

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF THE BRONX

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KNIC LLC, a Delaware Limited Liability Company, and :  
KNIC Properties LP, a Delaware Limited Partnership, :

Plaintiffs, :

-against- :

NEW YORK CITY ECONOMIC DEVELOPMENT :  
CORPORATION, :

Defendant, :

-and- :

ZACHARY W. CARTER, in his capacity as CORPORATION :  
COUNSEL OF THE CITY OF NEW YORK and Escrow Agent, :

Nominal Defendant. :  
-----X

Index No.

**SUMMONS**

**TO THE ABOVE-NAMED DEFENDANTS:**

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiff’s attorney an answer to the complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiffs designate Bronx County as the place of trial. The basis of the venue designated is CPLR § 507.

Plaintiffs’ addresses are: KNIC LLC, 920 Broadway, 12th Floor, New York, NY 10010; KNIC Properties LP, 250 Park Avenue, 7th Floor, New York, NY 10177.

Defendants’ addresses are: New York City Economic Development Corporation, 110 William Street, New York, NY 10038; Zachary Carter, Corporation Counsel of the City of New York, Law Department, 100 Church Street, New York, New York 10007.

Dated: New York, New York  
April 12, 2016

By: /s/ Michael L. Smith  
William A. Brewer III  
Michael L. Smith  
750 Lexington Ave, 14th Floor  
New York, New York 10022  
Telephone: (212) 489-1400

**ATTORNEYS FOR PLAINTIFF**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF THE BRONX

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KNIC LLC, a Delaware Limited Liability Company; and :  
KNIC Properties LP, a Delaware Limited Partnership, : Index No.  
 : Date Purchased:  
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 Plaintiffs, : **COMPLAINT**  
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 -against- :  
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 NEW YORK CITY ECONOMIC DEVELOPMENT :  
 CORPORATION, :  
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 Defendant, :  
 -and- :  
 :  
 ZACHARY W. CARTER, in his capacity as :  
 CORPORATION COUNSEL :  
 OF THE CITY OF NEW YORK and :  
 Escrow Agent, :  
 :  
 Nominal Defendant. :  
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Upon personal knowledge of its own actions and upon information and belief as to all others, Plaintiffs KNIC LLC (“KNIC LLC”) and KNIC PROPERTIES LP (“KNIC Properties”, and together with KNIC LLC “KNIC”) file this Complaint against Defendant NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION (“EDC”), and Nominal Defendant ZACHARY W. CARTER, in his capacity as CORPORATION COUNSEL OF THE CITY OF NEW YORK and as escrow agent (“Corporation Counsel”), as follows:

**I.**

**PRELIMINARY STATEMENT**

1. This action arises from a determination made by the administration of New York City Mayor Bill de Blasio to breach a contract entered into by the administration of Mayor Michael Bloomberg and divert a business opportunity from its rightful owner. Motivated by their unexpressed preferences, those same administration members have deliberately delayed the

progress of the Kingsbridge Armory redevelopment. By so doing, Defendant EDC, its officials, and those in league with them have caused hundreds of millions of dollars in damages to KNIC and the community at large.

2. Few projects have promised greater benefits to the people of The Bronx and the City of New York than the planned transformation of the historic Kingsbridge Armory into the Kingsbridge National Ice Center.

3. Hailed by Bronx leaders as a future “cornerstone of the local community” because of its potential to create jobs and economic opportunity for one of the most disadvantaged communities in New York, the project has earned broad support from community and business leaders, charitable foundations and elected officials.

4. Although EDC has publicly professed support for the project, it is now known that senior officials within EDC have conspired with three individuals who worked on the project but are no longer associated with it to steal the project from KNIC.

5. In March 2014, when KNIC was about to obtain a fully-executed, 99-year lease for the property, thus enabling it to take possession of the property and start construction, EDC delayed the closing.

6. Documents only recently produced by EDC reveal that EDC’s action in delaying the closing was the result of the efforts of senior executives within EDC to deliver the project to the three favored individuals who were no longer associated with KNIC.

7. It now appears that, while publically pretending to cooperate with KNIC, EDC was secretly working to advance the private interests of the three favored individuals and other non-party co-conspirators to the detriment of KNIC, the Kingsbridge community, The Bronx, and the City of New York.

8. In furtherance of this wrongful scheme, in early 2014, EDC determined to breach its obligation under a pre-development agreement with KNIC to deliver the then fully-negotiated lease to KNIC. Instead, EDC unreasonably delivered a “take it or leave it” demand and insisted that the lease be held in escrow until KNIC satisfied new financing conditions imposed by EDC. EDC’s new escrow condition was tantamount to a vote of no-confidence in the KNIC project team and was imposed despite an express appreciation within EDC of the chilling effect it would have on KNIC’s ability to secure the necessary financing. Indeed, the disruptive effect the new escrow condition would have on KNIC’s fundraising efforts was secretly discussed within EDC. In fact, the new escrow condition, which was not part of the lease approved by Mayor Bloomberg and the City Council, was insisted upon by EDC despite certain members having acknowledged in writing the chilling effect the escrow would have, and their view that the escrow actually afforded no protection for the City beyond that to which the parties had previously agreed.

9. Just as predicted, imposition of the escrow arrangement impeded KNIC’s efforts to obtain financing for the project. Nevertheless, determined to proceed despite the interference, for the next 18 months KNIC continued to invest significant resources in the ice center in an effort to overcome this obstacle created by EDC.

10. Although it took almost two years to do so, KNIC successfully raised over \$20 million dollars in equity investments and obtained a commitment from the New York Empire State Development Corporation (“ESD”) to provide \$138 million in senior debt financing to fund construction.

11. The first \$30 million tranche of the \$138 million total commitment was publicly approved by the ESD board on December 22, 2015 – well before the “outside date” set by the

Escrow Agreement as the date by which KNIC was required to demonstrate the availability of financing to move the project forward.

12. In January 2016, the commitment by ESD was reaffirmed when funding of the first tranche of the loan was *unanimously* approved by the New York State Public Authorities Control Board (“PACB”).

13. Accordingly, on February 4, 2016, KNIC notified Corporation Counsel, as escrow agent, that the escrow condition had been satisfied and requested that the lease and other documents held in escrow be released to KNIC. Incredibly, EDC objected to the turnover of the lease documents and continues to refuse to allow them to be delivered, thereby interfering with the forward movement of the project.

14. Despite the successful efforts of KNIC to overcome the heavy burden EDC improperly imposed, EDC continues to direct Corporation Counsel to wrongfully keep the facility lease under lock and key. In so doing, EDC is denying the community a historic opportunity, and is threatening destruction of this transformative project and KNIC’s business. Because of EDC’s actions, the development project now faces imminent danger of being victimized by the collusion between officials within the agency and individuals formerly involved with the developer intent on gaining financial benefits to which they are not entitled.

15. The impacts of EDC’s reckless insistence on the Escrow Agreement and its unreasonable objection to release of the lease and other deal documents from escrow has caused KNIC to incur millions of dollars in increased costs unnecessarily and has caused tens of millions of dollars in losses to KNIC by delaying commencement of ice center operations. In addition, EDC’s actions are placing important and far-reaching community benefits and programs, and the substantial economic benefits of this project, in serious jeopardy.

16. As a result, KNIC is now forced to bring this action to obtain possession of the lease and related deal documents from escrow so this landmark project may proceed.

17. KNIC also seeks to recover for the losses caused by EDC's breaches of its obligations to KNIC, and its other wrongful conduct.

## **II.**

### **THE PARTIES**

#### **A. Plaintiffs**

18. Plaintiff KNIC LLC (formerly known as KNIC Partners LLC) is a Delaware limited liability company with its principal place of business in New York, New York. Under the terms of a pre-development agreement with EDC dated April 23, 2013, as amended (the "Pre-Development Agreement"), KNIC is the "Developer" of the Kingsbridge National Ice Center development, and general partner of KNIC Properties.

19. Plaintiff KNIC Properties is a Delaware limited partnership with its principal place of business in New York, New York. KNIC Properties is a party to an escrow agreement dated October 14, 2014 (the "Escrow Agreement"), and is the party to become tenant of the Kingsbridge Armory based on the lease agreement and other documents held in escrow.

#### **B. Defendants**

20. Defendant EDC is a not-for-profit corporation that is party to the Pre-Development Agreement and the Escrow Agreement, with a principal place of business in New York, New York.

21. Nominal Defendant Zachary W. Carter ("Carter") is Corporation Counsel of the City of New York, Chief Legal Officer of the City of New York, and head of the New York City Law Department. Pursuant to the terms of the Escrow Agreement, Corporation Counsel is designated as the Escrow Agent and is therefore a necessary party for the purposes of obtaining

declaratory and other judicial relief. Accordingly, Carter is sued as a nominal defendant in his capacity as Corporation Counsel of the City of New York and in his capacity as escrow agent.

**C. Non-Party Co-Conspirators**

22. Alicia Glen (“Glen”) is an attorney who is Deputy Mayor for Housing and Economic Development in the City of New York, an EDC board member, and the de facto head of EDC. Before joining the de Blasio administration, Glen was head of the Urban Investments Group at Goldman Sachs that oversaw investments in socially responsible real estate property and companies, and was involved in discussions relating to the Kingsbridge project on behalf of Goldman. Glen has a close relationship with Jonathan Richter (“Richter”), who, along with Jeff Spiritos (“Spiritos”) and Marcus Wignell (“Wignell”), was formerly associated with KNIC, but ceased to be associated with the project following their unsuccessful efforts to lavish themselves with undeserved financial benefits at the expense of the Armory development project. Richter, Spiritos and Wignell are referred to hereinafter collectively as the “Former Associates”.

23. James Patchett (“Patchett”) is currently Chief of Staff to Deputy Mayor Glen. Prior to taking that position, Patchett worked with Glen as an Associate at Goldman Sachs. Patchett also has a close relationship with Richter.

24. Kyle Kimball (“Kimball”) is the former President of EDC. Kimball first joined EDC in 2008, and was appointed President by then Mayor Michael Bloomberg in 2013. Thereafter, he was reappointed President by Mayor Bill de Blasio and served until June 2015. During his tenure, Kimball oversaw capital projects ranging from city infrastructure upgrades to the building of new housing. Before joining EDC, Kimball was a vice president at Goldman Sachs and at J.P. Morgan Chase & Co. Kimball also has a close relationship with Richter.

25. Richter, Wignell and Spiritos are individuals previously associated with KNIC who, before quitting the project, were involved in the ice project with Kevin Parker, the founder

and managing member of KNIC, and have attempted to divert the business opportunity to redevelop the Kingsbridge Armory to themselves.

26. The actions by those individuals to interfere with KNIC LLC's contractual and prospective economic relations are the subject of a separate, related action *KNIC LLC et al. v. Richter et al.*; Index No. 303116/143, also pending in Supreme Court of the State of New York, Bronx County.

### III.

#### **JURISDICTION AND VENUE**

27. This Court has jurisdiction over the subject matter of this action pursuant to N.Y. Const. Art. 6, § 7.

28. Venue in The Bronx is proper pursuant to CPLR § 507 because the judgment demanded would affect title to, and possession of, the Kingsbridge Armory, located on West Kingsbridge Road, Bronx County. In addition, this action is related to three other actions currently pending in the Supreme Court of the State of New York, New York, Bronx County, titled *KNIC LLC et al. v. Richter et al.*, Index No. 303116/143; *Richter et al. v. Kevin E. Parker et al.*, Index. No. 651586/14; and *KNIC LLC v. LWP Capital, LLC*, Index No. 25953/21014E.

### IV.

#### **FACTUAL BACKGROUND**

##### **A. KNIC: A Vision For A Greater Bronx**

29. In late 2009, Kevin Parker, the founder and managing member of KNIC, began to explore the idea of building ice rinks in the New York City area. He did so after experiencing first-hand the severe shortage of ice sport facilities in New York City as he attempted to help his two young sons pursue their passion for ice hockey. At the time, Parker was the head of Asset Management at Deutsche Bank.

30. Seeking help in pursuit of his idea, Parker approached a longtime friend and colleague, John Nolan, himself a passionate, life-long hockey player. Nolan eagerly accepted the opportunity to help Parker research and develop the concept.

31. Soon thereafter, Parker invited others to join the project team. Among those recruited was star former New York Ranger and NHL legend Mark Messier (“Messier”), a friend whom Parker involved in the New York Police & Fire Widows’ and Children’s Benefit Fund, where Parker and Messier serve on the board and as officers.

32. In the beginning, Messier worked with Parker to develop the plan to build ice skating rinks in the New York area as a volunteer. He did so because of his belief that bringing ice sports to under-served communities could play an important role in reinvigorating those neighborhoods and helping kids stay in school, succeed in school and life, and make their way to college.

33. Today, Messier is the CEO for KNIC and the ice center development.

34. Sarah Hughes, the 2002 Olympic Figure Skating gold medalist, also joined the development team.

**B. NYCEDC: The Economic Development Corporation for the City of New York**

35. EDC was created in 1966 as the New York City Public Development Corporation for the purpose of revitalizing the City of New York’s then struggling economy.

36. EDC is a not-for-profit corporation with the stated mission “to encourage economic growth throughout the five boroughs of New York City by strengthening the City’s competitive position and facilitating investments that build capacity, create jobs, generate economic opportunity and improve quality of life.”

37. Although EDC is headquartered, along with the City’s Department of Small Business Services, at 110 William Street in New York, New York, it is not a city agency.

Rather, it is a not-for-profit corporation organized pursuant to Section 1411 of the Not-for-Profit Corporation Law of the State of New York, and operates under a contract with the City of New York.

38. The scope of EDC's work is defined by two contracts with the City's Department of Small Business Services: the Master Contract and the Maritime Contract. Significantly, both contracts allow EDC to retain a significant portion of the revenue earned from the sale and lease of city-owned property.

39. Among EDC's missions is the acquisition, supervision, transfer and lease of city-owned land and facilities. One such property is the Kingsbridge Armory in The Bronx.

**C. The Redevelopment Of The Kingsbridge Armory: An Opportunity For the Kingsbridge Community, The Bronx, New York City, and KNIC.**

40. In pursuit of the ice center vision, Parker and his team searched for suitable venues in New York City and surrounding areas. After several locations proved to be unworkable, Parker met with the New York City Department of Parks and Recreation and EDC to explore whether any sites owned by the City of New York might be suitable for a multi-rink ice center.

41. In January 2011, EDC officials discussed City-owned properties with Parker and others as possible locations for his ice center project. During the course of their discussions, EDC identified the Kingsbridge Armory, which had been empty for nearly two decades, as a potential location.

42. The Kingsbridge Armory is an enormous facility that occupies an entire five-acre block in The Bronx. Built in 1917 to house the National Guard's Eighth Coastal Artillery Regiment unit the "Washington Greys," it is the largest armory in the world. The facility was designated a New York City Landmark in September 1974.

43. In February 2011, after Parker and his team toured the Kingsbridge Armory, they decided to pursue the Armory as the project site. They immediately recognized that the redevelopment project would not only provide room for the much needed “ice” in the metropolitan area, but, given the size and the scale of this project, could deliver jobs and significant economic benefits to one of the most disadvantaged areas in New York City.

**D. A Winning Bid For The Kingsbridge Armory**

44. Throughout the summer of 2011, KNIC’s proposal for the ice center was presented informally to EDC and various elected officials, including City Council Members, the Bronx Borough President, several former Deputy Mayors, and then New York City Mayor Michael Bloomberg.

45. On January 12, 2012, EDC issued a formal request for proposals for the redevelopment of the Kingsbridge Armory.

46. On or about March 22, 2012, KNIC submitted a response to EDC’s request. Notably, the response included a letter of interest and support from Goldman Sachs signed by Glen, then an investment banker. Today, Glen is an EDC board member, the Deputy Mayor for Housing and Economic Development, the de-facto decision maker at EDC and a non-party co-conspirator in this action. When Glen and Goldman Sachs were approached with an opportunity to invest in the project, Glen was a strong supporter, and submitted a letter of support on behalf of a division of Goldman Sachs.

47. On April 19, 2012, KNIC went to EDC’s offices to discuss its Armory proposal and presented its vision for transforming the Kingsbridge Armory into the Kingsbridge National Ice Center, a facility containing nine indoor rinks, including a center rink with seating for approximately 5,000 guests. The Kingsbridge National Ice Center would feature ice hockey, figure skating, synchronized skating, speed skating, curling, sled hockey for the disabled, and

open skating for recreational skaters, and would provide free after school skating and mentoring programs for underprivileged kids at Title I schools in the area. The facility would also host local, regional, national and international tournaments, competitions and shows. It was a grand vision that contemplated full use of the Armory, attracting tourists and visitors to the neighborhood, and the creation of jobs, educational support for children and economic development for The Bronx. Not surprisingly, the proposal was enthusiastically received.

48. KNIC's development plan was carefully crafted to preserve the historic features of the building while using sustainable "green" energy and architecture and striving for LEED Silver environmental certification. The estimated full project cost is \$350 million and the ice center was originally scheduled for completion in the summer of 2017, the 100<sup>th</sup> anniversary of the completion and opening of the Armory and the 100<sup>th</sup> anniversary of the founding of the National Hockey League.

49. When completed, the center is expected to welcome approximately 2.5 million visitors annually. An economic consulting firm commissioned by KNIC estimates that the ice center will have an economic impact on the area of approximately \$2 billion and create hundreds of living wage jobs.

50. By August 2012, KNIC's proposal for the redevelopment of the Armory gained significant momentum. On August 23, 2012, Bronx Borough President Ruben Diaz, Jr. held a news conference at the Kingsbridge Armory during which he pledged his support for KNIC's proposal.

**E. Community Participation: The Beneficial Community Cooperation Agreement**

51. Given the significant economic impact the ice center is expected to have, numerous local community action groups saw the opportunities the project would present for the community.

52. On April 17, 2013, KNIC LLC entered into a Cooperation Agreement with a coalition of nearly thirty local community organizations, led by the Kingsbridge Armory Redevelopment Alliance. KNIC agreed to provide benefits of a magnitude and duration never before offered by any New York City developer. Among other benefits, KNIC agreed to pay a living wage to all workers it employed, and maintain a hiring preference toward local workers. It also promised to provide the community with 50,000 square feet of meeting space and offices in the Armory at a rent of one dollar per year for 99 years. It further agreed to contribute \$8 million toward the design and build-out of the community space, and to provide, each year for 99 years, \$1 million of in-kind services and ice time to citizens of The Bronx. The understanding was that the benefits would principally go to the children of The Bronx, with priority going to “Title I” public schools in the community, which serve students from low-income families.

**F. The Pre-Development Agreement: KNIC’s Proposal Is Approved By The City**

53. On April 23, 2013, KNIC LLC entered into the Pre-Development Agreement with EDC by which it was designated “Developer” of the Kingsbridge National Ice Center project. A true and correct copy of the Pre-Development Agreement is attached hereto as Exhibit 1. That same day, then-Mayor Bloomberg held a press conference to announce the City’s agreement with KNIC. Mayor Bloomberg made the historic announcement at the Kingsbridge Armory flanked by KNIC’s representatives Parker, Messier, and Olympic champion Hughes, along with Bronx Borough President Ruben Diaz, and other elected officials.

54. In Section 2.1, the Pre-Development Agreement provided for delivery to KNIC of an effective lease at the transaction closing (the “Closing”). Specifically, Section 2.1 provides:

At the Closing, subject to the terms and conditions of this Agreement, including, without limitation, the satisfaction of the Closing Conditions, the City and, at the request of NYCEDC, NYCLDC will execute and deliver, or have executed and delivered, the Lease [attached as Exhibit B to the agreement], and the Parties will execute and deliver, or have executed and delivered, the Initial Assignment. The Parties *acknowledge and agree that*

*the Lease has been fully negotiated and is in final form (in all material respects) as of the date of this Agreement and shall not be modified in any material respect, except as the Parties may mutually agree in their respective sole discretion (it being understood and agreed, however, that the Parties will reasonably cooperate to make revisions to the Lease as indicated by the footnotes and blanks therein to the extent applicable). Any party's consent to the modification of any portion of the Lease shall not be deemed to be a consent to the modification of any other portion of the Lease or any subsequent modification of the same portion of the Lease. (Emphasis added.)*

55. In addition, Article X of the Pre-Development Agreement set forth what EDC was required to deliver to KNIC at the Closing. Pursuant to Article X, EDC was required to deliver, among other things, the lease agreement duly executed and acknowledged by the City of New York, an appropriate assignment agreement, evidence of authorization for entering into the transaction, and all customary documents and affidavits executed on behalf of the City and New York City Land Development Corporation, another City-related party.

56. The Pre-Development Agreement set forth a number of obligations and conditions that had to be met before the City was required to execute and deliver the lease to KNIC. Article III of the agreement provided for the payment of non-refundable fees, including an administrative fee, a ULURP filing fee, and a CEQR fee, totaling hundreds of thousands of dollars. In addition, Article VII required that a security deposit in the amount of \$1,000,000 be deposited with EDC. The other material conditions to execution of the lease were obtaining public approvals from: (1) the New York City Planning Commission; (2) the Bronx Borough Board; and (3) EDC.

57. Two amendments were made to the Pre-Development Agreement – one in August 2013 (the “First Amendment”) and another in September 2013 (the “Second Amendment”). The First Amendment gave KNIC the right to enter and use the Armory facility to build an office space for the purpose of marketing the project. In particular, KNIC and EDC expressly acknowledged that “it will be in the best interests of the Parties to permit Developer to enter

upon and maintain a presence at the Premises for purposes of marketing the Project prior to lease execution and during the effective period of the Agreement.” After executing the amendment, KNIC constructed an office at the Armory at its own expense. The Second Amendment gave KNIC the right to allow its engineers to enter the Armory and conduct an interior noise measurement program.

58. The Closing was required to occur no later than September 30, 2014.

**G. KNIC Satisfied All Conditions, Which Entitled It To Delivery Of The Lease.**

59. In accordance with the Pre-Development Agreement, KNIC LLC timely paid all the required fees and satisfied the security deposit requirement. In addition, KNIC LLC and the project received all required approvals in quick succession. After the project received overwhelming approval from Community Board 7, the Landmark Preservation Commission voted 8-0 to approve the project and, on November 21, 2013, KNIC won the *unanimous* support of the Bronx Borough Board, which voted 10-0 for the project. Finally, on December 10, 2013, the City Council approved the project by a vote of 48-1.

60. Having satisfied all the conditions set forth in the Pre-Development Agreement, KNIC LLC was entitled to delivery of an executed and effective lease, which EDC was contractually obligated to deliver.

**H. EDC Refuses To Deliver An Effective Lease Agreement At Closing Without The Imposition Of New Material Terms.**

**1. EDC Delays The Closing.**

61. In March 2014, just as the Closing for this historic project was being scheduled, EDC declared that it would be delayed. Although the parties expressly agreed that the lease that was attached to the Pre-Development Agreement, and made a part of that agreement, was *fully negotiated and in final form* in all material respects, EDC refused to proceed with the Closing and announced to KNIC that it would not deliver the lease.

**2. EDC Conspires With Others To Withhold Delivery Of The Lease.**

62. KNIC was scheduled to meet at City Hall with Deputy Mayor Glen on March 10, 2014, to discuss execution and delivery of the lease. However, the meeting at City Hall was summarily canceled by EDC. Instead, KNIC was instructed to meet with Kimball, then EDC President, at EDC's offices.

63. Documents which have recently surfaced reveal that, unbeknownst to KNIC, beginning as early as February 18, 2014, Kimball and Patchett began secretly dealing with former KNIC associate Richter to derail KNIC and deliver the Armory to Richter. Those documents recently discovered by KNIC reveal that upon having resigned from the project team in February 2014, when his exorbitant demands for financial gain were rejected by Parker and Messier, Richter immediately contacted Kimball to obtain his support, and the support of others at EDC, in an attempt to cause KNIC to lose the Armory project.

64. Kimball and Patchett, along with Glen and the other non-party co-conspirators at EDC immediately began plotting to delay delivery of the lease to KNIC. This was done for the purpose of aiding Former Associates Richter, Wignell, and Spiritos in their scheme to wrest control of the project from KNIC LLC. (This dispute was later resolved in KNIC's favor on October 6, 2014, by the Honorable John A. Barone in the Supreme Court of the State of New York, County of The Bronx).

65. At 7:34 a.m. on Monday, March 10, 2014 – the date scheduled for the meeting at City Hall to discuss delivery of the lease – Kimball received a letter via email signed by Wignell, Spiritos, and Richter. True and correct copies of the email and accompanying letter are attached hereto as Exhibit 2. The letter falsely stated that Parker did not have authority to act on behalf of KNIC, and that he did not have authority to sign the lease or enter into any other agreements with EDC. In addition to being emailed to Kimball, the letter was emailed to various others

including Deputy Mayor Glen and Bronx Borough President Diaz. Although the letter purports to be for informational purposes, in fact, Kimball, Glen, and others at EDC requested that it be sent in advance of their meeting with representatives of KNIC to “justify” their refusal to go forward with delivery of the lease.

66. Upon receiving the letter from the Former Associates, Kimball forwarded the letter by email to others within EDC. Significantly, although the documents recently obtained prove that Kimball and Patchett decided to move the meeting from City Hall to EDC’s offices the week before (*see* email from Kimball to Patchett, dated March 7, 2014, a true and correct copy of which is attached hereto as Exhibit 3), when forwarding the letter, Kimball disingenuously wrote: “FYI, received this letter challenging Kevin Parker’s ability to execute the KNIC lease, this why [sic] the meeting was moved from CH [City Hall] this am to EDC.” The email went on to say: “Additionally, we should figure out how to get ahead of this in the press.” A true and correct copy of the email from Kimball, dated March 10, 2014, is attached hereto as Exhibit 4.

67. In an effort to “explain” their refusal to deliver the lease, the co-conspirators within EDC decided to conduct additional due diligence on Parker and KNIC, which was known to be unnecessary. Thus, on March 13, 2014, Patrick O’Sullivan, (“O’Sullivan”), Executive Vice President of EDC, initiated a due diligence process on KNIC. As part of this process, KNIC was required to provide organizational and financing documentation, and information on key management personnel.

68. On April 8, 2014, counsel for KNIC submitted its response to EDC’s due diligence request. Unaware that this new round of due diligence was part of a plan to slow KNIC down to enable the Former Associates to “go to Court” to prevent it from taking delivery

of the lease, KNIC spent much of April meeting with EDC to discuss their due diligence requests and KNIC's responses thereto.

69. In addition to initiating an unnecessary and pretextual "due diligence" process, Kimball contacted the New York City Department of Investigation ("DOI") and requested that it investigate Parker for suitability to take delivery of the lease. Pursuant to that request, DOI met with Richter, Wignell and Spiritos, each of whom stated that Parker did not have the financial backing or expertise to complete the project. Nonetheless, after its investigation, DOI concluded that Parker *did* have adequate financing and expertise to move forward; and noted that EDC had itself previously looked into the matter and determined the same. Frustrated by their inability to derail KNIC's entitlement to the lease in accordance with the terms of the Pre-Development Agreement, Kimball, Patchett and others within EDC conceived a different strategy and changed tack.

**3. EDC Unilaterally Imposes An Escrow Arrangement That Affords The City No Additional Protection, And Whose Real Purpose Is To Impede KNIC's Progress.**

70. In contravention of its obligations in the Pre-Development Agreement, EDC refused to deliver the effective lease to KNIC. Instead, as a new condition to the Closing, EDC unilaterally required that the lease be held in escrow. In particular, on April 25, 2014, less than two full days after Kimball internally acknowledged the need to deliver the lease to KNIC to ensure that it could access financial markets to obtain necessary financing, O'Sullivan, for the first time, raised the notion that the lease would be withheld from KNIC until KNIC satisfied new material conditions. (By way of example, a true and correct copy of an email from Kimball to Patchett, dated April 23, 2014, is attached hereto as Exhibit 5.) Pursuant to the "proposed" escrow arrangement, the lease would not be delivered to KNIC unless newly-imposed financing conditions were satisfied by a specified date.

71. Significantly, the following day, in an email dated April 26, 2014, O’Sullivan asked Ernesto Padron (“Padron”), a real estate professional on EDC staff, whether the requirements of the escrow condition “line up with when they [KNIC] were required to have their financing under the existing predevelopment agreement and lease.” In response, Padron, who was a real estate attorney before joining EDC, told O’Sullivan: “Neither the PDA [*i.e.*, the Pre-Development Agreement] nor the lease specifies a timeframe for financing to be in place. The lease requires that construction commence within 450 days of becoming effective.” A true and correct copy of the email from Padron to O’Sullivan, dated April 26, 2014, is attached hereto as Exhibit 6.

72. When KNIC sought an explanation regarding the “justification” for the Escrow Agreement, EDC stated that it was “necessary” to protect the City and its interests from uncompleted projects. However, when KNIC pointed out that the proposed arrangement was unnecessary because the lease prevented that occurrence and the arrangement afforded no additional protection to the City, EDC stated that “escrow” was now EDC’s policy. Those representations were false.

73. What is now known is that EDC co-conspirators were actually dealing directly with the Former Associates, and imposed the escrow condition in order to prevent KNIC from moving the project forward without the Former Associates. It did so despite knowing the escrow arrangement would harm and detrimentally delay the project.

74. The escrow arrangement EDC mandated was detrimental to KNIC because it deprived KNIC of possession of the effective lease, a core and valuable asset of the company. Most importantly, it created a chilling effect on KNIC’s ability to secure development financing necessary to commence construction. EDC was well aware of the inevitable detrimental impact

to the project and KNIC, as well as the delay it would cause to the commencement of construction and the opening of the Kingsbridge National Ice Center.

75. For example, by email dated May 12, 2014, Jeffrey Nelson (“Nelson”), EDC’s Executive Vice President for the Real Estate Transaction Services Group, asked Patchett whether EDC should move forward with KNIC, and how they should proceed with regard to the proposed escrow situation. Specifically, Nelson wrote:

“Assuming we have the go-ahead to move forward, EDC has contemplated executing the deal in one of two ways:

- 1) placing the lease in escrow pending receipt of firm financing commitments and/or availability of funds; or
- 2) executing the lease now and building in additional landlord termination rights if financing is not delivered.

The Kingsbridge team has indicated that an escrow approach will cause significant [investor] disclosure issues, but that #2 is workable.

I believe you may have discussed the above with the KNIC team and/or Ross Moskowitz. Is #2 the chosen approach at this point?”

76. A true and correct copy of the email from Nelson to Patchett, dated May 12, 2014, is attached hereto as Exhibit 7.

77. Despite the express appreciation of the detrimental impacts of the escrow, EDC insisted that the lease be held in escrow.

78. In the afternoon of May 22, 2014, Richter called Kimball to inform him that he and the other Former Associates were going to seek a restraining order that would enjoin EDC from signing any agreements with Parker at the helm.

79. When EDC refused to deliver the lease purportedly due to confusion over the ownership dispute, KNIC commenced a legal action seeking a declaration that Parker was the owner of the project and authorized to sign on behalf of KNIC. That action was appropriately

filed in The Bronx and served on June 5, 2014, and a preliminary injunction hearing date was established.

80. In the meantime, again unbeknownst to KNIC, the Former Associates filed an action in New York Supreme Court - County of New York. The complaint in that action, which the Former Associates secretly shared with EDC, was not served on KNIC until after KNIC's action was commenced.

81. At the same time, KNIC – unaware of the back channel communications between the Former Associates and EDC – continued to emphasize to EDC that the proposed escrow conditions were unnecessary and would cause significant delay in project financing and completion, and would thereby delay the project's positive impacts on the community.

82. On June 9, 2014, O'Sullivan received an email from a DOI special investigator which noted the pending lawsuits and inquired, "is EDC still planning on moving forward with the transactions or will this delay/halt the Kingsbridge project?" A true and correct copy of the email from DOI to O'Sullivan, dated June 9, 2014, is attached hereto as Exhibit 8.

83. Earlier that same day, Kimball wrote to the Commissioner of DOI to follow up on his earlier requests that the Commissioner *re-review* prior determinations made by his predecessor regarding Parker and take a fresh look at whether DOI was comfortable with "things moving forward" with Parker based on, among other things, conversations which occurred with members of the new Mayoral administration. Specifically, by email dated June 9, 2014, Kimball wrote to the Commissioner,

"We are in the final steps of potentially signing a lease with Kingsbridge National Ice Center (KNIC) as headed by Kevin Parker. Per our conversation a few months ago, I asked you to take a look at the work of your predecessor to see if you are comfortable with us moving forward. Can you confirm for me that, from a DOI perspective, you are comfortable with the City entering into an Escrow Agreement and Lease (Lease going into escrow and will come out at the time financing for the project is secured) with KNIC & Kevin Parker, based on what

you currently know and the conversations that have happened in this administration?” (emphasis added).

84. The Commissioner responded the following day, on June 10, 2014, that there was no objection by DOI. Significantly, DOI highlighted that EDC had reported to it that it had looked into questions raised by Richter regarding financial backing and expertise of Parker and “*determined that Parker did have adequate financing and expertise to move forward.*” Additionally, DOI noted that, following a *New York Times* article published on June 6, 2014, which referred to pending lawsuits, DOI obtained copies of the complaints to review the claims asserted by the parties. In doing so, DOI reported that “EDC has reviewed those claims and told us they have done additional due diligence on the project and Parker’s ability to execute it and *are comfortable that Parker has adequate financing and expertise to move forward.*”

85. Undaunted, Kimball pushed for still further inquiry by DOI regarding a previously resolved question. He asked, “Do you or your team have any concerns about the review the prior administration did?” A true and correct copy of the email string is attached hereto as Exhibit 9.

86. That same day, June 10, 2014, Richter filed an application seeking a TRO to enjoin Parker from signing any agreement with EDC on behalf of KNIC. Also, in an email dated June 10, 2014, to Glen, Patchett, and others, Kimball provided a status update to respond to questions raised by Bronx Borough President Diaz about why the project was “stymied.” Knowing otherwise, Kimball’s response was deceptive at best: “Developer is embroiled in a lawsuit with his former partners. Former partner [Richter] has notified us that they plan to file a restraining order against the City to keep us from signing the lease until their issue is resolved, but we’ve not been served.”

87. Incredibly, Kimball knew that EDC previously determined that Parker had adequate financing and expertise to complete the project, but provided misleading information to the contrary for the update to the Bronx Borough President. Specifically, on June 10, 2014, Kimball wrote:

The next step is for the City to enter into a lease for the Armory facility with KNIC. We have asked for the lease to go into escrow and come out of escrow when they raise the money for Phase 1, in order to protect the City. It's a \$350 million project and *there are concerns about his [Parker's] ability to raise the money and complete the project...namely the fact that they've never done a project like this. There are other issues, as well, we should talk about off line.* (emphasis added.)

88. A true and correct copy of the email from Kimball to Patchett and others, dated June 10, 2014, is attached hereto as Exhibit 10. Kimball's statement that there were other "issues" that he wanted to talk about with Glen, Patchett, and others, but that he preferred to talk about those "offline," indicates that he did not want a record of those communications.

89. Kimball's statements regarding "concerns" about financing or the expertise necessary to complete the project were patently false, as EDC's internal documents demonstrate.

90. The following day, on June 11, 2014, the Honorable Eileen Bransten, a Justice of the Supreme Court of the State of New York for New York County, Commercial Division, heard the Former Associates' application for a TRO. After reviewing the application and considering the arguments of counsel, Justice Bransten denied the application. Notably, in their papers and during the hearing, Richter, Wignell, and Spiritos claimed that they were majority owners of KNIC exactly as they had in their prior letter to EDC dated March 10, 2014.

91. Subsequently, the Former Associates advanced the same claims in a case in Supreme Court in The Bronx. After a hearing that spanned more than four (4) weeks, Justice Barone of the Supreme Court of the State of New York for Bronx County, Commercial Division, dismissed the claims of the Former Associates stating, inter alia, that "there is no viable claim

that [Richter, Wignell and Spiritos] had any responsibility to share in any prospective losses” and that there is “no assertion that any parties to this litigation other than Kevin Parker was recognized as being empowered to make management decisions.”

**I. EDC Continues To Demand That The Lease Be Placed In Escrow Despite KNIC Having Procured Sufficient Equity Investments And Project Financing To Satisfy The New Financing Condition.**

92. After entering into the Pre-Development Agreement on April 23, 2013, KNIC LLC set out to procure the funds necessary to pursue development of the Kingsbridge National Ice Center and to ensure its completion by Summer 2017, as planned, and was successful in obtaining significant investments of both equity and debt financing.

93. For example, KNIC obtained a \$10 million investment from the Kresge Foundation, a \$3 billion private, national foundation dedicated to working to expand opportunities in America's underserved cities through investment in arts and culture, education, environment, health, human services, and community development. KNIC also received a multi-million dollar investment from Performance Sports Group, the parent company of hockey's industry leader, Bauer Hockey. In addition, KNIC negotiated the sale of more than \$85 million in historic and new market tax credits. It also worked to obtain \$25 million in senior debt financing, as well as other commitments concerning \$250 million in subordinated debt funding. Furthermore, other parties expressed a strong interest in making investments with KNIC to provide additional project financing.

94. Notwithstanding the foregoing, EDC insisted on the escrow condition. Because it recognized the significant delay the escrow condition would cause, KNIC spent months negotiating with EDC in an attempt to resolve this flagrant breach and to obtain possession of the lease. Of course, those efforts proved to be futile.

95. Faced with a looming deadline of September 30, 2014, when the Pre-Development Agreement would expire, by letter dated September 24, 2014, KNIC advised EDC that it objected to the imposition of additional terms and conditions, it could not agree to the escrow arrangement proposed by EDC, and requested that the Closing be scheduled for September 30, 2014, based on the terms and conditions to which the parties previously agreed. A true and correct copy of the letter, dated September 24, 2014, is attached hereto as Exhibit 11.

96. It is now known that KNIC's efforts never had any chance for success — given the secret dealings between EDC co-conspirators and the Former Associates. Thus, EDC refused to deliver the signed lease to KNIC by the September 30, 2014, expiration date.

97. Despite knowing that an escrow requirement would delay the project and negatively impact KNIC's fundraising efforts, thereby delaying the opening of the ice center by a year or more, EDC refused to budge. It did so because EDC was surreptitiously negotiating with the Former Associates who represented that they were ready, willing, and financially able to immediately move the project forward without KNIC.

98. Faced with a take-it-or-leave-it ultimatum, KNIC reluctantly submitted to EDC's demand to sign the Escrow Agreement. By placing such a demand upon KNIC, EDC intentionally caused KNIC to be deprived of the benefit of its bargain and to suffer tens of millions of dollars in damages.

**J. Against The Odds: KNIC Satisfies The Escrow Condition, But EDC Unreasonably Objects To The Delivery Of The Lease**

**1. KNIC Satisfies The Escrow Condition.**

99. Under the terms of the lease, the first phase of the Kingsbridge Armory redevelopment project ("First Phase") consists of completion of five interior ice rinks, parking facilities, and approximately 50,000 square feet of space dedicated exclusively to community

uses. At the time the Escrow Agreement was signed, the cost to complete the First Phase was estimated to be approximately \$158 million. The Escrow Agreement provided, among other things, that the lease and other related documents would be held in escrow, and not delivered to the Company, until EDC had reasonable evidence of available financial resources, composed of debt and equity, sufficient to complete the First Phase of the project.

100. Section 2.01 of the Escrow Agreement provides that the escrow condition shall be satisfied based on “evidence reasonably satisfactory to [EDC] of financial resources sufficient to complete the First Phase”.

101. KNIC timely demonstrated compliance with the escrow condition.

102. Before being compelled to sign the Escrow Agreement, KNIC provided EDC with evidence demonstrating \$20 million in existing equity investment.

103. Thereafter, EDC was involved in discussions regarding the \$138 million loan commitment by ESD and was given a copy of the term sheet for the loan to fund construction. The term sheet was signed by ESD following a public meeting of its Board, which unanimously approved the loan commitment and funding for the first \$30 million tranche of financing.

104. Thereafter, public action was taken to approve the initial funding of the state’s overall loan commitment, including a unanimous vote of the PACB in favor of advancing the first \$15 million of the overall state loan.

105. As publicly reported, Brad Austin, the ESD lawyer who publicly presented the project at the PACB meeting on January 28, 2016 (the “PACB Meeting”), stated in advance of the vote by the board: “I’d like to note that while the Kingsbridge project resolution is for \$15 million, [the ESD] board has approved up to \$30 million as part of a larger \$138 million commitment” and “[w]e do anticipate returning to seek PACB approval for additional money in the future.” Clearly, EDC had more than reasonable evidence demonstrating the availability of

financial resources sufficient to complete the First Phase of the Kingsbridge National Ice Center project.

106. By letter dated February 4, 2016, KNIC advised Corporation Counsel (as escrow agent) that the condition for release of the lease and other documents held in escrow (the “Escrowed Documents”) had been satisfied, and requested that the Escrowed Documents be released. A true and correct copy of the letter, dated February 4, 2016, is attached hereto as Exhibit 12.

**2. EDC Unreasonably Objects And Wrongfully Interferes With The Release Of The Documents Held In Escrow.**

107. In response to KNIC’s letter, EDC wrongfully refused to allow the lease to be delivered.

108. In a letter from Nelson, dated February 9, 2016, EDC informed Corporation Counsel that it objected to the release of the Escrowed Documents, and instructed Corporation Counsel not to release the Escrowed Documents. EDC did so purportedly because the “only evidence received by [EDC] from [KNIC] as of [that] date in relation to debt financing” was an unexecuted term sheet, and that “based on this lone article of evidence” EDC was unable to conclude that the escrow condition had been satisfied. That highly suspect response from EDC is disingenuous at best.

109. The response was made in bad faith, with the aim of stopping delivery of documents by Corporation Counsel. By responding the way it did, and interfering with the release of the Escrowed Documents, EDC breached its contractual and common law duties to KNIC.

110. EDC has since been provided with a copy of the signed term sheet with ESD.

111. In addition, EDC knows that the State of New York has publicly confirmed its commitment to provide financing for this project on multiple occasions. EDC knows of the public action and unanimous votes of the ESD Board and the Public Authorities Control Board.

112. In addition to being aware of the public action by the ESD board and PACB, EDC knows that on February 17, 2016, ESD representative Marion Phillips III, speaking at a public forum hosted by New York State Senator Gustavo Rivera, reiterated the vote and authorization by the ESD board in support of the project and explained that the purpose of the vote at the PACB Meeting was to “spearhead the project and keep it moving forward.” These public actions, statements and representations known to EDC, but consciously and conveniently ignored in its objection, constitute sufficient evidence that KNIC has satisfied the escrow condition EDC forced upon it.

113. In light of the foregoing, in a letter dated February 15, 2016, KNIC inquired whether EDC had any reason to doubt the commitment or capability of the state. To date, no response has been provided. Accordingly, the escrow condition has been satisfied, EDC has a duty to withdraw its objection, and the documents must be released.

114. By continuing to impede Corporation Counsel from releasing the Escrowed Documents, EDC is in further default of its obligations to KNIC. Furthermore, its ongoing refusal to deliver the lease shows that EDC is still intent on killing the project and depriving the public of all benefits that go with it – presumably so the lease and accompanying development rights can be given to individuals who possess close relationships with City officials.

**K. The Damage Done**

115. As detailed above, KNIC LLC spent millions of dollars to win the right to redevelop the Kingsbridge Armory. In addition, KNIC LLC spent millions of dollars to satisfy the conditions imposed by EDC and to establish entitlement to delivery of the lease for the

Armory, possession of the Armory, and an option to buy the Armory. Furthermore, KNIC LLC ensured that its development would provide remarkable benefits and transformative positive economic impacts to the Kingsbridge community and the people of The Bronx and New York City.

116. However, after KNIC LLC won the right to redevelop the Armory, EDC determined not to perform its obligations to KNIC LLC under the Pre-Development Agreement. EDC refused to deliver the effective lease to KNIC at a Closing before September 30, 2014, the date on which the Pre-Development Agreement expired, and required KNIC to enter into the Escrow Agreement to avoid the agreement's imminent expiration. Now, even though KNIC has satisfied the escrow condition that was unilaterally imposed by EDC, EDC continues to interfere with and prohibit delivery of the lease and other deal documents by Corporation Counsel, thereby preventing progress and delaying KNIC's pursuit of this historic and transformative development project. As a result of EDC's wrongful conduct, KNIC has been denied possession of the lease and deprived of the value of the lease and purchase-option agreements for the Armory. Such conduct has also caused KNIC to incur tens of millions of dollars in additional cost.

117. Absent a judgment compelling delivery of the lease, the Kingsbridge National Ice Center project will face an imminent threat of termination, and KNIC will face an imminent threat of being put out of business by the EDC and losing this valuable business opportunity to the undeserving and dishonest cronies of those calling the shots at EDC.

118. Accordingly, KNIC is forced to bring this action to obtain release and possession of the Escrowed Documents, to recover damages for the losses caused by EDC's wrongful conduct, and to obtain other appropriate relief.

V.

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**  
**Declaratory Judgment**

119. Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1 through 118 as though fully set forth herein.

120. An actual, substantial, and justiciable controversy exists regarding KNIC's satisfaction of the escrow condition, and EDC's possession of evidence reasonably satisfactory to demonstrate the availability of resources sufficient to complete the First Phase of the Kingsbridge National Ice Center development project.

121. An actual, substantial, and justiciable controversy also exists regarding KNIC's right to possession of an effective lease, as well as other documents currently held in escrow which EDC has refused to permit Corporation Counsel to release, and instructed Corporation Counsel not to deliver to KNIC, and also KNIC's right to possession and use of the Armory.

122. As detailed above, KNIC has satisfied the escrow condition in the Escrow Agreement and is entitled to delivery of the Escrow Documents. EDC, however, has wrongfully objected to delivery by Corporation Counsel.

123. Section 4.02 of the Escrow Agreement provides that the Escrowed Documents will be delivered to KNIC Properties by Corporation Counsel within a reasonable time following receipt of a final order by a court of competent jurisdiction that resolves any controversy regarding satisfaction of the escrow condition.

124. Accordingly, pursuant to CPLR 3001, KNIC requests a declaratory judgment overruling the wrongful objection of EDC and determining that the escrow condition has been

satisfied, thereby requiring Corporation Counsel to deliver the Escrowed Documents to KNIC Properties in accordance with the terms of the Escrow Agreement.

**SECOND CAUSE OF ACTION**  
**Breach of Contract**

125. Plaintiff repeats and re-alleges the allegations in paragraphs 1 through 124 as though fully set forth herein.

126. As detailed above, on April 23, 2013, KNIC LLC entered into the Pre-Development Agreement with EDC. The Pre-Development Agreement is a binding and enforceable contract, pursuant to which EDC became obligated, upon satisfaction of certain conditions, to deliver to KNIC at a Closing an effective lease for the Kingsbridge Armory.

127. The Pre-Development Agreement included a lease agreement that the parties agreed was fully negotiated, and final in all material respects, except as the parties otherwise mutually agreed.

128. On December 10, 2013, the New York City Council approved KNIC's project and the lease agreement.

129. KNIC completed and/or substantially performed all of its contractual obligations and all conditions necessary for KNIC to receive delivery and possession of the lease have been satisfied, and KNIC has acted in good faith and fairly in all material respects.

130. EDC, therefore, became obligated to deliver an executed and effective lease agreement to the KNIC at a Closing.

131. EDC insisted on a material change to the lease and Pre-Development Agreement involving an escrow arrangement by which the lease would not become effective, but would merely be held in escrow and not be delivered to KNIC before newly imposed conditions had been satisfied.

132. As detailed above, in October 2014, KNIC was required to succumb to EDC's improper demand for an escrow agreement after KNIC was forced by EDC to choose between either signing the Escrow Agreement it demanded or allowing the Pre-Development Agreement to expire, thereby exterminating the development project and its community benefits and causing KNIC to lose millions of dollars it had spent in pre-development costs and deposits.

133. As further detailed above, KNIC satisfied the escrow condition and the Escrowed Documents were required to be released. Among other things, KNIC obtained and provided EDC with evidence of significant equity funding as well as a commitment by ESD to provide a \$138 million senior-mortgage loan to fund construction.

134. On February 4, 2016, KNIC provided notice to Corporation Counsel that the escrow condition had been satisfied.

135. Despite satisfaction of the escrow condition, EDC wrongfully objected to and interfered with release of the Escrowed Documents to KNIC Properties, and has otherwise breached its duties and obligations to KNIC including, among other things, its duty of good faith and fair dealing.

136. As a direct result of EDC breaches, and other wrongful conduct, KNIC has suffered tens of millions of dollars in damages due to, among other things, delays, increased cost, and lost revenues and profits, and its damages will become hundreds of millions dollars if the project is terminated and lost.

137. Accordingly, KNIC is entitled to specific performance of the Pre-Development Agreement and an award of damages in an amount to be determined by the trier of fact.

**THIRD CAUSE OF ACTION**  
**Aiding And Abetting The Commission Of A Tort**

138. Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1 through 137 as though fully set forth herein.

139. As detailed in the action titled *KNIC LLC et al. v. Richter et al.*; Index No. 303116/143, also pending in The Bronx, Richter, Wignell and Spiritos engaged in wrongful action and intentionally interfered with KNIC LLC's contractual and prospective economic relations.

140. EDC, and its agents, including Glen, Patchett, Kimball and other non-party co-conspirators, had direct knowledge of the actions by Richter, Wignell and Spiritos that interfered with KNIC's economic relations, and substantially assisted Richter, Wignell and Spiritos in their wrongful conduct. Among other things, EDC wrongfully delayed the Closing, refused to deliver a fully-executed lease, insisted on an escrow agreement, and adopted an unreasonable, unfair, and bad faith interpretation of the Escrow Agreement, with the intent, purpose, and effect of depriving KNIC of possession of the lease, and wrongfully interfered with and refused to allow Corporation Counsel to deliver the Escrowed Documents to KNIC Properties despite the escrow conditions having been satisfied.

141. As a direct result of EDC's wrongful conduct, and substantial assistance to Richter, Wignell and Spiritos, KNIC has suffered tens of millions of dollars in damages for which EDC and each officer, director or agent of EDC who acted for his or her own benefit or personal gain are jointly and severally liable with Richter, Wignell and Spiritos.

142. Accordingly, KNIC is entitled to an award of damages in an amount to be determined by the trier of fact.

## VI.

### **DEMAND FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court consider these matters on an expedited basis, enter judgment in Plaintiff's favor against Defendant EDC, and award Plaintiff the following relief:

(1) declaratory judgment, pursuant to CPLR 3001, overruling the wrongful objection of defendant EDC and declaring that the escrow condition has been satisfied, thereby requiring the Escrow Agent to deliver the Escrowed Documents to plaintiff KNIC Properties in accordance with the terms of the Escrow Agreement;

(2) specific performance of the contracts between plaintiff and defendant EDC for delivery of a lease and purchase option for the Kingsbridge Armory;

(3) damages, including, without limitation, actual, compensatory and punitive damages, in an amount to be determined at trial;

(4) reasonable attorneys' fees, experts' fees and expenses;

(5) costs and disbursements of court; and

(6) any other or further relief, at law or in equity, to which Plaintiff may be entitled and which the Court deems just and proper.

Dated: April 12, 2016  
New York, New York

Respectfully submitted,

**BREWER, ATTORNEYS &  
COUNSELORS**

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