

**Statement by Capodagli Property Company, LLC, Regarding Lawsuit Filed Against
Township of Toms River and Mayor Daniel T. Rodrick**

August 8, 2024

Capodagli Property Company, LLC, announces today that its subsidiary, Meridia Toms River 40 Urban Renewal LLC, has filed a ten-count complaint in the Superior Court of New Jersey against the Township of Toms River and Mayor Daniel T. Rodrick for various causes of action including breach of contract, tortious interference, and violations of Meridia's constitutional and civil rights under the United States Constitution and the Constitution of New Jersey. The lawsuit seeks an order directing the Defendants to honor their contractual obligations under the Redevelopment Agreement with Capodagli, as well as compensatory damages, punitive damages, attorneys' fees, and interest.

Capodagli Property Company, LLC, takes great pride in developing projects that benefit the entire community, which this project will do by transforming underutilized parcels into a vibrant, first-class mixed-use development reinvigorating downtown Toms River. While this is a sad day for the company, it is the Township's residents, property owners, and downtown small business owners who will be most affected by Mayor Rodrick's illegal crusade to stop this project.

Since his inauguration, Mayor Rodrick and the Township have repeatedly breached the Redevelopment Agreement and have engaged in a course of conduct intended to delay and obstruct the project. The resulting delay was relied upon by Mayor Rodrick and the Township as the basis to illegally and improperly terminate the parties' Redevelopment Agreement. In truth, it is the Township that has breached the Redevelopment Agreement. Rather than honor its contractual obligations, the Township has put taxpayer dollars at risk by forcing this litigation to vindicate Meridia's rights.

We have no doubt that Mayor Rodrick will not cease in his attempts to stop this project, regardless of Capodagli's contractual and constitutional rights. Capodagli, however, is not deterred and intends to vindicate its rights through today's lawsuit. When successful, Capodagli looks forward to delivering on its promise to develop this project for the benefit of the Township of Toms River.

Capodagli is represented in the lawsuit by Greenbaum, Rowe, Smith & Davis LLP, led by its Redevelopment & Land Use Department Co-Chair, Steven Mlenak, Esq.

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MERIDIA TOMS RIVER 40 URBAN
RENEWAL LLC,

Plaintiff,

v.

TOWNSHIP OF TOMS RIVER, DANIEL
T. RODRICK, Individually and
in His Capacity as Mayor of
the Township of Toms River,
and JOHN DOES 1-10

Defendants.

SUPERIOR COURT OF NEW JERSEY
OCEAN COUNTY: LAW DIVISION
DOCKET NO. OCN-L-

Civil Action

COMPLAINT AND JURY DEMAND

Plaintiff, MERIDIA TOMS RIVER 40 URBAN RENEWAL LLC, a New Jersey limited liability company, by way of Complaint against the Defendants, TOWNSHP OF TOMS RIVER (hereinafter "Township") and DANIEL T. RODRICK (hereinafter "Mayor") says:

THE PARTIES

1. Plaintiff, Meridia Toms River 40 Urban Renewal LLC, with offices at 201 South Wood Avenue, Linden, New Jersey 07036, is a limited liability company formed under the laws of the State of New Jersey.

2. Plaintiff is the owner, of property in the Township of Toms River at 40 & 48 West Water Street and 511 Irons Street, formally designated as Block 569, Lots 3, 4, 5, 5.01, 10 and 11 on the tax map of the Township of Toms River (the "Property") and is the designated redeveloper of the Property for development of the Project that is the subject of this lawsuit.

3. Defendant, Township of Toms River ("Township") is a municipal corporation of the State of New Jersey with offices at 33 Washington Street, Toms River, NJ 08754 and is authorized, empowered and required to perform functions and powers as a redevelopment agency pursuant to the provisions of the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Redevelopment Law").

4. Defendant, Daniel T. Roddick is the Mayor of the Township of Toms River with an office at 33 Washington Street, Toms River, NJ 08754.

5. Upon information and belief, John Does 1 - 10 are the names of fictitious persons who are believed to be legally responsible for the damages set forth herein.

FACTS COMMON TO ALL CLAIMS

6. On December 26, 2017 after the Township Council of the Township had designated certain properties within the Township as an area in need of redevelopment, the Township Council adopted an Ordinance approving a Redevelopment Plan for the Phase 1 Downtown

Waterfront Redevelopment Area, which was further amended on July 13, 2021 and December 14, 2021 (the "Redevelopment Plan").

7. In order to effectuate the Redevelopment Plan, the Township entered into a redevelopment agreement with Plaintiff on August 25, 2021, as amended on December 21, 2022 and July 12, 2023 (the "Redevelopment Agreement"). Copies of the Redevelopment Agreement and amendments are annexed as Exhibit A, B and C.

8. Pursuant to the Redevelopment Agreement, Plaintiff was designated the Redeveloper of property within the Township previously owned by the Township at Block 569, Lots 4, 5, 5.01 and 11.01 and previously owned by the Parking Authority of the Township at Block 569, Lots 3 and 10 (collectively the "Project Site").

9. Pursuant to the Redevelopment Agreement, Plaintiff agreed to acquire the entire Project Site, and on December 28, 2022 Plaintiff paid the Township \$625,000.00 for the conveyance of the Project Site. Plaintiff is the current record owner of the Project Site pursuant to a Deed recorded on January 12, 2023 in OR Book 19273 page 1067.

10. Pursuant to the Redevelopment Agreement, Plaintiff agreed to develop the Project Site as a mixed use development with a maximum of ten (10) stories providing approximately 242 market-rate units and 43 affordable units, a minimum of 16,000 square feet of retail and commercial components, and appropriate

amenities and related Project Improvements, in accordance with the Redevelopment Plan (the "Project").

11. The Redevelopment Agreement provided in Section 4.18 that the parties shall fully cooperate with each other as necessary to effectuate the Project.

12. Section 7.02 of the Redevelopment Agreement also provided: "To the extent reasonably requested by the Redeveloper and, to the extent permitted by Applicable Law (and without violating its obligations as a governmental entity or regulatory body having competent jurisdiction over the Project), the Township shall provide its support and assistance to the Redeveloper in facilitating the review of all plans, issuance of all permits, request for inspections and the conduct of such inspections through the appropriate Township board, body or department, as applicable."

13. Prior to January 1, 2024 the Township complied with its obligations under the Redevelopment Agreement and supported and assisted Plaintiff in obtaining the approvals for development of the Project.

14. With the Township's support and assistance, Plaintiff obtained preliminary and final site plan approval for the Project in accordance with the requirements of the Redevelopment Plan as memorialized in a January 19, 2022 resolution adopted by the Township Planning Board.

15. After the resolution of approval, the New Jersey Department of Environmental Protection determined that no retail space would be permitted on the ground floor of the proposed building, and Plaintiff, with the Township's support and assistance and in response to public concerns with respect to the height of the building, revised the development plans for the Project to reduce the height of the building by five stories and to reduce the retail and commercial components as originally proposed in the Redevelopment Agreement.

16. On or about July 12, 2023, Plaintiff and the Township executed a Second Amendment to the Redevelopment Agreement for the revised plans for the Project, with a revised Project Schedule to accommodate the approvals needed for the amended design.

17. On November 1, 2023 the Toms River Township Planning Board adopted a resolution granting preliminary and final major site plan approval and variance and design waiver relief to Plaintiff for development of a six-story mixed-use building with 281 residential apartment units consisting of 238 market rate units and 43 affordable units, as well as 14,731 square feet of retail space, with 389 indoor parking stalls in a two-story enclosed parking deck and 22 exterior parking spaces, along with additional site improvements including an outdoor amphitheater, elevated boardwalk, loading areas, trash enclosure areas, retaining walls,

lighting and landscaping. A copy of the Planning Board resolution is annexed as Exhibit D.

18. The 43 affordable units in the approved Project provide a substantial contribution to satisfy the Township's affordable housing obligations.

19. Notice of the Planning Board approval was published on November 10, 2023 in the Asbury Park Press, and no challenge to the approval was filed in the Superior Court of New Jersey.

20. The resolution was subject to a number of conditions, and Plaintiff proceeded with satisfying the conditions in the resolution, including:

- a. Approval of the Toms River Municipal Utilities Authority on April 23, 2024
- b. Approval of the Toms River Bureau of Fire Prevention on January 26, 2024
- c. Issuance of zoning permit on February 27, 2024 for removal of asphalt parking lot.
- d. Issuance of building permit for retaining wall [bulkhead replacement] on February 29, 2024
- e. Issuance of electrical permit on March 21, 2024
- f. Issuance of CAFRA permit on January 9, 2023 for construction of project

- g. Issuance of NJDEP permit on March 31, 2023 for construction of public access walkway in association with Freshwater Wetlands General Permit No. 17
 - h. Flood Hazard Area Verification approval on February 24, 2022
 - i. Recording of Deed notice on February 23, 2023 to comply with requirements of N.J.A.C. 7:13-12.6(f)
 - j. Recording of Conservation Restriction/Easement for public access to waterfront on February 23, 2023
 - k. Issuance of license from the New Jersey Bureau of Tidelands Management on June 9, 2023
 - l. United States Army verification on April 11, 2022 of nationwide permit #3 and #7 for replacement of 240 linear feet of bulkheads
 - m. April 10, 2024 letter of no interest from New Jersey Department of Transportation
 - n. Stormwater Discharge General Permit authorization from NJDEP on March 26, 2024
21. Plaintiff has expended more than \$3,200,000 in obtaining the approvals.

22. While Plaintiff was proceeding with its approvals in accordance with the Planning Board resolution and Redevelopment Plan, the Mayor, the Township and its officials proceeded on a

path to obstruct the development of the Project in violation of the Redevelopment Agreement.

23. On January 1, 2024, Daniel Rodrick commenced his term as Mayor of the Township. The Mayor had campaigned on a platform to prevent overdevelopment in the Township, and the Mayor specifically targeted the Project, stating at the inception of his term that the Township is going to "bring in a high-powered attorney to fight these guys and get us out of this terrible deal.". <https://patch.com/new-jersey/tomsriver/rodrick-makes-sweeping-changes-toms-river-administration> See Exhibit E.

24. Pursuant to the Mayor's directive, the Township administration has undertaken arbitrary, capricious and unreasonable efforts to prevent the development of the Project since the Mayor's inauguration, including but not limited to:

- a. Refusing to provide the Redeveloper with necessary information to complete certain requests by the Township Planning Board and Ocean County;
- b. Taking excessive and unreasonably delayed time in responding to the Redeveloper's Resolution compliance submissions;
- c. Delaying or outright refusing to respond to requests and inquiries from the Redeveloper, including requests for calculations to post performance guarantees and inspection fees;
- d. Failing to identify the Township's Flood Plain Manager, who was required to provide the Flood Mitigation Approval required for the Project;
- e. Failing to hire professionals who were required for approvals of the Project, including termination and

failure to replace the Township engineer and Township planner involved in the Affordable Housing plan for the project and the downtown area;

- f. Adding requirements unsupported by Township Ordinance to which no other development or Planning Board application has ever been subject; and
- g. Interfering with a multimillion-dollar Federal grant awarded to the Township for the purpose of improving the entire Downtown Toms River area, which would provide significant benefits and improve conditions for all local business owners.

25. Plaintiff has worked diligently to address the conditions of approval in the Planning Board resolution in order to commence construction of the Project.

26. Commencement of Construction is defined in the Redevelopment Agreement as "the undertaking of any actual physical construction of any portion of the Project, including but not limited to site preparation, environmental remediation, construction of new structures or construction or upgrading of infrastructure."

27. Plaintiff obtained confirmation from the previous Redevelopment Counsel for the Township that the demolition of any structures, the relocation of the storm water sewer pipes / utility services, or the grading of soil within the Project Site, constituted site preparation which, when undertaken, would be deemed the Commencement of Construction pursuant to the Redevelopment Agreement. Plaintiff has obtained the permits to conduct this work and is ready, willing, and able to commence

construction pursuant to the Redevelopment Agreement prior to the January 31, 2025 deadline set forth in the Agreement. Indeed, Plaintiff has already commenced construction on the bulkhead improvements pursuant to its CAFRA approvals.

28. Notwithstanding Plaintiff's diligent efforts in proceeding with the Project pursuant to the Redevelopment Agreement, Plaintiff was concerned in March 2024 that the Township in its hostility to the Project would seek to declare that Plaintiff was in default under the Agreement.

29. Plaintiff met with representatives of the Township on March 24, 2024 to discuss the status of the Project and Plaintiff's efforts to address the conditions for commencement of construction, and followed this with a March 28, 2024 letter from Plaintiff's attorney to the Township's attorney. A true copy of the March 28, 2024 letter is annexed as Exhibit F.

30. In the March 28, 2024 letter, Plaintiff's attorney noted that Plaintiff had not received from the Township's Engineer the calculation of amounts required for inspection fees, tax map maintenance fees, or the Guarantees. Without those values, which come from the Township, Plaintiff was unable to pay the fees or post the bonds required to proceed with construction of the building.

31. The Township did not provide the information requested by Plaintiff but instead on April 19, 2024 issued a notice of

default pursuant to Section 11.02 of the Redevelopment Agreement. The Township listed 28 conditions of the Planning Board resolution that, still needed to be satisfied, as well as items requested by the Township's consulting engineer Remington & Vernick. A copy of the April 19, 2024 letter is annexed as Exhibit G.

32. The Township advised that Plaintiff had 45 days to commence to cure the defaults under Section 11.02 of the Redevelopment Agreement, and if Plaintiff failed to cure the default, the Township would consider exercising the remedies available under the Redevelopment Agreement.

33. On May 23, 2024 Plaintiff's attorney responded to the Township's purported notice of default. The letter asserted that Plaintiff had received the necessary approvals and permits sufficient to Commence Construction as that term is defined in the Redevelopment Agreement and that the outstanding items referenced in the Township's letter were either received by the Township, or to the extent they were delayed or not received, this was the result of default by the Township. A copy of the May 23, 2024 letter is annexed as Exhibit H.

34. In the May 23, 2024 letter, Plaintiff's attorney responded to all of the items set forth in the Township's attorney's April 19, 2024 letter, and noted that many items were awaiting responses from the Township, including calculations for

the performance guaranties and inspection fees, and the need to identify the Township's flood mitigation officer.

35. Plaintiff's attorney noted that Plaintiff could not comply with the time frames in the Project Schedule as a result of the Township's failure to cooperate and assist with the Project, and pursuant to Section 4.05 of the Redevelopment Agreement "in such event the Project Schedule shall be modified accordingly, subject to the Township's consent, which shall not be unreasonably withheld, conditioned or delayed".

36. Plaintiff's attorney further noted that there could not be a default pursuant to Section 11.01(7) of the Redevelopment Agreement, which provided that an event of default was the "failure to comply with the Project Schedules, subject to delays caused by the Township's failure to timely perform its obligations." The Township's default and violation of the Redevelopment Agreement required that all timelines and schedules under the Redevelopment Agreement to be met by the Redeveloper, had to be stayed and should not begin running until the Township cured its defaults and resumed cooperation.

37. In the May 23, 2024 letter, Plaintiff's attorney also provided the Township with formal written notice of default pursuant to Section 11.01 of the Redevelopment Agreement, stating that the Township was in violation of Sections 4.18 and 7.02 of the Agreement by reason of its overt and continued lack of

cooperation, including but not limited to, the refusal to provide the Redeveloper with necessary information to complete certain requests by the Township Planning Board and Ocean County; taking excessive and unreasonably delayed time in responding to the Redeveloper's Resolution compliance submissions; along with delayed or outright refusal to respond to requests and inquiries from the Redeveloper; adding requirements that no other development or Planning Board application has ever been subject to; and interfering with a multimillion-dollar grant awarded to the Township for the purpose of improving the entire Downtown Toms River area, which is slated to improve conditions for all local business owners.

38. Under Section 11.02 of the Redevelopment Agreement, the Township had 45 days to commence to cure its default, which 45 days would expire on July 8, 2024.

39. The Township has taken no action to cure its default and to return to cooperating and assisting Plaintiff with the Project.

40. Instead, on July 2, 2024 the Township issued a formal written notice of default, asserting that Plaintiff had failed to comply with the Project Schedule by not closing on financing by June 30, 2024. The Township asserted that Plaintiff had 15 days to cure the default under Section 11.02 of the Redevelopment Agreement. A true copy of the July 2, 2024 letter is annexed as Exhibit I.

41. On July 16, 2024, Plaintiff's attorney responded to the July 2, 2024 default notice. Plaintiff's attorney advised that it had been diligently working to secure the necessary financing, but due to the actions and inactions of the Township and its mayor, Plaintiff faced significant delays in being able to close on financing. A true copy of the July 16, 2024 letter is annexed as Exhibit J.

42. This political interference is frustrating the purpose of the Redevelopment Agreement and making Plaintiff's performance impossible. The interference is beyond the Plaintiff's control and constitutes a Force Majeure Event under the Redevelopment Agreement, staying all schedules and timelines. Plaintiff was not in default, because the failure to comply with the Project Schedule was subject to delays caused by the Township's failure to timely perform its obligations, as provided in Section 11.01(7) of the Agreement.

43. Plaintiff's attorney further advised that the Township had incorrectly calculated the cure period for its purported notice of default. The term "financial obligation" was not a defined term in the Redevelopment Agreement, and closing on construction financing was an element of the Project Schedule subject to Section 11.01(a)(7) and not a failure to make payments owed to the Township when due under Section 11.01(a)(5). Under Section 11.02, the purported default was subject to a 45-day period to commence to

cure the default, and if the defaulting party required additional time, they would have an additional 180 days to complete the cure. Plaintiff advised that it was undertaking steps to finalize its financing agreements to cure the default, but needed the Township to provide written support of the Project, as it was required to do under the Redevelopment Agreement.

44. On July 16, 2024, Plaintiff's attorney also wrote to the Township's attorney stating that the Township had undertaken no effort to commence to cure its default, and that the Township was in default under the Redevelopment Agreement by violating Sections 4.18 and 7.02 of the Redevelopment Agreement and continuing its flagrant disregard for the overall terms and intent of the Redevelopment Agreement. A true copy of this July 16, 2024 letter is annexed as Exhibit K.

45. Rather than cure its default and provide the cooperation and assistance as required by the Redevelopment Agreement, the Township escalated this matter on July 23, 2024 by issuing a formal written notice that Plaintiff failed to cure its "financial default", the cure period expired on July 18, 2024, and the Redevelopment Agreement will terminate on September 23, 2024. The Township required Plaintiff to transfer the Project Site back to the Township and to forfeit the \$625,000 paid by the Plaintiff. A true copy of this July 23, 2024 letter is annexed as Exhibit L.

46. The letter further advised that the Township authorized the Township's attorney to take all necessary action to enforce its rights under the Redevelopment Agreement. This is the culmination of the Mayor's antagonism to the Project duly authorized and approved by the Township and his efforts to "bring in a high-powered attorney to fight these guys and get us out of this terrible deal".

47. Even after issuance of the default letter, the Township has acted in bad faith to obstruct the Project. After requesting the Township's engineers for bonding estimates for the project for months, on July 25, 2024 the Township's consulting engineers Remington & Vernick produced a letter purportedly dated April 18, 2024 with the estimates for the inspection fee and performance guarantees required for the Project. The problem with this "April 18, 2024" letter is that it is addressed to Mark Rohmeyer, P.E. as Township Engineer, when Mr. Rohmeyer was not appointed as Township Engineer until April 24, 2024.

COUNT ONE

(Breach of Redevelopment Agreement)

48. Plaintiff repeats the allegations contained in the previous paragraphs of the Complaint as if set forth at length.

49. Plaintiff and Defendant Township executed a Redevelopment Agreement and the Township is obligated to perform its obligations under the Agreement.

50. Plaintiff has expended substantial funds in connection with the performance of the Redevelopment Agreement and pursuit of approvals in compliance with the Redevelopment Agreement, in reasonable reliance upon the Township's performance thereof, including, but not limited to, providing support and assistance to Plaintiff in the development of the Project under the Redevelopment Agreement.

51. Township has breached its obligations to Plaintiff under the Agreement by failing to cooperate with Plaintiff in the development of the Project and failing to provide support and assistance to the Redeveloper in facilitating the review of all plans, issuance of all permits, request for inspections and the conduct of such inspections.

52. Indeed, the Township and its officials have actively interfered with the development of the Project.

53. The Township's interference frustrated the purpose of the Redevelopment Agreement and made Plaintiff's performance of the Agreement impossible.

54. As a direct and proximate result of the Township's anticipatory and actual breach of the Redevelopment Agreement, Plaintiff has been deprived of the use and enjoyment of its property and has suffered and will continue to suffer actual, severe and direct economic harm.

WHEREFORE, Plaintiff demands that Judgment be entered in their favor and against Defendants as follows:

- a. Declaring that Defendants breached the Redevelopment Agreement;
- b. Ordering specific enforcement of the Redevelopment Agreement requiring defendant Township to honor its obligations under the Agreement;
- c. Awarding compensatory and punitive damages;
- d. Awarding interest;
- e. Awarding attorneys' fees;
- f. Awarding costs of suit; and
- g. Awarding such other and further relief as the Court may deem equitable and just.

COUNT TWO

(Breach of the Covenant of Good Faith and Fair Dealing)

55. Plaintiff repeats the allegations contained in the previous paragraphs of the Complaint as if set forth at length.

56. Every agreement in the State of New Jersey contains implied covenants of good faith and fair dealing.

57. Defendant Township had an obligation and duty to act in good faith and to deal fairly with Plaintiff in connection with the Redevelopment Agreement.

58. Defendant Township breached its obligation and duty to act in good faith and deal fairly by among other things failing to

cooperate with Plaintiff in the development of the Project and to provide support and assistance to Plaintiff in facilitating the review of all plans, issuance of all permits, request for inspections and the conduct of such inspections.

59. Defendant Township's actions and misconduct as set forth above have denied Plaintiff the fruits of the Redevelopment Agreement and constitute a breach of the implied covenants of good faith and fair dealing.

60. As a result of the foregoing, Plaintiff has been deprived of the use and enjoyment of its property.

61. As a result of the foregoing, plaintiff has sustained damages.

WHEREFORE, Plaintiff demands that Judgment be entered in their favor and against Defendant Township as follows:

- a. Declaring that Defendant breached its duty of good faith and fair dealing in connection with its obligations to Plaintiff;
- b. Specific enforcement of the Redevelopment Agreement requiring Defendant Township to honor its obligations under the Agreement;
- c. Awarding compensatory and punitive damages;
- d. Awarding interest;
- e. Awarding attorneys' fees;
- f. Awarding costs of suit; and

g. Awarding such other and further relief as the Court may deem equitable and just.

COUNT THREE

(Duty to "Turn Square Corners")

62. Plaintiff repeats the allegations set forth above and incorporates the same as if set forth at length herein.

63. A municipality, its agencies and representatives owe a duty to Plaintiff and the members of the public to "turn square corners" as articulated by the Supreme Court in F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418 (1985).

64. Defendants have breached this duty to Plaintiff in all respects via their improper actions relative to the treatment of the Plaintiff under the Redevelopment Agreement, and by their delays and obstruction, including but not limited to their interference with the development of the Project and failure to facilitate the review of plans and applications, issuance of permits and response to requests for bonding estimates.

65. As a result of the aforementioned improper conduct by the Defendants, Plaintiff has been and continues to be injured and deprived of its rights.

WHEREFORE, Plaintiff demands that Judgment be entered in their favor and against Defendants as follows:

- a. Declaring that Defendants have breached their obligations to Plaintiff in connection with the development of the Project;
- b. Specific enforcement of the Redevelopment Agreement requiring Defendants to honor their obligations under the Agreement;
- c. Awarding compensatory and punitive damages;
- d. Awarding interest;
- e. Awarding attorneys' fees;
- f. Awarding costs of suit; and
- g. Awarding such other and further relief as the Court may deem equitable and just.

COUNT FOUR

(Declaratory Judgment)

66. Plaintiff repeats the allegations contained in the previous paragraphs of the Complaint as if set forth at length.

67. Plaintiff has diligently pursued its approvals pursuant to the Redevelopment Agreement but has been obstructed from obtaining approvals and financing in accordance with the Project Schedule provided in the Agreement, as a result of the Township's delays and obstructive tactics.

68. The Township has sought to take advantage of the delays created by its own misconduct to declare that Plaintiff is in default under the Redevelopment Agreement.

69. Plaintiff asserts that there is no default under the Agreement as a result of the delays caused by the Township's failure to timely perform its obligations. The timelines and schedules under the Redevelopment Agreement should be stayed and should not begin running until the Township cures its defaults and resumes its obligations of cooperation and support under the Agreement.

70. The New Jersey Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62, is remedial legislation designed "to settle and afford [a party] relief from uncertainty and insecurity with respect to rights, status and other legal relations".

71. There are unsettled questions of law and uncertainty in the status of rights impacting the plaintiff.

72. Plaintiff is insecure and uncertain and seeks the Court's assistance and an Order of the Court settling and declaring its protected rights and privileges under the Redevelopment Agreement and to declare that Plaintiff is not in default under the Redevelopment Agreement

73. Defendants' improper actions are prejudicial to the Plaintiff and have caused substantial uncertainty and have a legally significant impact on the Plaintiff's business interests, and cause the Plaintiff to need the Court's intervention and action to resolve and bring clarity and finality to the unsettled, uncertainty and insecurity in rights, status and legal relations.

74. The court should declare that the Plaintiff is not in default under the Redevelopment Agreement and any delays in Plaintiff's performance are the result of the Township's breach of its obligations under the Redevelopment Agreement.

WHEREFORE, plaintiff requests that judgment be entered in its favor as follows:

- (a) Declaring that plaintiff is not in default under the Redevelopment Agreement;
- (b) Declaring that the Township is in default under the Redevelopment Agreement;
- (c) Issuing mandatory injunctive relief requiring the Township and its representatives to comply with their obligations under the Redevelopment Agreement and facilitate the issuance of permits and approvals; and
- (d) Awarding plaintiff costs of suit and such other and further relief as this Court deems appropriate.

COUNT FIVE

(Injunctive Relief)

75. Plaintiff repeats the allegations contained in the previous paragraphs of the Complaint as if set forth at length.

76. Plaintiff has acted in good faith in the performance of its obligations under the Redevelopment Agreement.

77. Plaintiff is ready, willing and able to continue to perform its obligations under the Redevelopment Agreement and to develop the Project Site.

78. Defendants have engaged in a campaign to prevent Plaintiff from complying with its obligations under the Redevelopment Agreement and to satisfy the conditions of the Planning Board approval for the Project Site obtained by Plaintiff.

79. The Project Site is a unique parcel of real estate and Defendants' pursuit of a default under the Redevelopment Agreement would require Plaintiff to return the Project Site to the Township.

80. Plaintiff's remedy at law, i.e., monetary damages, is inadequate since the Project Site is unique and has peculiar value.

81. If Defendants are not enjoined from their improper practices and interference with Plaintiff's performance under the Redevelopment Agreement, Plaintiff will suffer immediate and irreparable injury.

WHEREFORE, Plaintiff demands judgment as follows:

- (a) issuing preliminary and permanent injunctions enjoining and restraining defendant Township and its agents and representatives from interfering with the Plaintiff's performance under the Redevelopment Agreement;
- (b) dissolving and vacating the Township's notice of default; and

(c) awarding Plaintiff costs of suit and such other and further relief as this Court deems appropriate.

COUNT SIX
(Estoppel)

82. Plaintiff repeats the allegations contained in the previous paragraphs of the Complaint as if set forth at length.

83. Defendant Township adopted a Redevelopment Plan providing for mixed-use development on plaintiff's property and entered into a Redevelopment Agreement with Plaintiff for the development of the Project Site.

84. Plaintiff has proceeded with the redevelopment of the Project Site with the expectation that the Township would comply with its obligations.

85. Plaintiff at all times acted in good faith in reliance upon and compliance with the Township ordinances and Redevelopment Plan.

86. Plaintiff relied on the provisions in the Redevelopment Plan and Redevelopment Agreement and expended substantial sums in order to obtain site plan approvals and to acquire the Property.

87. Defendants have prevented Plaintiff from proceeding with the development by its delays and obstructions in violation of the Redevelopment Agreement.

88. Defendant's conduct has deprived Plaintiff of its value, investment and vested property rights in the Property and its legitimate investment-backed expectations.

89. Under principles of equitable estoppel, defendants should be enjoined from proceeding with its notice of default against Plaintiff and taking any further action to prevent development in the Redevelopment Area.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- a. Declaring Defendants' conduct to be arbitrary, capricious, unreasonable and invalid as an improper exercise of municipal power as applied to the Property owned by plaintiff;
- b. Enjoining defendants from proceeding with its notice of default and interfering with Plaintiff's efforts to develop the Property;
- c. For sanctions for Defendants' improper conduct;
- d. For costs and attorneys' fees; and
- e. For such other relief as the Court deems just and proper.

COUNT SEVEN

(Violation of Contractual Rights, Privileges and Immunities)

90. Plaintiff repeats the allegations contained in the previous paragraphs of the Complaint as if set forth at length.

91. The Township's conduct is arbitrary, capricious and unreasonable, and without any basis in law.

92. The Township's conduct is contrary to the public interest, without any public purpose and is ultra vires.

93. The Township's conduct violates plaintiff's rights, privileges and immunities in violation of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. 1983.

94. As a result of defendant's unlawful actions, plaintiff has suffered and will continue to suffer damages in amounts to be determined at trial.

WHEREFORE, plaintiff demand judgment against defendants as follows:

- a. declaring that the Township's conduct was arbitrary, capricious, and unreasonable and otherwise void, ultra vires, and without basis;
- b. enjoining the Township from undertaking any action that would interfere with Plaintiff's rights in its property;
- c. awarding Plaintiff damages;
- d. awarding Plaintiff costs of suit;
- e. awarding Plaintiff attorneys fees pursuant to 42 U.S.C. §1988; and

f. granting Plaintiff such other and further relief as the Court, in its discretion, determines is equitable and just.

COUNT EIGHT

(Violation of Constitutional and Civil Rights)

95. Plaintiff repeats the allegations contained in the previous paragraphs of the Complaint as if set forth at length.

96. The Township's conduct was arbitrary, capricious, unreasonable, and without any basis in law.

97. The Township's unlawful actions have caused Plaintiff to incur significant legal expenses, unnecessary carrying costs, and lost revenue in its attempts to develop the Property.

98. The Township's unlawful actions have deprived Plaintiff of the reasonable use of the Property and deprived Plaintiff of its contractual rights.

99. The Township's unlawful actions have jeopardized Plaintiff's ability to utilize public funding that has been committed to the Township for transportation improvements for the downtown Toms River Area.

100. The Township's unlawful actions have been taken under the color of state law, shock the conscience, and deprive Plaintiff of its substantive property rights guaranteed by the Federal and

State Constitution, in violation of 42 U.S.C. §1983 and the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 to -2.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- a. Declaring that the Defendants' conduct is an unlawful deprivation of Plaintiff's substantive due process and property rights in violation of the Federal Constitution and 42 U.S.C 1983 et seq.
- b. Declaring that the Defendant's conduct is an unlawful deprivation of Plaintiff's substantive due process and property rights in violation of the New Jersey Constitution and New Jersey Civil Rights Act, N.J.S.A. 10:6-1 to -2.
- c. Awarding such other and further relief as the Court may deem equitable and just in the circumstance including consequential damages, attorney's fees and costs of suit pursuant to 42 U.S.C 1983 et seq. and the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 to -2.

COUNT NINE

(Violation of Mount Laurel Obligations)

101. Plaintiff repeats the allegations contained in the previous paragraphs of the Complaint as if set forth at length.

102. Defendant Township has a constitutional fair share housing obligation pursuant to the Mount Laurel decisions to create sufficient opportunities for the construction of safe, decent housing affordable to low and moderate income households to satisfy the unmet housing needs of its indigenous poor and its fair share of the unmet housing needs of the poor in the housing region in which it is located.

103. On July 7, 2015, the Township filed a declaratory judgment action, seeking a determination of its Round Three affordable housing obligations and approval of its proposed Housing Element and Fair Share Plan to satisfy such obligations and, thereby, obtain a Judgment of Compliance and Repose from the court, pursuant to the March 2015 New Jersey Supreme Court decision, In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) ("Mount Laurel IV").

104. On November 3, 2016, the Township entered into a settlement agreement with Fair Share Housing Center that would form the basis of the Township's court approved affordable housing obligations.

105. On December 16, 2016, the court conducted a fairness hearing to determine whether the November 3, 2016 settlement agreement presented a realistic opportunity for affordable housing development and were fair, equitable and protected the interests

of low and moderate income families and approved of the settlement agreement by order entered by the court and filed on December 31, 2016.

106. The court approved settlement agreement established the Township's affordable housing obligations as follows:

- a. Rehabilitation Obligation: 243 units
- b. Prior Round Obligation (1987-1999): 1,735 units
- c. Third Round Gap and Prospective Need Obligation (1999-2025): 1,285 units.

107. The settlement with Fair Share Housing Center provided an obligation of the Township for approximately 100 affordable residential units to be in the Downtown Waterfront Phase I Redevelopment Area, and the Plaintiff's Project provides 43 affordable residential units to satisfy that obligation.

108. The Township's obstruction of the Project is preventing the construction of the affordable units that are an important component to satisfy the Township's affordable housing obligation.

109. Defendant Township is in violation of its duty to create sufficient realistic opportunities for the construction of safe, decent housing affordable to low and moderate income families to satisfy its fair share of the unmet regional need for such housing and is thereby in violation of the New Jersey Constitution as constructed by the New Jersey Supreme Court in Southern Burlington County NAACP v. Mt. Laurel Township, 67 N.J. 151 (1975) and 92

N.J. 158 (1983) and the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq.

WHEREFORE, plaintiff demands judgment for the following relief:

- a. Declaring that the Township is in violation of its constitutional duty to create sufficient realistic opportunities for the construction of safe, decent housing affordable to low and moderate income families to satisfy its fair share of the unmet regional need for such housing;
- b. Enjoining and directing the Township to cooperate with Plaintiff with regard to the approval of and construction of Plaintiff's inclusionary development;
- c. Awarding plaintiff costs of suit and reasonable attorney's fees; and
- d. For such other and further relief as this Court deems just and equitable.

COUNT TEN

(Tortious Interference with Contractual Rights
and Prospective Economic Advantage)

110. Plaintiff repeats the allegations contained in the previous paragraphs of the Complaint as if set forth at length.

111. Plaintiff is the designated Redeveloper of the Project Site pursuant to a Redevelopment Agreement duly authorized by the Township.

112. Defendant Mayor was aware or should have been aware of Plaintiff's rights in the Redevelopment Agreement and Project Site under which Plaintiff had a reasonable expectation of economic advantage, and upon which it would rely.

113. Defendant Mayor, acting either in his individual capacity, and/or as a representative of Defendant Township, interfered with Plaintiff's contractual agreement and prospective economic advantage by, among other things, as set forth above:

- (a) Expressly advocating against the development of the Project Site and seeking to repudiate the Redevelopment Agreement;
- (b) Delaying appointment of the Township engineer;
- (c) Delaying appointment of the Township's flood plain manager;
- (d) Delaying appointment of the Township's planner charged with effectuating the Township's affordable housing obligations;
- (e) Delaying appointment of the Township's affordable housing counsel;
- (f) Interfering with a multimillion-dollar grant awarded to the Township for the purpose of improving the entire Downtown Toms River area; and
- (g) Upon information and belief, pressuring and threatening officials of the Township to delay and

obstruct Plaintiff's performance under the properly authorized Redevelopment Agreement.

114. The conduct of the Mayor was unconscionable and tortiously interfered with Plaintiff's contractual rights and prospective economic advantage in the Property.

115. Defendant Mayor's interference was inflicted intentionally, maliciously and without justification.

116. Plaintiff has been damaged as a result of the tortious conduct of Defendant Mayor.

WHEREFORE, Plaintiff demands that Judgment be entered in their favor and against Defendants as follows:

- a. Awarding compensatory and punitive damages;
- b. Awarding interest;
- c. Awarding attorneys' fees;
- d. Awarding costs of suit; and
- e. Awarding such other and further relief as the Court may deem equitable and just.

GREENBAUM, ROWE, SMITH & DAVIS LLP
Attorneys for Plaintiff

By: /s/ Steven G. Mlenak
Steven G. Mlenak

DATED: August 8, 2024

JURY DEMAND

Plaintiff hereby demand a trial by jury on all issues so triable.

CERTIFICATION OF NO OTHER ACTIONS

I certify that to the best of my knowledge, information and belief, the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding, nor is any action or arbitration proceeding contemplated with the exception of the following pending matter:

In the Matter of the Township of Toms River, County of Ocean,
Docket No. OCN-L-1867-15

At the present time, and prior to discovery, I know of no other parties who should be joined in the within action at this time.

GREENBAUM, ROWE, SMITH & DAVIS
Attorneys for Plaintiff

By: /s/ Steven G. Mlenak
Steven G. Mlenak

Dated: August 8, 2024

CERTIFICATION PURSUANT TO R. 1:38-7

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

GREENBAUM, ROWE, SMITH & DAVIS
Attorneys for Plaintiff

By: /s/ Steven G. Mlenak
Steven G. Mlenak

Dated: August 8, 2024