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**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
DOCKET NO. HUD-L-**

**195 EAST 22ND STREET URBAN
RENEWAL, LLC, 195 EAST 22ND STREET 1-
01 URBAN RENEWAL L.L.C., 195 EAST
22ND STREET 1-02 URBAN RENEWAL
L.L.C., and 195 EAST 22ND STREET 1-03
URBAN RENEWAL L.L.C.**

Plaintiffs,

vs.

**CITY OF BAYONNE and 23rd STREET
URBAN RENEWAL JOF AAI III, LLC,**

Defendants.

CIVIL ACTION

COMPLAINT

Plaintiffs, 195 East 22nd Street Urban Renewal, LLC, 195 East 22nd Street 1-01 Urban Renewal, LLC, 195 East 22nd Street 1-02 Urban Renewal, LLC, and 195 East 22nd Street 1-03 Urban Renewal, LLC, by way of Complaint against Defendants, City of Bayonne and 23rd Street Urban Renewal JOF AAI III, LLC, through their undersigned counsel, allege and say:

PARTIES

1. Plaintiffs are New Jersey limited liability companies with a place of business at 85 E 2nd Street, Bayonne, NJ 07002.

2. Defendant City of Bayonne (the “City”) is a body politic with offices located at 630 Avenue C, Bayonne, New Jersey 07002.

3. Defendant, 23rd Street Urban Renewal JOF AAI III, LLC, is a South Carolina limited liability company with a business address at 100 Dunbar Street, Spartanburg, South Carolina, 29306.

BACKGROUND

4. Plaintiffs are the owners of real property known as Block 452.01, Lots 1.01, 1.02, and 1.03 (formerly known as Block 452, Lots 1, 2, and 3 on the tax maps of the City) (collectively, “Plaintiffs’ Property”).

5. On June 27, 2016, the City and Plaintiff, 195 East 22nd Street Urban Renewal, LLC (“Redeveloper”), entered into that certain Redevelopment Agreement (the “RDA”).

6. Pursuant to the RDA, the City designated Redeveloper as the redeveloper of Plaintiffs’ Properties, under the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the “Redevelopment Law”), for the development of a mixed-use commercial development.

7. Plaintiffs’ Properties are located at the intersection of Route 440 and East 22nd Street (the “Intersection”).

8. Under the RDA, the City and Redeveloper agreed that as part of the redevelopment project, Redeveloper would construct a new traffic signal and related infrastructure improvements at the Intersection (collectively, the “Traffic Improvements”) without any monetary contribution from the City.

9. Under Section 3.02(b) of the RDA, however, in lieu of the City’s financial contribution to the Traffic Improvements, the City’s obligation was to “require monetary contributions from any and all owners, developers and redevelopers proposing and/or developing non-residential projects or enlargements of existing non-residential projects, capital improvements, access improvements and/or parking areas from and after [June 27, 2016] on a fair share basis whose properties and/or projects are located within 3,000 linear feet in all four compass directions measured outward from the center of the intersection adjacent to [Plaintiffs’ Properties] (the “Contribution Area”).”

10. The Contribution Area was attached as “Exhibit I” to the RDA and identified properties/projects within 3,000 linear feet of the Intersection.

11. The RDA further provides, in relevant parts, that:

The contributions from each such owner, developer and/or redeveloper towards shall be based upon the percentage of the entire cost incurred by the Redeveloper for the installation of the Traffic Improvements allocated to each property within its Contribution Area based on the linear footage of frontage of their respective properties. The contributions shall only become due and owing when the owner, developer and/or redeveloper constructs its project. The Redeveloper shall supply to the City the actual cost of installation upon completion of the Traffic Improvements, so that it can then assess the pro rata contribution to be made by subsequent developers pursuant to the provisions of N.J.S.A. 40:55D-42. All amounts paid pursuant to the foregoing shall be paid to Redeveloper until Redeveloper has been reimbursed for 90% of the cost of the traffic light improvement. The City will continue to make good faith efforts to collect such funds until the 90% reimbursement figure has been reached. The City will continue to have this responsibility to collect such funds for up to 8 years following submission of the cost completion information by Redeveloper to the City. Under no circumstances shall the City ever become responsible and/or liable for the failure to collect such fees on the Redeveloper's behalf. However the City hereby assigns to Redeveloper the right, at Redeveloper's option, to collect such amounts by litigation or otherwise if the City does not or is otherwise unable to collect such fee within sixty (60) days of receiving written notice from the Redeveloper.

12. Redeveloper, at a substantial cost, obtained all state and local approvals for the Traffic Improvements, and completed construction thereof circa 2018.

13. On October 4, 2022, Redeveloper submitted its certified costs to the City totaling \$1,653,485, which the City accepted.

14. Defendant, 23rd Street Urban Renewal JOF AAI III, LLC, is an affiliate of Johnson Development Associates, Inc. (collectively referred to herein as "JDA").

15. In or about 2019, JDA received redevelopment approvals and a tax abatement from the City to construct a self-storage facility on real property located at Block 451, Lot 2.06 (the "JDA Property").

16. The JDA Property is within the Contribution Area and in close proximity to the Intersection.

17. In a February 2020 interview, Mayor Jimmy Davis was quoted regarding the redevelopment of the JDA Property as follows: "These developments will add economic value

to our city. Developers will be contributing toward the cost of road and bridge improvements from which our residents will benefit.”

18. Similarly, the City’s redevelopment counsel was also quoted in a February 2020 interview stating that JDA will contribute about \$200,000 worth of road construction and an additional \$150,000 to the roadway project.

19. On September 16, 2020, the City and JDA entered into a Redevelopment Agreement for the JDA Property (the “JDA Redevelopment Agreement”).

20. Pursuant to Section 2.09(c) of the JDA Redevelopment Agreement, JDA was “responsible to contribute One Hundred Thousand Dollars (\$100,000.00) to the road improvements shown on Exhibit F. This contribution shall be applied to (i) the construction of the Connector Road after the Connector Road is approved and prior to its construction, and/or (ii) any eminent domain or condemnation that is required for any of the road improvements shown on Exhibit F, including road improvements that will be constructed by other developers. The exact distribution of the contribution for these two purposes shall be in the City’s discretion.”

21. Pursuant to Section 3.02(b) of the JDA Redevelopment Agreement, JDA was obligated to pay the City “[a] contribution in the amount of \$100,000 to (i) the construction of the Connector Road, also known as Avenue G, and/or (ii) any eminent domain or condemnation that is required for any of the road improvements shown on Exhibit F, including road improvements that will be constructed by other developers, as set forth in Section 2.09(c)” and “[a] contribution in the amount of \$15,000 to the installation of any traffic signals or necessary equipment to accomplish signal preemption for emergency vehicles at a signalized intersection adjacent to the Project Premises, which improvements will be constructed by another developer.”

22. Upon information and belief, JDA paid the City the total sum of \$115,000 as required by the JDA Redevelopment Agreement.

23. Upon information and belief, in lieu of requiring monetary contributions for the Traffic Improvements by Plaintiffs, the City elected to extract monetary contributions from JDA that benefitted the City at the expense and detriment of Plaintiffs.

24. JDA thereafter constructed a self-storage facility on the JDA Property and opened to the public in late 2022.

25. Under the terms of the RDA, a payment in the amount of \$163,417 became due by JDA to Plaintiffs.

26. Nevertheless, neither the City nor JDA remitted any payment to Plaintiffs for JDA's fair share of the costs of the Traffic Improvements.

27. On December 19, 2023, the Redeveloper provided written notice to the City and a demand that the City collect the \$163,417 due by JDA and/or turnover to Plaintiffs any payments previously received from JDA for the Traffic Improvements.

28. The City never responded to Plaintiffs' demand.

29. On February 24, 2024, Plaintiffs then made a demand for payment from JDA.

30. JDA denied responsibility to make any payment to Plaintiffs.

31. In addition to JDA, after the City entered into the RDA, several other owners, developers and redevelopers in the Contribution Area proposed and/or developed non-residential projects or enlargements of existing non-residential projects, capital improvements, access improvements and/or parking areas, thus triggering the City's obligation to collect funds from such owners, developers, and redevelopers to reimburse Plaintiffs for its Traffic Improvements.

32. These other owners, developers, and redevelopers include: Duke Realty Bayonne Urban Renewal, LLC, Block 452.02 Lot 5.01, LLC, MCR 54 Rt 440 Lot 6 LLC, 116 E. 22nd St. Corp., Lehigh Realty Co., Inc., IMTT Holdings Inc., Bayonne Industries, Inc., and Bayonne Industries LLC.

33. In material breach of its obligations under the RDA, however, the City failed and refused to take any action to recover the pro rata contributions due to Plaintiffs by these other

owners, developers and redevelopers in the Contribution Area, and/or, like JDA, collected monies but never remitted any payments to Plaintiffs.

34. Plaintiffs are currently owed a total sum of \$1,464,927 for the Traffic Improvements.

FIRST COUNT

(Breach of Contract, including Breach of the Covenant of Good Faith and Fair Dealing)

35. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth at length herein.

36. As more fully set forth in the preceding paragraphs, the City has the obligation under the RDA to make good faith efforts to collect funds from other owners, developers and redevelopers in the Contribution Area proposing and/or developing non-residential projects or enlargements of existing non-residential projects, capital improvements, access improvements and/or parking areas for the Traffic Improvements constructed by Plaintiffs.

37. As more fully set forth in the preceding paragraphs, the City has materially breached these obligations.

38. As more fully set forth in the preceding paragraphs, the City has also acted in bad faith by, among other things, collecting funds on Plaintiffs' behalf and then failing to remit such payments to Plaintiffs despite demand, and not taking any steps to impose conditions on other owners, developers and redevelopers in the Contribution Area to make such contributions in connection with their respective projects.

39. As a consequence of the foregoing, Plaintiffs have suffered and continue to suffer damages in an amount no less than \$1,464,927.

WHEREFORE, Plaintiffs demand Judgment against Defendant, **CITY OF BAYONNE**, for all relief that they are entitled to in law and equity, and specifically as follows:

- (a) Awarding compensatory and consequential damages;
- (b) Awarding attorney's fees and costs;
- (c) Awarding pre- and post-judgment interest; and

(d) Awarding such other relief as the Court deems just and proper.

SECOND COUNT

(Specific Performance)

40. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth at length herein.

41. As more fully set forth in the preceding paragraphs, the City has the obligation under the RDA to make good faith efforts to collect funds from other owners, developers and redevelopers in the Contribution Area proposing and/or developing non-residential projects or enlargements of existing non-residential projects, capital improvements, access improvements and/or parking areas for the Traffic Improvements constructed by Plaintiffs.

42. As more fully set forth in the preceding paragraphs, the City has failed and refused to enforce this obligation against other owners, developers and redevelopers in the Contribution Area.

43. As a consequence of the foregoing, Plaintiffs have suffered and continue to suffer damages in an amount no less than \$1,464,927.

44. Plaintiffs have satisfied all conditions precedent to the City's obligations to perform.

WHEREFORE, Plaintiffs demand Judgment against Defendant, **CITY OF BAYONNE**, for all relief that they are entitled to in law and equity, and specifically as follows:

- (a) A judgment ordering the City of Bayonne to fulfill its obligations under the RDA and make payment of \$1,464,927 to Plaintiffs or require other owners, developers and redevelopers in the Contribution Area to make pro rata contributions to the Traffic Improvements due to Plaintiffs;
- (b) Awarding compensatory and consequential damages;
- (c) Awarding attorney's fees and costs;
- (d) Awarding pre- and post-judgment interest; and
- (e) Awarding such other relief as the Court deems just and proper.

THIRD COUNT

(Unjust Enrichment)

45. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth at length herein.

46. As more fully set forth in the preceding paragraphs, JDA developed a self-storage facility in the Contribution Area and has benefitted from Plaintiffs' Traffic Improvements.

47. While JDA has, upon information and belief, submitted some payments to the City for the Traffic Improvements, JDA has not paid its fair share of the costs Plaintiffs incurred for those improvements.

48. As a consequence of the foregoing, JDA has been unjustly enriched at the expense of Plaintiffs.

WHEREFORE, Plaintiffs demand Judgment against Defendant, **23RD STREET URBAN RENEWAL JOF AAI III, LLC**, for all relief that they are entitled to in law and equity, and specifically as follows:

- (a) Awarding compensatory and consequential damages;
- (b) Awarding attorney's fees and costs;
- (c) Awarding pre- and post-judgment interest; and
- (d) Awarding such other relief as the Court deems just and proper.

DESIGNATION OF TRIAL COUNSEL

Pursuant to and in accordance with *R. 4:5-1(c)*, Jonathan T. Guldin, Esq. is hereby designated as trial counsel for Plaintiffs.

CERTIFICATION PUSUANT TO R. 4:5-1(b)(2)

Pursuant to and in accordance with *R. 4:5-1(b)(2)*, the undersigned, attorney for Plaintiffs, hereby certifies that the within matter is not the subject of any other action or arbitration proceeding, and no other action or arbitration proceeding is contemplated. I further certify that I am unaware of any non-party who should be joined in this action pursuant to *R. 4:28* or who is subject to joinder pursuant to *R. 4:29-1(b)* because of potential liability to any party on the basis of the same transactional facts, except perhaps individual officers of Marist who personally participate in the alleged fraud. I acknowledge the continuing obligation to amend this certification pursuant to *R. 4:5-1(b)(2)*. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

CLARK GULDIN
Attorneys for Plaintiffs

By: _____


Jonathan T. Guldin, Esq.

Dated: May 1, 2024