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Attorneys for Plaintiffs Hoboken Land Building, L.P. & Hoboken Holdings, L.P.

HOBOKEN LAND BUILDING, L.P., and
HOBOKEN HOLDINGS, L.P.,

Plaintiffs,

v.

CITY OF HOBOKEN, CITY COUNCIL OF
THE CITY OF HOBOKEN, RAVI S.
BHALLA, in his capacity as the Mayor of the
City of Hoboken, and KMS DEVELOPMENT
PARTNERS, L.P.

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
HUDSON COUNTY

DOCKET NO. HUD-L-

Civil Action

**COMPLAINT IN LIEU OF
PREROGATIVE WRITS**

Plaintiffs Hoboken Land Building, L.P. and Hoboken Holdings, L.P., by way of complaint against Defendants City of Hoboken, City Council of the City of Hoboken, Ravi S. Bhalla in his capacity of the Mayor of the City of Hoboken, and KMS Development Partners, L.P., state:

COUNT 1

1. Hoboken Land Building, L.P. is a limited partnership of the State of Delaware with an address of One Newark Street, Hoboken, New Jersey. Hoboken Land Building, L.P. is the owner of real property in the City of Hoboken located at One Newark Street, designated as Lot 10 in Block 230 on the City’s tax map, and known as the Hoboken Land Building.

2. Hoboken Holdings, L.P. is a limited partnership of the State of Delaware with an address c/o National Realty & Development Corp., located at 3 Manhattanville Road, Suite 202, Purchase, New York. Hoboken Holdings, L.P. is the owner of real property in the City of Hoboken located at Two Hudson Place, designated as Lot 6.01 in Block 230 on the City's tax map, and improved with an eight-story office building known as Baker Waterfront Plaza.

3. Defendant City of Hoboken ("City") is a municipal corporation of the State of New Jersey located in Hudson County.

4. Defendant City Council of the City of Hoboken ("Council") is the governing body of the City of Hoboken.

5. Defendant Ravi S. Bhalla ("Mayor") is the Mayor of the City of Hoboken.

6. Defendant KMS Development Partners, L.P. ("KMS") is a Pennsylvania limited partnership.

7. Pursuant to the Local Redevelopment and Housing Law ("LRHL"), N.J.S.A. 40A:12A-1 et seq., the City, by resolution of the Council, designated certain properties within the City as areas in need of rehabilitation, which properties include land currently designated as Block 231.01, Lot 1 on the City's tax map and commonly known as 89 River Street ("Subject Property").

8. The Subject Property is located directly across Newark Street from and in close proximity to Plaintiffs' properties.

9. Thereafter, by ordinance of the Council adopted April 19, 2017, the City adopted the Hoboken Post Office Redevelopment Plan for land within the Hoboken Post Office Rehabilitation Area including the Subject Property ("Redevelopment Plan").

10. The Redevelopment Plan contemplates the redevelopment of the Subject Property with a hotel and ancillary facilities including a restaurant, banquet halls, meeting rooms and a bar, and with renovated facilities for the existing U.S. Post Office located on a portion of the Subject Property.

11. By resolution of the Council dated April 4, 2018, the City conditionally designated KMS as the redeveloper of the Subject Property.

12. KMS sought substantial changes and modifications to the Redevelopment Plan in order to substantially increase the size of the hotel permitted by the Redevelopment Plan, including increasing by approximately 20% the maximum Gross Floor Area (“GFA”) permitted by the Redevelopment Plan, increasing by approximately 25% the maximum number of rooms permitted by the Redevelopment Plan, and substantially reducing the “step back” from Newark Street required by the Redevelopment Plan in order to accommodate a larger hotel structure on the Subject Property.

13. KMS sought additional amendments to the Redevelopment Plan, including but not limited to reducing the off-street parking requirements.

14. The amendments to the Redevelopment Plan sought by KMS would increase traffic congestion, impair view sheds, reduce light, increase shadows and otherwise detrimentally affect the properties of Plaintiffs and other property owners and the people of Hoboken.

15. Defendant Mayor and City Council refused to accede to the amendments to the Redevelopment Plan sought by KMS unless and until KMS agreed to certain “givebacks” (sometimes euphemistically referred to as Community Benefit Payments), including, among others, payment of two million dollars to be utilized by the City for community recreation

facilities; one million dollars to the Hoboken Public Education Foundation, and \$485,000 to charter schools in the City (collectively “Giveback Payments”).

16. The Mayor negotiated a Redevelopment Agreement (“2018 Redevelopment Agreement”) between the City and KMS, which provides that the 2018 Redevelopment Agreement is conditioned upon the City’s adoption of a proposed ordinance amending the Redevelopment Plan for the Subject Property (“2018 Redevelopment Plan Amendment”) appended to the 2018 Redevelopment Agreement. The 2018 Redevelopment Plan Amendment included, among other provisions, the amendments to the Redevelopment Plan set forth above.

17. The 2018 Redevelopment Agreement also required KMS to make the Giveback Payments.

18. At its meeting on October 17, 2018, the Council introduced on first reading an ordinance adopting the 2018 Redevelopment Plan Amendment.

19. Also at its meeting on October 17, 2018, the Council adopted a resolution authorizing the Mayor to sign the Redevelopment Agreement (“2018 Resolution”).

20. At its meeting on November 7, 2018, the Council adopted on second reading the ordinance adopting the 2018 Redevelopment Plan Amendment.

21. On November 15, 2018, Plaintiffs filed a complaint in lieu of prerogative writs challenging the 2018 Redevelopment Agreement, the 2018 Resolution authorizing the Mayor to sign the 2018 Redevelopment Agreement, and the ordinance adopting the 2018 Redevelopment Plan Amendment, a case known as Hoboken Land Building, LP, et al. v. City of Hoboken, et al., Docket No. HUD-L-4580-18 (“Prior Litigation”).

22. In the Prior Litigation, Plaintiff alleged that the Giveback Payments constitute a blatant *quid pro quo* for the City’s acquiescence to the 2018 Redevelopment Agreement, and that

the Giveback Payments amount to the sale by the City of the redeveloper designation, the 2018 Redevelopment Agreement, and the 2018 Redevelopment Plan Amendment.

23. The Complaint in the Prior Litigation also alleged that the Giveback Payments constitute an exaction unrelated to legitimate land use concerns generated by the redevelopment of the Subject Property pursuant to the Redevelopment Plan or 2018 Redevelopment Plan Amendment.

24. The Complaint in the Prior Litigation further alleged that the 2018 Redevelopment Agreement (including the 2018 Redevelopment Plan Amendment) and the ordinance adopting the 2018 Redevelopment Plan Amendment are *ultra vires* the authority of the City, the Council, and the Mayor under the constitution and laws of the State of New Jersey, including but not limited to New Jersey Constitution Art. 4, §6, ¶2, the LRHL, the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

25. The Complaint in the Prior Litigation further alleged the 2018 Resolution authorizing the Mayor to sign the 2018 Redevelopment Agreement and the ordinance adopting the 2018 Redevelopment Plan Amendment are *ultra vires* the authority of the City, the Council, and the Mayor under the constitution and laws of the State of New Jersey, including but not limited to New Jersey Constitution Art. 4, §6, ¶2, the LRHL, the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

26. The Complaint in the Prior Litigation further alleged the 2018 Resolution authorizing the Mayor to sign the 2018 Redevelopment Agreement and the ordinance adopting the 2018 Redevelopment Plan Amendment are subversive of law, anathematic to public policy, and remedial only by vitiation of the 2018 Resolution and the 2018 Redevelopment Plan Amendment.

27. On March 26, 2019, the Honorable Anthony V. D’Elia, JSC entered an opinion and order holding that Defendant City does not have the statutory authority to require these givebacks under the LRHL and, further holding that permitting a municipality to require givebacks or condition approvals for an ordinance approving a redevelopment area or a redeveloper on such givebacks, would create unacceptable possibilities for abuse and fraud and cannot be permitted for reasons of public policy.

28. Thereafter, the Court enter an Order to Stay Further Proceedings in the Prior Litigation while the Defendants explored and potentially implemented changes to the 2018 Redevelopment Plan Amendment and the 2018 Redevelopment Agreement that Defendants believed could render the Prior Litigation moot.

29. By Resolution adopted by the Council on May 15, 2019, No. 10.A.2.6, the City terminated the 2018 Redevelopment Agreement.

30. Thereafter, the City and KMS negotiated amendments to the Redevelopment Plan, creating the 2019 Redevelopment Plan Amendment.

31. On June 5, 2019, the Council introduced at first reading an ordinance repealing the 2018 Redevelopment Plan Amendment adopting the 2019 Redevelopment Plan Amendment.

32. Like the 2018 Redevelopment Plan Amendment, the 2019 Redevelopment Plan Amendment substantially increases the size of the hotel permitted by the Redevelopment Plan, including increasing by approximately 20% the maximum Gross Floor Area (“GFA”) permitted by the Redevelopment Plan, increasing by approximately 25% the maximum number of rooms permitted by the Redevelopment Plan, and substantially reducing the “step back” from Newark Street required by the Redevelopment Plan in order to accommodate a larger hotel structure on the Subject Property.

33. Like the 2018 Redevelopment Plan Amendment, the 2019 Redevelopment Plan Amendment includes amendments to the Redevelopment Plan, including but not limited to reducing the off-street parking requirements.

34. Like the 2018 Redevelopment Plan Amendment, the 2019 Redevelopment Plan Amendment would increase traffic congestion, impair view sheds, reduce light, increase shadows and otherwise detrimentally affect the properties of Plaintiffs and other property owners and the people of Hoboken. In fact, the 2019 Redevelopment Plan Amendment would result in even greater adverse impacts than the 2018 Redevelopment Plan Amendment.

35. At its meeting on June 19, 2019 the Council adopted on second reading the ordinance adopting the 2019 Redevelopment Plan Amendment.

36. On June 24, 2019 the Mayor approved the 2019 Redevelopment Plan Amendment.

37. Because the actions of Defendants challenged in the Prior Litigation, i.e., approval of the 2018 Redevelopment Agreement and adoption by ordinance of the 2018 Redevelopment Plan Amendment, had been terminated and repealed, respectively, on June 28, 2019, the parties entered a stipulation dismissing the Prior Litigation without prejudice.

38. Meanwhile, the Mayor and City officials also negotiated revisions to the terminated 2018 Redevelopment Agreement with KMS, creating a 2019 Redevelopment Agreement.

39. The 2019 Redevelopment Agreement, like the 2018 Redevelopment Agreement is conditioned on KMS making a giveback payments to the City. However, rather than designating specific uses to which the giveback payments will be put, the 2019 Redevelopment Agreement includes an Escrow Agreement and requires KMS to make a \$3.2 million giveback payment into

a City controlled escrow account (“Giveback Escrow Payment”) to be used for unspecified and undetermined purposes to be determined upon in the future.

40. The 2019 Redevelopment Agreement and the Escrow Agreement are a transparent attempt to circumvent the Court’s opinion and order in the Prior Litigation by creating what amounts to a slush fund for the City to use in the future as it deems fit.

41. At its meeting on June 19, 2019, the Council adopted a resolution authorizing the Mayor to sign the 2019 Redevelopment Agreement and the Escrow Agreement (“2019 Resolution”).

42. The Giveback Escrow Payment constitutes an exaction unrelated to legitimate land use concerns generated by the redevelopment of the Subject Property pursuant to the Redevelopment Plan or 2019 Redevelopment Plan Amendment.

43. The Giveback Escrow Payment constitutes a blatant *quid pro quo* for the City’s acquiescence to the 2019 Redevelopment Agreement.

44. The Giveback Escrow Payment amounts to the sale by the City of the redeveloper designation and the 2019 Redevelopment Agreement.

45. The 2019 Redevelopment Agreement is *ultra vires* the authority of the City, the Council, and the Mayor under the constitution and laws of the State of New Jersey, including but not limited to New Jersey Constitution Art. 4, §6, ¶2, the LRHL, and the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

46. The 2019 Resolution authorizing the Mayor to sign the 2019 Redevelopment Agreement is *ultra vires* the authority of the City, the Council, and the Mayor under the constitution and laws of the State of New Jersey, including but not limited to New Jersey Constitution Art. 4, §6, ¶2, the LRHL, the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

47. The 2019 Resolution authorizing the Mayor to sign the 2019 Redevelopment Agreement is subversive of law, anathematic to public policy, and remedial only by vitiation of the 2019 Resolution.

48. The Council's adoption of the 2019 Resolution is arbitrary, capricious and unreasonable and, otherwise, *ultra vires* and contrary to law.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

- a. Reversing the action of the Council adopting the 2019 Resolution authorizing the Mayor to sign the 2019 Redevelopment Agreement and the Escrow Agreement.
- b. Declaring that the 2019 Resolution is null and void.
- c. Declaring that the 2019 Redevelopment Agreement and the Escrow Agreement are null and void.
- d. For attorney's fees and costs of suit.
- e. For such other relief as may be just and equitable.

COUNT 2

49. Plaintiffs repeat all prior allegations.

50. The 2019 Redevelopment Agreement and the Escrow Agreement are arbitrary, capricious and unreasonable, contrary to sound land use planning, and contrary to public policy.

51. The 2019 Resolution and the 2019 Redevelopment Agreement and the Escrow Agreement are arbitrary, capricious and unreasonable, contrary to sound land use planning, and contrary to public policy.

52. The 2019 Resolution is *ultra vires* the authority of the City, the Council and the Mayor.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

- a. Reversing the action of the Council adopting the 2019 Resolution authorizing the Mayor to sign the 2019 Redevelopment Agreement and the Escrow Agreement.
- b. Declaring that the 2019 Resolution is null and void.
- c. Declaring that the 2019 Redevelopment Agreement and Escrow Agreement are null and void.
- d. For attorney's fees and costs of suit.
- e. For such other relief as may be just and equitable.

COUNT 3

53. Plaintiffs repeat all prior allegations.

54. The Giveback Escrow Payments constitute a blatant *quid pro quo* for the Council's adoption of the 2019 Redevelopment Plan Amendment.

55. The Giveback Escrow Payments amount to the sale by the City of the amendments to the Redevelopment Plan reflected in the 2019 Redevelopment Plan Amendment.

56. The ordinance adopting the 2019 Redevelopment Plan Amendment is *ultra vires* the authority of the City, the Council, and the Mayor under the constitution and laws of the State of New Jersey, including but not limited to New Jersey Constitution Art. 4, §6, ¶2, the LRHL, the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

57. The adoption of the 2019 Redevelopment Plan Amendment is anathematic to public policy, and remedial only by vitiation of the ordinance adopting the 2019 Redevelopment Plan Amendment.

58. The 2019 Redevelopment Plan Amendment fails to comply with the requirements of the LHRL at N.J.S.A. 40A:12A-7.

59. The Council's adoption of the 2019 Redevelopment Plan Amendment is arbitrary, capricious and unreasonable, and otherwise *ultra vires* and contrary to law.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

- a. Reversing the ordinance adopting the 2019 Redevelopment Plan Amendment.
- b. Declaring that the 2019 Redevelopment Plan Amendment is null and void.
- c. For attorney's fees and costs of suit.
- d. For such other relief as may be just and equitable.

COUNT 4

60. Plaintiffs repeat all prior allegations.

61. The 2019 Redevelopment Plan Amendment is arbitrary, capricious and unreasonable, contrary to sound land use planning, and contrary to public policy.

62. The ordinance adopting the 2019 Redevelopment Plan Amendment is arbitrary, capricious and unreasonable, contrary to sound land use planning, and contrary to public policy.

63. The purported adoption of the 2019 Redevelopment Plan Amendment is *ultra vires* the authority of the City, the Council and the Mayor.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

- a. Reversing the ordinance adopting the 2019 Redevelopment Plan Amendment.
- b. Declaring that the 2019 Redevelopment Plan Amendment is null and void.
- c. For attorney's fees and costs of suit.
- d. For such other relief as may be just and equitable.

CERTIFICATIONS

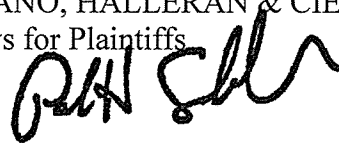
Pursuant to R. 4:5-1, I hereby certify that the subject matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, and that no such

other action or arbitration proceeding is contemplated. I further certify that there is no other party that should be joined in this action pursuant to R. 4:28 or that is subject to joinder pursuant to R. 4:29-1(b). Pursuant to R. 1:38-7(c), I hereby 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). Pursuant to R. 4:69-4, I hereby certify that all necessary transcripts of the proceedings in this matter have been ordered.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:5-1(c), Paul H. Schneider, Esq. is hereby designated as trial counsel in this action.

GIORDANO, HALLERAN & CIESLA, P.C.
Attorneys for Plaintiffs



By: _____
PAUL H. SCHNEIDER, ESQ.

Dated: August 2, 2019

Docs #3889629-v1