

PASHMAN STEIN WALDER HAYDEN, P.C.
Justin P. Walder (Attorney No. 207311961)
Court Plaza South
21 Main Street, Suite 200
Hackensack, New Jersey 07601
(201) 488-8200

GREENBERG TRAURIG, LLP
Cory Mitchell Gray (Attorney No. 033221992)
500 Campus Drive
Suite 400
Florham Park, New Jersey 07932
(973) 360-7900

Attorneys for Plaintiff
615 River Road Partners, LLC

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

-----X	
615 RIVER ROAD PARTNERS, LLC, a Delaware	:
limited liability company,	:
	:
Plaintiff,	:
	:
- against -	:
	:
BOROUGH OF EDGEWATER, a municipal	:
corporation of the State of New Jersey, and JOHN	:
DOES and JANE DOES Nos. 1 – 100,	:
	:
Defendants.	:
	:
-----X	

Civil Action No.:

**COMPLAINT AND
JURY DEMAND**

Plaintiff 615 RIVER ROAD PARTNERS, LLC (“Plaintiff”), with its principal place of business at 825 Third Avenue, 31st Floor, New York, New York 10022, by and through its attorneys, Greenberg Traurig, LLP and Pashman Stein Walder Hayden, P.C., as and for its Complaint against Defendants BOROUGH OF EDGEWATER (“Edgewater” or the “Borough”) with its principal place of business at Edgewater Municipal Building, 55 River Road, Edgewater, New Jersey 07020, and JOHN DOES AND JANE DOES 1-100, alleges as follows:

INTRODUCTION

1. This is an action to enforce Plaintiff's constitutional rights and to defend its interests in its environmentally remediated 18-plus-acre waterfront property in Edgewater, New Jersey (the "Property"). Since early 2014, Edgewater has engaged in a continuing unlawful campaign to violate Plaintiff's rights culminating in its declared intention to condemn Plaintiff's Property. Edgewater's actions are designed to (a) favor Fred A. Daibes ("Daibes"), a competing real-estate developer, who has functional control over real-estate development in Edgewater through extensive, and often improper, relationships with Edgewater municipal officials; (b) further Edgewater's years-long attempts to evade its obligations under the New Jersey Constitution to provide affordable housing in Edgewater; and (c) retaliate against Plaintiff for bringing to light Edgewater's unconscionable and unlawful conduct.

2. As demonstrated by a series of corrupt transactions, self-dealing, and conflicts of interest, Edgewater's local government has shown that it is beholden to Daibes, a powerful hometown developer. Daibes essentially controls high-density real estate (that is, 100 apartment units per acre) in Edgewater. He and his related development entities ("Daibes Entities") have participated in the development of virtually all high-density properties built in Edgewater since 2000. Daibes also controls the development rights to approximately 90% of potential high-density units that can be developed in the Borough under current zoning classifications (more than 3,000 potential units). Edgewater has routinely granted re-zoning or variances to Daibes so that he can build his projects. Indeed, more than 90% of all zoning relief granted by the Borough to allow high-density development since 2000 went to Daibes Entities.

3. Predictably, Daibes—who, as a competing developer, should have no say in the matter—opposes Plaintiff's project. Daibes unsuccessfully sought to buy the Property and told representatives of Hess Corporation ("Hess"), the prior owner of the Property, that if Hess did

not sell the Property to him, he would ensure that it would “never be built on.” Daibes even directly threatened Plaintiff’s representatives that they “should have come to me in the beginning. I own and built this town. Now it will be condemned; I am your neighbor on all sides.” *The New York Times* has reported that Daibes “boasts that he has either built or been a partner in every project in Edgewater over the past two decades.” Charles V. Bagli, *New Jersey Town Says ‘No Thanks’ to Development*, N.Y. Times, Oct. 4, 2017.

4. Daibes did not become Edgewater’s developer of choice by accident; he bought and paid for that status. As shown in detail herein, and supported by both documents and information provided by individuals close to Daibes’ various corporate entities and Edgewater’s municipal government, Daibes and Edgewater have been engaged for decades in an unlawful conspiracy through which Daibes Entities and Edgewater municipal officials profit at the expense of lawfully competing real-estate developers, low-income residents, and the public trust.

5. Daibes maintains his influence over Edgewater’s public officials in multiple ways. Daibes and his Entities provide important Edgewater municipal officials and their families with, among other things, undisclosed cash payments (Daibes has been known to keep millions of dollars in cash at his apartment), employment at Daibes Entities and governmental agencies that are controlled by Daibes’ political allies, below-market rental apartments in Daibes-owned buildings, loans and credit facilities from the Daibes-controlled Mariner’s Bank, free use of a Daibes-owned restaurant, and the opportunity to purchase real property owned by Mariner’s Bank for a fraction of the fair market value.

6. Daibes also exercises control in the Borough by “appointing” members of Edgewater’s land-use boards. Current Zoning Board of Adjustment (“ZBA”) members Mark Klein and Jeffrey Mathieu have close relationships with Daibes Entities. Mathieu was a Vice-President of a Daibes Entity for nearly 20 years, and both Klein and Mathieu have engaged in

multiple real-estate transactions with Daibes Entities using funds provided by Daibes-owned Mariner's Bank. Similarly, Daibes ensures that Mariner's Bank is quick to make loans to local officials, including Councilpersons Anthony Bartolomeo, Victor Monte, and Dolores Lawlor; Planning Board member Kathleen D'Errico; ZBA attorney Denise Travers and her mother-in-law, Councilwoman Duane Fischetti; former Mayor Bryan Christiansen; construction official, building and housing inspector, Land Use Administrator, and Planning Board member, John Candelmo; and others.

7. Upon information and belief, among the Edgewater officials who have received improper, or improperly concealed, benefits from Daibes are Mayor Michael McPartland and Councilpersons Bartolomeo, Monte, Vidal, Fischetti, and Henwood, all of whom are reliably reported to be "in the pocket" of Daibes. In addition, upon information and belief, Candelmo, Denise Travers, former Mayor Bryan Christiansen and his brother, current ZBA Chairman Robert Christiansen, Councilwoman Fischetti, and former Councilwoman Lois Fein all have had business and/or familial relationships with Daibes that rendered them reliable supporters of Daibes' development projects.

8. In return for his generosity towards Edgewater officials, Daibes is repaid in kind: Daibes-owned properties in Edgewater are routinely re-zoned by Edgewater to permit residential development where such development had not previously been permitted. Daibes' profits from those developments are further enhanced because Edgewater does not require Daibes to construct legally mandated, but less profitable, affordable housing. Daibes has constructed approximately 3,000 market-rate units in Edgewater but only approximately 80 affordable-housing units (or less than 3% of the total units that Daibes Entities have built in Edgewater).

9. Edgewater goes to great lengths to keep its business out of the public view. To ascertain the true state of affairs with respect to Edgewater's compliance with its affordable-

housing obligations, Plaintiff submitted requests to Edgewater pursuant to the Open Public Records Act (“OPRA”). Edgewater first stonewalled in responding to the request and then produced a grossly deficient response. Accordingly, Plaintiff went to court to enforce its rights under OPRA and, in July 2017, the New Jersey Superior Court found that Edgewater had provided “vague and insufficient” and “elusive” responses, and had willfully failed properly to respond to Plaintiff’s requests for records relating to affordable housing in Edgewater. The court then (a) ordered Edgewater to supplement its responses to Plaintiff’s OPRA request and (b) assessed attorneys’ fees against Edgewater for its intentional violation of its obligations under OPRA.

10. Edgewater’s improper and unlawful treatment of Plaintiff and the Property is motivated by its unconstitutional and illegal goals (a) to protect Daibes and preserve the improper benefits from Daibes that Edgewater public officials receive, and (b) to retaliate against Plaintiff for exercising its rights as a property owner in Edgewater to challenge Edgewater’s failure to comply with state affordable-housing obligations, including at Daibes-owned properties.

SUMMARY OF THE ACTION

11. The Property is a former oil terminal that Plaintiff purchased and caused to be fully remediated in accordance with applicable environmental regulations. Plaintiff has proposed to turn this waterfront site into a world-class development, including five high-rise residential buildings specifically designed to preserve the public’s view of the Manhattan skyline, a 20% affordable-housing component, beautifully landscaped public parks, and innovative mass-transit improvements for bus and ferry transportation. The Property is not zoned for residential use; accordingly, the proposed development would require Edgewater to provide Plaintiff with the same zoning relief that it has routinely provided to Daibes and others.

12. It should not have been a problem for Plaintiff to obtain appropriate zoning relief for the Property. Indeed, for many years, Edgewater has granted zoning relief in some form to every similarly situated waterfront parcel in the Borough. Edgewater, however, has refused for nearly three years even to meet with Plaintiff to discuss a plan for developing the Property and resisted processing Plaintiff's zoning applications until ordered to do so by a New Jersey State court. In addition to creating contrived roadblocks to Plaintiff's proposed development, Edgewater has now taken the ultimate step in its campaign: it has authorized the use of eminent domain to take the Property away from Plaintiff based on demonstrably pretextual reasons and for unconstitutional motives and purposes.

13. Edgewater claims that it is taking what NJ.com describes as "likely the most prized piece of undeveloped land on the Gold Coast," Allison Priess, *DPW garage with million-dollar Hudson River views?*, NJ.com, Sept. 21, 2017, for use as a Department of Public Works ("DPW") depot, parking facilities, and a park. Edgewater's decision to condemn the Property was made without public hearings, studies, findings of any kind, or support from the Borough's own Master Plan, and leaves the Property as the only significant vacant parcel of waterfront property in the Borough that has not been permitted a residential use. The Borough's rationale for the decision to condemn the Property fails under even the most casual scrutiny: the DPW does not need prime waterfront space to store its equipment, such use would deprive the Borough of millions of dollars in tax revenue, and Plaintiff's proposed development plan would already provide Edgewater with two large parks and related public amenities that Plaintiff agreed to build at its own expense without the need for public expenditure.

14. While Edgewater's stated reasons for the condemnation are nothing more than cover-ups of Edgewater's corrupt relationship with Daibes, Edgewater's efforts to block Plaintiff's proposed residential development are consistent with its long history of providing

zoning relief to Daibes and his companies while at the same time resisting the Borough's constitutional obligations to offer affordable housing.

15. Edgewater's unequal treatment of Plaintiff's Property is part of a calculated and well-coordinated effort to favor Daibes and his projects and to ensure that Edgewater public officials continue to receive their share of improper benefits provided to them by Daibes, as described in more detail below.

16. Thus, Daibes has the necessary governmental support to ensure that he—though not the Borough—will benefit from condemning the Property and preventing Plaintiff's development. Among other things, his companies have built and are in the process of building competing residential developments in the Borough. In fact, a Daibes Entity has prepared detailed plans for a high-rise residential development on a site near the Property (the "Honeywell Site"), which had been zoned identically to Plaintiff's Property but which Edgewater only recently re-zoned for residential use.

17. Upon information and belief, Daibes' planned development at the Honeywell Site will include over 2,200 new housing units (Plaintiff's application proposed 1,800 units), and plans for the construction of the same high-rise buildings under the same R-5 zoning designation that the Plaintiff proposed for its project. However, unlike their obstruction of Plaintiff's development, Edgewater and its municipal officials have supported Daibes' plan for the Honeywell Site. In 2014, the Honeywell Site remained zoned for only commercial uses without any residential entitlements, as is Plaintiff's Property. In 2015, Edgewater re-zoned the Honeywell Site to a residential zone, R-5, which permits 100 units per acre of residential housing. In September 2017, Edgewater approved an ordinance to provide Daibes' Honeywell Site with a density factor greater than the maximum permitted by Edgewater's own zoning code. Edgewater has provided this enhanced density status to three waterfront properties in Edgewater

(the Honeywell Site and two others), all of which Daibes owns. Edgewater's selective largesse will permit Daibes to construct his project at the Honeywell Site as of right, that is, without the need for variances. Plaintiff's proposed development was also designed in accordance with the R-5 standards for density and other factors, but Edgewater has stonewalled Plaintiff's zoning application.

18. While all this has occurred, the Mayor of Edgewater, who lives in a Daibes building at well below market rent, was working to drum up support for the condemnation of the Property. In that effort, Mayor McPartland, stated that (a) the condemnation was declared because Edgewater was faced with an "aggressive developer" (Plaintiff) who was asserting that Edgewater was shirking its affordable-housing obligations; (b) Edgewater cannot permit Plaintiff's development because it is "too dense," while at the same time Edgewater is allowing re-zoning or increased densities for 50 other sites in the Borough, including approvals for high-density zoning on Daibes-owned sites that will allow him to develop more than 3,000 apartment units; and (c) Edgewater "does not need" the \$12 million in annual tax revenues that Plaintiff's development would provide. Edgewater is willing to take these extraordinary steps to benefit Daibes and harm Plaintiff and the public because of Daibes' influence over municipal officials. The evidence of Daibes' improper influence over Edgewater officials is considerable. It includes:

(a) improper self-dealing such as (i) undisclosed financial transactions involving Daibes Entities, (ii) municipal officials' ownership interests in Mariner's Bank, in which Daibes holds the controlling interests and which has provided numerous Edgewater officials with loans and lines of credit; and (iii) rent-free or reduced-rent apartments and free use of guest suites provided to municipal officials by Daibes or Daibes Entities;

(b) municipal officials' failure to recuse themselves from considering matters involving Daibes or Daibes Entities, despite financial arrangements with Daibes Entities, including Mariner's Bank;

(c) Councilwoman Duane Fischetti's voting to condemn the Property despite the fact that her son, Robert Travers (a lawyer) and his wife, Denise Travers (an Edgewater public official) would benefit from that condemnation because (i) Daibes and Daibes Entities are Mr. Travers' largest law clients; (ii) the Travers have bought properties from Daibes Entities on a below-market basis; (iii) they have secured financing from Daibes Entities; and (iv) Daibes' competing developments, including the Honeywell Site, will profit from the eradication of Plaintiff's Property as a competitor;

(d) failing to enforce affordable-housing obligations on Daibes' developments, thereby enhancing the value of those developments to Daibes and avoiding the construction of affordable housing in Edgewater;

(e) accepting improper "donations" from Daibes Entities and significant personal monetary considerations in return for favored zoning or zoning enforcement and preferential tax treatment;

(f) failing to pursue and enforce available remedies against Daibes and a Daibes Entity for environmentally contaminating Edgewater's largest public park that the Daibes Entity was remediating under a contract with Edgewater;

(g) granting Daibes Entities, and those working in tandem with them, zoning relief via variance or re-zoning for every single parcel of property for which Daibes sought such relief, while leaving Plaintiff's Property idle despite its own requests for zoning relief; and

(h) other wrongful conduct as set forth herein, intended to, and/or having the actual effect of, favoring Daibes and punishing his competitors, including Plaintiff, and ensuring

that affordable housing, Edgewater's obligation under the New Jersey Constitution, is not actually constructed in Edgewater.

19. As detailed below, Edgewater's actions have violated and continue to violate Plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution and Article 1 of the New Jersey Constitution. Accordingly, Plaintiff brings this action to (a) enjoin Edgewater from continuing its improper and retaliatory attempts to discriminate against Plaintiff and from condemning the Property in violation of Plaintiff's constitutionally protected rights, and (b) to recover money damages to redress the constitutional violations that have occurred.

THE PARTIES AND RELEVANT NON-PARTIES

PLAINTIFF

20. Plaintiff is a Delaware limited liability company with offices at 825 Third Avenue, 31st Floor, New York, New York 10022, c/o The Maxal Group, Inc., and it is the fee-simple owner of the Property, which it acquired in 2014.

DEFENDANTS

21. Defendant Edgewater is a municipal corporation and corporate body politic located in Bergen County, with offices located at Edgewater Municipal Building, 55 River Road, Edgewater, New Jersey 07020.

22. Edgewater is governed under the Borough form of New Jersey municipal government. The Mayor and a six-person Borough Council, with all positions elected on a partisan basis, serve as Edgewater's "Governing Body" pursuant to and by operation of law. At all times from and after 2005, all members of the Governing Body have belonged to the same political party.

23. The Mayor has the power to veto ordinances and make committee and liaison assignments for council members. Further, most governmental appointments, such as the ZBA and the Planning Board, are made by the Mayor with the advice and consent of the Council.

24. Edgewater acts officially through its Governing Body; the Governing Body is a policymaker for Edgewater and is authorized to adopt zoning ordinances for Edgewater in accordance with the Municipal Land Use Law, N.J.S.A. 40:55D-1, *et seq.* The Mayor and Council have final authority to establish municipal policy and to direct the acts and actions complained of herein.

25. John Does and Jane Does Nos. 1-100 are those persons whose identities are not yet known, or about whom Plaintiff does not yet have sufficient information to properly plead causes of action against, who participated in, facilitated, or otherwise engaged in or made possible, the acts and actions set forth herein. The John Does and Jane Does Nos. 1-100 are believed to include, but may not be limited to, employees of Edgewater, including administrative personnel; employees of various Daibes Entities, including Mariner's Bank; architects, designers, and contractors who have worked with Edgewater and/or the Daibes Entities; and others.

RELEVANT NON-PARTIES

26. Daibes Enterprises, LLC, a New Jersey limited liability company, having an address at 1000 Portside Drive, Edgewater, New Jersey 07020, and related entities (each a Daibes Entity), were and/or are the developers of numerous properties in Edgewater.

27. Robert Travers, Esq., is the husband of Edgewater ZBA attorney Denise Travers, Esq. Mr. Travers is general counsel for, and regularly represents, Daibes Enterprises, LLC and other Daibes Entities, including in proceedings before the Edgewater Council and Edgewater boards and committees.

28. Among other entities, Daibes owns and/or controls DBR Management, Inc., Mariner's Bank, Daman Associates (an insurance company), Waterside Construction, 38 COAH, LLC, and numerous other companies engaged, among other things, in real-estate development in Edgewater.

JURISDICTION AND VENUE

29. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343, as this action arises under the Constitution and laws of the United States.

30. Venue is proper in this Court under 28 U.S.C. § 1391 because Defendant Edgewater is deemed to reside in this District, the acts and actions which give rise to the claims asserted in this Complaint occurred in this District, and the Property at issue in this action is located in this District.

STATEMENT OF THE CASE

A. Plaintiff's World-Class Property and Planned Development

31. In 2014, Plaintiff—outbidding Daibes—purchased the Property, which had been used for at least sixty years primarily as an oil terminal. Commonly known as “615 River Road,” the Property spans River Road in Edgewater to the east and west. The easterly side of the Property is identified on the Borough of Edgewater's Tax Assessment Map as Block 76, Lots 1 and 5 (“Parcel 1”), and the westerly side of the Property is identified as Block 77, Lot 1 (“Parcel 2”). The Property is located in two zoning districts within the Borough: Parcel 1 is located in Zone B-3 (Waterfront Commercial Business District), and Parcel 2 is located in the OR-1 District (Office and Research District).

32. Plaintiff met with Edgewater officials twice before closing on the Property in an attempt to discuss the proposed development. After closing on the Property, Plaintiff repeatedly asked for the Borough's feedback on the development plans and for additional meetings, but the Borough did not respond and refused to discuss zoning or development of the Property.

33. The Property required extensive and expensive environmental remediation, which Plaintiff ensured was performed to allow residential development. Edgewater knew the remediation was occurring and issued permits to facilitate it. Despite Edgewater's involvement in approving the remediation process and its knowledge of Plaintiff's intended use, it never informed Plaintiff that its planned development was inconsistent with Edgewater's plans for the waterfront. In fact, the residential use of the Property was not inconsistent with Edgewater's growth plans, that is, until Daibes failed in his bid to acquire the Property. Only then, after nearly three years of stonewalling and without any public hearings, did Edgewater decide that the Property was inappropriate for residential use.

34. Indeed, Plaintiff developed a plan for the Property that was so favorable to Edgewater that *The New York Times* described the plan as one Plaintiff "thought the town could not refuse." Bagli, *supra*, N.Y Times, Oct. 4, 2017. Plaintiff's plan incorporated world-class architectural design features and included five high-rise residential buildings, beautifully landscaped public parks, and innovative mass-transit improvements. Plaintiff's development plan also satisfied Edgewater's affordable-housing obligations under New Jersey law, was consistent with Edgewater's Master Plan, and compared favorably in all respects to the plans of similarly situated developers, including Daibes, that Edgewater has readily approved. The development would provide significant tax revenues—over \$12 million annually—and was designed in substantial compliance with the framework for building height, density, and other

factors of the zoning designation (R-5) that Edgewater has routinely granted, or applied, to similar developments, including projects built by Daibes Entities.

35. In addition to five high-rise residential buildings, which were to be situated on the Property to create public sight lines of the Hudson River and the Manhattan skyline, Plaintiff proposed to construct two public parks, one on the Property's eastern side and one on its western side. On the eastern (or waterfront) side, Plaintiff proposed to construct "Edgewater Green," an impressively landscaped, multi-acre park that would be open to the public. Designed by a noted landscape architect, the waterfront park would include extensive green lawn areas, trees, shrubbery, and flowers. Amphitheater seating would be built directly on the Hudson River so that Edgewater residents could enjoy sweeping vistas of the New York City skyline. For the first time, a public walkway along the shore would be constructed that would provide a connection to the rest of the promenade. Cafés and restaurants would be constructed along the Hudson-facing public walkway, providing panoramic vistas for patrons. The public parks would be built and maintained entirely by Plaintiff without taxpayer support. On the western side, Plaintiff proposed a park along Undercliff Avenue. Elevated high above River Road, that park, too, would provide breathtaking Hudson River and New York City views.

36. In addition, Plaintiff proposed to construct, at its sole expense, a bus "super stop" for New Jersey Transit and other bus companies, which would feature newly created loading lanes for both north- and south-bound buses. These loading zones would enable buses to load without stopping River Road traffic, unlike the present situation, where a bus stopping to accommodate passengers closes off one of River Road's two traffic lanes. The new bus super stops would include shelters for weather protection and would be linked by a pedestrian bridge to allow safe passage to both the east and west sides of River Road, where several pedestrian deaths have occurred. The pedestrian bridge would be constructed by converting an existing industrial

crossing that is inappropriate for pedestrian use, and Plaintiff would undertake the construction at its sole cost.¹

37. Plaintiff's development plan also included a new ferry stop at the Property that involved upgrading the existing pier for ferry access, constructing a passenger waiting facility, and providing parking. Notably, Daibes' plans for the Honeywell Site also include a ferry facility, and therefore Daibes would face direct competition both for the ferry service and for residential tenants from Plaintiff's development of the Property.

38. In short, Plaintiff's Property was designed to create a maximum amount of public open space and to provide a visual corridor from River Road to the Hudson River and the New York City skyline. High-rise buildings, open space, and visual corridors are planning concepts that Edgewater itself specifically advocated in its most recent reexaminations of its Master Plan in 2014 and 2017. No other existing development in the Borough provides anywhere near the level of public benefit as the Plaintiff offered.

39. Despite all these obvious benefits that Plaintiff's proposed development would provide, Edgewater—without explanation—simply refused to meet with Plaintiff to discuss its development plan, while it approved similar plans proposed by Daibes Entities.

B. Edgewater's Duplicitous Condemnation of the Property and Its Implausible Excuses for Condemning Plaintiff's Property

40. In or about January 2014—before Plaintiff's acquisition of the Property—Edgewater issued a 2014 Master Plan Reexamination Report (the "2014 Report"). The 2014 Report was prepared by Edgewater's planner and adopted by Edgewater's Planning Board.

¹ Notably, this bus super stop was recommended by the River Road/Hudson Waterfront Circulation Study prepared by an independent transportation expert for several governmental agencies including the Bergen County Department of Planning & Economic Development and the North Jersey Transportation Authority.

41. Based on a review of the significant number of use and bulk variances granted by Edgewater's ZBA over the past 15 years, the 2014 Report found significant deviations from Edgewater's zoning ordinances and recommended that the ordinances be amended to comply with existing uses. Accordingly, the 2014 Report specifically recommended that Plaintiff's Property be provided with a zoning change or other new designation because it is "located at the heart of the Borough, surrounded by new large-scale developments," where industrial use was no longer appropriate. 2014 Report at 35.

42. The 2014 Report acknowledged that many of the Borough's commercial zoning designations, including those affecting the Property, were not producing the type of development that the Borough originally envisioned. One example is the OR-1 zoning designation for a portion of the Property. The 2014 Report found that "[t]he uses permitted in the OR-1 zone are particularly limiting in scope and do not reflect the majority of the Borough's current development patterns,"² and further noted that "there has not been an application for a permitted use in the OR-1 Zone in more than ten years." *Id.* at 19.

43. While other properties, including Daibes' properties, were thereafter re-zoned or granted variances, Plaintiff's Property remains zoned for commercial uses that are no longer consistent with the development of the Borough. The Borough itself acknowledged in the 2014 and 2017 Master Plan Reexamination Reports that Plaintiff's site should be considered for re-zoning. Despite Plaintiff's best efforts, Edgewater has declined even to discuss the development of the Property. Without re-zoning or variance relief from Edgewater, the Property cannot be developed for residential use.

² The OR-1 zone primarily allows commercial use by laboratories engaging in research and product development; it requires a minimum lot area of 40,000 square feet and allows for a maximum of three-story buildings.

44. On July 17, 2017, Edgewater (acting through its Governing Body) abruptly—without hearings, findings, studies, or comment—decided to seize the Property through eminent domain. The Governing Body authorized the use of eminent domain to seize the Property and wipe out Plaintiff’s property rights based on unconstitutional reasons and motives.

45. In its condemnation resolution, Edgewater cited, for the first time, three purported uses for the Property: a public park, a public parking facility, and a DPW depot. The first two of these three purported uses *were already part of Plaintiff’s own development plan* and would be provided at no cost to the public. The third purported use—the DPW depot—is simply irrational and (as explained below) is intended to benefit Daibes.

46. Far from serving any legitimate public purpose or need, Edgewater’s proposed condemnation of the Property is designed to facilitate wholly improper purposes—to favor Daibes, eliminate competition that Daibes does not want in the Borough, and to punish Plaintiff for participating in several affordable-housing lawsuits, described in more detail below. Daibes opposes Plaintiff’s project because, among other things, (a) he wants to maintain his control over high-density development in the Borough; (b) he attempted to purchase the Property but was unsuccessful, and Plaintiff did not pay homage to him by seeking his assistance with its development applications; (c) he wants to expand his existing property called The Alexander to include an adjacent site, which is currently a DPW facility (and which would presumably be moved to Plaintiff’s Property once condemned, according to the Borough’s resolutions); (d) the Property would compete for tenants with Daibes’ current projects and future developments (including at the Honeywell Site); and (e) high-density development of Plaintiff’s Property would obstruct The Alexander’s views of the Hudson River, while use as a Borough park would preserve those views for Daibes.

47. Edgewater's improper purposes are reflected in numerous public statements from Mayor McPartland in his effort to drum up public support for the condemnation. At the August 21, 2017 Borough Council meeting, at which Edgewater adopted an ordinance authorizing raising funds for the acquisition of Plaintiff's Property through municipal bonds, Mayor McPartland had a written statement read on his behalf by Borough counsel, a highly unusual step for a supposedly "impartial" public official. The statement, which was both factually incorrect and blatantly pro-Daibes, provides in relevant part: "[W]e [Edgewater] have been the target of a very aggressive developer [Plaintiff] and a non-profit [Fair Share Housing Center]³ that have been seeking to tell us where we should have the [affordable] housing. Those parties do not have the best interest of the Borough at heart, they are driven by their own self-interest, profit and greed."

48. Cynically, at that very same August 21, 2017 Borough Council meeting, the Mayor also announced that the Council was introducing ordinances to allow greater population densities on other development sites in the Borough, purportedly (but not actually) to provide more affordable housing. Those sites are, on information and belief, largely owned or controlled by Daibes Entities and include the Honeywell Site, which has been designated as a Superfund Site.

49. In other words, Edgewater, through the Mayor's statements, officially announced that it was seeking to increase affordable-housing development while at the exact same time declaring that it would seize the Property from Plaintiff, a developer that had specifically included a 20%-affordable component in its land-use application and that was proactively

³ As described herein, the Fair Share Housing Center is a nonprofit entity that opposes Edgewater's consistent refusal to permit construction of affordable housing in the Borough.

seeking to assist the Borough to comply with its affordable-housing obligations, a constitutional imperative in New Jersey.⁴

50. Mayor McPartland has also publicly stated that:

(a) a “park for special needs children” should be placed on the Property, although Edgewater’s resolution to condemn the Property did not cite such a public need and there are no findings or reports that document any such need;

(b) although the Property has not yet been appraised, the Borough’s retained appraiser had “pre-opined” that the amount of the bond sought for its acquisition—under \$24 million, or approximately \$1.26 million per acre for a fully remediated and cleared site—is “sufficient,” notwithstanding that this amount is substantially below Plaintiff’s cost basis even without considering the millions spent for environmental remediation and the significant increase in value for a clean site; and, upon information and belief, an unremediated 15-plus-acre waterfront site in the Borough with the same zoning designation as the Property is under contract to be sold for more than \$50 million, approximately \$3.2 million per acre;

(c) Edgewater “doesn’t need the tax relief,” a statement that is directly contradicted by the Mayor’s other public pronouncement that the costs to acquire the Property would have to be offset by an increase in tax ratables from the development of the Daibes Entities’ newly re-zoned properties.

⁴ In the *Mount Laurel* cases, the New Jersey Supreme Court held that municipal land-use regulations that prevent affordable housing are unconstitutional and required municipalities to take affirmative steps to provide for their “fair share” of affordable residences. See *S. Burlington Cty. N.A.A.C.P. v. Twp. of Mt. Laurel*, 67 N.J. 151 (1975); *Burlington Cty. N.A.A.C.P. v. Twp. of Mt. Laurel*, 92 N.J. 158 (1983). The State of New Jersey established the Council on Affordable Housing (“COAH”) to monitor municipal affordable-housing obligations. The Fair Share Housing Center is a nonprofit organization that focuses on enforcing the *Mount Laurel* doctrine and has challenged Edgewater’s failure to meet its fair-share obligations. Plaintiff’s proposal includes 375 affordable units to satisfy Edgewater’s fair-share obligations; as detailed herein, Edgewater has consistently shown its opposition to allowing affordable housing in the Borough.

51. Edgewater apparently has no idea how it will pay for the acquisition and development of the Property. When Mayor McPartland was asked how the Borough intended to pay for the development of the DPW depot, park, and public parking, he dismissively stated: “We’ll cross that bridge when we come to it.” When told that Plaintiff intended to defend its rights in the Property, Mayor McPartland issued a cartoonish and irresponsible challenge to Plaintiff by exclaiming: “Rock on!”

52. The Mayor has also claimed that Edgewater cannot accommodate an increase in population; however, while stonewalling Plaintiff, Edgewater has, in the past three years alone, granted approval for residential development through use variances, re-zonings, and up-zonings to approximately 50 other properties in the Borough, even without considering the impact of certain ordinances discussed below. Many of these approvals were for densities that are higher than that sought by Plaintiff. In fact, even as the Mayor publicly proclaims that Edgewater cannot permit the development of Plaintiff’s Property due to concerns of “overdevelopment,” the Governing Body proposed in 2017 several ordinances that will significantly increase the amount of residential development in the Borough. So far in 2017, the Borough introduced at least four ordinances that will re-zone approximately 31 sites with a development potential of approximately 3,200 units. Unsurprisingly, Daibes was the overwhelming beneficiary of the 2017 re-zoning ordinances: about 90% of the total residential units authorized by the 2017 ordinances are for properties that Daibes Entities own.

53. Upon information and belief, apart from taking a riverfront parcel that had been operated as a private marina more than 10 years ago to create a commuter ferry and marina, and a small parcel to re-route River Road, Edgewater has never proposed to condemn any other Hudson River waterfront lot, and *every other* residential development proposed for the Hudson River waterfront has been approved.

54. Edgewater's proposed condemnation of the Property violates Plaintiff's constitutional rights. Indeed, no legitimate public purpose has been, or can be, established for any of the three uses that Edgewater claims it will make of the Property, and the proposed uses of the Property for the purported reasons stated by the Borough for condemnation are inconsistent with Edgewater's Master Plan and its zoning ordinances, demonstrating that these uses are pretextual and not in good faith:

(a) The DPW depot: Edgewater has never previously proposed to locate a DPW depot on the Hudson River waterfront, and it is illogical from a planning perspective to place it there. The DPW depot is ostensibly being relocated because it is situated in a flood plain. However, relocating the DPW depot to the Property will not alleviate that situation because the flood zone for the Property is identical to that of the existing DPW depot (both are in the AE and X flood zones). Further, the DPW depot can easily be located at other sites in Edgewater, which could be readily condemned for far less than the cost of the acquisition of the Property.

The DPW currently utilizes only about 2.46 acres; it is difficult to conceive of any actual need to expand that acreage significantly to accommodate such a modest department. In any event, there are approximately seven acres of privately owned properties adjacent to the current DPW facility. These properties are blighted or underutilized lots owned by various persons and include abandoned warehouse facilities, dilapidated structures, parking lots, and a gas station. In addition to these blighted, privately owned sites, the Borough is believed to own an additional two-acre property that can be assembled with the existing DPW facility. In short, the Borough could more than quadruple the DPW facility while preserving the existing facility, which would be a considerable savings since the existing facility would not have to be demolished and

rebuilt on a new site. In a further demonstration of bad faith, Edgewater itself has acknowledged that no significant new facility is required. In 2012, Edgewater declared that two smaller sites would also suffice for the DPW.

However, the Borough is apparently not considering the blighted, privately owned lots adjacent to the current DPW facility or the Borough-owned sites for the DPW depot, even though using or taking such properties would cost far less than taking Plaintiff's Property, one of the largest remaining development sites in the Borough.

The Borough's decision to take the Property to relocate the DPW facility, if genuine, is meant to benefit Daibes. The existing DPW facility is located next to The Alexander, a major Daibes-owned apartment complex. By relocating the DPW facility to Plaintiff's Property, Daibes can create a second phase to The Alexander development with an approximately 3.32-acre site, which would allow Daibes to construct 332 dwelling units on this site if the current R-5 zoning for The Alexander is applied to the new development. Accordingly, there is an improper but real motivation for Borough officials under the sway of Daibes to relocate the DPW depot to the Plaintiff's site.

(b) Parking: Dating back to 1990, there is no mention in Edgewater's Master Plans, or the re-examinations of its Master Plans, of any need for a public parking facility at or near the Property. The Edgewater Council Resolution authorizing the condemnation of the Property nevertheless inexplicably states that there "exists a need for . . . a public parking facility in the central business district." Even were the Resolution based on public studies, reports, or the Borough's Master Plan (which it is not), Plaintiff's Property is not in that district; rather, it is located to the south of the Central Business District. Thus, public parking at Plaintiff's Property would not address the purported parking needs set forth in the Borough's Resolution authorizing the condemnation.

(c) Public Park: There is no public need to condemn the Property to locate a park at the Property. First, Plaintiff's own development proposal would locate not one, but two, public parks on the Property, *which Plaintiff would pay for and maintain without public expense*. Further, Edgewater actually has nearly *50 acres of parkland* through eight separate public parks and playgrounds, without including the approximately two-mile-long Hudson River Waterfront Walkway, the 0.32-acre park within the North River Mews development (located at Vreeland Terrace and Undercliff Avenue), and the playgrounds and ballfields at the public schools. In fact, Edgewater's Master Plan does *not* opine that additional parkland is needed in Edgewater.

55. None of Edgewater's purported "reasons" for condemning Plaintiff's Property has any basis in Edgewater's Master Plan, its ordinances, or any studies or reports. Rather, the basis for the condemnation and unequal treatment of Plaintiff and the Property is rooted in the improper relationships between Edgewater municipal officials and the Daibes Entities, and, as Mayor McPartland admitted in a written statement, in response to Plaintiff's efforts to enforce Edgewater's affordable-housing obligations.

56. Edgewater's solution to the "very aggressive developer" (as Mayor McPartland pejoratively described Plaintiff) was not to allow that developer's application to be decided on the merits, nor was it to discuss with Plaintiff plans for a development that would satisfy both the developer and the Borough, as might be expected from public officials. Instead, Edgewater's solution was to take Plaintiff's Property while increasing permissible densities at Daibes-owned properties, including at the Honeywell Site.

C. Edgewater Officials' Long-Time Improper Relationships With Daibes

57. Daibes has long controlled development in Edgewater and does not want Plaintiff's project—which he unsuccessfully sought to acquire for himself—to proceed. As

reported in *The New York Times*, Daibes opposes the project and “boasts that he has either built or been a partner in every project in Edgewater over the past two decades.” Bagli, *supra*, N.Y. Times, Oct. 4, 2017. Daibes also told the prior owner of the Property that if it did not sell the Property to him, he would ensure that it would “never be built on.” He also told Plaintiff’s representatives that “they should have come to me in the beginning. I own and built this town. Now it will be condemned; I am your neighbor on all sides.” Daibes’ opposition is a critically important reason behind Edgewater’s actions to shut down Plaintiff’s proposed development.

58. As shown below, numerous public officials have extensive business and/or personal relationships with Daibes, his Entities, and Mariner’s Bank. From the Mayor to Council members to the building official and members of the Planning Board and the ZBA, Edgewater officials (and/or their immediate families) and advisors to the municipality have: (a) borrowed significant amounts of money from Mariner’s Bank; (b) purchased real estate from Mariner’s Bank at far below market value; (c) obtained mortgage loans from Mariner’s Bank; (d) resided in Daibes-controlled buildings at below-market rent; (e) failed to disclose these relationships to the public; and (f) failed to recuse themselves from consideration of Daibes’ projects.

59. Moreover, Daibes uses his influence at public agencies like the Passaic Valley Sewerage Commission and the Bergen County Utilities Authority to offer employment for Edgewater officials in order to manipulate them and ensure their fealty to him. Both these agencies have both been identified as hubs of political patronage, rampant waste, and improper conduct. Daibes also provides employment at his own businesses to officials and/or their relatives for the same purposes.

60. In addition, Daibes liberally permits local governmental officials to use his restaurant, Le Jardin, without cost, provides them with free meals and alcohol, free guest suites

at one or more of his buildings, and makes illicit cash payments to governmental officials. In the context of such illegal cash payments, it is not surprising that, in 2013, Daibes was the subject of a home invasion at his apartment in the St. Moritz (which he developed and owned at the time) during which he was robbed of a reported \$3-4 million in cash and gold (the perpetrators, one of whom was a former Daibes employee, were caught and successfully prosecuted).

61. Upon information and belief, Daibes provides cash to Borough insiders and aspiring insiders in order to finance their election campaigns in the Borough. A refusal to accept such cash “donations” is treated as disloyalty.

62. Daibes’ routine connections to convicted felons and alleged organized-crime figures brings such persons close to the seat of Edgewater municipal government. For example, Joseph Ponteiro, the president of Worth Construction, a Connecticut company that Daibes regularly hires to work on his projects, was convicted of providing unlawful gratuities to public officials and failure to report income. Mr. Ponteiro was reported by *The New York Times* to have been an unindicted co-conspirator in the notorious “Mafia Commission” case that exposed the inner-workings of New York’s organized-crime families, and a wiretapped conversation between Mr. Ponteiro and a “member” of an organized-crime family provided critical evidence at the trial. *See William K. Rashbaum, Mob’s Shadow Still Falls Across Building Projects, N.Y. Times, Sept. 4, 2000.*

63. Upon information and belief, Daibes ensures allegiance from politicians and officials in Edgewater through both financial control and implicit threats. Upon information and belief, more than one person involved in Edgewater politics has received a not-so-subtle message that Daibes was not “happy” with that person’s level of support.

64. Daibes’ influence in Edgewater is so great and well known that, upon information and belief, contract purchasers of other properties in Edgewater have retained him to shepherd

their variance applications through the municipal government. Upon information and belief, Daibes is paid as much as \$5 million to arrange for zoning approvals for other developers and then to “manage” the ensuing construction.

65. Among the specific instances of Daibes’ insidious financial relationships with Edgewater officials and improper and/or unlawful conduct by Edgewater and its officials involving Daibes are:

(a) **Mayor Michael McPartland**: Edgewater Mayor Michael McPartland resides in an apartment in The Alexander, a Daibes-owned development in Edgewater. Daibes lives in the penthouse of the same building. McPartland lives in Unit 105, a three-bedroom, three-bathroom duplex. At the same time, Units 104 and 106, adjacent to Mayor McPartland’s unit and having the same square footage as his unit, have market rents of \$5,200 per month, or annual rent of \$62,400. Upon information and belief, Mayor McPartland’s monthly rent for his three-bedroom unit is not more than approximately \$2,750, or an annual rent of \$33,000, an undisclosed benefit to him of nearly \$25,000 per year from a developer whose interests the Mayor openly champions.

Mayor McPartland took office in January 2015, with the support of Daibes. On February 24, 2014, during the time McPartland was an alternate member of the Planning Board, the Planning Board granted his own application to subdivide property that he owned at 1228 River Road into two lots. Robert Travers, Daibes’ attorney, represented McPartland on that application. McPartland sold the lots in December 2014.

In October 2016, a \$2,310 judgment was entered against McPartland for failure to pay child support, a fact that suggests that Mayor McPartland is not current in payment of his debts. This judgment remains outstanding as of December 4, 2017, and reflects that Mayor McPartland’s financial condition may render him particularly susceptible to

financial influence.

(b) **Denise Travers, Robert Travers, and Councilwoman Duane Fischetti:**

Denise Travers currently serves as the board attorney for the Edgewater ZBA, a job which, upon information and belief, Daibes obtained for her. Denise Travers' husband, Robert Travers, regularly represents Daibes as an attorney and has been listed as the registered agent for at least 60 Daibes Entities. Councilwoman Duane Fischetti is Robert Travers' mother.

Robert Travers is listed as a debtor in two active UCC financing arrangements with Mariner's Bank, which are secured by properties in Florida and New Jersey. Upon information and belief, Denise Travers and/or Councilwoman Fischetti are beneficiaries of one or both of these financing arrangements between Robert Travers and Mariner's Bank but they are not "debtors" on the UCC filings so that they can evade publicly disclosing those relationships with Mariner's Bank.

Despite her husband's representation of Daibes and her family's connections to Daibes Entities, Denise Travers did not recuse herself from the ZBA's consideration of Plaintiff's use-variance application (discussed in more detail below). Moreover, Councilwoman Fischetti did not recuse herself when the Council voted to condemn Plaintiff's Property. Rather, she voted in favor of Edgewater's decision to condemn Plaintiff's Property, all while the Borough—without any support from its Master Plan or any other study—has decided to "shift" residential development to the south side, where, not coincidentally, Daibes controls significant parcels of real estate. Councilwoman Fischetti's vote to condemn Plaintiff's Property materially benefited her son Robert Travers' major law client. Upon information and belief, Councilwoman Fischetti and her husband received a \$200,000 revolving line of credit from Mariner's Bank in 2016 that is

secured by a mortgage on a home that they own in Edgewater.

In 2014, a Daibes Entity transferred control of a commercial property at 521 Livingston Street, Norwood, New Jersey, to an LLC of which Robert Travers is the agent, for \$1.00. Upon information and belief, this was a sham transaction through which Daibes retained actual control of that property, and at the same time satisfied the concerns of Norwood public officials about undue delays in the development of that property. The Travers also had a mortgage loan from Mariner's Bank for a property that they own at 1 Summit Avenue, Norwood, New Jersey.

(c) **Kathryn Gregory**: Ms. Gregory is Edgewater's planner. In 2010, Ms. Gregory recognized that she had a conflict and recused herself from hearing an application made by a Daibes Entity. Upon information and belief, Ms. Gregory had, in her private capacity, signed the plans for the same project on behalf of Daibes, even though she claimed to have no knowledge of the project. But Gregory continued to prepare reexamination reports for Edgewater that benefitted Daibes-owned properties. For example, Gregory prepared multiple Master Plan Reexamination Reports in which she recommended that the Borough encourage high-rise developments. Daibes directly benefitted from this recommendation because he owns or controls virtually all of the sites where high rises could be built. Upon the advice of Gregory, the Borough adopted Ordinance 1485-2012, which re-zoned multiple blocks and lots owned by Daibes to medium or high-density zones. At the time that Daibes was attempting to acquire the Property, Gregory specifically recommended that the Property be designated as an area in need of redevelopment. Gregory was initially in favor of Plaintiff's development proposal and stated in a meeting with Plaintiff that she believed that the proposal satisfied her recommendations in the Master Plan. She later became hostile to Plaintiff's proposal

and set up numerous roadblocks to Plaintiff's application, by, among other things, making demands upon Plaintiff that she did not make of Daibes with respect to his land-use applications.

(d) **Edgewater Councilman Vincent Monte**: Councilman Monte joined the Edgewater Council in 2010. Thereafter, Daibes Enterprises hired Monte's son, also named Vincent Monte, where the younger Mr. Monte was employed for approximately 18 months. Although Councilman Monte properly abstained from voting on several resolutions citing his son's employment by Daibes, the hiring, upon information and belief, was an attempt by Daibes to improperly influence Mr. Monte.

Councilman Monte had a prior relationship with Mariner's Bank. In December 2006, Mr. Monte obtained a mortgage loan from Mariner's Bank in the amount of \$964,541. One month later, Mr. Monte borrowed an additional \$125,000 from Mariner's Bank. Shortly thereafter, Mr. Monte used the funds to make improvements to his house, and then formed a two-unit condominium and a condominium association, within days of the time that another Councilman, Anthony Bartolomeo, did the same. Mr. Monte then sold one of the condominium units, yielding a significant profit.

(e) **Councilman Anthony Bartolomeo**: In December 2006, Bartolomeo also received a mortgage loan from Mariner's Bank of \$942,000. One month later, Bartolomeo borrowed an additional \$150,000 from Mariner's Bank. Shortly thereafter, Bartolomeo used the funds to construct improvements to his house, and then formed a two-unit condominium and a condominium association within days of the time Councilman Monte did the same. Councilman Bartolomeo later sold off one of the two newly created condominium units for a significant profit.

Councilman Bartolomeo also received an undisclosed \$131,250 loan from

Mariner's Bank in 2016 through an affiliated entity, KAAB-High Street Holdings LLC ("KAAB"). This loan was connected to a property that KAAB acquired on High Street in Glassboro, New Jersey, for \$175,000. Mr. Bartolomeo's required public-disclosure forms did not reveal the mortgage loan to KAAB from Mariner's Bank.

In addition, Mariner's Bank made a \$550,000 loan to Bartolomeo and his wife in April 2015 for a property located on Undercliff Avenue in Edgewater. The purchase price for the property, however, was only \$412,500, and they had closed on the purchase only a few months before the loan was provided.

(f) **Purchase of "Affordable-Housing Units" by Daibes' Relatives**: Edgewater permitted Daibes to "meet" a portion of his St. Moritz development's affordable-housing requirement off-site by selling multi-family buildings located at 435, 437, and 439 Undercliff Avenue to Affordable Housing of Metropolitan Edgewater Inc. ("AHOME"), a nonprofit housing group organized by then-Edgewater Councilwoman Lois Fein. In 2008 and 2009, two Daibes relatives, Daniel Daibes and Diana Daibes, were allowed to purchase units at 435 Undercliff Avenue from AHOME for \$92,000 each, even though only income-qualified buyers (meaning buyers with incomes below a level set by State regulations) could purchase these units. Upon information and belief, Daniel Daibes and Diana Daibes were not income-qualified and thus not eligible to purchase affordable-housing units. Moreover, the purchasers of these affordable units were required by law to be selected by lottery. Upon information and belief, Daniel and Diana Daibes were not validly selected by lottery.

(g) **Daibes and Mariner's Bank**: Daibes founded Mariner's Bank in 2001 and is believed to be the bank's majority shareholder. Mariner's Bank has been the subject of recent regulatory actions by both the FDIC and Federal Reserve Bank of New York.

Consent orders have highlighted problems at Mariner's Bank regarding capital requirements, loan performance, and insider dealing.

Mariner's Bank has faced scrutiny for having made unsecured loans to New Jersey political figures who later defaulted in repayment of those loans. Publicly reported recipients of such non-repaid Mariner's Bank loans include Joe Ferriero (\$350,000), the former chairman of the Bergen County Democratic Organization, who was convicted for, among other things, bribery and using his public position for personal gain; and now suspended attorney Dennis Oury (\$25,000), who was convicted of defrauding the Borough of Bergenfield by failing to disclose his ownership of entities with which Bergenfield was doing business. An additional such loan from Mariner's Bank was made to former Dumont mayor and Bergen County political operative, Matthew McHale (\$15,000).

Mariner's Bank's former CEO, James Cochinos, pleaded guilty in 2013 to facilitating a mortgage-fraud scheme during his tenure as a director at the bank. He was subsequently sentenced to serve one year in federal prison.

Further, according to a report in *The Record*, government banking officials imposed on Mariner's Bank "unusually strict requirements on lending to insiders, who at times have included Daibes, his relatives and companies that he controls or manages." Richard Newman & Jean Rimbach, *Bank on Regulators' Radar*, *The Record*, Mar. 11, 2012.

(h) **Former Mayor Bryan Christiansen and Robert Christiansen**: Bryan Christiansen was a four-term mayor of Edgewater. He has owned stock in Mariner's Bank. In 2003, after Mayor Christiansen's stock holdings in Mariner's Bank became publicly known, he sold his stock to an unnamed purchaser. At the time, Mayor

Christiansen had been running for a seat in the New Jersey Assembly, but he withdrew from the race after the details of his ownership of Mariner's Bank stock became public. He is also a Managing Member of H2 Only Sales LLC, a water-purification company, which is based at Daibes' corporate headquarters and which lists numerous Daibes Entities among its clients. In 2010, he purchased a property in a Daibes development through funds provided by a Mariner's Bank loan. Upon information and belief, he purchased the property at a below-market price.

In 2010, Christiansen resigned from his position as Director of the Passaic Valley Sewerage Commission under pressure from Governor Christie over charges of rampant waste and political patronage. At the time, Christiansen's salary for his public position was reported to be \$313,000. After he left office, he was rewarded for his service to Daibes with a job for a Daibes Entity.

Former Mayor Christiansen's brother, ZBA Chairman Robert Christiansen, controls Plaintiff's pending zoning application that has been met at every turn with obstacles and delays.

(i) **John Candelmo**: Candelmo holds many public offices in Edgewater. In January 2015, Mariner's Bank sold a property that it had foreclosed at 35 Stuyvesant Avenue, Lyndhurst, New Jersey, to 35 Stuyvesant LLC for \$122,000, a sale price well below the fair market value of the property. Upon information and belief, Mariner's Bank conducted the sale without the normal public notice. 35 Stuyvesant LLC lists two principals, John Candelmo and his wife, Laurette Candelmo. Robert Travers is listed as an attorney on the sale document.

In February 2016, this property was converted by 35 Stuyvesant LLC into a condominium to be known as the Lyndhurst Meadows Condominium Association. As

part of the conversion, this property was split into 3 units: Unit A, B and C, which were sold in 2016 for \$432,000, \$450,000 and \$432,000, respectively.

Thus, Mariner's Bank sold a property to Candelmo for the under-market price of \$122,000, which Mr. Candelmo turned into over \$1.3 million in condo sales within 18 months. Candelmo also previously had an unrelated mortgage through Mariner's Bank. Candelmo's required public filings did not disclose the mortgage loans from Mariner's Bank, which were required to be disclosed.

In or about 2010, the New Jersey Office of Regulatory Affairs Office ("NJRAO") suspended Candelmo from his job as a building inspector in Edgewater when it was reported by former Edgewater fire official Charles Batch, in a series of memoranda commencing in 2005, that Candelmo had certified Daibes' St. Moritz development for occupancy despite the fact that there was missing sprinkler equipment and one of two fire exit doors led onto a cliff with no place for exiting tenants to go in order to escape a fire (in other words, tenants would have to choose between being caught in a fire and jumping from a cliff). The NJRAO also required Candelmo to retake the tests for certification as a construction official and a building inspector.

Shortly after Candelmo chose fealty to Daibes over public safety, Edgewater fired Batch, but not Candelmo, allegedly over his overtime pay. Batch sued Edgewater, claiming that he was fired in retaliation for bringing to light safety issues at Daibes' St. Moritz development. The case was settled out of court.

(j) **Edgewater's Legal Counsel Mariniello & Mariniello, P.C.**: The firm Mariniello & Mariniello, P.C., consisting of Joseph R. Mariniello and his son, acts as Borough attorney for Edgewater. Joseph R. Mariniello has an active UCC financing arrangement with Mariner's Bank, which has been in place since roughly 2006. This

financing arrangement has been the subject of several continuations since first initiated, including as recently as 2015. The financing is secured by the property in Fort Lee, New Jersey where Mariniello & Mariniello's offices are located.

Despite this relationship with Daibes' Mariner's Bank, the firm has represented Edgewater in tax appeals filed by Daibes Entities. For example, Mariniello & Mariniello represented Edgewater against the Daibes Entity that owns Kray Plaza (discussed in more detail below) in a tax appeal filed in 2016. Under a settlement agreement in that appeal, Edgewater reduced the assessed value of the property for multiple years by approximately \$850,000, which resulted in a tax savings for Daibes of approximately \$86,000. In another appeal, the firm represented Edgewater against a Daibes Entity called Edgewater Lin-Hill LLC. Edgewater agreed to reduce the assessed value of that entity's property for multiple years by approximately \$625,000, which resulted in a tax savings to Daibes of approximately \$64,000.

66. In addition, numerous Edgewater public officials have owned stock in Mariner's Bank, of which Daibes is the majority shareholder. Current and former Edgewater officials and their spouses who have owned stock in Mariner's Bank and who have exercised official action with respect to Daibes-owned properties include former Mayor Bryan Christiansen and his wife, Carol; Councilman Jeff Mathieu (who is or was also employed by a Daibes Entity); Councilman Joseph Kerwin, who was a member of Mariner's Bank's board of directors; and John Candelmo's wife, Laurette.

D. Daibes Benefits From His Control Over Edgewater Officials

67. The benefits that he has provided to Edgewater officials have borne fruit for Daibes. While Edgewater has taken extraordinary steps to block Plaintiff's development of its Property, the Borough has routinely supported Daibes' projects, even when doing so required the

Borough to violate its own ordinances and (as discussed in the following section) constitutional affordable-housing obligations. The result is that Daibes controls high-density development in Edgewater (that is, developments with at least 100 units per acre). Daibes has participated in all or virtually all of the high-density developments in Edgewater since 2000. All of these developments required some change in zoning for Daibes, and Edgewater accommodated Daibes' zoning requests every time.

68. In addition to the high-density properties that Daibes has already built, he owns or controls other properties with the potential to develop more than 3,000 additional residential units. Edgewater has granted Daibes zoning relief for these properties as well. Upon information and belief, Edgewater has never denied Daibes a re-zoning or variance request.

69. For example, in 2016, even while refusing to meet with Plaintiff, the Edgewater ZBA reviewed, considered, and approved—in less than 45 days—a development application submitted by a Daibes Entity for a project at 1000 Portside known as “Kray Plaza,” which permitted the construction of a high-rise residential building with 91 units on less than one acre of property (a density higher than that sought by Plaintiff in its development application). The Kray Plaza development site is located only one block from the Property. Despite the fact that Borough regulations for the zoning district only allowed the development of a three-story structure with a maximum height of 35 feet on this site, the ZBA rubber-stamped approval for Daibes for a 15-story structure with a total height of 153 feet, or five times the number of stories and the height limit otherwise permitted.

70. On other occasions, Daibes has obtained approvals for his properties from Edgewater for, among other things, extensive density variances (thereby increasing the properties' value), which the Daibes then sold to a third party. As just one example, a Daibes Entity obtained density variances and exceptions to fair-housing obligations for property that it

later sold to developer Avalon Bay, which was then able to develop 404 market-rate units with only four affordable-housing units.

71. In addition, while moving to condemn Plaintiff's Property, the Borough adopted Ordinance 1553-2017 in October 2017, which will allow 105 units per acre for three specified sites, all of which Daibes Entities own or control. Thus, even while the Mayor decries over-development, this Ordinance approves a massive increase in density for Daibes' sites that will produce a total of approximately 3,000 dwelling units.

72. In another example of its improper accommodations to Daibes, Edgewater approved a zoning classification for Daibes' property at 180 Old River Road that violated the Borough's zoning regulations. The Borough re-zoned the property to MXD-2, a high-density zone that allows Daibes to build 100 units per acre. But Edgewater's zoning regulations require a minimum lot area of 40,000 square feet for MXD-2 zoning, and Daibes' site at 180 Old River Road has less than 30,000 square feet.

73. Daibes has also received public contracts from the Borough despite a long history of egregious misconduct and violations of environmental regulations. For example, Daibes, with the help of his employee, former Mayor Bryan Christiansen, obtained a lucrative public contract to remediate Veteran's Field, Edgewater's largest park. Far from benefitting the Borough with his work on this project, however, Daibes caused the Borough and its residents extensive additional financial and environmental harm, as explained below. This conduct has not changed Daibes' position as the favored developer in Edgewater.

74. In or about 2013, Edgewater discovered that Waterside Construction, the Daibes Entity that was performing the work at Veteran's Field, had further contaminated the park by knowingly dumping PCB-laden concrete there. Upon information and belief, Waterside Construction's work on the project was overseen by Bryan Christiansen and Mark Iafelice, an

alleged organized-crime associate who was convicted in or about 2010 on gambling-related charges and in the 1990s on drug charges. The contaminated fill was taken from a former Alcoa site that another Daibes Entity (38 COAH, LLC) owned. Daibes was personally onsite when Waterside Construction dumped the contaminated fill at the park over a weekend. Remarkably, several Council members, including Vincent Monte and Anthony Bartolomeo, publicly voted to sue Waterside Construction for the harm that the contamination caused the Borough, but subsequently—in private—changed their votes to “no” in an effort to prevent Edgewater from holding Daibes and his Entities accountable.

75. In addition, in a May 15, 2017 Resolution, Edgewater stated that “the ultimate cost for the cleanup [of the Alcoa site] should be the responsibility of Alcoa,” upon information and belief in an attempt to exonerate Daibes. In that same Resolution, Edgewater permitted Waterside Construction to remediate portions of the former Alcoa property “subject to reimbursement by the Borough in the event of receipt of damages from Alcoa in this litigation.”

76. But for his improper influence over Borough officials, no Daibes Entities should have been eligible for the public contract to remediate environmental contamination at Veteran’s Field or the Alcoa site. Daibes Entities had been fined and cited repeatedly for violations of NJDEP regulations before the Borough awarded the contract to clean-up Veteran’s Field to Daibes in 2011. For example, the NJDEP fined Daibes Entities \$1.9 million for completing several projects (more than a decade previously) on the Hudson River in Edgewater without a permit while disregarding repeated demands for compliance over improvements that Fred Daibes had made to Le Jardin, his French restaurant on River Road, and the property that surrounds it.

77. Notwithstanding Daibes’ continued NJDEP violations in Edgewater and Waterside Construction’s failure to fulfill its requirements under the public contract, Edgewater

has taken none of the actions available to it under the New Jersey Local Public Contracts Law to disqualify any Daibes Entity.

E. Thwarting Plaintiff's Development Helps Edgewater and Daibes Evade Their Affordable-Housing Obligations and Maximize the Profitability of Daibes' Projects

78. Daibes and Edgewater have also been complicit in frustrating the development of affordable housing in the Borough for years. As described in more detail below, Edgewater takes extraordinary and outrageous steps to avoid its constitutional fair-share obligations. Edgewater's unlawful conduct enables Daibes to build more profitable market-rate apartments without having to include affordable units—which a developer must construct at its own expense—in his luxury high rises. Thus, Daibes and Edgewater engage in mutually beneficial collusion to prevent income-qualified families from finding housing in the Borough. Plaintiff's inclusion of 20% affordable housing in its development plan is an additional and important reason that Edgewater opposes the project.

79. For many years, the Borough has refused to comply with its affordable-housing obligations under the New Jersey Constitution. The Fair Share Housing Center, the State's largest affordable-housing advocacy group, has called the Borough "one of the most flagrant violators of New Jersey's fair housing laws." Svetlana Shkolnikova, *Fair-housing group seeks halt to eminent domain in Edgewater*, USA Today, July 26, 2017. The Fair Share Housing Center also described the Borough's proposed condemnation of the Property as "further evidence that the town is acting in bad faith" to prevent development of affordable housing in Edgewater. *Id.*

80. COAH has also consistently noted that Edgewater has failed to produce affordable housing because the Borough has not enforced its own resolutions and has improperly

released developers from their obligations to build affordable housing. The Borough's course of conduct dates back many years and continues to date.

81. In August 2005, COAH denied Edgewater's request to certify it as compliant with affordable-housing obligations. The COAH staff report prepared regarding the agency's decision noted that Edgewater's population had grown by 50% in the 1990s (largely as a result of Daibes' developments), and while the Borough had "authorized" the construction of 1,294 affordable-housing units since 1998, not a single affordable-housing unit had been built in nearly a decade. To date, COAH has not certified Edgewater as compliant with its obligations.

82. As stated above, Daibes has directly or indirectly participated in the construction of over 3,000 residential units in Edgewater, but has built only 80 affordable-housing units, evidencing the fact that the Borough and Daibes are colluding to maximize profits to Daibes and simultaneously minimizing the construction of affordable-housing units in the Borough. While a remedy for Edgewater's failure to enforce its affordable-housing obligations is not before this Court, Edgewater's documented history amply demonstrates that it is incentivized to benefit Daibes and to keep developers who want to provide affordable housing out of town.

83. In addition, the Borough has failed to require the payment of development fees in lieu of building affordable-housing units and has also failed to enforce a mandatory affordable-housing set-aside provision in an Edgewater ordinance. Moreover, substantially all of the affordable units that have been created are relegated to one area of the Borough on Undercliff Avenue.

84. On multiple occasions, Edgewater has purported to "impose" upon Daibes Entities, their development partners, and others the obligation to construct affordable housing as part of their market-rate residential developments, but later knowingly permitted them to avoid that obligation. Daibes routinely constructs significant multi-family residential projects in

Edgewater without the Borough requiring him to provide affordable housing. Daibes also routinely obtains variances and re-zonings that permit him to develop high-density projects, and he equally routinely—and with Edgewater’s acquiescence—fails to construct the required affordable housing at those projects. Some examples are provided later in this section.

85. Moreover, under Edgewater’s zoning ordinances and New Jersey regulations, commercial developments, which of course cannot themselves provide affordable housing, are required to pay a fee into the Borough’s Affordable Housing Trust Fund. Upon information and belief, the Borough has not enforced that obligation against Daibes or other developers.

86. The iPark development is a good example of Edgewater’s obstinate refusal to comply with its constitutional obligations. Edgewater claims that 75 of the affordable-housing units required to comply with the Borough’s obligations are located at iPark, but no affordable-housing units have ever been built on that property.

87. The Borough originally approved the iPark property with more than 15% of the units to be affordable housing. But the Borough later permitted up-zonings of the property to allow construction of substantially more market-rate components, including retail, a hotel, and nearly twice as many market-rate apartments, while lowering the affordable component to only 11%. The market-rate components in the iPark project are substantially complete, but not a single affordable unit has been built during the approximately 14-year build-out of this property. Furthermore, upon information and belief, the Borough did not collect the fee in lieu of affordable development required for the significant commercial component of the iPark project.

88. The construction of substantially all of the market-rate components at iPark without building any of the affordable units that were a condition of approval for the project violates New Jersey law. COAH regulations require inclusionary projects to build the market-rate units and affordable units on a pro rata basis to ensure that developers do not build the

profitable market-rate units first and then fail to construct the affordable units that are at best marginally profitable. Despite iPark's blatant violations of these regulations, the Borough has allowed the project to continue.

89. It is not surprising that Daibes is involved with the iPark project. Daibes purchased a portion of the iPark property in or about 2013, including valuable retail development sites on the property. As part of the sale transaction, Daibes took the responsibility for all 75 of the affordable units that were required to be included in the iPark development. Daibes, of course, has suffered no consequences from the Borough for his failure to build the affordable units even while he has commenced construction of the retail portion of the development.

90. In yet another instance of Edgewater's favored treatment of Daibes in the affordable-housing context, in 1997, Waterford Towers (n/k/a The Metropolitan) was proposed as a convalescent or congregate-care facility with a 23% set-aside for affordable housing. Daibes obtained a \$55-million loan to construct the building (378 units), consisting of 303 market-rate and 75 affordable-housing units. Although the 75 required affordable-housing units had not been properly deed-restricted (i.e., restricted by deed for use as affordable housing), Edgewater continues to claim them as satisfying part of its affordable-housing obligations. COAH, however, refused to issue credits for the 75 units because Daibes was unable to document that the affordable-housing units were properly deed-restricted and administered. As of 2015, Daibes had not been able to provide Edgewater with the proper documentation of the affordable-housing units, presumably because none exists.

91. The St. Moritz is yet another example of Daibes and Edgewater's collusion to prevent affordable housing in the Borough. Edgewater approved development of the high-end, residential St. Moritz (a/k/a the Portside Gorge and n/k/a The Riello), with 23 affordable units as a condition of approval. As detailed in the following paragraphs, however, Daibes not only

avoided the construction of any of those units, but was able to turn the burden of building affordable units at his own expense into a substantial profit.

92. The first step in Daibes' plan was to transfer the obligation to build 18 of the affordable units from the St. Moritz building to another site. Although developers can transfer the obligation to build affordable units to another site in the Borough if the Borough approves, the developer retains the financial obligation to provide the affordable units. Daibes, through one of his entities, owned two 80-year-old buildings on Undercliff Avenue. But instead of renovating and providing those properties to Edgewater free of charge in a manner consistent with his development obligations, Daibes—with the Borough's permission—*sold* the properties on Undercliff Avenue to AHOME, the nonprofit of which former Councilwoman Lois Fein was a founder and president and which was partially funded through a public grant. Councilwoman Fein even voted to approve the transfer instead of recusing herself from the Council's vote.

93. AHOME bought the two buildings, which needed substantial renovations to convert them to the required number of affordable residences, for approximately \$2.6 million (\$500,000 of which Daibes provided as a "credit" to AHOME). Upon information and belief, AHOME paid Daibes substantially more than market value for these properties. Thus, Daibes turned the financial burden of creating affordable housing in Edgewater into a profit by selling these buildings to a nonprofit run by an Edgewater politician with ties to him. As if that were not egregious enough, Daibes doubly benefitted from the transaction because AHOME borrowed \$1.3 million from his Mariner's Bank to fund the purchase.

94. Although the affordable units were eventually built at the AHOME site, they have been improperly administered. State regulations provide that affordable units must be

affirmatively marketed and selected through random lottery, which was not done.⁵ Instead, as noted above, Daibes' own relatives improperly purchased two of the units. In addition, only 12 of the 18 AHOME units have been transferred to supposedly low- and moderate-income households, and 6 vacant units are not being marketed.

95. Daibes furthered his plan to avoid building any affordable housing at the St. Moritz when he illegally transferred three affordable units to yet another site on Undercliff Avenue. The St. Moritz was required to deed-restrict the three affordable-housing units onsite for at least 30 years. In 2015, however, Edgewater sought to release the deed restriction for the three affordable units. When Edgewater wrote to COAH asking for permission to transfer the units, COAH refused because the transfer would violate State law. Thereafter, Edgewater *unilaterally* (i.e., without COAH authorization) released the three affordable-housing units from the St. Moritz and transferred them to a run-down building at 341 Undercliff Avenue, again demonstrating the Borough's collusion with Daibes.

96. Daibes' transfers of 18 affordable units to AHOME and 3 units to 341 Undercliff Avenue, left Daibes with responsibility to build only 2 of the 23 affordable units at the St. Moritz, which he never built. Edgewater has never taken any steps to enforce even that minimal obligation against Daibes.

F. Edgewater is Acting in Retaliation for Plaintiff's Prior Exercise of Its Rights

97. Edgewater has steadfastly refused even to meet with Plaintiff to discuss the development of the Property. During this time, the Edgewater ZBA deemed Plaintiff's

⁵ State regulations further provide that members of sponsoring organizations are not entitled to priority as residents (N.J.A.C. 5:80-7.8). Further, the affirmative administrator must recertify occupants as eligible for affordable housing at specific intervals (N.J.A.C. 5:80-8.5), and is responsible for affirmative marketing to attract buyers or renters of all majority and minority groups (N.J.A.C. 5:80-26.15).

submission incomplete, and arbitrarily required that Plaintiff's development application—although it was for a single development on two linked parcels that had been commonly owned for over 75 years and that are each part of a common development plan—be broken down into two separate applications. After Plaintiff complied with this demand, the ZBA imposed one-of-a-kind submission requirements with respect to both of Plaintiff's applications by requiring utility plans and other engineering plans that are not required for other applications for use variances. Before the ZBA could even act on Plaintiff's applications, Edgewater decided to condemn the Property.

98. Edgewater's treatment of Plaintiff is a result of, among other wrongful purposes stated herein, Edgewater's desire to punish and retaliate against Plaintiff for participating in affordable-housing lawsuits against Edgewater.

99. If Edgewater is permitted to seize the Property through eminent domain, these lawsuits (or at least Plaintiff's ability to participate in them) will potentially be eliminated. Edgewater is effectively using the condemnation process to punish Plaintiff for having vigorously exercised its right to pursue its development application and to object to Edgewater's continued evasion of its legal obligation to provide affordable housing. The litigations against Edgewater in which Plaintiff is involved are the following:

The Declaratory Judgment ("DJ") Action

100. In *In re Borough of Edgewater*, Docket No. BER-L-6364-15, Edgewater sought a declaration that its fair-share housing plan meets the requirements of the New Jersey Fair Housing Act and *Mount Laurel* precedent. The court granted Plaintiff's motion to intervene in the DJ Action, which Plaintiff had as of right as a property owner in the Borough seeking to build affordable housing.

101. Before Plaintiff intervened in the DJ Action, the Court had appointed a special master to report on Edgewater's proposed plan and to facilitate the formulation of a plan that would be acceptable to the court. No such plan has yet been proposed.

102. During motion practice, the Fair Share Housing Center, which had also been permitted to intervene in the action, advised the court that, without the affordable-housing units envisioned in Plaintiff's development plan, Edgewater will never be able to comply with its *Mount Laurel* obligations.

The Zoning Action

103. Independent of the DJ Action, on or around September 4, 2015, Plaintiff submitted its development application to the Edgewater ZBA, seeking approval to develop the Property with mixed uses, including high-rise residential housing, with a legally compliant affordable-housing component. As noted, Plaintiff's development application also proposed, among other things, public areas for playgrounds, safer bus stations, a new ferry terminal, and an elevated walkway for safe public passage across River Road.

104. On January 7, 2016, with no notice to Plaintiff, the Edgewater ZBA purported to consider the completeness of the development application and adopted a resolution, signed by ZBA Chairman, deeming the development application incomplete. Denise Travers did not recuse herself as attorney for the ZBA on Plaintiff's application despite her and her family's connections with Daibes, who opposes Plaintiff's application and would materially benefit from its denial.

105. Plaintiff objected, maintaining that Edgewater had acted untimely in reviewing the development application for completeness because applicable State regulations allow only for 45 days to determine completeness; thus, under State law, the application should have been deemed "complete." Plaintiff further maintained that, under State law, the ZBA had 120 days

from the date the development application was deemed complete to grant or deny the application. Because the ZBA did not grant or deny the development application within the specified time, the development application should have been deemed “automatically approved.”

106. In March 2016, Plaintiff pursued these arguments by filing the Zoning Action, captioned *615 River Road Partners, LLC v. Edgewater Zoning Board of Adjustment and John Candelmo*, Docket No. BER-L-2020-16, in which Plaintiff sought the statutory “automatic approval” of the development application that the N.J. Municipal Land Use Law authorizes in cases of municipal inaction. On June 14, 2017, the court granted summary judgment to Edgewater on the issue of whether it had timely acted in reviewing the development application for completeness and remanded the application to the Edgewater ZBA for further proceedings. This matter is currently on appeal.

107. On July 17, 2017, one month after the court remanded Plaintiff’s development application to the ZBA, Edgewater—in an obvious act of retaliation for Plaintiff’s assertion of its rights—took official action to rid itself of a “troublesome developer” and condemn the Property by adopting a resolution to authorize a bond for \$23.75 million and to authorize Edgewater’s legal counsel to negotiate with Plaintiff.

108. Notwithstanding the July 17, 2017 condemnation resolution, on August 2, 2017, Plaintiff’s development applications (which had been separated, at the ZBA’s demand, into applications for each parcel) were deemed complete, but the ZBA postponed the initial scheduled hearing on the application because it decided at the last minute that it wanted Plaintiff to submit a complete utility plan and other detailed engineering studies that are inappropriate for the use-variance stage of a ZBA application and which no other property is believed to have been required to submit. A subsequent hearing was also postponed when Plaintiff’s request to have the ZBA’s consulting professionals meet with Plaintiff’s consulting professionals was

disregarded until the night of the scheduled hearing. Only at the hearing, upon multiple requests by Plaintiff, did the ZBA agree that its consultants could meet with Plaintiff's professionals to discuss Plaintiff's application. However, the ZBA conditioned such a meeting on Plaintiff providing a further escrow deposit, because the ZBA's professionals, including (inappropriately) its lawyers, had exhausted the existing escrows of more than \$20,000.

The Overlay-Ordinance Action

109. On December 29, 2016, Plaintiff filed another action, captioned *615 River Road Partners v. Borough of Edgewater*, Docket No. BER-L-0090-17, challenging an Edgewater ordinance adopted in November 2016, which established an overlay zone on Undercliff Avenue. Under COAH regulations, an overlay zone is a tool that a municipality utilizes when it seeks a vacant-land adjustment to "bookmark" properties it believes will become available and could satisfy housing needs that are unmet.

110. The overlay ordinance improperly and impermissibly treats similarly situated properties differently by obligating only the subject properties to set aside affordable-housing units without providing any rational basis for the distinction. As such, Plaintiff challenged the overlay ordinance as arbitrary, capricious, and unreasonable.

The iPark Order to Show Cause Action

111. During motion practice in the DJ Action, Edgewater revealed that, although all 584 market-rate units at the iPark Project were either completed or nearly completed, the 75 affordable-housing units required for the project were not even designed yet. Edgewater represented to the court that, due to the lack of affordable-housing units, no further certificates of occupancy with respect to the iPark Project would be issued.

112. To confirm the accuracy of Edgewater's representation to the court, on March 17, 2017, Plaintiff served Edgewater with an Open Public Records Act ("OPRA") request to

determine whether it had, in fact, issued any further certificates of occupancy for the iPark project. Plaintiff learned that, despite Edgewater's representation to the court, its construction official, John Candelmo, had issued two temporary certificates of occupancy for the last building being constructed in the iPark project. The certificates were issued to enable iPark to hold an open house to market units for sale.

113. Accordingly, on May 26, 2017, Plaintiff filed an action against Edgewater and iPark, captioned *615 River Road Partners, LLC v. Borough of Edgewater, et al.*, Docket No. BER-L-003638-17, demanding that Edgewater show cause why it had not required iPark to comply with its obligation to provide affordable housing. In opposing the motion, iPark argued that it is not responsible for the affordable housing because it had sold the obligation to a Daibes Entity.

114. On October 20, 2015, the New Jersey Superior Court concluded that the Borough violated State regulations, that iPark is still responsible to complete the affordable-housing units, and that the Court might require Daibes to obtain a performance and payment bond to construct the 75 affordable-housing units that were supposed to have been built under State regulations at the same time as the market-rate housing at the project.

115. On June 27, 2017, the Fair Share Housing Center filed a separate complaint seeking the same relief with respect to the iPark property, and the court consolidated the cases. The Fair Share Housing Center again advised the court that Edgewater could satisfy its affordable-housing obligations only by including Plaintiff's Property in the Borough's plan for affordable housing.

G. Edgewater Delays Decisions On Other Development Applications Until It “Deals With” Plaintiff

116. Upon information and belief, Edgewater officials have privately “counseled” other Edgewater property owners to refrain from filing high-density development applications while Edgewater’s dispute with Plaintiff continues. Upon information and belief, Edgewater did so to avoid setting zoning precedent that would support Plaintiff’s development applications.

117. Plaintiff has suffered, and will continue to suffer, irreparable harm if Defendants’ actions are not enjoined.

FIRST COUNT
(Violations of Plaintiff’s Right to Equal Protection, 42 U.S.C. § 1983 and § 1988)

118. Plaintiff re-alleges the allegations set forth in the preceding Paragraphs as if fully set forth herein.

119. Defendants, acting under color of law, have violated Plaintiff’s constitutional rights by intentionally treating Plaintiff differently from others similarly situated.

120. Defendants have no rational basis for treating Plaintiff differently from others similarly situated.

121. Defendants’ actions were, and continue to be, irrational and wholly arbitrary.

122. As such, Defendants’ actions violate Plaintiff’s right to equal protection under the Fourteenth Amendment to the U.S. Constitution and under the Constitution of the State of New Jersey.

123. Plaintiff has been, and will continue to be, damaged by Defendants’ violations of its equal-protection rights.

SECOND COUNT

(Violations of Plaintiff's Right to Substantive Due Process, 42 U.S.C. § 1983 and § 1988)

124. Plaintiff re-alleges the allegations set forth in the preceding Paragraphs as if fully set forth herein.

125. At all times relevant to this action, Plaintiff has had and continues to have a protected constitutional interest in and to the Property, and Plaintiff also has the right to be free from unlawful action by Defendants, which are acting under color of law with respect to the Property.

126. Defendants' actions were and are not rationally related to a legitimate state interest and/or were and are motivated by bias, bad faith, and/or partisan political reasons or personal reasons unrelated to a proper governmental purpose, and shock the conscience.

127. Defendants' adverse treatment of Plaintiff's Property, including the decision to seize Plaintiff's Property under eminent domain, was motivated by improper purposes, including (a) to favor a competing developer in the municipality who has maintained control and influence over Edgewater officials in the various ways described above; (b) to minimize Edgewater's obligation to provide affordable housing pursuant to New Jersey law and public policy; and/or (c) to punish Plaintiff for exercising its right to challenge Defendants' actions and inactions with respect to the Property, as well as Edgewater's failure to provide affordable-housing pursuant to New Jersey law and public policy.

128. Defendants' actions violate Plaintiff's right to substantive due process under the Fourteenth Amendment to the U.S. Constitution, and Plaintiff has been, and will continue to be, damaged by such actions.

THIRD COUNT

(Violations of Plaintiff's Right to Free Speech, 42 U.S.C. § 1983 and § 1988)

129. Plaintiff re-alleges the allegations set forth in the preceding Paragraphs as if fully set forth herein.

130. At all times relevant to this action, Plaintiff has had and continues to have a protected constitutional interest in and to the Property, as well to its right to seek enforcement of Edgewater's affordable-housing obligations.

131. In connection therewith, Plaintiff also has the right to be free from unlawful action by Defendants, including from attempts to deprive Plaintiff of the ability to exercise its free-speech rights through public-interest litigation.

132. Defendants' proposed seizure of the Property under eminent domain will deprive Plaintiff of its First Amendment rights by depriving Plaintiff of standing to prosecute its stake in the affordable housing required to be provided by Edgewater.

133. Defendants' actions were and are not rationally related to a legitimate state interest and/or were and are motivated by bias, bad faith, and/or partisan political reasons or personal reasons unrelated to a proper governmental purpose.

134. Plaintiff will not be able to "resist" the Defendants' attempt to restrict its First Amendment rights because it will have no recourse if it is deprived of standing in the affordable-housing actions as a result of Edgewater's depriving it of its status as a developer in the Borough.

135. Defendants' actions against Plaintiff are based, in part, on their intent to retaliate against Plaintiff for its exercise of its First Amendment rights.

136. Defendants' actions violate Plaintiff's First Amendment rights, and Plaintiff has been, and will continue to be, damaged by such actions.

WHEREFORE, Plaintiff demands judgment against Defendants:

A. For preliminary and permanent injunctive relief enjoining and restraining Defendants' violations of Plaintiff's constitutional rights and enjoining Defendant Edgewater from pursuing the condemnation of the Property and subjecting Plaintiff to unconstitutionally disparate treatment from similarly situated others;

B. For money damages in an amount to be determined at trial, but in no event less than an amount equal to the value of the Property as developed in accordance with Plaintiff's development plan;

C. For Plaintiff's costs of suit, including its reasonable attorneys' fees and expenses pursuant to 42 U.S.C. §§ 1983 and 1988; and

D. Such other and further relief the Court deems just and necessary.

Respectfully submitted,

GREENBERG TRAUERIG, LLP
Attorneys for Plaintiff
615 River Road Partners, LLC

PASHMAN STEIN WALDER HAYDEN, P.C.
Attorneys for Plaintiff
615 River Road Partners, LLC

By: s/Cory Mitchell Gray
Cory Mitchell Gray
500 Campus Drive
Suite 400
Florham Park, New Jersey 07932
(973) 360-7900

By: s/Justin P. Walder
Justin P. Walder
Court Plaza South
21 Main Street, Suite 200
Hackensack, New Jersey 07601
(201) 488-8200

Dated: December 6, 2017
Florham Park, New Jersey

Dated: December 6, 2017
Hackensack, New Jersey

DEMAND FOR TRIAL BY JURY

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff hereby demands trial by jury of all issues triable as of right by a jury.

GREENBERG TRAURIG, LLP
Attorneys for Plaintiff
615 River Road Partners, LLC

PASHMAN STEIN WALDER HAYDEN, P.C.
Attorneys for Plaintiff
615 River Road Partners, LLC

By: s/Cory Mitchell Gray
Cory Mitchell Gray
500 Campus Drive
Suite 400
Florham Park, New Jersey 07932
(973) 360-7900

By: s/Justin P. Walder
Justin P. Walder
Court Plaza South
21 Main Street, Suite 200
Hackensack, New Jersey 07601
(201) 488-8200

Dated: December 6, 2017
Florham Park, New Jersey

Dated: December 6, 2017
Hackensack, New Jersey

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

The undersigned hereby certify that the matter in controversy is not the subject of any other action in any court or of a pending arbitration proceeding, and that no other action or arbitration proceeding is contemplated, except, as stated in the within Complaint, that Plaintiff is party to proceedings pending in New Jersey State court that relate to the property that is the subject of this action. Resolution of those matters will not resolve the constitutional violations that are the subject of this action.

GREENBERG TRAURIG, LLP
Attorneys for Plaintiff
615 River Road Partners, LLC

PASHMAN STEIN WALDER HAYDEN, P.C.
Attorneys for Plaintiff
615 River Road Partners, LLC

By: s/Cory Mitchell Gray
Cory Mitchell Gray
500 Campus Drive
Suite 400
Florham Park, New Jersey 07932
(973) 360-7900

By: s/Justin P. Walder
Justin P. Walder
Court Plaza South
21 Main Street, Suite 200
Hackensack, New Jersey 07601
(201) 488-8200

Dated: December 6, 2017
Florham Park, New Jersey

Dated: December 6, 2017
Hackensack, New Jersey