Joseph B. Fiorenzo, Esq.
SILLS CUMMIS & GROSS P.C.
One Riverfront Plaza
Newark, New Jersey 07102
Tel. (973) 643-7000
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

409-415 BERGENLINE AVE. UC, LLC, **Plaintiff,** v. **CITY OF UNION CITY, HECTOR MORALES, VIELKYS PAULINO, GERMAN TAVERAS and AMPARO LOPEZ PEREZ, DAYANA RUIZ, SALVADOR PEREZ, OSCAR RIJO AND RAQUEL RIJO, ERIC R. CASTILLO, LEILA Y. VENTURA, JESUS M. GERMAN, JUAN TRINIDAD, FRANCIS HERNANDEZ, ROSA TRINIDAD, CARMEN GARCIA, ANTONIA RAMOS, PAULINA JARAMILLO, JUAN MOLINA and AGUSTIN MOLINA, BIANCA D. REYNAUD, RODOLFO MARTINEZ, LEONILDA SANTIAGO, MIRTHA VAZQUEZ, and JOHN DOES 1-9,** **Defendants.**	**Civil Action No.** **COMPLAINT**

Plaintiff 409-415 Bergenline Ave. UC, LLC, for its Complaint against Defendant the City of Union City and Defendants Hector Morales, Vielkys Paulino, German Taveras and Amparo Lopez Perez, Dayana Ruiz, Salvador Perez, Oscar Rijo and Raquel Rijo, Eric R. Castillo, Leila Y. Ventura, Jesus M. German, Juan Trinidad, Francis Hernandez, Rosa Trinidad, Carmen Garcia, Antonia Ramos, Paulina Jaramillo, Juan Molina and Agustin Molina, Bianca D. Reynaud, Rodolfo Martinez, Leonilda Santiago, and Mirtha Vazquez (the "Former-Occupant Defendants"), alleges and states as follows:

SUMMARY OF ACTION

1. Defendant The City of Union City brazenly singled out the Plaintiff property owner for enforcement of the most aggressive interpretation of the most draconian provisions of the most restrictive rent control ordinance in the nation. Plaintiff is not even a landlord and has never offered its Property for lease. Yet as part of a political crusade against Plaintiff, the City scoured northern New Jersey to solicit the former occupants of the prior owner's building on the Property to sue Plaintiff to compel it to enter leases for its premises at below-market rates, with the City going so far as to hire lawyers for the former occupants, and bring its municipal agencies to bear upon Plaintiff with baseless citations, fines, and building department delays. After inciting these former occupants in order to drum up litigation against Plaintiff, the City funded their representation with taxpayer dollars, using the power of government to weigh in unequally in a private dispute to punish Plaintiff for political purposes and/or personal animosity. In so doing, Union City paid taxpayer funds for lawyers to represent former occupants—even several nonresidents of Union City—to zealously advocate the most onerous conceivable interpretation of the law against Plaintiff, a taxpaying resident of Union City. The City's action of granting some unnamed official the power to pick and choose particular residents to fund their lawsuits against other City residents—without any measurable standards to protect against the utter abuse of government power seen here—constitutes an arbitrary, irrational, and unequal assertion of government power. It has left Plaintiff no other alternative but to fight to stop the City from turning Plaintiff's Property into a rent-stabilized apartment building and foisting upon it landlord-tenant relationships it never approved or expected.

2. The City unlawfully deprived Plaintiff of the constitutional right to develop its recently-purchased property, instead forcing it to build a specific apartment building and

involuntarily enter into landlord-tenant relationships with particular individuals, a flagrant taking requiring just compensation. In 2012, an apartment building was destroyed by fire. The City inexplicably waited for years without ever requesting that landlord repair the apartment pursuant to the Union City's Ordinance. Instead, the remains of the apartment building sat idle for years, the former occupants moved on and relocated to new residences, and the City simply ignored the dilapidated, fire-scarred shell of the building on Bergenline Avenue—that is until the Plaintiff developer purchased the Property from that prior owner years later. Plaintiff acquired the land, which contained the remains of the building, with plans to remove the interior rubble and invest its resources in building modern condominiums, immensely improving the value of the neighborhood. But when Plaintiff approached the City with its plans to commence construction, the City rejected every proposal and demanded, for the first time, that Plaintiff comply with a City Ordinance requiring it to maintain it as an apartment building for use of the former occupants. After its purchase, not even a single former occupant had reached out to the Plaintiff or asserted any expectation of moving back to the fire-scarred building, only political officials. Plaintiff had no notice of any grounds to assert these stale claims under the Ordinance, nor was such a claim ever recorded anywhere for subsequent purchasers to have fair warning. Nevertheless, the City compelled Plaintiff to complete the rebuilding of the apartment building that existed under the prior owner, at Plaintiff's sole expense, and to lease the rebuilt apartment units to the former occupants.

3. Compounding the City's deprivation of Plaintiff's reasonable investment-backed expectations, the City barred Plaintiff from charging the market rates in 2020 to lease the rebuilt apartments, instead demanding that Plaintiff offer leases to the former occupants at the same rent-stabilized 2012 rate as on the date of the fire. In so doing, the City blatantly invaded Plaintiff's

physical property and regulated away all economic value to the land, compelling Plaintiff to forego its own development plans and instead create landlord-tenant relationships not approved or desired by Plaintiff, without any possibility of profit.

4. Moreover, the City's egregiously untimely assertion of the Ordinance against Plaintiff also constitutes selective enforcement and an unreasonable and arbitrary deprivation of Plaintiff's rights to due process and equal protection, including because the City never sought to enforce the Ordinance against the similarly-situated prior owner at the time of the fire. The City has unfairly singled out Plaintiff, targeting it for retribution and unfair treatment out of personal and/or political animus against Plaintiff and its owners.

5. On top of the fact that the City forced Plaintiff to spend millions of dollars rebuilding the structure at the Property at its own expense and then accepting the 2012 rental rate for the rebuilt units, the City's most recent 2017, 2018, and 2019 amendments to the Ordinance preclude any rental increase above the Consumer Price Index (CPI). The City freezes the real income from rent at the current rate, destroying any expectation of profit, and even if CPI were to increase, the City bars annual increases above 3% regardless of the rate of inflation (or even 2% for "senior tenants," which, upon information and belief, the City asserts covers the majority of the Former-Occupant Defendants). Under the ordinance, there is no possibility of profit: the owner is limited to rental rates at or below the rate of inflation. The City's Ordinance precludes any just and reasonable return for land owners, constituting a confiscatory deprivation of Plaintiff's due process rights.

6. The City's conduct is unlawful and unconstitutional. Plaintiff is entitled to the damages caused by the City's wrongful actions and a declaration that the Rent Stabilization Ordinance is unenforceable and void.

THE PARTIES

7. Plaintiff 409-415 Bergenline Ave. UC, LLC, is a New Jersey Limited Liability Company doing business at 409-415 Bergenline Avenue, Union City, NJ 07087. The members of the Limited Liability Company are residents of Pennsylvania, Florida, and California. None of the members of the Company is a New Jersey resident. In 2014, Plaintiff purchased real property located at Block 16, Lot 5, in the City of Union City, County of Hudson, also known as 409-415 Bergenline Avenue (the "Property"). Before a fire broke out on December 3, 2012—approximately 20 months prior to Plaintiff's acquisition of the Property—the Property contained a mixed-use apartment building with twenty residential units and two commercial spaces.

8. Defendant the City of Union City (the "City") is a municipal corporation and political subdivision of the State of New Jersey with offices located at 3715 Palisade Avenue, Union City, New Jersey 07087.

9. Defendant Hector Morales was an occupant of the apartment building previously located at the Property prior to the fire on December 3, 2012. Upon information and belief, Defendant Morales is currently a resident of Union City, New Jersey.

10. Defendant Vielkys Paulino was an occupant of the apartment building previously located at the Property prior to the fire on December 3, 2012. Upon information and belief, Defendant Paulino is currently a resident of Bayonne, New Jersey.

11. Defendants German Taveras and Amparo Lopez Perez was an occupant of the apartment building previously located at the Property prior to the fire on December 3, 2012. Upon information and belief, Defendants Taveras and Perez are currently residents of Union City, New Jersey.

12. Defendant Dayana Ruiz was an occupant of the apartment building previously located at the Property prior to the fire on December 3, 2012. Upon information and belief, Defendant Ruiz is currently a resident of Union City, New Jersey.

13. Defendant Salvador Perez was an occupant of the apartment building previously located at the Property. Sometime prior to December 3, 2012, this tenant moved out and the unit was vacant at the time of the fire. Upon information and belief, Defendant Perez is currently a resident of Union City, New Jersey.

14. Defendants Oscar Rijo and Raquel Rijo were tenants of the apartment building previously located at the Property prior to the fire on December 3, 2012. Upon information and belief, Defendants Oscar Rijo and Raquel Rijo are currently residents of Union City, New Jersey.

15. Defendant Eric R. Castillo was an occupant of the apartment building previously located at the Property prior to the fire on December 3, 2012. Upon information and belief, Defendant Castillo is currently a resident of Union City, New Jersey.

16. Defendant Leila Y. Ventura was an occupant of the apartment building previously located at the Property prior to the fire on December 3, 2012. Upon information and belief, Defendant Ventura is currently a resident of Union City, New Jersey.

17. Defendant Jesus M. German was an occupant of the apartment building previously located at the Property prior to the fire on December 3, 2012. Upon information and belief, Defendant German is currently a resident of Jersey City, New Jersey.

18. Defendant Juan Trinidad was an occupant of the apartment building previously located at the Property prior to the fire on December 3, 2012. Upon information and belief, Defendant Trinidad is currently a resident of Union City, New Jersey.

19. Defendant Francis Hernandez was an occupant of the apartment building previously located at the Property prior to the fire on December 3, 2012. Upon information and belief, Defendant Hernandez is currently a resident of Union City, New Jersey.

20. Defendant Rosa Trinidad was an occupant of the apartment building previously located at the Property prior to the fire on December 3, 2012. Upon information and belief, Defendant Trinidad is currently a resident of West New York, New Jersey.

21. Defendant Carmen Garcia was an occupant of the apartment building previously located at the Property prior to the fire on December 3, 2012. Upon information and belief, Defendant Garcia is currently a resident of Union City, New Jersey.

22. Defendant Antonia Ramos was an occupant of the apartment building previously located at the Property prior to the fire on December 3, 2012. Upon information and belief, Defendant Ramos is a resident of New Jersey.

23. Defendant Paulina Jaramillo was an occupant of the apartment building previously located at the Property prior to the fire on December 3, 2012. Upon information and belief, Defendant Jaramillo is currently a resident of Union City, New Jersey.

24. Defendants Juan Molina and Agustin Molina were tenants of the apartment building previously located at the Property prior to the fire on December 3, 2012. Upon information and belief, Juan Molina and Agustin Molina are currently residents of Union City, New Jersey.

25. Defendant Bianca D. Reynaud was an occupant of the apartment building previously located at the Property prior to the fire on December 3, 2012. Upon information and belief, Defendant Reynaud is currently a resident of Union City, New Jersey.

26. Defendant Rodolfo Martinez was an occupant of the apartment building previously located at the Property. Sometime prior to December 3, 2012, this tenant moved out and the unit

was vacant at the time of the fire. Upon information and belief, Defendant Martinez is currently a resident of Union City, New Jersey.

27. Defendant Leonilda Santiago was an occupant of the apartment building previously located at the Property prior to the fire on December 3, 2012. Upon information and belief, Defendant Santiago is currently a resident of New Jersey.

28. Defendant Mirtha Vazquez was an occupant of the apartment building previously located at the Property prior to the fire on December 3, 2012. Upon information and belief, Defendant Vazquez is currently a resident of Union City, New Jersey.

JURISDICTION AND VENUE

29. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 on the basis of federal question jurisdiction, as Plaintiffs allege causes of action arising under 42 U.S.C. § 1983 and the United States Constitution. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

30. This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because all Defendants are New Jersey residents, and are completely diverse from Plaintiff, a non-New Jersey resident. Plaintiff's complaints against each individual Defendant, without regard for interest, costs, or fees, exceeds the value of $75,000. For example and without limitation, the value of each former occupant's alleged interest in each apartment unit subject to regulation, compared to the value in the open market, is greater than $75,000.

31. This Court has personal jurisdiction over the Former-Occupant Defendants because they reside in this judicial district.

32. This Court has personal jurisdiction over the City because it is a municipality situated within this judicial district.

33. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b), among other provisions, because the Property at issue in this Complaint is located in this judicial district. Additionally, a substantial part of the actions and events giving rise to the claim occurred in this judicial district.

ALLEGATIONS AS TO ALL COUNTS

A. The Rent Stabilization Ordinance

34. In 2016, the City passed the first of several amendments to the Union City Code Chapter 334, entitled "Rent Stabilization." The Ordinance notes that "[h]ousing conditions in the City have changed since the enactment of the original Rent Control Ordinance," which was passed "in response to a housing emergency crisis which existed in the early 1970s." The ordinance concluded "it is no longer in the public interest to maintain rent control on all types of residential units."

1. The Ordinance Strictly Limits Rent Increases, With No Vacancy Decontrol

35. Despite recognizing that the economic facts underlying the purported governmental need for rent control no longer exist, the amended Rent Stabilization ordinance prohibits any adjustments to rent above the "Permitted increases."

36. This amendment to Union City Code § 334-10 restricted any adjustment to rent above 3.5% annually, and only 2% for certain residents, as set forth below:

> Permitted increases.
>
> A. Rent control established. All units, unless otherwise specifically exempted, shall be subject to the provisions of this chapter. Any and all increases not in accordance with the provisions of this chapter shall be refunded or credited to the tenant.
>
> B. Annual increases for covered units.
>
> (1) The maximum permissible annual rent increase is 3.5%.

(2) Exception for qualified senior tenants. The maximum annual permissible rent increase for a senior tenant who satisfies each of the following requirements is 2%:

(a) Sixty-five years of age or older; and

(b) Eligible to receive benefits under the Pharmaceutical Assistance to the Aged and Disabled (PAAD); and

(c) Whose annual income combined with the annual income of all other occupants of the unit does not exceed the combined annual income of an applicant and spouse to be eligible for PAAD except for a caregiver employed to provide care or services to the senior tenant.

(3) A landlord may apply for a hardship increase under Subsection C of this section in the event that the maximum annual rent increase for covered units does not allow the landlord a reasonable return on his investment.

37. In other circumstances, based on the age or income level of the tenant, the permitted annual increase to rent is even smaller.

38. The Union City Rent Stabilization Ordinance does not provide for any vacancy decontrol. In other words, the rent for a unit cannot be increased to market rates, or above 3.5% (or 2% for specified tenants), even when a unit becomes vacant and a new resident seeks to enter a lease.

2. The Ordinance Prohibits Owners From Exiting The Market And Leaving The Units Vacant

39. For an owner who does not find the economic tradeoffs of the amended Rent Stabilization Ordinance acceptable, however, that owner is prohibited from simply cutting their losses and exiting the market. The "Anti-warehousing rules" of the Rent Stabilization Ordinance, Union City Code § 334-20, provide that owners shall be fined after a tenant moves out if the unit remains vacant for 90 days, subject to certain extensions to construct improvements to the building:

> All such units shall be rented and occupied by a tenant within 90 days after the end of the preceding tenancy, which shall be defined as the last day of occupancy by the preceding tenant(s), except where an extension has been granted by the Rent Stabilization Board under the provisions of § 334-20D(4) below, in which event the unit shall be rented and occupied within the time period specified in the extension. Failure to comply with the requirements of this Subsection C shall be considered a violation of this section and subject the owner to the penalties set forth herein.

40. The Ordinance, Union City Code § 334-20(F), imposes a daily fine for each vacant unit of between $100 and $500, making it economically impossible for an owner to exit the market:

> Violations and penalties. A first violation of § 334-20A of this chapter or the conditions upon which a waiver has been granted by the Rent Stabilization Board shall be punishable by a fine of not more than $500 for each unit in violation. Subsequent violations shall be punishable by a fine of not less than $100 nor more than $500. Each day during which an owner is in violation of Subsection A of this section or the conditions upon which a waiver has been granted shall constitute a separate violation.

41. Moreover, the Property Maintenance Ordinance, Union City Code § 311-37, further subjects owners to additional fines when they reach the decision that the Rent Stabilization act is simply too onerous and elect to exit the market. The Property Maintenance Ordinance imposes a yearly escalating fee, which reaches $5,000 per vacant building by the third year of vacancy.

42. In addition, the Ordinance requires that, for any building with a vacant unit, the entire building must be inspected every ten business days until occupied. Moreover, when a tenant moves out and new tenant leases the unit, the Ordinance requires that the City inspect the unit prior to occupancy and make capital expenditures and or repairs. Together, these provisions force property owners to unnecessarily expend additional resources whenever there is a vacancy.

3. The Rebuilding Provision Of The Rent Stabilization Ordinance

43. The Rent Stabilization Ordinance, subsection 17(C), purports to require that any building with rent stabilized units, which is damaged by fire, must be rebuilt and relet to the prior tenants at the same rent-stabilized rate as of the date of the fire.

C. Tenant's right to return to premises rehabilitated after a fire.

(1) Repair of fire-damaged building. Whenever any building or buildings which contain residential units leased to tenants shall be injured or damaged by fire, the landlord shall repair same as speedily as possible.

(2) Tenant's right to return. In the event, as the result of injury or damage to the residential leased premises as a result of fire, a tenant is displaced, the tenant who is displaced shall have the right to return to his/her unit as soon as the building is in complete repair and has been approved for occupancy by the Construction Code Official of the City pursuant to the usual procedures for occupancy under applicable law.

(3) Rent.

(a) During the period of time that the tenant is displaced from the building, the tenant shall have no obligation to pay rent for his/ her unit.

(b) In the event that the residential building is subject to rent stabilization, the tenant shall return to his/her unit upon its complete repair at the legal rent existing at the time of his/her vacation of the unit.

44. Under the language of the Ordinance, when a fire spreads through a building, leaving little but the exterior remaining, the owner is prohibited from demolishing what remains of the building and erecting a commercial structure, condominiums, or even another apartment building. Instead, the statute compels the owner to rebuild the prior apartment building and relet the units to the former occupants. According to the Ordinance, the owner cannot pursue the options provided for in N.J.S.A. § 2A:18-61.1, such as retiring the building or converting the building to other uses, for example, condominiums, cooperatives, or park sites, without first rebuilding the prior apartment building.

45. On its face, the Rebuilding Provision does not set forth a timeframe within which a former occupant must seek to compel the rebuilding of the apartment unit. It does not expressly preclude the City and the former occupants from waiting years after a fire and then, upon a change

of ownership, demanding the remains of the structure be rebuilt to restore the former occupant to the apartment unit.

46. The Ordinance also purports to require that, however far in the future the Ordinance is enforced, the former occupant must be offered the rent stabilized rate "at the time of [tenant's] vacation of the unit" due to the fire. Thus, the language of the Ordinance does not, on its face, prohibit a tenant from demanding a rent-stabilized rate from a decade ago.

4. The Tenant Advocate Provisions

47. Union City Code § 334-9 provides for the appointment of a tenant advocate attorney:

> Tenants' Advocacy Attorney.
>
> A. Established; appointment.
>
> (1) There is hereby established within the Department of Public Affairs the Office of Tenants' Advocacy Attorney. The Tenants' Advocacy Attorney shall be appointed by the governing body for the term of one year or until a successor is appointed and qualified.
> (2) The Attorney shall be a duly licensed attorney at law and shall be compensated by the Mayor and Board of Commissioners.
>
> B. Duties. The Tenants' Advocacy Attorney, among other duties, shall:
>
> (1) Provide and distribute information to tenants regarding federal, state and municipal laws affection [sic] the rights and duties of landlords and tenants.
> (2) Distribute information specifically dealing with tenants' legal rights.
> (3) Write and publish information, pamphlets, leaflets or booklets providing information on tenant/landlord rights and duties.
> (4) Operate a hotline to provide advice to tenants.
> (5) Promote, sponsor and organize tenants rights workshops to disseminate information between tenants and tenant groups in organizing to protect tenants' rights.
> (6) Receive and forward to appropriate agencies of the City complaints from tenants relating to the administrative action or inaction of any department.
> (7) Give free advice and assistance to apartment dwellers in their dealings with the City Rent Stabilization Board and/or before any

> court or administrative tribunal as may be assigned by the appropriate official of the City.

48. The Ordinance authorizes only "advice" and "assistance" to apartment dwellers. Nothing in the tenant advocate provision authorizes the City to fund the legal representation or appear in pending litigation on behalf of one citizen against another. Indeed, the Tenant Advocate Attorney is instructed to "forward to appropriate agencies of the City [tenant] complaints," not to file complaints on behalf of tenants in Court.

49. Nevertheless, the City has repeatedly solicited former occupants to sue, join other tenants' suits, or assert additional forms of damages against landlords. The City has not only provided "free advice," but also appointed attorneys to appear on behalf of former occupants and litigate against property owners at taxpayers' expense. By way of example only, and without limitation, the City hired counsel on behalf of former occupants to litigate against Plaintiff regarding application of the Rent Stabilization Ordinance, with representatives of the City even complaining that they had a hard time finding former occupants to join the lawsuit. By way of further example, the City has hired counsel to appear on behalf of tenants in dispossess actions.

50. There are no measurable standards or facial limits on the discretion of the unidentified "appropriate official of the City" to arbitrarily pick and choose which members of the community in which industry to wade unequally into their private disputes, and select one resident to fund their lawsuit against another. The City's conduct was designed to unlawfully obtain leverage over property owners and manufacture standing where none existed: the ordinance conferred a waivable right to tenants, and no such rights to the municipality.

51. Furthermore, some of the former occupants for whom the City has funded litigation are not even residents of the City. By way of example, Union City has paid for attorneys for

residents of West New York and Jersey City to litigate against taxpayer-residents of Union City, including Plaintiff.

5. Further Amendments Eliminate Any Annual Increase In Real Rental Income

52. On September 26, 2017, the City adopted an Ordinance amending the Rent Stabilization Ordinance to preclude the 3.5% annual increase (or 2% for specified tenants), which was previously permitted. Instead, the owner is at most permitted to increase the rent to the extent of any increase in the consumer price index. However, if the consumer price index exceeds 3% (or 2% as the case may be), then the owner must suffer a loss:

53. The amendment provides the following "Permitted increases":

> A. Rent control established. All units, unless otherwise specifically exempted, shall be subject to the provisions of this chapter. Any and all increases not in accordance with the provisions of this chapter shall be refunded or credited to the tenant.
>
> B. Annual increases for covered units.
>
> (1) The maximum permissible annual rent increase is either 3.0% or the amount equal to the percentage increase in the latest available consumer price index for the New York-Northern New Jersey Metropolitan Area, for the twelve month period preceding the date of the notice of the proposed rental increase, whichever amount is less.
>
> (2) Exception for qualified senior tenants. The maximum annual permissible rent increase for a qualified senior tenant is either 2.0% or the amount equal to the percentage increase in the latest available consumer price index for the New York-Northern New Jersey Metropolitan Area, for the twelve month period preceding the date of the notice of the proposed rental increase, whichever amount is less.
>
> A qualified senior tenant, eligible for this exception, is one who satisfies all of the below criteria:
>
> (a) Sixty two years of age or older, as established in NJSA 2A:42-84.1; and
>
> (b) Whose annual income combined with the annual income of all other occupants of the unit does not exceed the combined annual

> income of an applicant and spouse to be eligible for Pharmaceutical Assistance to the Aged and Disabled "PAAD" except for a caregiver employed to provide care or services to the senior tenant.
>
> (c) The permissible rent increase, as set forth herein, shall be applied prospectively from the date of the determination by the Rent Control Office that the senior tenant qualifies.
>
> (3) A landlord may apply for a hardship increase under Subsection C of this section in the event that the maximum annual rent increase for covered units does not allow the landlord reasonable return on his investment.

54. The City adopted additional amendments in 2018 and 2019, each of which further constrained property owner's ability to obtain just and reasonable rents from tenants.

B. Destruction of the Property Under The Prior Owner And The City's Failure, Over The Course Of Years, To Enforce The Rebuilding Provision Of The Rent Stabilization Ordinance

55. Before Plaintiff acquired the Property, it was owned by company 5th Bergenline LLC, which operated an apartment building.

56. Upon information and belief, 5th Bergenline LLC had leased many of the residential units to tenants, including the Former-Occupant Defendants. As of December 3, 2012, several of the apartments were vacant because some of the Former-Occupant Defendants had moved out of the building.

57. On December 3, 2012, a fire broke out on the fourth floor of the apartment building, leaving little more than the brick façade remaining usable. The rest of the structure was completely missing or uninhabitable.

58. Once the fire was extinguished, the City issued Notices of Imminent Hazzard and of Unsafe Structure to the prior owner 5th Bergenline LLC, ordering all tenants to "[v]acate the above structure" and that the "[f]ire damaged structure must remain vacant."

59. The former occupants of the apartment building vacated the units, removed any remaining personal property, and demanded the return of their security deposits. Upon information and belief, 5th Bergenline LLC issued checks to the former occupants for the value of their security deposit, with the exception of two former occupants, whose security deposit was applied against their past due rent.

60. Each of the former occupants relocated to a new residence. In the more than seven years between December 2012 and April 2020, none of the Former-Occupant Defendants has lived at the Property.

61. 5th Bergenline LLC braced the masonry walls but otherwise undertook no repair or rebuilding efforts. Between December 3, 2012 and August 24, 2014, the Property sat idle. There was no construction performed by the prior owner.

62. Neither the City nor the former occupants made any attempt to enforce the Rebuilding Provision of the Rent Stabilization Ordinance or demand to be returned to the apartment units. Nor did they in any way record their intent to assert the provisions of the Rent Stabilization Ordinance so as to provide notice to potential purchasers of the Property.

63. On August 24, 2014, some 20 months after the fire, Plaintiff purchased the Property for approximately $775,000, which Property consisted of the remains of the building and the lot. Plaintiff paid the market rate for the Property.

64. Among other things, Plaintiff had the investment-backed expectation of building a structure containing condominium units for sale to the general public. It retained professionals to design and implement a plan to build such condominiums. It also considered constructing an apartment building with new units for rent at the market rate. Pursuant to statute, newly-

constructed units are exempt from the Union City Rent Stabilization Ordinance. City Code § 334-2.

65. After Plaintiff purchased the Property, for the first time, the City notified Plaintiff of its intent to assert the Rebuilding Provision. The City informed Plaintiff that whatever Plaintiff planned to do with the Property would be rejected because the City insisted upon enforcing the Rebuilding Provisions of the Rent Stabilization Ordinance, and would compel Plaintiff to rebuild the prior apartment building even though nearly two years had passed since the fire.

66. Plaintiff objected to being forced to rebuild a structure it did not want and to lease to former occupants it did not select. Plaintiff responded that any alleged ability the City or the former occupants had to enforce the Rebuilding Provision was lost by sitting on those alleged rights for years, and that in any event, they could only obtain relief against the prior owner, not against a subsequent purchaser with no notice of any claim under the Rebuilding Provision.

67. The City singled out Plaintiff, targeting it for enforcement unlike the prior owner or other similarly-situated owners, not for legitimate governmental reasons, but to harm Plaintiffs based on animosity fueled by personal and/or political animus.

68. Plaintiff filed a petition with the Union City Rent Stabilization Board, seeking a decision that the Property was not subject to the Rebuilding Provision of the Rent Stabilization Ordinance, or in the alternative, the right to charge rental rates above the 2012 rent stabilized rate, including market rates. The City, both before the Rent Stabilization Board and the Superior Court, hired attorneys using taxpayer funds to advocate in the interest of the former occupants and against Plaintiff.

C. The City Definitively Applied The Rent Stabilization Ordinance to Plaintiff's Property, Causing Concrete Harm

69. On September 14, 2018, both the City and Plaintiff filed actions in the New Jersey Superior Court with respect to the Rent Stabilization Board proceedings. The parties consented to the Superior Court rendering a determination based upon the record before the Rent Stabilization Board in the action entitled *City of Union City v. 409-415 Bergenline Ave. UC, LLC*, HUD-C-144-18, in the Chancery Division of the Superior Court of New Jersey.

70. On January 4, 2019, the Hon. Jeffrey Jablonski, P.J.Ch., of the Superior Court of New Jersey, Hudson County, entered an order on the basis of the record before the Rent Stabilization Board that the Rebuilding Provisions of the Rent Stabilization Ordinance applied to Plaintiff's Property.

71. The relief sought by the City, and ordered by the Superior Court, constitutes the City's definitive position on application of the Ordinance. The effect of the City's application of the Ordinance to Plaintiff's Property—i.e. an Order compelling Plaintiff to rebuild the apartment building—caused concrete injury to Plaintiff's rights. This includes, but is not limited to, the loss of Plaintiff's ability to develop its Property as condominiums or as anything else except the prior apartment building, compelling the creation of involuntary landlord-tenant relationships, depriving Plaintiff of the right to exclude the Former-Occupant Defendants, and imposing upon Plaintiff below market rates for the units it is forced to construct and lease.

D. The City Unconstitutionally Obstructed Plaintiff's Completion Of The Rebuilt Apartments Through Baseless Delays In Inspections And Malicious Rejection Of A Certificate Of Occupancy For The Improper Purpose Of Obtaining Penalties Against Plaintiff

72. After the City obtained a decision by the Superior Court applying the Ordinance to Plaintiff's Property, Plaintiff was given a nine-month deadline to complete the rebuilding process

and obtain a Certificate of Occupancy or face fines and penalties. There was a presumption, unfortunately incorrect, that all parties would act expeditiously and in good faith. But while Plaintiff operated diligently and quickly, during the entirety of the nine-month period, the City actively and intentionally hindered Plaintiff from meeting the deadlines, making it impossible for Plaintiff to comply with the Court-ordered schedule. Paradoxically, the City itself controlled the timing of inspections and approvals, directly affecting whether Plaintiff met or missed the deadline and was assessed penalties payable to the City. The City maliciously abused its control over timing inspections and approvals to delay and obstruct Plaintiff's efforts, thereby ensuring penalties against Plaintiff. The following are a series of non-exhaustive examples, for illustration purposes, of outrageous conduct by the City intended to delay and harm Plaintiff.

1. The City Frivolously Delayed Inspections To Make It Impossible For Plaintiff To Complete The Rebuilding Project

73. By way of example only, and without limitation, Plaintiff rapidly rebuilt the structure and was prepared for rough inspections within only weeks. The City delayed more than 44 days after Plaintiff called for rough inspections, falsely claiming it could not inspect until Plaintiff submitted the architect's plans. In reality, months earlier, Plaintiff had filed the architect's plans and received stamped copies of the documents approved by the City.

74. By way of further example, after receiving approvals for rough inspections, the City's inspector arrived at the Property at the scheduled time for the fire inspection, but refused to perform any further inspection, claiming Plaintiff's permit had "expired" years ago. This assertion was patently frivolous, as Plaintiff had just received rough inspection approvals on its valid construction permit only weeks before.

75. Moreover, upon placing a call with the Construction Code Official for Union City, Plaintiff was advised that the permit had, in fact, not "expired," that a new construction permit was not necessary, and the inspection could be rescheduled.

76. On the date of the rescheduled fire inspection, the City's inspector again refused to conduct the inspection, asserting the already-refuted position that the permit "expired." For a second time, no inspection was conducted.

77. Only after Plaintiff's counsel repeatedly notified the City of the consequences of its obstruction did the City finally relent and conduct the inspection, granting Plaintiff the fire inspection approval on its existing permit.

78. Frequently, Plaintiff called for a subcode inspection, but the City delayed weeks or months to send an inspector to the Property, an unheard-of delay. At the inspections, the City inspector refused to provide approvals based on nonexistent "deficiencies," trivial requested alterations, or already-satisfied requirements.

79. Moreover, the City repeatedly refused to consider Plaintiff' pending requests until updated "as-built" plans were submitted, causing numerous additional delays. Plaintiff was forced to keep submitting the updated plans based on the whim of the inspector before the City would process Plaintiff's requests to continue with interim inspections.

2. The City Obstructed Issuance Of The Certificate Of Occupancy For More Than Six Months

80. By way of further example, Plaintiff requested final building inspection and issuance of the Certificate of Occupancy on October 31, 2019. The City demanded to schedule no fewer than a dozen separate inspections, which could not be completed for two months, rather than a single inspection a reasonable time after requested.

81. On the date of the last scheduled final inspection, November 26, 2019, the inspector cancelled—without explanation—and rescheduled multiple times, pushing the inspection into the following year.

82. On January 24, 2020, the inspector advised Plaintiff that the property was fully compliant and would receive a final inspection sticker, but it could not be issued until he completed the formality of reviewing the on-site inspection plans on a return visit scheduled for later that week, notwithstanding that the subcode inspector viewed the plans repeatedly on site.

83. But instead of issuing the approval and Certificate of occupancy, the City again cancelled and delayed until February 11, 2020. Plaintiff was fully expecting to receive the Certificate because the City inspector had conducted over a dozen subcode inspections and had represented that the rebuilding was properly performed, met the applicable code, and would receive approval on the specified date. Particularly, the City's inspector stated that, having inspected each of the rooms of the building, the only outstanding item for the final building inspection was the formality of reviewing the architectural plans on site. But on the date of the final building inspection, when he had committed to doing no more than reviewing the plans and issuing the Certificate, instead, the inspector asserted a number of purported new deficiencies, some of them miniscule, and the remainder items that were either inapplicable or already completed.

84. By way of illustration, the inspector refused to issue the Certificate on the alleged basis that the roof and other components related to it did not conform to the required plans. The City issued this rejection even though Plaintiff had previously obtained a certificate of approval for the roof from the City's inspector many months before.

85. Many of the requests were for items the City's inspector was well aware of, having inspected the building repeatedly. Had any of these items posed a problem, the inspector could have identified them all at once. But in an effort to further string out the issuance of the Certificate of Occupancy, the City intentionally made piecemeal requests, triggering a requirement for new inspections, one after another, rather than identifying all alleged deficiencies at once.

86. Moreover, the City also asserted as a basis to deny the certificate of occupancy that Plaintiff lacked the "as built" plans for the basement, despite the fact Plaintiff displayed photographs of the "cellar" plans, marked "as built," stamped by the City as submitted and approved many months before.

87. At the same time that the City repeatedly delayed approval and was issuing meritless rejections, the City asserted fines and penalties against Plaintiff for its purported failure to obtain the certificate of occupancy within the deadline.

88. Tellingly, the City has since acknowledged Plaintiff did, in fact, have a certificate of approval for the roof and that this was an improper basis to deny the certificate of occupancy, as well as acknowledging that other requests were unnecessary.

89. The City further engaged in numerous other delays and asserted frivolous objections to issuing approvals and conducting inspections in a piecemeal fashion.

3. The City's Obstruction Continues To This Day

90. Even as of today, despite Plaintiff demonstrating it possessed approval for the roof and had submitted as-built plans for the basement, the City most recently asserted substantive new and additional claimed "prerequisites" for issuance of the Certificate.

91. By way of example, the City claimed it could not issue the Certificate until Plaintiff closed out a series of permits dating back to the 1990s, decades before the fire, and decades before

the Plaintiff's ownership, and notwithstanding that the City never asserted never alleged any of these purported deficiencies against prior owners. Moreover, these permits are for items relating to the structure of a prior building that no longer exists, and by definition the Plaintiff's rebuilding of the building renders all those permits moot. Plaintiff would not even know how to close out such permits it did not even take out and are clearly inapplicable. As with many of the other issues, the City never raised these alleged deficiencies during the entire rebuilding process, instead asserting a laundry list of new requirements at the moment the Certificate was to issue, even after admitting in writing that there were no other outstanding issues. The City looked through the entire file to attempt to find ammunition to delay the issuance of the approval.

92. The City's intentional obstruction of Plaintiff's ability to complete the rebuilding process within the deadline was part of a malicious scheme to trigger devastating penalties and fines. Indeed, the City's ploy succeeded, and it assessed over $2.2 million in fines and penalties for Plaintiff's purported failure to complete the rebuilding of the apartment units by the deadline, and ongoing consequential damages, with the Plaintiff at the City's mercy to exercise its authority to issue a Certificate of Occupancy.

FIRST COUNT

42 U.S.C. § 1983

(Taking By Physical Invasion Pursuant to the Fifth and Fourteenth Amendments)

93. Plaintiff repeats and realleges the allegations of the preceding paragraphs of this Amended Complaint as if fully set forth herein.

94. 2 U.S.C. § 1983, provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights,

> privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

95. The Fifth Amendment to the U.S. Constitution provides: "No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

96. The Fourteenth Amendment to the U.S Constitution provides: "nor shall any State deprive any person of life, liberty, or property, without due process of law[.]"

97. Defendants, acting under color of state law, have caused Plaintiff to be deprived of property without just compensation by, among other things, appropriating Plaintiff's real property, compelling the involuntary construction of an apartment building, forcing its permanent physical occupation by others, and eviscerating Plaintiff's right to exclude the Former-Occupant Defendants from entering and using the property.

98. Defendants' action, of creating involuntary landlord-tenant relationships between Plaintiff (who never willingly leased any portion of the Property) and the prior owner's tenants, represents a clear physical invasion of Plaintiff's property, not a regulation of an existing relationship.

99. Defendants' invasion of Plaintiff's property was for a purported public use, allegedly maintaining the stock of affordable housing, an asserted public good.

100. Defendants sought relief, and obtained an order, definitively applying the Ordinance to Plaintiff's property and compelling Plaintiff to construct a building—the prior apartment complex—that Plaintiff did not wish to build. Pursuant to the City's definitive and final determination, Plaintiff rebuilt the apartment building that existed under the prior owner.

101. Defendants have not paid Plaintiff just compensation for their physical invasion of Plaintiff's property.

102. As a direct and proximate result of Defendants' violation of Plaintiff's constitutional rights, Plaintiff has suffered and continues to suffer substantial damages.

WHEREFORE, Plaintiff demands judgment against Defendants for the following relief:

A. Declaring the Rebuilding Ordinance to be a violation of the Due Process Clause;

B. Awarding compensatory damages and just compensation;

C. Punitive damages;

D. Plaintiffs' costs of suit, including reasonable attorneys' fees and expenses pursuant to 42 U.S.C. §§ 1983 and 1988; and

E. Such other and further relief as the Court may deem equitable and just.

SECOND COUNT

42 U.S.C. § 1983

(Per Se Regulatory Taking Pursuant to the Fifth and Fourteenth Amendments)

103. Plaintiff repeats and realleges the allegations of the preceding paragraphs of this Amended Complaint as if fully set forth herein.

104. Defendants, acting under color of state law, enacted regulation of private property tantamount to a direct taking, including by depriving Plaintiff of all economically beneficial use of the Property.

105. Absent the challenged ordinance, Plaintiff was permitted to construct any structure permissible under the applicable zoning regulations, including certain commercial space,

condominiums, new apartments, or a multi-family dwelling. But, applying the challenged ordinances, Plaintiff was forced to expend significant resources to rebuild a particular apartment building with units comparable to the one existing under the prior owner that were destroyed by fire in 2012, and involuntarily lease the rebuilt apartments in 2020 to the former occupants at their 2012 rent-stabilized rate.

106. The City rejected Plaintiff's attempt to charge market rents, raise the 2012 rent rates based on the rebuilding expenditures, or increase the rent to reflect yearly increases of 3.5%—the maximum permissible annual rent increase under the ordinance—between 2012 and 2018, and CPI thereafter.

107. Thus, while all other landlords with units subject to the ordinance were authorized to increase rents by over 23% year-over-year under the rent stabilization ordinance, Plaintiff is forced to accept a 0% increase in the 2012 rent for property it purchased years after the fire.

108. In reality, the effect of Defendants' regulation is far worse than forcing Plaintiff to accept 2012 rent-stabilized rates. Based on increases in the consumer price index for rent in the NY-NJ-PA metro region for all urban consumers, Defendants' regulation means that Plaintiff must accept a 25% discount in the real income from what the prior owner received in 2012. In other words, the maximum income Plaintiff is allowed to collect is only three-quarters the amount paid to the prior owner nearly a decade ago, all while receiving no adjustment for the millions of dollars of renovations it expended to rebuild the apartments.

109. The City's regulations, which preclude Plaintiff from using the Property for anything except the prior owner's apartment building, and foisting upon Plaintiff the prior owner's lease agreements with 2012 rates, deprive Plaintiff of all economically beneficial use of the Property, rendering it essentially valueless.

110. The City's regulation bars Plaintiff from pursuing otherwise permissible development opportunities that are economically beneficial, and instead forces Plaintiff into an arrangement where it must operate at a significant loss.

111. Separately and independently, setting aside the Rebuilding Provisions of the Rent Stabilization Ordinance, the Ordinance and the 2017, 2018, and 2019 Amendments' prohibition against increases to rent above the Consumer Price Index, but in no event greater than 3% (or even 2% for "senior tenants"), deprives Plaintiff of any economically beneficial use of the Property, regulating so far as to make it economically idle.

112. Under the City's Ordinance, the recovery of any return on investment is impossible because the most Plaintiff can charge for rent is based on the annual increase in the Consumer Price Index, and if inflation is greater than 3%, Plaintiff is nevertheless required to charge no more than a 3% increase (or 2% increase for "senior tenants"), necessarily resulting in a loss.

113. As a direct and proximate result of Defendants' violation of Plaintiff's constitutional rights, Plaintiff has suffered and continues to suffer substantial damages.

WHEREFORE, Plaintiff demands judgment against Defendants for the following relief:

A. Declaring the Rent Stabilization Ordinance to be a violation of the Due Process Clause;

B. Awarding compensatory damages and just compensation;

C. Punitive damages;

D. Plaintiffs' costs of suit, including reasonable attorneys' fees and expenses pursuant to 42 U.S.C. §§ 1983 and 1988; and

E. Such other and further relief as the Court may deem equitable and just.

THIRD COUNT

42 U.S.C. § 1983

(Regulatory Taking Pursuant to the Fifth and Fourteenth Amendments)

114. Plaintiff repeats and realleges the allegations of the preceding paragraphs of this Amended Complaint as if fully set forth herein.

115. The City's regulation, which imposes on Plaintiff the wholly impracticable burden of rebuilding a prior owner's apartment building at its own expense, and then leasing the building to former occupants at rental rates frozen in 2012, singles out Plaintiff alone to bear a burden which must be borne by the public as a whole.

116. The Ordinance results in a deprivation of an extreme magnitude to the Plaintiff's economic interest: a total prohibition on Plaintiff's selected use for the Property, significant mandated expenditures to rebuild the apartment building of well over seven figures, and an inability to exclude the Former-Occupant Defendants from the Property. This frustrated Plaintiff's reasonable investment-backed expectations in purchasing Property containing the remains of a fire-damaged building: the reasonable and permissible use of the Property to construct condominiums, among other things.

117. Weighing Plaintiff's interest against Defendants' interest, the governmental interest is minimal. Whatever interest the City has in maintaining stable rents to its apartment-renting residents, there is no interest in affording a particular former occupant a copy of his or her previously-destroyed apartment unit at the rent-stabilized rate from nearly a decade earlier.

118. Former occupants whose apartment building was destroyed by the fire under the prior owner were able to—and did—find comparable apartments, including rent stabilized

apartments. There is no legitimate governmental benefit of conferring a windfall on specific former occupants at the expense of the owner.

119. Separately and independently, setting aside the Rebuilding Provisions of the Rent Stabilization Ordinance, the Ordinance and the 2017, 2018, and 2019 Amendments' prohibition against increases to rent above the Consumer Price Index, but in no event greater than 3% (or 2% for "senior tenants"), constitutes a regulatory taking.

120. Under the City's Ordinance, the recovery of any return on investment is impossible because the most Plaintiff can charge for rent is based on the annual increase in the Consumer Price Index, and if inflation is greater than 3%, Plaintiff is nevertheless required to charge no more than a 3% increase (or 2% increase for "senior tenants"), necessarily resulting in a loss.

121. As a direct and proximate result of Defendants' violation of Plaintiff's constitutional rights, Plaintiff has suffered and continues to suffer substantial damages.

WHEREFORE, Plaintiff demands judgment against Defendants for the following relief:

A. Declaring the Rent Stabilization Ordinance to be a violation of the Due Process Clause;

B. Awarding compensatory damages and just compensation;

C. Punitive damages;

D. Plaintiffs' costs of suit, including reasonable attorneys' fees and expenses pursuant to 42 U.S.C. §§ 1983 and 1988; and

E. Such other and further relief as the Court may deem equitable and just.

FOURTH COUNT

42 U.S.C. § 1983

(Violation of the Substantive Due Process Clause As Confiscatory)

122. Plaintiff repeats and realleges the allegations of the preceding paragraphs of this Amended Complaint as if fully set forth herein.

123. The Due Process Clause of the U.S. Constitution prohibits any state from enforcing rent control regulations that are confiscatory.

124. The City's Rent Stabilization Ordinance, the most restrictive in the nation, including but not limited to the purported requirement that Plaintiff rebuild the former apartment building at its own cost and relet the Property to the former occupants at 2012 rent rates, results in even an economically efficient property owner such as Plaintiff operating at a loss.

125. Among other things, the Ordinance requires that Plaintiff build a structure for the benefit of former occupants without allowing it to pass on to the former occupants the cost of such improvements or charge rental rates reflecting the change in the consumer price index between 2012 and 2020.

126. There is, and will continue to be, a wide disparity between Plaintiff's foreseeable rental income and its much higher expected operating expenses.

127. Separately and independently, setting aside the Rebuilding Provisions of the Rent Stabilization Ordinance, the Ordinance and the 2017, 2018, and 2019 Amendments' prohibition against increases to rent above the Consumer Price Index, but in no event greater than 3% (or 2% for "senior tenants"), is confiscatory.

128. Under the City's Ordinance, the recovery of any return on investment is impossible because the most Plaintiff can charge for rent is based on the annual increase in the Consumer

Price Index, and if inflation is greater than 3%, Plaintiff is nevertheless required to charge no more than a 3% increase (or 2% increase for "senior tenants"), necessarily resulting in a loss.

129. As a direct and proximate result of Defendants' violation of Plaintiff's rights, Plaintiff has suffered and continues to suffer substantial damages.

WHEREFORE, Plaintiff demands judgment against Defendants for the following relief:

A. Declaring Union City's Rent Stabilization Ordinance to be invalid and unenforceable;

B. Restraining Defendants, or any of their agents, servants, or employees, from enforcing the Rent Stabilization Ordinance against Plaintiff;

C. Compensatory damages;

D. Punitive damages;

E. Plaintiffs' costs of suit, including reasonable attorneys' fees and expenses pursuant to 42 U.S.C. §§ 1983 and 1988; and

F. Such other and further relief as the Court may deem equitable and just.

FIFTH COUNT

42 U.S.C. § 1983

(Violation of the Substantive Due Process Clause)

130. Plaintiff repeats and realleges the allegations of the preceding paragraphs of this Amended Complaint as if fully set forth herein.

131. At all times relevant to this action, Plaintiff had, and continues to have, a protected constitutional interest in the Property, as well as its planned development of the Property. Plaintiff has the right to be free from unlawful action by Defendants, who are acting under color of law with respect to the property rights of Plaintiff.

132. Among other things, and as more fully set forth above, the City, with malice and illegal intent, instructed and encouraged its inspectors and representatives to assert frivolous objections to Plaintiff's efforts to rebuild the Property, so as to frustrate Plaintiff's ability to complete the project within the deadline, triggering onerous fines and penalties.

133. Defendants' actions are not related to a legitimate State interest but are instead motivated by bias, bad faith and/or partisan political reasons and personal reasons unrelated to a proper governmental purpose. Their baseless obstruction of Plaintiff's project in order to accrue fines and penalties from one of their residents shock the conscience.

134. Plaintiff's illegal scheme was successful. After asserting meritless objections to delay and obstruct issuance of a Certificate of Occupancy due to Plaintiff for the completed apartment building reconstruction, the City claimed Plaintiff failed to meet the deadline for completion and assessed over $2.2 million in fines and penalties against Plaintiff, as well as consequential damages.

135. In so directing the inspectors and representatives, the City was acting under color of State law at all relevant times.

136. As a direct and proximate result of Defendants' violation of Plaintiff's constitutional rights, Plaintiff has suffered and continues to suffer substantial damages.

WHEREFORE, Plaintiff demands judgment against Defendants for the following relief:

A. Compensatory damages;

B. Punitive damages;

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

D. Such other and further relief as the Court may deem equitable and just.

SIXTH COUNT

42 U.S.C. § 1983

(Facial Violation of The Equal Protection Clause)

137. Plaintiff repeats and realleges the allegations of the preceding paragraphs of this Amended Complaint as if fully set forth herein.

138. The Rent Stabilization Ordinance violates the Equal Protection Clause of the U.S. Constitution because it creates facial distinctions, which are discriminatory in nature, without any rational relationship to a legitimate governmental interest.

139. By way of example only, and without limitation, the Rebuilding Provision of the Rent Stabilization Ordinance creates a class of owners of property containing leased premises where the premises are merely "injured or damaged by fire." Union City Code § 334-17(C). This class of citizens whose property has been "damaged" are forced to bear the substantial burden of expending resources to repair the damaged property and reletting the property to the former occupants at a rent-stabilized rate as of the date of the fire.

140. On the other hand, a New Jersey state statute creates another class of owner whose building was "totally destroyed," who need not bear any of the burdens of a citizen whose property was merely "damaged." N.J.S.A. § 46:8-7 provides: "[w]henever any building or buildings erected on leased premises shall be totally destroyed by fire or otherwise . . . from thenceforth, the lease shall cease and come to an end." Such owners are free to pursue any use consistent with the zoning ordinances, including commercial uses, condominiums, or newly constructed apartments. They are not required to invest resources to rebuild the prior building, nor are they compelled to relet to former occupants at the stabilized rate on the date of the damage.

141. The City's Ordinance creates a distinction between owners of "totally destroyed" buildings, who bear no public burden, and owners of buildings that are anything less than "totally destroyed," who bear an extensive financial burden.

142. Because Defendants' regulation impairs a fundamental constitutional right to the use and enjoyment of property, Defendants are required to demonstrate that the Ordinance furthers a compelling governmental objective and is narrowly tailored to achieving that objective.

143. There is no compelling governmental objective to support forcing owners to rebuild a copy of the damaged building rather than construct new or different structures. Nor is the distinction created by the Ordinance of "totally destroyed" buildings versus merely "damaged" buildings narrowly tailored to any governmental objective.

144. Regardless, there is not even a rational, legitimate governmental basis for discriminating between owners who are left after a building fire with merely the façade of a building versus those left with only rubble.

145. This distinction between similarly-situated citizens is arbitrary, unreasonable, and without any rational justification.

146. By way of further example, and without limitation, the Tenants' Advocacy Attorney provision of the Rent Stabilization Ordinance discriminates in providing discretionary services to one group of citizens but not another.

147. The Ordinance creates a class of citizens who receive a taxpayer-funded benefit of the advice of a Tenant Advocacy Attorney. The City chose one industry out of the entire market, housing, and one group of citizens, select tenants, and then weighs in on a private dispute to unequally allocate taxpayer resources in favor of the selected tenants and against other taxpaying residents. On the face of the Ordinance, these citizens are selected by an unidentified "appropriate

official of the City," without any standards or explicit limits on the official's discretion to "assign[]" benefits. All other citizens, including other tenants, and owners of leased property, are denied access to a taxpayer-funded attorney.

148. The Ordinance's grant of authority to confer discretionary government benefits on some but not all citizens, without any meaningful or articulable standards, constitutes an arbitrary and irrational regulation in violation of the Equal Protection Clause. It is wholly irrational for a municipality to choose, with no limitations, to fund one citizen's lawsuit against another.

149. As a direct and proximate result of Defendants' violation of Plaintiff's constitutional rights, Plaintiff has suffered and continues to suffer substantial damages.

WHEREFORE, Plaintiff demands judgment against Defendants for the following relief:

A. Declaring Union City's Rent Stabilization Ordinance to be invalid and unenforceable;

B. Restraining Defendants, or any of their agents, servants, or employees, from enforcing the Rent Stabilization Ordinance against Plaintiff;

C. Compensatory damages;

D. Punitive damages;

E. Plaintiffs' costs of suit, including reasonable attorneys' fees and expenses pursuant to 42 U.S.C. §§ 1983 and 1988; and

F. Such other and further relief as the Court may deem equitable and just.

SEVENTH COUNT

42 U.S.C. § 1983

(As-Applied Violation of The Equal Protection Clause)

150. Plaintiff repeats and realleges the allegations of the preceding paragraphs of this Amended Complaint as if fully set forth herein.

151. Plaintiff has a constitutionally protected property right, including but not limited to the interest as owner of the Property, and a protected right to develop the Property. As set forth above, Defendants, acting under color of law, have violated Plaintiff's constitutional rights by interfering with Plaintiff's right to develop its Property.

152. Defendant has discriminatorily applied the Rent Stabilization Ordinance against Plaintiff, in a manner never applied to similarly-situated property owners.

153. By way of example only, and without limitation, 5th Bergenline LLC, the prior property owner is similarly situated to Plaintiff in every relevant manner. It possessed the same Property, which previously contained the apartment building damaged by fire. For years after the fire, during 5th Bergenline LLC's ownership, the City declined to enforce the Rebuilding Provision of the Rent Stabilization Ordinance against 5th Bergenline LLC. However, when Plaintiff purchased the Property, the City attempted to enforce the Ordinance against Plaintiff for the first time.

154. Furthermore, upon information and belief, there are multiple other property owners in Union City, where apartment buildings contained on the property were damaged by fire, but the City made no attempt to enforce the Ordinance against these similarly-situated property owners.

155. Defendants have no rational basis or legitimate governmental interest in treating Plaintiff differently from others similarly situated. Instead, Defendants' enforcement is wholly arbitrary.

156. 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.

157. By way of further example, and without limitation, as discussed more fully above, Defendants willfully delayed and obstructed Plaintiff's efforts to rebuild the apartment building within the deadline, including, but not limited to, Defendant asserting patently frivolous objections to issuance of the Certificate of Occupancy and refusing to conduct inspections. Among other things, Defendants obstructed issuance of the Certificate by claiming Plaintiff's roof was improperly constructed, despite Plaintiff's possession of a certificate of approval for the roof from the City, and Defendants delayed inspections by claiming Plaintiff's permit was invalid, despite the fact that the City has since admitted this was untrue. Moreover, the City repeatedly required piecemeal inspections and unnecessary updated revisions to the plans.

158. Similarly-situated property owners were not subjected to such delays and obstructions.

159. Defendants' actions were wholly irrational and arbitrary. Defendants acted for the demonstrably improper purpose of frustrating Plaintiff's ability to complete the project before the deadline, and thereby seek fines and penalties.

160. Moreover, the City has applied the Tenant Advocate Attorney provision of the Rent Stabilization Ordinance to solicit Former-Occupant Defendants and others to file claims and litigate against Plaintiff, picking and choosing specific residents and funding their litigation against

other Union City residents. Even more egregiously, Union City has funded litigation by residents of West New York, Jersey City, among others, against Plaintiff, a taxpaying resident of Union City. Defendant conferred discretionary benefits in an arbitrary and unreasonable way, treating similarly-situated citizens differently without any rational basis.

161. By hiring lawyers to represent selected tenants against another taxpayer, the City requires a taxpayer-funded lawyer to act in behalf of selected tenants "with zeal in advocacy upon the client's behalf," as required by the Rules of Professional Responsibility and comments thereto. The City is funding lawyers to adopt the most extreme interpretation conceivable on behalf of one selected group of citizens, even if that interpretation is wholly illogical and improper, as it is here, and asserting that interpretation against Plaintiff, rather than promoting neutral and correct interpretation of its ordinances.

162. As a direct and proximate result of Defendants' violation of Plaintiff's constitutional rights, Plaintiff has suffered and continues to suffer substantial damages.

WHEREFORE, Plaintiff demands judgment against Defendants for the following relief:

A. Declaring Union City's Rent Stabilization Ordinance to be invalid and unenforceable;

B. Restraining Defendants, or any of their agents, servants, or employees, from enforcing the Rent Stabilization Ordinance against Plaintiff;

C. Compensatory damages;

D. Punitive damages;

E. Plaintiffs' costs of suit, including reasonable attorneys' fees and expenses pursuant to 42 U.S.C. §§ 1983 and 1988; and

F. Such other and further relief as the Court may deem equitable and just.

EIGHTH COUNT

New Jersey Civil Rights Act, N.J.S.A. § 10:6-1, et seq.

(Due Process)

163. Plaintiff repeats and realleges the allegations of the preceding paragraphs of this Amended Complaint as if fully set forth herein.

164. The New Jersey Civil Rights Act, N.J.S.A. § 10:6-2 provides:

> Any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief. The penalty provided in subsection e. of this section shall be applicable to a violation of this subsection.

165. The New Jersey Constitution prohibits the state from the arbitrary exercise of governmental power that interferes with citizens' rights to "acquiring, possessing, and protecting property."

166. The City's Rent Stabilization Ordinance, including but not limited to the purported requirement that Plaintiff rebuild the former apartment building at its own cost and relet the Property to the former occupants at 2012 rent rates, results in Plaintiff operating at a loss and deprives Plaintiff of a just and reasonable rate of return.

167. Among other things, the Ordinance requires that Plaintiff build a structure for the benefit of former occupants without allowing it to pass on to the former occupants the cost of such improvements or charge rental rates reflecting any increase between 2012 and 2020.

168. There is, and will continue to be, a wide disparity between Plaintiff's foreseeable rental income and its much higher expected operating expenses.

169. Separately and independently, even without the Rebuilding Provisions of the Rent Stabilization Ordinance, the limitations on Plaintiff's maximum permitted increases of rent to the Consumer Price Index deprives a reasonable efficient owner of a just and reasonable return on its investment.

170. As a direct and proximate result of Defendants' violation of Plaintiff's rights, Plaintiff has suffered and continues to suffer substantial damages.

WHEREFORE, Plaintiff demands judgment against Defendants for the following relief:

A. Declaring Union City's Rent Stabilization Ordinance to be invalid and unenforceable;

B. Restraining Defendants, or any of their agents, servants, or employees, from enforcing the Rent Stabilization Ordinance against Plaintiff;

C. Compensatory damages;

D. Punitive damages;

E. Plaintiffs' costs of suit, including reasonable attorneys' fees and expenses pursuant to N.J.S.A. § 10:6-2(f); and

F. Such other and further relief as the Court may deem equitable and just.

NINTH COUNT

New Jersey Civil Rights Act, N.J.S.A. § 10:6-1, et seq.

(Equal Protection)

171. Plaintiff repeats and realleges the allegations of the preceding paragraphs of this Amended Complaint as if fully set forth herein.

172. Defendant's regulation intrudes upon Plaintiff's right to use and develop its Property.

173. The nature of Plaintiff's right is fundamental and at the core of property rights protected by the New Jersey Constitution.

174. The extent of Defendant's invasion of Plaintiff's right is extreme, depriving Plaintiff of any use of the Property except that demanded by the City.

175. The government interest is minimal, including but not limited to the fact that the former occupants have found substitute residences, and there is no compelling government interest in providing particular former occupants with a copy of their previously-destroyed apartment unit.

176. Defendant's application of the Ordinance to Plaintiff is arbitrary, unreasonable, and discriminatory, in violation of Plaintiff's right to equal protection under the New Jersey constitution.

177. As a direct and proximate result of Defendants' violation of Plaintiff's rights, Plaintiff has suffered and continues to suffer substantial damages.

WHEREFORE, Plaintiff demands judgment against Defendants for the following relief:

A. Declaring Union City's Rent Stabilization Ordinance to be invalid and unenforceable;

B. Restraining Defendants, or any of their agents, servants, or employees, from enforcing the Rent Stabilization Ordinance against Plaintiff;

C. Compensatory damages;

D. Punitive damages;

E. Plaintiffs' costs of suit, including reasonable attorneys' fees and expenses pursuant to N.J.S.A. § 10:6-2(f); and

F. Such other and further relief as the Court may deem equitable and just.

TENTH COUNT

(Inverse Condemnation)

178. Plaintiff repeats and realleges the allegations of the preceding paragraphs of this Amended Complaint as if fully set forth herein.

179. The City's regulation of Plaintiff's Property, including but not limited to compelling Plaintiff to rebuild the prior owner's apartment, restricting Plaintiff from charging market rental rates and instead forcing Plaintiff to accept 2012 rates, and/or limiting any prospective increases to the percentage increase of the Consumer Price Index, constitutes a taking.

180. The City's taking was purported to be in furtherance of an alleged public purpose.

181. Plaintiff was not afforded just compensation.

182. As a direct and proximate result of Defendants' violation of Plaintiff's rights, Plaintiff has suffered and continues to suffer substantial damages.

WHEREFORE, Plaintiff demands judgment against Defendants for the following relief:

A. Declaring Union City's Rent Stabilization Ordinance to be invalid and unenforceable;

B. Restraining Defendants, or any of their agents, servants, or employees, from enforcing the Rent Stabilization Ordinance against Plaintiff;

C. Compensatory damages;

D. Punitive damages;

E. Plaintiffs' costs of suit, including reasonable attorneys' fees and expenses pursuant to N.J.S.A. § 10:6-2(f); and

F. Such other and further relief as the Court may deem equitable and just.

ELEVENTH COUNT

28 U.S.C. § 2201

(Declaratory Judgment Of Invalidity)

183. Plaintiff repeats and realleges the allegations of the preceding paragraphs of this Amended Complaint as if fully set forth herein.

184. As set forth more fully above, the Rent Stabilization Ordinance is invalid, unenforceable, and void, including but not limited to the fact that it violates Plaintiff's substantive due process, equal protection, and property rights, and is confiscatory.

185. By way of further example, and without limitation, the Rebuilding Provision of the Rent Stabilization Ordinance conflicts with, and is preempted by, N.J.S.A. § 2A:18-61.1.

186. Pursuant to state statute, a property owner with leased premises has the right to "retire permanently the residential building" or "convert[] the rental market to a condominium, cooperative, or fee simple ownership of two or more dwelling units," by providing notice and performing specified steps. Id.

187. The Rebuilding Provision precludes property owners from exercising their rights under the state statute. Where, as here, an apartment building is leveled by a fire, with only masonry walls remaining, the Ordinance mandates that the owner rebuild the prior building. Under the statute, a subsequent purchaser, such as Plaintiff, is not permitted to purchase the Property containing the remains of the former building and exercise its statutory right to build condominiums or other dwellings, and instead must build a single structure: the prior apartment building.

188. By compelling a land owner, such as Plaintiff, to forego its rights under the state statute, the Ordinance conflicts with state law. It forbids activity by the Plaintiff that N.J.S.A. § 2A:18-61.1 expressly authorizes.

189. Where there is a conflict, validly enacted state statutes supersede municipal ordinances. Accordingly, because the Rent Stabilization Ordinance conflicts with, and is thus superseded by, state statute, the Rent Stabilization Ordinance is void and unenforceable.

190. Separately and independently, the City's application of the Tenant Advocacy Attorney provision of the Rent Stabilization Ordinance is invalid, void, and unenforceable.

191. The City's practice of retaining attorneys to prosecute claims and appear in court on behalf of former occupants at taxpayer expense goes well beyond the express limitation in the Ordinance of authorizing "advice" to former occupants. The City's conduct exceeds the authority conferred by the Ordinance and is ultra vires.

192. Furthermore, the City's practice of invoking the Tenant Advocacy Attorney on behalf of non-residents exceeds the City's authority.

193. Moreover, a number of the Former-Occupant Defendants have stated no intention to move into the rebuild apartments. These former occupants have waived any alleged right to lease a unit at a rent-stabilized rate. Accordingly, for any such unit, the City cannot apply the 2012 rent-stabilized rate, rather Plaintiff may assess the 2020 rent rates.

194. The City's conduct with respect to the Rent Stabilization Ordinance is arbitrary, unreasonable, and capricious.

195. As a direct and proximate result of Defendants' violation of Plaintiff's rights, Plaintiff has suffered and continues to suffer substantial damages.

WHEREFORE, Plaintiff demands judgment against Defendants for the following relief:

A. Declaring Union City's Rent Stabilization Ordinance to be invalid and unenforceable;

B. Declaring that the Rebuilding Provision of the Rent Stabilization Ordinance is preempted and unenforceable;

C. Declaring that the Permitted Increase Provision of the Rent Stabilization Ordinance limiting annual increases to the Consumer Price Index is invalid and unenforceable;

D. Declaring the Tenant Advocacy Provision of the Rent Stabilization Ordinance is void and unenforceable;

E. Declaring that the City's policy of appointing attorneys to sue and litigate on behalf of selected citizens pursuant to the Tenant Advocacy Provision of the Rent Stabilization Ordinance is *ultra vires* and improper;

F. Declaring that, for any unit where the tenant waived the alleged right to relet the unit, such unit is not subject to the Rebuilding Provision of the Rent Stabilization Ordinance and may be leased at market rates;

G. Such other and further relief as the Court may deem equitable and just.

TWELFTH COUNT

Violation of Taxpayer's Rights

196. The City has allocated taxpayer funds on behalf of one resident and against another, the Plaintiff. This allocation was discriminatory, unequal, and illegal.

197. By selectively using taxpayer funds in a discriminatory manner to benefit one resident and harm another, the City's expenditure violates taxpayer rights.

WHEREFORE, Plaintiff demands judgment against Defendants for the following relief:

A. Declaring Union City's Rent Stabilization Ordinance to be invalid and unenforceable;

B. Restraining Defendants, or any of their agents, servants, or employees, from enforcing the Rent Stabilization Ordinance against Plaintiff;

C. Compensatory damages;

D. Punitive damages;

E. Plaintiffs' costs of suit, including reasonable attorneys' fees and expenses; and

F. Such other and further relief as the Court may deem equitable and just.

THIRTEENTH COUNT

(Declaratory Judgment That Each Former occupant Voluntarily Terminated Lease Or Abandoned The Tenancy)

198. Plaintiff repeats and realleges the allegations of the preceding paragraphs of this Amended Complaint as if fully set forth herein.

199. On September 14, 2018, Plaintiff filed an action against the Former-Occupant Defendants in the Superior Court of New Jersey, Law Division, seeking a declaration that the Former-Occupant Defendants had voluntarily terminated or abandoned the Property. The action was dismissed without prejudice.

200. Several of the Former-Occupant Defendants had ended their lease and vacated the Property owned by 5th Bergenline LLC, their landlord, before the fire occurred, including but not limited to Defendants Perez and Martinez.

201. All of the Former-Occupant Defendants voluntarily demanded the return of their security deposits. 5th Bergenline returned each former occupants' security deposit or applied the

deposit to any outstanding past due rent, and each of the former occupants voluntarily terminated their tenancy.

202. Each of the Former-Occupant Defendants vacated the Property, removed all personal belongings, and found new residences. Upon information and belief, none of the Former-Occupant Defendants made a request of 5th Bergenline LLC to lease the units.

203. Upon information and belief, the Former-Occupant Defendants did not intend to return to the Property. Instead, they intended and planned to continue living at their new residences.

204. Each of the Former-Occupant Defendants abandoned their leases.

205. None of the leases between 5th Bergenline and the Former-Occupant Defendants remains in effect or is enforceable.

WHEREFORE, Plaintiff demands judgment against Former-Occupant Defendants for the following relief:

A. Declaring each of the Former-Occupant Defendants voluntarily terminated their leases with 5th Bergenline.

B. Declaring each of the Former-Occupant Defendants abandoned their leases with 5th Bergenline.

C. Such other and further relief as the Court may deem equitable and just.

Dated: April 8, 2020.

SILLS CUMMIS & GROSS P.C.

By: *s/Joseph B. Fiorenzo, Esq.*

Joseph B. Fiorenzo, Esq.
David L. Cook, Esq.
Stephen Klein, Esq.
One Riverfront Plaza
Newark, New Jersey 07102-5400
(973) 643-7000
jfiorenzo@sillscummis.com
dcook@sillscummis.com
sklein@sillscummis.com

Attorneys for Plaintiffs

LOCAL CIVIL RULE 11.2 CERTIFICATION

I, counsel of record for Plaintiff in the above-referenced matter, hereby certify that the matter in controversy is not the subject of any other action pending in any court, except for the following action: *City of Union City v. 409-415 Bergenline Ave.*, UC, LLC, HUD-C-144-18, and any appeal therefrom, wherein the Rent Stabilization Ordinance was applied to Plaintiff's Property.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: April 8, 2020.

SILLS CUMMIS & GROSS P.C.

By: *s/Joseph B. Fiorenzo, Esq.*

Joseph B. Fiorenzo, Esq.
David L. Cook, Esq.
Stephen Klein, Esq.
One Riverfront Plaza
Newark, New Jersey 07102-5400
(973) 643-7000
jfiorenzo@sillscummis.com
dcook@sillscummis.com
sklein@sillscummis.com

Attorneys for Plaintiffs

CERTIFICATION OF NON-ARBITRABILITY PURSUANT TO LOCAL RULE 201.1(d)

I, counsel of record for Plaintiff in the above-referenced matter, hereby certify that the relief requested in this matter includes non-monetary relief, and the damages potentially recoverable in this matter exceed the sum of $150,000, exclusive of interest and costs of any claim for punitive damages. Accordingly, Local Rule 201.1(d) does not apply to this matter.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: April 8, 2020.

SILLS CUMMIS & GROSS P.C.

By: *s/Joseph B. Fiorenzo, Esq.*

Joseph B. Fiorenzo, Esq.
David L. Cook, Esq.
Stephen Klein, Esq.
One Riverfront Plaza
Newark, New Jersey 07102-5400
(973) 643-7000
jfiorenzo@sillscummis.com
dcook@sillscummis.com
sklein@sillscummis.com

Attorneys for Plaintiffs