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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SPEEDWELL, LLC, SPEEDWELL
ASSOCIATES NO. 1, LP AND
SPEEDWELL ASSOCIATES NO. 4,
LP,

Plaintiffs,

vs.

TOWN OF MORRISTOWN, TIMOTHY
DOUGHERTY, in his individual capacity
and official capacity as Mayor of
Morristown, TOPOLOGY NJ, LLC, PHIL
ABRAMSON in his individual capacity
and official capacity as Morristown's Town
Planner, JOHN INGLESINO, in his
individual capacity and official capacity as
Morristown's Special Counsel,
MORRISTOWN DEVELOPMENT, LLC,
MORRISTOWN URBAN RENEWAL
PHASE II, LLC, and JOHN DOES 1 – 10,

Defendants.

Civil Action

Case No. 2:19-CV-19820-KSH-CLW

**ACKNOWLEDGMENT OF
SERVICE**

ACKNOWLEDGEMENT OF RECEIPT OF SUMMONS AND COMPLAINT

On behalf of the Town of Morristown, I hereby acknowledge that the Summons and Complaint were served on me this 22nd day of November, 2019.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SPEEDWELL, LLC, ET AL.,
Plaintiff

V.

SUMMONS IN A CIVIL CASE

TOWN OF MORRISTOWN, ET AL.,
Defendant

CASE
NUMBER: **2:19-CV-19820-KSH-CLW**

TO: *(Name and address of Defendant):*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States Agency, or an office or employee of the United States described in Fed. R. civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

s/ WILLIAM T. WALSH

CLERK



ISSUED ON 2019-11-05 10:37:31, Clerk
USDC NJD

RETURN OF SERVICE		
Service of the Summons and complaint was made by me(I)	DATE	
NAME OF SERVER (<i>PRINT</i>)	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
☐ Served personally upon the defendant. Place where served: _____ _____ ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. ☐ Name of person with whom the summons and complaint were left: _____ ☐ Returned unexecuted: _____ _____ ☐ Other (specify) : _____ _____ _____		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct. Executed on _____ Date _____ Signature of Server _____ Address of Server _____		

Plaintiffs Speedwell, LLC, Speedwell Associates No. 1, LP and Speedwell Associates No. 4, LP (all three entities, collectively, “Plaintiff” or “Speedwell”), by way of complaint against Defendants the Town of Morristown (“Morristown” or the “Town”), Timothy Dougherty (“Dougherty” or the “Mayor”), Topology NJ, LLC (“Topology”), Phil Abramson (“Abramson”), John Inglesino (“Inglesino”), Morristown Development LLC and Morristown Urban Renewal Phase II, LLC (collectively “Morristown Development”) and John Does 1 – 10, allege as follows:

IDENTIFICATION OF PARTIES

1) In accordance with Local Civil Rule 10.1, the addresses of the parties are as follows: ^{[[1]]}_{SEP}

- a. Speedwell, LLC – 7 Arborview Way, Morristown, New Jersey 07960
- b. Speedwell Associates No. 1, LP - 7 Arborview Way, Morristown, New Jersey 07960
- c. Speedwell Associates No. 4, LP - 7 Arborview Way, Morristown, New Jersey 07960
- d. Town of Morristown – 200 South Street, Morristown, New Jersey 07960
- e. Timothy Dougherty – 10 Wetmore Avenue, Morristown, New Jersey 07960
- f. Phil Abramson – 60 Union Street, Newark, New Jersey
- g. Topology NJ, LLC – 60 Union Street, Newark, New Jersey
- h. John Inglesino – 600 Parsippany Rd., #204, Parsippany, New Jersey 07054
- i. Morristown Development LLC - 35 Route 202/206, Suite 9, 1st Floor, Bedminster, New Jersey 07921

- j. Morristown Urban Renewal Phase II, LLC- 35 Route 202/206, Suite 9, 1st Floor,
Bedminster, New Jersey 07921
- k. John Does 1 – 10 – to be determined

INTRODUCTION

2) This Complaint has been filed to seek redress for ongoing, continual, and massive breaches of contract and other improper and unlawful actions that have violated Plaintiff's federally protected rights under 42 U.S.C. §1983, deprived Plaintiff of property rights without due process of law and effected a taking of Plaintiff's real property without just compensation. Defendants have also violated Plaintiff's protected rights under the New Jersey Constitution and have committed breaches of contract and torts recognized under New Jersey law.

3) The Complaint concerns Plaintiff's assemblage of properties that are located on a main thoroughfare (Speedwell Avenue, NJ Route 202) and a side street (Clinton Place). These properties are prominently visible from the center of Morristown, are a gateway to 453 redevelopment units already constructed, can be considered to be an anchor for the entire Speedwell Area in need of Redevelopment, and are only a few blocks from Morristown's beautiful Town Green. Nonetheless the properties have long had the following basic appearance:

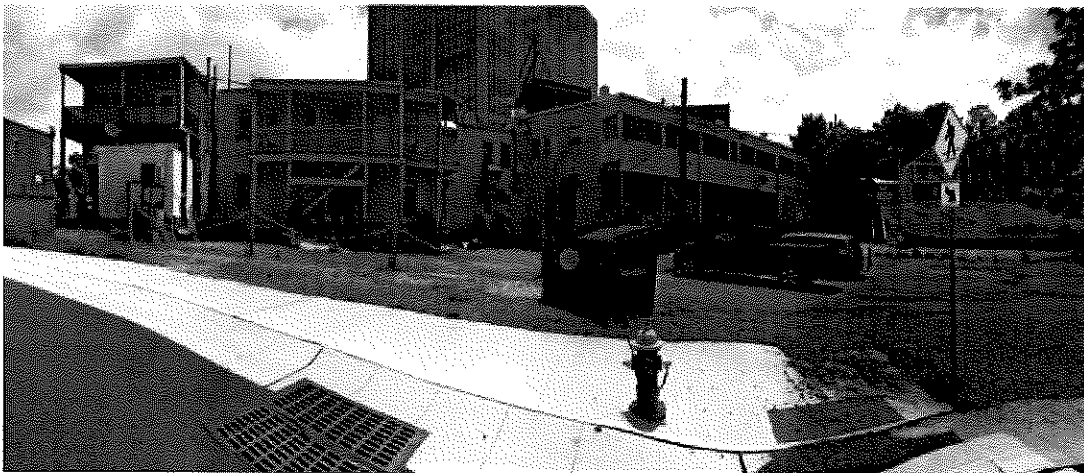


4) Had Defendants Morristown, Dougherty, Abramson, Topology and John Does 1 – 10 not massively violated a 2015 Settlement Agreement and engaged in other wrongdoing, and instead approved Plaintiff's proposed development, the same street would substantially look like this:



5) The appearance of the properties from the interior (where large numbers of Morristown residents now live) would also be dramatically different, had Defendants acted differently and honored Morristown's contractual obligations, as reflected by the pictures below:

Current Appearance:



Proposed Interior Park and New Appearance:



6) In 1999, Plaintiff contacted the then-Morristown Mayor and Town Council proposing that Morristown designate the area in which Plaintiff's properties are located, and certain surrounding areas, as an Area in Need of Redevelopment. Plaintiff's vision was to transform a poorly developed area in an otherwise vibrant town into an area where more people could live, walk to work or the nearby train station and the entire Town could enjoy enhanced shopping.

7) In 2004, Morristown adopted Plaintiff's recommendation and designated Plaintiff's parcels and the surrounding area as an Area in Need of Redevelopment. In 2008, Morristown's Town Council passed an ordinance adopting a Redevelopment Plan to develop the entire Area in four Phases:

- Phases 1 and 2 concerned interior parcels behind Speedwell Avenue. More than one third of the Phase 2 properties were controlled by Plaintiff, as Plaintiff had exercised an option on a 99 year leasehold interest in those properties (Plaintiff's "Interior Leasehold Parcels")
- Phase 3 concerned the Speedwell Avenue and Clinton Place street fronts where Plaintiff owned most of the property
- Phase 4 concerned parcels on the opposite side of Speedwell Avenue

8) On September 13, 2011, and again on November 30, 2012, Morristown passed ordinances adopting Redevelopment Plans for the Area in Need of Redevelopment. Both ordinances stated that Phase 3 development could include up to 156 residential units and 25,000 square feet of commercial space. Both ordinances further stated that the "provisions, "requirements and restriction" in the Redevelopment Plans would have a "Duration" of fifty (50) years.

9) Accordingly, as of the end of November 2012, Plaintiff knew that Plaintiff would be able to contribute to the transformation of Morristown through Plaintiff's

control of more than a third of the Phase 2 site and Plaintiff's ownership of most of the Phase 3 sites, the latter programmed to include up to 156 residential units and 25,000 square feet of commercial space.

10) In May 2013, Phase 1 development began, with Phase 2 development slated to commence approximately a year later. Clearly aware that Plaintiff controlled more than a third of the Phase 2 area, Morristown and the Morristown Parking Authority filed a lawsuit against Plaintiff falsely claiming Plaintiff had never exercised Plaintiff's 99 year leasehold option interest in the interior parcels and Plaintiff's interest was therefore null and void.

11) In January 15, 2015, the parties entered into a Settlement Agreement. In exchange for Plaintiff's agreement in good faith to relinquish Plaintiff's control over more than a third of the Phase 2 parcels to enable the Morristown Parking Authority to sell the property to the Phase 2 developer --

- a. Morristown Parking Authority conveyed to Plaintiff for \$950,000 two street-front parcels substantially completing Plaintiff's assemblage. The price was a concession to induce Plaintiff to settle, as it was far less than the properties' value.
- b. Morristown explicitly agreed to "*immediately, continuously, timely without unreasonable delay, diligently work in good faith with [Plaintiff] to develop an agreed to plan and amendment to the Speedwell Redevelopment Plan* and to take the necessary actions to adopt same for the redevelopment of Phase Three of the Speedwell Redevelopment Plan ... and to designate [Plaintiff, or Plaintiff's] designated entity as redeveloper of the Phase Three Parcels...."
- c. Morristown explicitly agreed that Plaintiff "may apply to the Town to be designated as redeveloper of the Phase Three parcels *immediately* and the Town *shall promptly and without delay review Speedwell's application* and, if [Plaintiff] reasonably demonstrates to the Town it has the financial and managerial ability to develop the project, qualify [Plaintiff] as the redeveloper of Phase Three."

(emphasis added).

12) In entering into the Settlement Agreement and releasing Plaintiff's exercised option on valuable Interior Leasehold Parcels, Plaintiff reasonably assumed that Morristown - and its officials - would honor its contractual obligations in good faith, immediately work with Plaintiff to develop a plan that would conform with the 2012 Redevelopment Plan provisions that were stated to be in effect for 50 years, and allow Plaintiff to immediately apply to be the Phase 3 developer.

13) However, as described at length in this Complaint, Defendants violated all of Morristown's obligations in the 2015 Settlement Agreement.

14) Under the terms of the 2015 Settlement Agreement and a subsequently executed 2016 Temporary Easement Agreement, Plaintiff granted Morristown a temporary pedestrian easement, which was to terminate when Phase 3 development allowed the easement to be moved to a location that all parties agreed was superior and that was identified in the Redevelopment Plan. Since Defendants Morristown, Dougherty, Abramson, Topology and John Does 1 – 10 have refused to approve any of Plaintiff's numerous proposed Phase 3 plans, the temporary easement continues more than 4 years after Plaintiff executed the Temporary Easement Agreement, and there is no prospect of the easement's termination. Accordingly, Morristown has effected a taking without just compensation.

15) Plaintiff now seeks specific performance of Morristown's contractual obligations, compensatory damages, punitive damages, a declaratory judgment, interest, costs of suit, attorneys' fees, and such other relief as may be ordered by the Court. Plaintiff also seeks damages for attorney Inglesino's defamation.

THE PARTIES

16) Plaintiff Speedwell, LLC is a domestic limited liability company with its principal place of business located at 7 Arborview Way, Morristown, New Jersey 07960. Speedwell, LLC holds title in fee simple to Block 5803, Lots 5, 6, 1.02 and 1.03 on the Tax Map of the Town of Morristown, with street addresses of 15 Clinton Place, 17 Clinton Place, 110 Speedwell Avenue and 11 Clinton Place.

17) Plaintiff Speedwell Associates No. 1, LP is a limited partnership with its principal place of business located at 7 Arborview Way, Morristown, New Jersey 07960. Speedwell Associates No. 1 LP holds title in fee simple to Block 5803, Lots 2 and 4 on the Tax Map of the Town of Morristown, with street addresses of 104 Speedwell Avenue and 90 – 96 Speedwell Avenue.

18) Plaintiff Speedwell Associates No. 4, LP is a limited partnership with its principal place of business located at 7 Arborview Way, Morristown, New Jersey 07960. Speedwell Associates No. 4 LP holds title in fee simple to Block 5803, Lots 3 and 5 on the Tax Map of the Town of Morristown, with street address of 98 Speedwell Avenue and 15 Clinton Place respectively.

19) Defendant Town of Morristown is a municipal corporation of the State of New Jersey with offices located at 200 South Street, Morristown, New Jersey 07963-0914.

20) Defendant Timothy Dougherty is the Mayor of the Town of Morristown. Defendant Dougherty's home address is 10 Wetmore Avenue, Morristown, New Jersey 07960.

21) Defendant Topology is a municipal planning and development firm that Defendant Morristown retained and paid to, among other matters, assist in matters related to the Area in Need of Redevelopment. Topology's principal offices are located at 60 Union Street, 1st Floor, Newark, New Jersey 07105.

22) Defendant Phil Abramson is employed by Defendant Topology and has served as the Morristown Town Planner with regard to all matters addressed in this Complaint.

23) Defendant John Inglesino is special counsel to the Town of Morristown.

24) Defendants Morristown Development LLC and Morristown Urban Renewal Phase II, LLC (collectively "Morristown Development") are affiliated private development firms appointed to be the developer of the Area in Need of Redevelopment and a party to the 2015 Settlement Agreement and the Temporary Easement Agreement. Morristown Development's offices are located at 135 Route 202/206, Suite 9, 1st Floor, Bedminster, New Jersey 07921.

25) John Does 1 – 10 are Morristown officials – or individuals retained or engaged to work for Morristown – who took part in the wrongdoing alleged in this Complaint.

JURISDICTION AND VENUE

26) This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. §1331 based upon federal questions arising under 42 U.S.C. §1983 and the Constitution of the United States. This Court has supplemental jurisdiction over certain claims pursuant to 28 U.S.C. §1367.

27) This Court has personal jurisdiction over Defendants by virtue of their residence within this Court's jurisdiction, and because their conduct giving rise to this action is occurring within this Court's jurisdiction.

28) Venue is proper in this District pursuant to 28 U.S.C. §1391, because all Defendants reside within this District, and all of the events or omissions giving rise to this action occurred within this District.

FACTUAL ALLEGATIONS

A. Plaintiff Obtains An Assemblage of Properties in the Heart of Morristown

29) Beginning in 1984 and continuing until 1990, Plaintiff or its affiliates acquired and assembled a number of valuable adjacent properties in the heart of Morristown, only a few blocks away from the Town Green, and fronting on two streets, the main thoroughfare Speedwell Avenue, and Clinton Place. The properties included the following:

Block	Lot	Address
5803	3	98 Speedwell Avenue
5803	4	90 Speedwell Avenue
5803	5	15 Clinton Place
5803	6	17 Clinton Place
5803	42	116 Speedwell Avenue
5803	43	112 Speedwell Avenue

30) In July 1998, Plaintiff obtained an option to lease two, large interior properties that were being used as parking lots and that were immediately behind Plaintiff's properties on Speedwell Avenue, under an agreement entered into with the Morristown Parking Authority captioned "Option Agreement for Lease of Property" (the "Leasehold Agreement"). The parcels included (i) Block 5803, Lot 1, and (ii) Block

5803, Lot 37.01 (the "Interior Leasehold Parcels"). The Leasehold Agreement granted Plaintiff the right to lease the Interior Leasehold Parcels for a period of 99 years.

31) By virtue of the Leasehold Agreement, Plaintiff was assured that for 99 years Plaintiff would have sufficient parking for any development that Plaintiff would build on its Speedwell Avenue and Clinton Place street front properties in the future.

32) From 1984 to mid-2018, Plaintiff leased all its street front properties on Speedwell Avenue and Clinton Place to residential and commercial tenants and generated monthly revenues from the properties. The ground floor of the Speedwell Avenue properties was used for various commercial purposes. The second floor of the Speedwell properties and all floors of the Clinton Place properties were rented to Morristown residents as apartments.

33) In the final year in which Plaintiff fully rented Plaintiff's Phase 3 properties, Plaintiff collected in excess of \$300,000 in rental income from the properties.

B. Plaintiff Proposes that Morristown Create An Area In Need of Redevelopment, and Morristown Adopts the Idea

34) In December 1999, Plaintiff wrote the then-Mayor of Morristown and the Town Council proposing that Plaintiff's assemblage of parcels, including the Interior Leasehold Parcels, and certain nearby properties be designated by the Morristown Council as an "Area in Need of Redevelopment" as defined in N.J.S.A.40A:12A (the "Redevelopment Law"). Plaintiff's recommendation was based on the fact that while the Morristown Green and areas in between the Green and Plaintiff's properties were thriving residential and commercial areas, the properties beginning at the intersection of Clinton Place and Speedwell Avenue - belonging to Plaintiff and other owners - were in poor condition.

35) Plaintiff's recommended action spurred discussions and subsequent investigation by Morristown leading the Town ultimately to take action. In February 2004, pursuant to the Redevelopment Law, the Town Council of Morristown adopted a Resolution designating all or a portion of certain Tax Blocks 5001, 5702 and 5803 as an Area in Need of Redevelopment.

36) On September 18, 2007 and November 28, 2007, the Town Council adopted ordinances approving and then amending a Redevelopment Plan relating to the Area in Need of Redevelopment.

37) Thus, Plaintiff's actions assisted Morristown in changing Morristown's entire approach to the area and positioned Morristown to extend the thriving residential and commercial area that existed at the Town Green to Plaintiff's assemblage of properties and beyond, which would enhance the entire Town of Morristown.

C. In February 2008, Plaintiff's Real Estate Interests Are Valued At \$8.5 Million in an Executed Purchase Agreement

38) On February 5, 2008, in anticipation of its appointment as the redeveloper of the entire Area in Need of Redevelopment, the developer Morristown Development LLC executed a Purchase Agreement with Plaintiff in which Morristown Development agreed to purchase Plaintiff's real estate assets on Speedwell Avenue and Clinton Place and to obtain an assignment of Plaintiff's 99-year leasehold interest in the Interior Leasehold Parcels.

39) In the Purchase Agreement, Morristown Development agreed to pay Plaintiff eight million and five hundred thousand dollars (\$8,500,000) for the above assets and interests. Moreover, if the closing took place more than one year after the

Purchase Agreement's effective date, the purchase price would be increased by a "CPI Adjustment Factor."

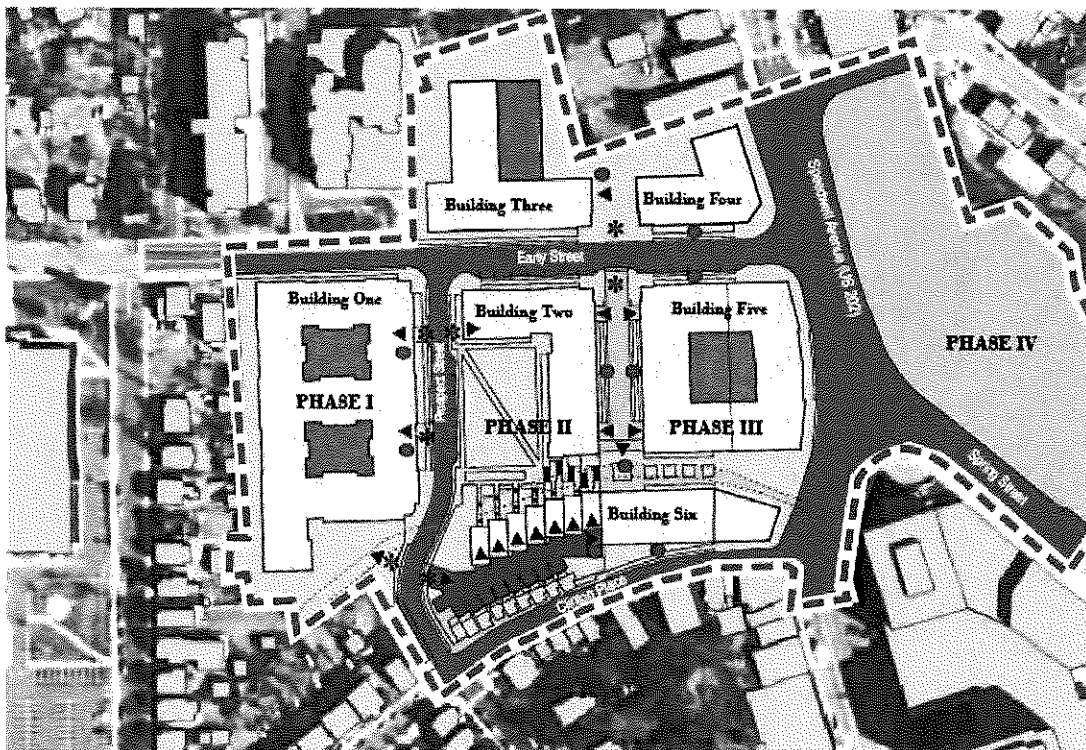
40) The 2008 Purchase Agreement also contained a "rent reimbursement" provision. Acknowledging that Plaintiff's parcels were "currently occupied by twenty-two (22) residential tenants and by ten (10) commercial tenants", and recognizing that all properties would need to be vacated by the time of redevelopment and demolition, Morristown Development agreed to compensate Plaintiff on a monthly basis for the amount of lost rent, as each property was vacated, until the time of closing and the payment of the purchase price.

41) On May 6, 2008, the Morristown Parking Authority passed a Resolution authorizing the assignment of Plaintiff's Leasehold Agreement in the Interior Leasehold Parcels to Morristown Development. The resolution identified the July 1998 Leasehold Agreement with Plaintiff and recited that it had been amended and extended from time to time, that Plaintiff had made payments pursuant to said Agreement, and that Morristown Development had entered into the Purchase Agreement to purchase Plaintiff's 99-year leasehold interest in the Interior Leasehold Parcels. Through the Resolution, Morristown recognized the validity of Plaintiff's 99 year interest in the Interior Leasehold Parcels.

42) Due to the national and global economic downturn in late 2008 and thereafter, Morristown Development terminated the Purchase Agreement and the purchase was never completed.

D. Morristown Passes a 2011 Ordinance Adopting a Redevelopment Plan Providing For Up to 156 Residential Units and 25,000 Square Feet of Commercial Space To Be Developed Largely On Plaintiff's Parcels

43) On October 13, 2011, Morristown's Town Council adopted an ordinance amending the Redevelopment Plan (the "2011 Redevelopment Plan").¹ The Plan made clear that the redevelopment of the Area In Need of Redevelopment was to take place in four Phases, as reflected in the picture below that was included in the 2011 Redevelopment Plan:



As shown in the above picture, Phases 1 and 2 were to result in the construction of two large new buildings on interior properties behind Speedwell Avenue. More than a third of

¹ The 2011 Plan remains on Morristown's website as of the filing of this Complaint. See https://www.townofmorristown.org/vertical/sites/%7B0813EA2E-B627-4F82-BBB0-DDEE646947B5%7D/uploads/8-16-11_Amended_Redevelopment_Plan_FINAL.pdf

the Phase 2 area consisted of Plaintiff's Interior Leasehold Parcels, which at the time contained a large parking lot. Phase 3 of the redevelopment was to result in the construction of three other large buildings – Buildings Four, Five and Six – with Buildings Five and Six to consist of Plaintiff's Speedwell Avenue and Clinton Street properties (as well as adjacent properties owned by others directly south of Early Street). Phase 4 of the redevelopment was not yet well defined, but was to include neighboring properties on the other side of Speedwell Avenue.

44) The 2011 Redevelopment Plan identified the number of residential units and retail commercial footage that would be allowed to be developed in each Phase, as well as the maximum number of stories and building heights:

Phase / Areas	Maximum # of Residential Units	Maximum Square Feet of Commercial Space	Maximum Stories/ Feet
Phase 1	268	0	6 stories / 72 ft
Phase 2 (including Plaintiff's Interior Leasehold Parcels)	214	0	6 stories / 72 ft
Phase 3			
Area Largely Containing Plaintiff Properties (Buildings 5 and 6) ²	156 units	25,000 sq feet	4 – 6 stories / 56 – 80 ft
Area Owned Entirely by Others (Building 4)	24	15,000 sq feet	4 stories / 56 ft
Phase 4	150	25,000 – 45,000 sq feet	1 to 6 stories / 20 – 80 feet

45) The 2011 Redevelopment Plan also included an explicit provision stating its "provisions", "requirements and restriction" would be in effect for 50 years:

² Phase 3 included Plaintiff's properties, as well as certain adjacent parcels: Block 5803, Lots 4,5 and 6 and portion of Lots 1 & 6 (to be subdivided), and Block 5803, Lots 39, 40, 41, 42, 43, 44 & Lots 2 and 3 & portion of Lot 1 (to be subdivided).

Redevelopment Plan Duration

The provisions of this Amended Redevelopment Plan specifying the redevelopment of the Redevelopment Area and the requirements and restriction with respect thereto shall be in effect for a period of fifty (50) years from the date of adoption of this Amended Redevelopment Plan by the Town Council of the Town of Morristown.

See page 45 of the 2011 Redevelopment Plan.

46) Given the depiction of the two large buildings between Clinton Place and Early Street – and the depiction of a Pedestrian Entryway just north of the Clinton Place/Speedwell Avenue intersection – the 2011 Redevelopment Plan also made it clear that all of Plaintiff's existing buildings on Speedwell Avenue and Clinton Place would need to be demolished and replaced with new buildings, which ensured enhancement of Plaintiff's properties as well as the entire Town of Morristown.

47) The 2011 Plan also showed a Pedestrian Entryway passing through Plaintiff's Speedwell Avenue properties to an interior park. However, there was no requirement in the 2011 Plan identifying a width for the Pedestrian Entryway. Also, the 2011 Plan did not show any other passage between Speedwell Avenue and the interior buildings that would be required through Plaintiff's Speedwell Avenue properties.

48) Based on Morristown's passage of an ordinance adopting the 2011 Redevelopment Plan, as of November 2011 Plaintiff knew that its Interior Leasehold Parcels were a large and necessary part of Phase 2 development, and Plaintiff knew that the Phase 3 properties could be used to develop up to 156 residential units and 25,000 square feet of retail commercial space. Plaintiff also knew that its Phase 3 structures on Speedwell Avenue could be the tallest buildings in the Area in Need of Redevelopment (up to 6 stories and 80 feet).

49) Defendant Dougherty, who was elected as Mayor in 2010, also knew all the above facts, since Mayor Dougherty presided over the Town Council.

E. Morristown and Morristown Development Execute A 2012 Redeveloper Agreement Appointing Morristown Development As the Exclusive Developer, Providing A Carve-Out for Plaintiff to Develop Phase 3, and Adopting A Time Schedule Whereby Morristown Was To *Complete* Phase 3 Development No Later Than January 2019

50) In January 2012, Morristown executed a contract appointing Morristown Development as the developer of the Area in Need of Redevelopment (the “2012 Redeveloper Agreement”).³ The identified developer was the same or a related entity to the entity that had agreed to purchase Plaintiff’s properties and interest in the Interior Leasehold Parcels for \$8.5 million in 2008.

51) Although the 2012 Redeveloper Agreement named Defendant Morristown Development as the exclusive developer of the Area in Need of Redevelopment, Section 2.07(c) contained a carve-out whereby Morristown and Morristown Development agreed that Plaintiff could develop certain of its Phase 3 parcels.

52) Based on the carve-out in Morristown’s contract with Morristown Development, Plaintiff had a reasonable certainty that Plaintiff would be the developer of its Phase 3 parcels.

53) Subject to Plaintiff’s carve-out right, the 2012 Redeveloper Agreement also contained provisions requiring Defendant Morristown Development to provide a “Phase Three Notice” if it wanted to develop the Phase 3 properties, and thereafter, to try to timely purchase all Phase 3 properties from the relevant property owners, or timely serve an “Acquisition Notice” on Defendant Morristown to do so, after which Defendant

³ The Agreement was captioned “Amended and Restated Development Agreement”. An unexecuted copy of this Agreement is posted on Morristown’s website at: [https://www.townofmorristown.org/vertical/sites/%7B0813EA2E-B627-4F82-BBB0-DDEE646947B5%7D/uploads/Speedwell_Avenue-Final_Amended_and_Restated_Redevelopment_Agreement\(1\).pdf](https://www.townofmorristown.org/vertical/sites/%7B0813EA2E-B627-4F82-BBB0-DDEE646947B5%7D/uploads/Speedwell_Avenue-Final_Amended_and_Restated_Redevelopment_Agreement(1).pdf)

Morristown could choose to try to purchase all Phase 3 properties “through negotiation and contract as required pursuant to Section 6 of the Eminent Domain Law”.

54) Upon information and belief, Defendant Morristown Development never filed a Phase 3 Notice.

55) The 2012 Redeveloper Agreement also contained a “Redevelopment Project Schedule,” including for Phase 3. The Schedule made clear that Phase 3 construction was to be *completed* no later than January 2019:

Completion of Construction of Phase Three	Within Thirty (30) Months after Commencement of Construction, but not later than Seven (7) years after the Effective Date
---	---

56) However, as of the filing of this Complaint, Phase 3 development has not yet begun, Defendant Morristown has failed to appoint any developer (including Plaintiff, despite numerous submitted plans), all properties in Phase 3 have been forced to lie under-developed, and the residents of Morristown continue to live with this under-developed street front only blocks from the Town Green.

F. Morristown Passes a 2012 Ordinance Adopting a Redevelopment Plan Replicating the 2011 Redevelopment Plan and Again Providing for Up to 156 Residential Units and 25,000 Square Feet of Commercial Space To Be Developed Largely On Plaintiff’s Parcels

57) On November 30, 2012, Morristown’s Town Council passed another ordinance amending the Redevelopment Plan (the “2012 Redevelopment Plan”).⁴ The revised Plan retained and restated all the core provisions related to Phase 2 and Phase 3

⁴ The 2012 Plan remains on Morristown’s website as of the filing of this Complaint. See https://www.townofmorristown.org/vertical/sites/%7B0813EA2E-B627-4F82-BBB0-DDEE646947B5%7D/uploads/AMENDED_SPEEDWELL_REDEVELOPMENT_PLA_N_-_30NOV2012_-_FINAL_DRAFT.pdf.

development that had been identified in the 2011 Redevelopment Plan, but added new specificity concerning Phase 4 development, as reflected in the picture below that was included in the 2012 Redevelopment Plan:

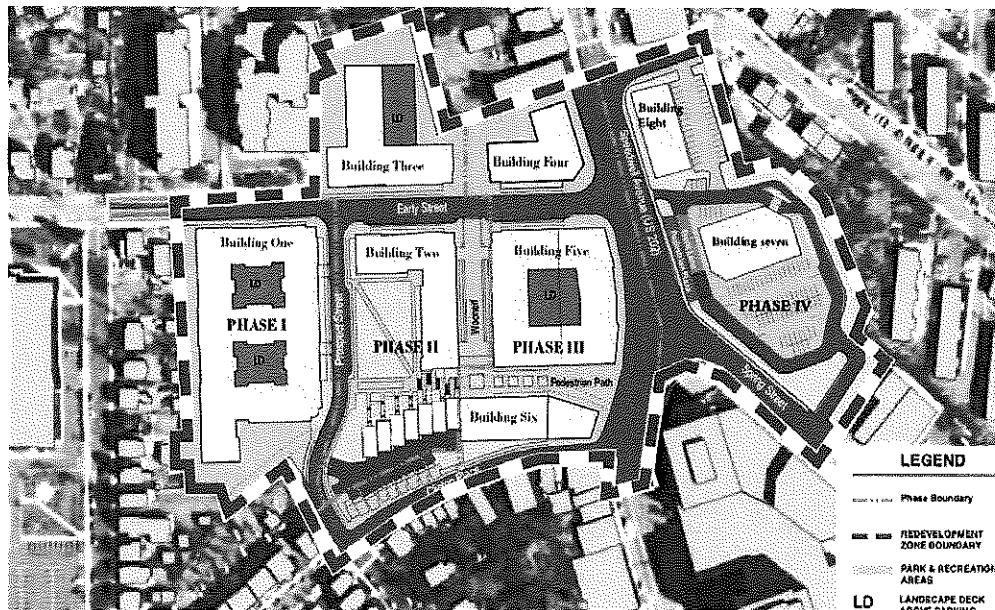


Figure 6: Tracts and Phasing
Speedwell Avenue Redevelopment Plan
Town of Morristown, New Jersey

Prepared using backdrops prepared by Dewberry Geisler, Inc. and
Mandana Higgins Sieve Architects | Planning | Urban Design

58) Under the 2012 Redevelopment Plan, a large portion of the Phase 2 area again consisted of Plaintiff's Interior Leasehold Parcels that were then being used as a large parking lot including for Plaintiff's rental properties. Buildings Five and Six in Phase 3 were again to consist of Plaintiff's Speedwell Avenue and Clinton Place properties (as well as adjacent properties owned by others directly south of Early Street).

59) The 2012 Redevelopment Plan also contained the same provisions as the 2011 Redevelopment Plan concerning the allowed Phase 3 residential units, square footage of commercial space, and maximum number of stories and building heights, while adding greater specificity to the information provided for Phase 4 development:

Phase / Areas	Maximum # of Residential Units	Maximum Square Feet of Commercial Space	Maximum Stories/ Feet
Phase 1	268	0	6 stories / 72 ft
Phase 2 (including Plaintiff's Interior Leasehold Parcels)	214	0	6 stories / 72 ft
Phase 3			
Area Largely Containing Plaintiff Properties (Buildings 5 and 6)	156 units	25,000 sq feet	4 – 6 stories / 56 – 80 ft
Area Owned Entirely by Others (Building 4)	24	15,000 sq feet	4 stories / 56 ft
Phase 4 (Buildings 7 and 8)	27-45	8,800 sq feet	Building 7: 1 – 2 stories, 30-35 ft. Building 8: 4 stories / 56 ft

60) The 2012 Plan again depicted a Pedestrian Entryway through Plaintiff's Speedwell Avenue properties but did not state any requirement concerning its width. Nor did the Plan require any other passageway through Plaintiff's properties.

61) The 2012 Redevelopment Plan also contained the same "Duration" provision as the 2011 Redevelopment Plan stating that the "provisions", "requirements and restriction" of the Plan would remain in place for fifty years.

62) Based on Morristown's adoption of the 2012 Redeveloper Agreement - stating Plaintiff could be appointed the Phase 3 developer - and Morristown's two, separately passed ordinances adopting the 2011 and 2012 Redevelopment Plans, as of November 2012 Plaintiff knew that

- Plaintiff controlled more than a third of Phase 2 development as a result of Plaintiff's interest in the Interior Leasehold Parcels

- Plaintiff would be able to develop approximately 156 residential units and 25,000 square feet of retail commercial space in Phase 3 development on its (and others') Speedwell Avenue and Clinton Place properties
- Plaintiff's Phase 3 structures on Speedwell Avenue could be the tallest buildings in the Area in Need of Redevelopment (up to 6 stories and 80 feet),⁵ and
- Phase 3 development would be completed by January 2019
- Plaintiff would likely be appointed the Phase 3 developer

63) At the time the November 2012 Redevelopment Plan was adopted, Defendant Dougherty also knew all the above facts, since Defendant Dougherty presided over Town Council meetings.

64) At the time Morristown passed the ordinance adopting the 2012 Redevelopment Plan, Morristown's officials publicly recognized that Morristown needed to provide sufficient development opportunities to enable developers to develop Phase 2 and 3. As reflected in a newspaper article dated January 12, 2012, the 2012 Redevelopment Plan reduced the number of residential units for Phase 1 that had originally been contemplated in the 2007 Plan, and increased the number of units for Phase 2 and Phase 3. The article quoted Defendant Inglesino, identified as the Town's Planning Board attorney and "a key figure in the negotiations", as stating: "This is superior to the old agreement because we think this project *will* be built. We feel that from an economic perspective ... and from the perspective of ensuring the whole thing is

⁵ The 2012 Redevelopment Plan also contained a specific provision allowing for Building 5 to contain more than 4 stories and up to 6 stories, based on 3 possible conditions, including providing "a 12-foot "step-back" for stories above the 4th floor. *See 2012 Redevelopment Plan at 35.* The 2012 Redevelopment Plan also explicitly stated that the Speedwell Avenue corner element in Building 6 could exceed the stated height by 20 feet. *See 2012 Redevelopment Plan at 34.*

completed, this is a much better deal for the town of Morristown.” (*emphasis included*) The article further indicated that total “Phase Three will have 180 units and 40,000 square feet of retail/commercial space; the 2007 accord called for 88 units and 20,000 square feet.”⁶

G. Phase 1 Development Begins, and Morristown and the Morristown Parking Authority File A Lawsuit to Try to Nullify Plaintiff’s Interest In Its Phase 2 Interior Leasehold Parcels

65) In May 2013, Morristown, Mayor Dougherty and Morristown Development held a ground-breaking ceremony to herald the beginning of Phase 1 construction in the Area in Need of Redevelopment. In a press release on the ground-breaking ceremony, the developer Morristown Development stated that Phase 2 was slated to begin in 2014. See <https://millcreekplaces.com/2013/05/mill-creek-residential-and-local-officials-break-ground-in-morristown-on-phase-1-of-latitude-a-luxury-rental-community/>.

66) Morristown and the Morristown Parking Authority knew that the large Interior Leasehold Parcels were needed as part of Phase 2 development.

67) Morristown and the Morristown Parking Authority also knew that Plaintiff controlled the Interior Leasehold Parcels. By a letter to the Morristown Parking Authority, dated May 3, 2006, Plaintiff had exercised its 99-year leasehold option with regard to the Interior Leasehold Parcel. The Morristown Parking Authority had also recognized Plaintiff’s 99-year leasehold control over the Interior Leasehold Parcels when

⁶ See <https://morristowngreen.com/2012/01/12/highlights-of-the-speedwell-redevelopment-plan-before-the-morristown-council/>.

the Authority passed a Resolution in 2008 agreeing to assign Plaintiff's leasehold interest to Morristown Development.

68) However, in July 2013 Morristown and the Morristown Parking Authority filed a lawsuit against Plaintiff falsely claiming that Plaintiff had never executed its leasehold options rights, and Plaintiff's interest was null and void.

H. The Parties Enter Into a 2015 Settlement Agreement Whereby Plaintiff Relinquished Its Interior Leasehold Parcel Interest In Exchange For (i) Additional Phase 3 Properties, and (ii) Morristown's Agreement to (a) "Immediately" and "Diligently Work In Good Faith With" Plaintiff To Approve a Plan, and (b) Revise the Redevelopment Plan, and (c) "Immediately" Allow Plaintiff to Apply to be the Phase 3 Developer and for Morristown to "Promptly and Without Delay" Review and Approve Plaintiff as the Phase 3 Developer

69) On January 15, 2015, the parties entered into a Settlement Agreement to resolve the litigation. Plaintiff also entered into an "Agreement of Sale" with Defendant Morristown Development, effective December 31, 2014.

70) Recognizing that Defendants Morristown and Morristown Development needed the Interior Leasehold Parcels to develop Phase 2, and relying on Defendant Morristown's contractual obligations in the Settlement Agreement, Plaintiff relinquished its 99-year leasehold interest in the existing large parking lot that constituted the Interior Leasehold Parcels, which made up more than a third of the Phase 2 redevelopment area. Plaintiff also agreed to convey to Defendant Morristown Development an approximately 5,060 square foot area located in the rear of certain of Plaintiff's Speedwell Avenue properties, which area Morristown Development wanted to use in connection with Phase 2 development. In so doing, Plaintiff made it possible for Defendants Morristown and Morristown Development to develop Phase 2.

71) Taken together, the 2015 Settlement Agreement and the Agreement of Sale bound Morristown Development, Morristown, and the Morristown Parking Authority to the following contractual obligations:

a) Defendant Morristown Development's 3 Settlement Agreement Obligations:

First, Defendant Morristown Development agreed to enter into an Agreement with the Morristown Parking Authority to purchase from the Morristown Parking Authority and simultaneously convey to Plaintiff two parcels of land – one fronting Speedwell Avenue (Block 5803, Lot 1.02), and one fronting Clinton Place (Block 5803, Lot 1.03) (separately, the “Speedwell Conveyance Parcel” and the “Clinton Conveyance Parcel”; together “the Conveyance Parcels”). The Conveyance Parcels were conveyed to Plaintiff at a discount price - \$900,000 – to induce Plaintiff to enter into the 2015 Settlement Agreement and relinquish Plaintiff's Phase 2 rights. Plaintiff valued the two properties at \$1,000,000 above their cost in view of the anticipated development permitted under the 2011 and 2012 Redevelopment Agreements. The Conveyance Parcels had significant value, because they were (i) street front parcels; (ii) in the Phase 3 Area in Need of Redevelopment where Phase 1 was already completed, Phase 2 about to begin and Phase 3 to commence immediately thereafter; (iii) where the 2011 and 2012 Redevelopment Agreements both specifically allowed up to a total of 156 residential units and 25,000 square feet of commercial space; and (iv) those provisions were in place for 47 more years under the ordinance passed by the Morristown Town Council.

Second, Defendant Morristown Development paid Plaintiff \$1,450,000 for Plaintiff's conveyance to Morristown Development of 5,060 square feet in the rear portion of Plaintiff's two parcels on 112 and 116 Speedwell Avenue.

Third, Defendant Morristown Development agreed to “relinquish all of its right, title and interest as redeveloper of the Phase Three Parcels, and agreed it would not pursue redevelopment within, or seek to be designated as redeveloper of, the Phase Three Parcels for a period ending on the later of (i) the one year anniversary under the Contract of Sale, and (ii) January 1, 2017.” To accomplish the above result, the Settlement Agreement required Defendants Morristown and Morristown Development “within one hundred and twenty days (120) days from the execution of [the Settlement Agreement] ... to enter into an amendment to [the Redevelopment Agreement] that relinquishes all of its right, title and interest as redeveloper of Phase Three Parcels....”

b) *Defendant Morristown's and the MPA's Settlement Agreement Obligations:*

Defining the corporate owners of the street front parcels on Speedwell Avenue and Clinton Place as “Speedwell”, Defendant Morristown and the MPA also bound themselves to the following contract obligations:

First, in paragraph 7(a) of the Settlement Agreement, Defendant Morristown agreed to:

immediately, continuously, timely without unreasonable delay, diligently work in good faith with Speedwell to develop an agreed to plan and amendment to the Speedwell Redevelopment Plan and to take the necessary actions to adopt same for the redevelopment of Phase Three of the Speedwell Redevelopment Plan, which area may include the Phase Three Parcels, and to designate Speedwell, or Speedwell's designated entity, as redeveloper of the Phase Three Parcels of the Speedwell Redevelopment Plan as so amended, in accordance with the Local Redevelopment and Housing Law, N.J.S.A.40:12A-1, et seq. (“LRHL”) and subject to the Town's standard review, requirements and approval process and protocol. (emphasis added).

The above contract obligation meant that Morristown would both quickly work with Plaintiff to approve a plan for development, and quickly work with Plaintiff to amend the

existing Redevelopment Plan. The above contract obligation also meant that Defendant Morristown could not revise Phase 3 without working in good faith with Plaintiff.

Second, in paragraph 7(b) of the Settlement Agreement, Defendant Morristown explicitly ensured that Plaintiff would quickly be appointed the Phase 3 developer of Plaintiff's parcels, as well as other parcels located in Block 5803 of the Phase 3 development area. The Settlement Agreement stated that Plaintiff (called "Speedwell" in the Settlement Agreement):

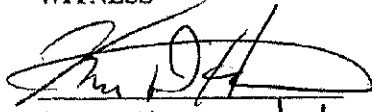
may apply to the Town to be designated as redeveloper of the Phase Three Parcels *immediately* and the Town shall *promptly and without delay* review Speedwell's application and, if Speedwell reasonably demonstrates to the Town it has the financial and managerial ability to develop the project, qualify Speedwell as the redeveloper of Phase Three subject to the adoption of the redevelopment plan for Phase Three. The parties understand and agree that the designation of Speedwell as redeveloper of Phase Three may occur following (i) the adoption of an amendment to the Redevelopment Plan for Phase Three, and (ii) the closing under the Agreement of Sale. (*emphasis added*)

Third, Defendant Morristown and the Morristown Parking Authority obligated themselves to "consult with each other and consider the potential parking needs to accommodate the Phase Three Parcels in the plan for Phase Two." This provision was critical, since Plaintiff was relinquishing the large interior parking lot that Plaintiff had acquired a 99-year option and leasehold interest in from the Morristown Parking Authority and would need Defendant Morristown and the MPA to ensure that sufficient parking was still available for Phase 3 development.

72) Defendant Dougherty was well aware of all of Morristown's new contractual obligations to Plaintiff, since Defendant Dougherty was involved in determining the terms of the Settlement Agreement and executed the final Agreement, as reflected below:

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

WITNESS


Kevin Harris, clerk

TOWN OF MORRISTOWN

By: 
Name: Timothy Dougherty
Title: Mayor
Date: January 13, 2015

73) However, Defendants Morristown, Dougherty, Abramson and Topology breached Morristown's Settlement Agreement obligations, and four and a half years later, all of Plaintiff's Phase 3 parcels, including the Conveyance Parcels Plaintiff acquired in exchange for allowing Phase 2 development, remain as they were in January 2015, meaning entirely undeveloped.

I. Morristown's and Morristown Development's Breach of Their Settlement Agreement Obligations To Execute A Contract Within 120 Days Whereby Morristown Development Would Relinquish Its Phase 3 Redevelopment Rights

74) Defendants Morristown and Morristown Development violated their Settlement Agreement obligation that required both Defendants to, "within one hundred and twenty days (120) days from the execution of [the Settlement Agreement] ... enter into an amendment to [the 2012 Redeveloper Agreement] that relinquish[ed] all of [Morristown Development's] right, title and interest as redeveloper of Phase Three Parcels...."

75) Upon information and belief, Defendant Morristown Development continues to harbor an interest in being the Phase 3 developer, although it wants to do so only if it can acquire Plaintiff's and other Phase 3 property owners' assets "on the cheap".

76) Demonstrating Morristown Development's above-described interest: In August 2016, Morristown Development approached Plaintiff to make a "quick deal" to purchase certain of Plaintiff's parcels at a fraction of their value. Morristown Development offered \$2 million for several of Plaintiff's parcels, which Plaintiff pointed out was less than the value of just one of the parcels that Morristown Development was trying to buy. Morristown Development conceded Plaintiff was correct.

77) Defendant Morristown Development's offer was clearly not a good faith, appropriate purchase offer, given the amount that was offered, and the way it was offered - in a few, short email exchanges, over a few days, with Morristown Development claiming the offer had to be consummated immediately.

78) As a result, Plaintiff dismissed the offer and continued to try to get Morristown to approve Plaintiff's plans and confirm Plaintiff as the Phase 3 developer.

J. Morristown's Passage of the May 2015 Ordinance Adopting A New Redevelopment Plan That Drastically Reduced Phase 3 Development, Breaching Morristown's Settlement Agreement Obligation To "Immediately" and "Diligently Work with Plaintiff" to Amend the Redevelopment Plan

79) In May 2015, only a few months after Defendant Morristown and Plaintiff executed the January 2015 Settlement Agreement, Defendant Morristown, under the leadership of Defendant Dougherty, ambushed Plaintiff by passing a new ordinance

adopting an entirely different Redevelopment Plan (the “2015 Redevelopment Plan”)⁷. The new May 2015 Redevelopment Plan, which was prepared by Defendant Abramson and Defendant Topology, explicitly stated that it contained “significant changes” to Phase 3 of the Redevelopment Plan and drastically reduced the development that would be allowed in Phase 3.

80) During the period when Morristown’s officials, including Defendants Dougherty and Abramson, were developing the new Plan, Morristown’s officials never told Plaintiff they were developing a new plan, let alone honored Morristown’s contract obligation to “immediately, continuously, timely without unreasonable delay, diligently work with Plaintiff” to amend the existing 2012 Redevelopment Agreement. In fact, Plaintiff first learned of the Plan and obtained a copy of the Plan on the day that Morristown presented the Plan to the Town Council – May 14, 2015. That Plan reduced the permitted residential units in Phase 3 from 156 to 24 plus underlying zoning.

81) Moreover, during the period from January 2015 to May 2015, Plaintiff twice met with the Town Planner, Defendant Abramson, to talk about the direction to follow in developing a plan and the steps to take to be appointed “immediately” as the Phase 3 developer. During those meetings (and before and after in exchanges that occurred about the meetings), Defendant Abramson never mentioned that Morristown was about to present a new Redevelopment Plan that would drastically decrease the amount of permitted Phase 3 development. Nor did Defendant Abramson ever consult

⁷ As of the filing of this Complaint, the May 2015 Redevelopment Plan remains on Morristown’s public website at:
https://www.townofmorristown.org/vertical/sites/%7B0813EA2E-B627-4F82-BBB0-DDEE646947B5%7D/uploads/Draft_Speedwell_Redevelopment_Plan_as_introduced_by_Council_on_May_14_2015.pdf.

with Plaintiff about the contents of the new Plan, as was required under the 2015 Settlement Agreement. No suggestion was ever made during more than three years after the May 2015 Redevelopment Plan was adopted that the Plan was applicable to Plaintiff's development proposals although there were many opportunities.

82) Upon information and belief, Defendants Dougherty and Abramson were already drafting the drastically reduced density limitations that were included in the 2015 Redevelopment Plan at the time that Morristown's officials were negotiating and executing the January 2015 Settlement Agreement with Plaintiff.

83) However, Defendants Dougherty and Abramson and other Town officials John Does 1 - 10 purposely did not disclose to Plaintiff the changes that Morristown intended to include in the 2015 Plan.

84) This failure was knowing and intentional, because the Defendants knew that Plaintiff would never release Plaintiff's interest in the valuable Interior Leasehold Parcels in exchange for the Conveyance Parcels, which became virtually worthless, thus robbing Plaintiff of the value of the Conveyance Parcels, notwithstanding that Plaintiff had paid \$900,000 for the Parcels.

85) As reflected in the Table below, the May 2015 Redevelopment Plan greatly reduced the Phase 3 development that was allowed in the 2012 Redevelopment, which Plaintiff had reasonably relied on in relinquishing Plaintiff's Interior Leasehold Parcel interest given the Plan's 50-year duration:

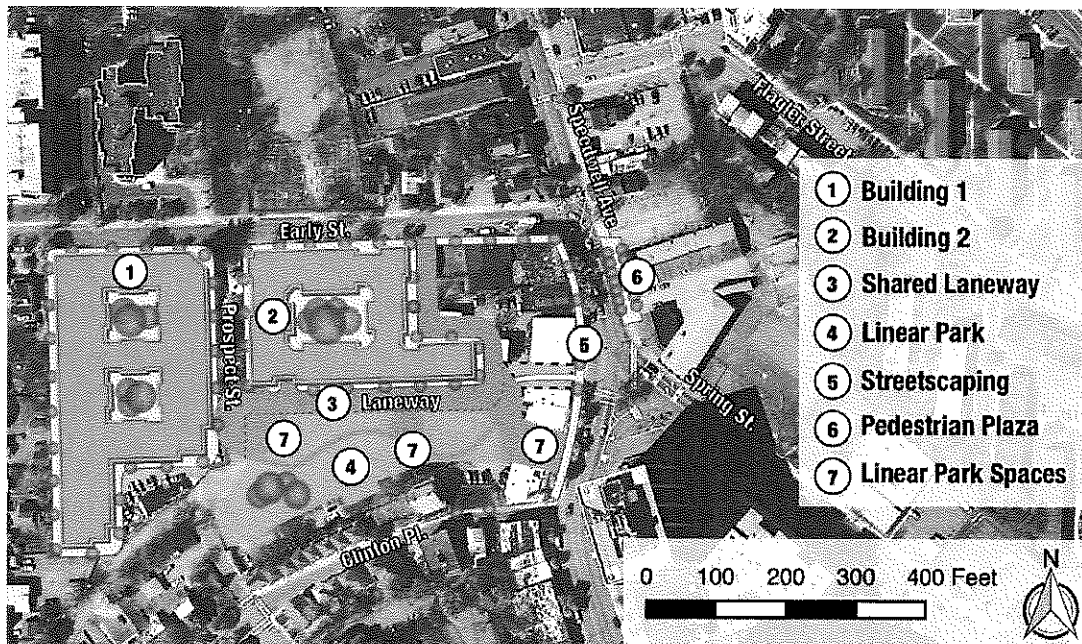
	2011 and 2012 Redevelopment Plans	2015 Redevelopment Plan
Number of residential units (largely on Plaintiff's Phase 3 parcels)	156 total residential units	24+ total residential units (24 units, plus units allowed in "underlying zoning",

		(which number was not stated and remains ambiguous and unclear) ⁸
Amount of square feet in commercial development (largely on Plaintiff's Phase 3 parcels)	25,000 square feet	5,000+ sf (5,000 sf, plus sf allowed in underlying zoning, which amount was not stated and remains ambiguous and unclear)

86) In contrast to the 2011 and 2012 Redevelopment Plans, which did not contain any requirement concerning the width of the Pedestrian Entryway from Speedwell Avenue to the interior park, the 2015 Redevelopment Plan explicitly required a 60-foot wide Pedestrian Entryway through Plaintiff's Speedwell Avenue parcels. The 60-foot requirement represented approximately 30% of Plaintiff's total 201foot frontage on Speedwell Avenue (including the newly-acquired Speedwell Conveyance Parcel). Moreover, the 2012 Plan retained the requirement of considerable "depth" for Plaintiff's Buildings 5 and 6 by stating they "shall extend approximately 50 to 75 feet along down the Pedestrian Greenway". Therefore, if implemented, the 2015 Plan created a very wide and deep Pedestrian Entryway that represented a significant taking of Plaintiff's properties.

⁸ The number of residential units and amount of retail square footage allowed under the 2015 Redevelopment Plan remains unknown and is ambiguous and unclear, because the Plan allows the stated numbers, plus the residential units and square footage in "underlying zoning"; However, the Plan does not identify which underlying zoning – the zoning in effect at the time the Plan was passed, or the zoning in effect thereafter. In addition, the underlying zoning that was in effect at the time is not clear in connection with the area in question.

87) In the 2015 Redevelopment Plan, there was also suddenly a possibility that Morristown would require an additional passageway through the northern part of Plaintiff's properties directly across the Speedwell Conveyance Parcel that Plaintiff had just acquired in the January 2015 Settlement Agreement, as reflected by the picture below that was included in the Plan:



88) In short, Defendant Morristown, and Defendants Dougherty, Abramson and Topology (which drafted the May 2015 Development Plan) ambushed Plaintiff in issuing a new Redevelopment Plan that:

- Represented a clear breach of Morristown's January 2015 Settlement Agreement Obligations to "immediately, continuously, timely without unreasonable delay, diligently work" with Plaintiff to amend the existing 2012 Redevelopment Plan;
- Drastically changed the development requirements of the 2011 and 2012 Redevelopment Plans, which Plaintiff had reasonably relied on when agreeing to the terms of the January 2015 Settlement Agreement since both Plans contained the identical Phase 3 requirements and both specifically stated their requirements would be in place for 50 years;

- Robbed Plaintiff not only of the value of Plaintiff's previously owned real estate assets, but also of any incremental value that Plaintiff could realize from the Conveyance Parcels that Plaintiff had just obtained when Plaintiff relinquished its interest in the Interior Leasehold Parcels and conveyed additional rear property footage to Morristown and Morristown Development for Phase 2 development;
- Set forth a development structure that economically could not be developed given how few residential units and how little commercial space was allowed.

89) Defendants Morristown, Dougherty and Abramson were well aware of all the above facts, given their passage of the 2012 Redevelopment Plan, their knowledge that its "provisions", "restrictions and limitation" were to be in effect for 50 years, and their knowledge of the 2015 Settlement Agreement.

K. Plaintiff's Retention of Numerous Professionals and Good Faith Efforts To Try To Develop Plaintiff's Phase 3 Parcels and Enhance the Town of Morristown From January 2015 to May 2019

90) Immediately after executing the January 2015 Settlement Agreement – and without realizing that Defendant Morristown, under the leadership of Defendant Dougherty, was about to ambush Plaintiff with an entirely different Redevelopment Plan - Plaintiff began work to develop a plan, secure its position as the Phase 3 Redeveloper and thus be positioned to accomplish the dream that Plaintiff originally proposed in 1999: Improving downtown Morristown.

91) Shortly after executing the 2015 Settlement Agreement, Plaintiff began interviewing professional firms to develop plans. By May 2015, Plaintiff decided to retain Gensler, a global architecture, design and planning firm with 48 locations and more than 6,000 professionals worldwide, with an office in Morristown. Among other projects, Gensler is the designer of:

- China's Shanghai Tower (the second largest building in the world)
- One Microsoft Place in Ireland

- Incheon International Airport
- Facebook's offices in New York City
- ExxonMobil's corporate offices
- Metropolis (a mixed use residential, hotel and retail development in the heart of downtown Los Angeles)

92) Gensler was also the intended architectural choice of the original redeveloper designated in 2008 by Morristown to develop the Area in Need of Redevelopment.

93) Gensler is also the architect of plans recently approved by Morristown to create the "M Station" office/retail development on Spring and Morris Streets in Morristown.

94) In early June, Plaintiff made its first payment to Gensler.

95) On June 20, 2015, Gensler transmitted the following email to Plaintiff:

... The Gensler team is excited to join your team in conceptualizing the Phase III Speedwell Redevelopment Area here in Morristown. It is a great opportunity to help the economic growth of the community in which we are all part of.

.... We understand the urgency of getting your vision in front of the Planning Board since they are currently moving forward with finalizing Phase II of the Plan. We have been able to move schedules to allow us to commence on Monday....

96) By July 1, 2015, Gensler prepared its first proposed plan, which was presented to Defendant Abramson, and his colleague Chris Cole who worked at Defendant Topology.

97) As described below in greater detail, Plaintiff retained and paid Gensler large amounts of money from June 2015 to August 2017 to develop numerous plans that

Plaintiff and Gensler submitted serially to Defendant Abramson. However, every plan submitted by Gensler was rejected by Morristown.

98) Thereafter, Plaintiff retained and paid large amounts of money to other professional firms, including without limitation Barton Partners and Schommer Engineering,⁹ to develop and present still more plans *seriatim*. Barton Partners was selected in particular because Morristown was familiar with its work: it had built a significant mixed-use, residential and retail building on the Town Green in Morristown.¹⁰ But each time Plaintiff's retained experts submitted plans, Defendant Abramson requested changes to the submitted plans, often after lengthy delays. Defendant Abramson also never provided comments as to how a proposal would be approved, notwithstanding Morristown's contractual obligation to "diligently work in good faith with" Plaintiff to approve a plan.

99) In December 2017, Plaintiff partnered with Claremont, a development and construction company that has financed and built numerous buildings and developments in New Jersey, including among others:

- University Place, a 2 phase, 330 luxury apartment building, combined with 20,000 square feet of retail space and 350 parking places, in Jersey City
- Newark Replacement Housing, consisting of more than 500 rental units in Newark
- Marin Residences, a 17-story luxury residential building in Jersey City

⁹ Schommer Engineering was a New Jersey engineering firm Plaintiff retained to assist in addressing parking and other engineering issues.

¹⁰ Barton Partners also designed Erie Harbor in Rochester, New York (revitalizing the River Walk) and the Paoli Intermodal Station, among other projects.

- The Target Center, a 130,000 square foot anchored retail shopping center, in Washington Township, New Jersey

100) Given New Jersey municipalities' record of approving Claremont's plans, Plaintiff assumed Morristown would approve Claremont's submitted plans and thus began vacating residential tenants from Plaintiff's properties. Plaintiff needed to do so to comply with the statutory 18-month residential lease termination notice requirement. Thus, Plaintiff began losing rental income in anticipation that Defendants Abramson and Dougherty would approve Claremont's plans and recommend their adoption to the Town Council for formal approval.

101) However, as described in detail below, all of Plaintiff's good faith efforts were to prove to be of no avail.

L. For Approximately 3 Years, Morristown Reviewed Plaintiff's *Seriatim* Plans Complying with the 2012 Plan, Never Told Plaintiff Such Plans Would Be Unacceptable, But Each Time Asked for Modifications to the Plans, Only To Suddenly Demand Far Smaller-Scale Development in September 2018, and Even Smaller Development Thereafter, Until April 2019, When the Town Planner Finally Accepted 65 Residential Units and 8,000 Square Feet of Commercial Space Only To Have Defendant Dougherty Reject Said Development In May 2019

102) Beginning in July 2015 (only a month after the Town Council approved the 2015 Redevelopment Plan) and continuing for more than three years until August 2018, Plaintiff repeatedly presented detailed development proposals to Defendant Town Planner Abramson and his associates at Defendant Topology. Other Town representatives including Defendant Dougherty, the Town Administrator (Jillian Barrick) and various lawyers (including Vij Pawar, Dean Donatelli and John Inglesino) reviewed certain of Plaintiff's proposed plans and/or attended meetings with Plaintiff concerning Plaintiff's plans.

103) Virtually all of Plaintiff's submitted proposed plans called for more than 100 residential units and more than 22,000 square feet of commercial space to be developed on Plaintiff's parcels, as reflected in the Table below identifying examples of Plaintiff's proposed plans:

Date of Proposal	# of Proposed Residential Units	Square Feet of Proposed Commercial Space
7/1/15	89 residential units	7,322 sf of retail space Also, large hotel with 7 floors of guest rooms
8/5/15	118 residential units	7,500 sf of retail space Also, large hotel with 7 floors of guest rooms
3/24/16	100 residential units	Retail 18,078 sf Office – 5,684 sf
6/8/16	<u>3 options:</u> (i) “Current program” – 138 residential units (ii) “Lot 2 acquisition” – 140 residential units (iii) “Expanded Program + Office Program” – 140 residential units	<u>3 options:</u> (i) “Current program” – 17,447 sf of commercial space (ii) 18,732 sf of commercial space (iii) 18,732 sf of commercial space + office tower of 11,226 sf
12/21/16	<u>2 options:</u> (i) Self-park: 124 residential units (ii) valet stack – 124 residential units	<u>2 options:</u> (i) Self-park: 22,000 sf of commercial space (ii) valet stack – 22,200 sf of commercial space
9/7/17	110 residential units	27,125 sf of retail space
6/18/18	104 residential units	9,500 sf of retail space

104) When reviewing and responding to each of the above plans, in not a single instance during the three year period beginning in July 2015 and continuing to August 2018 did Defendants Abramson or Dougherty - or any of the other Morristown officials who attended meetings and responded to Plaintiff's plans - ever state that Morristown

would not accept at least 100 residential units and at least 22,000 square feet of commercial space. Moreover, in not a single instance did the above Defendants or other Morristown officials ever tell Plaintiff (or Plaintiff's retained professionals) that they would need to comply with the drastically reduced density requirements of the 2015 Redevelopment Plan.

105) Instead, Defendant Morristown, through Defendants Abramson, Dougherty and other Morristown officials, led Plaintiff to believe that Plaintiff could develop Phase 3 in conformity with the development authorized by the 2012 Redevelopment Plan, if Plaintiff would only make certain design changes to Plaintiff's proposed plans.

106) Upon information and belief, during the period from July 2015 through August 2018, Defendant Dougherty instructed Defendant Abramson and other officials - and/or they together agreed - to make Plaintiff believe that Plaintiff's serially submitted plans that conformed with the 2012 Redevelopment Plan were being carefully reviewed and would be approved as long as Plaintiff made certain requested changes, even though these Defendants and other Morristown officials knew that Plaintiff's plans would not be approved when re-submitted, and all such reviews were nothing but a long-term stalling tactic.

107) In September 2018, Defendants Abramson and Dougherty and other Morristown officials John Does 1 - 10 suddenly changed their previous position and told Plaintiff that those Defendants and Morristown would not accept development in conformity with the 2012 Redevelopment Plan, and would instead require far smaller development in conformity with the 2015 Redevelopment Plan.

108) In September 2018, Defendant Abramson and other Morristown representatives communicated only that Plaintiff (and its development partner Claremont) needed to reduce the number of residential units “by at least 30% to 40%.” However, Morristown’s representatives refused to tell Plaintiff and Claremont the maximum number of residential units and amount of square footage that would be allowed, and instead indicated that Plaintiff and Claremont should propose the smallest numbers that they would be willing to develop. Defendant Abramson’s repeated response was in itself a violation of Morristown’s obligation to “immediately, continuously, timely without unreasonable delay, diligently work in good faith with [Plaintiff] to develop an agreed to plan”.

109) When Plaintiff’s development partner, Claremont, asked the amount of development that was allowed in the “underlying zoning” referenced in the 2015 Redevelopment Plan, Morristown’s Town Planner indicated it was unclear.

110) Plaintiff and Claremont could not on their own determine the allowed development in the “underlying zoning” for at least two reasons: It was not clear if the “underlying zoning” would be based on the zoning that existed at the time the 2015 Redevelopment Plan was adopted, or the zoning that was passed thereafter. Moreover, the underlying zoning that existed at the time the Plan was adopted was unclear.

111) As Plaintiff’s team submitted serial proposals during the fall of 2018 and winter of 2018 - 2019, Defendant Abramson and others continued to demand reduced density. Finally, in April 2019, after Plaintiff’s development partner had repeatedly whittled down their proposed numbers, Defendant Abramson and others approved plans showing 65 residential units and 8,770 square feet of commercial space. Upon

information and belief, Defendant Abramson indicated his approval of said development at the direction of Defendant Dougherty.

112) For the next month and a half, Defendant Abramson and his colleagues working for Defendant Topology began for the first time to “diligently work with Plaintiff” to finalize plans to present to the Town Council. Numerous emails were exchanged - often in the same day - containing the identified Defendants’ comments on Claremont’s submitted plans, their requested revisions, and time tables to obtain ultimate approval by July 1, 2019, which was represented to be feasible if special Redevelopment Committee meetings were held.

113) In early April 2019, Town Planner Abramson directed Claremont to file a Land Use Application and post an escrow account against which Morristown could draw funds to pay for Morristown’s staff and retained experts to finalize proposed plans. Claremont funded the account as directed. In mid-April, Abramson retained an outside architectural expert, Earl Jackson, to assist in the review of repeated revised plans, with Claremont funding Jackson’s work too.

114) The conduct of Defendant Abramson and his Topology colleagues during this period clearly demonstrated that Defendant Abramson and other Morristown officials John Does 1 – 10 had never “diligently worked with Plaintiff” during any of the previous four and a half years, as Morristown’s officials were obligated to do under the terms of the 2015 Settlement Agreement.

115) On May 13, 2019, Town Planner Abramson, his Topology colleagues and Morristown’s retained expert exchanged final emails preparing for a meeting with Mayor Dougherty the next day.

116) On May 14, 2019, Claremont and its team of professionals appeared at the Town Hall for a meeting with Defendant Dougherty, Town Planner Abramson and their team of professionals. The Claremont Team presented detailed concept plans and an extensive set of renderings that depicted a beautiful set of new Phase 3 buildings that would transform the currently dilapidated Speedwell Avenue and Clinton Place properties and beautify Morristown, as reflected in the picture below:



During the meeting, Town Planner Abramson added his own comments, using his architectural and development expertise and that of his colleagues and outside experts, to explain why the proposed plans responded to Morristown's needs and should be approved.

117) The meeting lasted only approximately half an hour. At the end of the meeting, Defendant Dougherty indicated that Morristown would respond within the next few days.

118) A few days later, Defendant Abramson contacted Claremont with a “courtesy call” and indicated he had received direction that 65 residential units was too large a development: Claremont needed to reduce its proposed development to about 45 residential units. Upon information and belief, Defendant Dougherty had unilaterally decided to reject Plaintiff’s and Claremont’s proposed plans.

119) On May 22, 2019, Defendant Abramson wrote Claremont, cc’ing his Topology colleague Chris Colley, Town Administrator Barrick and attorneys Vij Pawar, John Inglesino and Dean Donatelli. Defendants Abramson and Topology requested changes in the submitted plans including reducing the height of certain buildings to three floors (rather than the six floors allowed under the 2012 Redevelopment Plan). For the first time in more than four years, Abramson indicated that Morristown’s Redevelopment Plan would allow only 27 residential units:

“[G]iven the size of the site, a 65 unit building results in a density of 86 units an acre. This level of density exceeds the maximum standards contained both in the applicable portions of Speedwell Redevelopment Plan (27 total units for the properties in question) as well as the most dense zoning district in Morristown (which tops out at 50 dwelling units per acre). Retail space at 8,000SF remains acceptable.”

Abramson’s representations utterly ignored that Morristown has repeatedly approved construction that far exceeds the stated figures.

120) Defendant Abramson concluded with the following words:

“Please know that the Town has been very impressed and appreciative of Claremont’s ongoing commitment to this project. You have worked with me and my office in good faith to improve the design, to incrementally reduce intensity and to address other concerns that have been raised along the way. Our general conclusion, that the project remains excessive with regard to scale and intensity, is in no way a reflection upon Claremont. It is our sincere hope that you will find a path forward, consistent with the parameters above, that will make our collective vision for Speedwell Avenue a reality.”

121) On May 23, 2019, Claremont responded by email to the Town Planner by providing a revised plan that incorporated all requested changes, including the reduction of the height of certain buildings by one floor. However, Claremont indicated that it would not -and could not - further reduce the number of residential units or retail square footage, as it would be impossible economically to develop such a project.

122) Defendants Abramson, Dougherty, and Topology did not respond to Claremont's email.

123) The deliberate and ongoing actions of Defendants Abramson and Topology from January 2015 through April 2019 and again in May 2019 - and of Defendant Dougherty from January 2015 through May 2019 - robbed Plaintiff of Plaintiff's contractual benefits of the 2015 Settlement Agreement. Municipal custom and usage is well settled that the Mayor, Town Planner and planning representatives have the authority to decide whether the proposed plans of a private development firm will be presented to the Town Council for approval. By their ongoing conduct during the periods identified, Defendants Abramson, Topology and Dougherty violated Morristown's contractual obligations under the 2015 Settlement Agreement to "immediately, continuously, timely without unreasonable delay, diligently work in good faith with [Plaintiff] to develop an agreed to plan."

M. During the Period July 2015 to May 2019, Morristown Officials Repeatedly Changed Their Minds About Core Development Requirements, Creating A "Moving Target" For Plaintiff to Satisfy, and Thus Breached Morristown's Obligation To "Immediately, Continuously, Timely without Unreasonable Delay, Diligently Work in Good Faith with [Plaintiff]" to Approve Plaintiff's Plans

124) During the almost four year period from July 2015 until May 2019, Defendants Abramson and Dougherty and other Morristown officials John Does 1 - 10

who reviewed Plaintiff's plans took positions on certain core matters for considerable periods of time, only to change their positions thereafter and require Plaintiff to make significant revisions to Plan's proposed plans, and thereafter often to change their positions again. As a result, Plaintiff squandered large amounts of time and resources and incurred ever-increasing costs paying professionals to try to satisfy Morristown's 'moving targets', but was never able to satisfy Morristown's ever-changing demands.

125) Four examples – of many – follow below.

(i) Morristown Officials' Changing Positions Related To Whether Phase 3 Development Could Take Place In Stages Or Must Take Place All At Once

126) From July 2015 until June 2017, Plaintiff submitted plans to develop all of Plaintiff's parcels simultaneously.

127) In June 2017, Plaintiff and several colleagues met with Defendant Abramson, Town Administrator Jillian Barrick and Town redevelopment attorney John Inglesino. At this meeting, the parties discussed that Plaintiff's Phase 3 development would be divided into two sub-phases, the first being the development along Speedwell Avenue and the second - to follow later - the development along Clinton Place. The reason for creating sub-phases was clear to all concerned: Development of the Clinton Place parcel was complicated given the steep topography and large expense for parking. Defendant Morristown's representatives agreed that Plaintiff would submit plans in September 2017 for the first sub-phase of development on Speedwell Avenue.

128) The following year, when Morristown's officials suddenly announced in September 2018 that Plaintiff would not be allowed to develop in conformity with the 2012 Redevelopment Plan and needed to reduce the number of residential units "by 30%

to 40%,” and Plaintiff proposed sub-phase development of Clinton Place and Speedwell Avenue, Defendant Abramson responded that such development was likely unacceptable: “If we proceed with amending the redevelopment plan, we need to understand Phase 3 as a whole.” Defendant’s email cc’d his Topology colleague Chris Colley and Town Administrator Jillian Barrick.

129) Notably, Defendant Abramson’s stated position on Phase 3 sub-phase development contradicted defendant Morristown’s position on Phase 4 development, where Morristown specifically adopted a Redevelopment Amendment that allowed for sub-phase development.¹¹

(ii) Morristown’s Changing Positions Related to Whether Plaintiff Should Demolish Existing Buildings In Conformity With All Redevelopment Plans, Or Re-Face Existing Buildings In Violation of All Redevelopment Plans

130) The 2011 and 2012 Redevelopment Plans (and even the 2015 Redevelopment Plan) depicted two large buildings on Speedwell Avenue, with a Pedestrian Entryway in between the buildings near the Speedwell Avenue and Clinton Place corner. Accordingly, it was clear that Plaintiff would need to demolish Plaintiff’s existing structures and construct new buildings, particularly because one such existing structure stood directly on the area that all Redevelopment Plans designated as the Pedestrian Entryway.

131) Given the requirements of all three Redevelopment Plans, during the initial two years Plaintiff proposed in all Plaintiff’s submitted plans the demolition of

¹¹ See Morristown’s website, posting the 2019 Redevelopment Amendment concerning Phase 4 development at 10:

https://www.townofmorristown.org/vertical/sites/%7B0813EA2E-B627-4F82-BBB0-DDEE646947B5%7D/uploads/Redevelopment_Plan_Amendment_Presentation_2.14_Reduced.pdf.

existing buildings, construction of new buildings, and construction of a Pedestrian Entryway at the site identified in the Redevelopment Plans. For almost two years, Defendant Abramson - and other Morristown officials – never indicated a contrary approach would be allowed or required.

132) However, in April 2017, Plaintiff's principal, Paul Marshall, met with Defendant Abramson, and Abramson indicated that he would approve the idea of retaining and re-facing all existing buildings on Speedwell Avenue. Shortly after the meeting was over, Defendant Abramson wrote Plaintiff and stated: "I very much appreciate ... the change of direction we're taking here...." Two days later, Defendant Abramson again wrote to Plaintiff stating:

"I had some preliminary conversations inside Town Hall and the proposal was received favorably. I would definitely suggest that it'd be worth your while to develop the concept described below into some preliminary drawings."

133) Given that the new approach of Defendant Abramson – and others in Town Hall - was contrary to all three Redevelopment Plans approved by the Town Council, Plaintiff's professional team continued to propose demolishing the existing structures, constructing new buildings and creating a Pedestrian Entryway to the interior park in the location identified in all Redevelopment Plans.

134) Six months later at a meeting in September 2017 attended by Defendant Abramson, and his Topology associate Chris Kok, Plaintiff presented detailed new plans (showing "layout", "materials", "lighting", "grading", "planting", "irrigation", "site furnishing" and "site sections"). After the meeting, Defendant Abramson – and Topology – followed up with comments stating the following about the matter:

"Preservation of Existing Buildings is Recommended ... [and] will be considered a positive element. This could involve different strategies such as

preserving the structures as is, constructing above the structures, or gutting the structures and maintaining only the facades. Key structures we feel are worth preservation are the two buildings at the corner of Speedwell and Clinton Place....”

135) Trapped between complying with the Town Council’s stated requirements in three Redevelopment Plans, all of which had been adopted by Morristown ordinances, and the inconsistent and contradictory recommendations of Defendants Abramson and Topology, Plaintiff took note that the Topology Memorandum merely “recommended” re-facing the existing buildings, and proceeded to submit a revised plan in October 2017 to address other stated concerns.

136) When Plaintiff’s professional team requested comments on the submitted plan, Defendant Abramson responded by providing a Topology Memorandum, dated October 3, 2017. This time, Defendant Abramson and Topology did not challenge construction of entirely new buildings rather than re-facing. Instead, Defendants Abramson and Topology provided pictures of architectural “precedents” from developments in other locations, and requested certain design changes.

137) For example, the identified Defendants requested that the fronts and backs of the new buildings create different appearances, suggesting (a) a more formal façade for the Speedwell Avenue side of certain buildings, with punched window openings and a separate glass base at retail level; and (b) a less formal façade for the back of the buildings that would face the new Park, with larger window openings and bay windows.

138) Several submitted plans later, Defendants Abramson and Dougherty and other Morristown officials made clear in September 2018 that development in conformity with the 2012 Redevelopment Plan would not be approved, and Plaintiff needed to submit a plan that reflected “30% to 40%” less development. As a result, Plaintiff tried to

come up with an approach that would be economically feasible and wrote Defendant Abramson to determine if re-facing the buildings would be approved. This time, Defendant Abramson's response questioned how re-facing the existing buildings could be satisfactorily achieved given the need to create a Pedestrian Entryway in the location identified in the Redevelopment Plans:

“... I think we'd need more information to provide feedback. ... the question is ... what type of modifications/demolition would you propose to the existing buildings? We would be very concerned about the quality of public access if the proposal is to provide a single story access “tunnel” through former storefronts.”

139) When Defendant Abramson and other Morristown officials finally decided in April 2019 to “work diligently with Plaintiff” and finalize a set of plans that could be presented to the Mayor and Town Council, Defendant Abramson and others approved the demolition of the existing structures. When Defendant Dougherty rejected Claremont's proposal after the May 14, 2019 meeting, and Defendant Abramson followed up with a Topology Memorandum identifying the changes that would be needed, there was no mention of a “preference” or “requirement” that existing buildings be re-faced.

140) Given Defendants' flip-flops on this core matter, Plaintiff has no basis for believing that Morristown's officials will honor the design requirements concerning buildings and the Pedestrian Park Entryway set forth in the 2011 and 2012 Redevelopment Plans, rather than deciding again at some point in the future that they would prefer or require Plaintiff to retain and re-face the existing buildings.

iii. Morristown Officials' Changing Positions Concerning the Pedestrian Entryway

141) In similar fashion, Defendant Abramson - and other Morristown officials — entirely changed their position concerning the Pedestrian Entryway structure.

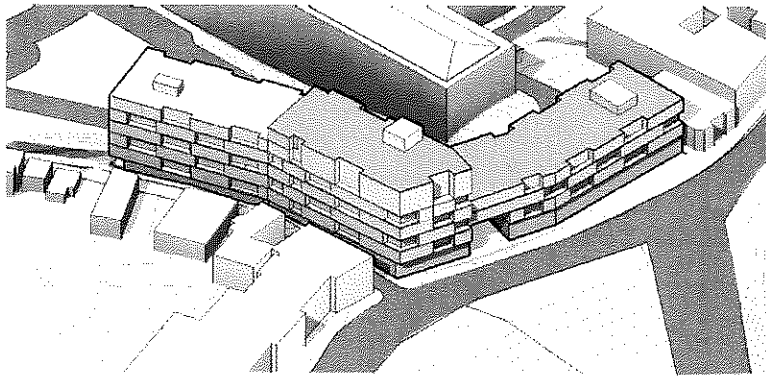
142) Beginning in 2015 and continuing for more than a year thereafter, Defendant Abramson voiced his enthusiasm for – and accepted - a Pedestrian Entryway from Speedwell Avenue to the interior park that would be a “covered passageway”. During a meeting that occurred as early as May 7, 2015, Defendant Abramson articulated that a “bridge design” over the Pedestrian Entryway from Speedwell Avenue to the interior park was very important. After the meeting, Town Planner Abramson sent an email to Plaintiff’s principal, Paul Marshall, with the following text and attached picture showing a bridge designed with extensive glass, and a pedestrian entry below, but no requirement of a 60 feet entryway:

“Look at the second picture after the intro text. Very well designed curtain wall.”



143) As a result, Plaintiff designed and submitted numerous subsequent plans all containing a “bridge” element over the Pedestrian Entryway, without concern about a 60 foot entryway.

144) For example, the picture below shows the Pedestrian Entryway in a proposed plan submitted on December 21, 2016, with a relatively narrow width that was far smaller than the 60 feet required in the 2015 Redevelopment Plan:

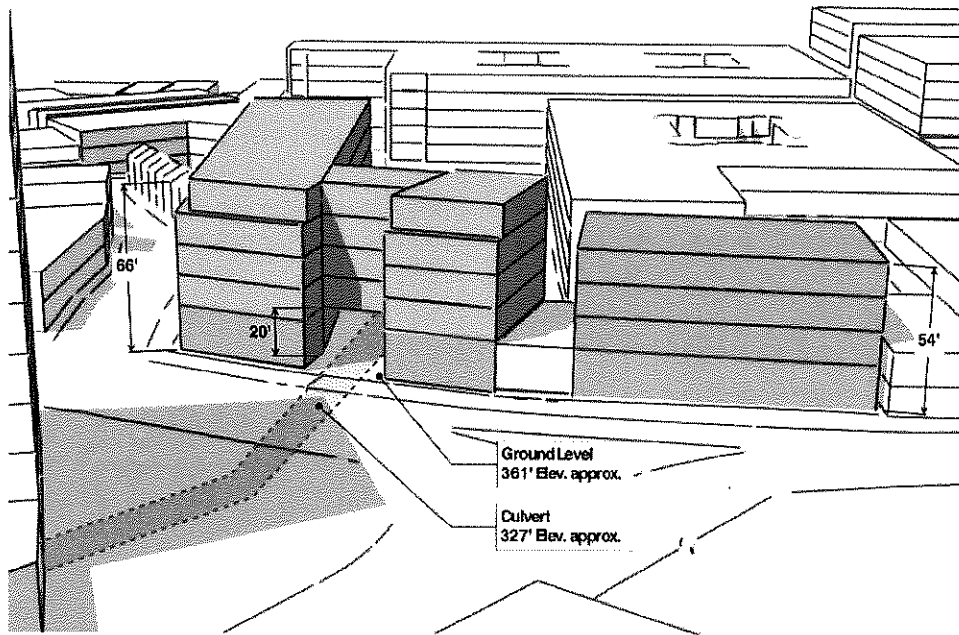


Speedwell Redevelopment | Program Distribution

Morristown, New Jersey | December 21, 2016
General

In his detailed comments responding to this proposal, Defendant Abramson did not reject or comment on the bridge design or the width of the passage.

145) As another example, in the Spring of 2016, Plaintiff submitted yet another set of plans showing a similar Pedestrian Entryway, but with four floors rather than two as a “bridge” over the Pedestrian Entryway:



Again, in his responsive comments Defendant Abramson did not reject or comment on the “bridge” design or the entryway width. Moreover, Abramson expressed his approval of the planned structure and even indicated he would travel to Newark to support the plan before the Department of Environmental Protection, which Plaintiff was meeting with because the covered entryway was over an underground culvert that was in the DEP’s domain.

146) However, after a meeting on September 7, 2017 during which Plaintiff and retained professionals presented yet another set of plans that also contained a covered bridge entryway, Defendant Abramson changed Morristown’s position concerning the Pedestrian Entryway. In transmitting a Topology Memorandum “to provide a list of necessary submissions for the next meeting scheduled for September 21, 2017”, Abramson included the following statement:

“The entrance to the park must remain open and inviting to pedestrians. Any design that closes off the space or is likely to create a feeling of

private space *is not acceptable*. It is the Town's preference to have no building structure over the entrance to the park. If any structure over the park is permitted, it should consist of only a corridor and glass walls. This will create an interesting feature for residents while ensuring the park maintains its public character." (*emphasis added*)

147) In April 2019, when Defendant Abramson and his Topology colleagues, as well as the retained expert Earl Jackson, expressed their approval of Claremont's submitted plans, these plans showed a bridged Pedestrian Entryway and was in conformity with the 2012 Redevelopment Plan, meaning it was narrower than the 60 feet required by the 2015 Redevelopment Plan.

148) During the weeks that followed, those Morristown representatives never questioned that approach to the Pedestrian Entryway.

149) When Claremont's plans were rejected after the May 14, 2019 meeting with Defendant Dougherty and Defendant Abramson transmitted a Topology Memorandum to Claremont thereafter, nothing was stated about the design of the "bridge" over the Pedestrian Entryway and the narrower width to the Pedestrian Entryway.

150) Based on Defendants' flip-flops on those matters and many others, Plaintiff has no reason to believe that Morristown's officials will not change their minds again and reject the most recently submitted Pedestrian Entryway structure, were Plaintiff to submit revised plans again.

151) In sum, rather than honoring Morristown's contractual obligations to "immediately, continuously, timely without unreasonable delay, diligently work in good faith with" Plaintiff to develop and approve plans, Morristown's representatives toyed with Plaintiff by taking positions on core matters for significant periods of time, then

changed those positions and required Plaintiff to comply with the changes, and then often changed their positions again. In so doing, Morristown's officials created a "moving target" on core matters that Plaintiff could neither predict nor satisfy, and thus breached Morristown's contractual obligations.

iv. Morristown Representatives' Changing Positions Concerning the Acceptable Height of Buildings

152) Based on the 2011 Redevelopment Plan and 2012 Redevelopment Plan, Plaintiff had the right to develop buildings that were to be the tallest buildings in the Area in Need of Redevelopment - up to 6 stories and 80 feet tall.

153) Based on the 2015 Redevelopment Plan, Plaintiff continued to have the right to construct buildings of the same height.

154) During the four years that Plaintiff repeatedly submitted plans, Morristown's representatives repeatedly changed the height of buildings that Plaintiff would be allowed to develop. In so doing, they not only created a "moving target" that Plaintiff could not satisfy, but also imposed extensive costs on Plaintiff as Plaintiff (and his agents) repeatedly were forced to change plans.

155) By way of example only, after Plaintiff's retained experts, Barton Partners, submitted plans in September 7, 2017 showing buildings up to six stories in height, Town Planner Abramson and his colleague Chris Kok responded with a Topology Memorandum that stated that building heights should be limited to 5 stories.

156) Almost a year later, after many other requested changes had been addressed, Plaintiff's retained developer, Claremont, submitted plans in July 2018 for 5 and 6 stories. Town Planner Abramson responded with a Topology Memorandum that contained the following Chart:

Requirements	Required / Permitted	Proposed
Max. Building Height	4 stories / 56 feet (Speedwell) 4-6 stories / 56-80 feet (Clinton)	54' (5 stories) 65' (6 stories)

However, the Memorandum did not require the reduction in the height of buildings and instead focused on the “mass” of the buildings:

- *Overall Height:* generally speaking the height and mass of the building remain a concern, particularly when coupled with some of the urban design points described below. Every opportunity should be taken to reduce building mass wherever possible, particularly at the “high point” of the building, closest to the existing townhomes along Clinton Place as well as the upper stories along Speedwell Avenue and Clinton Place. One or more step-backs would be an effective mechanism to reduce perceived mass.

157) In September 2018, Claremont submitted plans that addressed the concerns related to the mass of the buildings without reducing the heights. At that point, Morristown’s representatives suddenly for the first time indicated that the proposed density needed to be reduced by 30% to 40%.

158) From February 2019 through early May 2019, Claremont repeatedly submitted plans calling for buildings of 4 floors. As described in greater detail below, the Town Planner, Topology and an outside architectural expert retained by the Town at Claremont’s expense, repeatedly reviewed and approved those plans, and they were submitted by those individuals and Claremont to the Mayor for review and approval at a meeting on May 14, 2019. Shortly thereafter, on May 22, 2019, the Town Planner wrote Claremont, cc’ing his Topology colleague Chris Colley as well as Defendant Inglesino,

Town Administrator Barrick, and lawyers Donatelli and Pawar, stating the maximum height of the Clinton Avenue buildings was to be 3 stories.

N. Morristown Officials' Ongoing and Continuous Pattern of Delay For More Than Four Years, Breaching Morristown's Obligation To "Immediately, Continuously, Timely Without Unreasonable Delay, Diligently Work in Good Faith with [Plaintiff] to Develop An Agreed To Plan"

159) From January 2015 when Defendant Dougherty executed the 2015 Settlement Agreement until April 2019 when Town Planner Abramson and other Morristown representatives finally began to "work diligently" with Plaintiff to approve Plaintiff's plans, the Town Planner and other Morristown officials engaged in a pattern and practice of delay, often by being entirely non-responsive, and on many occasions by blaming Plaintiff for a lack of progress.

160) Three examples – of many possibilities – follow:

i. Failure to Provide Necessary Information Concerning Parking

161) As previously described, in the 2015 Settlement Agreement Plaintiff relinquished a 99 year leasehold interest in two large interior parcels that had long been a parking lot that provided parking for Plaintiff's street front parcels.

162) As a result, Plaintiff needed Morristown to assist in facilitating parking for Plaintiff's development of Phase 3 properties, and Morristown and the Morristown Parking Authority bound themselves in the 2015 Settlement Agreement to "consult with each other and consider [Plaintiff's] potential parking needs to accommodate the Phase Three Parcels in the plan for Phase Two."

163) On October 11, 2016, Plaintiff's principal, Paul Marshall, wrote Defendant Abramson, and his Topology colleague, Chris Kok, indicating Phase 3 parking

was presenting difficulties, and asking for information about parking that would be allowed below the new interior park. Marshall received no response.

164) On October 20, 2016, Marshall again wrote Morristown's officials about the same matter, stating "Any news? Yearning for something good." Again, there was no response.

165) Nor did the Town Planner or his colleague Kok provide any information or assistance during numerous months thereafter when Plaintiff (and retained professionals) tried to determine how to provide Phase 3 parking and satisfy the Town's demands concerning parking for Phase 3 development.

166) As of the filing of this Complaint, Plaintiff still does not know how many parking spaces in Phase 2 parking lots will be made available for Phase 3 use: The range that has been repeatedly stated has been between 5 and 60 parking spaces.

ii. Taking Numerous Months to Respond to Requests for Meetings

167) On December 21, 2016, Plaintiff's representatives met with Town Planner Abramson, and other Topology associates working with the Planner, to discuss another set of plans that Plaintiff submitted with Plaintiff's retained professional team from Gensler. The Town Planner and his Topology colleagues responded by expressing support, but as usual, requested certain architectural changes including reducing the height of proposed buildings by one story.

168) After the meeting, Plaintiff and Gensler took immediate steps to comply with Morristown's latest requests. Thereafter, they repeatedly called Abramson to set up a follow-up meeting. However, Abramson failed to respond.

169) After considerable delay, Plaintiff's principle, Paul Marshall, transmitted the following email to Abramson on March 2, 2017 on behalf of himself and another then-principal, Bill Moran, to try to move matters forward:

From: **Paul Marshall** <paul_marshall@marshallmoran.com>
Date: Thu, Mar 2, 2017 at 4:55 PM
Subject: Meeting
To: Phil Abramson (phil@thisistopology.com) <phil@thisistopology.com>
Cc: Bill Moran <bill.moran@marshallmoran.com>, Kurt Eichler (kurt.eichler1@outlook.com) <kurt.eichler1@outlook.com>, Peter Gilpatric <peter.gilpatric@gmail.com>, Chris Kok (chris@thisistopology.com) <chris@thisistopology.com>

Bill and I have made several calls to you and your associates over the past couple of weeks. We called to set up a meeting to go over Gensler's plan which we believe conforms to your suggestions from our last meeting. As we haven't heard back, I'll run by you some important issues that need attention.

Morristown requires access to the park, currently shown as going through our Speedwell frontage, parts of our 90 and 98 Speedwell buildings.

We need:

- a) Temporary access to a small portion of park land for staging construction
- b) Road access off Prospect to get to our parking

As you know the Settlement Agreement provides that we are to be the designated developer for our properties, subject to approval of our plan. In a word, we have to meet, to go over our plan and these items.

170) In response to the above email, Abramson acknowledged his complete failure to respond, but then incongruously blamed Plaintiff for Plaintiff's purported delay in making progress:

"My apologies for the radio silence....

"We will make ourselves available for another meeting to discuss the design, but the town would like to see this process come to closure in a timely manner, consistent with the settlement agreement....

Thanks in advance and again, sorry for the delayed reply."

171) It was not until April 2017 that Plaintiff and Plaintiff's professionals were finally able to meet with Abramson. Plaintiff lost approximately four months trying to set

up a meeting to review plans that Gensler had quickly prepared after the December 2016 meeting.

iii. Creating Schedules, Which Plaintiff Was Satisfying, and Then Blaming Plaintiff for Purportedly Unacceptable Delays

172) On June 7, 2017, Plaintiff, representatives from Plaintiff's retained professional team and Plaintiff's lawyer met with Town Planner Abramson, his Topology colleague Chris Kok, Town Administrator Jillian Barrick and several lawyers representing Morristown and its agencies. At the end of the meeting, the parties agreed that Plaintiff would submit a revised plan in September 2017.

173) On June 20, 2017, Chris Kok sent an email to Plaintiff, cc'ing Town Planner Abramson, stating:

"It was good meeting with you on the 7th. I'm writing to follow up on our meeting and to keep things moving forward. We think the project is moving in a good direction and are excited to see it get finalized."

Mr. Kok then summarized the matters that should be addressed in the next set of plans that the parties had agreed would be presented in September, under headers: "Due diligence," "Conceptual Design" and "Additional Work".

174) Plaintiff's retained professionals immediately began work to respond to the Town's latest design demands and present revised plans in September 2017. However, on August 17, 2017, notwithstanding the discussion at the June 2017 meeting and the September 2017 timetable, the Town's redevelopment attorneys sent a written notice to Plaintiff captioned "NOTICE OF DEFAULT UNDER SETTLEMENT AGREEMENT."

175) Turning reality on its head, the attorneys' Notice falsely asserted that Morristown had "continuously and diligently worked in good faith with [Plaintiff] to

develop a plan and amendment to the Speedwell Redevelopment Plan.” The Notice also falsely claimed that Plaintiff had “failed to produce and/or pursue in good faith a viable plan/concept for the redevelopment of Phase Three....” The Notice also falsely accused Plaintiff of failing “to work in good faith with the Town of Morristown to adopt an amendment to the Speedwell Redevelopment Plan for Phase Three.” Finally, the Notice threatened Plaintiff stating Plaintiff was in default of Plaintiff’s Settlement Agreement obligations:

“This letter shall constitute written notice to Speedwell, LLC of its default and failure to perform its obligations under the Agreement. If Speedwell, LLC fails to cure such breach within the time period specified in the Agreement (or within ninety (90) days of the date hereof, if none), then the Town of Morristown shall have the right to pursue all remedies available under law and in equity and as further set forth in Paragraph 15 of the Settlement Agreement.”

176) Given municipal practices, the attorneys’ Notice must have been initiated by, or approved by, senior municipal officials. Upon information and belief, Defendant Dougherty and Defendant Abramson did both.

177) On August 24, 2017, Plaintiff’s lawyer responded to each of the false claims asserted in the Notice. Among other matters, Plaintiff’s lawyer addressed the blatantly false and bizarre allegation that Plaintiff had failed to work with the Town to amend the Town’s bad faith 2015 Redevelopment Plan:

“My client and I were likewise surprised by your assertion that my client has failed to work in good faith with the Town of Morristown to adopt an amendment to the Speedwell Redevelopment Plan for Phase Three. There has been no discussion about adopting an amendment to the Speedwell Redevelopment Plan for Phase Three. If the Town wishes to engage in discussions regarding that subject, my client and I will prove to be quite accommodating.”

Plaintiff's lawyer also pointed out that only a few weeks before writing their letter, two attorneys from Morristown's law firm had been present with the Town Planner and Town Administrator, as well as two of Plaintiff's principals, at the June meeting when all parties "discussed the progress of the Phase Three development." The letter continued:

"At this meeting there was no mention of any frustration or default. To the contrary it was agreed that my client would present a usable concept plan to [the Town Planner] by September.... My client is on schedule for this presentation."

178) Tellingly, although Morristown retained and paid a law firm to draft and transmit a "Notice of Default" to Plaintiff falsely alleging that Morristown had "continuously and diligently worked in good faith with [Plaintiff] to develop a plan and amendment to the Speedwell Redevelopment Plan", as of the date of the filing of this Complaint, the Town has still never contacted Plaintiff about drafting *any* Redevelopment Plan or amendment.

179) Moreover, when Defendant Morristown, through the work of Defendants Dougherty, Abramson and Topology, subsequently drafted a new Redevelopment Plan and presented it to the Town Council on February 9, 2019 (as more fully described in Section Q below), not a single Town official contacted Plaintiff to discuss the Plan, and Plaintiff only learned of the Town's 2019 Redevelopment Plan via Plaintiff's independent review of the Town's website after the Plan was completed and posted there.

O. Morristown Officials Breach Morristown's Contractual Obligation to Allow Plaintiff to "Immediately" Submit An Application to be Appointed the Phase 3 Developer, and Instead Repeatedly Tell Plaintiff An Application Can Only Be Filed After A Plan Is Approved

180) Within weeks after Plaintiff executed the 2015 Settlement Agreement, Plaintiff assembled materials to file an application to be appointed the Phase 3 developer, and met with Defendant Abramson on May 7, 2015 concerning the requirements to file an application.

181) On June 3, 2015, Plaintiff and several colleagues again met with Defendant Abramson, as well as two attorneys representing Morristown, John Inglesino and Dean Donatelli. Plaintiff again raised the question of obtaining immediate appointment as the Phase 3 developer; However, Plaintiff was told Plaintiff's approval as the developer could only occur *after* four other steps had been achieved: (i) Plaintiff needed to work to develop a plan with the Town Planner; (ii) the proposed plan needed to then be presented to the Mayor, who needed to approve it; (iii) the proposed plan then needed to be presented to the Town Council; and (iv) the Town Council then needed to approve the proposed plan as part of a Redevelopment Plan ordinance.

182) As an experienced real estate professional, Plaintiff's principal, Paul Marshall, knew that Plaintiff needed to work with Mayor Dougherty and Town Planner Abramson to obtain approval of Plaintiff's proposal, amend the Redevelopment Plan and be appointed the Phase 3 developer. Accordingly, while the order of events that was described violated Morristown's 2015 Settlement Agreement obligations, Plaintiff concluded that Plaintiff could not immediately apply to be the Phase 3 developer.

183) During the next four years, Plaintiff repeatedly tried to raise the question of making application to be appointed the Phase 3 developer. Each time, Morristown's officials rejected Plaintiff's requests.

184) For example, on September 15, 2017, Plaintiff's principal, Paul Marshall, wrote the Town Administrator Jillian Barrick stating the following:

"I think you know that we're meeting again next Thursday, our architects presenting plans for Phase III development. I'd like to stop by, or we can exchange emails, to go over a PILOT agreement, designation as redeveloper, and other [matters] needed to get ... to our ground breaking."

Town Administrator Barrick wrote back:

"I would be happy to discuss general questions regarding process. However, beyond that I believe it is premature to have these discussions as that typically happens at the conclusion of a conceptual design process. And when the matter is ripe, it would be more appropriate to discuss in a setting with the planner and our attorneys."

185) As another example, on October 12, 2017, Paul Marshall wrote to Defendant Abramson stating the following:

"Thought it an interesting meeting and trust you did too. We're enthusiastic and intent on moving quickly.

"The first item is for you: Please set a date, roughly a month from now, to meet with Mayor Dougherty.

"We then expect to begin the process wherein we are designated the redeveloper. Could you fill me in on the drill? As it's legal process, I assume our counsels will play major roles. Will Dean represent Morristown? Which Morristown officials will be handling the basic negotiations on a day to day basis? Jillian? You?

"Kindly let me know. Would want to be prepared for the designation process as soon as possible following our meeting with" the Mayor.

186) Not hearing back for more than two weeks, Marshall wrote Defendant Abramson again on October 27, 2017, asking: "Any progress on meeting with Mayor

Dougherty?” Defendant Abramson did not respond. But on the same day, Plaintiff’s retained professionals at Barton Partners contacted Marshall saying Topology associate Chris Kok had called and indicated that the Town Planner was delayed in getting dates from the Mayor “due to the upcoming election.”

187) On November 14, 2017, Marshall again wrote the Town Planner and Chris Cok, saying:

“With the election behind us and a very successful one at that, can we schedule a meeting? We’re most anxious to push this forward.”

188) No meeting was ever scheduled. Moreover, no Morristown official provided any time thereafter to discuss Plaintiff’s application to be appointed the Phase 3 developer.

189) The deliberate and ongoing actions of Defendants Dougherty, Abramson, Topology and John Does 1 – 10 robbed Plaintiff of Plaintiff’s contractual benefits of the 2015 Settlement Agreement, which explicitly stated that Plaintiff could file an application to be appointed the Phase 3 developer “immediately”. Municipal custom and usage is well settled that the Mayor, Town Planner and planning representatives have the authority to make decisions concerning whether a private development firm will be presented to the Town Council for approval as a developer.

P. Plaintiff Grants A Temporary Pedestrian Easement Across Plaintiff’s Newly-Acquired Speedwell Conveyance Parcel; Defendant Morristown Thereafter Ignores Defendant Morristown Development’s Obligations With Regard to Maintenance of the Easement, and Morristown Harasses Plaintiff by Issuing Improper Summonses against Plaintiff for a Garbage Problem Caused by Morristown Development; Given Morristown’s Refusal To Approve Phase 3 Development, the Easement Becomes a Temporary or Permanent Taking Without Compensation

190) In the Agreement of Sale entered into by Defendant Morristown Development in connection with the January 2015 Settlement Agreement, Plaintiff agreed to grant a temporary pedestrian easement across the Speedwell Conveyance Parcel that Plaintiff acquired until Phase 3 development began.

191) More than a year later, when Defendants Morristown and Morristown Development approached Plaintiff to draft and execute a temporary easement agreement, Plaintiff expressed concern that the temporary easement would become a permanent easement given Morristown's ongoing failure to approve any Phase 3 development plan. As a result, in March 2016 a meeting was held, attended by Plaintiff and Plaintiff's counsel, and Defendant Abramson, Town Administrator Barrick and attorneys Dean Donatelli and John Inglesino. During the meeting, attorney Inglesino reassured Plaintiff that Phase 3 development was in Plaintiff's hands, a plan would be soon be approved when Plaintiff submitted an appropriate plan, and the temporary easement would be moved to a different location.

192) Attorney Inglesino's statements were so positive that Plaintiff's principle, Paul Marshall, shortly thereafter wrote a letter to Mayor Dougherty describing the "unusual meeting" that had taken place, and how Attorney Inglesino was "forceful and convincing, and most important of all, gave us the assurance we needed. After about 10 minutes, we were persuaded."

193) Based on Inglesino's and other Morristown representatives' representations, Plaintiff executed a Temporary Easement Agreement on April 20, 2016.

194) Plaintiff received \$1 in consideration for granting the easement across Plaintiff's Speedwell Conveyance Parcel, even though Plaintiff paid \$450,000 to acquire

the Parcel, and Plaintiff valued the Parcel at \$1.4 million as of the January 2015 Settlement Agreement.

195) The Temporary Easement Agreement explicitly stated that the easement that Plaintiff was providing was a “temporary and non-exclusive easement.”

196) The Temporary Easement Agreement also required Defendant Morristown Development, at Morristown Development’s “sole cost and expense, [to] perform all inspections, maintenance, repair and replacement of the Easement Area.”

197) In the Fall of 2018 after Defendant Morristown and Defendants Abramson and Dougherty suddenly changed their position and stated Plaintiff needed to reduce the number of residential units by “30% to 40%,” Defendant Morristown Development installed bollards blocking off all use of the Speedwell Conveyance Parcel, as reflected in the picture below:



Morristown Development also removed all existing dumpsters from the area without providing any replacement dumpsters elsewhere. Morristown Development then failed to

inspect and maintain the property as it was obligated to do by the terms of the Temporary Easement Agreement, and garbage began to accumulate.

198) Although Defendant Abramson had no responsibility for property maintenance, Abramson repeatedly involved himself in the accumulating garbage problem, visiting the site, making calls to various departments in Town Hall, and even contacting Morristown's Property Maintenance Supervisor to address the garbage collection problem, as reflected in the email below:

From: Philip Abramson [mailto:phil@topology.is]
Sent: Wednesday, November 21, 2018 12:28 PM
To: King, Andrae
Subject: Marshall property

Trash



199) Notwithstanding Defendant Morristown Development's contractual obligations under the Temporary Easement Agreement to maintain the easement property – and Morristown's knowledge of those obligations - Defendant Morristown began

issuing multiple, serial summonses to Plaintiff for accumulations of trash in the easement area, not to Defendant Morristown Development.

200) Plaintiff notified Defendant Morristown Development of the foregoing situation by an email dated January 14, 2019 and requested that Morristown Development confirm it would take full responsibility for inspections, maintenance, repairs and replacement as required by the easement, and contact the Town to confirm that responsibility.

201) Defendant Morristown Development's response sent by email the same day was a four-word email:

"You must be joking."

On the email, Morristown Development cc'd Town Planner Abramson, Town Administrator Jillian Barrick and the Town's redevelopment attorney Dean Donatelli.

202) By letter dated January 17, 2019, Plaintiff brought the foregoing facts, including the January 14 email exchange with Morristown Development, to the attention of Defendant Dougherty, Town Administrator Barrick, Town Attorney Pawar, and Town redevelopment attorneys John Inglesino and Dean Donatelli, among others. Plaintiff pointed out that paragraph 3 of the Temporary Easement Agreement provides that the Town has the right to police the easement and enforce all applicable laws and the terms of the easement.

203) The January 17, 2019 letter included a request that Defendant Morristown immediately enforce the terms of the easement by informing Defendant Morristown Development that it was responsible for all aspects of inspections and maintenance, and

by directing Defendant Morristown Development to immediately take all actions consistent with its contractual obligations.

204) Plaintiff received no response from any of the Morristown representatives who received the letter.

205) Notwithstanding the terms of the Temporary Easement Agreement and the notice provided to Defendant Morristown by the January 17, 2019 letter, Defendant Morristown continued to issue additional summonses against Plaintiff for the garbage accumulation problem caused by Defendant Morristown Development.

206) On January 17, 2019, Defendant Morristown also suddenly issued 5 summonses to Plaintiff concerning Plaintiff's other Speedwell Avenue and Clinton Place properties. During the course of more than thirty years of ownership of Plaintiff's parcels, Plaintiff had received only one or two summonses in total related to any of those properties.

207) Defendant Morristown also continued its prosecution against Plaintiff for the accumulation of trash in the easement area. As a result, Plaintiff was forced to attend several court hearings related to the summonses, and Plaintiff retained an attorney to do so. The municipal judge asked Plaintiff's attorney to work things out with Defendant Morristown Development. When Plaintiff's attorney attempted to do so, Morristown Development again refused to take responsibility.

208) To end mounting legal costs, and knowing that none of Morristown's officials had responded to Plaintiff's January 17th letter, Plaintiff directed its counsel to conclude the matter by having Plaintiff plead guilty and pay reduced fines.

209) As of the filing of this Complaint - meaning more than four and a half years after Plaintiff acquired the Speedwell Conveyance Parcel in the January 2015 Settlement Agreement, and more than three years after Plaintiff granted Morristown a “temporary” easement across the Parcel - Plaintiff still has no ability to use its Speedwell Conveyance Parcel. Meanwhile, Plaintiff continues to incur ongoing expenses to maintain the property given Defendant Morristown Development’s refusal to do so and Defendant Morristown’s failure to enforce the easement’s terms.

210) By Morristown’s wrongful actions, Morristown has effected a taking of Plaintiff’s property without just compensation.

Q. In February 2019, Morristown Passes Another Ordinance Adopting Another Redevelopment Plan Without Ever Even Telling Plaintiff, Again Breaching Its Settlement Agreement Obligations To “Immediately” and “Diligently In Good Faith Work With Plaintiff” To Amend the Redevelopment Plan

211) In early February 2019, Defendant Dougherty and Defendant Abramson presented to the Town Council a revised Redevelopment Plan written by Defendant Topology (the “2019 Redevelopment Plan”). The Town Council thereafter approved the 2019 Redevelopment Plan in an ordinance.

212) Morristown’s officials never discussed the Plan’s contents with Plaintiff, and never even told Plaintiff that Morristown was developing a new Redevelopment Plan. Plaintiff discovered the new Plan by reviewing Morristown’s public website.

213) The foregoing actions breached Morristown’s 2015 Settlement Agreement obligations to “immediately, continuously, ... diligently work in good faith with [Plaintiff] to develop an agreed to ... amendment to the Speedwell Redevelopment Plan,”

214) The new Plan called for the same drastic reduction in Phase 3 residential units and retail square footage as had been set forth in the 2015 Redevelopment Plan, which was a dramatic reduction from the 2011 and 2012 Redevelopment Plans that Plaintiff reasonably relied on in entering into the 2015 Settlement Agreement:

Phase 3	2011 and 2012 Redevelopment Plan (stated to have a duration of 50 years)	2015 Redevelopment Plan	2019 Redevelopment Plan
Total number of residential units	156 residential units	24 residential units + “amount allowed in underlying zoning”	24 residential units + “amount allowed in underlying zoning”
Total retail commercial space	25,000 sq ft	5,500 sq ft + amt allowed in “underlying zoning”	5,500 sq ft + amt allowed in “underlying zoning”

215) The 2019 Redevelopment Plan also imposed a 60-foot wide Pedestrian Entryway through Plaintiff’s Speedwell Avenue parcels, which had not been a requirement of the 2011 and 2012 Redevelopment Plans, and would result in a taking of approximately 30% of Plaintiff’s Speedwell street front for the Pedestrian Entryway.

216) Notably, while Morristown’s officials were re-stating the 2015 Redevelopment Plan’s drastic reduction in Plaintiff’s Phase 3 density, the new 2019 Redevelopment Plan allowed an expansion of Phase 4 residential unit development and retail square footage from that allowed in the 2015 Redevelopment Plan:

Phase 4	2015 Redevelopment Plan	2019 Redevelopment Plan
Total number of residential units	36 residential units	45 residential units
Total retail commercial space	23,600 sf of commercial space	23,800 sf of commercial space

217) The 2019 Redevelopment Plan also made clear that rather than focusing on Phase 3 as the next Phase of development, Defendants Morristown, Dougherty, Abramson and Topology were now focused on Phase 4 development.

R. In August 2019, Plaintiff Asks the Morristown Town Council To Honor Morristown's 2015 Settlement Agreement Obligations; Morristown, Through Its Lawyer, Defendant Inglesino, Rejects Plaintiff's Request and Defames Plaintiff, and Morristown Again Violates Its 2015 Settlement Obligations By Failing To: (i) Allow Plaintiff's Designated Developer To "Immediately" Apply To Be Appointed the Redeveloper, and To Approve the Developer Given Proof Of Its "Financial and Material Ability To Develop the Project"; and (ii) "Immediately, Continuously, Timely without Unreasonable Delay, Diligently Work in Good Faith with [Plaintiff]" to Approve Plaintiff's Plans And Amend The Redevelopment Plan

218) Given Morristown officials' failure to honor Morristown's 2015 Settlement Agreement obligations for more than four years, on August 2, 2019 Plaintiff's lawyers wrote directly to all representatives on Morristown's Town Council and Morristown's Redevelopment Entity (who are the same individuals).

219) In the August 2, 2019 letter, Plaintiff's lawyers asked the Town Council "to honor Morristown's Settlement Agreement obligations and appoint [Plaintiff's] designated developer, Claremont, as the Phase 3 developer." Plaintiff's lawyers also

attached a document making clear that Claremont had the “financial and managerial ability to develop the project,” which obligated Morristown under the 2015 Settlement Agreement to “promptly and without delay review [the Plaintiff’s] application ... and qualify [Plaintiff’s designated developer] as the redeveloper of Phase Three subject to the adoption of the redevelopment plan for Phase Three.”

220) Plaintiff’s lawyers also provided Morristown’s Town Council with the following additional documents:

- The proposed Plans that Claremont and Morristown’s Town Planner Abramson had worked on from February to May 2019 and the Town Planner had presented to Defendant Dougherty for approval on May 14, 2019;
- A Term Sheet for the project; and
- A Time Schedule identifying each of the matters related to Phase 3 development that needed to take place and mapping out a schedule that would enable completion within 4 months.

Plaintiff’s lawyers pointed out that given that Morristown contractually obligated itself in January 2015 to “immediately, continuously, timely without unreasonable delay, diligently work in good faith with [Plaintiff] to develop an agreed to plan and amendment to the Speedwell Redevelopment Plan,” Plaintiff’s 4 month Schedule to complete the work by the end of November 2019 was reasonable.

221) Plaintiff’s lawyers also provided the Town Council with a draft Complaint summarizing Morristown’s and its representatives’ continuous and ongoing violations of Morristown’s 2015 Settlement Agreement obligations. The Complaint was substantially in the form of this Complaint. Plaintiff’s lawyers made clear that Plaintiff did not want to litigate against Morristown, and Plaintiff was willing to “work in good faith with the Town Council and appear before the Council at any time requested by the Council” to

ensure the Town Council was provided with all necessary information to enable Phase 3 development to begin. Plaintiff's lawyers concluded: "It's been 15 years since Morristown designated the area only blocks from its Town Green as an Area in Need of Redevelopment. It's time for the Town Council to wrest control from its officials and act."

222) Plaintiff purposely did not disclose its attorneys' email transmittal to the Town, or the draft Complaint or any other documents to the public or press. Therefore, all contents of those documents remained unknown to the public.

223) On August 6, 2019, Plaintiff's lawyers briefly appeared before the Town Council and spoke about Plaintiff's request to have the Town honor its contractual obligations, and explained why the 2015 Settlement Agreement obligated the Town to act quickly.

224) On August 7, 2019, Claremont's counsel transmitted a letter to the Town Council members and Mayor Dougherty stating Claremont did not join in Plaintiff's allegations against Morristown and indicating Claremont was not currently under contract with Plaintiff (which was the case because of Morristown's repeated and continuous delays). The letter then stated:

"All that being said, Claremont spent very significant money on professionals designing and redesigning multiple concept plans, expended hundreds of hours on meetings, communications and planning analyses, and remains professionally committed to what would be a transformational project for Morristown. Claremont hopes that a path can be forged forward to allow Claremont to execute a shared vision with the Town for this prominent location."

Claremont transmitted its letter privately to the Town Council's members and other Town representatives. Thus, like the content of Plaintiff's counsel's transmittals, the content of this letter remained unknown to the public.

225) On August 9, 2019, Plaintiff's lawyers again privately wrote the Town's representatives reminding them that the Town had obligated itself in two different provisions in the 2015 Settlement Agreement to quickly review and approve Plaintiff's designated developer as the Phase 3 redeveloper and again cited the relevant provisions of the 2015 Settlement Agreement:

"The Town ... shall immediately, continuously, timely without unreasonable delay, diligently work in good faith with [Plaintiff] ... to designate [Plaintiff], or [Plaintiff's] designated entity, as redeveloper of the Phase Three Parcels...."

"[Plaintiff] may apply to the Town to be designated as redeveloper of the Phase Three Parcels immediately and the Town shall promptly and without delay review [Plaintiff's] application and, if [Plaintiff] reasonably demonstrates to the Town it has the financial and managerial ability to develop the project, qualify [Plaintiff] as the redeveloper of Phase Three subject to the adoption of the redevelopment plan for Phase Three."

Plaintiff's lawyers further stated that Plaintiff would appear at the upcoming August 13, 2019 hearing of the Morristown Redevelopment Entity to answer any questions.

226) On August 13, 2019, only hours before the Town meeting was to commence, Defendant Inglesino transmitted a letter to Plaintiff's lawyers entirely rejecting Plaintiff's application. The letter included the following representations, all of which were false, and many of which were libelous:

"After numerous meetings with Claremont ... the Town's Administration agreed to bring a sixty-five (65) unit project to the Town's governing body and public for consideration.

"[I]t appears that the only reason Claremont sought a long-term tax abatement is to support your client's prodigious purchase price for the subject property. You and your client must comprehend that the Town will not grant a developer a tax abatement for the sole purpose of supporting an artificially higher land value. Your client's demand that the taxpayers of Morristown subsidize a redevelopment project so that your client can inflate its purchase price is based on your client's one consistent virtue – Greed!

“The Town’s policy regarding long term tax abatements has been consistent and is rooted in serving the public interest. Proving ‘financeable yields’ and ‘market rates of internal return’ to satisfy the ‘but for test’, consideration of public infrastructure, ... and other similar public benefits have been the guiding principles that this Administration and governing body have implemented to ensure that the granting of long term tax abatements, which is a public subsidy, is not abused. Supporting artificially inflated purchase prices for sellers of land, where none of the aforementioned attributes exist, is not a justification for a public subsidy.”

As Inglesino must have known given his multi-year involvement in Phase 3 development, Plaintiff, and its designated developer Claremont, sought a tax abatement for all the reasons identified by Inglesino. And their previously submitted documents made clear that Plaintiff was

- Relinquishing a significant parcel of land to Morristown to create a Pedestrian Entryway for an interior park
- Proposing to provide design and construction management services on behalf of Morristown for the design, coordination and construction of Lane Way Park
- Proposing to provide a street widening / streetscape plan along Clinton Place
- Proposing to provide a study to evaluate the pedestrian foot traffic as it relates to the site

Moreover, most of the above reasons why a tax abatement was justified had been explicitly identified in the documents that Plaintiff’s lawyers had privately transmitted to the Town Council and Town representatives, including Inglesino.

227) Inglesino also stated in the opening of his letter that he was “compelled to address the most egregious aspects [of Plaintiff’s lawyers’] actions and conduct...” Inglesino alleged that Plaintiff’s lawyers had acted in “direction violation of” Rule of Professional Conduct 4.2 by communicating about a subject with a person the lawyer knows or should know is represented by another lawyer.

228) Contrary to Inglesino's allegations, Plaintiff - through Plaintiff's lawyers - had the right as a developer to communicate directly with Morristown's governing bodies since Plaintiff had been unable to get Morristown's officials and representatives to honor the terms of Morristown's 2015 Settlement Agreement.

229) Inglesino also falsely indicated that Plaintiff's lawyers may have violated Rule of Professional Conduct 3.3 by failing to disclose that Attorney Cahn was the wife of the Plaintiff's principal, Paul Marshall. As a practicing attorney for decades, Inglesino surely knew that attorneys frequently represent their relatives without proclaiming the relationship, and doing so does not constitute any violation of any Rule of Professional Conduct.

230) Inglesino also posed two rhetorical questions in his letter, further misleading Town Council members about the underlying facts and further defaming Plaintiff by holding Plaintiff up to ridicule:

- "If your client seeks to be designated as the redeveloper, why has it not submitted an application?"
- "Why are you demanding that the Town designate Claremont as the redeveloper for your client's site when your client and Claremont are no longer under contract?"

231) Only hours after transmitting his letter to Plaintiff's counsel, Inglesino appeared at the August 13th public hearing and spoke for more than 10 minutes to all Town Council members, several Town officials who were present (including Defendants Dougherty and Abramson) and approximately 100 individuals who were attending the meeting. Reporters were present, with cameras and a videotape rolling.

232) Defendant Inglesino repeated many of the falsehoods that had been contained in his letter and added still more.

233) Inglesino began by falsely claiming that “three of the four Phases are virtually complete, Phase 3 is not, although the Town has been working many years in attempts to try to bring Phase 3 so that all of the Speedwell Redevelopment Project could come to fruition.” In fact, much of Phase 4 development was not yet initiated, and the Town had not been working many years in attempts to bring Phase 3 to fruition.

234) Inglesino continued by making the following statements, each of which was false:

- “The notion that Morristown has defaulted under the 2015 Agreement is preposterous.”
- “The reality is that this Administration has worked extensively with Claremont and its representatives to come to a plan that would include 65 units on this site ... and the Administration has indicated it is willing to bring that plan forward to the governing body for consideration at the appropriate time.”
- “Sixty five units ... is not in any way inconsistent with what was anticipated to be built....”
- “The Town has considered tax abatements in the past ... but not for the sole purpose of inflating artificial purchase prices for owners. But to use that concept as a sole basis, as a basis to just increase land values is not a concept that the Town believes appropriate....”

235) Inglesino also claimed that Plaintiff’s proposed development “equates to about \$119,000 per market rate unit ... which seems to be an exorbitantly high, very high purchase price.” Inglesino’s calculation entirely ignored the proposed ground floor retail space, and therefore totally misrepresented the finances underpinning Plaintiff’s residential development.

236) Inglesino concluded by stating that he would make his Letter to Attorneys Rosenbach and Cahn available to the public. The letter was printed in multiple copies, and everyone attending the public hearing therefore had access to it.

237) As of the filing of this Complaint, Inglesino's slanderous public remarks are still present on the internet and can be seen and heard at <https://www.youtube.com/watch?v=JNb5ZOloINU>.

238) On the day following Inglesino's distribution of his inaccurate and defamatory letter - and oral presentation to the public and press - a news story carrying information from both was published on the internet. The story was captioned "Morristown accuses developer of bullying, intimidation and greed." *See Exhibit B*. As of the filing of this Complaint, the article is still present on the internet at <https://morristowngreen.com/2019/08/14/morristown-accuses-developer-of-bullying-intimidation-greed/>.

S. Defendants' Unlawful Acts Have Caused Plaintiff Extensive Damages

239) Defendants' bad faith, outrageous and unlawful conduct since Plaintiff in good faith entered into the January 2015 Settlement Agreement and relinquished its interest in more than a third of all Phase 2 properties, has caused Plaintiff ongoing and extensive damages, including the following as of the filing of this Complaint:

- More than one hundred and fifty thousand dollars (\$150,000) in fees paid to professional architects, engineers and other parties to repeatedly develop and submit plans that Defendants failed to review in good faith as they were obligated to do under the Settlement Agreement
- More than three hundred and fifty thousand dollars (\$350,000) in lost rents since Plaintiff vacated tenants in Plaintiff's existing buildings in anticipation of demolition, which Plaintiff was obligated to do given regulatory requirements allowing tenants 18 months' notice before tenants may be compelled to vacate redevelopment properties
- More than \$1.4 million in damages from the temporary or permanent taking of the Speedwell Conveyance Parcel, as the case may be, which parcel Plaintiff acquired in executing the 2015 Settlement Agreement, but which Plaintiff has never been able to use given Morristown's taking of the parcel

- More than \$800,000 in damages from the taking of the Clinton Conveyance Parcel, which Plaintiff acquired in executing the 2015 Settlement Agreement, but which Plaintiff has never been able to use given Defendants' wrongful actions
- At least \$6.5 million in lost revenue from the inability to sell or develop Plaintiff's remaining assets, given Defendants' wrongful refusal to allow development of Plaintiff's Phase 3 properties
- Legal fees from responding to Defendant Morristown Development's breach of the Temporary Easement Agreement and Defendant Morristown's refusal to require Defendant Morristown Development to honor its maintenance obligations, and ongoing maintenance fees to monitor the easement
- Compensatory and punitive damages from Defendant Inglesino's defamation.

FIRST CAUSE OF ACTION
42 U.S.C. § 1983 - CONTRACTS CLAUSE
IMPAIRMENT OF THE 2015 SETTLEMENT AGREEMENT
Against Morristown, Dougherty, Abramson, Topology and John Does 1 – 10

240) Plaintiff repeats and re-alleges the allegations above as if fully set forth herein.

241) Plaintiff and Morristown entered into the January 2015 Settlement Agreement, which constituted a contract between Plaintiff and Morristown.

242) As described in this Complaint, Defendants substantially impaired Plaintiff's contract rights and thereby breached the U.S. Constitution, Article 1, § 10, clause 1, and 42 U.S.C. § 1983, in at least four different ways:

- Morristown's adoption of the May 2015 Redevelopment Plan via an ordinance substantially impaired Plaintiff's contract right to have Morristown "immediately, continuously, timely without unreasonable delay, diligently work in good faith with [Plaintiff] to develop an agreed to ... amendment to the Speedwell Redevelopment Plan"
- Defendants Dougherty, Abramson and Topology, acting under a well settled municipal policy and practice that constitutes custom or usage with the force of law (namely that the Mayor, Town Planner and other planning representatives must approve a developer's plan before the developer presents its plan to the governing body) substantially impaired Plaintiff's contract right to have Morristown "immediately, continuously, timely without unreasonable

delay, diligently work in good faith with [Plaintiff] to develop an agreed to plan”

- Defendants Dougherty, Abramson and Topology, acting under a well settled municipal policy and practice that constitutes custom or usage with the force of law (namely that the Mayor, Town Planner and other planning representatives must approve a private firm as the developer before the firm applies to the governing body to be approved) substantially impaired Plaintiff’s contract right to apply “immediately” to be appointed the Phase 3 developer, and to have Morristown “promptly and without delay review” and approve Plaintiff’s application if Plaintiff demonstrated “financial and managerial ability”
- Morristown’s adoption of the February 2019 Redevelopment Plan via an ordinance substantially impaired Plaintiff’s contract right to have Morristown “immediately, continuously, timely without unreasonable delay, diligently work in good faith with [Plaintiff] to develop an agreed to ... amendment to the Speedwell Redevelopment Plan”

243) The conduct of Defendants Morristown, Dougherty, Abramson, Topology and John Does 1 – 10 in violating the 2015 Settlement Agreement substantially impaired Plaintiff’s contract rights.

244) The conduct by Defendants Morristown, Dougherty, Abramson, Topology and John Does 1 – 10 was taken under color of State law.

245) Morristown had no significant or legitimate public purpose in taking the actions that substantially impaired Plaintiff’s contract rights.

SECOND CAUSE OF ACTION

42 U.S.C. § 1983 – 14TH AMENDMENT DUE PROCESS CLAUSE

Against Morristown, Dougherty, Abramson, Topology and John Does 1 - 10

246) Plaintiff repeats and re-alleges the above allegations as if fully set forth herein.

247) Plaintiff’s ownership interest in its real properties located within the area designated as Phase 3 is a property interest worthy of substantive due process protection.

248) The conduct of Defendants Morristown, Dougherty, Abramson, Topology and John Does 1 – 10 deprived Plaintiff of its property interest, was arbitrary and capricious, and shocks the conscience.

249) The conduct by Defendants Morristown, Dougherty, Abramson, Topology and John Does 1 – 10 was taken under color of State law.

**THIRD CAUSE OF ACTION
42 U.S.C. § 1983 – CIVIL CONSPIRACY
CONCERNING BREACH OF THE 2015 SETTLEMENT AGREEMENT &
DEPRIVATION OF PLAINTIFF'S DUE PROCESS RIGHTS
Against Morristown, Dougherty, Abramson, Topology and John Does 1 - 10**

250) Plaintiff repeats and re-alleges each of the allegations above as if fully set forth herein.

251) Defendants Morristown, Dougherty, Abramson, Topology and John Does 1 – 10 conspired and acted in concert to prevent Plaintiff from receiving the benefits of the 2015 Settlement Agreement and/or from receiving the benefits of Plaintiff's ownership of the real property located in Phase 3.

252) The conduct by Defendants Morristown, Dougherty, Abramson, Topology and John Does 1 – 10 was taken under color of State law.

253) These Defendants committed numerous overt acts in support of their conspiracy as described at length in this Complaint.

**FOURTH CAUSE OF ACTION
42 U.S.C. § 1983 – FIFTH AMENDMENT TAKINGS CLAUSE
Against Morristown**

254) Plaintiff repeats and re-alleges the allegations set forth above as if fully set forth herein.

255) As set forth above, in March 2016, Plaintiff granted Defendant Morristown a “temporary” pedestrian easement across Plaintiff’s Speedwell Conveyance Parcel.

256) As of the filing of this Complaint, the “temporary” pedestrian easement remains in place and continues to benefit Defendants Morristown and Morristown Development, and Plaintiff continues to be deprived from obtaining any value from Plaintiff’s Speedwell Conveyance Parcel in that Plaintiff cannot use this parcel for any reason and cannot develop it.

257) The taking of Plaintiff’s property is at least temporary and may well be permanent.

258) Both the temporary and permanent impairments constitute a taking of Plaintiff’s property without just compensation.

**FIFTH CAUSE OF ACTION
42 U.S.C. § 1983 - CONTRACTS CLAUSE
IMPAIRMENT OF CONTRACT RIGHTS
Against Morristown, Dougherty, Abramson, John Does 1 - 10 and Morristown
Development**

259) Plaintiff repeats and re-alleges the allegations above as if fully set forth herein.

260) Plaintiff, Morristown and Morristown Development entered into the Temporary Easement Agreement, which constituted a contract between Plaintiff and Defendants Morristown and Morristown Development.

261) As described in this Complaint, Defendants substantially impaired Plaintiff’s contract rights and thereby breached the U.S. Constitution, Article 1, § 10, clause 1, and 42 U.S.C. § 1983, in at least two different ways:

- Defendants Morristown, Dougherty, Abramson and John Does 1 – 10, acting under municipal policy and practice that constituted custom or usage with the force of law, substantially impaired Plaintiff's contract rights by transforming a non-exclusive and "temporary" easement into an easement that has lasted as of the filing of this Complaint more than 3 years, with no end in sight, given Defendants' failure to approve Phase 3 development
- Defendants Morristown, Dougherty, Abramson, John Does 1 – 10, and Morristown Development, acting under a municipal policy and practice that constituted custom or usage with the force of law, on an ongoing and repeated basis substantially impaired Plaintiff's contract right under the Temporary Easement Agreement by ignoring Defendant Morristown Development's obligation to maintain the easement property, and instead harassing Plaintiff by issuing summonses and refusing to enforce Morristown Development's contractual obligations

262) As detailed in this Complaint, the conduct of Defendants Morristown, Dougherty, Abramson, John Does 1 – 10 and Morristown Development deprived Plaintiff of its contract rights, was arbitrary and capricious, and shocks the conscience.

263) The conduct by Defendants Morristown, Dougherty, Abramson, John Does 1 - 10 and Morristown Development was taken under color of State law.

**SIXTH CAUSE OF ACTION
42 U.S.C. § 1983 – CIVIL CONSPIRACY
IMPAIRMENT OF CONTRACT RIGHTS
Against Dougherty, Abramson, John Does 1 – 10 and Morristown Development**

264) Plaintiff repeats and re-alleges each of the allegations above as if fully set forth herein.

265) Defendants Dougherty, Abramson and John Does 1 – 10 have conspired and acted in concert to ensure that the non-exclusive and temporary easement would not end, and Morristown would instead engineer a taking of Plaintiff's Speedwell Avenue Conveyance Parcel without any compensation.

266) Defendants Dougherty, Abramson, John Does 1 – 10 and Morristown Development have also conspired and acted in concert to ensure Defendant Morristown

Development would not be required to satisfy its Temporary Easement Agreement obligations to maintain the easement property, and instead have harassed Plaintiff and forced Plaintiff to maintain the property.

267) The above-identified Defendants have committed numerous overt acts in support of the above-described conspiracies as described at length in this Complaint.

268) The conduct by Defendants Dougherty, Abramson, John Does 1 – 10 and Morristown Development was taken under color of State law.

**SEVENTH CAUSE OF ACTION
42 U.S.C. § 1983 – EQUAL PROTECTION
Against Morristown, Dougherty, Abramson, Topology and John Does 1 – 10**

269) Plaintiff repeats and re-alleges each of the allegations above as if fully set forth herein.

270) Defendants Morristown, Dougherty, Abramson, Topology and John Does 1 – 10 have, under color of State law, intentionally and arbitrarily discriminated against Plaintiff by treating Plaintiff differently from the way that all other redevelopers in the Speedwell Area in Need of Redevelopment have been treated with regard to their efforts to obtain, and their success in obtaining, approvals for commercially viable redevelopment projects.

271) There is no rational basis for the difference in the way the Defendants have treated Plaintiff and the way the Defendants have treated other redevelopers in the Speedwell Area in Need of Redevelopment.

**EIGHTH CAUSE OF ACTION
BREACH OF THE 2015 SETTLEMENT AGREEMENT
Against Defendant Morristown**

272) Plaintiff repeats and re-alleges the allegations set forth above as if fully set forth herein.

273) The 2015 Settlement Agreement created an enforceable contract between Plaintiff and Defendant Morristown.

274) Beginning in January 2015 and continuing thereafter, Morristown has blatantly breached its obligations under this contract.

275) These breaches, individually and collectively, were material.

276) As a direct and proximate result of Defendant Morristown's breaches, Plaintiff suffered injury for which the Defendant is liable.

**NINTH CAUSE OF ACTION
BREACH OF THE TEMPORARY EASEMENT AGREEMENT
Against Defendants Morristown and Morristown Development**

277) Plaintiff repeats and re-alleges the allegations set forth above as if fully set forth herein.

278) The Temporary Easement Agreement created an enforceable contract between Plaintiff, Defendant Morristown and Defendant Morristown Development.

279) Defendants Morristown and Morristown Development have blatantly breached their obligations under this contract.

280) These breaches, individually and collectively, were material.

281) As a direct and proximate result of Defendant Morristown's and Defendant Morristown Development's breaches, Plaintiff suffered injury for which the Defendants are liable.

**TENTH CAUSE OF ACTION
BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING
Against Defendant Morristown**

282) Plaintiff repeats and re-alleges the allegations set forth above as if fully set forth herein.

283) In entering into the 2015 Settlement Agreement with Plaintiff, Defendant Morristown knew or should reasonably have known that Plaintiff's primary incentive to enter into a settlement agreement was to be able to develop Phase 3 in a commercially reasonable manner.

284) The actions of Defendant Morristown since entering into the 2015 Settlement Agreement have been in bad faith and have had the effect of destroying or injuring the Plaintiff's right to receive the fruits of the contract comprised by the 2015 Settlement Agreement.

285) As a direct and proximate result of Defendant Morristown's breaches, Plaintiff suffered injury for which the Defendant is liable.

**ELEVENTH CAUSE OF ACTION
TORTIOUS INTERFERENCE WITH CONTRACT
Against Dougherty, Abramson, Topology & John Does 1 - 10**

286) Plaintiff repeats and re-alleges the allegations set forth above as if fully set forth herein.

287) To the extent that the actions by Defendants Dougherty, Abramson, Topology and John Does 1 – 10 are not attributable to Morristown, these actions have intentionally and improperly interfered with the performance of the 2015 Settlement Agreement.

288) Plaintiff has been injured by these intentional and improper actions.

**TWELFTH CAUSE OF ACTION
CIVIL CONSPIRACY
CONCERNING BREACH OF THE 2015 SETTLEMENT AGREEMENT
Against Dougherty, Abramson, Topology and John Does 1 - 10**

289) Plaintiff repeats and re-alleges each of the allegations above as if fully set forth herein.

290) Defendants Dougherty, Abramson, Topology and John Does 1 – 10 conspired and acted in concert to prevent Plaintiff from receiving the benefits of the 2015 Settlement Agreement and from receiving the benefits of Plaintiff's ownership of the real property located in Phase 3.

291) These Defendants committed numerous overt acts in support of their conspiracy as described at length in this Complaint.

292) As a direct and proximate result of the Defendants' wrongful acts, Plaintiff suffered injury.

**THIRTEENTH CAUSE OF ACTION
CIVIL CONSPIRACY
CONCERNING BREACH OF THE TEMPORARY EASEMENT AGREEMENT
Against Dougherty, Abramson, John Does 1 - 10 and Morristown Development**

293) Plaintiff repeats and re-alleges each of the allegations above as if fully set forth herein.

294) Defendants Dougherty, Abramson and John Does 1 – 10 conspired and acted in concert to deprive Plaintiff of its rights under the Temporary Easement Agreement, which explicitly stated that the easement was a “temporary” and non-exclusive easement. Instead, Defendants engaged in a course of conduct that ensured that the temporary easement would remain and would not be moved to another parcel.

295) Defendants Dougherty, Abramson, John Does 1 – 10 and Morristown Development conspired and acted in concert to harass Plaintiff and to deprive Plaintiff of its rights under the Temporary Easement Agreement, which explicitly stated that

Defendant Morristown Development at its “sole cost and expense, [was required to] perform all inspections, maintenance, repair and replacement of the Easement Area....”

296) The above-identified Defendants committed numerous overt acts in support of each of the above conspiracies as described at length in this Complaint.

297) As a direct and proximate result of the Defendants' wrongful acts, Plaintiff suffered injury.

**FOURTEENTH CAUSE OF ACTION
CONTRACTS CLAUSE – IMPAIRMENT OF THE 2015 SETTLEMENT
AGREEMENT (NEW JERSEY CONSTITUTION)
Against Morristown**

298) Plaintiff repeats and re-alleges the allegations above as if fully set forth herein.

299) Morristown's adoption of ordinances subsequent to the 2015 Settlement Agreement and other actions, as described above, have effected and constitute a substantial impairment of the 2015 Settlement Agreement and thereby of Plaintiff's contract rights under the New Jersey Constitution, Article IV, § 7, par. 3.

300) Morristown had no significant or legitimate public purpose in taking the actions that impaired Plaintiff's contract rights.

**FIFTEENTH CAUSE OF ACTION
DEFAMATION (Libel and Slander)
Against Inglesino**

301) Plaintiff repeats and re-alleges the allegations above as if fully set forth herein.

302) Defendant Inglesino made defamatory statements that were injurious to Plaintiff's reputation and exposed Plaintiff to hatred, contempt, ridicule and the loss of good will, and had the tendency to injure Plaintiff's trade and business.

303) Defendant's defamatory statements concerned Plaintiff.

304) Defendant's statements were false.

305) Defendant's statements were communicated to numerous people.

306) Defendant made his defamatory statements maliciously, with actual knowledge that they were false or with reckless disregard of the statements' truth or falsity.

307) Plaintiff seeks compensatory damages and punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- a) For specific performance of the 2015 Settlement Agreement;
- b) For compensatory damages caused by Morristown's unlawful taking of Plaintiff's Speedwell Conveyance Parcel
- c) For a Declaratory Judgment terminating the Temporary Easement, or in the alternative, for a Declaratory Judgment indicating Morristown has, by its actions, created a permanent easement and ordering Morristown to compensate Plaintiff for a temporary and permanent taking of Plaintiff's property as the case may be
- d) For injunctive relief prohibiting Morristown from issuing summonses to Plaintiff with regard to the Speedwell Conveyance Parcel
- e) For compensatory damages caused by Morristown's impairment of Plaintiff's contract rights by Defendants Morristown, Dougherty, Abramson, Topology and John Does 1 - 10;
- f) For compensatory damages caused by the violation of Plaintiff's due process rights by Defendants Morristown, Dougherty, Abramson, Topology and John Does 1 - 10;
- g) For compensatory and punitive damages for defamation by Defendant Inglesino;
- h) For punitive damages;

- i) For interest;
- j) For costs of suit;
- k) For attorneys' fees; and
- l) For such other relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand trial by jury on all issues herein so triable.

LOCAL CIVIL RULE 11.2 CERTIFICATION

Plaintiffs, by and through their undersigned counsel, hereby certify that the matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

LOCAL CIVIL RULE 201.1 CERTIFICATION

Plaintiffs, by and through their undersigned counsel, hereby certify that damages recoverable exceed the sum of \$150,000 exclusive of interest and costs and any claim for punitive damages.

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s/ Linda Cahn

November 4, 2019