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TERESI INVESTMENTS, a California Limited Partnership

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 18 CITY OF MOUNTAIN VIEW

19 UNITED STATES DISTRICT COURT
 20 NORTHERN DISTRICT OF CALIFORNIA
 21 SAN JOSE DIVISION

22 TERESI INVESTMENTS, a California
 Limited Partnership
 23
 24 Plaintiff,
 25
 vs.
 26
 27 CITY OF MOUNTAIN VIEW, a Municipal
 Corporation, and DOES 1-10, inclusive
 28
 Defendants.

Case No.: C10-04714 EJD

STIPULATION AND ^{F.O.D.}[PROPOSED]
 ORDER FOR FILING AMENDED
 COMPLAINT

1 IT IS HEREBY STIPULATED by and between the parties hereto, through their
2 respective attorneys of record, that Plaintiff may file an amended complaint, a copy of
3 which is attached hereto.

4 IT IS FURTHER STIPULATED that the amended complaint shall be deemed
5 served on defendant on the date this stipulation is approved by the court, and that
6 defendant shall have thirty (30) days from the date of service to answer or otherwise
7 respond to the amended complaint.

8
9 Dated: May 26, 2011

MATTEONI, O'LAUGHLIN & HECHTMAN

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12 _____
13 NORMAN EDWARD MATTEONI, ESQ.
14 GERALD HOULIHAN, ESQ.
15 Attorneys for Plaintiff
16 TERESI INVESTMENTS

17
18 Dated: May 26, 2011

STUBBS & LEONE

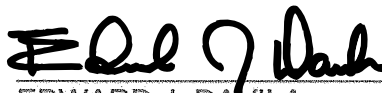
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21 _____
22 LOUIS A. LEONE, ESQ.
23 JENNIFER N. LOGUE, ESQ.
24 Attorneys for Defendant
25 CITY OF MOUNTAIN VIEW

26
27 PURSUANT TO STIPULATION, IT IS SO ORDERED:

28 Plaintiff shall file its Amended Complaint as a separate docket entry on or before June 10, 2011.

Dated: June 6, 2011



EDWARD J. DAVILA
United States District Judge

ATTACHMENT

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9 Attorneys for Plaintiff, TERESI INVESTMENTS, III a California limited partnership

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 (SAN JOSE DIVISION)

14 TERESI INVESTMENTS, III, a California
limited partnership,
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16 Plaintiff,
17
18 vs.
19 CITY OF MOUNTAIN VIEW, a municipal
corporation, and DOES 1-10, inclusive,
20
21 Defendants.
22

UNLIMITED JURISDICTION. AMOUNT IN
CONTROVERSY EXCEEDS \$25,000

Case No.: 5:10-CV-04714-EJD

FIRST AMENDED COMPLAINT FOR

1. VIOLATION OF UNITED STATES - -
CONSTITUTION 14TH AMENDMENT DUE
PROCESS;
2. VIOLATION OF UNITED STATES
CONSTITUTION 14TH AMENDMENT - -
EQUAL PROTECTION; AND
3. REQUEST FOR JURY TRIAL.

23 Plaintiff TERESI INVESTMENTS, III, a California limited partnership, alleges as follows:

24 **PRELIMINARY ALLEGATIONS**

25 1. TERESI INVESTMENTS, III, a California limited partnership (hereinafter
26 "Plaintiff" and/or TERESI INVESTMENTS") formerly owned property in Santa Clara County
27 located at 291 Evandale, Mountain View, California (hereinafter referred to as the "subject
28 property"). The subject property was an apartment complex and included sixteen (16) two-

1 Story wood frame structures with adjoining covered parking, a playground area and an in-
2 ground pool.

3 2. Defendant CITY OF MOUNTAIN VIEW is a municipal corporation (hereinafter
4 referred to as "Defendant" and/or "CITY OF MOUNTAIN VIEW"). At all times said
5 Defendant was empowered and authorized to adopt and enforce rules and regulations for
6 the building, remodeling, and rehabilitating of real property located within its jurisdiction.

7 3. Plaintiff is ignorant of the true names and capacities, whether individual,
8 corporate, associate or otherwise of Defendants named herein as DOES 1 through 10,
9 inclusive, and therefore sues said Defendants by such fictitious names pursuant to the
10 Code of Civil Procedure §474. Plaintiff will pray leave of Court to amend this Complaint to
11 allege their true names and capacities when the same have been ascertained.

12 4. Plaintiff is informed and believes, and thereon alleges, that each of the
13 fictitiously named Defendants are responsible in some manner for the occurrences herein
14 alleged and that Plaintiff's injuries and damages were proximately caused thereby. As used
15 herein, the word "Defendants" shall mean the named Defendants as set forth above and
16 Defendants DOES 1 through 10, and each of them.

17 5. At all times mentioned herein, Defendants, and each of them, were the
18 agents, servants, employees, or alter egos of their co-defendants, and each of them, and
19 were joint venturers with, or co-partners with, or sureties for their co-defendants, and each
20 of them, and were at all times mentioned herein acting within the course and scope of said
21 agency, employment, and/or other relationship.

22 **FIRST CAUSE OF ACTION**

23 **(Violation of United States Constitution, 14th Amendment**
24 **Against Defendant City of Mountain View)**

25 **(Substantive Due Process and Procedural Due Process)**

26 6. Plaintiff incorporates by reference the allegations of paragraphs 1 through 5
27 as though set forth in full herein.

28 7. In or about 2006, Plaintiff TERESI INVESTMENTS entered into a Purchase

1 Agreement, subject to various conditions and contingencies, to a developer who wanted to
2 demolish the complex and build residential condominiums for resale to the public. This
3 transaction required a demolition permit and rezoning which were approved by the CITY OF
4 MOUNTAIN VIEW's City Council in December, 2006.

5 8. One of the concerns expressed by the CITY OF MOUNTAIN VIEW at the time
6 were the costs that would be incurred by the mostly low income tenants who resided in the
7 subject property when they moved. In anticipation of the sale, which ultimately did not go
8 through, Plaintiff elected to vacate the subject property prior to close of escrow. Plaintiff
9 voluntarily paid some of the tenants' expenses, forgave rent, and took other actions in order
10 to assist many of the tenants to help them move. This was not a condition of approval of
11 the demolition permit. The CITY OF MOUNTAIN VIEW's City Council decided that it
12 wanted the tenants to receive more help, and elected to voluntarily use about \$125,000 of
13 the CITY OF MOUNTAIN VIEW's low income housing fund to further supplement the
14 assistance provided by Plaintiff. Plaintiff is informed and believes and thereon alleges that
15 the bulk of this money was spent by the CITY OF MOUNTAIN VIEW on supervision
16 expenses, not on actual payments to the tenants. This was not a condition of approval of
17 the rezoning. Plaintiff complied 100% with the tenant relocation terms.

18 9. After the property was vacant, the real estate market softened, as did the
19 economy, and the buyer of the subject property elected not to go forward with the
20 transaction. As a result, by March, 2008, Plaintiff was the owner of a vacant complex which
21 it needed to re-rent in order to generate income to use for, among other things, payment of
22 the existing first deed of trust secured by the subject property.

23 10. In 2008, Plaintiff, through its representatives, discussed with the CITY OF
24 MOUNTAIN VIEW plans for renovating the project. In or about June of 2008, Plaintiff
25 through its representatives discussed its plans for renovating the 63-unit project. Plaintiff
26 was scheduled to complete the rehabilitation before the end of the year. Plaintiff is
27 informed and believes and thereon alleges that its plans for the subject property were a
28 conforming use. However, the then CITY OF MOUNTAIN VIEW'S attorney, on behalf of

1 the CITY OF MOUNTAIN VIEW, advised Plaintiff that the CITY OF MOUNTAIN VIEW had
2 already spent money thinking that the property was going to be demolished, and advised
3 Plaintiff that they must now allow the CITY OF MOUNTAIN VIEW to inspect the property
4 and also go through a design review process all the way through to the CITY OF
5 MOUNTAIN VIEW's City Council.

6 11. In October, 2008, Plaintiff pulled a roof permit to start re-roofing the units.
7 Plaintiff is informed and believes and thereon alleges that under the CITY OF MOUNTAIN
8 VIEW's system, these are non discretionary permits, and one of the few types of permits
9 available on-line. In fact, after the roof permits were issued, the CITY OF MOUNTAIN
10 VIEW red tagged and issued a stop work notice stating falsely, that no permit had been
11 pulled. The CITY OF MOUNTAIN VIEW'S attorney then, on behalf of the CITY OF
12 MOUNTAIN VIEW, refused to allow issuance of the permit or any permit for any other work
13 to be performed until all the units were inspected. Plaintiff objected to the design review in
14 a letter from its counsel in December, 2008 and its representatives met with staff and the
15 CITY OF MOUNTAIN VIEW's City Attorney in an attempt to resolve the dispute.

16 12. For several months thereafter, meetings ensued between representatives for
17 Plaintiff and the CITY OF MOUNTAIN VIEW, a fence was put around the property at the
18 CITY OF MOUNTAIN VIEW's request, and the CITY OF MOUNTAIN VIEW inspected the
19 units. No notices of violation were issued and no abatement actions issued by the CITY OF
20 MOUNTAIN VIEW. Plaintiff is informed and believes and thereon alleges that although
21 work needed to be performed to make the units habitable, there was nothing that could not
22 be easily performed. In fact, a portion of the property was occupied by a caretaker. Plaintiff
23 is further informed and believes and thereon alleges that the work to be performed could
24 have been undertaken pursuant to non-discretionary building permits. The CITY OF
25 MOUNTAIN VIEW however, claimed that the prior work on the complex was done without
26 design review. That alleged work was very minor (e.g. a 4-foot tall, 6-foot wide masonry
27 wall serving as a partial fence to the entry to the property. Because the CITY OF
28 MOUNTAIN VIEW red tagged the building, exposed roofs could not be completed and were

1 exposed to the rain for the next year.

2 13. In or about December, 2008, the CITY OF MOUNTAIN VIEW turned off the
3 water supply to the water, meaning that the custodian and manager who lived on the
4 property was required to leave, and the landscaping would die. These actions were taken
5 without notice and without any hearing. The CITY OF MOUNTAIN VIEW later complained
6 about the dead landscaping which was a direct result of its unlawful acts and asserted that
7 replacing the dead landscaping required design review. The CITY OF MOUNTAIN VIEW
8 later issued a weed abatement notice but initially refused a permit to remove the weeds that
9 had arisen as a result of a caretaker being unable to live at and care for the property.
10 Plaintiff also continued to paint the outside of the building and remove tile and carpet
11 throughout each unit. The CITY OF MOUNTAIN VIEW, through its City Attorney, instructed
12 the Mountain View Police to arrest any employee or vendor conducting any work on the
13 building. Thereafter, Plaintiff ceased all work on the subject property.

14 14. In or about February, 2009, Plaintiff applied for another roof permit. Plaintiff is
15 informed and believes and thereon alleges that the contractor went in personally to obtain
16 one over the counter and was informed that staff would have to talk to the CITY OF
17 MOUNTAIN VIEW's attorney and that no permits were to be issued for this subject
18 property. No other explanation was provided.

19 15. The CITY OF MOUNTAIN VIEW continued to assert that no permits would be
20 issued without design review. In the meantime, potential buyers for the subject property
21 were interacting with the CITY OF MOUNTAIN VIEW and Plaintiff, and Plaintiff's lender was
22 going unpaid as a result of the lack of revenue stream, all of which was known to the CITY
23 OF MOUNTAIN VIEW.

24 16. Ultimately, it became clear to Plaintiff that the subject property could not be
25 sold as a result of the obstreperous conduct of the CITY OF MOUNTAIN VIEW and its
26 refusal to issue any permits to Plaintiff.

27 17. On or about August 21, 2009, Plaintiff submitted to Defendant CITY OF
28 MOUNTAIN VIEW an application to re-roof the subject property. The roof was a flat, tar

1 and gravel roof, not visible to the public. Defendant CITY OF MOUNTAIN VIEW issued that
2 permit.

3 18. Plaintiff processed the re-roofing permit by an online system. As set forth
4 above, it is one of the few types of building permits that are issued online, with the others
5 being permits for furnace replacement, water heater replacement and a water service line.

6 19. On or about August 25, 2009, representatives of the CITY OF MOUNTAIN
7 VIEW told Plaintiff in a telephone call that the building permit was revoked. No reason was
8 given, other than that "no permits could be issued" for the subject property.

9 20. On or about August 28, 2009, an appeal of the revocation of the permit was
10 filed with the CITY OF MOUNTAIN VIEW's City Council.

11 21. As requested by Defendant CITY OF MOUNTAIN VIEW, on or about October
12 5, 2009, Plaintiff submitted a letter summarizing the basis for the appeal.

13 22. The appeal was heard by CITY OF MOUNTAIN VIEW's City Council on or
14 about October 27, 2009. Defendant CITY OF MOUNTAIN VIEW submitted a written staff
15 report to the CITY OF MOUNTAIN VIEW's City Council on or about that same date. Other
16 than making the staff report available to the general public at the hearing, Defendant CITY
17 OF MOUNTAIN VIEW did not provide Plaintiff with a copy of the staff report at any earlier
18 time, and did not provide Plaintiff with any meaningful opportunity to respond to or rebut the
19 statements made in that staff report.

20 23. At the hearing, the appeal was discussed by staff, Plaintiff, CITY OF
21 MOUNTAIN VIEW's City Council members, and members of the public. Following the
22 hearing, the appeal was denied by CITY OF MOUNTAIN VIEW's City Council. The CITY
23 OF MOUNTAIN VIEW's City Council adopted findings prepared in advance of the hearing,
24 and did not modify the findings to take into account the discussions during the hearing.

25 24. Plaintiff has a right to use its property free from arbitrary and undue
26 interference as the right to use land is a protected property right. During all relevant times,
27 Defendant CITY OF MOUNTAIN VIEW was aware that the subject property was vacant,
28 was not generating any income, was subject to a mortgage requiring monthly payments of

1 principal and interest, and that the refusal of Defendant CITY OF MOUNTAIN VIEW to
2 issue permits as requested by Plaintiff would lead to Plaintiff's loss of ownership of the
3 subject property, through foreclosure or otherwise. As a direct and foreseeable
4 consequence of Defendant CITY OF MOUNTAIN VIEW's wrongful actions, Plaintiff suffered
5 a great financial loss and in October, 2009, was compelled to execute a deed in lieu of
6 foreclosure for the subject property to mitigate its damages.

7 25. Defendant CITY OF MOUNTAIN VIEW's continued practice of requiring
8 Plaintiff to obtain a development review permit before Plaintiff could obtain a permit to re-
9 roof one or more of the buildings and other building permits to which it was otherwise
10 entitled was unlawful and contrary to the obligations of Defendant CITY OF MOUNTAIN
11 VIEW's respective public offices and trusts and duties arising therefrom. Plaintiff is
12 informed and believes and thereon alleges that the CITY OF MOUNTAIN VIEW issues
13 roofing permits to other properties and to other owners without requiring design review.

14 26. Defendant CITY OF MOUNTAIN VIEW's continued practice of imposing this
15 unlaw condition on Plaintiff's applications for buildings permits caused great and irreparable
16 injury, loss and damage to the Plaintiff, and impermissibly interfered with Plaintiff's use of
17 the subject property. The City Council endorsed and ratified this practice when it denied
18 Plaintiff relief.

19 27. Defendant CITY OF MOUNTAIN VIEW had and has a clear, present and
20 ministerial duty to approve an application for a building permit when a property owner such
21 as Plaintiff has complied with all legal requirements for obtaining such a permit.

22 28. Plaintiff complied with all the legal requirements for obtaining a permit for its
23 proposed re-roofing, and had a beneficial right to a permit allowing it to re-roof the subject
24 property.

25 29. Re-roofing of a flat, tar and gravel roof on a two-story wood frame building,
26 which roof work is not visible to the public, is outside the scope of the Development Review
27 Process and does not require a determination by the Zoning Administrator that the work is
28 exempt.

1 30. As an owner of property located within the City of Mountain View, Plaintiff is
2 and was entitled to the use of the subject property free of regulations having no substantial
3 relation to the public health, safety, morals, or general welfare.

4 31. Additionally, Plaintiff is and was entitled to the same procedural and
5 substantive due process with respect to its application for permits and other applications
6 made to the CITY OF MOUNTAIN VIEW as set forth above as any other applicant similarly
7 situated.

8 32. Plaintiff is informed and believes and thereon alleges that subsequent to
9 Plaintiff's ownership of the subject property, that the subject property was acquired by non-
10 party Bay West Realty Capital, who was able to acquire roof permits, other permits, and
11 inspections of the subject property from the CITY OF MOUNTAIN VIEW without the
12 arbitrary and capricious denials of same and without the obstreperous and obstructive
13 conduct exhibited by the CITY OF MOUNTAIN VIEW with respect to Plaintiff's applications.
14 Plaintiff is informed and believes and thereon alleges that the denial of its various
15 applications as set forth above was based wholly or in part on Defendant CITY OF
16 MOUNTAIN VIEW's personal animosity towards Plaintiff and its representatives and was
17 intentional and disparate treatment on the part of Defendant CITY OF MOUNTAIN VIEW.
18 Plaintiff is informed and believes and thereon alleges that the then City Attorney of the CITY
19 OF MOUNTAIN VIEW had personal animosity toward Plaintiff and that the City Council
20 ratified and adopted the actions and conduct of the City Attorney and its members also
21 exhibited this personal animosity towards Plaintiff. Defendant CITY OF MOUNTAIN VIEW
22 treated the subject property's subsequent owner differently and gave them favorable
23 treatment. Plaintiff is informed and believes and thereon alleges that said subsequent
24 owner, Bay West Realty Capital, was an owner in a similarly situated position as Plaintiff.

25 33. Plaintiff is informed and believes and thereon alleges as set forth above that
26 the difference in treatment was intentional, there was no rational basis for same, and that
27 Defendant CITY OF MOUNTAIN VIEW's treatment of Plaintiff was wholly arbitrary, and
28 irrational, and made with the intent to deprive Plaintiff of its rights and/or in reckless

1 disregard of those rights.

2 34. As a proximate result of the conduct of Defendant CITY OF MOUNTAIN
3 VIEW, Plaintiff suffered loss of rent beginning in or about January, 2009 through the time it
4 was compelled to execute a deed in lieu of foreclosure to mitigate damage in excess of
5 \$915,000. Plaintiff is informed and believes and thereon alleges that loss or rents if Plaintiff
6 had been allowed to rehabilitate the building as planned for a 5-year period of time would
7 have been in excess of \$4,500,000 with no rent increase and over \$5 million if the rate had
8 been increased during that time. Further, Plaintiff had entered into an agreement to sell the
9 building to another entity and lost its opportunity to sell the subject property as a result of
10 Defendant's capricious and arbitrary conduct. Plaintiff is informed and believes and thereon
11 alleges that the building would have continued to appreciate over time and that Plaintiff's
12 loss of equity in the range of \$16-20 million.

13 35. The conduct of Defendant CITY OF MOUNTAIN VIEW constitutes a violation
14 of Section 1 of the 14th Amendment to the United States Constitution, and the suit is
15 brought pursuant to the Federal Civil Rights Act, 42 U.S.C. § 1983.

16 36. WHEREFORE, Plaintiff prays for relief against Defendants as more fully set
17 forth below.

18 **SECOND CAUSE OF ACTION**

19 **(Violation of United States Constitution, 14th Amendment**
20 **Against Defendant City of Mountain View)**

21 **(Equal Protection)**

22 37. Plaintiff incorporates by reference the allegations of paragraphs 1 through 36
23 as though set forth in full herein.

24 38. The conduct of Defendant CITY OF MOUNTAIN VIEW constitutes a violation
25 of Section 1 of the 14th Amendment to the United States Constitution, and the suit is
26 brought pursuant to the Federal Civil Rights Act, 42 U.S.C. § 1983.

27 39. As a proximate result of the conduct of Defendant CITY OF MOUNTAIN
28 VIEW, Plaintiff suffered consequential damages and loss of rent and usage of the subject
property as set forth above.

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40. The above – cited actions of Defendant City of Mountain resulted in inappropriate disparate treatment of Plaintiff entitling Plaintiff to proximately caused damages according to proof.

PRAYER

WHEREFORE, Plaintiff prays as follows:

1. For general damages in an amount in excess of the jurisdiction of this court plus interest at the legal rate;
2. For special damages in an amount according to proof;
3. Any other damages or relief the Court may determine that Plaintiff is entitled to.

DATED: 5/26/2011

MATTEONI, O'LAUGHLIN & HECHTMAN

By: 
GERALD HOULIHAN
Attorneys for Plaintiff