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 Counsel for Plaintiff
 The Garden at Red Bank

THE GARDEN AT RED BANK,		SUPERIOR COURT OF NEW JERSEY
		: LAW DIVISION:
		: DOCKET NO.
Plaintiff,		
		: Civil Action
v.		
		: VERIFIED COMPLAINT
BOROUGH OF RED BANK,		
		: (in Lieu of Prerogative Writs And Seeking
Defendant.		Declaratory Relief)
		:

Plaintiff The Garden at Red Bank ("The Garden" or "Plaintiff"), by way of Complaint in Lieu of Prerogative Writs against Defendant Borough of Red Bank says:

THE PARTIES

1. The Garden is a duly organized woman-owned, single-purpose limited liability company of the State of New Jersey formed for the application and operation of a Class 5 Retail Cannabis Dispensary.
2. The Borough is a municipality in Monmouth County and a body corporate and politic in the State of New Jersey.

JURISDICTION AND VENUE

3. The Court has jurisdiction under Rule 4:3-1(a) (5) and Rule 4:69-1 et seq.
4. Venue is proper under Rule 4:3-2(a) (2).

ALLEGATIONS COMMON TO ALL COUNTS

5. On or about February 22, 2021 New Jersey adopted P.L. 2021, c. 16, known as the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (the “Act”), which legalizes the recreational use of cannabis by adults 21 years of age or older, and establishes a comprehensive regulatory and licensing scheme for commercial recreational cannabis operations, use and possession.

6. The Act authorizes municipalities by ordinance to adopt regulations governing the number of cannabis businesses allowed to operate within their boundaries, as well as, *inter alia*, the location, manner and times of operation of such businesses.

7. Under the Act, a prospective cannabis business license-applicant is required to submit to the New Jersey Cannabis Regulatory Commission, *inter alia*, a resolution from the governing body of any potential host-municipality certifying that the municipality has authorized the type of cannabis businesses seeking to operate within its jurisdiction, and a confirmation that, if the municipality has imposed a limit on the number of licensed cannabis businesses, the issuance of a license to the license applicant by the commission would not exceed that limit.

8. Pursuant to Borough Ordinance No. 2021-17, the Borough permitted and established land use regulations and local taxes for regulated cannabis businesses within the Borough in accordance with the Act and the New Jersey Municipal Land Use Law (the “Borough Cannabis Ordinance”).

9. At all times relevant, The Garden, as contract purchaser, is and was an applicant for a Class 5 retail dispensary license for a proposed 2,523 sq. ft. building located at 199 Riverside

Ave., Block 1, Lot 1 (hereinafter “the Property”). The Property was previously used as a gas station and, prior to that, had been approved for a hotel.

10. In support of its proposed license application to the New Jersey Cannabis Regulatory Commission, The Garden requested that the Borough issue a resolution certifying that the municipality has authorized the type of cannabis businesses seeking to operate within its jurisdiction, and a confirmation that, if the municipality has imposed a limit on the number of licensed cannabis businesses, the issuance of a license to the license-applicant by the Commission would not exceed that limit.

11. On November 22, 2022, the Borough adopted Resolution No. 22-287 confirming that the issuance of a cannabis license to The Garden would not exceed the Borough’s established limit, stating in part that the Governing Body “finds that the Borough has indeed authorized the type of cannabis business license being sought by the license-applicant, and the issuance of a license to the applicant by the Commission would not exceed any municipally imposed limit” (the “Confirmation Resolution”).

12. In reliance upon the Confirmation Resolution, as well as upon its communications otherwise with the Borough, The Garden proceeded to take such steps as were necessary to secure all state and local cannabis licensing as well as local zoning approval to utilize the Property as a Class 5 retail dispensary.

13. On or about April 12, 2023, the Borough adopted Ordinance No. 2023-14 introduced Ordinance amending Chapter 270 entitled “CANNABIS” of Code of the Borough of Red Bank, New Jersey.

14. Among other things, Ordinance No. 2023-14 established a new municipal Cannabis Review Board to act as an advisory committee to the Borough's governing body, and to review and evaluate all cannabis license applications.

15. Upon information and belief, the Cannabis Review Board consists of a borough council appointed councilmember, the chief of police, the director of Community Development and the director of Code Enforcement.

16. Ordinance No. 2023-14, capped the respective number of Class 1-6 licenses, including a cap on the number of Class 5 Retail dispensary licenses of three (3).

17. Ordinance No. 2023-14 further provided that in the event there are multiple applicants for a cannabis license, the Cannabis Review Board shall evaluate all applicants and issue a notification of award after consideration and evaluation pursuant to the scoring criteria therein.

18. Ordinance No. 2023-14 further provided that the Cannabis Review Board "shall receive and review license applications for cannabis businesses and conduct a hearing with each applicant."

19. In reliance upon the Confirmation Resolution, as well as upon its communications otherwise with the Borough, on May 31, 2023, The Garden applied to the New Jersey Cannabis Regulatory Commission for a Class 5 Retailer license for its proposed cannabis business from the Property (the "State Cannabis License Application").

20. By application dated June 29, 2023, and in further reliance upon the Confirmation Resolution, as well as upon its communications otherwise with the Borough, the Garden applied to the Planning Board of the Borough of Red Bank (the "Planning Board") for major site plan

approval and associated relief for use of the Property as a Class 5 Cannabis Dispensary, application number 23-15253 (the “Planning Board Application”).

21. On September 28, 2023, the Planning Board, through its professionals, advised The Garden that its Planning Board Application was deemed complete and thereafter advised that its application was scheduled to be heard by the Planning Board on November 6, 2023, subject to satisfactory public notice.

22. By application dated October 23, 2023, and in reliance upon the Confirmation Resolution, as well as upon its communications otherwise with the Borough, The Garden applied to the Borough for a local Cannabis Establishment License (the “Cannabis License Application”).

23. The Garden remitted all fees and escrow sums requested and necessary in connection with the Planning Board Application and the Cannabis License Application, and remitted all applicable documents and information required to complete the respective applications.

24. The Planning Board conducted duly noticed public hearings on The Garden’s application in November 6, 2023 and December 7, 2023, and thereafter approved the application, which approval was memorialized in the Board’s resolution adopted March 4, 2024 (the “Planning Board Resolution”).

25. During the course of pursuing and prosecuting the Planning Board Application and the Cannabis License Application, The Garden remained in direct communication with the Borough and its agents, so as to advise of the status and progress of each.

26. As an example of the foregoing, (i) by letter dated September 14, 2023, The Garden apprised the Borough’s governing body of the status of its pending application to the New Jersey

Cannabis Regulatory Commission; (ii) by letter dated September 21, 2023, The Garden further apprised the Borough's governing body that it was proceeding with the Planning Board Application and that it was prepared to satisfy all the relevant requirements thereof; and (iii) The Garden participated in at least two (2) meetings with Borough's Downtown Improvement Committee.

27. In light of the foregoing,

28. In its dealings with the Borough's municipal officials, professionals and staff, The Garden was not informed of any adverse issues with its licensing applications.

29. However, and only as a result of a casual remark by the Planning Board's engineer to The Garden's project engineer on the eve of its appearance before the Planning Board did The Garden learn that the Borough had already committed to grant three Class 5 cannabis licenses to other operators.

30. The Garden, through its professionals, subsequently inquired as to the status of any other pending cannabis license applications and was advised that "license applications were continuing to be reviewed as they came in with no deadline." Moreover, it was told that only "two licenses had been awarded."

31. In light of and in particular reliance upon that representation, The Garden continued with its efforts to secure all necessary cannabis approvals and licenses, and expended substantial effort and costs in the pursuit of same.

32. Subsequently, however, The Garden came to learn that in fact all three Class 5 licenses had been awarded by the Borough in October, 2023.

33. The Garden, through its submissions to the Planning Board and to the Borough amply demonstrated it qualified for the issuance of cannabis license with respect to its proposed operations at the Property.

34. The Garden, through its submissions to the Planning Board and to the Borough, clearly demonstrated that it was relying upon the Confirmation Resolution, as well as upon its communications otherwise with the Borough, that at least one of the three Class 5 cannabis license remained available and that therefore it could continue in its efforts to secure all necessary cannabis approvals and licenses.

35. The Borough knew or should of known of The Garden's intent to secure and pursue its local cannabis license and of its efforts and actions to secure same.

36. Despite the foregoing, the Borough did not properly process the Cannabis License Application pursuant to Ordinance 2023-14 and associated regulations.

37. Further, the Borough demonstrated serious and substantial irregularities with its award of licenses to three operators other than The Garden, particularly in light of the Garden's complete and timely submission of its own application materials.

38. Despite the timeliness of its submissions, the Borough's Cannabis Review Board never held a hearing on The Garden's application.

39. The Borough provided no correspondence at any time to The Garden that cannabis licenses applications were closed and that all three of the applicable Class 5 licenses had been awarded to other applicants and not The Garden.

40. The Borough otherwise provided inaccurate and misleading information and direction to The Garden about and regarding the processing of its Cannabis License Application on which The Garden detrimentally relied.

41. These irregularities obstructed The Garden from obtaining a local cannabis retail dispensary license in the Borough to which it was already twice deemed to be qualified.

42. The Borough conducted a flawed, inconsistent and ultimately prejudicial licensing process both generally and particularly with respect to the Garden.

43. In light of the foregoing, The Garden approached the Borough and requested that Ordinance 2023-14 be amended to allow the additional issuance of a Class 5 cannabis license, and that its application for same be approved.

44. The Borough has made no formal reply to The Garden's request and has otherwise refused The Garden's demands for resolution.

45. To date, the Borough has still not formally denied or otherwise acted upon The Garden's Cannabis License Application.

46. At all times the Borough is and was obligated to be impartial, transparent and devoid of arbitrary judgment in the review of processing of cannabis license applications submitted to it.

47. However, the Borough, in its application of Ordinance 2023-24 and the processing of license applications submitted thereunder, including the of the Garden, was flawed, non-transparent, arbitrary, misleading and capricious.

48. Moreover, the Borough, knowing of The Garden's application efforts, had a duty to communicate to The Garden that the license it sought was not, or would not be, available.

49. As a result of the Borough's breach of its duties and obligations, the Garden has suffered extensive actual and prospective damages, including but not limited to loss of future earnings, the incurring of licensing and planning application costs, acquisition costs, contract and related extension costs, architectural and engineering fees, environmental remediation and legal costs.

CAUSES OF ACTION

FIRST COUNT

(Municipal Inaction and *Mandamus*)

50. Plaintiff The Garden repeats each and every allegation contained in the preceding paragraphs of this Complaint as if the same were set forth herein at length

51. By adopting Ordinance 2023-14, the Borough encouraged cannabis related businesses such as Plaintiff to apply for licenses to operate within the municipality.

52. Plaintiff timely submitted its formal Red Bank Cannabis License Application. to be licensed as a Class 5 retail dispensary.

53. In reliance upon the Confirmation Resolution, as well as upon its communications otherwise with the Borough, The Garden continued its efforts to secure all necessary cannabis approvals to its detriment.

54. Plaintiff completed and submitted all the requisite documentation and submitted all required fees in support of its Cannabis License Application.

55. Plaintiff's application submissions complied with the Borough's technical and procedural requirements.

56. Nevertheless, the Borough decided to take no formal action with respect to the Cannabis License Application and has otherwise not formally responded to it.

57. The Borough's failure to act, and/or to act contrary to the provisions of Ordinance 2023-14, is a dereliction of a basic municipal obligation and thus unlawful and consequently detrimental to The Garden.

WHEREFORE, Plaintiff, The Garden at Red Bank demands judgment against the Borough of Red Bank (i) requiring that the Borough increase the available Class 5 Cannabis licenses within the municipality, (ii) requiring that the Borough in good faith review, and expressly grant or deny, Plaintiff's Cannabis License Application, and to explain with sufficiency its reasoning requiring the Borough in good faith, (iii) for such attorneys' fees and costs as may be provided for by law, and (iv) such other and further relief as the court may deem just and proper.

SECOND COUNT
(Arbitrary, Capricious, and Unreasonable)

58. The Garden repeats and realleges the allegations set forth above as if same were set forth at length herein.

59. In the event the Borough is deemed to have denied the Red Bank Cannabis License Application, such denial is arbitrary, capricious, and unreasonable in at least the following respects:

- a. Plaintiff followed the proper procedures and submitted all requested and necessary documents for the review and processing of Plaintiff's Cannabis License Application, all of which fully complied with the Borough's technical requirements;

- b. Plaintiff demonstrated that it possessed rights to the Property and has the expertise, financial capability and technical expertise to own and operate the proposed Class 5 Retail Cannabis Dispensary;
- c. The Borough failed to apply the criteria for selecting a Class 5 cannabis licensee in accordance with Ordinance 2023-14;
- d. The Borough arbitrarily and improperly ignored the fact that Plaintiff had already been awarded the Initial Cannabis Permit and effectively terminated same;
- e. The Borough failed to assess Plaintiff's qualifications as a proposed Class 5 Cannabis licensee and thus improperly denied the license application by making a premature and unfounded adverse decision and determination about the Plaintiff;
- f. The Borough improperly extinguished the Initial Cannabis Permit;
- g. The Borough never formally articulated any legitimate reason for denying Plaintiff's Cannabis License Application;
- h. The Borough never formally articulated any legitimate reason for preferring other cannabis licensee applicants over, and to the detriment of, Plaintiff; se Application

WHEREFORE, Plaintiff, The Garden at Red Bank demands judgment against the Borough of Red Bank (i) declaring that the Borough's denial of Plaintiff's Cannabis License Application is arbitrary, capricious and without rational basis; (ii) requiring that the Borough increase the available Class 5 Cannabis licenses within the municipality, (iii) requiring that the

Borough in good faith review, and expressly grant or deny, the Red Bank Cannabis License Application, and to explain with sufficiency its reasoning requiring the Borough in good faith, (iv) for such attorneys' fees and costs as may be provided for by law, and (v) such other and further relief as the court may deem just and proper.

THIRD COUNT
(Duty to "Turn Square Corners")

60. Plaintiff The Garden repeats each and every allegation contained in the preceding paragraphs of this Complaint as if the same were set forth herein at length.

61. In the exercise of its legislative and regulatory responsibilities, the Borough was at all times obligated to "turn square corners" as confirmed in F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418 (1985) and its progeny.

62. The Borough's primary obligation is to comport itself with compunction and integrity.

63. The Borough's provisions governing substantive standards and procedures for the Borough's administrative review process are premised on the concept that government will act scrupulously, correctly, efficiently, conscientiously and honestly.

64. The Borough has breached its duties and obligations to Plaintiff in all respects via its improper actions and inaction relative to The Garden's Cannabis License Application as exemplified in the errors, omissions, failures to act, irregularities, lack of transparency and failures to communicate as aforesaid.

WHEREFORE, Plaintiff, The Garden at Red Bank demands judgment against the Borough of Red Bank (i) declaring that the Borough failed to Turn Square Corners with respect

to Plaintiff's Cannabis License Application is arbitrary, capricious and without rational basis; (ii) requiring that the Borough increase the available Class 5 Cannabis licenses within the municipality, (iii) requiring that the Borough in good faith review, and expressly grant or deny, the Red Bank Cannabis License Application, and to explain with sufficiency its reasoning requiring the Borough in good faith, (iv) for such attorneys' fees and costs as may be provided for by law, and (v) such other and further relief as the court may deem just and proper:

TRENK ISABEL, SIDDIQI & SHAHDANIAN, P.C.
Counsel for Plaintiff
The Garden at Red Bank

By: /s/ Reginald Jenkins, Jr.
Reginald Jenkins, Jr., Esq.

DATED: July 3, 2024

R. 4:5-1 CERTIFICATION

We hereby certify pursuant to R. 4:5-1 that this matter is not the subject of any other action pending in any court or of a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated. We further certify that we are unaware of any non-party who should be joined in this action pursuant to R. 4:28 or who is subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party based on the same transactional facts.

TRENK ISABEL, SIDDIQI & SHAHDANIAN, P.C.
Counsel for Plaintiff
The Garden at Red Bank

By: /s/ Reginald Jenkins, Jr.
Reginald Jenkins, Jr., Esq.

DATED: July 3, 2024

VERIFICATION

JAMIE DINAR, being of full age, hereby certifies as follows:

1. I am the Managing Member of Plaintiff The Garden at Red Bank and I am authorized to make and execute this verification on its behalf.
2. I have read the allegations contained in the Verified Complaint and the same are true to the best of my knowledge, except where noted as on information and belief, as to which I believe them to be true.
3. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATED: July 9, 2024

Jamie Dinar
JAMIE DINAR

Signature: Jamie Dinar
Jamie Dinar (Jul 9, 2024 17:16 EDT)

Email: [REDACTED]

Civil Case Information Statement

Case Details: MONMOUTH | Civil Part Docket# L-002266-24

Case Caption: THE GARDEN AT RED BA NK VS
BOROUGH OF RED BANK
Case Initiation Date: 07/10/2024
Attorney Name: REGINALD JENKINS JR
Firm Name: TRENK ISABEL SIDDIQI SHAHDANIAN, P.C.
Address: 290 W. MT. PLEASANT AVE STE 2370
LIVINGSTON NJ 07039
Phone: 9735331000
Name of Party: PLAINTIFF : The Garden at Red Bank
Name of Defendant's Primary Insurance Company
(if known): None

Case Type: ACTIONS IN LIEU OF PREROGATIVE WRITS
Document Type: Complaint
Jury Demand: NONE
Is this a professional malpractice case? NO
Related cases pending: NO
If yes, list docket numbers:
Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO
Does this case involve claims related to COVID-19? NO
Are sexual abuse claims alleged by: The Garden at Red Bank? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO Title 59? NO Consumer Fraud? NO
Medical Debt Claim? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

07/10/2024
Dated

/s/ REGINALD JENKINS JR
Signed

