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*Attorneys for Plaintiff Tower Hill  
Condominium Association, Inc.*

TOWER HILL CONDOMINIUM  
ASSOCIATION, INC.,

Plaintiff,

-vs.-

BOROUGH OF RED BANK,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MONMOUTH COUNTY

Docket No. MON-L-

Civil Action

**COMPLAINT IN LIEU OF  
PREROGATIVE WRITS**

Plaintiff Tower Hill Condominium Association, Inc. (“Plaintiff” and/or the  
“Association”), a New Jersey non-profit corporation, by way of Complaint against Defendant  
Borough of Red Bank (“Defendant” and/or “the Borough”), hereby says as follows:

**PARTIES**

**A. Plaintiff**

1. The Association is a New Jersey non-profit corporation organized under Title  
15A of the laws of the State of New Jersey (N.J.S.A. § 15A:1-1 et seq. and N.J.S.A. 46:8B-1 et  
seq.) pursuant to a Certificate of Incorporation filed in the Office of the Secretary of State and a  
certain Master Deed recorded with the Clerk’s Office, Monmouth County, New Jersey with an  
address at c/o Towne & Country Management, Inc., 711 Sycamore Avenue, Red Bank, NJ  
07701

**B. Defendant**

2. Defendant is a municipal corporation of the State of New Jersey with offices located at 90 Monmouth Street, Red Bank, New Jersey 07701.

**BACKGROUND FACTS**

3. Upon information and belief, pursuant to the authority granted the Borough under the New Jersey County and Municipal Water Supply Act, N.J.S.A. 40A:31-1, *et seq.* (the “Water Supply Act”), the Borough owns and operates a duly licensed municipal water distribution system and Water Department under the regulations promulgated by the New Jersey Department of Environmental Protection (the “Water System”).

4. The rates to be charged and collection of sums for water usage by properties connected to the Water System are governed by applicable law including, but not limited to, the Water Supply Act.

5. The Borough has set up a billing system whereby Property owners connected to the Water System are to pay quarterly water usage charges to the Borough based upon the Borough’s readings of the meters placed, maintained and located on said properties and the rates established in accordance with applicable law.

6. Upon information and belief, pursuant to the authority granted the Borough under the New Jersey Municipal and County Sewerage Act, N.J.S.A. 40A:26A-1, *et seq.* (the “Sewerage Act”), the Borough owns and operates a duly licensed municipal sewerage system and Sewer Department under the regulations promulgated by the New Jersey Department of Environmental Protection (the “Sewer System”).

7. The rates to be charged and collection of sums for usage of the Sewer System by properties connected to the Sewer System are governed by applicable law including, but not limited to, the Sewerage Act.

8. The Borough has set up a billing system whereby Property owners connected to the Sewer System are to pay quarterly sewerage service charges to the Borough based upon the amount of water usage at the property during the corresponding billing period.

9. The Association is connected to the Borough's Water System and Sewer System.

10. The Association had paid and continues to pay all quarterly charges rendered to the Association.

11. In or around March 2020, the Borough sent an invoice to the Association for alleged Water System and Sewer System charges in the amount of \$146,698.08 (the "Disputed Amount"), an amount nearly five times greater than any previously billed quarterly charges dating back to 2014.

12. By letter dated March 20, 2020, the Borough advised the Association that the Borough had undercharged the Association for alleged water and sewer charges for seven previous quarters as a result of an unexplained "computer glitch

13. The Borough did not provide any documentation or other explanation in connection with its calculation of the Disputed Amount or of the actual usage.

14. By letters dated June 4, 2020, July 27, 2020, August 31, 2020 and October 13, 2020 to Mr. Cliff Keen ("Keen"), Director of Public Utilities for the Borough regarding the alleged undercharging, the Association, through counsel disputed the Association's obligation to pay the Disputed Amount and sought to amicably resolve the matter.

15. Despite the multiple correspondences sent by the Association to the Borough, no response has ever been provided by the Borough in connection with same and, to date, the Borough (a) has not provided any information as to the claimed “computer glitch”, (b) has not provided any explanation or detail as to the calculation of the Disputed Amount and related charges it claims are due from the Association and (c) continues to send Water System and Sewer System invoices to the Association for the Disputed Amount in addition to interest thereon without providing a justification or explanation of same.

16. Other than the Disputed Amount, to date, the Association continues to remain current on all quarterly Water System and Sewer System invoices rendered by the Borough.

17. The Association did not install, set, repair, remove, or make any connections to either the Sewer System or the Water System and all equipment was and is exclusively in the control of the Borough.

**FIRST COUNT**  
**(Declaratory Judgment)**

1. The Association repeats and realleges the allegations in paragraphs 1 through 17 of the Complaint as if same were forth fully set forth herein at length.

2. To date, the Borough continues to send Water System and Sewer System invoices to the Association for the Disputed Amount in addition to interest thereon.

3. To date, the Borough has refused to provide the Association with any information as to the claimed “computer glitch” and had not provided any explanation or detail as to the calculation of the Disputed Amount and related charges it claims are due from the Association..

4. As a proximate result of the conduct of the Borough as set forth above and possibly otherwise, the Association is entitled to discovery and a declaratory judgment (a) setting forth the actual amount, if any, due from the Association to the Borough for Water and Sewer

charges including, but not limited to, the Disputed Amount, (b) establishing the proper methodology for calculating Water and Sewer charges and other sums due from the Association to the Borough in connection with same, (c) declaring that the Disputed Amount is not due from the Association to the Borough and (d) for such other and further relief as the Court may deem appropriate including, but not limited to, interest, costs of suit and attorneys' fees and costs.

**COUNT TWO**  
**(Declaratory Judgment Negating Interest and  
Allowing for Amortization of Obligation)**

1. The Association repeats and realleges the allegations in paragraphs 1 through 17 and the First Count of the Complaint as if same were forth fully set forth herein at length.

2. Any failure to properly bill the Association resulting in the demand of the Borough for the Disputed Amount was solely the result of the negligence and/or other wrongful conduct of the Borough.

3. To date, the Borough continues to demand payment of the Disputed Amount from the Association in one lump sum in addition to interest thereon.

4. To the extent the Court determines that the Disputed Amount or any portion of the Disputed Amount is due from the Association to the Borough, as a matter of law and equity, any and all interest claimed by the Association on the Disputed Amount should be disallowed and the Association should be permitted a period of time within which to make whatever payment the Court determines to be due from the Association to the Borough.

5. As a proximate result of the conduct of the Borough as set forth above and possibly otherwise, in the event the Court determines that the Disputed Amount or any portion of the Disputed Amount is due from the Association to the Borough, the Association is entitled to judgment declaring that (a) the Association is not responsible for interest payments in connection

with the Disputed Amount and (b) the Association shall be permitted to amortize payments for what the Court determines is due over a period of time to be determined by the Court.

**WHEREFORE** the Association demands declaratory judgment against the Borough (a) setting forth the actual amount, if any, due from the Association to the Borough for Water and Sewer charges including, but not limited to, the Disputed Amount, (b) establishing the proper methodology for calculating Water and Sewer charges and other sums due from the Association to the Borough in connection with same, (c) declaring that the Disputed Amount is not due from the Association to the Borough, (d) declaring that the Association is not responsible for interest payments in connection with the Disputed Amount, (e) declaring that the Association shall be permitted to amortize payments for any amounts the Court determines are due over a period of time to be determined by the Court and (f) for such other and further relief as the Court may deem appropriate including, but not limited to, interest, costs of suit and attorneys' fees and costs.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule. 4:25-4, Gregg S. Sodini, Esq is hereby designated as trial counsel for the Association in the within matter.

**CUTOLO BARROS LLC**  
*Attorneys for Plaintiff Tower Hill*  
*Condominium Association, Inc.*  
 By: *s/Gregg S. Sodini*  
 Gregg S. Sodini, Esq.

Dated: March 10, 2021

**NON-JOINDER CERTIFICATION PURSUANT TO RULE 4:5-1(b)(2)**

I hereby certify pursuant to R. 4:5-1 that, to the best of my knowledge, this matter is not the subject of any other action pending in any court or of any pending arbitration proceeding currently pending before this Court, no other action or arbitration proceeding is contemplated at this time and I am currently unaware of any other parties who should be joined in this action.

**CUTOLO BARROS LLC**  
*Attorneys for Plaintiff Tower Hill  
Condominium Association, Inc.*  
By: s/**Gregg S. Sodini**  
Gregg S. Sodini, Esq.

Dated: March 10, 2021

**PERSONAL IDENTIFIER CERTIFICATION PURSUANT TO RULE 4:5-1(b)(3)**

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).

**CUTOLO BARROS LLC**  
*Attorneys for Plaintiff Tower Hill  
Condominium Association, Inc.*  
By: s/**Gregg S. Sodini**  
Gregg S. Sodini, Esq.

Dated: March 10, 2021