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Attorneys for Declaratory Plaintiff, Borough of Montvale

**IN THE MATTER OF THE
APPLICATION OF THE BOROUGH OF
MONTVALE, COUNTY OF BERGEN,
STATE OF NEW JERSEY**

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY**

DOCKET NO.: **BER-L-____**

CIVIL ACTION
AFFORDABLE HOUSING
PER DIRECTIVE # 14-24

**COMPLAINT FOR DECLARATORY
RELIEF PURSUANT TO
DIRECTIVE# 14-24**

Declaratory Plaintiff, the Borough of Montvale, County of Bergen, State of New Jersey (hereinafter, “Montvale” or the “Borough”), a municipal corporation of the State of New Jersey, with principal offices located at 12 DePiero Dr, Montvale, NJ 07645, by way of this Declaratory Judgment Action (“DJ Action”) as authorized under Directive # 14-24 of the Administrative Office of the Courts, alleges and says:

Background

1. The Borough of Montvale is a municipal corporation of the State of New Jersey.
2. The Planning Board of the Borough of Montvale (hereinafter, “Planning Board”) is a municipal agency created and organized under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et. seq., (“MLUL”), and, among other duties and obligations, is responsible for adopting the Housing Element and Fair Share Plan (“HEFSP”) of Montvale’s Master Plan.

3. Through this DJ Action, Montvale seeks the following relief in relation to its Fourth Round (2025-2035) affordable housing obligation: (a) to secure the jurisdiction of the Affordable Housing Alternative Dispute Resolution Program (the “Program”) pursuant to P.L. 2024, c.2 (hereinafter, the “Act”) and the Court, pursuant to Directive # 14-24; (b) to have the Program and the Court approve the Borough of Montvale’s Present and Prospective affordable housing obligations as set forth in the binding resolution adopted by the Borough, attached hereto as **Exhibit 1**; (c) to have the Program and the Court approve that Montvale is entitled to a vacant land adjustment as set forth in the expert report of its Planner, Darlene Green, P.P./A.I.C.P., attached hereto as **Exhibit 2**; (d) to have the Program and the Court approve a HEFSP to be adopted by the Planning Board and endorsed by the Council and issue a conditional or unconditional “Compliance Certification” pursuant to the Act or other similar declaration; (e) to the extent it is not automatically granted pursuant to the Act, through the filing of this DJ Action and binding resolution, to have the Program and the Court confirm Montvale’s immunity from all exclusionary zoning litigation, including builder’s remedy lawsuits, during the pendency of the process outlined in the Act and for the duration of Fourth Round, i.e., through June 30, 2035; and (f) to have the Program and the Court take such other actions and grant such other relief as may be appropriate to ensure that the Borough receive and obtain all protections as afforded to it in complying with the requirements of the Act, including, without limitation, all immunities and presumptions of validity necessary to satisfy its affordable housing obligations voluntarily without having to endure the expense and burdens of unnecessary third party litigation.

COUNT I

ESTABLISHMENT OF JURISDICTION UNDER P.L.2024, C. 2

4. The Borough of Montvale repeats and realleges each and every allegation as set forth in the previous paragraphs of this DJ Action as if set forth herein in full.

5. The Act represents a major revision of the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 *et seq.*

6. Among other things, the Act abolished the Council on Affordable Housing (hereinafter, “COAH”), and replaced it with seven retired, on recall judges designated as the Program. Among other things, the Act authorized the Director of the Administrative Office of the Courts, (hereinafter, respectively, “Director” and “AOC”) to create a framework to process applications for a compliance certification.

7. On or about December 13, 2024, the Director issued Directive # 14-24, which among other things, required municipalities seeking compliance certification to file an action in the form of a declaratory judgment complaint and Civil Case Information Statement in the County in which the municipality is located within 48 hours after the municipality’s adoption of a binding resolution as authorized under the Act and attach a copy of said binding resolution to the DJ Action.

8. Montvale adopted a binding resolution establishing its present and prospective affordable housing obligations within the statutory window of time set forth in the Act and in accordance with the methodology and formula set forth in the Act, a certified copy of which resolution is attached to this DJ Action as **Exhibit 1**.

9. Based on the foregoing, Montvale has established the jurisdiction of the Program and the Court in regard to this DJ Action for a compliance certification as set forth hereinafter.

WHEREFORE, the Borough of Montvale seeks a declaratory judgment for the following relief:

- a. Declaring that the Borough has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as **Exhibit 1** to this DJ Action or to adjust such determination consistent with the Act;
- b. Declaring the present and prospective affordable housing obligations of the Borough under the Act;
- c. Declaring, in the context of the determination for the Borough's Round 4 obligations which will be completed by March 31, 2025 pursuant to P.L. 2024, c.2, and specifically, N.J.S.A. 52:27D-304.1(f)(c), that the Borough of Montvale is entitled to a vacant land adjustment pursuant to N.J.A.C. 5:93-4 with an RDP of 2 units and an unmet need of 174 units;
- d. Declaring, that the Borough's "Surplus" above its Round 3 RDP can be utilized towards any increases in RDP and/or any "realistic zoning" for redevelopment that may be required pursuant to the 25% requirement in P.L. 2024, c. 2, and specifically, N.J.S.A. 52:27D-310.1.
- e. Declaring the approval of the Borough's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Borough Council, including, as appropriate and applicable, (i) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or (ii) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (iii) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (iv) an adjustment based upon any ruling in litigation involving affordable housing

obligations; and (v) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;

- f. Declaring that the Borough continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- g. Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive # 14-24 to the Borough of Montvale for the period beginning July 1, 2025 and ending June 30, 2035; and
- h. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

COUNT II

DETERMINATION OF THE PRESENT AND PROSPECTIVE NEED OF THE BOROUGH OF MONTVALE

10. Montvale repeats and realleges each and every allegation set forth in the previous paragraphs of this DJ Action as if set forth herein in full.

11. The Act adopted the methodology to calculate every municipality's present and prospective need affordable housing obligation for the Fourth Round (2025-2035) and beyond.

12. Pursuant to the Act, a municipality desiring to participate in the Program is obligated to adopt a "binding resolution" determining its present and prospective affordable housing obligations to which it will commit based upon the methodology set forth in the Act.

13. Montvale adopted a binding resolution including an expert report attached thereto, a copy of which resolution and expert report is attached hereto and made a part hereof as **Exhibit 1** to this DJ Action.

14. The binding resolution maintains that the Present ("Rehabilitation") Need obligation of Montvale is 30 and its Prospective Need obligation is 176.

15. As described in Count V, Montvale seeks approval for a vacant land adjustment with a realistic development potential of 2 units and an unmet need of 174 units.

16. Montvale seeks the approval of and confirmation by the Program and the Court of the Present and Prospective affordable housing obligations as set forth in the binding resolution attached hereto and made a part hereof as **Exhibit 1** or the adjustment of those obligations consistent with the Act and the applicable COAH regulations

17. Pursuant to the binding resolution, the Borough of Montvale reserves all rights to amend its affordable housing obligations in the event of a successful legal challenge, or legislative change, to the Act.

18. Pursuant to the binding resolution, Montvale specifically reserves the right to seek and obtain 1) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or 3) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; 4) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; 5) an adjustment based upon any ruling in litigation involving affordable housing obligations; and 6) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations.

WHEREFORE, the Borough of Montvale seeks a declaratory judgment for the following relief:

- a.** Declaring that the Borough has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set

forth in the binding resolution attached as Exhibit 1 to this DJ Action or to adjust such determination consistent with the Act;

- b.** Declaring the present and prospective affordable housing obligations of Montvale under the Act; Declaring, in the context of the determination for the Borough's Round 4 obligations which will be completed by March 31, 2025 pursuant to P.L. 2024, c.2, and specifically, N.J.S.A. 52:27D-304.1(f)(c), that the Borough of Montvale is entitled to a vacant land adjustment pursuant to N.J.A.C. 5:93-4 with an RDP of 2 units and an unmet need of 174 units;
- c.** Declaring, that the Borough's "Surplus" above its Round 3 RDP can be utilized towards any increases in RDP and/or any "realistic zoning" for redevelopment that may be required pursuant to the 25% requirement in P.L. 2024, c. 2, and specifically, N.J.S.A. 52:27D-310.1.
- d.** Declaring the approval of Montvale's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Council, including, as appropriate and applicable, (i) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or (ii) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (iii) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (iv) an adjustment based upon any ruling in litigation involving affordable housing obligations; and (v) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;

- e. Declaring that the Borough continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- f. Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive # 14-24 to Montvale for the period beginning July 1, 2025 and ending June 30, 2035; and
- g. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

COUNT III

HOUSING ELEMENT AND FAIR SHARE PLAN

19. The Borough of Montvale repeats and realleges each and every allegation set forth in the previous paragraphs of this DJ Action as if set forth herein in full.

20. Pursuant to the Act, a Housing Element and Fair Share Plan (hereinafter, (“HEFSP”) must be prepared adopted by the Planning Board and endorsed, by June 30, 2025.

21. Pursuant to **Count V**, the Borough shall seek a Housing Elements and Fair Share Plan with a vacant land adjustment.

22. Montvale hereby commits for its professionals to prepare the appropriate HEFSP to address its affordable housing obligations, as determined by the Program and the Court which HEFSP shall apply as appropriate, any applicable adjustments, including, without limitation, 1) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or 2) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; 3) an adjustment based on any future legislation that may be adopted that allows an

adjustment of the affordable housing obligations; 4) an adjustment based upon any ruling in litigation involving affordable housing obligations; and 5) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations.

WHEREFORE, the Borough of Montvale seeks a declaratory judgment for the following relief:

- a. Declaring that Montvale has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as **Exhibit 1** to this DJ Action or to adjust such determination consistent with the Act;
- b. Declaring the present and prospective affordable housing obligations of Montvale under the Act;
- c. Declaring, in the context of the determination for the Borough's Round 4 obligations which will be completed by March 31, 2025 pursuant to P.L. 2024, c.2, and specifically, N.J.S.A. 52:27D-304.1(f)(c), that the Borough of Montvale is entitled to a vacant land adjustment pursuant to N.J.A.C. 5:93-4 with an RDP of 2 units and an unmet need of 174 units;
- d. Declaring, that the Borough's "Surplus" above its Round 3 RDP can be utilized towards any increases in RDP and/or any "realistic zoning" for redevelopment that may be required pursuant to the 25% requirement in P.L. 2024, c. 2, and specifically, N.J.S.A. 52:27D-310.1.
- e. Declaring the approval of Montvale's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Council, including, as appropriate and applicable, (i) a Durational Adjustment (whether predicated upon lack of

sanitary sewer or lack of water); and/or (ii) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (iii) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (iv) an adjustment based upon any ruling in litigation involving affordable housing obligations; and (v) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;

- f.** Declaring that the Borough of Montvale continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- g.** Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive # 14-24 to the Borough of Montvale for the period beginning July 1, 2025 and ending June 30, 2035; and
- h.** Declaring such other relief that the program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

COUNT IV

CONFIRMATION OF IMMUNITY

23. The Borough of Montvale repeats and realleges each and every allegation set forth in the previous paragraphs of this declaratory judgment complaint as if set forth herein in full.

24. Pursuant to the Act, a municipality that complies with the deadlines in the Act for both determining present and prospective affordable housing obligations affordable housing

obligations and for adopting an appropriate HEFSP shall have immunity from exclusionary zoning litigation.

25. The Borough of Montvale has met the deadline for the adoption and filing of its binding resolution (and the filing of this DJ Action in accordance with Directive # 14-24) not later than January 31, 2025 by adopting the binding resolution attached to this DJ Action as **Exhibit 1**, and has committed to the adoption of its HEFSP by the June 30, 2025.

26. Without waiving any judicial immunity from exclusionary zoning litigation that Montvale possesses as a result of any applicable Judgment of Compliance and Repose entered in favor of the Borough in Round 3, Montvale has qualified for continued immunity under the Act while pursuing its certification of compliance in the instant matter.

WHEREFORE, the Borough of Montvale seeks a declaratory judgment for the following relief:

- a. Declaring that the Borough has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as **Exhibit 1** to this DJ Action or to adjust such determination consistent with the Act;
- b. Declaring the present and prospective affordable housing obligations of Montvale under the Act;
- c. Declaring, in the context of the determination for the Borough's Round 4 obligations which will be completed by March 31, 2025 pursuant to P.L. 2024, c.2, and specifically, N.J.S.A. 52:27D-304.1(f)(c), that the Borough of Montvale is entitled to a vacant land adjustment pursuant to N.J.A.C. 5:93-4 with an RDP of 2 units and an unmet need of 174 units;

- d. Declaring, that the Borough's "Surplus" above its Round 3 RDP can be utilized towards any increases in RDP and/or any "realistic zoning" for redevelopment that may be required pursuant to the 25% requirement in P.L. 2024, c. 2, and specifically, N.J.S.A. 52:27D-310.1.
- e. Declaring the approval of Montvale's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Council, including, as appropriate and applicable, (i) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or (ii) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (iii) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (iv) an adjustment based upon any ruling in litigation involving affordable housing obligations; and (v) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;
- f. Declaring that Montvale continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- g. Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive # 14-24 to Montvale for the period beginning July 1, 2025 and ending June 30, 2035; and
- h. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

COUNT V

VACANT LAND ADJUSTMENT

27. The Borough of Montvale repeats and realleges each and every allegation set forth in the previous paragraphs of this declaratory judgment complaint as if set forth herein in full.

28. Pursuant to COAH's regulations at N.J.A.C. 5:93-4, if a municipality lacks sufficient land to address its entire prospective need obligation, it is entitled to receive a vacant land adjustment (VLA).

29. Pursuant to COAH's regulations at N.J.A.C. 5:93-4, the reduction in the obligation is then reduced to what is known as the realistic development potential (RDP), or the number of units a municipality can address due to its land constraints.

30. Pursuant to N.J.A.C. 5:93-4, the remainder of the prospective need is known as the unmet need.

31. In Round 3 (1999-2025), the Borough received a VLA against its Round 3 obligation for a total of 181 units and had an unmet need of 361 units.

32. The Borough of Montvale produced credits in excess of its Round 3 RDP and reserve rights to utilize those credits towards future obligations.

33. In Round 4, further land constraints have limited Montvale's developable acreage, entitling it to a VLA as described in Exhibit _ to this Complaint.

34. In Round 4, the Borough is entitled to a VLA with an RDP of 2 units and an unmet of 174 units. The basis for those conclusions is contained in **Exhibit 2** to this Complaint.

35. The Borough reserves all rights and defenses as to how it intends on complying with its calculated RDP and unmet need.

WHEREFORE, the Borough of Montvale seeks a declaratory judgment for the following relief:

- a. Declaring that the Borough has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as Exhibit 1 to this DJ Action or to adjust such determination consistent with the Act;
- b. Declaring the present and prospective affordable housing obligations of Montvale under the Act;
- c. Declaring, in the context of the determination for the Borough's Round 4 obligations which will be completed by March 31, 2025 pursuant to P.L. 2024, c.2, and specifically, N.J.S.A. 52:27D-304.1(f)(c), that the Borough of Montvale is entitled to a vacant land adjustment pursuant to N.J.A.C. 5:93-4 with an RDP of 2 units and an unmet need of 174 units;
- d. Declaring, that the Borough's "Surplus" above its Round 3 RDP can be utilized towards any increases in RDP and/or any "realistic zoning" for redevelopment that may be required pursuant to the 25% requirement in P.L. 2024, c. 2, and specifically, N.J.S.A. 52:27D-310.1.
- e. Declaring the approval of Montvale's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Council, including, as appropriate and applicable, (i) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (ii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or (iii) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as

applicable; (iv) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (v) an adjustment based upon any ruling in litigation involving affordable housing obligations; and (vi) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;

- f.** Declaring that Montvale continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- g.** Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive # 14-24 to Montvale for the period beginning July 1, 2025 and ending June 30, 2035; and
- h.** Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

SURENIAN, EDWARDS, BUZAK & NOLAN LLC
Attorneys for the Declaratory Plaintiff
Borough of Montvale

Michael J. Edwards

By: _____
 Michael J. Edwards, Esq.

Dated: January 30, 2025

CERTIFICATION PURSUANT TO R. 4:5-1

Michael J. Edwards, Esq., of full age, hereby certifies as follows:

1. I am a member of the Firm of Surenian, Edwards, Buzak & Nolan LLC, attorneys for declaratory plaintiff, Borough of Montvale.
2. To the best of my knowledge, there is no other action pending in any court or any pending arbitration proceeding of which the matter in controversy herein is the subject and no such other action or arbitration proceeding is contemplated. To the best of my knowledge, there are no other parties who should be joined in this action.
3. The within Complaint was filed and served within the time prescribed by the Rules of Court.

I hereby 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.

SURENIAN, EDWARDS, BUZAK & NOLAN LLC
Attorneys for the Declaratory Plaintiff
Borough of Montvale

Michael J. Edwards

By: _____
Michael J. Edwards, Esq.

Dated: January 30, 2025

CERTIFICATION PURSUANT TO R. 1:38-7(b)

Michael J. Edwards, Esq., of full age, hereby certifies as follows:

1. I am a member of the firm of Surenian, Edwards, Buzak & Nolan LLC, attorneys for Declaratory Plaintiff, Borough of Montvale.
2. 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 R. 1:38-7(b).

I hereby 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.

SURENIAN, EDWARDS, BUZAK & NOLAN LLC
Attorneys for the Declaratory Plaintiff
Borough of Montvale

By: *Michael J. Edwards*
Michael J. Edwards., Esq.

Dated: January 30, 2025

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, notice is hereby given that Michael J. Edwards, Esq., attorney for the Declaratory Plaintiff, Borough of Montvale is designated as trial counsel in the above captioned matter.

SURENIAN EDWARDS BUZAK & NOLAN LLC

*Attorneys for Declaratory Plaintiff,
Borough of Montvale*

Michael J. Edwards

By: _____
Michael J. Edwards, Esq.

Dated: January 30, 2025

**BOROUGH OF MONTVALE
BERGEN COUNTY, NEW JERSEY
RESOLUTION NO. 64-2025**

RE: Resolution Of The Borough Of Montvale Committing To Round 4 Present And Prospective Need Affordable Housing Obligations

WHEREAS, the Borough has a demonstrated history of voluntary compliance with its constitutional affordable housing obligations as evidenced by its Prior Round Compliance Certification from the Council on Affordable Housing ("COAH"); and

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), on July 6, 2015, the Borough of Montvale (hereinafter "Montvale" or the "Borough") filed a Declaratory Judgment Complaint in Superior Court, Law Division seeking, among other things, a judicial declaration that its Housing Element and Fair Share Plan (hereinafter "Fair Share Plan"), to be amended as necessary, satisfies its "fair share" of the regional need for low and moderate income housing pursuant to the "Mount Laurel doctrine;" and

WHEREAS, that culminated in a Court-approved Housing Element and Fair Share Plan and a Final Judgment of Compliance and Repose, which precludes builder's remedy lawsuits until July 1, 2025; and

WHEREAS, Montvale's Judgement of Compliance and Repose for Round 3 assigned the Borough an RDP of 181 units; and

WHEREAS, the Borough has in fact overseen the actual construction and crediting of 191 units of affordable housing in Round 3, exclusive of bonus credits, evidencing the Borough's commitment to the satisfaction of its affordable housing obligations; and

WHEREAS, the Borough presently has a surplus of 44 credits which may be applied to satisfy "any future changed circumstances, which would result in an increase in the Borough's RDP;" and

WHEREAS, by letter dated August 4, 2020, to Superior Court Judge Gregg A. Padovano, J.S.C., Joshua D. Bauers, Esq. of Fair Share Housing Center recognized Montvale's laudable efforts in Round 3, identifying Montvale as a community that is "actually...creating affordable housing [and] not just belated and incomplete plans to build it in the future"; and

WHEREAS, Mr. Bauers also recognized that "Montvale has fulfilled promises and is sending out advertisement for leasing completed affordable housing"; and

WHEREAS, Mr. Bauers further acknowledged that "Montvale has seen to the construction of actual affordable homes, with many more on the way and under construction"; and

WHEREAS, on March 20, 2024, Governor Murphy signed into law P.L. 2024, c.2 (hereinafter "A4"); and

WHEREAS, A4 calculates the size of the regional affordable housing need as follows “projected household change for a 10-year-round in a region shall be estimated by establishing the household change experienced in the region between the most recent federal decennial census, and the second-most recent federal decennial census. This household change, if positive, shall be divided by 2.5 to estimate the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region, and to determine the regional prospective need for a 10-year-round of low and moderate-income housing obligations...”; and

WHEREAS, this means that according to A4 the regional need equates to 40% of regional household growth; and

WHEREAS, said regional household growth includes growth in the region, including urban and municipalities that are exempt from any prospective need obligations; and

WHEREAS, the 1985 version of the Fair Housing Act and A4 both prohibit a result that would compel a municipality to spend its own money on compliance; and

WHEREAS, the theory which permits a municipality to meet its obligations without municipal subsidy is zoning for “inclusionary zoning”; and

WHEREAS, inclusionary zoning most typically requires a 15% or 20% set aside; and

WHEREAS, it is not clear how a regional need predicated upon 40% of anticipated growth can be met with 15-20% set asides and without municipal subsidy; and

WHEREAS, this is exacerbated by the fact that certain other municipalities in the region have an allocation of 0% of the need, irrespective of the growth in that particular municipality; and

WHEREAS, in Region 1, in which Montvale is located, fully 75% of the regional household growth was generated by municipalities that have been allocated 0% of the region’s prospective need obligation; and

WHEREAS, A4 yields a statewide new construction obligation of over 8,400 affordable units per year; and

WHEREAS, this is a substantially higher annual number than was imposed by COAH in the “Prior Round” or any iteration of its Round 3 regulations; and

WHEREAS, A4 determines the size of the regional need, but does not calculate allocation of the need to individual municipalities; and

WHEREAS, instead, A4 required the Department of Community Affairs (“DCA”) to produce non-binding estimates of need on or before October 20, 2024, which it did provide on October 18, 2024 (“DCA Report”); and

WHEREAS, the DCA Report estimates the Borough’s Round 4 (2025-2035) obligations as follows:

Present Need or Rehabilitation Obligation:	30
Prospective Need or New Construction Obligation:	348; and

WHEREAS, A4 further provides that, irrespective of the DCA's non-binding estimate, municipalities are to determine "present and prospective fair share obligation(s)...by binding resolution no later than January 31, 2025"; and

WHEREAS, the Borough accepts the conclusions in the DCA Report with respect to the Present Need, Equalized Nonresidential Valuation Factor and Income Capacity Factor; and

WHEREAS, the Borough rejects the nonbinding calculation from the DCA with respect to the Land Capacity Factor and ultimately, to the nonbinding estimate of Prospective Need, for the Borough of Montvale; and

WHEREAS, after receiving the DCA Report, the Borough Planner noted significant errors in the DCA's mapping and estimate of the Borough's Land Capacity Factor; and

WHEREAS, the Borough did thereafter authorize Borough Planner Darlene A. Green, P.P., AICP, to analyze the DCA Report with respect to the Land Capacity Factor and to render an expert opinion with respect to the amount of vacant and developable land within the Borough of Montvale; and

WHEREAS, Ms. Green issued a report dated January 21, 2025, which analyzed every area that had been identified by the DCA as developable within the Borough, a copy of which report is attached hereto and expressly made a part hereof; and

WHEREAS, Ms. Green's report determined that of the twenty-four (24) areas deemed "developable," by DCA, in fact only two (2) separate areas on one lot are actually vacant and developable; and

WHEREAS, Ms. Green further determined that as a result of the DCA's reliance upon incomplete and/or inaccurate data, the Borough's Land Capacity Factor as calculated by the DCA was significantly overstated; and

WHEREAS, Ms. Green determined that the Borough of Montvale presently has only 0.804081 developable acres; and

WHEREAS, revising the Borough's "Land Use/Land Cover Methodology Land Area" in the DCA's Fourth Round Calculation Workbook with more accurate and reliable data results in a reduction in Montvale's Land Capacity Factor to 0.04%; and

WHEREAS, as a result of this reduction in the Borough's Land Capacity Factor, the Borough's Average Allocation Factor is reduced to 0.63%; and

WHEREAS, when this Average Allocation Factor is applied to the Regional Need, the Borough of Montvale's calculated Fourth Round Prospective Need Obligation is 176; and

WHEREAS, Section 3 of A4 provides that: "the municipality's determination of its fair share obligation shall have a presumption of validity, if established in accordance with sections 6 and 7" of A4; and

WHEREAS, Borough's calculation of need is entitled to a "presumption of validity" because it complies with Sections 6 and 7 of A4; and

WHEREAS, the Borough of Montvale does hereby submit the following calculations of its Round 4 obligations:

Present Need or Rehabilitation Obligation:	30
Prospective Need or New Construction Obligation:	176; and

WHEREAS, the Borough specifically reserves the right to adjust those numbers based on one or any of the foregoing adjustments: 1) a windshield survey or similar survey which accounts for a higher-resolution estimate of present need; 2) an updated Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; 3) a Durational Adjustment (whether predicated upon lack of sewer or lack of water); and/or 4) an adjustment predicated upon regional planning entity formulas, inputs or considerations, including, but not limited to the Highlands Regional Master Plan and its build out, the Pinelands or Meadowlands regulations and planning document; and

WHEREAS, in addition to the foregoing, the Borough specifically reserves all rights to revoke this resolution and commitment in the event of a successful challenge to A4 in the context of the Montvale case (MER-L-1778-24), any other such action challenging A4, or any legislation adopted and signed into law by the Governor of New Jersey that alters the deadlines and/or requirements of A4; and

WHEREAS, in addition to the foregoing, the Borough reserves the right to take a position that its Round 4 Present or Prospective Need Obligations are lower than described herein in the event that a third party challenges the calculations provided for in this Resolution (a reservation of all litigation rights and positions, without prejudice); and

WHEREAS, in addition to the foregoing, nothing in A4 requires or can require an increase in the Borough's Round 4 Present or Prospective Need Obligations based on a successful downward challenge of any other municipality in the region since the plain language and clear intent of A4 is to establish, for example, unchallenged numbers by default on March 1, 2025; and

WHEREAS, in light of the above, the Mayor and Council finds that it is in the best interest of the Borough of Montvale to declare its obligations in accordance with this resolution; and

NOW, THEREFORE, BE IT RESOLVED on this ____ day of _____, by the Council of the Borough of Montvale, Bergen County, State of New Jersey, as follows:

1. All of the above Whereas Clauses are incorporated into the operative clauses of this resolution.

2. The Mayor and Council of the Borough of Montvale do hereby commit to the following calculations of its Round 4 obligations:

Present Need or Rehabilitation Obligation:	30
Prospective Need or New Construction Obligation:	176

3. The above calculations are submitted subject to all reservations of rights, which specifically include:

a) The right to adjust the number based on a windshield survey, lack of land, sewer, water, regional planning inputs, or any combination thereof;

b) All rights to revoke this resolution in the event of a successful legal challenge, or legislative change, to A4;

c) All rights to take any contrary position in the event of a third-party challenge to the obligations.

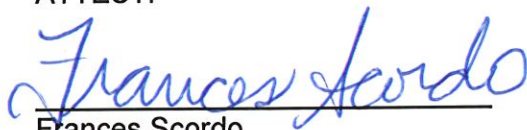
4. The Borough hereby directs its Affordable Housing Counsel to (a) file this Resolution with the "Program" pursuant to the requirements in A4.

5. This resolution shall take effect immediately, according to law.

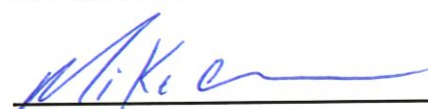
Councilmember	Motion	Second	Yes	No	Absent	Abstain	No Vote
Arendacs			✓				
Cudequest			✓				
Koelling			✓				
Lane		✓	✓				
Roche	✓		✓				
Russo-Vogelsang			✓				

Adopted: January 28, 2025

ATTEST:


 Frances Scordo
 Municipal Clerk

APPROVED:


 Michael Ghassali
 Mayor

Shelbourne at Hunterdon
53 Frontage Road, Suite 110
Hampton, New Jersey 08827
Main: 877 627 3772



Memorandum

To: Joseph Voytus, Esq., Borough Administrator, Borough of Montvale
From: Darlene A. Green, PP, AICP
Date: January 21, 2025
Subject: Review and Findings of DCA Land Capacity Analysis GIS Data
Project No.: MPP-0245

This office serves as the Planner for the Borough of Montvale. On March 20, 2024, the Governor signed Bill A4, referred to as P.L. 2024, c.2. This new law modifies the Fair Housing Act, specifically N.J.S.A. 52:27D-304.3, which concerns the methodology to determine the prospective (Fourth Round) affordable housing obligation.

Three factors are used to allocate the Regional Need to each applicable community – equalized non-residential valuation, income capacity, and land capacity. N.J.S.A. 52-27D-304.3c.(4) describes the land capacity factor and the steps to determine developable land. The law requires the use of the "land use/land cover data" most recently published by the Department of Environmental Protection ("DEP") as one of the analysis inputs.

P.L. 2024, c.2. tasked the Department of Community Affairs ("DCA") with calculating the Fourth Round affordable housing obligations. DCA released a report entitled Affordable Housing Obligation for 2025-2035 (Fourth Round) Methodology and Background (DCA Report).¹ This report describes the steps taken to compute the Fourth Round Obligation. Page 15 of the report states "The datasets mandated for use by the legislation have significant limitations in their use. The LULC data reflect a geographic depiction of the classification system established by the U.S. Geological Survey (Anderson Codes) and modified by DEP. Based on aerial imagery from 2020, land areas are identified by category to reflect uses and coverages."

P.L. 2024, c.2. also modified N.J.S.A. 52:27D-304.1 regarding requirements, specifically subsection a. which states "Each municipality shall determine its municipal present and prospective need obligations...and may take into consideration the calculations in the report published by the department..."

The DCA Report was released on October 18, 2024. It was accompanied by a detailed spreadsheet illustrating the various calculations used in determining the Fourth Round affordable housing obligations. The spreadsheet includes a tab for each of the three allocation factors (land capacity,

¹ https://www.nj.gov/dca/dlps/pdf/FourthRoundCalculation_Methodology.pdf

Project No. MPP-0245
January 21, 2025
Page 2 | 3



equalized non-residential valuation, and income capacity). However, the spreadsheet only noted an aggregated acreage value for each town. Detailed Geographic Information Systems ("GIS") mapping illustrating the location of the developable areas was not released until November 27, 2024. The timing of the production of the GIS data has made this exercise more difficult and on a rushed timeline.

Moreover, the link to the DCA GIS data², and the description section includes the following language:

"The land areas identified in this dataset are based on an the best available data using publicly available data enumerated in N.J.S.A. 52:27D-304.3c.(4) to estimate the area of developable land, within municipal and regional boundaries, that may accommodate development. **It is important to note that the identified areas could be over or under inclusive depending on various conditions and that municipalities are permitted to provide more detailed mappings as part of their participation in the Affordable Housing Dispute Resolution Program.**" (emphasis added)

This office was tasked with reviewing the detailed GIS mapping for accuracy. On or about December 2, 2024, this office downloaded the GIS data prepared by the DCA.³ The DCA data was then overlaid with Borough parcels, publicly-available environmental constraints data, mapped utility easements, and mapped environmental constraint data sourced from site plan applications and Borough files.

The DCA GIS data identifies 24 areas within the Borough as developable. These areas total 37.787 acres according to the GIS data. Each area has been assigned a unique "ObjectID" or identification number by DCA. The table attached as **Exhibit A** lists each area's identification number (see column "DCA ObjectID"), weighted acres, vacant acres, municipal total, and municipal percent of region identified by DCA.⁴ Our office then added a column to identify the block(s) and lot(s) each area encompasses. We then reviewed each identified area to confirm if it was developable. To the extent an area was not objectively developable, it was removed from the inventory. Our detailed findings for each of the 24 identified areas is provided under "Findings/Comments". Finally, the table contains a column labeled "Adjusted Developable Acres" based upon the results of our area-by-area analysis.

The locations of the 24 identified areas can be viewed in the "Environmental Constraints with NJDCA Land Capacity Analysis Results" maps attached as **Exhibit B** and **Exhibit C**.

This detailed evaluation reveals that only two of the 24 identified areas are developable. The two areas encompass 0.804 acres. Therefore, the Borough of Montvale's developable acreage is 0.804 acres, not 37.787 acres. When this corrected acreage data is entered into DCA's excel spreadsheet⁵ the Borough's Land Capacity Factor dwindles from 1.91% to 0.04%. The Borough's Average

² <https://njdca-data-hub-njdca.hub.arcgis.com/datasets/land-capacity-analysis-for-p-l-2024-c-2/about>

³ Ibid.

⁴ Note that the DCA GIS attribute table labels this column as "vacant acres" not developable acres.

⁵ https://www.nj.gov/dca/dlps/4th_Round_Numbers.shtml

Project No. MPP-0245
January 21, 2025
Page 3 | 3



Allocation Factor decreases from 1.26% to 0.63% and, accordingly, Montvale's Fourth Round Obligation is adjusted from 348 to 176.

The below table illustrates the revisions to the allocation factors and Fourth Round Prospective Need Obligation as a result of our analysis.

Allocation Factor/Prospective Need	DCA Calculation	Proposed Revision
Land Capacity Factor	1.91%	0.04%
Equalized Non-residential Valuation Factor	0.55%	0.55%
Income Capacity Factor	1.30%	1.30%
Average Allocation Factor	1.26%	0.63%
Prospective Need Obligation	348	176

DCA's land capacity analysis followed the steps outlined in P.L. 2024, c.2 (N.J.S.A. 52-27D-304.3c.(4)) to determine land capacity. As described above, the base layer of information was the land use/land cover data prepared by DEP, which is based on aerial imagery from 2020. Our review of the data for the Borough of Montvale reveals the following shortcomings with the GIS analysis prepared by the DCA:

- It does not capture conservation easements or deed restrictions.
- It fails to account for a lack of street frontage.
- It is blind to block and lot lines and identifies portions of existing developed sites as developable. Many of these instances occur in rear and side yard setback areas.
- It fails to account for area shape and size. For example, areas as narrow as 0.43 feet are identified as developable.
- It does not take into account utility easements.

These issues are illustrated in **Exhibit B** and **Exhibit C**. Furthermore, supplemental documentation regarding specific sites' development restrictions, limitations, and deed restrictions is provided in **Exhibit D, E** and **F**. Additionally, the Borough's tax maps can be found here: <https://www.montvale.org/assessor-page-list/237-tax-maps>.

Montvale does not dispute the DCA's calculation for Equalized Nonresidential Valuation or Income Capacity. Thus, the Borough is accepting the DCA analysis, but for the corrections to the Land Capacity Factor described in this report. Correcting the Land Capacity Factor yields a Round 4 prospective need obligation of 176, not 348.

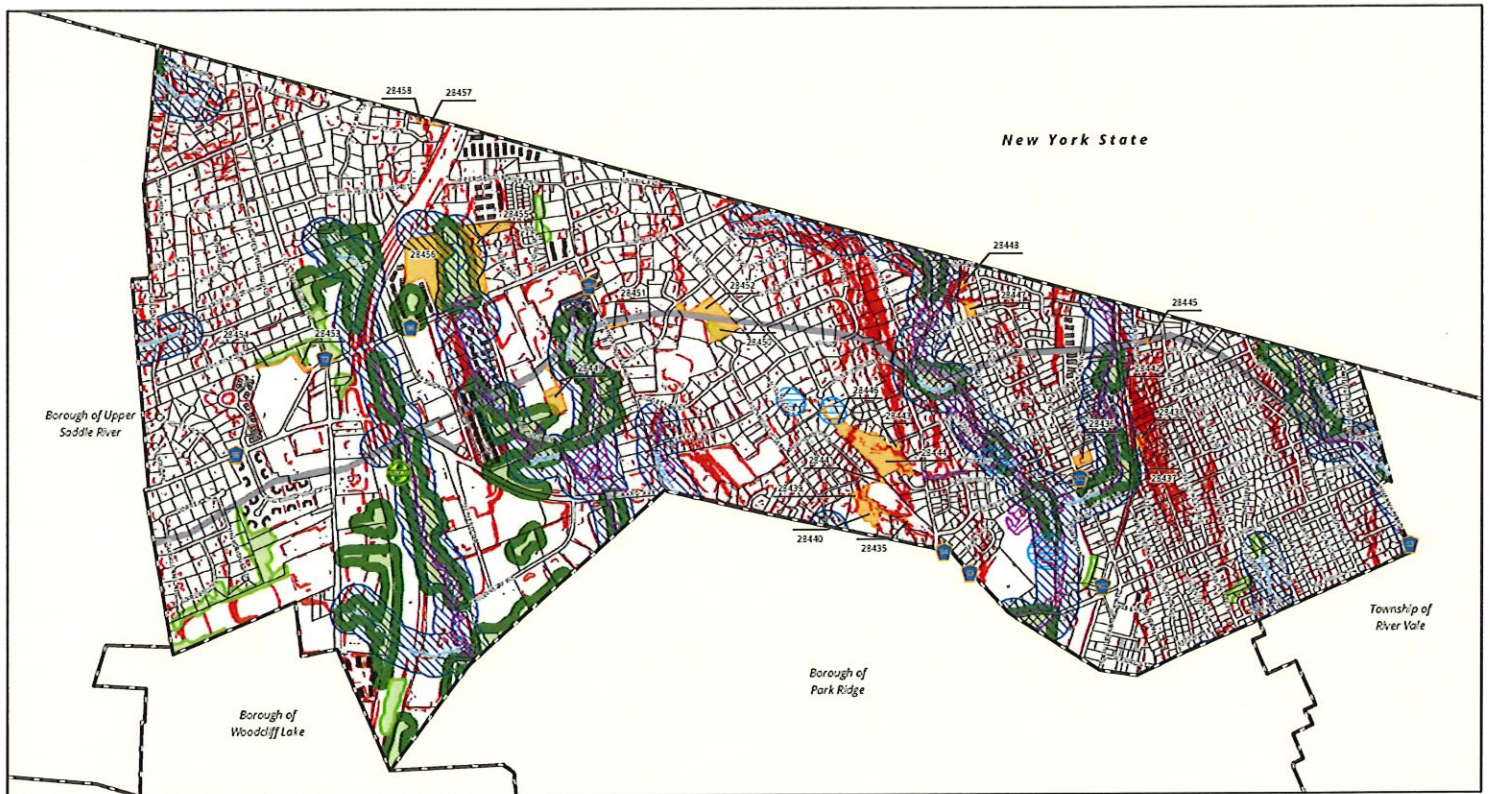
Exhibit A

Borough of Montvale: DCA Land Capacity Factor Analysis							
DCA ObjectID	Weighted Acres	Vacant Acres*	Municipal Total	Municipal Percent of Region	Block(s) / Lot(s)	Findings/Comments	Adjusted Developable Acres
28435	0.068065	0.068065	37.786652	1.908644	B2204, L28	This is the side yard of an existing developed property. Area is undersized with roughly 2,600 square feet. Identified area is not developable.	0
28436	0.921257	0.921257	37.786652	1.908644	B1504, L6	The identified area contains 0.0797 acres of steep slopes. Therefore, the developable acreage is only 0.842 acres. A single-family home is under construction. Footing and foundation permits have been issued (#20240360 paid for on October 22, 2024) and the foundation is present on site.	0
28437	0.232712	0.232712	37.786652	1.908644	B1505, L1	Due to surrounding steep slopes, the width of this area varies from 90 feet (south) to 10 feet (north). Identified area is an irregularly shaped triangle. While there is an unimproved right-of-way to access the area, said right-of-way has not been developed due to steep slopes. Identified area is not developable.	0
28438	0.074931	0.074931	37.786652	1.908644	B1505, L1	Due to surrounding steep slopes, the width of this area varies from 40 feet (north) to 10 feet (south). Identified area is an irregularly shaped triangle. While there is an unimproved right-of-way to access the area, said right-of-way has not been developed due to steep slopes. Identified area is not developable.	0
28439	0.246495	0.246495	37.786652	1.908644	B2204, L22 & 23	This area is the rear yard of existing developed properties. Identified area is not developable.	0
28440	2.399263	2.399263	37.786652	1.908644	B2204, L22 & 28	The identified area is the side and rear yards of existing developed properties. Identified area is not vacant and developable.	0
28441	0.159434	0.159434	37.786652	1.908644	B2204, L28	The identified area is the rear yard of an existing developed property. Identified area is not vacant and developable.	0
28442	0.087768	0.087768	37.786652	1.908644	B706, L1 & 3	Due to steep slopes, the identified area varies in width from 43 feet (south) to 12 feet (north). Identified area is an irregular shape. While there is an unimproved right-of-way to access the area, said right-of-way has not been developed due to steep slopes. Identified area is not developable.	0
48443	0.227023	0.227023	37.786652	1.908644	B1301, L24.01	This area is located on a property with a conservation restriction/easement in favor of the NJDEP, which was executed on June 18, 2024. The deed of dedication for public open space was recorded on September 23, 2015. Identified area is not developable.	0
28444	6.457933	6.457933	37.786652	1.908644	B1301, L24.01 & B2204, L34	This area is located on properties with a conservation restriction/easement in favor of the NJDEP, which was executed on June 18, 2024. The deed of dedication for public open space was recorded on September 23, 2015. Identified area is not developable.	0
28445	0.125119	0.125119	37.786652	1.908644	B710, L9	The identified area is fully located within a 100' wide utility easement, which contains overhead electric lines and underground gas lines. Identified area is not developable.	0
28446	1.389109	1.389109	37.786652	1.908644	B1301, L24.01	This area is located on a property with a conservation restriction/easement in favor of the NJDEP, which was executed on June 18, 2024. The deed of dedication for public open space was recorded on September 23, 2015. Additionally, a water body to the north is identified as a habitat for the Black-crowned Night Heron, a State Threatened species. The presence of a State Threatened species requires a 150-foot Riparian buffer. Said buffer encompasses the northern half of the area. Identified area is not developable.	0
28447	0.686572	0.686572	37.786652	1.908644	B603, L34	This area is vacant. However, there is 0.0231 acres of steep slopes within the identified area along Magnolia Avenue. Therefore, the vacant developable acres is only 0.663.	0.663
28448	0.141081	0.141081	37.786652	1.908644	B603, L34	This area is developable.	0.141
28449	2.258395	2.258395	37.786652	1.908644	B1102, L2.03 & 2.05	The identified area is partially located on Lot 2.03, which is developed with an existing electric substation. Lot 2.05 is currently vacant. However, wetlands to the southwest are identified as a habitat for the Black-crowned Night Heron and Wood Turtle, a State Threatened species, which classifies the wetlands as being of exceptional value and requiring a 150-foot buffer. Said buffer encompasses 0.371749 acres of the southwest corner of the area. Additionally, neither property has street frontage. Identified area is not developable.	0

Borough of Montvale: DCA Land Capacity Factor Analysis							
DCA ObjectID	Weighted Acres	Vacant Acres*	Municipal Total	Municipal Percent of Region	Block(s) / Lot(s)	Findings/Comments	Adjusted Developable Acres
28450	2.123263	2.123263	37.786652	1.908644	B1201, L10	An area of wetlands and associated 50-foot buffer divide this area into three sections, a 163.8 square foot section, a 0.098-acre section, and a 0.683-acre section. The 163.8 square foot section and 0.098-acre section are too small to be developed, while the 0.683-acre section could be developed. However, none of the three sections have street frontage. Furthermore, this area is located on a property developed with recreation fields. Identified area is not developable.	0
28451	0.247861	0.247861	37.786652	1.908644	B1103, L3	This area is located on a property that is owned by a private utility, Tenneco, Inc. Tenn. Gas Pipeline Div. Block 1201, Lot 10 is traversed by a 100' wide utility easement located to the north of the identified area, which contains overhead electric lines and underground gas lines. The identified area varies in width from 51 feet along Spring Valley Road to 18 feet at the rear (east). Area is approximately 44 feet wide 50 feet from the right-of-way. Area is 322 feet long. Identified area is not developable.	0
28452	2.319716	2.319716	37.786652	1.908644	B1201, L10	This area has two sections, an eastern section with no direct street frontage containing 2.018 acres and a western section located along Hilton Place containing 0.298 acres. The western section is divided into two pieces by an area of steep slopes, which totals 0.254 acres. Furthermore, the area is located on a property that is developed with recreational fields. The identified area is not developable.	0
28453	0.386798	0.386798	37.786652	1.908644	B2601, L32	This "L"-shaped area is the side yard of an existing developed property. The "I" portion of the area is 62.7 feet wide and 320.6 feet long, while the "L" portion of the area is 14.1 feet wide and 155.2 feet long. Identified area is not developable.	0
28454	0.236205	0.236205	37.786652	1.908644	B2601, L32	The identified area is 538.2 feet long and varies in width from 71.4 feet (west) to 0.43 feet (east). The area is located on an existing developed property. Identified area is not developable.	0
28455	6.32069	6.32069	37.786652	1.908644	B1002, L7	This area is on a property that has a deed restriction limiting the use to water utility and related purposes. Additionally, the property contains a Category One ("C1") Stream to the west of the identified area, which requires a 300-foot buffer. This buffer encompasses 3.549752 acres. Additionally, wetlands to the west are identified as a habitat for the Black-crowned Night Heron and Wood Turtle, State Threatened species, which classifies the wetlands as being of exceptional value and requires a 150-foot buffer. This buffer encompasses 1.850347 acres. Furthermore, 0.37535 acres of steep slopes are scattered across the property. These environmental features total 3.721635 acres, which would reduce the developable acres to 2.599055 acres. Due to these factors, the identified area is not developable.	0
28456	10.325087	10.325087	37.786652	1.908644	B1002, L7	This area is on a property that has a deed restriction limiting the use to water utility and related purposes. Additionally, the property contains a Category One ("C1") Stream to the east of the identified area, which requires a 300-foot buffer. This buffer encompasses 4.976982 acres. Additionally, wetlands to the east are identified as a habitat for the Black-crowned Night Heron and Wood Turtle. The 150-foot wetlands buffer encompasses 2.269852 acres of the area. Furthermore, there are 0.302988 acres of steep slopes in the area. These environmental features total 5.189416 acres, which would reduce the developable acres to 5.135671 acres. Due to these factors, the identified area is not developable.	0
28457	0.165702	0.165702	37.786652	1.908644	B203, L16 & 17	The identified area is the rear yard of homes located in New York State. Said area does not have street frontage. Identified area is not developable.	0
28458	0.186174	0.186174	37.786652	1.908644	B203, L15	The identified area is the rear yard of a home located in New York State. Said area does not have street frontage. Identified area is not developable.	0
Total	37.786653	37.786653					0.804081

* The DCA GIS attribute table labels this column as "vacant acres", not developable acres.

Exhibit B



**ENVIRONMENTAL CONSTRAINTS WITH
NJDCA LAND CAPACITY ANALYSIS RESULTS**

BOROUGH OF MONTVALE
BERGEN COUNTY, NEW JERSEY

January 20, 2025
MPP0245

Legend

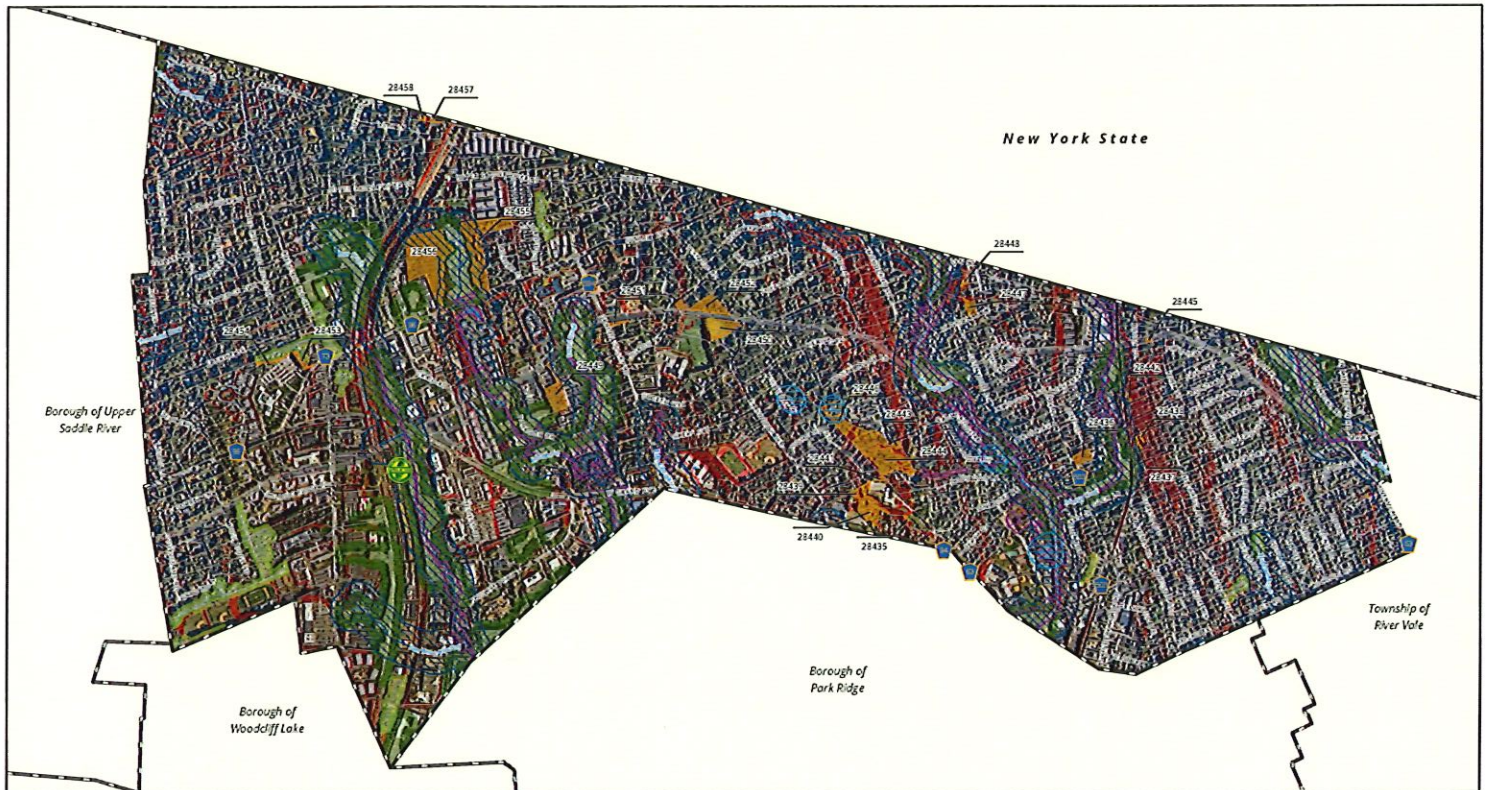
- | | |
|--------------------------------------|----------------------------------|
| Municipal Boundary | Wetlands |
| Parcels | 50-ft Wetlands Buffer |
| NJDCA Land Capacity Analysis Results | 150-ft Wetlands Buffer |
| Water Bodies | FEMA Special Flood Hazard Area |
| Category 1 (C1) Streams | Areas with slopes 15% or greater |
| 300-ft C1 Stream Buffer | Utility Easement |
| 150-ft Riparian Buffer | |

0 1,400 2,800
1 Inch = 1,400 Feet



Colliers
Engineering
& Design

Exhibit C



**ENVIRONMENTAL CONSTRAINTS WITH
NJDC LAND CAPACITY ANALYSIS RESULTS
BOROUGH OF MONTVALE**

BERGEN COUNTY, NEW JERSEY

January 20, 2025

MPP0245

Legend

- Municipal Boundary
- Parcels
- NJDC Land Capacity Analysis Results
- Water Bodies
- Category 1 (C1) Streams
- 300-ft C1 Stream Buffer
- 150-ft Riparian Buffer
- Wetlands
- 50-ft Wetlands Buffer
- 150-ft Wetlands Buffer
- FEMA Special Flood Hazard Area
- Areas with slopes 15% or greater
- Utility Easement

0 1,400 2,800
1 inch = 1,400 Feet



Colliers
Engineering
& Design

Exhibit D

 John S. Hogan Bergen County Clerk Bergen County Clerk One Bergen County Plaza Hackensack, NJ 07601 (201) 336-7000 www.bergencountyclerk.org/ 	 INSTRUMENT # 15-071351 V 02056 1491 RECORDED DATE: 09/23/2015 11:16:17 AM				
Document Type: Deed	Transaction #: 7054473 Document Page Count: 4 Operator Id: CLERK				
RETURN TO: ROBERT T REGAN ESQ 345 KINDERKAMACK ROAD PO BOX 214 WESTWOOD NJ 07675	SUBMITTED BY:				
PRIMARY NAME	SECONDARY NAME				
BEAR BAN BUILDERS LLC	MONTVALE BOROUGH OF				
ASSOCIATED DOCUMENT(S):					
MUNICIPALITY: MONTVALE LOT: 24.01 BLOCK: 1301 FEES / TAXES: <table> <tr> <td>Recording:</td> <td>\$73.00</td> </tr> <tr> <td>Total:</td> <td>\$73.00</td> </tr> </table>	Recording:	\$73.00	Total:	\$73.00	INSTRUMENT #: 15-071351 Recorded Date: 09/23/2015 11:16:17 AM I hereby CERTIFY that this document is recorded in the Clerk's Office in Bergen County, New Jersey.  <i>John S. Hogan</i> John S. Hogan Bergen County Clerk
Recording:	\$73.00				
Total:	\$73.00				

OFFICIAL RECORDING COVER PAGE

Page 1 of 5

PLEASE DO NOT DETACH

THIS PAGE IS NOW PART OF THIS LEGAL DOCUMENT

NOTE: If document data differs from cover sheet, document data always supersedes.

*COVER PAGE DOES NOT INCLUDE ALL DATA, PLEASE SEE INDEX AND DOCUMENT FOR ANY ADDITIONAL INFORMATION.

RECORD AND RETURN TO:

ROBERT T. REGAN

ATTORNEY AT LAW
STURBRIDGE COMMONS
345 KINDERKAMACK ROAD
P.O. BOX 214
WESTWOOD, NEW JERSEY 07675

Prepared by:

BEATTIE PADOVANO, LLC

By:

Antimo A. Del Vecchio
Antimo A. Del Vecchio, Esq.

An Attorney at Law of New Jersey

DEED OF DEDICATION

For Public Open Space

Block 1301, Lot 24.01

Borough of Montvale, NJ

(Dedication of Land)



15-071351 Deed
V Bk: 02056 Pg: 1491-1495 Rec. Fee \$73.00
John S. Hogan, Bergen County Clerk
Recorded 09/23/2015 11:16:17 AM

This Deed is made as of September 03, 2015

BETWEEN: BEAR-BAN BUILDERS, LLC, a New Jersey Limited Liability Company, with offices at 28 West Grand Avenue #12, Montvale, New Jersey 07645, hereinafter referred to as Grantor,

AND: BOROUGH OF MONTVALE, a municipal corporation of the State of New Jersey, maintaining offices at 12 Mercedes Drive, Montvale, County of Bergen and State of New Jersey 07645, hereinafter referred to as Grantee.

The words "Grantor" and "Grantee" shall mean all Grantors and all Grantees listed above.

Transfer of Ownership. The Grantor grants and conveys (transfers ownership of) the property described below to the Grantee. This transfer is made for the sum of One and 00/100 (\$1.00) Dollar. The Grantor acknowledges receipt of this money.

Tax Map Reference. (N.J.S.A. 46:15-2.1) Borough of Montvale, New Jersey, Block 1301, Lot 24.01

Property. The property consists of the land and all the buildings and structures on the land in the BOROUGH OF MONTVALE, COUNTY OF BERGEN and STATE OF NEW JERSEY for the purposes set forth below. The legal descriptions are as follows:

SEE EXHIBIT "A" ATTACHED HERETO.

Commonly known as Woodland Road, Montvale, New Jersey

Being a portion of the same premises conveyed to Grantor herein by Deed dated February 12, 2014 from Erika Hessler recorded in the Bergen County Clerk's Office on February 21, 2014 in Book 1622 at Page 1459.



**DESCRIPTION OF
PROPOSED LOT 24.01 IN BLOCK 1301
(CONSERVATION AREA)
ENCOMPASSING ALL OF LOT 39 IN BLOCK 2204,
A PORTION OF LOT 40 IN BLOCK 2204,
AND A PORTION OF LOT 26 IN BLOCK 1301
BOROUGH OF MONTVALE
BERGEN COUNTY, NEW JERSEY**

ALL that certain tract or parcel of land and premises, situate, lying, and being in the Borough of Montvale, Bergen County, New Jersey, described as follows:

Being a portion of lands of Bear-Ban Builders, LLC and formerly of Henry J. Bonnabel, to be deeded to the Borough of Montvale, and being more particularly described as follows;

BEGINNING at a point in the southerly line of a parcel of land to be dedicated to the Borough of Montvale for road purposes where the same is intersected by the division line between the herein described lot on the west and tax map lot 38, block 2204 on the east, and running thence:

- 1) S 03°52'59" E, along the easterly line of the herein described tract, a distance of 347.79 feet to a point and corner, thence;
- 2) S 85°29'57" W, along the southerly line of the herein described tract, a distance of 456.45 feet to a point and corner, thence;
- 3) N 19°26'08" W, along the westerly line of the herein described tract, a distance of 406.00 feet to a point, thence;
- 4) N 20°25'56" W, continuing along the same, a distance of 992.32 feet to a point and corner, thence;
- 5) S 89°31'10" E, along the northerly line of the herein described tract, a distance of 235.60 feet to a point and corner, thence;
- 6) S 03°50'55" E, along the easterly line of the herein described tract, a distance of 252.08 feet to a point, thence;
- 7) S 27°43'09" E, along the northeasterly line of the herein described tract, a distance of 179.36 feet to a point, thence;
- 8) S 45°14'12" E, along the same, a distance of 363.17 feet to a point, thence;
- 9) S 63°07'47" E, continuing along the same, a distance of 175.32 feet to a point in the westerly line of the aforesaid lands to be dedicated to the Borough of Montvale for road purposes, thence;
- 10) S 00°17'01" W, along the westerly line of said lands to be dedicated for road purposes, a distance of 183.22 feet to a point, thence;
- 11) N 89°49'01" E, along the southerly line of said lands to be dedicated for road purposes, a distance of 163.72 feet to a point in the same and to the point and place of BEGINNING.

The above description encompasses 444,131 square feet, 10.196 acres and is as shown on a map entitled "Minor Subdivision Plat, Woodland Heights, Woodland Road," revised 04/30/2014 and prepared by McNally Engineering, LLC of Oakland, NJ. The said plan was revised from the 08/11/2008 approved Minor Subdivision Plat to reflect the changes required by the resolution of approval dated December 2, 2008 and to correct the proposed lot numbers.

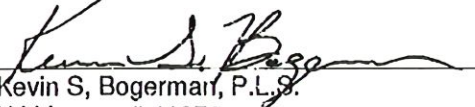

Kevin S. Bogerman, P.L.S.
NJ License # 41379
May 29, 2014

EXHIBIT "A" Page 1 of 1

169 RAMAPO VALLEY ROAD, OAKLAND, NEW JERSEY 07436

TEL: 201.337.9051 • FAX: 201.337.3391

CERTIFICATE C V BK 02056 PG 1493 27928700, EXP. 8

SUBJECT to covenants, restrictions and easements of record and such facts as may be shown by survey prepared by McNally Engineering, LLC, dated December, 2007, revised through the date of this Deed.

SUBJECT to Conservation Restriction/Easement in favor of the New Jersey Department of Environmental Protection granted simultaneously with this Deed.

SUBJECT to easements and setback lines as shown on proposed "Minor Subdivision Plat, Woodland Heights, Woodland Road," last revised on April 30, 2014 and prepared by McNally Engineering, LLC.

SUBJECT to municipal and governmental regulations, if any, provided it is not the intent of the parties to make them restrictive covenants.

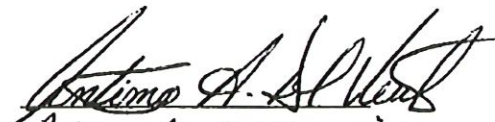
PROVIDED, FURTHER, that the Property shall only be used as shown on the Site Layout Plan as open space, open to the General Public, and shall forever be retained and preserved in its natural, scenic and open space condition and there shall be no use permitted of the Property that will impair or interfere with these conservation values of the Property, and the erection of any structures by Grantor or Grantee, including, without limitation, any buildings, fences, billboards, and benches are expressly prohibited. Without limiting the foregoing, the storage or dumping of trash, hazardous or toxic materials, the placement of underground storage tanks, or any other act or omission which would be contrary to the grant of Conservation Restriction/Easement to the New Jersey Department of Environmental Protection is expressly prohibited; and

PROVIDED, FURTHER, that the Grantor grants and conveys to the Grantee, to the extent that the Grantor has any right to do so, if any, access to the Property.

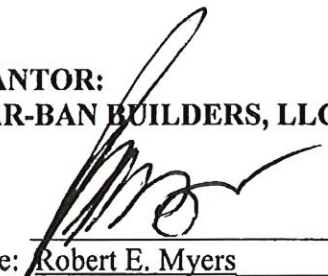
Promises by Grantor. The Grantor promises that the Grantor has done no act to encumber the property. This promise is called a "covenant as to grantor's acts" (N.J.S.A. 46:4-6). This promise means that the Grantor has not allowed anyone else to obtain any legal rights which affect the property (such as by making a mortgage or allowing a judgment to be entered against the Grantor).

Signatures. The Grantor signs this Deed as of the date at the top of the first page.

WITNESSED BY:


Antonio A. DeVecchio

GRANTOR:
BEAR-BAN BUILDERS, LLC

By: 
Name: Robert E. Myers
Title: Managing Member

STATE OF NEW JERSEY

SS:

COUNTY OF BERGEN

I CERTIFY that on September 03, 2015, Robert E. Myers personally came before me and this person acknowledged under oath, to my satisfaction, that:

- (1) this person signed, sealed and delivered the attached document as Managing Member of BEAR-BAN BUILDERS, LLC, the limited liability company named in this document;
- (2) this document was signed and made by the corporation as its voluntary act and deed by virtue of authority from its Board of Directors; and
- (3) this deed was made for One and 00/100 (\$1.00) Dollar as the full and actual consideration paid or to be paid for the transfer of title. (Such consideration is defined in N.J.S.A. 46:15-5).

Antimo A. DelVecchio
 Antimo A. DelVecchio, Notary Public or Attorney at Law
 of the State of New Jersey

Exhibit E

John S. Hogan Bergen County Clerk Bergen County Clerk One Bergen County Plaza Hackensack, NJ 07601 (201) 336-7000 www.bergencountyclerk.org/	 INSTRUMENT# 2024019836 V 5211 165 RECORDED DATE: 04/11/2024																																		
Document Type: DEED AND REALTY TAX FEES	Transaction #: 1983042 Document Page Count: 8 Operator Id: ERECORD																																		
RETURN TO: PO Box 2525 Fair Lawn, NJ 07410-8425	SUBMITTED BY: SIMPLIFILE 4844 North 300 West, Suite 202 PROVO, UT 84604																																		
PRIMARY NAME MONTVALE BOROUGH OF	SECONDARY NAME VEOLIA WATER NEW JERSEY INC																																		
ADDITIONAL PRIMARY NAMES	ADDITIONAL SECONDARY NAMES																																		
MARGINAL REFERENCES: File Number: Volume: Page:																																			
DOCUMENT DATE: 03/13/2024 MUNICIPALITY: MONTVALE LOT: 7 BLOCK: 1002 FEES/ TAXES: <table border="1"> <tr><td>RECORDING FEE</td><td>\$20.00</td></tr> <tr><td>STATE RECORDING FEE</td><td>\$35.00</td></tr> <tr><td>COUNTY RECORDING FEE</td><td>\$35.00</td></tr> <tr><td>TAX ABSTRACT-STATE</td><td>\$5.00</td></tr> <tr><td>TAX ABSTRACT-COUNTY</td><td>\$5.00</td></tr> <tr><td>HOMELESSNESS TRUST FUND</td><td>\$3.00</td></tr> <tr><td>HOMELESS CODE BLUE</td><td>\$2.00</td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td>NPNR</td><td>\$0.00</td></tr> <tr><td>Basic County</td><td>\$0.00</td></tr> <tr><td>Basic State</td><td>\$0.00</td></tr> <tr><td>PHPF</td><td>\$0.00</td></tr> <tr><td>Extra-Aide</td><td>\$0.00</td></tr> <tr><td>Gen-Purpose</td><td>\$0.00</td></tr> <tr><td>Mansion-Tax</td><td>\$0.00</td></tr> </table> Total: \$105.00	RECORDING FEE	\$20.00	STATE RECORDING FEE	\$35.00	COUNTY RECORDING FEE	\$35.00	TAX ABSTRACT-STATE	\$5.00	TAX ABSTRACT-COUNTY	\$5.00	HOMELESSNESS TRUST FUND	\$3.00	HOMELESS CODE BLUE	\$2.00							NPNR	\$0.00	Basic County	\$0.00	Basic State	\$0.00	PHPF	\$0.00	Extra-Aide	\$0.00	Gen-Purpose	\$0.00	Mansion-Tax	\$0.00	INSTRUMENT#: 2024019836 Recorded Date: 04/11/2024 I hereby CERTIFY that this document is recorded in the Clerk's Office in Bergen County, New Jersey.  <i>John S. Hogan</i> John S. Hogan Bergen County Clerk Recording Fees: \$105.00 Realty Transfer Tax Fees: \$0.00 Consideration: \$ 4725000.00
RECORDING FEE	\$20.00																																		
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OFFICIAL RECORDING COVER PAGE

Page 1 of 8

PLEASE DO NOT DETACH

THIS PAGE IS NOW PART OF THIS LEGAL DOCUMENT

NOTE: If document data differs from cover sheet, document data always supersedes.

*COVER PAGE DOES NOT INCLUDE ALL DATA, PLEASE SEE INDEX AND DOCUMENT FOR ANY ADDITIONAL INFORMATION.

V12.24.21

Bergen County Recording Data Page Honorable John S. Hogan Bergen County Clerk		<i>Official Use Only - Barcode</i>	
			
<i>Official Use Only – Realty Transfer Fee</i>			
Date of Document:		Type of Document: Deed	
First Party Name: Borough of Montvale		Second Party Name: Veolia Water New Jersey Inc.	
Additional Parties:			

THE FOLLOWING SECTION IS REQUIRED FOR DEEDS ONLY

Block: 1002	Lot: 7
Municipality: Montvale	
Consideration: \$4,725,000.00	
Mailing Address of Grantee: 200 Lake Shore Drive, Haworth, New Jersey 07641	

THE FOLLOWING SECTION IS FOR ORIGINAL MORTGAGE BOOKING & PAGE INFORMATION FOR ASSIGNMENTS, RELEASES, SATISFACTIONS, DISCHARGES & OTHER ORIGINAL MORTGAGE AGREEMENTS ONLY

Original Book:	Original Page:
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BERGEN COUNTY RECORDING DATA PAGE

Please do not detach this page from the original document as it contains important recording information and is part of the permanent record.

Deed

This Deed is made on the 13 day of March, 2024, and delivered on the 15 day of March, 2024,

BETWEEN

BOROUGH OF MONTVALE

a municipal corporation of the State of New Jersey

having its principal office at

12 DePiero Drive

Montvale, New Jersey 07645

referred to as the Grantor,

AND

VEOLIA WATER NEW JERSEY INC.

whose post office address is

200 Lake Shore Drive

Haworth, New Jersey 07641

referred to as the Grantee.

The words "Grantor" and "Grantee" shall mean all Grantors and all Grantees listed above.

- 1. Transfer of Ownership.** The Grantor grants and conveys (transfers ownership of) the property (called the "Property") described below to the Grantee. This transfer is made for the sum of Four Million Seven Hundred Twenty-Five Thousand and 00/100 Dollars (\$4,725,000.00).

The Grantor acknowledges receipt of this money.

- 2. Tax Map Reference** (N.J.S.A. 46:26A-3) Municipality of Montvale

Block No. 1002

Lot No. 7

Qualifier No.

Account No.

- 3. Property** The Property consists of the land and all the building and structures on the land in the Borough of Montvale, County of Bergen and State of New Jersey. The legal description is:

Please see attached Legal Description annexed hereto and made part hereof.

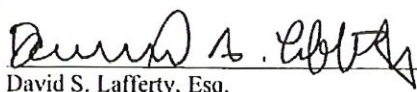
Being the same premises conveyed the Borough of Montvale by Deed from Summit Ave Holding, LLC dated November 2, 2022, recorded December 13, 2022 in the Bergen County Clerk/Register's Office in Book V-4882, page 164.

Subject to existing easements and restrictions of record and the effect, if any, of Municipal Zoning Ordinances and other applicable governmental regulations affecting the use of said premises and such state of facts as an accurate survey may disclose.

The property is conveyed and accepted subject to the restriction that the property shall be used solely for water utility and related purposes. This restriction shall be binding upon the Grantee, its successors, grantees and assigns. This restriction may only be terminated by an affirmative vote of the Mayor and Council of the Borough of Montvale. Grantee covenants and agrees that this restriction shall be included in all future deeds for this property or any portion thereof. In the event that the property is no longer used for water utility and related purposes, the Borough of Montvale shall have the right to re-acquire the Property.

Prepared by:

(For Recorders Use Only)


David S. Lafferty, Esq.



FIRST JERSEY TITLE SERVICES

25-00 Broadway • Fair Lawn, NJ 07410
(201) 791.4200

SCHEDULE A

ALL that certain lot, parcel or tract of land, situate and lying in the Borough of Montvale County of Bergen, State of New Jersey, and being more particularly described as follows

All that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, lying and being in the Borough of Montvale, County of Bergen, State of New Jersey.

BEING known and designated as Lot 7 in Block 1002 on the Borough of Montvale Tax Map.

BEING further described as Lot 7 in Block 1002 as shown on a certain map filed in the Bergen County Clerk's Office on October 1, 2014 as Map No. 9587.

COMMONLY known as: 127 Summit Avenue, Montvale, NJ 07645

IN COMPLIANCE WITH Chapter 157, Laws of 1977, premises herein are LOT 7, BLOCK 1002, on the Tax Map of the above municipality.

The street address of the Property is: 127 Summit Avenue, Montvale, New Jersey 07645.

4. **Promises by Grantor.** The Grantor promises that the Grantor has done no act to encumber the Property. This promise is called a "Covenant as to grantor's acts" (N.J.S.A. 46:4-6). This promise means that the Grantor has not allowed anyone else to obtain any legal rights which affect the Property (such as by making a mortgage or allowing a judgment to be entered against the Grantor).

5. **Signatures.** This Deed is signed and attested to by the Grantor's proper corporate officers as of the date at the top of the first page. (Print name below each signature.)

Witnessed or Attested by:

Fran Scordo
Fran Scordo, RMC, Borough Clerk

By: Michael N. Ghassali
Michael N. Ghassali, Mayor
Borough of Montvale

STATE OF NEW JERSEY, COUNTY OF BERGEN SS:

BE IT REMEMBERED, that on the 13 day of March, 2024, before me, the subscriber, personally appeared Fran Scordo, who, being by me duly sworn on her oath, deposes and makes proof to my satisfaction, that she is the Borough Clerk of the Borough of Montvale, the Municipal Corporation named in the within Instrument; that Michael N. Ghassali, is the Mayor of said Borough; that the execution, as well as the making of this Instrument, has been duly authorized by a proper resolution of the Governing Body; that deponent well knows the corporate seal of said Municipal Corporation; and that the seal affixed to said Instrument is the proper corporate seal and was thereto affixed and said Instrument signed and delivered by said Mayor as and for the voluntary act and deed of said Municipal Corporation, in the presence of said Clerk, who thereupon subscribed her name thereto as attesting witness; and that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by the within deed, as such consideration is defined in N.J.S.A. 46:15-5, is \$4,725,000.00.

Fran Scordo
Fran Scordo, RMC, Borough Clerk

Fran Scordo
Print name and title below signature
Municipal Clerk

Signed and sworn to before
me on this 13th Day of
March, 2024

David S. Lafferty
DAVID S. LAFFERTY
ATTORNEY AT LAW
STATE OF NEW JERSEY

RECORD AND RETURN TO:

First Jersey Title Services,
Post Office Box 2523
Fair Lawn, New Jersey 07410