

IN THE MATTER OF THE PETITION FOR
APPROVAL OF THE HOUSING ELEMENT
AND FAIR SHARE PLAN AND SPENDING
PLAN PURSUANT TO THE FAIR
HOUSING ACT, N.J.S.A. 52:27D-313, AND
THE NEW JERSEY CONSTITUTION, BY
THE BOROUGH OF MONTVALE, a
municipal Corporation of the State of New
Jersey,

Plaintiff/Petitioner

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY—LAW DIVISION

DOCKET NO. BER-L-6141-15

SETTLEMENT AGREEMENT

Plaintiff THE BOROUGH OF MONTVALE; Interested Party THE PLANNING BOARD OF THE BOROUGH OF MONTVALE, and Defendant-Intervenor TWO PARAGON DRIVE, LLC ("Paragon") being desirous of partially settling the lawsuit entitled IN THE MATTER OF THE PETITION FOR APPROVAL OF THE HOUSING ELEMENT AND FAIR SHARE PLAN AND SPENDING PLAN PURSUANT TO THE FAIR HOUSING ACT, N.J.S.A. 52:27D-313, AND THE NEW JERSEY CONSTITUTION, BY THE BOROUGH OF MONTVALE, DOCKET NO. BER-L-6141-15 ("Lawsuit"), without the risk, cost, or burden of further litigation, agree in exchange for their mutual promises, terms and conditions and other sufficient consideration as follows:

1. PURPOSE

The purpose of this agreement is (a) to create a realistic opportunity for the development of 16 affordable family for sale units; (b) to control the development of the Former A&P Site as set forth herein; and (c) to resolve all issues amongst the parties.

2. DEFINITIONS

Unless the context plainly requires a different meaning, the following terms have the following meanings for purposes of this Agreement.

- a. "Agreement" means this agreement.
- b. "Developer" means Two Paragon Drive, LLC or its successors or assigns.
- c. "Former A&P Site" means Block 1903, Lot 7 on the Borough's official tax map, consisting of approximately 19.9 acres located at the intersection of Paragon Drive and Summit Avenue in Montvale.
- d. "Nonappealable" means that the period for appeal has expired without any appeal having been filed by any party or that an appeal has been filed and all trial and appellate proceedings have concluded affirming the municipal actions that were the subject of the appeal.
- e. "Party" and "Parties" means one or more of the Borough of Montvale, the Planning Board of the Borough of Montvale, and the Developer, as the context may require.
- f. "Municipal Parties" means the Borough of Montvale and the Planning Board of the Borough of Montvale collectively.
- g. "Ordinance" means a duly adopted ordinance of the Borough of Montvale to rezone the Former A&P Site so as to permit the development contemplated by this Agreement in the form attached as Exhibit A- Concept Plan.

3. **COURT APPROVAL AND MOUNT LAUREL FAIRNESS HEARING**

- a. An essential and non-severable provision of this Agreement is the approval of this Agreement by the Court. The PARTIES will cooperate, and make a joint request, that the Court deem its order a final order subject to immediate appeal. In the event the Court does not deem its order a final order, the terms of this Agreement will be deemed effective upon entry of the Court's order approving this Agreement.
- b. Within seven (7) days after execution of this Agreement, and subject to the availability of the Court, Honorable Menelaos Toskos, J.S.C., Bergen County or such other Judge of the Superior Court designated by the Assignment Judge to hear this matter, the PARTIES shall: (1) file a consent order permitting Developer to intervene in the lawsuit, Exhibit B; and (2) apply to the Court for a Fairness Hearing to consider approval of this Settlement as soon as possible after the ordinance has been finalized and introduced. The proposed hearing shall be within 45 days of the publication of notice of the Fairness Hearing.
- c. Following the scheduling of a Fairness Hearing date on solely the Fairness of this Agreement, the BOROUGH shall promptly comply with and be responsible for all notice requirements as may be directed by the Court. DEVELOPER shall have the right to approve the form of notice. Said notice shall be published within seven (7) days of the Court scheduling the Hearing.

- d. Upon the Court approval of this Agreement, the PARTIES shall request the Court retain jurisdiction to address any issues or problems, whether real or perceived, in connection with review of development plans or development approval proceedings, if said issues or problems cannot be first resolved by the Court-appointed Special Master.
- e. The PARTIES hereto agree to cooperate and participate in the defense of any challenge to, or appeal of, the contemplated Court approval of this Agreement or any related implementing action.
- f. Each PARTY shall be responsible for its own costs and expenses associated with seeking Court approval for and implementing this Agreement, including any litigation costs except that DEVELOPER shall be responsible for half the expenses generated by the Special Master for evaluating the within settlement (but not any other portion of the Declaratory Judgement action), making recommendations to the Court concerning this settlement, and handling any issues that arise in conjunction with implementation of the settlement and the Borough shall be responsible for the remaining half. This provision shall not be construed to preclude joint representation of BOROUGH and PLANNING BOARD in any litigation or other proceeding.
- g. An essential and non-severable condition of this Agreement is a nonappealable determination by the Court that the RDP attributable to the Former A&P Site is 21 and that as long as the affordable units are administered in accordance with

UHAC standards the units shall be eligible for credit against the BOROUGH'S affordable housing obligations.

- h. The PARTIES shall jointly support entry of an order approving this Agreement in partial settlement of the pending litigation. If the Court declines to enter the consent order allowing DEVELOPER'S intervention and/or approve this Agreement, the PARTIES shall attempt, with the assistance of the court-appointed special master to modify this Agreement. If they are unable to do so within 30 days, either the DEVELOPER or the BOROUGH may, by written notice to all other PARTIES terminate this Agreement and neither party shall be permitted to use this Agreement against each other in any future proceeding.

4. OBLIGATIONS OF BOROUGH AND PLANNING BOARD

- a. By November 14, 2017, the BOROUGH shall entertain the adoption of a resolution authorizing the execution of this Agreement.
- b. By November 21, 2017, the PLANNING BOARD shall approve and execute this Agreement.
- c. By November 28, 2017, the Mayor shall introduce the Ordinance attached hereto as Exhibit A to rezone the subject property. Consistent with the discussions of the parties, the Ordinance reflects the caliber of project the PARTIES have discussed: a high quality for sale development, with a certain architectural style, finishings and amenities as depicted on the Concept Plan.

- d. In December, 2017, the PLANNING BOARD shall entertain the adoption of a resolution authorizing the Amendment of the Master Plan consistent with this Agreement. On the same night, the PLANNING BOARD shall review the Ordinance, make a determination of the consistency of the Ordinance with the Master Plan and refer the Ordinance back to the BOROUGH.
- e. The BOROUGH shall conduct a public hearing in accordance with the requirements of the Municipal Land Use Law and adopt the Ordinance. Nothing herein shall prohibit the PARTIES from mutually agreeing, in writing, to modifications of the Ordinance before final enactment.
- f. All parties acknowledge that DEVELOPER, the BOROUGH and/or the PLANNING BOARD may propose modifications to the Concept Plan if necessitated solely by the engineering of the Development. The PARTIES agree to reasonably consider any such request for modification necessitated solely by the engineering of the Development subject to the following limitations:
 - i. 20% of the units in the aggregate must be affordable family units and constructed as part of an inclusionary development as set forth below and subject to the phasing provisions set forth in this Agreement.
 - ii. No more than 80 gross units on the Former A&P Site.
 - iii. The Former A&P Site will be zoned to contain a total of 80 units consisting of 64 market rate units and 16 affordable family for sale units.

- g. The proposed development of the Subject Property pursuant to this Agreement shall require site plan approval in accordance with current BOROUGH land use and zoning regulations as amended by the Ordinance, procedural requirements of the Municipal Land Use Law, and the provisions of this Agreement.
- h. PLANNING BOARD agrees to cooperate with any requests for reasonable waivers and/or variances in connection with DEVELOPER'S development application to advance the purpose of this Agreement, the Ordinance and the Concept Plan and any changes permitted herein. Such variances and waivers shall be considered by the PLANNING BOARD consistent with the MLUL.
- i. PLANNING BOARD shall expedite the processing of applications for development of the Former A&P Site, including, without limitation, taking the actions set forth on Exhibit D attached hereto. At the request of the DEVELOPER, the PLANNING BOARD shall schedule special meetings to facilitate expedited processing of such applications provided that DEVELOPER pays the costs incurred in conjunction with such meetings.
- j. Requests by the PLANNING BOARD for reports shall be governed by the standards and procedures set forth in N.J.A.C. 5:93-10.3. The PLANNING BOARD may require submission of a stormwater management plan or flood hazard area plan, but, if the DEVELOPER seeks permits that require approval of the stormwater management plan or flood hazard area plan by the New Jersey Department of Environmental Protection (NJDEP), the PLANNING BOARD

shall not make an independent assessment of the stormwater management plan, but shall simply condition any development approvals upon approval of the stormwater management plan or flood hazard plan area by the NJDEP.

k. Except as expressly provided in the Ordinance adopted pursuant to this Agreement, neither the BOROUGH nor the PLANNING BOARD shall require the DEVELOPER, his successors or assigns, to construct, or pay for, any off-site improvements other than those provided for by N.J.S.A. 40:55D-42.

l. Nothing in this Agreement shall be deemed to relieve the DEVELOPER of any lawful obligation to pay generally applicable fees established by statute or ordinance, in connection with applications for development approvals, building permits, and certificates of occupancy for the Project Site nor shall it be deemed to relieve the DEVELOPER of any obligation to reimburse the BOROUGH or PLANNING BOARD for the reasonable fees of professionals for services rendered to the BOROUGH or the PLANNING BOARD provided for by N.J.S.A. 40:55D-53.2.

m. **Extended Vesting.** Any preliminary or final site plan approval granted to the Project Site under the terms of this Agreement shall be granted extended vesting by the PLANNING BOARD until July 1, 2025 unless credits and applicable rental bonuses are guaranteed by the court in which case the vesting shall extend for a period of at least ten years from the approval.

- n. Cost-Increasing Requirements. Neither the BOROUGH nor the PLANNING BOARD may impose any procedural or substantive requirement that substantially adds to the burden or cost of development of the Former A&P Site which is not strictly necessary to protect public health or safety. Compliance with the Ordinance or to develop the site substantially consistent with the Concept Plan shall not be deemed to impose a prohibited cost-increasing requirement.
- o. Amendment of Ordinances. Neither the ordinances adopted or amended pursuant to this Agreement nor the current ordinances governing development or use of the Former A&P Site may be materially added to, amended, modified, or repealed without the written consent of the DEVELOPER, while this Agreement remains in force, except that generally-applicable changes may be made to the BOROUGH'S Ordinances in a manner that will not affect DEVELOPER'S rights hereunder.

5. OBLIGATIONS OF DEVELOPER

- a. DEVELOPER shall file development applications substantially consistent with the Concept Plan attached hereto as Exhibit A and in accordance with the Ordinance once it is adopted.
- b. DEVELOPER shall be responsible for maintaining the required number of affordable units as required by this Agreement as affordable family for sale units. DEVELOPER shall have an obligation to deed-restrict such units as low and

moderate income affordable units. Any such affordable units shall comply with UHAC, applicable COAH affordable housing regulations, any applicable order of the Court, and other applicable laws.

- c. At least half of the affordable units shall be affordable to low income households and the remainder shall be affordable to moderate income households. To illustrate the intent of this provision, if 80 units are approved and constructed, the breakdown will be 8 moderate and 8 low.
- d. As to the affordable units, DEVELOPER shall comply with all COAH and UHAC standards. The distribution of the affordable housing units shall be in compliance with COAH's Round Two substantive regulations, N.J.A.C. 5:93 or as approved by the Special Master and the Court.
- e. The Parties agree that the affordable units are to be included in the Affordable Housing Plan to be approved and credited by the Court in the subsequent ~~compliance action and that the credits will be applied as the BOROUGH~~ deems fit.
- f. The phasing of the construction of low and moderate income units shall be governed by the phasing schedules set forth in regulations of the Council on Affordable Housing.
- g. DEVELOPER shall not be charged any affordable housing fees and the development on the Former A&P Site shall be treated as a fully inclusionary housing site.

- h. DEVELOPER shall be responsible for all costs associated with the initial sale of the affordable units. In satisfaction of this obligation, DEVELOPER shall retain Piazza & Associates as the Administrative Agent, which the BOROUGH hereby pre-approves, to perform all the administrative tasks associated with the affordable units to be constructed including but not limited to all those set forth below. In the event Frank Piazza is not available or unwilling to serve, then DEVELOPER and the BOROUGH shall cooperate toward retaining a mutually agreeable Administrative Agent.
- i. The administrative tasks include the affordable housing Administrative Agent performing its responsibilities pursuant to Uniform Housing Affordability Control ("UHAC") regulations, COAH regulations, the regulations of any other relevant agency and all other applicable laws related to affordable housing in New Jersey ("Affordable Housing Laws") to ensure that the affordable units remain creditworthy. ~~Notwithstanding anything herein to the contrary, DEVELOPER~~ directly or through the Administrative Agent shall take all necessary steps to make the affordable units provided for under this Agreement and in the approved site plan creditworthy and to maintain the creditworthiness of the units pursuant to applicable law. Such steps shall include, but not be limited to (i) complying with the bedroom distribution for the affordable units, (ii) the split of low-income units and moderate-income units, (iii) the phasing of the market units with the affordable units in accordance with all applicable

regulations; (iv) appropriately marketing the affordable units, (v) screening potential applicants for the units to ensure that they qualify as low or moderate households, (vi) pricing the units at affordable rates, (vii) ensuring that the affordable units are properly deed restricted, and (viii) enforcing any and all other UHAC requirements and requirements of the COAH or a successor agency as to the affordability of the units. For purposes of this subparagraph, the Parties assume current UHAC regulations and COAH round two regulations shall control. However, if COAH promulgates new applicable regulations prior to DEVELOPER securing preliminary site plan approval that impose different requirements to render the units creditworthy, then DEVELOPER shall comply with the new regulations. Upon written notice, DEVELOPER shall provide detailed information requested by the BOROUGH, or the BOROUGH'S Administrative Agent, within 30 days concerning DEVELOPER's compliance with UHAC and other applicable laws.

- j. DEVELOPER shall post escrows to cover the costs of the PLANNING BOARD'S professionals in conjunction with their review of DEVELOPER'S development applications, which costs shall include, by way of example, the cost to review submissions of the applicant and other relevant documents and to testify about the reports reviewed. All such escrows shall be governed by the requirements of the MLUL.

- k. DEVELOPER acknowledges that as a condition of preliminary and/or final site plan and/or subdivision approval, PLANNING BOARD may require on-site and off-site improvements only as permitted by N.J.S.A. 40:55D-42. DEVELOPER shall comply with all such reasonable conditions and shall confine any challenge to any condition of approval to an attempt to rectify the condition.
- l. DEVELOPER shall perform, at its expense, any studies the PLANNING BOARD or other BOROUGH board, commission or other entity with jurisdiction may reasonably, and lawfully, require with respect to any infrastructure improvements necessitated by the Project.
- m. DEVELOPER accepts and will comply with the requirement that any development approval granted by PLANNING BOARD for the Property shall incorporate by reference this Agreement, shall be consistent with all terms and provisions of this Agreement, and shall include an express condition requiring compliance by the PARTIES with all obligations under this Agreement.
- n. DEVELOPER shall take no direct or indirect action to interfere with implementation of BOROUGH'S Housing Element and Fair Share Plan or any subsequent amendment thereto, provided that any amendment does not deprive DEVELOPER of any express rights created hereunder or any other inclusionary project by the DEVELOPER in the BOROUGH.
- o. Subject to Section 3.g., DEVELOPER will cooperate with and support the BOROUGH'S subsequent request for entry of a judgment of compliance based

upon such an amended Housing Element and Fair Share Plan and will support the settled upon fair share, vacant land analysis and will not otherwise challenge the validity of the BOROUGH'S HEFSP.

- p. DEVELOPER shall have the obligation to cooperate with BOROUGH to advance the intent and purposes of this Agreement.
- q. The DEVELOPER has no obligation to construct, cause to be constructed, or subsidize the construction of, low or moderate income housing, except for the 16 units specified in this Agreement.
- r. The BOROUGH has reviewed the Concept Plan, a copy of which is attached as Exhibit A. While recognizing that this plan has not yet been fully engineered and is subject to the changes detailed within this Settlement Agreement and other revisions, the MUNICIPAL PARTIES stipulate that this plan represents an acceptable concept plan for the development of the Former A&P Site under the terms of the AH-6A Ordinance attached as Exhibit C. The Municipal Parties acknowledge and agree that the configuration, location, and architectural style of the units shown on the Concept Plan may change, provided that such changes comply with the provisions of the Ordinance. The DEVELOPER will work with the PLANNING BOARD to use façade elements and materials to add to the interest of the exterior elevations.

7. PROVISIONS APPLICABLE TO ALL PARTIES

- a. **Dispute Resolution.** At the request of the DEVELOPER or the Municipal Parties, the court-appointed special master shall decide on an expedited basis any dispute that arises as to whether any procedural or substantive requirement imposed by the BOROUGH or the PLANNING BOARD impedes, or adds to the cost of, development of the Former A&P Site is necessary to protect public health or safety provided that the requirement does not arise from a limitation in the ordinance or to develop substantially consistent with the Concept Plan. The cost of the special master shall be split evenly between DEVELOPER and the BOROUGH. Any decision by the court-appointed special master may be appealed to the Honorable Melenaos Toskos, J.S.C. or such other Superior Court Judge assigned by the Bergen County Assignment Judge by any party.
- b. **Legal Challenges by Third Parties.** If any third party files a legal challenge to, or appeal from, this Agreement, or the ordinance and master plan amendments adopted pursuant to this Agreement, the parties agree to jointly defend against any third party legal challenge to, or appeal from, this Agreement, or the Ordinance and Master Plan Amendments adopted pursuant to this Agreement and any action taken by the BOROUGH or PLANNING BOARD in implementation of this Agreement. All parties will be responsible for their own legal costs in any such defense.
- c. **Captions and Titles.** Captions and titles to this Agreement and the several sections are inserted for convenience of reference only and are in no way to be

construed as defining, limiting or modifying the scope and intent of the various provisions of this Settlement Agreement.

- d. **Invalidity.** If any provision of this Agreement is held by the Court to be invalid, void or unenforceable, the parties shall, after the exhaustion of all appeals, attempt with the assistance of the court-appointed special master to modify this Agreement. If they are unable to do so within 20 days, either the BOROUGH or the DEVELOPER may by written notice to all other parties terminate this Agreement and reinstate the litigation. Alternatively, the parties may jointly request that the Court reform the Agreement.
- e. **Violation.** If any party fails to perform any obligation required to be performed by this Agreement, such failure shall constitute a violation of this Agreement. Upon violation of the Agreement, any party for whose benefit such obligation is intended may enforce the Agreement by motion in aid of litigants' rights or any other remedy available at law or equity.
- f. **Waiver.** Any waiver of any provision of this Agreement will be effective only if made in writing. Failure to enforce any of the provisions of this Agreement by any of the parties shall not constitute a waiver of these provisions.
- g. **Entire Agreement.** This Agreement and the Exhibits attached hereto contain the entire agreement between the parties. No representative, agent or employee of any party has been authorized to make any representations or promises with reference to this Agreement or to vary, alter or modify the terms hereof except as

stated herein. No additions, changes or modifications, renewals or extensions hereof, shall be binding unless reduced to writing and signed by the parties hereto.

- h. **Covenants Run with Land.** It is the intention of the parties that this Agreement constitutes a set of covenants that run with the land. This Agreement shall inure to the benefits of and be binding upon the parties and their successors in interest and assigns. Wherever reference in this Agreement is made to the DEVELOPER, that reference shall also mean the successors in interest and assigns of the DEVELOPER.
- i. **Assignment.** The benefits and obligations of this Agreement may be assigned by the DEVELOPER in whole or in part.
- j. **Notice.** The parties agree to provide each other with immediate notice of any lawsuits, action or governmental declaration threatened or pending of which they are actually aware which may affect the provisions of this Agreement or implementation thereof.
- k. **Construction of Agreement.** The parties acknowledge that this Agreement was prepared jointly and, therefore, this Agreement shall be construed on a parity between the parties.
- l. **Governing Law.** This Agreement has been entered into and shall be construed, governed and enforced in accordance with the laws of the State of New Jersey.
- m. **Written Notices.** All written notices required under this Settlement Agreement shall be given by Certified Mail, Return Receipt Requested as follows:

Two Paragon Drive, LLC

Mark Schaevitz
One Paragon Drive, Suite 145
Montvale, New Jersey 07645

and

Antimo A. Del Vecchio, Esq.
Beattie Padovano, LLC
50 Chestnut Ridge Road, Suite 208
Montvale, New Jersey 07645

Borough of Montvale

Maureen Iarossi-Alwan
Municipal Clerk
Borough Hall
12 Mercedes Drive
Montvale, NJ 07645

and

Joseph W. Voytus, Esq.
Boggia & Boggia, LLC
71 Mount Vernon
Ridgefield Park, NJ 07660

and

Jeffrey R. Surenian, Esq.
Jeffrey R. Surenian and Associates, LLC
707 Union Avenue
Brielle, New Jersey 08730
JRS@Surenian.com

Planning Board of the Borough of Montvale

Lorraine Hutter
Planning Board Secretary
Borough Hall
12 Mercedes Drive
Montvale, NJ 07645

and

Robert T. Regan, Esq.
PO Box 214
345 Kinderkamack Road
Westwood, NJ 07675-1600

- n. **Authority.** Each of the parties represents that it has authority to execute this Settlement Agreement. Each party shall provide legally sufficient documentation of its authority to execute this Agreement upon request by any other party, the court-appointed master, or the Court.
- o. **Change of Law.** The validity and terms of this Agreement shall not be affected by any change in law subsequent to its effective date. In particular, the parties are aware that lawsuits are pending in the trial courts and the appellate courts following the decision of the Supreme Court in In re Adoption of N.J.S.A. 5:96, 221 N.J. 1 (2015), and that decisions might be rendered in these lawsuits. The parties are also aware that the Council on Affordable Housing might resume its former functions. Finally, the parties are aware that statutes might be adopted by the Legislature concerning the provision of low and moderate-income housing.

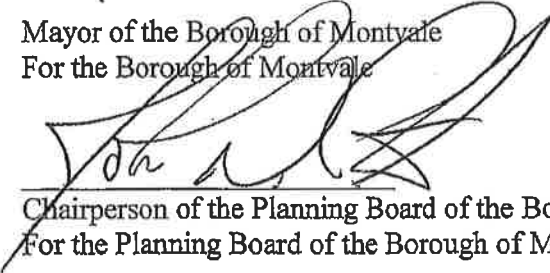
The validity and terms of this Agreement shall not be affected by any of these events.

- p. **Attorney and Expert Fees.** Each party shall bear its own attorney fees and costs of litigation.
- q. **Effective Date.** This Agreement shall become effective upon execution.
- r. **Period of Agreement.** Unless terminated sooner either by written agreement of the parties, this Settlement Agreement shall remain in force until the occurrence of the last of the following events:
 - s. Eight years from the date of the entry of a judgment of compliance;
 - t. Expiration of the extended vesting period for any development approvals granted for either Project Site;
 - u. Expiration of the period of repose established by the judgment of compliance, including any extensions of the period of repose granted by the Court or any state agency authorized to grant such extensions.
- v. **Effect of Termination or Expiration of Agreement.** Termination or expiration of this Agreement shall not affect the validity or vesting of any approvals or permits received by the DEVELOPER and shall not automatically repeal or amend any ordinances or master plan amendments adopted pursuant to this Agreement. The litigation shall be reinstated and all parties shall be in the same position as they were on the date the Agreement was executed.
- w. This Agreement may be executed in counterparts.



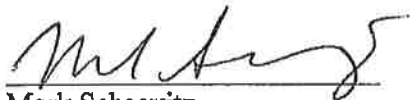
Mayor of the Borough of Montvale
For the Borough of Montvale

Dated: 11/27/2017



Chairperson of the Planning Board of the Borough of Montvale
For the Planning Board of the Borough of Montvale

Dated:



Mark Schaevitz
For Two Paragon Drive, LLC

Dated: 11/20/17

Exhibit "A"

MONTVALE | Carriages

TOLL ARCHITECTURE



Toll Brothers
AMERICA'S LUXURY HOME BUILDER

MONTVALE | Carriages

TOLL ARCHITECTURE

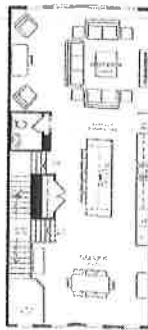
BARNFIELD/BRIERCLIFF/
BUSKIRK MARQUEE



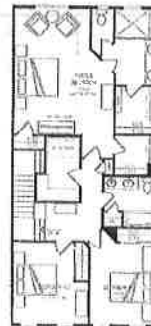
CONCEPTUAL RENDERING



FIRST FLOOR



SECOND FLOOR



THIRD FLOOR

MONTVALE | Carriages

TOLL ARCHITECTURE

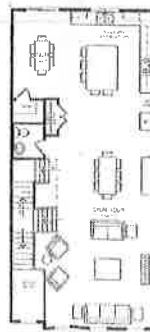
ORATAM/OSBURN/
OVERBROOK MARQUEE



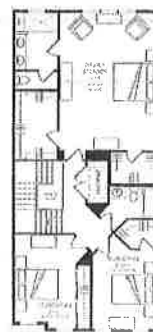
CONCEPTUAL RENDERING



GROUND FLOOR



SECOND FLOOR



THIRD FLOOR

MONTVALE | Carriages

TOLL ARCHITECTURE

FAWNHILL-ALLENDALE
2 BEDROOM / 2 BEDROOM
CONDO UNITS



CONCEPTUAL RENDERING

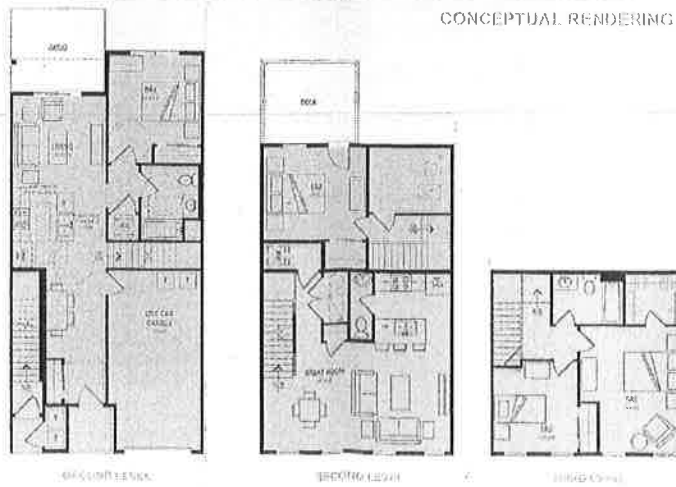


Exhibit "B"

Antimo A. Del Vecchio, Esq.
Attorney ID No. 015191989
Beattie Padovano, LLC
50 Chestnut Ridge Road, Suite 208
Montvale, New Jersey 07645-0244
(201) 799-2149
adelvecchio@beattielaw.com
Attorneys for Defendant Intervenor
Two Paragon Drive, LLC

IN THE MATTER OF THE PETITION FOR
APPROVAL OF THE HOUSING ELEMENT AND
FAIR SHARE PLAN AND SPENDING PLAN
PURSUANT TO THE FAIR HOUSING ACT,
N.J.S.A. 52:27D-313, AND THE NEW JERSEY
CONSTITUTION, BY THE BOROUGH OF
MONTVALE, a Municipal Corporation of the State
of New Jersey,

Plaintiff/Petitioner

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO.: BER-L-6141-15

CIVIL ACTION
(MOUNT LAUREL)

CONSENT ORDER PERMITTING
INTERVENTION BY
TWO PARAGON DRIVE, LLC

THIS MATTER this matter having come before the Court on the ____ day of _____ 2017, in the presence of counsel for the movant Two Paragon Drive, LLC and Plaintiff Borough of Montvale, upon the joint request of Two Paragon Drive, LLC and the Borough of Montvale for an Order granting Two Paragon Drive, LLC leave to intervene as a defendant-intervenor and to file an answer, and it appearing that the parties have consented to the entry of this Order, and for good cause shown,

IT IS on this _____ day of _____, 2017, hereby **ORDERED**:

1. Two Paragon Drive, LLC is granted leave to intervene as a party defendant for the sole purpose and limited to participating in the Court's adjudication of the Borough of Montvale's constitutional compliance with its affordable housing obligation.

2. Two Paragon drive, LLC shall file an answer within ten (10) days of the entry of this Order.

3. A true but uncertified copy of this Order shall be served on all parties within seven (7) days of entry.

_____, J.S.C.

☐ Opposed
☐ Unopposed

Attorneys for Plaintiff Borough of Montvale

BEATTIE PADOVANO, LLC
Attorneys for Intervenor-Defendant Two
Paragon Drive, LLC

By: _____

By: _____
Antimo A. Del Vecchio, Esq.
A member of the firm

Dated: November __, 2017

Dated: November __, 2017

Antimo A. Del Vecchio, Esq.
Attorney ID No. 015191989
Beattie Padovano, LLC
50 Chestnut Ridge Road, Suite 208
Montvale, New Jersey 07645-0244
(201) 799-2149
adelvecchio@beattielaw.com
Attorneys for Defendant Intervenor Two
Paragon Drive, LLC

IN THE MATTER OF THE PETITION
FOR APPROVAL OF THE HOUSING
ELEMENT AND FAIR SHARE PLAN
AND SPENDING PLAN PURSUANT TO
THE FAIR HOUSING ACT, N.J.S.A.
52:27D-313, AND THE NEW JERSEY
CONSTITUTION, BY THE BOROUGH
OF MONTVALE, a municipal
Corporation of the State of New
Jersey,

Plaintiff/Petitioner

SUPERIOR COURT OF NEW
JERSEY

BERGEN COUNTY—LAW DIVISION

DOCKET NO. BER-L-6141-15

**ANSWER AND AFFIRMATIVE
DEFENSES**

Defendant-Intervenor Two Paragon Drive, LLC, a limited liability corporation
organized under the laws of New Jersey with its principal place of business located at 1
Paragon Drive, Suite 145, Montvale, New Jersey 07645, says by way of answer:

BACKGROUND AND JURISDICTION

1. Admitted.
2. Admitted.

3. Admitted.

4. Defendant-intervenor lacks sufficient information to admit or deny this allegation.

5. This is an assertion of a legal conclusion which defendant-intervenor neither admits nor denies.

6. Defendant-intervenor lacks sufficient information to admit or deny this allegation.

MONTVALE'S PARTICIPATION IN COAH'S ADMINISTRATIVE PROCESS

7. This is an assertion of a legal conclusion which defendant-intervenor neither admits nor denies.

8. This is an assertion of a legal conclusion which defendant-intervenor neither admits nor denies.

9. This is an assertion of a legal conclusion which defendant-intervenor neither admits nor denies.

10. This is an assertion of a legal conclusion which defendant-intervenor neither admits nor denies.

11. Defendant-intervenor lacks sufficient information to admit or deny this allegation.

12. Defendant-intervenor lacks sufficient information to admit or deny this allegation.

13. Defendant-intervenor lacks sufficient information to admit or deny this allegation.

14. Defendant-intervenor lacks sufficient information to admit or deny this allegation.
15. Defendant-intervenor lacks sufficient information to admit or deny this allegation.
16. Defendant-intervenor lacks sufficient information to admit or deny this allegation.
17. Defendant-intervenor lacks sufficient information to admit or deny this allegation.
18. Defendant-intervenor lacks sufficient information to admit or deny this allegation.
19. Defendant-intervenor lacks sufficient information to admit or deny this allegation.
20. Defendant-intervenor lacks sufficient information to admit or deny this allegation.
21. Defendant-intervenor lacks sufficient information to admit or deny this allegation.
22. Defendant-intervenor lacks sufficient information to admit or deny this allegation.
23. Defendant-intervenor lacks sufficient information to admit or deny this allegation.
24. Defendant-intervenor lacks sufficient information to admit or deny this allegation.

25. Admitted.

26. Defendant-intervenor lacks sufficient information to admit or deny this allegation.

27. This is an assertion of a legal conclusion which defendant-intervenor neither admits nor denies.

FIRST COUNT

APPROVAL OF HOUSING ELEMENT AND FAIR SHARE PLAN

28. Defendant-intervenor repeats all of its foregoing responses which are incorporated herein by reference as if set forth in full.

29. This is an assertion of a legal conclusion which defendant-intervenor neither admits nor denies.

30. Defendant-intervenor lacks sufficient information to admit or deny this allegation.

31. Defendant-intervenor lacks sufficient information to admit or deny this allegation.

32. Insofar as the survey did not include the property identified as Block 1903, Lot 7 on the official tax map of the Borough of Montvale, which is located at 2 Paragon Drive, the allegation is denied. In all other respects, defendant-intervenor lacks sufficient information to admit or deny this allegation.

33. Insofar as the plan did not include a methodology for determining Montvale's third round obligation nor a determination of that obligation, the allegation is denied. In all other respects, defendant-intervenor lacks sufficient information to admit or deny

this allegation.

34. Defendant-intervenor lacks sufficient information to admit or deny this allegation.

35. This is an assertion of a legal conclusion which defendant-intervenor neither admits nor denies.

36. This is an assertion of a legal conclusion which defendant-intervenor neither admits nor denies.

37. Denied.

38. Denied.

WHEREFORE, defendant-intervenor respectfully requests that the Court grant the following relief:

A. DENYING all relief sought by the Borough in its Complaint;

B. DECLARING that the Borough is in violation of its constitutional duty to create sufficient realistic opportunities for the construction of safe, decent housing affordable to low- and moderate-income families to satisfy the Borough's fair share of the unmet regional need for such housing;

C. ORDERING the Borough to submit to the Court, within a time period to be set by the Court, a compliance plan and zoning ordinances that will bring the Borough into compliance with the requirements of the Constitution;

D. APPOINTING a Special Master, at the expense of the Borough, to oversee the implementation of the foregoing remedies; and

E. ORDERING such additional relief as the Court deems just and equitable.

SECOND COUNT

APPROVAL OF SPENDING PLAN

39. Defendant-Intervenor repeats all of its foregoing responses which are incorporated herein by reference as if set forth in full.

40. This is an assertion of a legal conclusion which defendant-intervenor neither admits nor denies.

41. This is an assertion of a legal conclusion which defendant-intervenor neither admits nor denies.

42. Defendant-intervenor lacks sufficient information to admit or deny this allegation.

43. Defendant-intervenor lacks sufficient information to admit or deny this allegation.

44. Defendant-intervenor lacks sufficient information to admit or deny this allegation.

45. Insofar as a spending plan can only be lawful if it is in implementation of a lawful housing element and fair share plan, the allegation is denied. In all other respects, defendant-intervenor lacks sufficient information to admit or deny this allegation.

WHEREFORE, defendant-intervenor respectfully requests that the Court grant the following relief:

A. DENYING all relief sought by the Borough in its Complaint;

B. DECLARING that the Borough is in violation of its constitutional duty to create sufficient realistic opportunities for the construction of safe, decent housing affordable to low-

and moderate-income families to satisfy the Borough's fair share of the unmet regional need for such housing;

C. ORDERING the Borough to submit to the Court, within a time period to be set by the Court, a compliance plan and zoning ordinances that will bring the Borough into compliance with the requirements of the Constitution;

d. APPOINTING a Special Master, at the expense of the Borough, to oversee the implementation of the foregoing remedies; and

e. ORDERING such additional relief as the Court deems just and equitable.

THIRD COUNT

GRANTING TEMPORARY IMMUNITY AGAINST EXCLUSIONARY ZONING ACTIVITIES

46. Defendant-Intervenor repeats all of its foregoing responses which are incorporated herein by reference as if set forth in full.

47. This is an assertion of a legal conclusion which defendant-intervenor neither admits nor denies.

48. This is an assertion of a legal conclusion which defendant-intervenor neither admits nor denies.

49. Denied.

50. Denied.

51. Denied.

WHEREFORE, defendant-intervenor respectfully requests that the Court grant the following relief:

A. DENYING all relief sought by the Borough in its Complaint;

B. DECLARING that the Borough is in violation of its constitutional duty to create sufficient realistic opportunities for the construction of safe, decent housing affordable to low- and moderate-income families to satisfy the Borough's fair share of the unmet regional need for such housing;

C. ORDERING the Borough to submit to the Court, within a time period to be set by the Court, a compliance plan and zoning ordinances that will bring the Borough into compliance with the requirements of the Constitution;

D. APPOINTING a Special Master, at the expense of the Borough, to oversee the implementation of the foregoing remedies; and

E. ORDERING such additional relief as the Court deems just and equitable.

FOURTH COUNT

GRANTING ADDITIONAL TIME TO REVISE, AMEND, AND/OR UPDATE HOUSING ELEMENT AND FAIR SHARE PLAN AND SPENDING PLAN, IF NECESSARY

52. Defendant-intervenor repeats all of its foregoing responses which are incorporated herein by reference as if set forth in full.

53. Denied.

54. This is an assertion of a legal conclusion which defendant-intervenor neither admits nor denies.

55. This is an assertion of a legal conclusion which defendant-intervenor neither admits nor denies.

56. This is an assertion of a legal conclusion which defendant-intervenor

neither admits nor denies.

WHEREFORE, defendant-intervenor respectfully requests that the Court grant the following relief:

A. DENYING all relief sought by the Borough in its Complaint;

B. DECLARING that the Borough is in violation of its constitutional duty to create sufficient realistic opportunities for the construction of safe, decent housing affordable to low- and moderate-income families to satisfy the Borough's fair share of the unmet regional need for such housing;

C. ORDERING the Borough to submit to the Court, within a time period to be set by the Court, a compliance plan and zoning ordinances that will bring the Borough into compliance with the requirements of the Constitution;

D. APPOINTING a Special Master, at the expense of the Borough, to oversee the implementation of the foregoing remedies; and

E. ORDERING such additional relief as the Court deems just and equitable.

FIRST AFFIRMATIVE DEFENSE

57. Defendant-Intervenor is the owner of property designated Block 1903, Lot 7 on the official tax map of the Borough of Montvale, which is located at 2 Paragon Drive ("the Property"). The Property consists of approximately 19.9 acres.

58. The Property was formerly occupied by the national headquarters of The Great Atlantic & Pacific Tea Company, Inc.

59. The Property is suitable for high density development including multi-family residential housing or mixed use development.

60. The Property is suitable for development of 240 multi-family housing units or equivalent mixed use development, including a substantial amount of low and moderate income housing.

61. Montvale seeks a downward adjustment of its fair share housing obligation.

62. In violation of governing constitutional and regulatory standards, Montvale has failed to include the Property in its inventory of land available for development or redevelopment and has failed to take it into account in its determination of its fair share housing obligation.

SECOND AFFIRMATIVE DEFENSE

63. Defendant-intervenor repeats all of the allegation set forth in its First Affirmative Defense and incorporates them by reference as if set forth in full.

64. In violation governing constitutional and regulatory standards, Montvale has failed to include the Property in its housing plan.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Antimo A. Del Vecchio, Esq., is designated as trial counsel.

CERTIFICATION OF NO OTHER ACTION

I certify that the subject of the above controversy dispute does not form the basis of any other action pending in any other court or pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

BEATTIE PADOVANO, LLC
Attorneys for Defendant-intervenor
Two Paragon Drive, LLC

By: _____
Antimo A. Del Vecchio, Esq.
A member of the firm

Dated: November __, 2017

Exhibit "C"

AN ORDINANCE 2017-14XX

AN ORDINANCE OF THE BOROUGH OF MONTVALE AMENDING AND SUPPLEMENTING CHAPTER 128 OF THE BOROUGH CODE TO ESTABLISH THE AH-6A DEVELOPMENT DISTRICT AND TO SET FORTH THE STANDARDS AND CRITERIA APPLICABLE THERETO

WHEREAS, Block 1903, Lot 7 (also known as 2 Paragon Drive) (the "Paragon Property") is currently owned by Two Paragon Drive, LLC and/or its subsidiaries or affiliates; and

WHEREAS, in order to facilitate the development of the Paragon Property, the Borough of Montvale Planning Board did adopt a Master Plan Amendment, prepared by Darlene A. Green, AICP, PP and Deborah Alaimo Lawlor, FAICP, PP, at its meeting held on _____, 2017; and

WHEREAS, the Master Plan Amendment made certain findings and recommendations concerning the property known as 2 Paragon Drive; and

WHEREAS, the Borough is desirous of adopting an Ordinance intended to implement the recommendations contained in the Master Plan Amendment.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Montvale, as follows:

Section 1. Chapter 128 of the Code of the Borough of Montvale, Section 128-2.1, "Classes of Districts," is hereby amended and supplemented by adding the underlined text alphabetically, as follows:

§128-2.1 Classes of Districts.

AH-6A- Affordable Housing District

Section2. Chapter 128 of the Code of the Borough of Montvale is hereby amended and supplemented by adding a new Section 128-5.16, "AH-6A Affordable Housing District," as follows:

§128-5.16 AH-6A Affordable Housing District.

The following standards shall apply to development within the AH-6A Affordable Housing District. All other provisions of Chapter 128, Zoning of the Montvale Code shall apply to development in the AH-6A District only where specifically indicated as applicable in §128-5.16 of the Montvale Code. When the standards herein conflict with other provisions of Chapter 128, the standards herein shall apply.

- A. Purpose. The purpose of this ordinance is to fulfill a Settlement Agreement by and between the Borough of Montvale and Two Paragon Drive, LLC. The AH-6A Affordable Housing District is intended to repurpose the former A&P Headquarters by constructing an inclusionary housing development that provides credits towards the Borough's affordable housing obligation. The

AH-6A regulations are implemented in recognition of the Paragon Property's unique topographic features and other regulatory constraints.

B. Application requirements. Any application for development for any portion or the entirety of the AH-6A District shall be submitted, in the nature of a preliminary site plan application. Such application shall describe any phasing of the proposed project, together with all on-site and off-site improvements needed to support such phases. The application for preliminary site plan approval may also include a request for final approvals with respect to such phase or phases.

C. Permitted principal uses:

1. Townhouses,
2. Low and moderate income units within townhouse buildings, which may be designed as one-over-one apartment flats within a townhouse configuration.

D. Permitted Accessory uses:

1. Any use which is ordinarily subordinate and customarily incidental to the principal permitted uses allowed in the AH-6A Zone, including but not limited to patios, decks, swimming pool, and tennis courts,
2. Signs, as otherwise regulated in the Borough ordinances,
3. In conjunction with residential development, noncommercial swimming pools, tennis courts and other outdoor recreation facilities, off-street parking for private vehicles (excluding recreational vehicles, trailers and boats) and outdoor recreational facilities,
4. Street furniture, planters, approved public art elements, gazebos, water features, waste/recycle receptacles, vehicle charging stations, cluster mailbox with or without roof structure and bicycle racks.
5. Parks and open space facilities, including, but not limited to, walkways, bikeways, courtyards, plazas and gardens.
6. Fences and walls, including retaining walls.
7. Landscaping and buffering.
8. Stormwater detention facilities, along with any other infrastructure improvement required for the project, i.e. pump station, etc.
9. Temporary construction trailer, temporary sales trailer and temporary sales office in model home through final project CO.

E. Prohibited uses.

1. Any use not specifically permitted shall be prohibited.

F. Bulk, area and other dimensional standards.

1. General standards for principal and accessory uses in the AH-6A District:

(a) Townhouse area, external yard and bulk requirements.¹²

- (i) Minimum lot area (acres): 12 acres⁵
- (ii) Minimum setbacks:
 - a. Front yard: 70 feet (but not less than 50 feet from property line)
 - b. Side yard: 30 feet
 - c. Rear yard: 30 feet
- (iii) Accessory building setbacks:
 - a. Minimum distance from principal buildings: 30 feet
 - b. Minimum distance to external lot lines: 40 feet³
 - c. No accessory buildings or structures (except for permitted signs) are allowed in any front yard
- (iv) Maximum building lot coverage: 25 percent
- (v) Maximum impervious lot coverage: 60 percent

(b) Townhouse Internal setback and building unit requirements.⁴

(i) Minimum distance between townhouse buildings:

- a. Front-to-front: 60 feet
- b. Front-to-side: 25 feet
- c. Side-to-side: 25 feet
- d. Side-to-rear: 30 feet
- e. Rear-to-rear: 40 feet

(ii) Maximum townhouse building length: 150 feet

¹ For purposes of this section, calculation of setbacks shall not include decks and patios, which may project a maximum of 10 feet from a building, and porches, eaves, stairs and chimneys which may project up to 5 feet from a building.

² Fences and retaining walls up to 6 feet in height are exempt from these set-back requirements.

³ For cluster mailboxes and permitted signs only, the minimum distance to external lot lines shall be 20 feet.

⁴ For purposes of this section, calculation of minimum distance shall not include decks and patios, which may project a maximum of 10 feet from a building, and porches, eaves, stairs and chimneys which may project up to 5 feet from a building.

⁵ However, lots used for open space shall be at least 4 acres.

- (iii) Maximum number of market rate units in single structure: 6 units, provided that 8 total units may be provided where there are stacked affordable units in the structure;
 - (iv) Maximum building height: 45 feet with allowances for stepped foundations along building length, said measurement shall then apply to each stepped section.
 - (v) Maximum number of stories: 3 stories
 - (vi) Maximum number of units before horizontal break: 2 units
 - (vii) Minimum front of building to cartway: 18 feet
 - (viii) Minimum side & rear of building to cartway: 12 feet
 - (ix) Minimum building to parking: 10 feet
- (c) Residential parking requirements:
- (i) Townhouse dwelling units and low- and moderate-income dwelling units: Residential Site Improvement Standards (RSIS) apply.
 - (ii) Required off-street parking for townhouse units: At least one of the two stacked affordable units within a townhouse building shall have a minimum of one garage space. One additional parking space for this affordable unit shall be provided in its associated driveway in front of the garage. The second affordable unit, lacking a garage space, shall have one driveway space, with the additional required parking for both affordable units provided per RSIS standards within 150 feet of said units. Required off-street visitor parking for low- and moderate-income units, as required by RSIS, shall be located within 200 feet of the units serviced.
 - (iii) Each garage space shall be counted as 1.0 parking space. A one-car garage and driveway combination shall be counted as 2.0 parking spaces provided the driveway measures a minimum of 18 feet between the face of the garage door and the internal roadway line. (RSIS §5.21-4.14(d)). Required visitor parking spaces for market rate units shall be provided within 200 feet of the units serviced.
- (d) Definitions: The following definitions shall apply to the AH-6A Zone.
- (i) Gross Development Site Area: The total gross acreage of a development within existing streets and/or property lines prior to development or subdivision, including streets, easements and common open space portions of the development.
 - (ii) Building Height: Irrespective of any other definition in Chapter 128, building height shall be defined as the vertical distance between the lowest

proposed grade adjacent to the individual unit to the Mean Roof Ridge Elevation of said unit.

(iii) Mean Roof Ridge Elevation: Irrespective of any other definition in Chapter 128, Mean Roof Ridge Elevation shall be defined as the average grade between the eaves above the highest living floor and the highest roof ridge elevation.

(e) Density standards. A maximum of 80 multi-family residential units are permitted on Block 1903, Lot 7.

G. Affordable housing unit requirements.

1. Twenty percent (20%) of the total residential units shall be reserved for, and affordable to, low and moderate income households. For example, if 80 total units are constructed, 16 of those units shall be for low and moderate income housing units (8 affordable to low income households and 8 affordable to moderate income households). The units shall meet the low/moderate income split required by the Uniform Housing Affordability Controls.

2. Low- and moderate-income (Mount Laurel) housing requirements:

(a) Minimum low- and moderate-income housing units located on-site:

(i) The low- and moderate-income units required to be provided by the developer, as noted herein, shall be distributed among the townhouse buildings proposed. No townhouse building shall have more than 4 low- and moderate-income units within its structure; such affordable units may be designed as one-over-one apartment flats within a townhouse configuration.

(ii) All low- and moderate-income housing units shall be in conformance with the latest applicable rules for affordable housing as determined by the Council on Affordable Housing, the Courts or other applicable authority, as determined appropriate, including such issues as phasing of building low- and moderate-income units in concert with market rate units.

(b) Bedroom distribution of low- and moderate-income housing units. Subject to the most current applicable COAH or other rules, the bedroom distribution of low- and moderate-income units for affordable units constructed in the AH-6A Zone shall be as follows:

- (i) No more than 20 percent of the units shall be efficiency or one bedroom units.
 - (ii) At least 20 percent of the units shall be three bedroom units.
 - (iii) At least 30 percent of the units shall be two bedroom units.
- (c) Low- and moderate- income unit split. The distribution of inclusionary affordable units to be provided as part of this development shall be in accordance with those requirements as set forth by COAH or otherwise deemed appropriate by the Court.
- (d) Procedures regarding affirmative marketing of low- and moderate-income units and other requirements of inclusionary development units are subject to and determined by COAH rules or other rules determined appropriate by the Court.
- (e) The affordable units shall be family affordable units.
- (f) All necessary steps shall be taken to make the affordable units provided creditworthy pursuant to applicable law.

H. Site standards.

1. Site standards for Block 1903, Lot 7.

- (a) Landscaping
 - (i) Landscaping shall be provided to promote a desirable visual environment, to accentuate building design, define entranceways, screen parking areas, mitigate adverse visual impacts and provide windbreaks for winter winds and summer cooling for buildings, and enhance buffer areas. The impact of any proposed landscaping plan at various time intervals shall be considered. Plants and other landscaping materials shall be selected in terms of aesthetic and functional considerations. The landscape design shall create visual diversity and contrast through variation in size, shape, texture and color. The selection of plants in terms of susceptibility to disease and insect damage, wind and ice damage, habitat (wet-site, drought, sun and shade tolerance), soil conditions, growth rate, longevity; root pattern, maintenance requirements, etc., shall be considered. Consideration shall be given to accenting site entrances and unique areas with special landscaping treatment. Flowerbed displays are encouraged. Shade trees shall be provided a minimum of 50 feet on average along the public right-of-way. Any visitor parking areas visible from the public right of way shall be screened to a height of 6 feet.
 - (ii) Landscaping within sight triangles shall not exceed a mature height of 30 inches. Shade trees shall be pruned up to an 8-foot branching height above grade.

- (iii) Parking rows longer than 20 parking spaces shall have a six foot wide landscaped island to break the pavement.
- (iv) Shade trees shall be a minimum 2.5 inch caliper with a canopy height of at least the minimum American Nursery and Landscape Association Standards for this caliper.
- (v) All plant material shall meet the minimum latest American Nursery and Landscape Association Standards.
- (vi) Landscape Plantings. A minimum of 30 percent of the plantings proposed shall be indigenous to the region.
- (vii) Foundation Plantings. The landscape plan shall include foundation plantings that provide an attractive visual setting for the development. These plantings shall include species that provide seasonal interest at varying heights to complement and provide pedestrian scale to the proposed architectural design of the buildings. The foundation planting shall incorporate evergreen shrubs and groupings of small trees in order to provide human scale to building facades and winter interest.
- (viii) Landscaping of any new stormwater management facilities shall be as required by the development in accordance NJDEP Best Management Plan requirements. Non-structural facilities shall be considered in the design of the proposed stormwater system to the extent practical.
- (ix) Landscape Plan Content. A landscape plan prepared by a certified landscape architect certified by the New Jersey State Board of Landscape Architects, or other qualified individual, shall be submitted with each major site plan or major subdivision application. In addition to the major site plan or subdivision submission requirements, the landscape plan shall include and identify the following information:
 - a. Existing and proposed underground and above ground utilities such as site lighting, transformers, hydrants, manholes, valve boxes, etc. existing wooded areas, rock outcroppings and existing and proposed water bodies.
 - b. Location of individual existing trees noted for preservation within the area of development and 30 feet beyond the limit of the disturbance.

Trees 4 inches in diameter (measured 4 1/2 feet above the existing ground level) shall be located and identified by name and diameter unless the wooded area is shown with a specific limit line. In this case, specimen trees shall be located within thirty feet of the line. Indicate all existing vegetation to be saved or removed.

- c. Existing and proposed topography and location of all landscaped berms.
- d. Location, species and sizes of all proposed shade trees, ornamental trees, evergreen trees and shrubs and areas for lawns or any other ground cover. Different graphic symbols shall be used to show the location and spacing of shade trees, ornamental trees, evergreen trees, shrubs and ground cover. The size of the symbol must be representative of the size of the plant shown to scale.
- e. A plant schedule indicating botanical name, common name, size at time of planting (caliper, height and spread), quantity, root condition and any special remarks (spacing, substitutions, etc.) for all plant material proposed. Plants within the plant schedule shall be keyed to the landscape plan utilizing the first letter of the botanical plant name.
- f. Planting and construction details and specifications.

(b) Lighting

- (i) All lighting fixtures and foot-candle standards for parking areas and recreation facilities should be consistent with the regulations of the Borough of Montvale.
- (ii) A lighting plan prepared by a qualified individual shall be provided with site plan applications.
- (iii) The intensity, shielding, direction and reflecting of lighting shall be subject to site plan approval by the approving authority.

(c). Sidewalks:

- (i) In public rights of way: Sidewalks shall be required along adjoining public rights of way, as determined appropriate.
- (ii) The development's private internal road network shall comply with RSIS.

(d) Fences and walls.

- (i) To the extent possible, the use of retaining walls should be used in the form of terraces to accommodate severe grade changes, rather than single tall retaining walls. However, no retaining walls shall exceed a height of 6 feet. Where provided, retaining walls shall be screened with a variety of landscaping materials, in groupings, rather than utilizing hedges or uniform plant species and spacing.
- (ii) Ornamental walls utilizing loose laid stone may be provided throughout the site as appropriate, up to a height of four feet.
- (iii) Fences shall be installed along the tops of all retaining walls that exceed a height of three feet. Chain-link fencing, including vinyl-coated chain-link fencing, is prohibited.
- (iv) No fence on the site may exceed a height of six feet.

(e) Signage

- (i) Section 128-9.7A.1 through Section 128-9.7A.5, shall apply. The standards in Section 128-9.7A.8 through Section 128-9.7A.15 of Chapter 128 shall also apply.
- (ii) Signs permitted within the AH-6A Zone shall be only those specified in the table below.

Type	Location	Maximum Number	Maximum Area of any 1 Sign (sq. ft.)	Maximum Height (feet)	Required setback from Property Line (feet)	Maximum Letter Height (feet)
Entrance Monument	Driveway Entrance	1 at each location	36	6	5	-

- (iii) Only external illumination shall be permitted for all non-wall-mounted signage. Uplighting or other forms of external illumination shall be permitted on proposed entrance sign.
- (iv) The entrance monument sign shall be limited to the name of the development and developer name.
- (v) No individual sign may exceed three colors. If white or black is used in the sign it shall be counted as a color.

Section 7. Repeal of inconsistent ordinances.

All ordinances and parts of ordinances which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

MIKE GHASSALI, Mayor

ATTEST:

MAUREEN IAROSSO-ALWAN, RMC, Borough Clerk

INTRODUCED:

ADOPTED:

APPROVED:

EXHIBIT "D"

EXHIBIT D: TIMELINES/FAST TRACK

The parties agree to use all best efforts to adhere to the following timelines for the review of the Developer's Development applications for the Former A&P Site:

a. The Planning Board's authorized designee shall examine the Developer's Development applications with diligence and shall report to Developer that the application is either complete or incomplete as soon as possible but no later than within forty-five (45) days after submission of the application to the Planning Board and shall provide Developer with a detailed list of deficiencies, if any, from the checklist governing the application. The Planning Board's authorized designee shall provide this notification in writing, in a single completion letter, and may not amend the list of deficiencies once submitted to Developer. Developer shall provide all materials found by the Planning Board's authorized designee as deficiencies from the checklist that are listed in the completeness letter no less than ten (10) days prior to the next regularly scheduled Planning Board hearing.

b. The Planning Board shall thereafter accept any additional information required by the completeness review letter, and shall consider whether the application is complete in accordance with newly submitted information at its next regular meeting following receipt of such necessary additional information, provided Developer complies with Paragraph a. above.

c. This Paragraph is not intended to modify or alter the provisions of N.J.S.A. 40:55D-10.3, but is tailored to encourage the Planning Board to deliberate and decide on completeness in an expeditious fashion, with the parties' intent that the Planning Board not protract the process beyond the statutory maximum permitted time periods. Developer may request a submission waiver from the Planning Board checklist requirements in accordance with Planning Board procedures.

d. Once deemed complete, Developer's application shall be reviewed in accordance with applicable law, so that the Planning Board shall make a decision concerning the proposed project within ninety-five (95) days following submission of a complete application, if no variance is requested, or one hundred twenty (120) days following submission of a complete application, if any bulk variance pursuant to N.J.S.A. 40:55D-70(c) is requested, except as said time frame may be extended by Developer. No further Mt. Laurel contributions to the Borough or modifications of the design of the Developer except as provided by this Agreement or by mutual agreement among the parties, shall be required of Developer. All plans for the residential component of the projects shall be in accordance with the Residential Site Improvement Standards ("RSIS"), as then promulgated by the State of New Jersey except where waiver(s) or a lesser standard is specifically permitted by the parties' Settlement Agreement.

e. Developer shall post professional review escrow fees in accordance with Municipal Land Use Law (N.J.S.A. 40:55D-1 (et. seq.)) and Borough ordinances for the Borough's costs for professional consultants, including engineers, planners and attorneys for all public hearings on this application.

f. A Resolution of Memorialization shall be adopted no later than forty-five (45) days following Planning Board action regarding the project and any required Developer's Agreement or other Borough approvals shall be prepared and executed by the parties not later than sixty (60) days following the approval of a Resolution of Memorialization.