

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 THE S. HEKEMIAN GROUP, LLC 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, 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 a total of 53 affordable family units (rental affordable units on the Mercedes Site and rental or sale affordable units on the Glenview Site); (b) to control the development of the Mercedes

Site and the Glenview 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 The S. Hekemian Group, LLC or its successors or assigns.
- c. "Mercedes Site" means Block 2702, Lot 1 and Block 2801, Lot 2 on the Borough's official tax map, consisting of approximately 32.65 acres located at the intersection of Mercedes Drive and Grand Avenue West in Montvale.
- d. "Glenview Site" means Block 3201, Lot 6 on the Borough's official tax map, consisting of approximately 4 acres with a street address of 1 Glenview Road in Montvale.
- e. "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.
- f. "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.

- g. "Municipal Parties" means the Borough of Montvale and the Planning Board of the Borough of Montvale collectively.
- h. "Ordinance" means a duly adopted ordinance of the Borough of Montvale to rezone the Mercedes Site and Glenview Site so as to permit the development contemplated by this Agreement in the form attached as Exhibit A.

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 make application (to approve this Settlement and to determine solely the fairness of this Agreement) to the Court for the scheduling, as soon as possible and, in no event, later than forty five (45) days from the provision of notice of a Fairness Hearing on solely the fairness of this Agreement to take place for Court approval of this Agreement and the fairness thereof.

- 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. DEVELOPER shall bear half of all expenses associated with their part of the Declaratory Judgment case filed by Plaintiff, prior to the work identified in Section 3.f. This will be as follows:

- i) The DEVELOPER will pay an amount not to exceed \$12,500.00 directly to the Special Master which payment will be made within ten (10) days after the adoption of all of the ORDINANCE required by this AGREEMENT and the appeal period, without an appeal being filed, expires: and
- ii) The DEVELOPER will pay FSHC, on behalf of the BOROUGH, \$12,500.00. The \$12,500.00 represents a portion of the costs incurred by FSHC in this matter. The payment to FSHC will be made by the DEVELOPER within ten (10) days after the adoption of the ORDINANCE required by this AGREEMENT and the expiration of the appeal period, without an appeal being filed. If an appeal is filed, BOROUGH shall pay FSHC \$12,500.00 within ten (10) days of the filing of any appeal. Within ten (10) days after the appeal being successfully denied, or determined in favor of DEVELOPER and BOROUGH, and the validity of this AGREEMENT and all ORDINANCES upheld, DEVELOPER shall reimburse the BOROUGH \$12,500.00.

- h. An essential and non-severable condition of this Agreement is a nonappealable determination by the Court that the RDP attributable to the Mercedes and Glenview sites is 70 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 and shall be eligible, to the extent the units are rental, for rental bonuses up to the rental bonus cap of 25 percent of the RDP.
- i. The PARTIES shall jointly support entry of an order approving this Agreement in partial settlement of the pending litigation. If the Court declines to 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 20 days, either the DEVELOPER or the BOROUGH may, by written notice to all other PARTIES terminate this Agreement.

4. **OBLIGATIONS OF BOROUGH AND PLANNING BOARD**

- a. By November 22, 2017, the PLANNING BOARD shall approve and execute this Agreement, and, by December 6, 2017, the PLANNING BOARD shall adopt a Master Plan Amendment consistent with the procedures prescribed by the Municipal Land Use Law which is consistent with the Ordinance to permit the Development of the Mercedes and Glenview sites (hereinafter collectively the

“Subject Property”) as permitted by the Ordinance. The Master Plan Amendment shall be substantially consistent with, and written, to further the implementation of the Ordinance attached hereto as Exhibit A and with the Concept Plan attached hereto as Exhibit B. The PARTIES acknowledge and agree that the unit counts, retail square footage and zoning controls set forth in the Ordinance (attached as Exhibit A) shall supersede those items set forth on the Concept Plan attached as Exhibit B. Nothing herein shall preclude the parties from further discussing, and/or modifying, the Ordinance and agreeing to a new approach provided that all parties agree on the new Ordinance.

- b. On or before November 28, 2017, the Mayor and Council shall introduce the Ordinance in the form attached hereto as Exhibit A. The BOROUGH shall refer the Ordinance to the PLANNING BOARD for review. The PLANNING BOARD shall complete its review pursuant to the MLUL and report its recommendation to the Mayor and Council on or before December 6, 2017.
- c. The BOROUGH shall conduct a public hearing in accordance with the requirements of the Municipal Land Use Law and adopt the Ordinance on or before December 11, 2017. The BOROUGH shall schedule such meeting(s) as may be needed to consider and render a decision on the adoption of the Ordinance on or before December 11, 2017. Nothing in this paragraph shall prohibit the

PARTIES from mutually agreeing, in writing, to modifications of the Ordinance before introduction and/or final enactment.

- d. The BOROUGH and PLANNING BOARD have reviewed the Ordinance and the Concept Plan and acknowledge that same are consistent with the purpose and intent of this Agreement and will review the Master Plan Amendment as soon as it is available. Nothing in this paragraph shall prohibit the PARTIES from mutually agreeing, in writing, to modifications of the Master Plan Amendment and Ordinance before introduction and/or final enactment of the Ordinance.
- e. All parties acknowledge that DEVELOPER, the BOROUGH and/or the PLANNING BOARD may propose modifications to the plan submitted for approval 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. 15% 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 350 gross units on the Mercedes Site and the Glenview Site combined.

- iii. The Mercedes Site will contain a total of no more than 308 units (any reduction to be at the DEVELOPER'S sole discretion) consisting of 264 market rate units and 44 affordable family rental units.
 - iv. The Glenview Site will contain a total of no more than 42 units (any reduction to be at the DEVELOPER'S sole discretion) consisting of 33 market rate units and 9 affordable family units. The units on the Glenview Site may be rental or sale units at the election of the DEVELOPER.
- f. 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.
 - g. 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.
 - h. PLANNING BOARD shall expedite the processing of applications for development of the Mercedes and Glenview Sites, including, without limitation, taking the actions set forth on Exhibit C 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.

- i. 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 Mercedes or Glenview Sites, which is not necessary to directly protect public health or safety.
- 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, such an non-residential development fees, 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 Mercedes or Glenview Sites 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 Mercedes or Glenview Sites 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 Ordinance attached hereto as Exhibit A.
- b. DEVELOPER shall be responsible for maintaining the required number of affordable units as required by this Agreement as affordable family units. DEVELOPER shall have an obligation to deed-restrict such units as very low, 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. In addition, at least 13 percent of the housing units made available for occupancy by low-income and moderate income households will be reserved for occupancy by very low-income households as defined by and reflected in the Fair Housing Act. To illustrate the intent of this provision, if 350 units are approved and constructed on both sides, the breakdown will be 26 moderate; 20 low and 7 very low.
- c. 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.

- d. In addition, any affordable unit, initially constructed by the DEVELOPER as a rental unit, shall remain affordable rental units restricted in accordance with UHAC regulations for a period of at least thirty (30) years from the date of their initial occupancy ("Deed-Restriction Period") so that the BOROUGH may count the units against its obligations to provide family rental affordable housing. This obligation includes, but is not limited to DEVELOPER'S obligation to comply with (1) bedroom distribution requirements; (2) income split requirements; (3) pricing requirements, (4) affirmative marketing requirements, (5) candidate qualification and screening requirements, (6) integrating the affordable units amongst the market rate units, (7) deed restriction requirements, and (8) phasing of the affordable units with the market-rate units.
- e. The PARTIES acknowledge that Mercedes Benz USA LLC currently occupies the Mercedes Site and the Glenview Site under the terms of the contract between Mercedes Benz USA LLC and the DEVELOPER, may continue to occupy that site until December 31, 2018. In light of that fact, construction of low and moderate income units shall not be governed by the schedules set forth in regulations of the Council on Affordable Housing or the schedule set forth in any other ordinance of the Borough of Montvale, but, rather, all low and moderate income units within that building shall be completed prior to the completion of 50

percent of the market rate housing units in that building. For purposes of this section, a newly constructed unit is considered complete when the certificate of occupancy is issued. For purposes of calculating the 50% level for this section, the calculation shall be made, and the requirement to construct the affordable units shall be made separate, distinct and independently for each building and each of the Mercedes Site and the Glenview Site. On the Mercedes Site, each building containing market rate housing units shall also contain low and moderate income units in a percentage equal to the overall percentage of low and moderate rate units to market rate units required to be constructed on the Mercedes site under this Agreement; provided however, in no event shall the total number of low and moderate units built in all buildings be in excess of the total required under this Agreement.

- f. DEVELOPER shall be responsible for all fees contemplated by the BOROUGH'S ordinances and all fees imposed by statute including but not limited to those imposed pursuant to the Non-Residential Development Fee Act with respect to the non-residential component of the mixed use project.
- g. DEVELOPER shall be responsible for all costs associated with the initial sale and for the rental of the affordable units, and for the continuing administration of the rental affordable units and the preservation of the creditworthiness of the 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.

- h. 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.

- i. In the event the required number of affordable units DEVELOPER is required to provide is an odd number, at least 50 percent of the affordable units shall be units rented to low-income households.
- 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 unless all taxes are not current
- 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 53 units specified in this Agreement.
- r. The BOROUGH has reviewed the Concept Plan, a copy of which is attached as Exhibit B. 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 Mercedes Site under the terms of the Mixed Use Planned Development Ordinance attached as Exhibit A. The Municipal Parties acknowledge and agree that the configuration, location, and size of the retail components shown on the Concept Plan may change, without the necessity of obtaining the consent or approval of the MUNICIPAL PARTIES, provided that such changes comply with the provisions of the Ordinance.
- s. The DEVELOPER shall make good faith efforts to design the site and obtain the necessary approvals to relocate the surface parking behind the residential buildings depicted on the Concept Plan to the front of the residential buildings,

resulting in an increased setback for the residential buildings along Mercedes Drive.

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 Mercedes or Glenview Sites 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. 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:

The S. Hekemian Group, LLC

Douglas M. Cohen
Vice President and General Counsel
The S.Hekemian Group
10 Sterling Blvd
Suite 401
Englewood, NJ 07631

and

Stephen Eisdorfer, Esq.
Hill Wallack LLP
21 Roszel Road
Princeton NJ 08543

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

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.

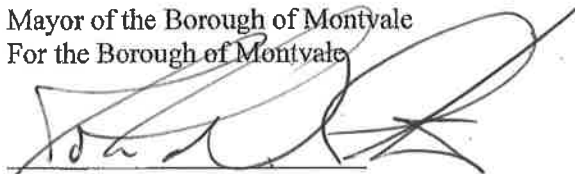
v. **Effect of Termination or Expiration of Agreement.** Termination or expiration of this Agreement shall not affect the validity or vesting of any approvals or permits received by the DEVELOPER and shall not automatically repeal or amend any ordinances or master plan amendments adopted pursuant to this Agreement. Upon termination of 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.



Dated: 11/21/2017

Mayor of the Borough of Montvale
For the Borough of Montvale



Dated: 11/21/17

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



Dated: 11/15/2017

Peter Hekemian
For The S. Hekemian Group, LLC.

EXHIBIT A

Proposed Ordinance No. 2017-

AN ORDINANCE 2017-14XX

AN ORDINANCE OF THE BOROUGH OF MONTVALE AMENDING AND SUPPLEMENTING CHAPTER 128 OF THE BOROUGH CODE TO ESTABLISH THE MIXED-USE PLANNED UNIT DEVELOPMENT DISTRICT AND TO SET FORTH THE STANDARDS AND CRITERIA APPLICABLE THERETO

WHEREAS, Block 2702, Lot 1 and Block 2801, Lot 2 (also known as 1 and 3 Mercedes Drive) and Block 3201, Lot 6 (also known as 1 Glenview Road) (collectively, the "Mercedes Properties") are currently owned by the S. Hekemian Group, LLC and/or its subsidiaries or affiliates; and

WHEREAS, in order to facilitate the development of the Mercedes Properties, the Borough of Montvale Planning Board did adopt a Master Plan Reexamination Reports, prepared by Darlene A. Green, AICP, PP and Deborah Alaimo Lawlor, FAICP, PP, at its meeting held on April 4, 2017, and subsequently amended same at its meeting held on June 6, 2017 and again on _____, 2017; and

WHEREAS, the Master Plan Reexamination Reports made certain findings and recommendations concerning the properties known as 1 and 3 Mercedes Drive and 1 Glenview Road; and

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

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.**

M-PUD Mixed-Use Planned Unit Development District

Section 2. Chapter 128 of the Code of the Borough of Montvale, Section 128-3.1, "Definitions and word usage," is hereby amended and supplemented by adding the underlined text alphabetically, as follows:

§128-3.1 **Definitions and word usage.**

Dinner theater – A venue that combines a restaurant-style meal and/or drinks with either: (i) a movie; or (ii) a live performance. Live performances include musical acts, theatrical acts (including stand-up comedy), plays or any combination of these, or similar activity performed live by one or more persons. This does not include adult entertainment.

Discount/dollar store – A retail store that sells a wide range of inexpensive household goods, which may include product lines such as food and drink, personal hygiene products, small home and garden tools, office supplies, decorations, electronics, garden plants, toys, pet supplies, books, recorded media and motor and bike consumables. This type of store often sells many items for the price of one dollar.

...

Express Retail store- A retail store of a smaller version of the large-scale retail store engaged in selling goods and/or services.

...

Instructional - Uses for the teaching and practice of dance, drama, art, language, martial arts, music, aerobics, sports, fitness, photography and the like. These uses may, from time to time, hold group events, such as birthday parties. This definition shall not include public or private schools.

...

Educational office – A room or group of rooms used for conducting corporate training, which is generally furnished with desks, tables and communication equipment.

Section 3. Chapter 128 of the Code of the Borough of Montvale is hereby amended and supplemented by adding a new Section 128-5.15, "Mixed-Use Planned Unit Development District," as follows:

§128-5.15 Mixed-Use Planned Unit Development District.

The following standards shall apply to development within the Mixed-Use Planned Unit Development District. All other provisions of Chapter 128, Zoning of the Montvale Code shall apply to development in the M-PUD District only where specifically indicated as applicable in §128-5.15 of the Montvale Code. When the standards herein conflict with other provisions of Chapter 128, the standards herein shall apply.

- A. Purpose. The Mixed-Use Planned Unit Development District is intended to repurpose the former Mercedes-Benz campus by constructing a mixed-use development that simultaneously provides credits towards the Borough's affordable housing obligation. The M-PUD regulations are intended to capitalize on the district's unique location between a lifestyle retail shopping center and the Garden State Parkway.
- B. Application requirements. Any application for development for any portion or the entirety of the M-PUD District shall be submitted as a planned development, 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. The following shall apply:

- (1) Development within the M-PUD District shall be subject to the requirements of the district and to the mandatory findings for planned development as required by the Municipal Land Use Law, N.J.S.A. 40:55D-45.
- (2) Contribution of the pro-rata share of off-site improvements, including, but not limited to, required roadways, traffic signals, utilities, lighting, landscaping, sidewalk/curbs and drainage.
 - (a) Off-tract improvements are required whenever an application for development requires the construction of off-tract improvements that are clearly, directly and substantially related to or necessitated by the proposed development. The Planning Board, as the case may be, shall require as a condition of final site plan or subdivision approval that the applicant provide for such off-tract improvements. Off-tract improvements shall include water, sanitary sewer, drainage and street improvements, including such easements as are necessary or as may otherwise be permitted by law.
 - (b) Determination of cost. When off-tract improvements are required, the Borough Engineer shall calculate the cost of such improvements in accordance with the procedures for determining performance guaranty amounts in N.J.S.A. 40:55D-53.4. Such costs may include, but not be limited to, any or all costs of planning, surveying, permit acquisition, design, specification, property and easement acquisition, bidding, construction, construction management, inspection, legal, traffic control and other common and necessary costs of the construction of improvements. The Borough Engineer shall also determine the percentage of off-tract improvements that are attributable to the applicant's development proposal and shall expeditiously report his findings to the board of jurisdiction and the applicant.
 - (c) Improvements required solely for the application's development. Where the need for an off-tract improvement is necessitated by the proposed development and no other property owners receive a special benefit thereby, or where no planned capital improvement by a governmental entity is contemplated, or the improvement is required to meet the minimum standard of the approving authority, the applicant shall be solely responsible for the cost and installation of the required off-tract improvements. The applicant shall elect to either install the off-tract improvements or pay the municipality for the cost of the installation of the required off-tract improvements.

(d) Improvements required for the applicant's development and befitting others. Where the off-tract improvements would provide capacity in infrastructure in excess of the requirements in Subsection B(2)(c) above, or address an existing deficiency, the applicant shall elect to either install the off-tract improvements, pay the pro-rata share of the cost to the Borough, or pay more than its pro-rata share of the cost to facilitate the construction of the improvement(s) and accept future reimbursement so as to reduce its payment to an amount equal to its pro-rata share. If a developer elects to address the required off-tract improvement(s) by making a payment, such payment shall be made prior to the issuance of any building permit. If the applicant elects to install the off-tract improvements or to pay more than its pro-rata share of the cost of the improvements, it shall be eligible for partial reimbursement of costs of providing such excess. The calculation of excess shall be based on an appropriate and recognized standard for the off-tract improvement being constructed, including but not limited to gallonage, cubic feet per second and number of vehicles. Nothing herein shall be construed to prevent a different standard from being agreed to by the applicant and the Borough Engineer. The process, procedures and calculation used in the determination of off-tract costs shall be memorialized in a PUD or developer's agreement to be reviewed and approved by the Borough Attorney, who may request advice and assistance from the Planning Board Attorney. Future developers benefiting from the excess capacity provided or funded by the initial developer shall be assessed in their pro-rata share of off-tract improvement cost based on the same calculation used in the initial calculation. Such future developers shall pay their assessment, plus a two percent administration fee not to exceed \$2,000, to the Borough, at the time of the signing of the final plat or final site plan as a condition precedent to such signing. The Borough shall forward the assessment payment to the initial developer, less any administration fee, within 90 days of such payment.

(e) Performance guaranty. If the applicant elects to construct the improvements, the applicant shall be required to provide, as a condition of final approval, a performance guaranty for the off-tract improvements in accordance with N.J.S.A. 40:55D-53 and §128-5.15 above.

(f) Certification of costs. Once the required off-tract improvements are installed and the performance bond released, the developer shall provide a certification to the Borough Engineer of the actual costs of the installation. The Borough Engineer shall review the certification of costs and shall either accept them, reject them or conditionally accept them. In the review of costs, the Borough Engineer shall have the right to receive copies of invoices from the developer

sufficient to substantiate the certification. Failure of the developer to provide such invoices within 30 days of the Borough Engineer's request shall constitute forfeiture of the right of future reimbursement for improvements that benefit others.

- (g) Time limit for reimbursement. Notwithstanding any other provisions to the contrary, no reimbursement for the construction of off-tract Improvements providing excess capacity shall be made after 10 years has elapsed from the date of the acceptance of the certification of costs by the Borough Engineer.

- (3) Any application for development within the M-PUD District shall be accompanied by an Environmental Impact Statement that complies with §128-17.1 through §128-17.10 of this Chapter.

C. Permitted principal uses:

- (1) Within the M-PUD District parcels along Mercedes Drive (Block 2702 Lot 1 and Block 2801 Lot 2), the site plan application for development shall contain all of the following principal uses:

- (a) Multi-family residential housing.
- (b) Minimum of 40,000 square feet in the aggregate of professional, medical, educational and general offices.
- (c) Hotel with a minimum of 150 rooms and 8,500 square feet of conference space.
- (d) A retail component with a minimum of 30,000 square feet in the aggregate inclusive of one or more of the following uses:

- [1] Restaurants.
- [2] Child care center and adult daycare.
- [3] Lifestyle retail uses as set forth in §128-5.14(C)(2)(b).
- [4] Instructional uses.
- [5] Pharmacy.
- [6] Fitness uses.
- [7] Express Retail Store not exceeding 65,000 square feet.
- [8] Grocery Stores.

- (2) Within the M-PUD District parcels along Mercedes Drive (Block 2702 Lot 1 and Block 2801 Lot 2), the development may contain one or more of the following principal uses:

(a) Dinner theater.

(b) Banks and financial institutions.

(c) Any use permitted in §128-5.4 governing the OR Districts.

(3) Within the M-PUD District parcel at 1 Glenview Road (Block 3201 Lot 6), the development may contain the following principal uses:

(a) Multi-family residential housing, either rental or "for sale".

(b) Any use permitted in §128-5.4 governing the OR Districts.

(4) Nothing in this Ordinance specifies or restricts the choice by the Developer as to the timing or sequence of construction of the various permitted uses in the M-PUD District. The General Development Plan may include either the Block 2702, Lot 1, Block 2801, Lot 2 and/or Block 3201, Lot 6 properties. Nothing contained herein shall require the General Development Plan to include all of these properties.

D. Permitted accessory uses:

(1) Off-street parking and loading.

(2) Freestanding parking garages, limited to two levels above grade surface parking, only on Block 2702 Lot 1 and Block 2801 Lot 2.

(3) Parking incorporated into the building design.

(4) Signs, subject to the requirements of §128-5.15(H)(1)(k) below.

(5) Street furniture, planters, approved public art elements, gazebos, information kiosks, water features, waste/recycle receptacles, vehicle charging stations and bicycle racks in accordance.

(6) Parks and open space facilities, including, but not limited to, walkways, bikeways, courtyards, plazas and gardens.

(7) Fences and walls, including retaining walls, subject to the requirements of §128-5.15(H)(1)(i) below.

- (8) Landscaping and buffering in accordance with the requirements of §128-5.15(H)(1)(e) below.
- (9) Stormwater detention facilities.
- (10) Management office for development.
- (11) Lighting fixtures in accordance with the requirements of §128-5.15(H)(1)(j) below.
- (12) Automated teller machines, incorporated into a building's design.
- (13) Outdoor dining, outside of the public right-of-way.

E. Prohibited uses.

- (1) Any use not specifically permitted shall be prohibited.
- (2) Gas stations.
- (3) Any drive-through or drive-in use or service, whether principal or accessory, other than in connection with a pharmacy use or a bank with no more than two (2) drive-thru lanes.
- (4) Adult stores.
- (5) Discount/dollar stores, except Express Retail Stores as permitted herein.
- (6) Tattoo parlors.
- (7) Nail salons and massage parlors, unless included as part of a day spa or full-service hair salon.

F. Bulk, area and other dimensional standards.

- (1) General standards for principal and accessory uses in the M-PUD District:

Standard	Requirement
Minimums:	
Lot area	32 acres

Lot frontage	600 feet
Front yard setback (from centerline of street)	60 feet
Side and rear yard setback	50 feet
Setback between building façades	60 feet

Maximums:

	Building height 4 stories and 65 feet ¹ . For purposes of this section, all cellars and/or basements and levels used, in whole or in part, for parking shall not be considered stories. Any level that contains residential shall be counted as a story.
Floor area ratio	65%
Building coverage	30%
Lot coverage (impervious surfaces)	50%
Lot coverage (including pervious surfaces) ²	65%

(2) Standards for Block 3201 Lot 6:

Standard

Requirement

Minimums:

¹ The building height measurement shall be measured from the proposed/final average grade, not the existing average grade. Where a building is situated on a slope the highest two building corners (which are the uphill corners) shall be used to determine the final average grade of the building. Except as previously set forth, building height shall be measured in accordance with the definition of "building height" set forth in Section 128-3.1. No fully subterranean level shall include any use other than parking or storage.

² The maximum impervious lot coverage shall be 50% utilizing standard impervious parking techniques for all paved surfaces. However, alternative porous paving system and vegetative "green" roof areas may be used to attain total lot coverage of 65%, with no more than 50% of the lot coverage being impervious surface and up to an additional 15% of the lot coverage being pervious paving surfaces and green roof areas. Pavers over pervious base or turf blocks shall only be utilized for pedestrian and biking surfaces, overflow parking areas or emergency only access driveways. Porous pavement, suitable for more general and heavier-use vehicular surface applications, is also acceptable. Upon approval, an approved, bonded maintenance plan incorporating best management practices shall be required for all pervious paving surface areas to minimize siltation of porous paving areas.

Lot area	2 acres
Front yard setback (from center line of street)	60 feet
Side and rear yard setback	30 feet

Maximums:

Building height	3 stories and 45 feet
Building coverage	35%
Lot coverage	60%

- (3) Contiguous lots separated by public streets or rights of way, other than divided highways, may be combined for the purpose of calculating lot area. Land dedicated to wetlands, wetland buffers, streams, riparian zones, floodways, flood hazard areas, or similar purposes shall be included in all calculations.

G. Multi-family residential standards:

(1) General standards.

- (a) A maximum of 350 multi-family residential units are permitted on Block 2702, Lot 1 and Block 2801, Lot 2 and Block 3201, Lot 6. Of these, an aggregate minimum of 15 percent shall be low and moderate income housing units. For example, if 350 total units are constructed, 53 of those units shall be low and moderate income housing units.

- (b) A maximum of 310 multi-family residential units are permitted on Block 2702, Lot 1 and Block 2801, Lot 2.

(2) Market-rate residential unit standards.

- (a) Residential units located on Block 2702, Lot 1 and Block 2801, Lot 2 shall have the following minimum unit sizes:

- [1] One-bedroom – 700 square feet
- [2] Two-bedroom – 850 square feet
- [3] Three-bedroom – 1,100 square feet

- (b) A maximum of 10% of the market-rate units on Block 2702, Lot 1 and Block 2801, Lot 2 may be three-bedroom units.

(3) Affordable housing unit requirements.

- (a) Fifteen percent (15%) of the total residential units shall be reserved for, and affordable to, low and moderate income households. For example, if 350 total units are constructed, 53 of those units shall be low and moderate income housing units (27 affordable to low income households (7 of which shall be affordable to very low income households) and 26 affordable to moderate income households). The units shall meet the low/moderate income split required by the Uniform Housing Affordability Controls and provide at least 13% of the units as very-low-income units.
- (b) The affordable units shall have a minimum 30 year deed restriction. Any such affordable units shall comply with UHAC, applicable COAH affordable housing regulations, the Fair Housing Act, any applicable order of the Court, and other applicable laws.
- (c) The units shall meet the bedroom distribution required by the Uniform Housing Affordability Controls.
- (d) The units shall meet the low/moderate income split required by the Uniform Housing Affordability Controls and provide at least 13% of the units as very-low-income units as mandated by the Fair Housing Act. The distribution of the affordable housing units shall be in compliance with COAH's Round Two substantive regulations, N.J.A.C. 5:93.
- (e) The developer shall be responsible for retaining a qualified Administrative Agent at the developer's sole cost and expense.
- (f) The affordable units shall be family affordable units.
- (g) The developer shall be responsible for paying the required development fees as outlined by the Statewide Non-Residential Development Fee Act applicable to the non-residential portion of the development.

H. Site standards.

- (1) Site standards for Block 2702, Lot 1 and Block 2801, Lot 2.

(a) Circulation.

- [1] Sidewalks shall be provided along all public street frontages. In addition, sidewalks and/or walkways shall link all buildings within the development to the sidewalks of all adjoining public streets.
- [2] Where sections of sidewalks branch off or join up, a decorative marker, signpost, or circle is recommended. Where sidewalks traverse vehicular driveways, crosswalks shall be provided and marked with textured paving in a contrasting material and color.
- [3] All sidewalks shall have a minimum clear paved walking width of at least five feet; however, sidewalks in front of all commercial storefronts and in other areas with high pedestrian traffic shall have a minimum clear paved walking width of at least seven feet and shall include decorative paving materials, rather than plain concrete.
- [4] Sidewalks adjacent to streets or circulation drives shall also include a landscape strip with street trees, grass and low planting that serve as water storage and infiltration. Where street trees are thus required, they shall be planted no more than 40 feet apart, on center, on average, with variation permitted for curb cuts, utility vaults and other site conditions.
- [5] Benches are encouraged to be located throughout the development along the pedestrian sidewalk network.
- [6] Bike racks shall be provided in clear view of storefront entrances, with at least one bike space for every 5,000 square feet of non-residential gross floor area. Said racks shall be served with night lighting.

(b) Off-street parking.

- [1] The standards in Section 128-7.1 (except for Subsections B, E, F, K, I and T) of Chapter 128 shall apply. The Planning Board may require compliance with Section 128-7.1(I) for hotel, or stand-alone office or retail pads. Rooftop parking shall be prohibited unless it is adequately screened from view from adjacent properties and streets.

[2] Off-street parking spaces between the building façade and Grand Avenue shall be limited to no more than fifteen percent of the total parking spaces.

[3] The following parking ratios shall apply to development within the M-PUD Zone:

Use	Parking spaces
Banks and financial institutions	1 per 300 sq ft.
Professional, medical, educational, and general offices	1 per 300 sq ft
Restaurants	1 per 3 seats + 1 per 2 employees (peak)
Lifestyle retail uses	1 per 250 sq ft
Child care center and adult daycare	1 per 300 sq ft
Instructional uses	1 per 120 sq ft
Hotels	greater of: 1 per room OR 0.75 per room + 1 per 3 conference seats
Dinner theater	1 per 3 seats + 1 per 2 employees (peak)
Multi-family residential	As per RSIS

[4] Where uses share access and parking spaces, the required ratios above shall be lowered by the Planning Board, based upon a shared parking analysis, which demonstrates, to the reasonable satisfaction of the Planning Board, that the combined peak parking demand can be satisfied for those shared parking facilities at a lower combined ratio.

[5] All surface parking shall be in common except for visitor and handicapped parking spaces.

(c) Loading.

- [1] The standards in Section 128-7.6 of Chapter 128 shall apply.
- [2] Truck loading, service bays and service areas shall be located on the side or rear façade. No truck loading, service bay or service area shall be visible from a municipal or county right-of-way. Landscaping, fencing and other site design mechanisms may be utilized in order to provide appropriate screening.

(d) Parks and open space.

- [1] Parks or plazas shall be provided that, in the aggregate, is at least 11,500 square feet and open to the public, subject to the rules of the property owner. Chairs, tables, benches and a water feature are encouraged.
- [2] If there is a retention/detention basin, a walking path may be provided around it that is linked to the greater development.

(e) Landscaping

- [1] The plant palette from the Shoppes at DePiero Farm (AH-PUD District) should be implemented and enhanced within the M-PUD.
- [2] The standards in Section 128-8.20.1(C)(8) shall apply.
- [3] The standards in Section 128-9.8 and Section 128-9.8.1 of Chapter 128 concerning berms shall apply.

(f) Architecture.

- [1] The building material design palette shall be compatible with the approved Shoppes at DePiero Farm (AH-PUD District), but not necessarily of a farm/equestrian vernacular.
- [2] Buildings shall avoid long, monotonous, uninterrupted walls or roof planes. Building wall offsets, including projections such as canopies and recesses shall be used in order to add architectural interest and variety and to relieve the visual effect of a simple, long wall. Similarly, in the

case of a pitched roof, roofline offsets, dormers or gables shall be provided in order to provide architectural interest and variety to the massing of a building and to relieve the effect of a single, long roof.

- [3] The maximum spacing between building wall offsets shall be 60 feet.
- [4] The minimum projection or depth of any individual vertical offset shall be 1.5 feet.
- [5] The maximum spacing between roof offsets shall be 60 feet.
- [6] The architectural treatment of the front façade shall be continued in its major features around all visibly exposed sides of a building. All sides of a building facing a public street shall be architecturally designed to be consistent with regard to style, materials, colors and details.
- [7] Fenestration shall be architecturally compatible with the style, materials, colors and details of the building. Windows shall be vertically proportioned.
- [8] All entrances to a building shall be defined and articulated by architectural elements such as lintels, pediments, pilasters, columns, porticoes, porches, overhangs, railings, etc.
- [9] All ground-level retail and service uses that face a public space shall have clear glass on at least 60% of their facades between three and eight feet above grade.
- [10] Heating, ventilating and air-conditioning systems, utility meters and regulators, exhaust pipes and stacks, satellite dishes and other telecommunications receiving devices shall be screened or otherwise specially treated to be, as much as possible, inconspicuous as viewed from the public right-of-way and adjacent properties. Section 128-6.4, regarding satellite antennas, shall apply.
- [11] All rooftop mechanical equipment shall be screened from view from all vantage points at or below the level of the roof.
- [12] Placement of any packaged terminal air conditioner units within the façade is prohibited.

[13] Balconies are prohibited, except for internal balconies not visible from the boundaries of the property which shall be permitted.

(g) Building design for commercial/office pads.

[1] A maximum of two free-standing commercial/office pads are permitted. The maximum building size of each such pad shall be 15,000 square feet per floor plate.

[2] Offices are encouraged to be located on the upper floors of the free-standing commercial pads.

[3] The maximum building height/stories shall be 4 stories and 65 feet.

(h) Trash. All trash/recycling storage areas shall be enclosed on all four sides and screened using wood fencing or other attractive material. Trash may be stored inside the buildings.

(i) Fences and walls.

[1] 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 15 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.

[2] Ornamental walls utilizing loose laid stone may be provided throughout the site as appropriate, up to a height of four feet.

[3] 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.

[4] No fence on the site may exceed a height of four feet, except for fences for the screening of loading areas, utility enclosures and dumpsters.

(j) Lighting.

[1] LED (light-emitting diode) light of the soft white category shall be incorporated into site, service and parking lot lighting.

- [2] All exterior lights shall be designed so as to reduce glare, lower energy usage and direct lights only to where they are needed.

(k) Signage.

- [1] Section 128-9.7A.1 through Section 128-9.7A.4, shall apply. The standards in Section 128-9.7A.8 through Section 128-9.7A.15 of Chapter 128 shall also apply, except that Section 128-9.7A.9A(6), 128-9.7A.9F, 128-9.7A.9G and 128-9.7A.9S shall not apply.

- [2] Signs permitted within the development shall be only those specified in the table below.

Type	Location	Maximum Number	Total Area (sq. ft.)	Maximum Area of any 1 Sign (sq. ft.)	Maximum Height (feet)	Required setback from Property Line (feet)	Maximum Letter Height (feet)
Primary Monument	Intersection of Mercedes Dr. / Grand Ave.	1	100	-	12	10	-
Entrance Monument	Mercedes Dr. Entrance	2	36	-	6	5	-
Wall*	-	1	36**	-	-	-	3
Wall* (over 10,000 sq. ft. tenant)	-	2	36 per sign, 60 combined**	-	-	-	3
Window	-	-	20% of the aggregate window area	-	-	-	-
Pedestrian Wayfinding Directory	Key pedestrian ways, public activity areas	4	60	12	6	100	-

* One additional projecting sign per tenant may be permitted but shall not exceed five square feet in size. If a projecting sign is utilized, then both a wall and a projecting sign may be allowed on the same façade. Otherwise, no tenant may locate two wall signs on the same façade.

** Per tenant.

- [3] Only external illumination shall be permitted for all non-wall-mounted signage. Wall-mounted signs may be individual, channel-cut letters with internal illumination or through LED backlighting of letters.

[4] The primary monument sign shall be limited to the name of the development and three tenants who each occupy a minimum of 10,000 square feet of space. The entrance monument sign shall be limited to the name of the development. All other signs, including wall signs shall be limited to the identification of the tenant only and may include corporate or brand name logos.

[5] No individual sign may exceed three colors. If white or black is used in the sign it shall not be counted as a color. The color limitation does not apply to projecting signs.

[6] Awnings are permitted, but shall not be used for signage purposes nor contain any letters, number, logos or the like. No vinyl or white awning shall be permitted; their design shall be consistent with the overall design of the development. Awning panels shall be flat or sloped, but shall not be fluted or curved.

[7] Monument signs shall utilize materials which closely resemble those materials used for the Shoppes at DePiero's Farm (AH-PUD) monument signs. A solid base surrounded by appropriate ornamental plantings shall be provided. No monument sign shall be located in a sight triangle.

[8] In addition to the signs above, a tenant may also be permitted to install a sign or signs, limited to demonstrate or evidence membership in a retail or professional organization or credit card or credit association or required licenses, which signs shall be permitted to be attached to windows on the interior of the business use, provided that the aggregate area employed for such purpose shall not exceed 5% of the total window area. A tenant may also be permitted to install window signs indicating sales, promotions and the like, provided that the aggregate area employed for such purpose shall not exceed 15% of the total window area.

(2) Site standards for Block 3201, Lot 6.

(a) Circulation.

[1] Sidewalks shall be provided to link all building entries through the site to the public street. Sidewalks shall also be provided along the public right-of-way.

(b) Off-street parking.

- [1] The standards in Section 128-7.1 (except for Subsections B, E, F and K) of Chapter 128 shall apply.
- [2] Off-street parking for residential uses shall be provided in accordance with the New Jersey Residential Site Improvement Standards.

(c) Landscaping.

- [1] A mix of deciduous and evergreen trees and low ground cover landscaping shall be planted along the entire site perimeter in order to form an effective year-round screening. Tree spacing shall be 40 feet on center, or closer. In addition, where a row of parking stalls runs in a straight line for more than 20 spaces, landscaped islands shall be provided between every 15 parking spaces, planted with trees and low ground cover.
- [2] The perimeter of the building(s) shall be surrounded on all sides by a landscaped, planted strip at least four feet in width. Paved walkways leading to pedestrian entrances may cross this landscape strip in a perpendicular fashion.
- [3] The standards in Section 128-9.8 and Section 128-9.8.1 of Chapter 128 concerning berms shall apply.

(d) Architecture.

- [1] Buildings shall avoid long, monotonous, uninterrupted walls or roof planes. Building wall offsets, including projections such as canopies and recesses shall be used in order to add architectural interest and variety and to relieve the visual effect of a simple, long wall. Similarly, roofline offsets, dormers or gables shall be provided in order to provide architectural interest and variety to the massing of a building and to relieve the effect of a single, long roof.
- [2] The maximum spacing between building wall offsets shall be 40 feet.
- [3] The minimum projection or depth of any individual vertical offset shall be 1.5 feet.

[4] The maximum spacing between roof offsets shall be 40 feet.

[5] The architectural treatment of the front façade shall be continued in its major features around all visibly exposed sides of a building. All sides of a building shall be architecturally designed to be consistent with regard to style, materials, colors and details.

[6] Fenestration shall be architecturally compatible with the style, materials, colors and details of the building. Windows shall be vertically proportioned.

[7] All entrances to a building shall be defined and articulated by architectural elements such as lintels, pediments, pilasters, columns, porticoes, porches, overhangs, railings, etc.

[8] Heating, ventilating and air-conditioning systems, utility meters and regulators, exhaust pipes and stacks, satellite dishes and other telecommunications receiving devices shall be screened or otherwise specially treated to be, as much as possible, inconspicuous as viewed from the public right-of-way and adjacent properties. Section 128-6.4, regarding satellite antennas, shall apply.

[9] All rooftop mechanical equipment shall be screened from view from all vantage points at or below the level of the roof.

[10] Placement of any packaged terminal air conditioner units within the façade is prohibited.

[11] Balconies are prohibited, except for internal balconies not visible from the boundaries of the property which shall be permitted.

(e) Trash: All trash/recycling storage areas shall be enclosed on all four sides and screened using wood fencing or other attractive material. Trash may be stored inside the buildings.

(f) Lighting.

[1] LED (light-emitting diode) lighting of the soft white category shall be incorporated into site, service and parking lot lighting.

[2] All exterior lights shall be designed so as to reduce glare, lower energy usage and direct lights only to where they are needed.

[3] Signage. The standards in Section 128-9.7A.5 and Section 128-9.7A.1 through Section 128-9.7A.4 of Chapter 128 shall apply. The standards in Section 128-9.7A.8 through Section 128-9.7A.15 of Chapter 128 shall also apply.

I. Additional applicable provisions to the M-PUD District. The following sections of the Montvale Zoning Code (Chapter 128) shall apply to development in the M-PUD District.

- (1) Article X, Enforcement.
- (2) Article XI, Interpretation.
- (3) Article XIII, Violations and Penalties.
- (4) Article XIV, Validity.
- (5) Article XVI, Effect.
- (6) Article XVIII, Site Work Permit.

Section 4. The Official Map shall be amended to include the M-PUD District.

Section 5. Planning Board review.

Upon approval of this Ordinance upon First Reading by the Mayor and Council of the Borough of Montvale, this Ordinance shall be transmitted to the Planning Board for its review and recommendation pursuant to N.J.S.A. 40:55D-26.

Section 6. Severability.

If any provision or portion of a provision of this ordinance is held to be unconstitutional, preempted by Federal or State law, or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the ordinance shall not be invalidated and shall remain in full force and effect.

Section 7. Effective date.

This Ordinance shall take effect immediately upon final passage and publication as required by law and upon receipt of an Order from the Superior Court of New Jersey approving of the Settlement Agreement, dated _____, between the Borough of Montvale, the Planning Board of the Borough of Montvale, and The S. Hekemian Group in the litigation *In re Montvale*, Docket No. BER-L-6141-15.

Section 8. 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 IAROSSE-ALWAN, RMC, Borough Clerk

INTRODUCED:

ADOPTED:

APPROVED:

EXHIBIT B

Concept Plan

EXHIBIT C
Expedited Processing Actions

EXHIBIT C: 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 Mercedes Site and Glenview 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.