State of New Jersey
COUNCIL ON AFFORDABLE HOUSING
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TRENTON NJ 08625-0813
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RICHARD J. CODEY
Acting Governor

SUSAN BASS LEVIN
Commissioner
LUCY VOORHOEVE
Executive Director

December 15, 2004

The Honorable George B. Zeller
Borough of Montvale
12 Mercedes Drive
Montvale, NJ 07645-1816

Dear Mayor Zeller:

Congratulations! The Council on Affordable Housing (COAH) granted substantive certification to the Borough of Montvale at its meeting on December 15, 2004. Enclosed is a copy of the resolution approved by the COAH Board.

Please note that, pursuant to N.J.A.C. 5:91-5.3(d), the Borough must adopt its revised its fair share ordinances no later than February 3, 2005, which is 45 days from the grant of substantive certification. **Failure to adopt these revisions will void the township's substantive certification. Immediately upon adoption, the ordinances should be forwarded to COAH.**

Additionally, the Borough must adopt a revised spending plan consistent with COAH's regulations and the Borough of Montvale's certified plan and forward a copy of the resolution adopting the revised spending plan and a copy of the revised spending plan to COAH for approval within 45 days from the grant of substantive certification.

COAH also requires that the Borough provide quarterly updates on the progress of, including the status of all required permits, the Borough owned site, the Axinn project and the Nottingham project until such time as these properties are completed. If the Borough owned site, the Axinn project or the Nottingham project have not been issued construction permits within two years of COAH's grant of substantive certification, Montvale may be required to amend its plan.

Please read the attached resolution and compliance report, and carefully review all requirements of the township's substantive certification.

If you have any questions or need further information, please call Barbara Walsh, COAH Planner, at (609) 292-3171.

Sincerely,

Lucy Voorhoeve

Lucy Voorhoeve
Executive Director

cc: Service list
Barbara Walsh, COAH

RESOLUTION GRANTING SUBSTANTIVE CERTIFICATION TO THE BOROUGH OF MONTVALE, BERGEN COUNTY #250-99

WHEREAS, the Borough of Montvale, Bergen County, received a Judgment of Compliance from the Superior Court for its first round 1987-1993 obligation on December 16, 1994; and

WHEREAS, COAH established a 1987-1999 precredited need for the Borough of Montvale of 255 units, including a new construction component of 255 units and no rehabilitation component; and

WHEREAS, the Borough of Montvale adopted a Housing Element and Fair Share Plan on May 23, 2000, which addressed the Borough's 12-year cumulative obligation in accordance with N.J.S.A. 52:27D-313 and N.J.A.C. 5:93-1 et seq.; and

WHEREAS, on June 5, 2000, the Borough of Montvale petitioned COAH for substantive certification of its second round Housing Element and Fair Share Plan; and

WHEREAS, the Borough of Montvale published notice of its petition in *The Bergen Record*, which is a newspaper of general circulation within the county, on the same day, June 5, 2000; and

WHEREAS, there were 10 objections to the Borough's plan, which triggered the initiation of mediation pursuant to N.J.A.C. 5:91-7 and the issuance of a Pre-mediation Report dated March 8, 2001; and

WHEREAS, in response to a request for a vacant land adjustment made by the Borough of Montvale pursuant to N.J.A.C. 5:93-4.2, COAH issued a Report Establishing a Realistic Development Potential (RDP) of 188 units on August 30, 2001; and

WHEREAS, the Borough of Montvale subsequently amended its second round Housing Element and Fair Share Plan two times and each time re-petitioned COAH for substantive certification of its second round Housing Element and Fair Share Plan addressing a 188-unit RDP; and

WHEREAS, the Borough of Montvale published notice of its most recent re-petition dated August 12, 2003, in *The Bergen Record*, which is a newspaper of general circulation within the county, on August 29, 2003; and

WHEREAS, there were seven objections to the Borough's August 12, 2003 re-petition, which triggered the initiation of mediation pursuant to N.J.A.C. 5:91-7 and the issuance of a Pre-mediation Report dated July 21, 2004; and

WHEREAS, three mediation sessions were conducted between July 29 and August 23, 2004; and

WHEREAS, in response to the July 21, 2004 Pre-mediation Report, the Borough of Montvale, by resolution dated November 1, 2004, requested a waiver from COAH's bedroom distribution requirements at N.J.A.C. 5:93-7.3 and the low- and moderate-income distribution requirements at N.JA.C. 5:93-7.2, on a project-by-project basis, demonstrating that the total bedroom distribution and low- and moderate-income distribution under Montvale's plan would comply with COAH's requirements; and

WHEREAS, the Mediator issued a Mediation Report (attached hereto as Exhibit A and incorporated by reference herein), on November 24, 2004, and recommended that there are no contested issues of material fact that necessitate transfer of this matter to the Office of Administrative Law; and

WHEREAS, COAH staff reviewed the Borough of Montvale's 2003 housing element and fair share plan, as revised, and the Borough of Montvale's waiver request; and

WHEREAS, COAH issued a Compliance Report dated November 24, 2004, which was distributed to the Borough of Montvale service list for a 14-day comment period; and

WHEREAS, COAH staff made minor corrections to the Compliance Report on November 25, 2004 (attached hereto as Exhibit B and incorporated by reference herein), due to comments received from the Borough of Montvale and further review by the COAH staff; and

WHEREAS, with the grant of the waiver requested by the Borough of Montvale, the Borough of Montvale's plan would be eligible to receive 49 credits and rental bonuses, including 22 affordable units built, 12 rental bonuses and 15 units being transferred through a regional contribution agreement (RCA) units; and

WHEREAS, with the grant of the waiver requested by the Borough of Montvale, the Borough of Montvale's plan addressed its calculated need of 139 units through construction of 115 units, 35 rental bonuses and 44 additional RCA units, providing a total of 243 units and leaving an unmet need of 12 units; and

WHEREAS, with the grant of the waivers requested by the Borough of Montvale, the Borough of Montvale's plan addresses its unmet need of 12 units through zoning for 32 additional affordable units, providing a surplus of 20 units plus four excess age-restricted units that may be carried forward to address any future affordable housing obligation; and

WHEREAS, the Borough of Montvale proposes to fund these programs through a number of contributory sites, the use of funds on deposit in its Affordable Housing Escrow Account, and the continued collection of development fees; and

WHEREAS, the Borough of Montvale has submitted a resolution of intent to bond by the governing body agreeing to fund any shortfall in financing the RCAs and municipally sponsored construction; and

WHEREAS, on November 23, 2004, the Borough of Montvale and the City of Garfield executed a Regional Contribution Agreement for the Borough of Montvale to fund the scattered site rehabilitation of 47 low- and moderate-income units in the City of Garfield at $25,000 per unit; and

WHEREAS, on July 8, 2003, the Borough of Montvale and the Borough of Cliffside Park entered into an agreement to execute an RCA for the Borough of Montvale to fund the scattered site rehabilitation of 10 low- and moderate-income units in the Borough of Cliffside Part at $25,000 per unit and on August 6, 2003, the Borough of Montvale and the Borough of Cliffside Park entered into an agreement to execute a Regional Contribution Agreement for the Borough of Montvale to fund the scattered site rehabilitation of two additional low- and moderate-income units in the Borough of Cliffside Part at $25,000 per unit; and

WHEREAS, on December 15, 2004, COAH approved the RCA between the Borough of Montvale and the City of Garfield for the Borough of Montvale to fund 47 units of low- and moderate-income units in the City of Garfield at $25,000 per unit; and

WHEREAS, on December 15, 2004, COAH approved the RCA between the Borough of Montvale and the Borough of Cliffside Park for the Borough of Montvale to fund 12 units of low- and moderate-income units in the Borough of Cliffside Park at $25,000 per unit; and

WHEREAS, on December 8, 2004, COAH received comments to the Compliance Report (attached hereto as Exhibit C and incorporated by reference herein) from Reno A. Del Ben, primarily reiterating previous comments and objections, including requesting an increase in the density on his property, which is an inclusionary site in Montvale's plan, from six units per acre to 14 units per acre, requesting that adjacent land owned by Del Ben be incorporated into Montvale's plan to address unmet need, objecting to the zoning regulations as containing cost generating features and further objecting to Montvale's intention to modify the zoning for this property to remove the provision that would allow for a payment in lieu of constructing affordable housing; and

WHEREAS, Del Ben's comments and objections have previously been responded to in COAH's Compliance Report and Mediation Report, and further responded to in memorandums from the COAH staff to the Council dated December 9, 2004 (attached hereto and incorporated by reference herein as Exhibit D) and December 10, 2004 (attached hereto and incorporated by reference herein as Exhibit E); and

WHEREAS, on December 8, 2004, COAH received comments to the Compliance Report from David Mann (attached hereto as Exhibit F and incorporated by reference herein), primarily reiterating previous comments and objections, including that rental units in some developments were not eligible for two-for-one credits, in lieu payments in excess of COAH regulated development fees

without zoning incentives violate COAH regulations, that the RDP should be revised to include some developments and that a number of sites are either not developable as proposed or will not be developed during the period of substantive certification; and

WHEREAS, David Mann's comments and objections have previously been responded to in COAH's Compliance Report and Mediation Report, and further responded to in memorandums from the COAH staff to the Council dated December 9, 2004 (attached hereto and incorporated by reference herein as Exhibit D) and December 10, 2004 (attached hereto and incorporated by reference herein as Exhibit E); and

WHEREAS, on December 8, 2004, Richard M. Preiss, on behalf of the Borough of Montvale, responded to the comments of Reno A. Del Ben and David Mann (attached hereto as Exhibit G and incorporated by reference herein); and

WHEREAS, the COAH Compliance Report recommended that the waiver requested by the Borough of Montvale be granted and recommended that substantive certification be granted.

NOW THEREFORE BE IT RESOLVED, that COAH grants the Borough of Montvale a waiver from COAH's bedroom distribution requirements at N.J.A.C. 5:93-7.3 and the low- and moderate-income distribution requirements at N.JA.C. 5:93-7.2, on a project-by-project basis, in consideration that the Borough of Montvale has demonstrated that the total bedroom distribution and low- and moderate-income distribution under Montvale's plan would comply with COAH's requirements; and

BE IT FURTHER RESOLVED, that COAH finds that the 2003 Housing Element and Fair Share Plan submitted by the Borough of Montvale, as amended, comply with the standards set forth at N.J.S.A. 52:27D-314, and are consistent with the rules and criteria adopted by COAH, except for those regulations for which the waiver has been granted; and

BE IT FURTHER RESOLVED, that COAH hereby grants the Borough of Montvale substantive certification of Montvale's Housing Element and Fair Share Plan addressing the Borough's 1987-1999 fair share obligation of 255 new construction units and no rehabilitation obligation; and

BE IT FURTHER RESOLVED, that this substantive certification will be valid for six years from the date of COAH'S grant of substantive certification; and

BE IT FURTHER RESOLVED, that the Borough of Montvale shall adopt its revised Fair Share Ordinance within 45 days from the grant of substantive certification and shall forward a copy of the adopted ordinances to COAH; and

BE IT FURTHER RESOLVED, that the Borough of Montvale shall execute an RCA contract with the Borough of Cliffside Park within 45 days from the grant of substantive certification, for the

Borough of Montvale to fund the scattered site rehabilitation of 12 low- and moderate-income units in the Borough of Cliffside Park at $25,000 per unit, and shall forward a copy of the executed RCA to COAH and;

BE IT FURTHER RESOLVED, that the Borough of Montvale shall adopt a revised spending plan consistent with COAH's regulations and the Borough of Montvale certified plan and shall forward a copy of the resolution adopting the revised spending plan and a copy of the revised spending plan to COAH for approval within 45 days from the grant of substantive certification; and

BE IT FURTHER RESOLVED, that, in response to concerns about the effect of newly adopted environmental regulation on some sites in the Borough of Montvale's Fair Share Plan, COAH shall monitor the progress of the Borough owned site, the Axinn project and the Nottingham project to ensure continued viability; and

BE IT FURTHER RESOLVED, that Montvale shall provide COAH with quarterly updates on the progress of, including the status of all required permits, the Borough owned site, the Axinn project and the Nottingham project until such time as these properties are completed; and

BE IT FURTHER RESOLVED, if the Borough owned site, the Axinn project or the Nottingham project have not been issued construction permits within two years of COAH's grant of substantive certification, Montvale may be required to amend its plan; and

BE IT FURTHER RESOLVED, that any change in the facts upon which the certification is based or any deviation from the terms and conditions of the certification, which affect the Borough of Montvale's ability to provide for the realistic opportunity of its fair share of low- and moderate-income housing and which the Borough of Montvale fails to remedy, shall render this certification null and void.

I hereby certify that this resolution
was duly adopted by the Council on
Affordable Housing on December 15, 2004.

Renée Reiss

Renée Reiss, Secretary
Council on Affordable Housing

EXHIBIT A

EXECUTIVE SUMMARY

BOROUGH OF MONTVALE, BERGEN COUNTY

Region 1

Barbara A. Walsh, PP/AICP

December 15, 2004

The Borough of Montvale, Bergen County, has a 12-year cumulative obligation of 255 units, consisting of a 255-unit new construction obligation and no rehabilitation obligation. Montvale received a judgment of compliance from the Superior Court for its first round obligation on December 16, 1994, and petitioned the Council on Affordable Housing (COAH) for second round certification on June 5, 2000. Montvale requested a vacant land adjustment and on August 30, 2001, COAH issued a report that reduced the Borough's 255-unit affordable housing obligation by 67 units, establishing a new Realistic Development Potential (RDP) of 188 units. After mediation and two re-petitions, there were seven objections to the last re-petition dated August 12, 2003. By resolution dated November 1, 2004, Montvale requested a waiver from COAH's bedroom distribution requirements at N.J.A.C. 5:93-7.3 and the low- and moderate-income distribution requirements at N.JA.C. 5:93-7.2, on a project-by-project basis, demonstrating that the total bedroom distribution and low- and moderate-income distribution under Montvale's Plan would comply with COAH's requirements. A Mediation Report issued November 24, 2004, included a recommendation that there are no contested issues of material fact that necessitate transfer to the Office of Administrative Law.

Subject to COAH's grant of the waiver requested by the Borough of Montvale, Montvale has submitted a compliant Housing Element and Fair Share Plan that addresses the Borough's RDP of 188 units. Montvale's Plan includes 22 units that have been built, 122 units that are zoned and/or the subject of developer agreements, 40 rental bonuses and 59 RCA units for a total of 243 units, bonuses and RCAs. The Borough has provided for 55 units above its RDP, which will be applied against a 67-unit unmet need. Montvale's Plan also proposes to meet its remaining 12 units of unmet need through zoning for 32 units that may result in 20 surplus units if the units are built.

COAH staff recommends that the waiver be granted and that Montvale be granted substantive certification. Within 45 days of COAH's grant of substantive certification, the Borough's affordable housing ordinance must be adopted and a revised spending plan consistent with the modified 2003 Housing Element and Fair Share Plan must also be submitted for review and approval by COAH.

During the 14-day comment period, staff received comments on the compliance report. These comments were received on December 8, 2004 which did not provide adequate time for staff to formulate summaries and responses. A packet including a resolution granting substantive certification along with a response and comment document and copies of the comments will be forwarded to the Council under separate cover prior to the December 15, 2005 COAH meeting.

5. **Fair Share Plan – 188-Unit RDP**

*Greenway for-sale units	10
Greenway rental units	2
Greenway rental bonuses	2
USCable/Bear Brook	5
USCable/Bear Brook rental bonuses	5
Janovic I payment - $300,000 for RCA	
Alternative Living Arrangement	5
Alternative Living Arrangement rental bonuses	5
Chamberlain Payment - $250,000 for RCA	
*Baldanza/Balder Consruction rental units	3
*Baldanza/Balder Consruction rental bonuses	3
Bonnabel rental units	14
Bonnabel rental bonuses	14
Del Ben	39
Janovic II Payment - $50,000 for RCA	
*Axinn/Hovnanian	26
The Rink/Hovnanian Payment - $800,000 for RCA	
*Nottingham rental units	8
*Nottingham rental bonuses	8
Montvale Senior Housing – 36 age-restricted rental units	32
Montvale Senior Housing age-restricted rental bonuses	3
Garfield RCA	47
Cliffside Park RCA	12
Total	**243**
Units in Excess of RDP	55
DePiero (Unmet Need Site)	32
Potential Surplus	**20**
Excess age-restricted units	**4**

*Waiver required

Recommendation:

- **Grant Waiver on Bedroom Distribution and Low- and Moderate-Income Split**
- **Grant Substantive Certification**

State of New Jersey
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101 SOUTH BROAD STREET
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TRENTON NJ 08625-0813
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RICHARD J. CODEY
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SUSAN BASS LEVIN
Commissioner
LUCY VOORHOEVE
Executive Director

COAH SUMMARY FACT SHEET 1987-1999

Staff Reviewer: Barbara Walsh, PP/AICP

1. **Municipality**: Montvale Borough
   County: Bergen
   Region: 1
   Planning Area: PA 1

2. **1st Round Judgment of Compliance** 12/16/94

3. | | |
   |---|---|
   | **Petition for 2nd round Certification** | 6/5/00 |
   | **Pre-Mediation Report I RRAI** | 3/8/01 |
   | **COAH Report Establishing RDP** | 8/30/01 |
   | **Mediation Dates** | 4/23/01, 2/26/02, 3/4/02, 3/5/02, 3/21/02, 4/16/02, 4/18/02, 6/19/02, 8/6/02, 8/15/02 |
   | **Mediation Report I** | 3/17/03 |
   | **Re-petition I** | 7/7/03 |
   | **Re-petition II** | 8/12/03 |
   | **Pre-Mediation Report II RRAI** | 7/21/04 |
   | **Mediation Dates** | 7/29/04, 8/5/04, 8/23/04 |
   | **Mediation II Report** | 11/24/04 |
   | **Compliance Report** | 11/24/04 |
   | **Substantive Certification** | 12/15/04 |

4. **1987-1999 Cumulative Obligation**

Precredited Need	255
New Construction Obligation	255
Rehabilitation Obligation	0
Vacant Land Adjustment	67
Realistic Development Potential	188

Montvale Borough **Bergen**

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Orangeburg, NY 10962-1005

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Montvale, NJ 07645

USC Realty
28 West Grand Avenue
Montvale, NJ 07645

J.P.E. Contractors
12 Quail Ridge Road
Montvale, NJ 07645

David Mann
160 Upper Saddle River Road
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Tenafly, NJ 07670

Art Bernard, P.P.
THP, Inc.
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Rockland Built Homes
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evised/Printed: 12/17/2004

Montvale Borough **Bergen**

The Honorable George B. Zeller
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Revised/Printed: 12/17/2004

COAH MEDIATION REPORT

MONTVALE BOROUGH-BERGEN COUNTY

Prepared By: Melissa J. Orsen, Esq.

November 24, 2004

BACKGROUND

Montvale Borough, (Montvale or the Borough) Bergen County was sued for exclusionary zoning in 1989. Litigation resulted in a judgment of compliance and order for repose that was granted by the Honorable Peter J. Ciolino, A.J.S.C. on December 16, 1994.

The final judgment of compliance and order for repose granted by the court was predicated upon a Housing Element and Fair Share Plan that included a reduction in the Borough's affordable housing obligation due to a lack of developable land. A 146-unit realistic development potential (RDP) for Montvale was set by the court.

Thereafter, Montvale petitioned the Council on Affordable Housing (COAH) on June 5, 2000 for substantive certification of a plan that addresses the Borough's 12-year cumulative affordable housing obligation. Montvale's 1987-1999 cumulative pre-credited need is 255 units, all new construction. There were ten objectors to Montvale's June 2000 second round fair share plan.

Following Montvale's 2000 petition, COAH staff prepared a Report Establishing RDP set Montvale's RDP at 186 units. However, during mediation for the June 2000 petition, information was brought to COAH's attention that resulted in a two-unit increase in the Borough's RDP to 188-units.

Mediation was conducted and concluded without agreements between the parties and Montvale was directed to amend its adopted Housing Element and Fair Share Plan, to address a 188-unit RDP and unmet need.

In response, the Montvale planning board re-noticed and re-adopted the amended Housing Element and Fair Share Plan dated June 5, 2003 and on August 5, 2003 the Borough re-petitioned the Council on Affordable Housing (COAH) for substantive certification of its amended Housing Element and Fair Share Plan on August 12, 2003[1]. A more comprehensive review of Montvale's history with COAH is contained in the COAH Pre-Mediation Report which was provided to all parties prior to mediation.

II. MEDIATION

The 45-day objection period for Montvale's 2003 Housing Element and Fair Share Plan expired on October 14, 2003. Seven timely objections were filed:

- Three objections were filed on August 25, 2003, one by David Mann, one by David Kinsey on behalf of Chamberlain Developers, Inc. and one by Henry L. Kent-Smith, Esq. on behalf of Henry J. Bonnabel;

- One objection was filed on August 27, 2003 by Metropolitan Home Development Corp.;

- One objection was filed by Reno A. Del Ben, through separate submittals filed on August 4, 2003, August 6, 2003, August 13, 2003 and September 8, 2003;

- One objection was filed on October 9, 2003 by Wanda Della Bella for the Citizens Group of Upper Saddle River Road; and

- One objection was filed on October 14, 2003 by James P. Kimball, Esq. on behalf of a number of residents of Franklin Avenue in Montvale (Franklin Avenue Residents).

[1] Montvale initially petitioned on June 19, 2003, however, due to a noticing error, Montvale cured its deficiency and re-petitioned on July 5, 2003.

David Mann submitted additional objections by fax on October 13, 2003.

Three mediation sessions were held between July 29, 2004 and August 23, 2004. In addition, numerous telephone caucus sessions took place. The following details specific objections and corresponding results of mediation

David Mann

David Mann, a private citizen who previously objected to Montvale's 2000 Housing Element and Fair Share Plan and participated in the mediation process that culminated in this re-petition, objected to Montvale's form of public notice in the newspaper because it did not inform the public of the allowable 45-day objection period. Montvale cured the deficiency by re-noticing the public, informing the public of the 45-day objection period. Mr. Mann also submitted additional objections regarding Montvale's 2003 Housing Element and Fair Share Plan, including the following:

Objection:

Since Montvale's plan is deficient, "payments in lieu of" should not be accepted per N.J.A.C. 5:93-8.10(c).

Mediation Result:

COAH staff has reviewed Montvale's submission and has prepared a recommendation to the Council that Montvale is fully compliant with N.J.S.A. 52:27D-301 et seq. and COAH's regulations promulgated thereunder, N.J.A.C. 5:93-1 et seq., including N.J.A.C. 5:93-8.10(c). There is no valid reason to preclude payments in lieu of construction.

Objection:

Per N.J.A.C 5:93-8.10(c) and (d), Site 1, the Chamberlain development site, Block 102, lots 1-4, should generate either $90,000 - $135,000 or $800,000 in development fees based on a 32-unit RDP, either by collecting a payment in lieu or a development fee based on the assessed value of the 18 single-family substituted units.

Mediation Result:

Mr. Mann withdrew his objections with respect to the Chamberlain site. Since this objection also related to payments in lieu of construction on a conceptual and not exclusively site specific basis, withdrawal of this objection is construed to be a withdrawal of similar objections relating to other sites.

Objection:

Per N.J.A.C 5:93-8.10(c) and (d), Mr. Mann maintains that Site 63, the Rink site, which will have 72 units with a 32-unit RCA, should be assessed a maximum of $350,000 (14 x $25,000) and not the $800,000 proposed.

Mediation Result:

Montvale granted the Rink site a change in use from non-residential to residential. In this regard, Montvale was free to negotiate the fees. Moreover, Mr. Mann's withdrawal of his objection to the Chamberlain site is based on concepts that are applicable to the Rink site. Therefore, this objection is not relevant to the legitimacy of Montvale's plan.

Objection:

Per N.J.A.C. 5:93-8.10(d), an incentive should be provided for the excess development fees assessed on Site 63 and on the Janovic site, Block 1405, lot 11.02.

Mediation Result:

During negotiations between Montvale and the Rink and Janovic sites, the developer willingly agreed to the payments made or to be made to the Borough's Affordable Housing Trust Fund. Mr. Mann was not a party to those agreements and therefore has no basis in which to assert the need for any incentives beyond those which were agreed to by the affected parties.

Objection:

Per N.J.A.C. 5:93-4.2(h), an overlay zone to address unmet need must produce low- and moderate- income housing or a development fee.

Mediation Result:

Montvale's petition includes overlay zoning designed to capture affordable housing opportunities if development occurs on the sites that have been zoned for this purpose. This occurs only if the sites so zoned become the subject of an application for development. Montvale's approach is fully compliant with COAH's rules.

Objection:

The Nottingham site is environmentally sensitive and cannot provide affordable housing. Montvale's code 128.5.6F(4) provides that in an affordable housing zone, 15 percent of rental units shall be for affordable

housing. Therefore, four, not eight affordable rental units could be provided. The objector seeks proof that the proposed development will meet N.J.A.C. 5:93-7.3 and 7.4 regarding bedroom distribution and rents.

Mediation Result:

Montvale submits that the Montvale Planning Board has approved a site plan for the Nottingham development. The site plan is based on a settlement agreement entered into between the Mayor and the Montvale Governing Body and Alsan Realty, the owner of the Nottingham site. Alsan Realty willingly entered into said agreement, which was part of a renewal and expansion of an existing multi-family project. The development received planning board approcal on April 20, 2004. Therefore, the development meets COAH's definition of "approvable." The Borough has requested a waiver from bedroom distribution requirements that is based on the fact that there are no three bedroom units, market or affordable, in Nottingham and that on a municipal-wide basis, bedroom distribution evens out. Waivers granted by COAH are not subject to mediation.

Objection:

The two rental units in the Greenway development and the five rental units in the Bear Brook development should receive 1.33 rental credits per unit, not two per unit, in accordance with N.J.A.C. 5:92-14.4, in effect at the time the compliance plan was approved by the Court. However, since the Court Master approved the 20 percent set aside, Montvale should receive only 12 credits for the Greenway development, not the 14 requested, and since the Court Master approved five rental units to receive seven credits for the Bear Brook development, Montvale should receive only seven credits, not the 10 credits requested.

Mediation Result:

Montvale's submission has been reviewed by COAH staff utilizing the rules in effect at the time the Borough petitioned, which was N.J.A.C. 5:93-1 et seq. Accordingly, two for one credits for non age-restricted rental units may be granted. COAH rules are not subject to mediation.

Objection:

Montvale requests credits for age-restricted housing units that exceed the maximum permitted pursuant to N.J.A.C. 5:93-6.1(b)2 and N.J.A.C. 5:93-5.15(d)2.

Mediation Result:

Montvale will only be granted credits for age-restricted housing units that meet the maximum permitted pursuant to N.J.A.C. 5:93-6.1(b)2 and N.J.A.C. 5:93-5.15(d)2. The Compliance Plan approved by COAH staff caps Montvale's age-restricted units at 32.

Objection:

Montvale's proposed senior housing development is not approvable and does not satisfy N.J.A.C. 5:93-5.5.

Mediation Result:

COAH staff has reviewed Montvale's proposed senior housing development and has determined that it meets the requirements of N.J.A.C. 5:93-5.5. Moreover, the development received development approvals from the Montvale Planning Board on July 1, 2003, thus demonstrating that it is approvable.

Objection:

The bedroom distribution proposed for the Axinn/Hovnanian development does not conform to the bedroom distribution requirements.

Mediation Result:

Montvale has requested a waiver from the bedroom distribution requirements pursuant to N.J.A.C. 5:93-15.1 for the Axinn/Hovnanian site. The Council will hear the waiver request prior to rendering a decision on substantive certification. COAH staff has reviewed the petition and determined that Montvale's overall proposed plan meets the bedroom distribution requirements pursuant to N.J.A.C. 5:93-7.3. Waivers granted by the Council are not subject to mediation.

Objection:

The De Piero site will not create a realistic development potential within the six- year period of substantive certification.

Mediation Result:

The De Piero site has been included in Montvale's plan as a site to address the Borough's unmet need. COAH's rules do not require that units addressing unmet need be constructed during the substantive certification period.

Chamberlain Developers, Inc.

David Kinsey, PP, submitted an objection on behalf of his client, Chamberlain Developers, Inc. who is the contract purchaser of Block 102, lots 1-4. Chamberlain previously objected to Montvale's 2000 Housing Element and Fair Share Plan and participated in the mediation process that culminated in this re-petition. Chamberlain

seeks rezoning of its 20.039- acre site to permit inclusionary multi-family development at a gross density of 10 units per acre with a 20 percent set-aside. Chamberlain set forth 15 objections, which were summarized in the COAH Pre-Mediation Report.

Mediation Result

On November 18, 2004, COAH received a copy of correspondence from Ronald Shimanowitz, Esq., on behalf of Chamberlain Developers, Inc., withdrawing its opposition to Montvale's petition. The withdrawal was conditioned upon no appeal being filed of the Borough's grant of final subdivision approval to the Application filed by Chamberlain Developers, Inc.

In consideration that the Chamberlain site has made a payment in lieu of constructing affordable housing and is in the process of building single-family detached homes on the site, the relief sought by the objector in their original objection would be rendered moot. Accordingly, COAH staff accepts Chamberlain's withdrawal of its objections.

Henry J. Bonnabel

Henry L. Kent-Smith, Esq. submitted objections on behalf of his client, Henry Bonnabel, who previously objected to Montvale's 2000 Housing Element and Fair Share Plan and participated in the mediation process that culminated in this re-petition. Bonnabel owns or controls several properties totaling over 41 acres in Montvale. The objections are summarized in the attached Pre-Mediation Report.

On November 18, 2004, COAH received an executed Agreement for Affordable Housing entered into between Bonnabel and representatives of Montvale, which does not affect Montvale's petition for substantive certification for its 1987-1999 fair share plan. Accordingly, Bonnabel withdrew his objections.

Metropolitan Home Development Corp.

Stanley Nowak, President of Metropolitan Home Development Corp, owner of Block 302, lot 13 indicated that this site was not included in the original inventory of available sites and should be considered as a site with a realistic development potential.

Mediation Result

Montvale advised Mr. Nowak that it was not prepared to include Block 302, lot 13 in its 1987-1999 fair share plan. However, Montvale encouraged Mr. Nowak to submit a proposal to the Montvale Affordable Housing Committee to address its third round affordable housing obligation. Accordingly, Mr. Nowak withdrew his objection.

Reno A. Del Ben

Reno A. Del Ben, owner of Block 302, lots 1 and 4 and Block 1002, lot 7, previously objected to Montvale's 2000 Housing Element and Fair Share Plan and participated in the mediation process that culminated in this re-petition. Mr. Del Ben reiterated all previous objections and requested re-consideration of reports previously submitted by P. David Zimmerman, PP. He also made the following objections:

Objection:

As stated in a report dated September 13, 2001 prepared by David Zimmerman, PP/AICP, the Del Ben site is suitable for a much greater density, i.e. a density of at least 14 units per gross acre.

Mediation Result:

The Del Ben site was zoned at six units per acre as part of Montvale's judgment of compliance and the zoning remains unchanged. The Borough has

zoned the property for up to six units per acre and incorporates this zoning in a plan that provides 235 units against its 188-unit RDP.

Objection:

All of the Del Ben site zoned one acre residential, which the municipality failed to acquire, should be available for affordable housing.

Mediation Result:

Montvale has received Green Acres funding and Bergen County Open Space funding to acquire the property. Negotiations have ensued and Montvale anticipates acquiring the property within one year.

Objection:

The De Piero site does not create a realistic opportunity as an overlay site for 32 affordable units, as the owners have indicated they expect to farm this property for at least the next two generations.

Mediation Result:

The De Piero site has been included in Montvale's plan as a site to address the Borough's unmet need. COAH's rules do not require that sites addressing unmet need be constructed during the period of substantive certification.

Objection:

A number of cost generation features of the Montvale zoning ordinances should be eliminated or made inapplicable to affordable housing sites, prior to the grant of substantive certification, i.e. requirements regarding trees 4" or more, regulation of set backs, yard and bulk requirements and distribution of

buildings, two-story height restrictions on affordable units, regulations limiting the maximum length of affordable housing unit buildings, regulations specifying the minimum distances between affordable housing buildings, regulations specifying the maximum lot coverage of affordable housing buildings and regulations dealing with buffer areas and open space areas and steep slopes ordinance.

Mediation Result:

Montvale submits that no cost-generating features have in any way impaired the builder to construct low- and moderate-income housing. Montvale further submits that it is in conformance with COAH's rules and regulations with respect to cost-generating features. The majority of zoning ordinances implemented were crafted as a result of development agreements entered into between the Borough of Montvale and developers who would have raised objections to the extent that it would have inhibited development of low- and moderate-income housing. This has never occurred. With respect to the Del Ben site, the zoning is a result of a court approved settlement in 1994.

Citizens Group of Upper Saddle River Road

Wanda Della Bella submitted an objection on behalf of The Citizen Group of Upper Saddle River Road requesting inclusion of their four contiguous properties, which are in excess of six acres, in the revised rezoning for multifamily housing at 10 units per acre. The property owners are: Ciro and Wanda Della Bella (Block 301, lot 1, size 1.3), Fred and Cathy Galda (Block 301, lot 14, size 2.45), Martin and Dorothy Gallagher (Block 302, lot 2, size 1.61), and Irma Nelson and Renate Guiglia (Block 302, lot 3, size 1.34).

Mediation Result:

Montvale advised the Citizens Group of Upper Saddle River Road (Citizens Group) that it was not prepared to include its property in its 1987-1999 fair share plan. However, the residents may petition Montvale Affordable Housing Committee to present a proposal for the property to address the Borough's third round affordable housing obligation. The Citizens Group did not withdraw its objection.

Franklin Avenue Residents

James P. Kimball, Esq. submitted the following objections and a report from John D. Maczuga, PP, dated October 8, 2003, on behalf of a number of residents of Franklin Avenue in Montvale (Franklin Avenue Residents) objecting to the inclusion of the Baldanza site, Block 2408, lots 24 and 25, in Montvale's 2003 Housing Element and Fair Share Plan:

Objection:

Montvale's submissions as to the Baldanza property are defective as they have failed to provide COAH or the public with crucial documentation relating to the realistic development potential of the site.

Mediation Result:

COAH staff has reviewed Montvale's submissions with respect to the Baldanza site and has determined that it is in compliance with COAH rules and regulations. Montvale submitted to COAH the necessary documentation relating to the realistic development potential of the site.

Objection

The Baldanza site does not provide a realistic opportunity for the development of low-income housing. The plan submitted is insufficient to determine the potential development of the Baldanza site and the proposed density is inappropriate.

Mediation Result:

COAH staff has determined that the Baldanza site does in fact provide a realistic opportunity for the development of low- and moderate-income housing. Montvale submitted to COAH the necessary documentation relating to the realistic development potential of the site and COAH has determined that the proposed density is appropriate for the location and size of the property.

Objection

The Baldanza site fails to include any analysis relating to the impact of safety and traffic issues relating to the proposed inclusionary development.

Mediation Result:

Montvale has proposed a 12-unit development, with 3 low- and moderate-income units. Safety and traffic issues are a concern of the Montvale Planning Board and will be considered by the Montvale Planning Board during the site development approval process and are outside the scope of COAH's rules.

Other Comments

By letter dated August 25, 2003, Jeffrey Kantowitz, Esq., representing K. Hovnanian Companies, advised that Hovnanian supports Montvale's 2003 Housing Element and Fair

Share Plan and is committed to participating in helping Montvale to satisfy its affordable housing obligation through implementation of two Settlement Agreements reached with Montvale, and requested to be noticed with respect to any mediation sessions.

III. RECOMMENDATION

As a result of mediation, COAH staff received an executed agreement between the Borough of Montvale and Bonnabel. It should also be noted that Montvale entered into agreements with Baldanza and Axinn/Hovnanian prior to mediation and those agreements continue to remain in effect.

At the conclusion of mediation, objectors Bonnabel, Metropolitan Home Development and Chamberlain, Inc. withdrew their objections. With respect to the remaining objectors, the COAH Mediator is recommending to the Council that no contested issues of material fact remain. It is therefore recommended that the Council proceed in accordance with the Compliance Report prepared by COAH staff, dated November 24, 2004.

This report will be forwarded to the Borough, objectors and all others on the service list for comments to be submitted within 14 days or no later than 5 PM on December 8, 2004. All comments to the COAH Mediation Report will be addressed in a report to the Council.

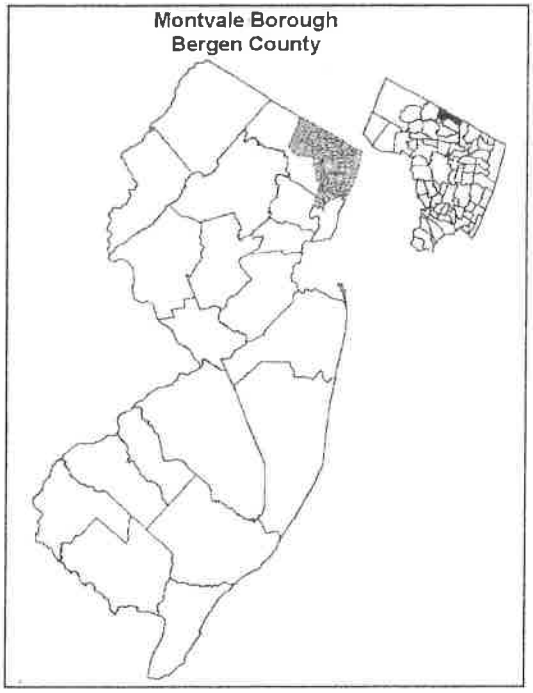
EXHIBIT B

COAH COMPLIANCE REPORT
MONTVALE BOROUGH/ BERGEN COUNTY
REGION #1
Prepared by Barbara Walsh, PP/AICP
November 25, 2004

PART I – PLAN REVIEW

I. INTRODUCTION

Montvale Borough is located along the northern border of Bergen County and contains approximately four square miles. The Borough is bounded by the Borough of Upper Saddle River on the west, the Boroughs of Woodcliff Lake and Park Ridge on the south, the Township of River Vale on the east and New York State on the north. It is traversed by the Garden State Parkway. Montvale is located entirely in Planning Area 1 on the State Plan Policy Map (SPPM) of the State Development and Redevelopment Plan (SDRP) with a number of Critical Environmental Sites delineated.



The Planning Board of Montvale Borough, Bergen County, adopted an amended Housing Element and Fair Share Plan on June 19, 2003 that addresses its 12-year cumulative obligation. Montvale's 1987-1999 cumulative pre-credited need is 255 units, all new construction. However, due to a lack of vacant land, a realistic development potential (RDP) of 188 units was subsequently established for Montvale.

The Borough re-petitioned the Council on Affordable Housing (COAH) for substantive certification on August 12, 2003 and published in The Record and The Ridgewood News on August 29, 2003. The 45-day objection period concluded on October 13, 2003. There were seven objections to the plan.

In Montvale, the Saddle River and Pascack Brook watersheds are designated Category 1 (C1) watersheds. All but a very small portion of the municipality is a Category 1 watershed. COAH staff reviewed the limits of the C1 watersheds and C1 waterbodies in Montvale, as well as the potential regulatory impacts to development in these watersheds, with NJ Department of Environmental Protection (NJDEP) staff. Effective February 2, 2004, the NJDEP adopted new stormwater management rules. The design and performance standards for new development include groundwater recharge, runoff quantity controls, runoff quality controls and Category One buffers. Under the new stormwater management rules, the design and performance standards for new development may impact the design of proposed development on a site as well as the intensity of development that could be implemented. Additionally, if development is proposed within the C1 watershed and there is a stream located on or within 300-feet of the property, the development may be impacted by Special Resource Protection Area regulations. The DEP stormwater rules only apply to major development, new development that results in the disturbance of one or more acres of land or increased impervious surface by one-quarter acre or more. If DEP land use permits are not required, the development is exempt. If preliminary or final site plan approval was granted prior to February 2, 2004 and one DEP land use permit had been granted, the development is exempt. Otherwise, the new stormwater regulations apply. Montvale's Municipal Engineer provided a report on November 11, 2004 evaluating each proposed development in Montvale's 2003 Housing Element and Fair Share Plan regarding the

applicability of the new stormwater regulations and assessed the developability of each site impacted by the new stormwater regulations as proposed. Only the proposed Chamberlain development is in the Saddle River watershed and that development is exempt from the new stormwater regulations. All other proposed development is in the Pascack Brook watershed. More detailed information regarding the applicability of the new stormwater regulations to each proposed development in the plan is addressed later in this report.

A. BACKGROUND

The Borough of Montvale was sued for exclusionary zoning by Theodore Kaczala and Rockland Built Homes, Inc. (Bergen County Docket No. L-35838-89) and Raymond Janovic and Patricia Janovic, et al. (Bergen County Docket No. L-33745-89). The cases were consolidated by the Superior Court and a judgment of compliance and order for repose was granted by the Honorable Peter J. Ciolino, A.J.S.C. on December 16, 1994, expiring on December 15, 2000.

The final judgment of compliance and order for repose that was granted by the court was predicated upon a Housing Element and Fair Share Plan that included a vacant land adjustment due to limitations on developable land and set a 146-unit RDP for Montvale.

The Borough's 1994 compliance plan included the rezoning of seven sites, of which six sites were to provide inclusionary setasides totaling 131 units, and in which one site was to provide funding for a Regional Contribution Agreement (RCA) for 15 units, to produce a total of 146 units, as shown in Table I.

TABLE I – 1994 Housing Element and Fair Share Plan		
Owner/Developer	**Block/Lot**	**Affordable Units**
Del Ben	302/1 & 4 1002/7	39
Rockland Built Homes	302/5	13
Metropolitan Homes Development (Nowack)	302/16	7
Greenway at Montvale (Treglia & Lovenich)	1002/6 & 8	17
USC Cable/Bear Brook	1102/5	8
Janovic	1401/12, 13, 14 1504 /21 & 22	15 (RCA)
Axinn	1903/1 2001/1 & 3	13
DePiero	2802/2 & 3	34
	Total	**146**

Montvale petitioned on June 5, 2000 for substantive certification of a plan that addressed the Borough's 12-year cumulative affordable housing obligation. Montvale's 1987-1999 cumulative pre-credited need is 255 units, all new construction. The Borough's 2000 Housing Element and Fair Share Plan modified the 1994 Housing Element and Fair Share Plan and included the following inclusionary housing plan, as shown in Table II.

TABLE II – 2000 Housing Element and Fair Share Plan						
			2000 Plan			
Owner/Developer	**Block/Lot**	**1994 Plan**	**On Site**	**Off Site**	**Rental Bonuses**	**Total**
Del Ben	302/1 & 4 1002/7	39	39	0	0	**39**
Rockland Built Homes	302/5	13	0	10(a)	3(b)	**13**
Metropolitan Homes Development (Nowack)	302/16	7	0	5(a)	2(b)	**7**
Greenway at Montvale (Treglia & Lovenich)	1002/6 & 8	17	12	0	2(c)	**14**
USC Cable/Bear Brook	1102/5	8	5	0	5(d)	**10**
Janovic	1401/12,13,14 1504/21 & 22	15 (RCA)	0	15 (RCA)	0	**15** **(RCA)**
Axinn	1903/1 2001/1 & 3	13	13	0	0	**13**
DePiero	2802/2 & 3	34	34	0	0	**34**
Montvale	1601/21 & 23		7	0	0	**7**
	Total	**146**	**110**	**30**	**12**	**152**

(a) To be transferred to the Borough-owned senior affordable housing site
(b) Eligible for a 1.33 unit credit for age-restricted rental units
(c) Eligible for a two for one credit for two family rental units
(d) Eligible for two for one credit for family rental units

Montvale's 2000 Housing Element and Fair Share Plan provided that Rockland Built Homes and Metropolitan Homes Development would fund 15 affordable units in a municipally sponsored affordable senior housing development through payment in lieu of constructing the 15 affordable units on site. Metropolitan Homes has been completed and, in lieu of constructing affordable units on site, contributed $140,000 to Montvale's Affordable Housing Trust Fund as a contribution to the development of the Montvale Senior Housing development. Rockland Built Homes has entered an agreement with Montvale, in lieu of constructing affordable units on site, to construct the Montvale Senior Housing development.

In most cases, COAH honors court settlements and COAH's rules at N.J.A.C. 5:93-4.2(f) establish such a presumption. Had Montvale implemented the terms of its judgment of compliance, the RDP for Montvale would have remained at 146 units. However, Montvale did not acquire open space as required in its judgment of compliance and the Borough also included an additional vacant land analysis in its June 2000 petition requesting a reduction in the RDP established by the court.

There were ten objectors to the Borough's June 2000 petition. COAH released a Report Requesting Additional Information on March 8, 2001 and COAH mediation began on April 23, 2001. It was agreed by the objectors and the Borough that the establishment of an RDP was a necessary precursor to the continuance of mediation. Montvale was informed that COAH's analysis would establish a new RDP, that the adjustment previously granted by the court would no longer apply and that the Borough may no longer rely on the court's analysis or the previous court-approved RDP.

A COAH Report Establishing RDP was released on August 30, 2001 analyzing the Borough's vacant land inventory and establishing an RDP of 187 units. All objectors and the Borough were given an opportunity to comment on the August 30th COAH report and adjustments to the RDP were further refined based on comments received. A review of comments on the August 30th COAH report resulted in a one unit decrease and established Montvale's RDP to be 186 units. During mediation, information was brought to COAH's attention that resulted in a two-unit increase in the Borough's RDP and established Montvale's RDP to be 188 units. Mediation was concluded on December 4, 2002 without agreements between the parties.

On February 27, 2003 Henry J. Bonnabel, a landowner within Montvale, filed a prerogative writ action challenging the constitutionality of Montvale's ordinances. Bonnabel v. Borough of Montvale, et als, Docket No. BER-l-1377-03.

COAH's March 17, 2003 Mediation Report concluded that Montvale was to amend its Housing Element and Fair Share Plan to address a 188-unit RDP and unmet need. While there were no formalized written agreements to fully resolve the objections, Montvale indicated that it would prepare an amended Fair Share Plan that included payments for 51 RCA units from the Chamberlain, Del Ben and Janovic properties; 78 units to be built on the Bonnabel (Spring Valley Road), DePiero, Borough-owned, Axinn and Balder Construction sites; and 13 rental bonuses for the Borough-owned and Balder Construction sites. Along with 39 units previously identified as credits from the Borough's first round court-certified plan, Montvale would have had a plan that addressed 191 units against its 188-unit RDP. Overlay zoning on Block 2802, Lot 2 (DePiero); Block 3301, Lots 3 and 4 (The Rink); and Block 160, Lot 2 (Nottingham

Apartments) had been included were to be included in the Montvale re-petition as the Borough's means to address unmet need pursuant to N.J.A.C. 5:93-4.1(b).

In response to comments received on COAH's March 17, 2003 Mediation Report, COAH prepared a Response to Comments on the COAH Mediation Report dated May 1, 2003. The comments did not alter the recommendation of the COAH mediator that the Borough of Montvale be directed to re-petition with an amended plan. However, COAH staff recommended that density and cost generation issues raised by an objector (Del Ben) be carried forward to a new mediation with all objections preserved. Furthermore, if the parties were not able to resolve these issues within two mediation sessions, the mediator would have the option of transferring the matter to OAL at that time.

Montvale and the Planning Board jointly filed a Motion to Dismiss Henry J. Bonnabel's prerogative writ action (Bonnabel v. Borough of Montvale, et als, Docket No. BER-l-1377-03) and on June 6, 2003, the Honorable Jonathan N. Harris, J.S.C., entered an order dismissing Bonnabel's action on the basis of the requirement to exhaust administrative remedies and COAH's primary jurisdiction over Montvale. On July 16, 2003, Bonnabel filed a Notice of Appeal from Judge Harris' Order.

The Montvale Planning Board adopted an amended Housing Element and Fair Share Plan on June 19, 2003 and the Borough re-petitioned for substantive certification of that amended plan on July 7, 2003. The Montvale Planning Board re-noticed and re-adopted the amended Housing Element and Fair Share Plan on August 5, 2003 and the Borough re-petitioned COAH for substantive certification of its amended Housing Element and Fair Share Plan on August 12, 2003. Seven objections to the plan were received from David Mann; David Kinsey on behalf of

Chamberlain Developers, Inc.; Henry L. Kent-Smith, Esq. on behalf of Henry J. Bonabel; Metropolitan Home Development Corp.; A. Del Ben; Wanda Della Bella for the Citizens Group of Upper Saddle River Road; and James P. Kimball, Esq. on behalf of a number of residents of Franklin Avenue in Montvale (Franklin Avenue Residents).

On December 1, 2003, Murray & Kimball, LLC filed a lawsuit entitled Franklin Avenue Coalition, et al. v. Borough of Montvale, et al., Docket No. BER-L-8637-03, in the Superior Court of New Jersey, Bergen County challenging Ordinance 2003-1207 permitting the rezoning of the Baldanza site at nine units per acre and the March 19, 2003 agreement between Balder Construction and the Borough of Montvale regarding the development of the Baldanza site.

On January 7, 2004 COAH denied a motion by Henry J. Bonnabel for the imposition of a scarce resource restraint imposing temporary restraints prohibiting new development approvals and issuance of building permits in the Borough of Montvale.

The objections to the 2003 Housing Element and Fair Share Plan triggered the initiation of mediation pursuant to N.J.A.C. 5:91-7 and the issuance of a Pre-mediation Report dated July 21, 2004. Mediation sessions were conducted and the results of mediation are summarized in a separate Mediation Report.

In response to the July 21, 2004 Pre-mediation Report, Montvale, by resolution dated November 1, 2004, has requested a waiver from COAH's regulations regarding the low- and moderate-income split and the bedroom distribution, which is discussed further in this report.

II. HOUSING ELEMENT/FAIR SHARE PLAN

Montvale's 2003 Housing Element and Fair Share Plan proposes to meet its 188-unit RDP through credits for 49 affordable units built and zoning that will produce 141 affordable units and/or RCAs. Overlay zoning creating an opportunity for as many as 80 affordable units has been proposed to address unmet need.

A. Demographic Analysis

Montvale's June 19, 2003 amended Housing Element and Fair Share Plan reported that according to the 2000 Census, Montvale had 7,034 people living in 2,590 housing units, compared to a population of 6,946 people living in 2,439 housing units in 1990. At nearly 50 percent, the largest percentage increase in population was in residents age 65 to 84 years old. The largest percentage decrease was in the number of residents age 15 to 24. Approximately 82 percent of the housing stock was single-family structures. Owner-occupied housing had a median value of $346,400, the median contract rent was $1,116 per month and median household income was $93,031. Over 80 percent of the Borough's housing stock was built subsequent to 1950.

Pursuant to additional information provided on November 5, 2004, Montvale anticipates that approximately 600 to 700 total units of housing will be added in the future, or an average of 50 to 60 units per year for the next 10 years. The predominant source of such housing will be the development of housing sites that have been or will be rezoned in order to meet the Borough's fair share obligation as required by the New Jersey Fair Housing Act. Such rezonings include the following: the Bonnabel property (70 units), Chamberlain (18 units), Del Ben (195 units), Janovic II (4 units), Montvale Senior Housing (48 units), Axxin/Hovnanian (128 units),

Baldanza (12 units), the Rink (72 units), Nottingham (36 units) and the De Piero property (160 units). Aside from these properties, Montvale reports that there are virtually no other vacant sites in Montvale available for residential development and that it is possible that a small number of units will be added via infill development, minor subdivisions of larger properties or the addition of a few units in Montvale's commercial zones, such as in the downtown. However, this is not expected to be significant or have any meaningful impact on the projections of average number of units to be added per year. In 2000, Montvale had a total of 2,590 housing units. Approximately 120 building permits have been added in the past 4 years since the Census was conducted, so that presently (as of 2004) the number of units total approximately 2,710. At full build-out, the Borough is anticipated to have approximately 3,400 housing units.

The 1999 NJ Department of Labor statistics for Montvale reported an average of 12,308 people employed in the municipality, providing an employment to housing ratio of 4.8 to one. On November 5, 2004 Montvale also provided information on existing employment in the municipality, as well as employment projections, utilizing information from the North Jersey Transportation Planning Authority (February 23, 2003) which estimated that existing employment in 2000 was 9,113 and is expected to grow to 9,726 by 2010 (a 6.7 percent increase), in 2020 to 10,511 (an eight percent increase) and to 10,805 in 2025, an overall increase of 18.5 percent over 25 years.

B. Credits/Reductions/Adjustments

Credits represent units that have been built, created or rehabilitated. Reductions represent unbuilt units that have been included in a previously certified affordable housing plan by zoning for low and moderate-income housing. Adjustments reflect the application of COAH regulations

that reduce a municipality's affordable housing obligation based on other limitations and/or methodological corrections.

1. Credits

a) Prior Cycle Credits

In accordance with N.J.A.C. 5:93-3.2, municipalities may receive credit for units constructed between April 1, 1980 and December 15, 1986 provided that the units are occupied by low- or moderate-income households and that the required controls on affordability are in place. Montvale did not request Prior Cycle Credits.

b) Post-1986 Credits

Pursuant to N.J.A.C. 5:93-3.3, municipalities may receive credit and rental bonus credits for eligible housing activity completed subsequent to December 15, 1986.

Janovic (Block 1401, lots 12, 13 and 14)

This development was part of Montvale's 1994 judgment of compliance where a settlement was reached with the plaintiff. In accordance with the settlement, Montvale reports that a 32-lot single-family subdivision, which required a payment in lieu of providing affordable housing units on site, was approved and completed. The Borough reports that a total of $300,000 was provided by Janovic to fund an RCA for 15 low- and moderate-income units. The payment will be used to fund an RCA of 15 units with the City of Garfield[1] in Bergen County. All required documentation and approvals must be submitted for COAH approval prior to substantive certification. The RCA will be reviewed in a separate report. **[15-unit RCA]**

[1] Formerly to be transferred to the City of Paterson.

US Cable/Bear Brook (Block 1102, lot 5)

This development was part of Montvale's 1994 judgment of compliance. The 2003 Housing Element and Fair Share Plan indicated that 33 townhouse units were completed including five affordable rental units. The zoning for this site (AH-6) provides for 30-year controls for rental units. Pursuant to N.J.A.C. 5:93-5.15(d), these units are eligible to receive two for one rental bonus credits. The Housing Affordability Service (HAS) administers the affordability controls on this development. However, Montvale is arranging to transfer this responsibility to the Bergen County Housing Authority. Montvale provided the following information regarding the bedroom mix for this development:

Bear Brook	**1 Bedroom**	**2 Bedrooms**	**3 Bedrooms**	**Total**		**Total Low Income**	**Total Moderate Income**
Rentals							
Low Income	1	1		2		2	
Moderate Income	1	1	1	3			3
Grand Total	**2**	**2**	**1**	**5**		**2**	**3**

The development does conform to the bedroom distribution requirements but does not conform to the required low- and moderate-income split as required by COAH's rules at N.J.A.C. 5:92-5.14 and N.J.A.C. 5:93-7.2. Montvale has requested a waiver for the low- and moderate-income split for this development since the low- and moderate income split required is met for the total units in the inclusionary developments in the Borough, as further discussed in Section K of this report. Montvale is eligible to receive credit for four affordable rental units and four rental bonuses. If the waiver is granted, Montvale is eligible to receive credit for five affordable rental units and five rental bonuses. **[5 credits + 5 rental bonuses subject to grant of a waiver]**

Greenway (Block 1002, lots 6 and 8)

This development was part of Montvale's 1994 judgment of compliance. The 2003 Housing Element and Fair Share Plan indicated that 59 units were completed including two affordable family rental units and 10 affordable family for-sale units. The zoning for this site (AH-7) provides for 30-year controls for rental units. Pursuant to N.J.A.C. 5:93-5.15(d), the rental units are eligible to receive two for one rental bonus credits. The Bergen County Housing Authority will administer affordability controls for this development. Montvale provided the following information regarding the bedroom mix for this development:

Greenway	1 Bedroom	2 Bedrooms	3 Bedrooms	Total		Total Low Income	Total Moderate Income
Owner Occupied							
Low Income	2	1	1	4		4	
Moderate Income	2	3	1	6			6
Sub-Total	**4**	**4**	**2**	**10**			
Rentals							
Low Income	1			1		1	
Moderate Income		1		1			1
Sub-Total	**1**	**1**		**2**			
Grand Total	**5**	**5**	**2**	**12**		**5**	**7**

The development does conform to the bedroom distribution requirements but does not conform to the required low- and moderate-income split as required by COAH's rules at N.J.A.C. 5:92-5.14 and N.J.A.C. 5:93-7.2. Montvale has requested a waiver for the low- and moderate-income split for this development since the low- and moderate income split required is met for the total units in the inclusionary developments in the Borough, as further discussed in Section K of this report. Montvale is eligible to receive credit for 10 affordable units, including eight for-sale units and two rental units, and is eligible for two rental bonuses. If the waiver is granted, Montvale is eligible to receive credit for 12 affordable units, including 10 for-sale units

and two rental units, and two rental bonuses. **[12 credits + 2 rental bonuses subject to grant of a waiver]**

National Institute for People with Disabilities of New Jersey (Block 1702, lot 1)

Located on Middletown Road and licensed by the New Jersey Department of Human Services in 2003, this community residence for developmentally disabled adults includes five bedrooms. New Jersey Division of Developmental Disabilities (DDD) staff confirmed that DDD provided this facility with capital funding which carries a 20-year renewable deed restriction. Pursuant to N.J.A.C. 5:93-5.15(d), these units are eligible to receive two for one rental bonus credits. **[5 credits + 5 rental bonuses]**

2. Reductions

Montvale's Housing Element and Fair Share Plan does not include any reductions.

3. Adjustments

a. Lack of Available Land

The December 16, 1994 judgment of compliance and order for repose that was granted by the court was predicated upon a Housing Element and Fair Share Plan that included a vacant land adjustment due to limitations on developable land and set a 146-unit RDP for Montvale.

During the second COAH round, the 1987-1999 cumulative obligation for Montvale was established at 255 units, all new construction. In most cases, COAH honors court settlements and COAH's rules at N.J.A.C. 5:93-4.2(f) establish a presumption that, provided Montvale

implemented the terms of its judgment of compliance, the RDP for Montvale would have remained at 146 units. However, Montvale did not acquire open space as required in its judgment of compliance and the Borough also included an additional vacant land analysis in its June 5, 2000 petition requesting a reduction in the RDP established by the court.

A COAH Report Establishing RDP was released on August 30, 2001 analyzing the Borough's vacant land inventory and establishing an RDP of 187 units. All objectors and the Borough were given an opportunity to comment on the August 30th COAH report and adjustments to the RDP were further refined based on comments received. A review of comments on the August 30th COAH report resulted in a one-unit decrease and established Montvale's RDP to be 186 units. During mediation, information was brought to COAH's attention that resulted in a two-unit increase in the Borough's RDP and established Montvale's RDP to be 188 units. The RDP analysis in the Montvale June 19, 2003 Amended Housing Element and Fair Share Plan acknowledges the RDP of 188 established by COAH.

C. Summary of Credits, Reductions and Adjustments

In summary, as shown in Table III under Eligible Without A Waiver, Montvale may receive credits for a total of 45 affordable units, including 19 affordable units built, 11 rental bonuses and the transfer of 15 affordable units through an RCA with the City of Garfield. Montvale's 2003 Housing Element and Fair Share Plan does not include any reductions. COAH established an RDP of 188 units, providing a vacant land adjustment of 67 units. Pursuant to N.J.A.C. 5:93-14, applying these credits and adjustments, totaling 112 credits, to Montvale's new construction obligation of 255 units, leaves a remaining obligation of 143 units.

However, Montvale has requested a waiver for the low- and moderate-income split for individual developments since the low- and moderate income split required is met for the total units in the inclusionary developments in the Borough, as further discussed in Section K of this report. If the waiver is granted, as shown in Table III under Plan, in addition to the vacant land adjustment of 67 units, Montvale may receive credits for a total of 49 affordable units, including 22 affordable units built, 12 rental bonuses and the transfer of 15 affordable units through an RCA with the City of Garfield. Pursuant to N.J.A.C. 5:93-14, applying these credits and adjustments, totaling 116 credits, to Montvale's new construction obligation of 255 units, leaves a remaining obligation of 139 units.

TABLE III – Summary of Credits and Adjustments

Owner/ Developer	Block/Lot	Plan				Eligible Without Waiver			
		On Site	Off Site	Rental Bonuses	Total With Waiver	On Site	Off Site	Rental Bonuses	Total
Obligation					255				255
Greenway (Treglia & Lovenich)	1002/6 & 8	12	0	2(a)	14	10	0	2(a)	12
USC Cable/Bear Brook	1102/5	5	0	5(b)	10	4	0	4(b)	8
Janovic	1401/12,13,14 1504/21 & 22	0	15 (RCA)	0	15 (RCA)	0	15 (RCA)	0	15 (RCA)
Alternative Living Arrangement	1702/1	5	0	5(b)	10	5	0	5(b)	10
	Sub-Total	22	15	12	49	19	15	11	45
Vacant Land Adjustment					67				67
	Total	**22**	**15**	**12**	**116**	**19**	**15**	**11**	**112**
Remaining Obligation					139				143

(a) Eligible for a two for one credit for two family rental units
(b) Eligible for two for one credit for family rental units

D. Remaining Fair Share Obligation

Montvale's 2003 Housing Element and Fair Share Plan proposes to meet its remaining obligation through inclusionary zoning that will create 79 affordable units on site[2], three of which will be rental units for which Montvale has requested three rental bonuses; 12 additional RCAs, and a municipally sponsored 36-unit age-restricted rental housing development, for which Montvale has requested 11 age-restricted rental bonuses, for a total of 141 units. To meet unmet need, Montvale's 2003 Housing Element and Fair Share Plan provides overlay inclusionary zoning that could authorize 40 affordable units for which eight rental bonuses were claimed and an additional 32 RCA units, for a total of up to 80 credits.[3]

1. Zoning for Inclusionary Development

Chamberlain (Block 102, lots 1, 2, 3 and 4)

Montvale reports that final approval for an 18-lot subdivision has been granted on this 20-acre parcel on November 1, 2004, subject to the developer providing a $250,000 payment in lieu of providing affordable housing units on site. The payment, agreed to in a 2002 Settlement Agreement, will be used to fund an RCA of 10 units, at $25,000 per unit, through an executed RCA with Cliffside Park in Bergen County. All required documentation and approvals must be submitted for COAH approval prior to substantive certification. The RCA will be reviewed in a separate report. The Municipal Engineer advised that this development, which is in the Saddle River watershed, is exempt from the new stormwater rules because preliminary subdivision

[2] Montvale's plan provides the alternative to build 39 affordable units on the Del Ben site or fund an RCA for the 39 affordable units. However, Montvale intends to modify this to eliminate the option.

[3] Shown in Table V

approval was granted November 7, 2002, and amended January 7, 2003 and the development received a wetland permit on April 21, 2003. **[10-unit RCA]**

Baldanza/Balder Construction (Block 2408, lots 24 and 25)

Montvale's 2003 Housing Element and Fair Share Plan indicates that the Borough has agreed to allow the owner to develop the property with a 12-unit multifamily development including three affordable rental units on site. Pursuant to N.J.A.C. 5:93-5.15(d), the rental units are eligible to receive two for one rental bonus credits. This development is in the Pascack watershed and the Municipal Engineer has advised that although the proposed development is subject to the new DEP stormwater rules, the proposed development is not subject to the 300 foot buffer regulations and should be able to be developed as proposed and meet the new DEP stormwater regulations. A copy of an executed agreement dated March 19, 2003 between the Borough and property owner was submitted which provides that the property will be rezoned and the developer will provide three affordable family rental units on site. The property has been rezoned to AH-9A which requires that the developer shall provide three affordable rental housing units with either two one-bedroom units for low-income household occupancy and one two-bedroom unit for moderate-income household occupancy, or one one-bedroom unit for moderate-income household occupancy and two two-bedroom units for low-income household occupancy. Montvale has requested a waiver from COAH's bedroom distribution requirements at N.J.A.C. 5:93-7.2 for this development since the bedroom distribution required is met for the total units in the inclusionary developments in the Borough, as further discussed in Section K of this report. **[3 units + 3 rental bonuses subject to grant of a waiver]**

Bonnabel[4] *(Block 301, lot 3)*

Montvale's 2003 Housing Element and Fair Share Plan indicated that a 9.45-acre parcel (Block 301, lots 2 and 3) would be rezoned AH-6A for a multi-family inclusionary development at six units per acre with a 20 percent set-aside for affordable housing units. The site was to generate a total of 56 for-sale units, of which 11 will be affordable.

As a result of mediation, Montvale and Bonnable reached a settlement agreement providing that the parcel, now Block 301, lot 3 and 8.65 acres, will be rezoned AH-8A for a multi-family inclusionary development at eight units per acre with a 20 percent set-aside for affordable housing units. The site will now generate a total of 70 units, comprised of 56 market-rate for-sale units and 14 affordable rental units. Pursuant to N.J.A.C. 5:93-5.15(d), the rental units are eligible to receive two for one rental bonus credits. This development is in the Pascack watershed and the Municipal Engineer has advised that although the proposed development is subject to the new DEP stormwater rules, the proposed development is not subject to the 300 foot buffer regulations and should be able to be developed as proposed and meet the new DEP stormwater regulations. Implementing zoning must be adopted within 45 days of COAH's grant of substantive certification. **[14 units plus 14 rental bonuses]**

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Del Ben (Block 302, lots 1 and 4 and Block 1002, lot 7)

This development was part of Montvale's 1994 judgment of compliance. Montvale's re-petition indicates that a 32.45-acre portion of this property was rezoned AH-6 at six units per acre with a 20 percent set-aside for affordable housing units, generating a total of 195 units, of

[4] Formerly Bonnabel/Gaess (Block 301, lots 2 and 3)

which 39 will be affordable. This development is in the Pascack Brook watershed and the Municipal Engineer has advised that this development is impacted by the 300 foot buffer regulations in the new DEP stormwater regulations, but has ascertained that there are enough upland areas available to design the development as proposed to meet the new DEP stormwater regulations. The zoning for this site allows the developer the option of building the units on site or providing a payment to fund an equivalent number of units via an RCA in lieu of building the units on the property. In the event the payment in lieu of providing the affordable units on site is selected, Montvale must amend its Housing Element and Fair Share Plan to include another RCA. The receiving municipality must prepare a project plan for approval by HMFA, and the county Planning Board in the county in which the receiving municipality is located must approve the RCA. Montvale should consider that under the Borough's 2003 Housing Element and Fair Share Plan, a maximum of 94 units may be transferred through RCAs and that additional RCA transfers will reduce the number of age-restricted units for which Montvale may claim credit pursuant to N.J.A.C. 5:93-6.1(b).

Montvale has subsequently advised that the zoning for the site will be amended to designate this parcel AH-6B and that the payment-in-lieu option will be deleted in light of no final settlement agreement being executed. Implementing zoning must be adopted within 45 days of COAH's grant of substantive certification. **[39 units]**

Janovic (Block 1405, lot 11.02)

Montvale's 2003 Housing Element and Fair Share Plan indicates that the Borough has agreed to allow four single-family homes to be developed on 10,000 square foot lots on this property, now zoned R1-10A, in exchange for which the owner will provide $50,000 to fund two RCA

units. The payment, agreed to in a 2003 Settlement Agreement, will be used to fund an RCA of two units, at $25,000 per unit, through an executed RCA with Cliffside Park in Bergen County. All required documentation and approvals must be submitted for COAH approval prior to substantive certification. The RCA will be reviewed in a separate report. This development is in the Pascack Brook watershed and the Municipal Engineer has advised that this development is impacted by the 300 foot buffer regulations in the new DEP stormwater regulations. However, the municipality has adopted a resolution to bond, if necessary, in the event there is any shortfall in funds for the RCAs and has advised that the Borough will assume responsibility for these two RCAs. On that basis, COAH staff has determined that Montvale is eligible for credit in the Montvale plan for this two-unit RCA. **[2-unit RCA]**

Axinn/Hovnanian (Block 2001, lots 1 and 3)

This development was part of Montvale's 1994 judgment of compliance as a site that would provide 13 affordable units. Montvale's 2003 Housing Element and Fair Share Plan indicates that the Borough has rezoned this parcel AH-10A at 10 units per acre to yield a total of 128 multifamily units, of which 26 affordable units will be provided on site. The property lies in the Pascack Brook watershed. Site plan approval was granted on February 1, 2004, prior to the effective date of the new stormwater rules. The Municipal Engineer advises that no DEP land use approvals are required. If no DEP land use approvals are required, the development is exempt from the new DEP stormwater rules. The provisions of the executed Settlement Agreement and the zoning ordinance for the AH-10A zone provides that 50 percent of the affordable housing units shall be two-bedroom units and 50 percent three-bedroom units. Montvale has requested a waiver from COAH's bedroom distribution requirements at N.J.A.C.

5:93-7.2 for this development since the bedroom distribution required is met for the total units in the inclusionary developments in the Borough, as further discussed in Section K of this report. **[26 units subject to grant of a waiver]**

The Rink/Hovnanian (Block 3301, lots 3 and 4)

Montvale's 2003 Housing Element and Fair Share Plan indicates that the Borough will provide overlay zoning on this parcel to address unmet need. The 2003 Housing Element and Fair Share Plan indicates that the zoning on this site, 7.3 acres of which are within Montvale (the remainder is in Woodcliff Lake), will be revised to allow development of an adult community of 108 units, of which 72 will be located in Montvale. This development is in the Pascack watershed and the Municipal Engineer has advised that although the proposed development is subject to the new DEP stormwater rules, the proposed development is not subject to the 300 foot buffer regulations and should be able to be developed as proposed and meet the new DEP stormwater regulations. The 2003 Housing Element and Fair Share Plan includes an executed Developer's Agreement dated June 30, 2003 between the owner/developer and Montvale providing that the owner/developer has agreed to provide an $800,000 payment in lieu of providing affordable housing units on site. Since the 2000 Housing Element and Fair Share Plan, zoning (RCO zone) for this development has been adopted. These funds will be used to finance an additional 32 affordable units through an RCA with the City of Garfield in Bergen County. All required documentation and approvals must be submitted for COAH approval prior to substantive certification. The RCA will be reviewed in a separate report. Since the Developer's Agreement has been executed, the zoning adopted and the RCA contract entered into with the

City of Garfield, COAH considers these affordable units as addressing Montvale's 188-unit RDP, rather than as addressing any unmet need. **[32-unit RCA]**

Nottingham (Block 1601, lot 2)

Montvale's 2003 Housing Element and Fair Share Plan indicates that the Borough will provide overlay zoning on this parcel to meet unmet need and to permit the owner/developer to build an additional apartment building on a vacant portion of this garden apartment complex with 36 total units, of which eight units will be unrestricted affordable rental units. Pursuant to N.J.A.C. 5:93-5.15(d), the rental units are eligible to receive two for one rental bonus credits. The property lies in the Pascack Brook watershed. The zoning (AHO16) has been adopted and site plan approval was granted on April 20, 2004. The Municipal Engineer advises that no DEP land use approvals are required. If no DEP land use approvals are required, the development is exempt from the new DEP stormwater rules. Since the zoning has been adopted and final site plan approval granted, COAH considers these affordable units as addressing Montvale's 188-unit RDP, rather than as addressing any unmet need.

This development will not provide any three-bedroom units and Montvale has requested a waiver from COAH's bedroom distribution requirements at N.J.A.C. 5:93-7.2 for this development since the bedroom distribution required is met for the total units in the inclusionary developments in the Borough, as further discussed in Section K of this report. **[8 units plus 8 rental bonuses subject to receipt of a waiver]**

2. Municipally Sponsored Construction

Montvale Senior Housing (Block 1601, lots 21, 23 and 24)

Montvale's 2003 Housing Element and Fair Share Plan indicates that conceptual approval for the development of a municipally sponsored 36-unit affordable age-restricted rental development was granted by the Planning Board in 2002 and that the municipality is purchasing a 0.6 acre vacant portion of an adjacent property to expand the site to provide additional parking and setbacks. However, since adoption of the 2003 Housing Element and Fair Share Plan, the Borough purchased the additional land and documentation has been submitted indicating that site plan and subdivision approvals were granted by the Planning Board on July 1, 2003 to the Borough of Montvale and Rockland Built Homes, Inc. to construct 36 affordable one-bedroom rental age-restricted units the site. The property lies in the Pascack Brook watershed. Site plan approval was granted on July 1, 2003, prior to the effective date of the new stormwater rules. The Municipal Engineer advises that no DEP land use approvals are required. If no DEP land use approvals are required, the development is exempt from the new stormwater rules that became effective February 2, 2004.

Also included in the documentation submitted is a copy of a 20-year ground lease executed on February 4, 1997 by the Borough of Montvale and Rockland Built Homes, Inc. providing that "not less than thirty-two (32) nor more than forty-four (44) rental apartments of multi-family housing (or such lesser number of units as may be finally approved by the governmental agencies having jurisdiction)" shall be constructed which meet "all applicable COAH regulations

"to qualify as Senior Citizen Affordable Housing" and that after 20 years Rockland Built Homes, Inc. may purchase the Borough's fee interest in the premises for $10.00 subject to prior approval of the Bergen County Division of Community Development until such time that the Division is fully reimbursed for any and all capital expenses contributed by it towards the cost of land acquisition, development or otherwise.

On October 26, 2004, Montvale and Rockland Built Homes, Inc. executed an agreement providing that the project will be amended to consist of 36 affordable rental units, of which 20 units are to be available to low-income persons, 16 units are to be available to moderate-income persons, and 12 market-rate rental units, for a total of 48 units. Montvale will amend the zoning by November 30, 2004 and the Planning Board agreed to hear an amended application on December 7, 2004. Pursuant to N.J.A.C. 5:93-5.5, the agreement outlines each step of the development process and provides that construction shall begin by March 1, 2005. Funding for the development is being made available partially from the transfer of funds from the Metropolitan Homes development that is now fully developed. A project pro forma has been submitted in the amount of $5,885,699 and the Montvale Council adopted a resolution dated November 1, 2004 committing to either fund or construct the units if for any reason the developer fails to do so. The ground lease must be amended to be consistent with this new agreement. Montvale is arranging for the Bergen County Housing Authority (BCHA) to administer affordability controls for this development. An agreement with the BCHA must be submitted to COAH within 45 days of the grant of substantive certification.

Montvale's 2003 Housing Element and Fair Share Plan claimed 11 age-restricted rental bonuses for 32 of the 36 total units for a total of 47 credits. Pursuant to N.J.A.C. 5:93-6.1(b)(2)

no more than 32 units may be age-restricted [.25 (188-59)]. Therefore, Montvale is eligible for credit for 32 age-restricted units in this project of 36 age-restricted units.

Pursuant to N.J.A.C. 5:93-5.15(d)(3) no more than 50 percent of the rental obligation of 47 units shall receive a bonus for age-restricted units. Pursuant to N.J.A.C. 5:93-5.15(d), these units are eligible to receive one and one-third rental bonus credits. Therefore, Montvale may claim rental bonuses on a maximum of 24 of the 32 eligible age-restricted rental units (47 x .5 = 24 x .33 = 8) or 8 age-restricted rental bonuses.

However, since Montvale has requested rental bonuses on 37 other rental units, which may receive two for one credits, and Montvale may receive rental bonuses on a maximum of 47 rental units, Montvale may receive rental bonuses on only 10 of the eligible 32 age-restricted rental units (47 – 37 = 10 x .33 = 3), or 3 age-restricted rental bonuses. Therefore, the 36-unit Montvale Senior Housing development is eligible for a total of 35 credits consisting of 32 age-restricted units and three age-restricted rental bonuses.

The ground lease must be amended to be consistent with the new agreement and the zoning map for the LMSCH zone must be amended to include the additional 0.6 acres deeded to the Borough within 45 days of substantive certification. **[32 age-restricted units + 3 age-restricted rental bonuses]**

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If Montvale is not granted the waivers requested, then Montvale will be eligible for rental bonuses on 25 rental units, which receive two for one rental bonuses, and Montvale may receive rental bonuses on a maximum of 47 rental unit. Montvale may receive rental bonuses on 22 of the eligible 32 age-restricted rental units (47 – 25 = 22 x .33 = 7), or seven age-restricted rental

bonuses. Therefore, without the waivers, the 36-unit Montvale Senior Housing development is eligible for a total of 39 credits, consisting of 32 age-restricted rental units and seven age-restricted rental bonuses.

3. Regional Contribution Agreement (RCA) (5:93-5.7)

Pursuant to N.J.A.C. 5:93-6.1(a)2, Montvale may transfer up to one-half of its affordable housing obligation via an RCA based on the following formula:

RCA Maximum = *.5 (RDP + rehabilitation component - rehabilitation credits) - any units transferred as a result of a previously approved RCA.*

RCA Maximum = *.5 (188 + 0 - 0) - 0 = 94 units*

To meet the 188-unit RDP, a total of 59 units will be transferred through RCAs: Janovic, (Round 1) 15 units to Garfield; Chamberlain, 10 units to Cliffside Park; Janovic (Round 2), another two units to Cliffside Park; and Hovnanian, another 32 units to Garfield. Montvale's zoning ordinance also provides that the Del Ben site may optionally provide 39 units for an RCA, which would exceed the number of units that may be transferred through RCAs (59 + 39 = 98). However, Montvale intends to amend the zoning to eliminate this option.

A spending plan prepared by Montvale indicates that Montvale received $300,000 to transfer 15 units from the first Janovic development to the City of Garfield and that the Borough will receive $250,000 from Chamberlain Developers to transfer 10 units to Cliffside Park, $50,000 from the second Janovic development to transfer an additional two units to Cliffside Park and $800,000 from K. Hovnanian to transfer another 32 units to the City of Garfield.

In the event that funding is not forthcoming from the Janovic development to fund the two-unit RCA as a result of the new DEP stormwater regulations, Montvale has committed to fund these two RCA units.

E. Rental Component

Pursuant N.J.A.C. 5:93-5.15(a), Montvale must provide a realistic opportunity for the creation of rental units. Pursuant to N.J.A.C. 5:93-5.15(d) COAH grants bonus credits for rental units that conform to COAH standards. Units that are available to the general public are eligible to receive two units of credit and units that are age-restricted are eligible for one and one-third units of credit. The minimum number of rental units to be provided by Montvale pursuant to N.J.A.C. 5:93-5.15(a) is determined by the following formula:

Rental obligation = .25 (precredited need – prior cycle credits – rehabilitation component)

Rental obligation = .25 (188 - 0 - 0) = 47 units

Based on this calculation, the minimum number of rental units to be provided by Montvale and the maximum number of rental units for which rental bonuses may be granted pursuant to N.J.A.C. 5:93(d)3 is 47 units.

If the waivers requested by Montvale are granted, Montvale's plan, as modified as a result of mediation, provides a total of 69 rental units, meeting the rental obligation as follows: two from Greenway, five from Bear Brook if the waiver is granted, five from alternative living arrangements, 14 from Bonnabel, three from Baldanza, eight from Nottingham if the waiver is granted, and 32 from the Montvale Senior Housing development. If the waivers are not granted, Montvale's plan will provide 57 rental units, still satisfying Montvale's rental obligation, as

follows: two from Greenway, four from Bear Brook, five from alternative living arrangements, 14 from Bonnabel and 32 from the Montvale Senior Housing development.

Montvale's 2003 Housing Element and Fair Share Plan requested 26 rental bonuses consisting of 15 rental bonuses on 15 family rental units and 11 rental bonuses on 32 age-restricted units. Subsequent to the 2003 Housing Element and Fair Share Plan, Montvale modified the Bonnabel development to include 14 rental units and approved the Nottingham development of eight rental units.

Pursuant to N.J.A.C. 5:93-5.15(d)(3) no more than 50 percent of the rental obligation shall receive a bonus for age-restricted units. Therefore Montvale may only claim eight rental bonuses on a maximum of 24 age-restricted units (47 x .5 = 24 x .33 = 8). However, since Montvale has requested rental bonuses on 37 other rental units, which may receive two for one credits, and Montvale may receive rental bonuses on a maximum of 47 rental units, Montvale may receive rental bonuses on only 10 of the eligible 32 age-restricted rental units (47 – 37 = 10). Pursuant to N.J.A.C. 5:93-5.15(d), these units are eligible to receive one and one-third rental bonus credits. Montvale may receive three age-restricted rental bonuses (10 x .33 = 3).

If the waivers sought by Montvale are granted, the total number of rental bonuses for which Montvale's plan may be eligible is 40 rental bonuses as follows: two from Greenway, five from Bear Brook if the waiver is granted, five from alternative living arrangements, three from Baldanza, 14 from Bonnabel, eight from Nottingham if the waiver is granted and three age-restricted rental bonuses from the Montvale Senior Housing development.

However, if the waivers are not granted, the total number of rental bonuses for which Montvale's plan may be eligible is 32 rental bonuses as follows: two from Greenway, four from Bear Brook, five from alternative living arrangements, 14 from Bonnabel and eight age-restricted rental bonuses from the Montvale Senior Housing development (47 – 25 = 22 x .33 = 7).

F. Age-Restricted Units

Pursuant to N.J.A.C. 5:93-5.14(a)3, Montvale is limited in the age-restricted units it may use in addressing an affordable housing obligation. Since Montvale's plan includes pursuing RCAs and a vacant land adjustment, the maximum age-restricted units is calculated in accordance with the following formula pursuant to N.J.A.C. 5:93-6.1(b)(2):

Age-Restricted Maximum = *.25 (RD P - transferred or proposed RCA units) – first round age-restricted units*

Age-Restricted Maximum = *.25 (188-59) - 0 = 32 units*

The maximum number of age-restricted units Montvale may use to address its affordable housing obligation is 32 units. Montvale's 2003 Housing Element and Fair Share Plan creates 36 affordable age-restricted units, which exceeds the maximum number permitted by four units. These four units may be carried forward as surplus units to address any future affordable housing obligation.

Pursuant to N.J.A.C. 5:93-6.1(b)2, the maximum number of units that may be transferred is inter-related to the maximum number of age-restricted units that may be age-restricted in the sending municipality. Therefore, if Montvale allows an additional RCA from the Del Ben site, credit for some age-restricted rental units and any corresponding rental bonus credits may be

lost. However, Montvale intends to modify the zoning for the Del Ben site to eliminate the option to provide payment in lieu of providing affordable units on site to fund a RCA.

G. Regional Contribution Agreement (RCA)

Pursuant to N.J.A.C. 5:93-6.1(a)3, Montvale may transfer up to one-half of its affordable housing obligation via an RCA in accordance with the following formula:

RCA Maximum = .5 (pre-credited need – prior cycle credits – rehabilitation credits)

RCA Maximum = .5 (188 - 0 - 0) = 94 units

Based on this calculation, the maximum number of units Montvale may transfer is 94. Montvale is transferring a total of 59 units from inclusionary zoning developments through RCAs: Janovic (Round 1) 15 units to Garfield, Chamberlain 10 units to Cliffside Park, Janovic (Round 2) two additional units to Cliffside Park, and Hovnanian 32 units to Garfield.

H. Development Fee Ordinance

COAH approved Montvale's Development Fee Ordinance on August 9, 1994. Montvale has submitted the most recently required Development Fee Monitoring Forms and executed Escrow Agreement for the two accounts established for the collection of funds for RCAs and development fees. Development fees may be used as a mechanism to address any unmet need.

I. Spending Plan

Montvale submitted a spending plan for COAH to review and approve with the 2003 Housing Element and Fair Share Plan. However, the spending plan requires revisions. Montvale must revise the spending plan and submit the revised spending plan for review and approval, as

well as a resolution from the Montvale Council approving the revised spending plan and requesting COAH to review and approve the revised spending plan, within 45 days of substantive certification.

J. Affordable Housing Ordinance

Montvale adopted an affordable housing ordinance as part of its first round compliance plan comporting to N.J.A.C. 5:92 et. seq. Montvale has submitted draft revisions to the Borough's affordable housing ordinance consistent with Montvale's modified 2003 Housing Element and Fair Share Plan and comporting to N.J.A.C. 5:93 et. seq. The revisions to the Borough's affordable housing ordinance must be adopted within 45 days of substantive certification.

K. Affirmative Marketing Ordinance

Montvale adopted an affirmative marketing ordinance, incorporated in its affordable housing ordinance, as part of its first round compliance plan comporting to N.J.A.C. 5:92 et. seq. Montvale has submitted draft revisions to the Borough's affirmative marketing ordinance consistent with Montvale's modified 2003 Housing Element and Fair Share Plan and comporting to N.J.A.C. 5:93 et. seq. The revisions to the Borough's affirmative marketing ordinance must be adopted within 45 days of substantive certification.

L. Unmet Need

De Piero (Block 2802, lots 2 and 3)

This development, as part of Montvale's 1994 judgment of compliance, was proposed to provide 34 affordable units. Montvale's 2003 Housing Element and Fair Share Plan indicates

that the Borough will provide overlay zoning on this parcel to meet unmet need providing a density of eight units per acre for a total of 160 units with a 20 percent set-aside of 32 affordable units. This development is in the Pascack watershed and the Municipal Engineer has advised that although the proposed development is subject to the new DEP stormwater rules, the proposed development is not subject to the 300 foot buffer regulations and should be able to be developed as proposed and meet the new DEP stormwater regulations. The 2003 Housing Element and Fair Share Plan includes a letter from the property owners advising that they have no objection to the overlay zoning. The zoning ordinance indicates that this property is zoned AH-8, which permits a density of eight units per acre with a 10 percent set-aside. Montvale intends to modify the zoning and zoning map for this overlay zone to AHO-8A, to be to be consistent with COAH's current regulations, including 30-year affordability controls for all affordable units. Implementing zoning must be adopted within 45 days of COAH's grant of substantive certification. **[32 units towards unmet need]**

M. Waiver

In response to the July 21, 2004 Pre-mediation Report, Montvale, by resolution dated November 1, 2004, has requested a waiver from COAH's bedroom distribution requirements at N.J.A.C. 5:93-7.2 and the low- and moderate-income distribution requirements at N.J.A.C. 5:92-5.14 and N.J.A.C. 5:93-7.2, on a project-by-project basis. As shown in Table IV-A and Table IV-B[5], the total bedroom distribution and low- and moderate-income distribution under the plan would comply with COAH's requirements. Table IV-C shows the results if the alternative bedroom distribution option is exercised by Baldanza.

[5] Tables IVA and IVB were modified by COAH staff to show the bedroom distribution alone and Table IVC was created by COAH staff.

Montvale stated that the reason for the project-by-project waiver request is that the inclusionary units provided in the Axxin/Hovnanian project, which has already received site plan approval, are so large that it made no sense to utilize these units as one-bedroom units. In other projects, Nottingham and Baldanza, the production of three-bedroom units was more difficult because of the small size of the market-rate apartments proposed. The market-rate units in the projects are only one- and two-bedroom units. However, in the aggregate, the proposed bedroom distributions and low- and moderate-income split in these developments balance out to provide municipal wide compliance with COAH's regulation on bedroom distribution and the low- and moderate-income split. Therefore, COAH staff recommends granting these waivers.

N. Summary

As shown in Table V, the COAH staff review of Montvale's 2003 Housing Element and Fair Share Plan, as modified, concludes that, with the granting of the waivers requested, Montvale's plan will meet Montvale's 12-year 1987-1999 fair share affordable housing obligation of 255 units of new construction through 243 units towards its 188-unit RDP. The plan also includes 32 units towards the Borough's unmet need, of which 20 and four excess age-restricted units may be carried to satisfy any future affordable housing obligation. Montvale's rental obligation is also satisfied. Without the waivers, Montvale will have a deficit of 27 units.

Waiver Request
Table IV-A
Montvale's Inclusionary Obligation via RDP
Distribution by Bedroom and Income

	Low-Income				Moderate-Income							
Project Name	1-Bedroom	2-Bedroom	3-Bedroom	Subtotal	1-Bedroom	2-Bedroom	3-Bedroom	Subtotal	10-20% 1-Bedroom	30% 2-Bedroom	20% 3-Bedroom	TOTAL
Bear Brook- - rentals - completed	1	1	0	2*	1	1	1	3*	2	2	1	5
Greenway – for sale - completed	2	1	1	4*	2	3	1	6*	4	4	2	10
Greenway – rentals - completed	1	0	0	1	0	1	0	1	1	1	0	2
Greenway Sub-Total	3	1	1	5*	2	4	1	7*	5	5	2	12
Axxin/Hovnanian for-sale	0	7	7	14	0	6	6	12	0#	13	13	26
Del Ben – for-sale	4	11	5	20	3	12	4	19	7	23	9	39
Baldanza –@ for sale	0	2	0	2	1	0	0	1	1	2	0#	3
Bonnabel – rentals	1	5	1	7	1	4	2	7	2	9	3	14
TOTALS	9	27	14	50	8	27	14	49	17	54	28	99

*Does not meet low- and moderate-income split

#Does not meet bedroom distribution

@Property rezoned so that owner may alternatively provide 2 one-bedroom low-income units and 1 two-bedroom moderate-income unit – See Table IVC

Income Distribution:
- Low = 50 units (50%)
- Mod = 49 units (50%)

Bedroom Distribution:
- 1-Bedroom = 17 (17%)
- 2-Bedroom = 54 (55%)
- 3-Bedroom = 28 (28%)

Waiver Request
Table IV-B
Montvale's Inclusionary Obligation (All projects)
Distribution by Bedroom and Income

	Low-Income				Moderate-Income							
Project Name	1-Bedroom	2-Bedroom	3-Bedroom	Subtotal	1-Bedroom	2-Bedroom	3-Bedroom	Subtotal	10-20% 1-Bedroom	30% 2-Bedroom	20% 3-Bedroom	TOTAL
Subtotal: RDP Sites	9	27	14	50	8	27	14	49	17	54	28	99
Unmet Need Sites:												
A. Nottingham - rentals	2	2	0	4	2	2	0	4	4	4	0#	8
De Piero – for-sale	3	10	3	16	3	10	3	16	6	20	6	32
TOTAL	14	39	17	70	13	39	17	69	27	78	34	139

#Does not meet bedroom distribution

Income Distribution:
- Low = 70 units (50%)
- Mod = 69 units (50%)

Bedroom Distribution:
- 1-Bedroom = 27 (19%)
- 2-Bedroom = 78 (56%)
- 3-Bedroom = 34 (25%)

Waiver Request
TableIV-C
Montvale's Inclusionary Obligation via RDP
Distribution by Bedroom and Income
Baldanza Alternative Bedroom Distribution

	Low-Income				Moderate-Income							
Project Name	1-Bedroom	2-Bedroom	3-Bedroom	Subtotal	1-Bedroom	2-Bedroom	3-Bedroom	Subtotal	10-20% 1-Bedroom	30% 2-Bedroom	20% 3-Bedroom	TOTAL
Bear Brook- - rentals - completed	1	1	0	2*	1	1	1	3*	2	2	1	5
Greenway – for sale - completed	2	1	1	4*	2	3	1	6*	4	4	2	10
Greenway – rentals - completed	1	0	0	1	0	1	0	1	1	1	0	2
Greenway Sub-Total	3	1	1	5*	2	4	1	7*	5	5	2	12
Axxin/Hovnanian for-sale	0	7	7	14	0	6	6	12	0#	13	13	26
Del Ben – for-sale	4	11	5	20	3	12	4	19	7	23	9	39
Baldanza - @ for sale	2	0	0	2	0	1	0	1	2	1	0#	3
Bonnabel – for sale	1	5	1	7	1	4	2	7	2	9	3	14
TOTALS	11	25	14	50	7	28	14	49	18	53	28	99

*Does not meet low- and moderate-income split

#Does not meet bedroom distribution

@Property rezoned so that owner may alternatively provide 2 one-bedroom low-income units and 1 two-bedroom moderate-income unit

Income Distribution:
- Low = 50 units (50%)
- Mod = 49 units (50%)

Bedroom Distribution:
- 1-Bedroom = 18 (18%)
- 2-Bedroom = 53 (54%)
- 3-Bedroom = 28 (28%)

TABLE V – Summary of Plans						
Owner/Developer	**Block/Lot**	1994 Plan	2000 Plan	**2003 Plan**	**Eligible with Waivers**	**Eligible without Waivers**
Obligation				**255**	**255**	**255**
Vacant Land Adjustment				67	67	67
RDP		**146**		**188**	**188**	**188**
Greenway/(Treglia & Lovenich) (completed)	1002/6 & 8	17	17	14	14 (a)(w)	10 (a)
USCCable/BearBrook (completed)	1102/5	8	10	10	10 (b)(w)	8 (b)
Janovic (1) (completed)	1401/12,13,14 1504/21 & 22	15 (RCA)	15 (RCA)	15 (RCA)	15 (RCA)	15 (RCA)
Alternative Living Arrangement	1702/1			10	10	10
Total Credits				49	49	45
Remaining Obligation				**139**	**139**	**143**
Metropolitan Homes/(Nowack) (completed)	302/16	7				
Rockland Built Homes/Kaczala)(completed)	302/5	13				
Montvale (age restricted)	1601/21 & 23		7	47	35 (c)	39(f)
Chamberlain	102/1,2,3 & 4			10 (RCA)	10 (RCA)	10 (RCA)
Baldanza/Balder Construction	2408/24 & 25			6	6(b)(w)	0
Bonnabel	301/3[6]			11	28(b)(d)	28(b)(d)
Del Ben	302/1 & 4 1002/7	39	39	39(a)	39(e)	39(e)
Janovic (2)	1405/11.02			2 (RCA)	2 (RCA)	2 (RCA)
Axinn/Hovnanian	2001/1 & 3	13	13	26	26(w)	0
The Rink/ Hovnanian (age restricted)	3301/3 & 4			0	32 (RCA)	32 (RCA)
Nottingham	1601/2			16	16(b)(w)	0
	Sub-Total			141	194	150
	Total			**190**	**243**	**196**
Obligation				**255**	**255**	**255**
Total Credits and New Construction				190	243	196
Unmet Need				**65**	**12**	**59**
The Rink/ Hovnanian (age restricted)	3301/3 & 4			32 (RCA)	0	0
Nottingham	1601/2			16	0	0
DePiero	2802/2 & 3	34	34	32	32	32
	Sub-Total			80	32	32
	Total	**146**	**152**	**270**	**275(g)**	**228(h)**

(a) Includes two for one credit for two family rental units
(b) Includes two for one credit for family rental units
(c) Includes 1.33 credits for 10 of the 32 eligible units.
(d) Modified through mediation from 11 for-sale affordable units to 14 affordable rental units.
(e) There is an option for payment in lieu of building to transfer obligation through RCA. However, Montvale amending zoning to remove this option.
(f) Includes 1.33 credits for 22 of the 32 eligible units
(g) Surplus of 20 units plus 4 age-restricted units.
(h) Deficit of 27 units
(w) Waiver required.

[6] Previous reports list this as Block 104 Lot 14 and Bonnabel/Gaess Block 301, Lots 2 & 3

III. RECOMMENDATION

Subject to COAH's acceptance of the staff's recommendation to grant waivers for the low- and moderate-income split and the bedroom distribution and subject to the receipt of all required documentation and approvals for the RCAs that are a part of Montvale's plan, Montvale has submitted a compliant Housing Element and Fair Share Plan that addresses the Borough's cumulative obligation of 255 units. After credits, rental bonuses and a vacant land adjustment of 67 units, the plan results in 122 units to be constructed and 59 units to be funded through RCAs. Montvale's plan also proposes to meet its remaining 12 units of unmet need through new construction of 32 units and will result in 20 surplus units and four excess age-restricted units that may be carried to meet any future affordable housing obligation. COAH staff recommends that the Borough of Montvale be granted second round substantive certification.

The Borough's affordable housing ordinance must be adopted within 45 days of COAH's grant of substantive certification. A revised spending plan consistent with the modified 2003 Housing Element and Fair Share Plan must also be submitted for review and approval by COAH within 45 days of COAH's grant of substantive certification.

EXHIBIT C

TELEPHONE (201) 567-9400

RENO A. DEL BEN

Post Office Box 861
Tenafly, New Jersey 07670

December 8, 2004

REVISED
BY TELECOPY (609-633-6056) AND REGULAR MAIL
Lucy Voorhoeve, Executive Director
New Jersey Council on Affordable Housing
101 South Broad Street
P.O. Box 813
Trenton, New Jersey 08625-0813

RECEIVED
DEC - 8

RE: Comment to COAH Compliance Report, Montvale Borough/Bergen County Region #1, Prepared by Barbara Walsh, PP/AICP, November 24, 2004

Dear Director Voorhoeve:

This is a comment to the COAH Compliance Report referred to in the caption of this letter. I rely on and incorporate by reference herein my letter of December 8, 2004 commenting on COAH's Mediation Report of November 24, 2004 in this matter.

I understand that certain general principles guide COAH's review of Montvale's proposed housing element and fair share plan and COAH's ultimate determination as to whether that plan provides a realistic opportunity for the production of Montvale's fair share of affordable housing. These include the principle that COAH must conduct a thorough and searching examination of each aspect of Montvale's fair share plan and determine that it presents a realistic opportunity for the production of Montvale's entire affordable housing obligation. Another principle is that if, during the course of COAH's review, a dispute arises over a material fact that is part of Montvale's plan, COAH must conduct a hearing, and allow for the receipt of competent evidence and sworn testimony, in order to make a finding on each material fact in dispute. (My understanding is that these hearings are conducted by the Office of Administrative Law, the fact-finding arm of COAH, and that recommendations from the hearing officer are sent to COAH for its final determination.)

I am the owner of property in Montvale identified as Block 302, Lots 1 and 4 and Block 1002, Lot 7 on the Borough's tax maps. As comments to the COAH Compliance Report, I reiterate and incorporate by reference the objections that I have previously filed in this matter and that are on file with COAH. These objections include: my July 10, 2000 letter with accompanying "Housing, Planning and Zoning Report" of P. David Zimmerman, PP/AICP, dated July 6, 2000 (incorporating by further reference Mr. Zimmerman's 1993 Report); my September 13, 2001 letter to Shirley Bishop, formerly COAH's Executive Director; my August 4, 2003 letter Objection to Montvale's Petition for Substantive Certification; and my September 3, 2003

letter Objection to Montvale's Re-Petition for Substantive Certification.

In addition, I have the following comments to the COAH Compliance Report.

I object to and find lacking the Janovic funding of a new RCA with the City of Garfield, which apparently has not yet been approved. The $300,000.00 provided to fund 15 units averages $20,000.00 per unit. This is insufficient under COAH's rules, which call for a $25,000.00 payment per unit under Montvale's re-petition, or a total of $375,000.00.

I object to Montvale's requested waiver of COAH's rules for the split between low income and moderate income units for the US Cable/Bear Brook and Greenway properties. Where Montvale has requested a vacant land adjustment, and has proposed inadequate mechanisms to meet its unmet need, Montvale has failed to demonstrate its entitlement to these waivers, especially where the need to provide units for low income households in Montvale is great and undisputed.

I object on several grounds to Montvale's treatment of my property. First, as my earlier correspondence and Planner's Report indicate, as a matter of fact, my property is suitable for development of market and affordable housing units (a mix that COAH describes as an "inclusionary development") at a much greater density than the six units per acre called for by Montvale's plan and its current zoning. Mr. Zimmerman's Reports support a development density of 14 units per gross acre. In addition, my property, as compared to the properties of others, should not be singled out for different treatment and an unrealistic and economically disadvantageous and discriminatory density of development. In a similar competitive market, there is no justification to afford other developments with market and affordable units (set aside) a higher density of development, while restricting my density to six units per acre. Such treatment plainly places me and my property in a distinct competitive disadvantage. Axiomatically, then, the restrictive density is both economically discriminatory and cost-generating. Without a fact-finding hearing, COAH cannot conclude on the basis of the statements of the consultants of Montvale, alone, that the development density for my property should be six units per acre.

Second, the remaining 13.19 acres of my property (outside of the acreage to remained zoned at six units per acre), which are zoned for one unit per acre, should be available to meet Montvale's unmet need and should be re-zoned for market and affordable housing development at a much higher density. If development of such acreage is not adversely affected by the DEP stormwater regulations, surely, under COAH's rules, and where the Montvale has sought a vacant land adjustment, Montvale must and should consider the properties of landowners who have expressed an interest in having their property developed for affordable housing. Instead, Montvale has declined to re-zone the remainder of my property, declined to re-zone the included property at a higher, realistic density, and has chosen to re-zone other property where the owner has expressed the view that its land is and will not be available for the development of affordable housing.

Third, there remains a factual dispute over whether Montvale's zoning ordinance is cost-generating with respect to my property as a result of several onerous provisions. My September 3, 2003 letter sets out those cost generating features of Montvale's ordinance. Its substance and content are reiterated and incorporated herein by reference. (The most evident and offensive

provisions pertain to tree specification and excessive set back, yard, and bulk requirements.)

The onerous and cost-generating nature of these provisions, which causes the zoning to be unrealistic and infeasible to produce the affordable housing called for, based on a density of six units per acre, is highlighted by the COAH Compliance Report's statement about the impact of new DEP stormwater regulations. The COAH Compliance Report states at pages 19-20 that the Municipal Engineer has determined that the new DEP regulations, which impose a 300 foot buffer on a significant portion of my property, impact my property, but the engineer "has ascertained that there are enough upland areas available to design the development as proposed to meet the new DEP stormwater regulations." Again, as noted above, COAH must be circumspect in its easy, unchallenged acceptance of these conclusions of the Municipal Engineer.

There is no factual justification or support for the Municipal Engineer's bald conclusion. To the contrary, as a matter of fact, the zoning ordinances' various limitations, including, for example, limited six units per acre density, maximum height, required distance between buildings, and minimum set back standards, operate to preclude an inclusionary development that will produce 195 units, including 39 affordable units. In fact, my own review of the impact of the 300 foot buffer called for by the DEP stormwater regulations indicates that a significantly fewer number of units can be built on my property as a result of the adverse impact of these regulations, based on Montvale's current zoning for this property.

These disputed issues of fact, namely, whether Montvale's (renamed) AH-6A zoning of my property can support, as a matter of sheer planning and engineering feasibility, and as a matter economic feasibility, the proposed inclusionary development and its affordable housing yield, require a fact-finding hearing.

Fourth, I object to, and consider utterly unfair and improper, Montvale's last minute, unilateral, and substantial change in its proposed zoning for my property. In its June 2003 Housing Element and Fair Share Plan, which was the subject of a couple of rounds of mediation, the second of which took place in the late summer and early fall of 2004, Montvale's zoning for my property called for the option of having the affordable units built on site, or having a payment in lieu of construction paid. In fact, the COAH Compliance Report, at page 20, reads: "The zoning for this site allows the developer the option of building the units on site or providing a payment to fund an equivalent number of units via an RCA in lieu of building the units on the property."

After the mediation concluded, by memo dated November 4, 2004 (along with accompanying attachments), Montvale advised Barbara Walsh of COAH that with respect to the status of the Del Ben Property, "On advice of COAH, in light of no final settlement agreement with Del Ben, the payment-in-lieu option will not be adopted at this time." Page 1 of November 4, 2004 Memo. That memo was only mailed to me under a cover letter of November 15, 2004.

Indeed, it appears that the COAH Compliance Report added this unilateral, substantial change practically as an afterthought. See page 20 of COAH Compliance Report, middle of page ("Montvale has subsequently advised...that the payment-in-lieu option will be deleted...").

This is a substantial change from Montvale's fair share plan that was on the table since the summer of 2003. It is improper, punitive, runs contrary to COAH's rules, and should be

disallowed. This last minute, post-mediation change in Montvale's fair share plan sabotages the entire mediation process. If, without having to re-petition and re-notice, a town can unilaterally change the implementing ordinances that are designed to be known during the mediation and that are required to implement the proposed housing element and fair share plan, then what purpose is served by mediation? Why would I as an objector have committed the time, effort, and resources to mediate a plan that could be, and in this case is proposed to be, unilaterally changed after the mediation?

Further, I am troubled by the November 4, 2004's statement that the deletion of the "payment in-lieu option" was deleted "on advice of COAH." If COAH is to be an honest broker and mediator during this phase of the administrative process, unilateral contacts and advice between the agency and the municipality must cease once a housing element and fair share plan have been filed with COAH, and surely after a petition, or re-petition for substantive certification has been submitted. Fundamental fairness and evenhandedness by the agency demand impartiality and the absence of this "advice" at this point in the process. This conduct and interaction have tainted and should invalidate the administrative process.

Finally, I read the Compliance Report (at pages 32-33) as relying on the DePiero Property to produce 32 units toward Montvale's unmet need. As with my Property, given the impact of the DEP stormwater regulations on that property, there is no basis for the COAH to accept, without a factual demonstration with sworn testimony and competent evidence, that the re-zoning of the DePiero Property will enable the creation of this magnitude of development. This is in addition to the fact that the owner has expressed a lack of willingness to develop its Property. In these circumstances, it seems that COAH rules call for Montvale to propose still further methods through which it can meet its unmet need, such as zoning for accessory apartments, and for other development fees.

In sum, I think that there are substantial issues of disputed material facts that go to the heart of certain of the components of Montvale's proposed fair share plan. These require a hearing of the competent evidence and sworn testimony prior to COAH's making a decision on Montvale's re-petition for substantive certification, so that COAH can make the necessary factual findings that must support any ultimate decision by COAH on the re-petition.

Further, as noted, the RCA contribution for one of the properties is insufficient. Too, there is a serious question as to the fairness of the proceedings where COAH has given advice to Montvale during its review of the re-petition, and where the municipality has unilaterally, post-mediation, determined to alter substantially the zoning on my property by eliminating the payment- in-lieu option.

At this juncture, the re-petition should be denied both because the fair share is deficient and because the disputed issues of fact must be the subject of a hearing where competent evidence and sworn testimony are presented, examined, and evaluated.

Very truly yours,

Reno A. Del Ben

cc: Borough Clerk, Borough of Montvale (by telecopy 201-391-9317)
Melissa J. Orsen, Esq., COAH Mediator (by telecopy 609-633-6056)

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RENO A. DEL BEN

Post Office Box 861
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December 8, 2004

BY TELECOPY (609-633-6056) AND REGULAR MAIL
Lucy Voorhoeve, Executive Director
New Jersey Council on Affordable Housing
101 South Broad Street
P.O. Box 813
Trenton, New Jersey 08625-0813

RE: Comment to COAH Mediation Report, Montvale Borough-Bergen County
Prepared by Melissa J. Orsen, Esq., November 24, 2004

Dear Director Voorhoeve:

This is a comment to the COAH Mediation Report referred to in the caption of this letter. I understand that under COAH rules, I may request a hearing following Mediation. Please consider this letter, as well, as my Request for such a hearing because of the disputed issues of fact raised in the Mediation Report.

First, I reiterate and incorporate by reference my December 8, 2004 Letter Comment to the COAH Compliance Report in this matter.

As I stated in my Comment Letter to the Compliance Report, I understand that certain general principles guide COAH's review of Montvale's proposed housing element and fair share plan and COAH's ultimate determination as to whether that plan provides a realistic opportunity for the production of Montvale's fair share of affordable housing. Not only must COAH conduct a thorough analysis of Montvale's fair share plan and determine whether it presents a realistic opportunity for the production of Montvale's entire affordable housing obligation. If, during the course of COAH's review, a dispute arises over a material fact that is part of Montvale's plan, COAH must conduct a hearing, and allow for the receipt of competent evidence and sworn testimony, in order to make a finding on each material fact in dispute. As I stated in my Comment Letter to the Compliance Report, my understanding is that these hearings are conducted by the Office of Administrative Law, the fact-finding arm of COAH, and that recommendations from the hearing officer are sent to COAH for its final determination. These steps precede a COAH final determination on Montvale's re-petition for substantive certification.

I am the owner of property in Montvale identified as Block 302, Lots 1 and 4 and Block 1002, Lot 7 on the Borough's tax maps. As comments to the COAH Compliance Report, I reiterate and incorporate by reference the objections that I have previously filed in this matter and

that are on file with COAH. These objections include: my July 10, 2000 letter with accompanying "Housing, Planning and Zoning Report" of P. David Zimmerman, PP/AICP, dated July 6, 2000 (incorporating by further reference Mr. Zimmerman's 1993 Report); my September 13, 2001 letter to Shirley Bishop, formerly COAH's Executive Director; my August 4, 2003 letter Objection to Montvale's Petition for Substantive Certification; and my September 3, 2003 letter Objection to Montvale's Re-Petition for Substantive Certification.

In addition, I have the following comments to the COAH Mediation Report.

I continue to contest on several grounds Montvale's treatment of my property. These points were raised in mediation and the "Mediation Result" set forth in the Mediation Report is both unsatisfactory to me and leaves in dispute basic and critical facts about Montvale's treatment and zoning of my property.

First, as my earlier correspondence and Planner's Reports indicate, as a matter of fact, my property is suitable for development of market and affordable housing units (a mix that COAH describes as an "inclusionary development") at a much greater density than the six units per acre called for by Montvale's plan and its current zoning. Mr. Zimmerman's Reports support a development density of 14 units per gross acre.

The Mediation Report's statement that my property was previously zoned as part of Montvale's earlier judgment of compliance (years ago) ignores the events that have occurred in the recent past. In addition, my property, as compared to the properties of others, should not be singled out for different treatment and an unrealistic and economically disadvantageous and discriminatory density of development. In a similar competitive, current market, there is no justification for Montvale to rezone other developments with market and affordable units (set aside) with a higher density of development, while restricting my density to six units per acre. Such treatment plainly places me and my property in a distinct competitive disadvantage. The restrictive density is both economically discriminatory and cost-generating. Without a fact-finding hearing, COAH cannot conclude on the basis of the statements of the consultants of Montvale, alone, and thereby disregard my and my Planner's statements, that the development density for my property should remain at six units per acre.

Second, the remaining 13.19 acres of my property (outside of the acreage proposed to be zoned at six units per acre), which are zoned for one unit per acre, should be available to meet Montvale's unmet need and should be re-zoned for market and affordable housing development at a much higher density if such acreage is not adversely affected by the 300 foot buffer imposed on my property by the new DEP stormwater regulations. Surely, under COAH's rules, and where the Montvale has sought a vacant land adjustment, Montvale must and should consider the properties of landowners who have expressed an interest in having their property developed for affordable housing.

As I read the COAH Compliance Report, Montvale has not provided sufficient methods to meet its unmet need. Yet, Montvale has declined to re-zone the remainder of my property, declined to re-zone my included property at a higher, realistic density with bulk criteria designed to address the significant constraints imposed on my property by the new DEP stormwater regulations, and has chosen to re-zone other property where the owner has expressed the view

that its land is and will not be available for the development of affordable housing any time in the near future.

Third, there remains a factual dispute over whether Montvale's zoning ordinance is cost-generating with respect to my property as a result of several onerous provisions. My September 3, 2003 letter sets out those cost generating features of Montvale's ordinance. Its substance and content are reiterated and incorporated herein by reference. The most evident and offensive provisions pertain to tree specification and excessive set back, yard, and bulk requirements.

The onerous and cost-generating nature of these provisions, which causes the zoning to be unrealistic and infeasible to produce the affordable housing called for, based on a density of six units per acre, is highlighted by the COAH Compliance Report's statement about the impact of new DEP stormwater regulations. In fact, the Mediation Report completely omits any mention of this fact and how it will impact the development of my property and the magnitude of housing (market rate and affordable units) based on Montvale's zoning for my property.

The COAH Compliance Report states at pages 19-20 that the Municipal Engineer has determined that the new DEP regulations impact my property but "has ascertained that there are enough upland areas available to design the development as proposed to meet the new DEP stormwater regulations."

There is no factual justification or support for the Municipal Engineer's bald conclusion. To the contrary, as a matter of fact, the zoning ordinances' various limitations, including, for example, limited six units per acre density, maximum height, required distance between buildings, and minimum set back standards, operate to preclude an inclusionary development that will produce 195 units, including 39 affordable units. In fact, my own review of the impact of the 300 foot buffer called for by the DEP stormwater regulations indicates that a significantly fewer number of units can be built on my property as a result of the adverse impact of these regulations, based on Montvale's current zoning for this property.

Furthermore, COAH's "Mediation Result" that these provisions for my property are not objectionable because if they were, other developers would have objected to these provisions, is an unfounded generalization of fact that I and my Planner, through his Reports, dispute. This is a specific issue of fact related to my property and the zoning criteria applicable to it. The absence of objections by others cannot negate my current objection, or the need for a hearing to resolve this disputed fact.

These disputed issues of fact, namely, whether Montvale's (renamed) AH-6A zoning of my property can support, as a matter of sheer planning and engineering feasibility, and as a matter economic feasibility, the proposed inclusionary development and its affordable housing yield, require a fact-finding hearing. Again, as I wrote in my Comment Letter to the Compliance Report, COAH must be circumspect in its easy, unchallenged acceptance of these conclusions of the Municipal Engineer. Rather, these issues require a hearing with competent evidence and proofs.

Fourth, I reiterate my objection to the process that Montvale employed after the end of mediation. I consider unfair and improper, Montvale's last minute, unilateral, and substantial change in its proposed zoning for my property. In its June 2003 Housing Element and Fair Share

Plan, which was the subject of a couple of rounds of mediation, the second of which took place in the late summer and early fall of 2004, Montvale's zoning for my property called for the option of having the affordable units built on site, or having a payment in lieu of construction paid. In fact, the COAH Compliance Report, at page 20, reads: "The zoning for this site allows the developer the option of building the units on site or providing a payment to fund an equivalent number of units via an RCA in lieu of building the units on the property."

As I explained in my Comment Letter to the Compliance Report, after the mediation concluded, by memo dated November 4, 2004 (along with accompanying attachments), Montvale advised Barbara Walsh of COAH that with respect to the status of the Del Ben Property, "On advice of COAH, in light of no final settlement agreement with Del Ben, the payment-in-lieu option will not be adopted at this time." Page 1 of November 4, 2004 Memo. That memo was only mailed to me under a cover letter of November 15, 2004.

Indeed, it appears that the COAH Compliance Report added this unilateral, substantial change practically as an afterthought. See page 20 of COAH Compliance Report, middle of page ("Montvale has subsequently advised...that the payment-in-lieu option will be deleted...").

This is a substantial change from Montvale's fair share plan that was on the table and the subject of mediation since the summer of 2003. This late change is improper, punitive, runs contrary to COAH's rules, and should be disallowed. This last minute, post-mediation change in Montvale's fair share plan sabotages the entire mediation process. If, without having to re-petition and re-notice, a town can unilaterally change the implementing ordinances that are designed to be known during the mediation and that are required to implement the proposed housing element and fair share plan, then what purpose is served by mediation? As I read COAH's rules, such changes require re-notice and re-petition. If such a post-mediation change is allowed, why would I as an objector have committed the time, effort, and resources to mediate a plan that could be, and in this case is proposed to be, unilaterally changed after the mediation?

In sum, I contest and disagree with the Recommendation in the Mediation Report (page 15) that "no contested issues of material fact remain." As I have noted, there are substantial issues of disputed material facts that go to the heart of certain of the components of Montvale's proposed fair share plan. These include: whether the zoning on my property is suitable, let alone realistic and feasible to produce the magnitude of development; and whether the zoning of the DiPiero Property can realistically produce units to satisfy Montvale's unmet need. These issues, as well as the others set forth, require a hearing of the competent evidence and sworn testimony prior to COAH's making a decision on Montvale's re-petition for substantive certification, so that COAH can make the necessary factual findings that must support any ultimate decision by COAH on the re-petition.

In addition, there is a serious question as to the fairness of the proceedings where COAH has given advice to Montvale during its review of the re-petition, and where the municipality has unilaterally, post-mediation, determined to alter substantially the zoning on my property by eliminating the payment- in-lieu option.

I am troubled by the November 4, 2004's statement that the deletion of the "payment in-lieu option" was deleted "on advice of COAH." If COAH is to be an honest broker and mediator during this phase of the administrative process, unilateral contacts and advice between the agency

and the municipality must cease once a housing element and fair share plan have been filed with COAH, and surely after a petition, or re-petition for substantive certification has been submitted. Fundamental fairness and evenhandedness by the agency demand impartiality and the absence of this "advice" at this point in the process. This conduct and interaction have tainted and should invalidate the administrative process.

At this juncture, the re-petition should be denied both because the fair share is deficient and because the disputed issues of fact must be the subject of a hearing where competent evidence and sworn testimony are presented, examined, and evaluated. I request a hearing following mediation on these disputed issues of fact.

Very truly yours,

Reno A. Del Ben

cc: Borough Clerk, Borough of Montvale (by telecopy 201-391-9317)
Melissa J. Orsen, Esq., COAH Mediator (by telecopy 609-633-6056)

EXHIBIT D

RESPONSE TO COMMENTS ON
COAH MEDIATION REPORT
MONTVALE TOWNSHIP, BERGEN COUNTY
Prepared By: Melissa J. Orsen, Esq.
December 9, 2004

On November 24, 2004, a Mediation Report was forwarded to the Montvale Service List. On December 8, 2004, comments to the Mediation Report were received from Richard Preiss, P.P., on behalf of the Borough of Montvale (hereinafter Montvale); Reno Del Ben, property owner and objector to Montvale's Housing Element and Fair Share Plan; (hereinafter Plan) and David Mann, objector to the Plan. The following summarizes the objectors' comments and COAH staff responses to said comments:

Borough of Montvale

Montvale agreed with the Mediation Report responses to the individual objectors as well as the recommendation made at its conclusion. Its comments were provided to supplement the record and set forth Montvale's position on some of the objections raised during the course of mediation. Attached is a copy of Motnvale's comments for review.

Reno Del Ben

Reno Del Ben is the property owner of Block 302, Lots 1 and 4 and Block 1002, Lot 7 on Montvale's tax maps, which is included in Montvale's Plan. Mr. Del Ben continues to contest Montvale's treatment of his property and believes that mediation was concluded with contested issues of material fact still remaining. In this regard, Mr. Del Ben requests that his objection below be forwarded to the Office of Administrative Law as a contested

case. Mr. Del Ben incorporates his objections that have previously be filed with the Council on Affordable Housing (hereinafter COAH) and provides the following comments to the Mediation Report:

Comment:

Mr. Del Ben maintains that his property is suitable for development of market and affordable housing units at a greater density than the six units per acre called for by Montvale's plan and its current zoning. Mr. Del Ben submits that David Zimmerman, P.P., provided a report that supports a development density of 14 units per gross acre.

Response:

As stated in the Mediation Report, the Del Ben site was zoned at six units per acre as part of Montvale's judgment of compliance in 1994 and the zoning remains unchanged. The Borough has maintained the zoning on the property for up to six units per acre and incorporates this zoning in a plan that provides 235 units against its 188-unit RDP. Montvale's zoning of the property at six units per acre comports with the minimum presumptive density established under COAH rules, and was established per the court-sanctioned compliance plan in the first fair share round. Moreover, Montvale remains compliant with COAH rules, which permit the municipality to determine the means whereby its affordable housing obligation is to be satisfied.

Comment:

Mr. Del Ben maintains that the remaining 13.19 acres of his property, which are zoned for one unit per acre, should be available to address Montvale's unmet need.

Response:

As discussed in the Mediation Report, Montvale has received Green Acres funding and Bergen County Open Space funding to acquire the property. Negotiations have ensued and Montvale anticipates acquiring the property within one year. Furthermore, Montvale has addressed its RDP of 188 units and if granted substantive certification, has the potential to address its entire unmet need with a 20-unit surplus.

Comment:

Mr. Del Ben maintains that a factual dispute exists as to whether Montvale's zoning ordinance is cost-generating with respect to his property as a result of several onerous provisions, including provisions with respect to tree specification and excessive set back, yard and bulk requirements. Mr. Del Ben further submits that the Mediation Report did not address how the impact of new DEP stormwater regulations would affect his property.

Response:

Montvale submits that all of the sites rezoned for inclusionary development or for payments in lieu of constructing affordable housing were either subject to the court-

sanctioned compliance plan, which presumably would not allow cost-generating features, or by virtue of settlement agreements with landowners/developers.

In-person mediation was conducted on three separate occasions. Moreover, the parties to mediation contacted both the COAH mediator and Montvale representatives via telephone and written correspondence to discuss the issues continuously since July, 2004. At no point did Mr Del Ben submit facts to support his contention that cost-generating features exist. Mr. Del Ben only attended the first mediation session and did not provide any evidence to support his claims and nor did he contact the COAH mediator to provide evidence of same. However, Mr. Del Ben should note that once a development application is filed with the municipality, he is entitled to seek relief under N.J.A.C. 5:93-10.4, should issues arise with respect to his property.

Mr. Del Ben raised additional objections to the Mediation Report, which were not raised either subsequent to or during the course of mediation, which may be relevant to Montvale's Plan but are outside the scope of mediation, including whether the DEP stormwater regulations effect his property. This objection, as well as others, were also raised in Mr. Del Ben's comments to the Compliance Report and COAH staff responses will be provided therein.

David Mann

David Mann is a resident of Montvale and has maintained numerous objections to Montvale's Plan since July, 2000. Mr. Mann reiterates his objections filed on October 13, 2003 and provides the following comments to the Mediation Report:

Comment:

Mr. Mann submits that notwithstanding his settlement agreement in the Superior Court of New Jersey with respect to the Chamberlain site as to a higher development fee being assessed without a financial incentive to the developer, his identical objection to the Roller Rink and Janovic sites remain.

Response:

Montvale submits the following comment with respect to the Janovic 2 and Rink/Hovnanian sites:

The Borough agreed to amend the zoning to increase the number of single-family homes buildable on the property from one (1) unit per acre to four (4) units per acre, in exchange for a payment-in-lieu of $50,000 to fund a 2-unit RCA with Cliffside Park. Montvale maintains that the payment is reasonable and was made willingly by Mr. Janovic. Montvale maintains that it entered into a similar agreement with Mr. Janovic to address its first round obligation and to date, the units are built and sold and Montvale has received its payment. In this regard, Montvale submits that the payment is reasonable and the project successful. Moreover, Montvale has passed a resolution indicating that it is prepared to bond for the two RCA units in the event the payment is not forthcoming."

With respect to the Rink/Hovnanian site, Montvale submits that "the Borough and the owner/contract purchaser willingly and freely entered into an agreement whereby an $800,000 payment was to be made in exchange for a rezoning which would permit 72

units of senior housing to be provided on the Montvale portion of the site in place of the office-research development permitted as-of-right, (A portion is located in Woodcliff Lake). The $800,000 is to be used to fund a 32-unit RCA with the City of Garfield. Ahead of the conclusion of mediation, the Borough rezoned the property to permit such a development, and is currently working with the developer and the adjacent community of Woodcliff Lake to resolve an access issue involving an adjacent property owner and the Bergen County Transportation Department, which at the same time processing their application for site plan approval. The project, with renowned national builder K. Hovnanian Companies, had been built elsewhere in the State of New Jersey, is economically feasible, viable and proceeding in a timely fashion, indication that it is indeed realistic. All aspects of the agreement, including the amount of the payment, its form, the use of the funds and the timing of payment, comport with COAH rules."

See Attached Response from Montvale.

Comment:

Mr. Mann submitted several comments to the Mediation Report in which he maintains that Montvale's Plan is not in compliance with COAH regulations.

Response:

As stated in the Mediation Report, COAH regulations are not the subject of mediation. Mr. Mann has been advised of this fact on several occasions. In addition, Mr. Mann was also advised that COAH will not certify a Plan if it fails to comply with COAH rules, unless a waiver is requested by the municipality and granted by the Council.

Comment:

Mr. Mann submits that the Mediation Report failed to address his concern that a tenant resides in an affordable unit that he believes does not meet the definition of a low- or moderate-income tenant.

Response:

In his previously submitted objections, Mr. Mann raised this allegation concerning the income eligibility of the occupant of one of Montvale's affordable housing units, which included very specific personal information. At that time, COAH staff contacted the Housing Affordability Service (HAS) to inquire about the eligibility determination made at the time the household in question was determined to be eligible. That agency has indicated that it followed all pertinent rules regarding income qualification and that the discrepancies being alleged by Mr. Mann likely come from proposed child support payments that were not formalized until a divorce decree was granted several months after the eligibility determination had been made.

Thereafter, the current mediator again referred the matter to HAS and was again advised that it followed all pertinent rules regarding income qualification. Accordingly, this comment is outside the scope of mediation.

Comment:

Mr. Mann reiterates his previous comment regarding the overlay sites and his belief that it will not prove to address Montvale's unmet need.

Response:

Montvale submitted the following comment in response to Mr. Mann's objections: "Per Montvale's adopted Housing Element and Fair Share Plan, three sites were identified for rezoning to affordable housing overlay zones to meet Montvale's unmet need of 67 units. They were the Nottingham site, the Rink/Hovnanian site, and the DePiero site. In the first instance, all three sites are currently zoned for affordable housing, with the following status. The Nottingham site was rezoned to permit 36 additional multifamily units, of which 8 units would be unrestricted to 1- and 2- bedroom affordable rental units. This project has already received site plan approval (April 20, 2004). The Rink/Hovnanian property, as indicated above, has been rezoned and in accordance with the overlay zoning. An application for site plan approval has been made, which is currently being reviewed by Montvale, although a zoning amendment necessitated by access issues has delayed this approval process. This amendment should be adopted by year's end and a joint review of site plan approval by Montvale and Woodcliff Lake is expected to proceed in early 2005. Thus both the Nottingham and Rink/Hovnanian projects are expected to yield affordable housing within the relatively near term.

The DePiero property is currently zoned AH-8, which would yield 160 total units, 32 of which would be inclusionary affordable units. Such zoning has been in place since

1994, resulting from the court-approved first-round compliance plan. Since Montvale was not certain that the property owner would elect to proceed within the next 6 years, it proposed to put the property into an overlay zone to meet its unmet need, which is fully compliant with COAH's rules. Montvale has also indicated its willingness to have the DePiero property remain zoned as is, in a conventional AH-8 affordable housing district, with no other underlying zoning option.

In conclusion, all three sites comport with COAH's rules for meeting its unmet need, and two of which are expected to yield affordable housing units in-town, in the near term." See Attached Response from Montvale.

Comment:

Mr. Mann maintains several objections to adopted Montvale Ordinances.

Response:

Mr. Mann has pending litigation with respect to several municipal ordinances. In this regard, these matters are outside the COAH's jurisdiction, and will be addressed by the court.

Comment:

Mr. Mann maintains that the Roller Rink site should be included in Montvale's RDP.

Mr. Mann also objects to an agreement between the Rink owner and the developer.

Response:

COAH staff maintains that the Roller Rink site was not vacant at the time the RDP was established. Notwithstanding, the site is providing a payment in lieu that represents an equivalent that far exceeds the RDP calculation that would have been applied to the site.

Comment:

Mr. Mann submitted numerous comments alleging that Montvale's 2004 Planning Board meetings were not held in compliance with the Open Public Meetings Act.

Response:

These comments are outside the scope of mediation and should be addressed with Montvale.

CONCLUSION

The comments to the November 24, 2004 COAH Mediation Report that were received by COAH do not alter the original recommendation of the COAH mediator. In this regard, it is therefore recommended that the Council accept the Mediation Report, dated November 24, 2004.

EXHIBIT E

RESPONSE TO COMMENTS
On
COAH COMPLIANCE REPORT
BOROUGH OF MONTVALE, BERGEN COUNTY
Prepared By: Barbara A. Walsh, PP/AICP
December 10, 2004

A Compliance Report prepared for the Borough of Montvale, Bergen County, was issued by the Council on Affordable Housing (COAH) on November 24, 2004. The report was issued to the Montvale service list, including all objectors and affected property owners, for a 14-day Comment pursuant to N.J.A.C. 5:91-5.2(e). Comments on this Compliance Report were received from Reno A. Del Ben, the owner of a property included in the Borough's plan, and David Mann, a Montvale resident. These comments were received on December 8, 2004. The following is a summary of the comments and COAH responses:

Reno A. Del Ben

Comment:

The Commenter raises the issue of whether the Janovic in lieu payment of $300,000 to fund 15 RCA units at $20,000 per unit is unsatisfactory to fund 15 RCA units in the City of Garfield.

Response:

A payment in lieu of constructing affordable units was made by Janovic as part of the Borough's first round court settlement and as such, pre-dated COAH's rule requiring $25,000 as the minimum cost per unit for RCAs. Nonetheless, the Borough of Montvale has entered into an RCA with the City of Garfield to fund 15 units at $25,000 per unit and adopted a resolution of intent to bond in the event there is a shortfall of funds in the Borough's Affordable Housing Trust Fund. Pursuant to the draft revised spending plan, it is anticipated that sufficient funds will be available to fund this RCA with the City of Garfield.
Comment:

The Commenter objects to the grant of the waiver requested by the Borough of Montvale regarding bedroom distribution and the low- and moderate-income split.

Response:

The Council will make a determination regarding this request for the waiver by the Borough of Montvale.

Comment:

The Commenter primarily reiterates previous comments and objections, including his request for an increase in the density on his property, which is an inclusionary site in Montvale's plan, from six units per acre to 14 units per acre. The commenter also requests that adjacent land

he owns be incorporated into Montvale's plan to meet unmet need. Finally, the commenter contends that the Borough's zoning regulations contain cost generating features and that Montvale's intention to modify the zoning for this property to remove the payment in lieu provision is unfair.

Response:

The property owned by the commenter, block 302, lots 1 and 4, and block 1002, lot 7, was part of the 1994 judgment of compliance. A 32.45-acre portion of this property was rezoned at six units per acre with a 20 percent set-aside for affordable housing units and originally included an option for the developer to make a payment in lieu of providing affordable housing on site. Since the Court Master's report dated August 23, 1991 recommending that the property could be developed at eight units per acre and the report by P. David Zimmerman, PP/AICP, in 1993 prepared on behalf of the commenter justifying 14 units per acre for this property, the Pascack Brook watershed has been designated a Category 1 (C1) watershed, requiring 300' stream buffers and any wetlands will require 150' buffers. After reviewing reports available, including the 1990 environmental analysis of Thonet Associates and the wetland delineation of Louis A. Raimondi, PE, reviewing the COAH staff GIS analysis of the property, conferring with staff in the New Jersey Department of Environmental Protection Land Use Section, regarding the Category 1 stormwater regulations and securing an assessment from Montvale's municipal engineer, COAH staff concluded that it is a reasonable assumption, based on the information available at this time, that this development, as proposed at six units per acre in accordance with the zoning regulations, may be considered approvable, available, developable and suitable in accordance with COAH regulations.

COAH staff review of Montvale's Housing Element and Fair Share Plan concludes that the plan, including the proposed modification to the zoning on this property to eliminate the option for a payment in lieu of constructing affordable housing on site, satisfies Montvale's 1987-1999 affordable housing obligation in accordance with COAH regulations. Elimination of the payment in lieu provision is necessary in order for the Montvale Fair Share Plan to be compliant with COAH's regulations and the Fair Housing Act which both restrict the maximum number of units that may be transferred via an RCA. Furthermore, permitting additional RCA units would reduce the number of age-restricted units eligible to be included in the Borough's plan.

David Mann

Comment:

The commenter believes that Montvale should amend the Fair Share Plan because of the submission of new information and the revision of some elements of the plan, including changes from the zoning proposed and the change in the receiving municipalities for the RCAs.

Response:

Pursuant to N.J.A.C. 5:91-13.1, COAH requires amendments to a certified plan when there is a change in site, substantial increase in density or other zoning requirements that result in a change of housing structure on a specific site or a fundamental change in approach to its low-

and moderate-income housing obligation. Applying this standard to the filed Fair Share Plan, there has been no substantial modification to the Fair Share Plan to merit COAH requiring the Fair Share Plan to be amended and a re-petition filed.

Comment:

The commenter alleges that COAH staff arbitrarily extended deadlines for the submission of additional information.

Response:

The COAH Pre-mediation Report Requesting Additional Information requested that additional information be submitted by September 20, 2004. As the Housing Element and Fair Share Plan and the additional information submitted was under review by COAH staff, additional information was required prior to drafting of the Compliance Report dated November 24, 2004. As of that date, the only documentation missing was relative to the RCAs, which were to be finalized prior to review by the Council, and revisions to the approved spending plan and adopted affordable housing ordinances implementing the proposed Fair Share Plan. These documents must be revised and adopted by the Borough of Montvale to be consistent with the certified plan approved by COAH, within 45 days of the grant of substantive certification. There has been no deviation from COAH procedures and regulations in the review of this petition.

Comment:

The commenter asserts that the Greenway and Bear Brook developments are not entitled for two for one credits for rental units.

Response:

The rental units in these developments have 30-year affordability controls and pursuant to N.A.J.C. 5:93-5.15(d) are eligible for two for one credits for rental units.

Comment:

The commenter believes that in lieu payments in excess of COAH regulated development fees, without zoning incentives, violate COAH regulations.

Response:

Payments in lieu are negotiated agreements not subject to COAH development fee regulations. All parties to the negotiated agreements enter them of their own accord. Montvale has adopted a resolution of intent to bond for any shortfall in funds to implement the Regional Contribution Agreements, satisfying COAH regulations.

Comment:

The commenter indicates that because negotiations on two redevelopment sites (The Rink and Nottingham) were taking place when the revised RDP was established, the sites should be included in the RDP.

Response:

The COAH report Establishing Realistic Development Potential was issued August 30, 2001. Because both sites were not vacant at the time the RDP was established, they were not included in the RDP. However, Montvale's Fair Share Plan included these sites in addressing the unmet need.

Comment:

The commenter asserts that a number of sites (The Rink, Del Ben, Axxin, Nottingham and the Montvale Senior Housing development) are either not developable as proposed in Montvale's Fair Share Plan or will not be developed during the period of substantive certification, primarily because of litigation he has engaged in or intends to pursue, including alleged violation of the Open Public Meetings Act. He also indicates that the DePiero site will not be developed because the property owners have indicated in newspapers that they have no intention of developing their property.

Response:

Regarding the assertions that a number of sites (The Rink, Del Ben, Axxin, Nottingham and the Montvale Senior Housing development) are not developable as proposed in Montvale's Fair Share Plan, COAH staff makes the following observations:

- The Rink is proposed to make an in lieu payment which under Montvale's Fair Share Plan will be used to fund a Regional Contribution Agreement. Montvale has adopted a resolution of intent to bond for any shortfall in funds to finance the proposed RCAs.
- After reviewing reports available on the Del Ben property, including the 1990 environmental analysis of Thonet Associates and the wetland delineation of Louis A. Raimondi, PE, reviewing the COAH staff GIS analysis of the property, conferring with staff in the New Jersey Department of Environmental Protection, Land Use Section, regarding the Category 1 stormwater regulations, and securing an assessment from Montvale's municipal engineer, COAH staff concluded that it is a reasonable assumption, based on the information available at this time, that this development, as proposed at six units per acre in accordance with the zoning regulations, may be considered approvable, available, developable and suitable in accordance with COAH regulations. Specific site capacities will be determined at the time a development application for the site is reviewed. If for any reason, the developer cannot fulfill the affordable housing obligation for the site, Montvale will have to amend its plan.
- The Montvale Planning Board granted site plan approval to Axinn/Hovnanian on February 1, 2004. If for any reason, the developer cannot fulfill the affordable housing obligation for the site, Montvale will have to amend its plan.

- The Nottingham development was originally included in Montvale's Fair Share Plan to address unmet need. Since the Montvale Planning Board granted site plan approval on April 20, 2004 COAH staff felt it more appropriate to include the site as addressing the Borough's RDP. Including this site, which is proposed to create eight affordable rental units plus eight rental bonuses, the Borough has a plan that surpasses its RDP by 55 units. If for any reason, the developer cannot fulfill the affordable housing obligation for the site, Montvale will have to amend its plan.
- Since adoption of Montvale's Fair Share Plan, Montvale purchased the additional acreage required to complete the Montvale Senior Housing site and the Montvale Planning Board granted site plan and subdivision approvals on July 1, 2003.
- The DePiero site has been zoned to produce affordable housing since the Borough's first-round court settlement. It has been retained in the plan as a site that, if developed, will address unmet need. Sites designated to address unmet need are not necessarily required to produce affordable housing during the period of a municipality's substantive certification. Rather, they are included in plans so that if development does occur, affordable housing opportunities on the site will be captured.

Regarding any allegations that the sites proposed to be developed under Montvale's plan will not be developed during the period of substantive certification, primarily because of alleged violations of the Open Public Meetings Act or because David Mann has engaged in litigation or intends to pursue litigation, these allegations are ultra vires to COAH's jurisdiction and consideration in the review of Montvale's petition for substantive certification.

Comment:

Montvale has defaulted on its RCA with the City of Paterson.

Response:

Montvale has not terminated the RCA with the City of Paterson but has not included it in the plan under consideration for substantive certification. Montvale substituted 15 additional units to be funded in the City of Garfield in this plan.

EXHIBIT F

BW
MO

COAH
Director

12/8/04 4:35 pm

Enclosed are my comments/objections to COAH's 11/24/04 Reports (a) Compliance Report (b) Mediation Report) for Montvale. The enclosed material is being faxed now to meet the deadline (12/8/04 5 pm). It will be typed within a few days & resfaxed/mailed.

DEC - 8 2004

David J. Nan...

25 pages, excluding this cover sheet

Fax received
12/8/04 5 pm

fax # 609-633-6056
Director
COAH
PO Box 813
Trenton, NJ

(1)

160 Upper Saddle River Rd
Montvale, NJ 07645
201-505-1429
12/8/04 4:35 PM

This letter serves as a response to COAH's 11/24/04 Mediation Report (by Melissa Orsen) and Compliance Report (by Barbara Walsh). ~~All my objection~~ (with the exception of my objection to the Chamberlain site, all my objections dated 10/13/03 are ~~rejected~~ officially submitted again as objections to 11/24/04 COAH reports. Below are additional objections/comments.

(1) With regard to my objections to Chamberlain, ~~Melissa Orsen seems~~ Melissa Orsen has a severe comprehension problem. ~~My chamberlain~~ letter(s) from me & my attorney withdrawing objections to Chamberlain site specific and not conceptual. ~~All~~ my objections to the Chamberlain proposal "payment in lieu" of construction continue to stand.

(2) COAH rules - especially when not adhered to by COAH staff - subject to mediation. Greenway and Bear Brook are only eligible for 3 per unit credits, not 2.00 credits/unit. credits per unit.

(3) Roller Rink "payments in lieu": in addition to 10/13/03 objections NJAC 5:93-4.2(f) - max. set aside is 20% for vacant land towns - & Montvale code 57-5C vs. 57-9C "payment in lieu" will not be permitted came more than 50% of AH obligation is being transferred.

(4) Melissa Orsen conveniently ~~ignored~~ neglected to treat my objection to the Brook unit (421 Laurel Brook) receiving COAH credit who an income subb tenant lives there - ~~fraud~~ fraud theft by deception violation NJAS(2C: in completing the application. I told Melissa Orsen of a legal case (DCR vs. Legacy applies. So much for Melissa Orsen's false claim that COAH honors court decisions. Montvale code 128-5.7 I(1)(d)4, 128-5.7 I(2), 128-5.7 I(1)(a), 128-5.7 I(3)(a), 128-5.7 I(6)(a); NJAC 5:93-9.2(e)

(5) Nittinghan - all later in this letter (re: my lawsuit) Also add -- RDP
Since Montvale has engaged in subterfuge (negotiations since 2000 prior to FSHCP seeking MARKET RATE units)

(6) Senior Housing - all later in this letter (re: my lawsuit). The site plan is proposing development on steep slopes. Montvale has a steep slope ordinance. Either this portion of development - which if denied would negate the entire development as per Montvale engineer's report ~~#~~ - ~~to~~ must be disallowed by COAH or COAH must revisit the RDP for the town. P.S. - my lawsuit will show that there exists no legal access through Nottingham Court - Bergen County will not allow access onto Grand Ave. from only 20 foot easements. Number of eligible units for COAH credits to be discussed/argued in OAL/appellate court.

(7) Axinn - see later in this letter.
From 8/5/04 "mediation sessions": O&R and town has have not given any approval. In fact they have refused approval. Let's not forget Scott Lippett (attorney for Axinn) letter from 9/26/2001 about the unresolved contamination issue.

(8) DeLeiro - see later in this letter; as per Melissa Orsen's 11/24/04 comments that unmet need is required to be met during the period of substantive certification is completely disingenuous and will prove in a court of law. One simple answer is for Melissa, an attorney, to read the Mt. Laurel II decision 92 NJ 158 at p. 221.

(9) RCA's - what happened to the agreement with Paterson? Montvale appears to be reneging since the ~~act~~ 11/15/04 Montvale material and Res. #205-2004 (11/22/04) have ~~deleted~~ transferred the ~~obligated~~ legal 15 unit Paterson RCA to Fayfield.

(10) Roller Rink - see later in this letter; site must add to RDP because of subterfuge by Montvale and developer to conduct extensive discussions and negotiations ~~with~~ regarding rezoning the site to high density market-rate prior to any inclusion of this site in the plan. The contract between the Rink owner's and the developer dated 7/26/01 discusses this rezoning while conveniently eliminating

Roller Rink contd

any discussion of AH, FSHCP, etc. Richard Priess's (Montvale's Planner) 10/23/03 certification (p.6, #16) fraudulently claims the Rink was "not part of the RDP because of its unavailability when the RDP was being calculated." I repeat, the agreement between the Rink owner and the developer clearly discusses seeking governmental approvals from Montvale and Woodcliff Lake for high-density market rate units (108 see the final like in Montvale's 6/03 FSHCP!!) Jeffrey Kantowitz, attorney for Rink developer, in a 3/31/03 letter clearly volunteers that "extensive discussions ... with respect to a rezoning of the property" took place. At my 2002 "mediation session" (3/4/02?) the Montvale Planning Board chairman quickly questioned whether there was access to the Roller Rink site from the information I have presented the Planning Board Chairman and others were already deeply involved in negotiations with the developer to undermine the COAH rules/process involving RDP and vacant land adjustments. Do not forget a 1/16/02 Community Life Article whereby the Woodcliff Lake mayor discusses this known rezoning to market rate. Plus NJAC 5:93-4.2(f)

Many of the comments/objections in this correspondence and in my 10/13/03 objections were stated in my 8/5/04 "mediation session". Melissa Orsen and COAH have chose to ignore all.

(4)

160 Upper Saddle River Rd.
Montvale, NJ 07645
201-505-1429

12/8/04

Director
COAH
PO Box 813
Trenton, NJ 08625

Montvale was required by COAH to submit documents by 11/5/04 as a condition for Barbara Walsh to complete a report and place Montvale on the December, 2004 COAH schedule for a substantive certification hearing. That deadline passed and Barbara Walsh gave Montvale another arbitrary deadline- was it 11/15/04 because that is when objectors on the service list were sent a "Borough of Montvale, 2nd Round Substantive Certification Packet"? And now, Montvale is again creating additional documentation to send Barbara Walsh- a Resolution (#205-2004) amending the Garfield RCA which was passed at a special 11/22/04 Council meeting.

Why is COAH allowing Montvale to exceed these arbitrary deadlines and still be placed on the December, 2004 COAH schedule? Why have the objectors not been notified by COAH as to these deadlines?

Be that as it may, my previous correspondence to Barbara Walsh (11/4/04) outlines how many, if not all, of the 11/1/04 Montvale Resolutions creating documentation for submittal to COAH were invalid and illegal due to noncompliance with the Open Public Meetings Act (OPMA). Therefore, any COAH action- such as Barbara Walsh's report(s) and a December, 2004 Substantive Certification hearing/approval- based upon the invalid/illegal documentation would be deemed invalid/illegal That will be resolved in the courts. You will be kept apprised of any legal filings by me.

It is also possible that all of Montvale's 2004 Planning Board meetings were held in noncompliance with the OPMA. If that is the case then ~~most, if not~~ all, approvals for supposedly affordable housing related developments are invalid- e.g. the 11/15/04 documentation sent to objectors and previously required to be sent to COAH for placement of Montvale on the December, 2004 COAH schedule. Contains false, invalid & useless information

What is most definitely invalid, due to serious OPMA violations, is the Ordinance #2004-1225, which rezoned five properties to allegedly provide affordable housing or RCA's (Roller Rink, Axinn, Baldanza, Janovic, Nottingham). My primary attorney, Daniel Somers, is amending an existing lawsuit to include the challenge of Ordinance

#2004-1225. I doubt this matters to COAH, even though Melissa Orsen claims that COAH honors court decisions.

Speaking of lawsuits, in the 11/15/04 Montvale material Borough officials are misleading COAH by excluding information regarding my pending lawsuits which challenge alleged affordable housing developments. I give you permission to contact my attorney, Daniel Somers (973-267-9898), to inquire as to the status of the cases and what the judge thinks while these court cases are pending. COAH (Barbara Walsh, Melissa Orsen) claims to honor court decisions.

The 11/15/04 Montvale material is so markedly different from the June, 2003 FSHCP that a new amended FSHCP is warranted by COAH before it takes action. I will discuss this and how various developments cannot produce the obligated affordable housing due to environmental and other reasons (see Howell, Southampton cases; **Elon v. Howell Part II from 2004 whereby Elon successfully argued that COAH was required to review evidence that would exclude a zoned site as not producing affordable housing. This case is especially ironic considering that Elon's attorney was Jeffrey Kantowitz, the same person who presently represents owners of Montvale sites that COAH is allowing to be zoned for affordable housing despite serious environmental concerns that would preclude much of the development and much of the purported affordable housing**)

1) 11/4/04 Memorandum from Richard Priess to Barbara Walsh:

a) Page3: Montvale Senior Housing- Montvale does not own the extra 0.6 acre parcel, needed to match the required zoning, because of my lawsuit against the Nottingham Planning Board approval. The Senior Housing Ordinance (#2000-1140) is invalid, the new Senior Housing Ordinance (#2004-1218) is also invalid and being legally challenged by me. This will not be built for a very long time, if at all.

b) Page 3: DePiero- this site will never achieve any affordable housing (see 6/19/78 NY Times article whereby Edward DePiero states that no more DePiero lands will be sold for development; this was told to Melissa Orsen during the 8/5/04 mediation session however she had no interest in a copy of the newspaper article for evidence. See Elaine Depiero's 6/12/02 Letter-to-the-Editor which states emphatically that the DePiero lands will not become any housing, affordable or other; Melissa Orsen questioned whether Elaine DePiero wrote this letter and Keith Henderson claims to never pay attention to letters-to-the-editor, suppressing the truth is foremost for COAH). More proof of this site not producing any affordable housing is the nonexistence of any bulk requirements for this site in the Zone Limiting Schedule in the back of the 11/4/04 Montvale document.

c) Page 3: RCO Overlay Zone- nowhere has Montvale ever stated receiving a concept site plan application. With regard to an access issue Montvale introduced Ordinance #2004-1226 authorizing a road. Should this "road" not adhere to Montvale zoning or New Jersey zoning (RSIS) that will be an additional count in any lawsuit filed by me. This rezoning of the Roller Rink site to an RCO Overlay Zone is part of Ordinance #2004-1225 which, as I explained earlier, is being legally challenged by me. This will not be developed for some time, I assure you! Plus, I will be challenging, first in Superior Court and then in Appellate Court, COAH's approval of the

See Toll v. W. Windsor 103 NJ Super 540 and 334 NJ Super 71 (town must identify 2nd & vacant sites not built in 1st round)

See 9:5-22.1 (Satisfaction of Mt. Laurel obligation if the town has provided a Realistic opportunity for construction of fair share, not just Montvale Atty Huntington stated at 8/5/04 [illegible] a hard See NJAC 5:93-3.5(9)

$800,000 RCA payment as violating COAH regulations and Montvale Zoning ordinances.

d) Page 5: Montvale Senior Housing Agreement (10/26/04) and Resolution #188-2004 (11/1/04) are being legally challenged by me as created invalidly/illegally due to OPMA violations (see my 11/4/04 letter to Barbara Walsh). Also, the illegal 10/26/04 Senior Housing Agreement (48 units) and Resolution #188-2004 (36 units or not less than 36 units, take your pick) are markedly different from the June, 2003 FSHCP (36 units), which itself is also different from the most recent Senior Housing Ordinance (#2004-1218; 36 units of only 80% affordable housing). The markedly radical change in the Senior Housing Ordinance is only one of the legal challenges to any Senior Housing Ordinance.

e) Table 3 of the 11/4/04 Richard Priess Memorandum lists the Del Ben site as providing 39 on-site affordable housing units while the June, 2003 FSHCP adamantly lists the 39 units as RCA's.

f) Table 1: 1) The Axinn site's development approval is presently being legally challenged by me. One of the counts includes a violation of Montvale's steep slope ordinance whereby ½ of the development and ½ of the affordable housing would be eliminated (Melissa Orsen was given this information at my 8/5/04 "mediation session"). Plus I have just discovered that the Planning Board approval was done at an invalid/illegal Planning Board meeting.

2) Montvale Senior Housing- Montvale does not own the extra 0.6 acres needed to match ordinance #2004-1140. There is no deed!

3) Nottingham Planning Board approval is being legally challenged by me. Among other aspects, the NJDEP 100 year + 25% map lists buffers of fifty (50) feet along this portion of the Pascack Brook. A stream encroachment permit would have to be applied for, thus triggering compliance with the new Stormwater Management Regulations. A June, 2004 memo from Montvale's engineer – three months after the Planning Board approval- stated that Nottingham has not provided evidence that the development complies with the new Stormwater Management Regulations. This too was explained to Melissa Orsen at my 8/5/04 "mediation session". Just because a stream encroachment permit is applied for does not mean it would be granted. I will vigorously challenge in court any approvals to counteract the existing buffers along the Pascack Brook. COAH can expect zero development and **zero** affordable housing units at this site.

4) Roller Rink- see my legal challenges to Ordinance #2004-1225.

g) Bulk requirements in the Zone Limiting Schedule (128-6.3A) on pages 22-23 for the RCO Overlay Zone are completely different than those listed in Ordinance #2004-1225, the Ordinance passed on 10/26/04 which allegedly rezones five (5) sites for affordable housing; the same Ordinance which I am legally challenging as being invalid.

2) The 11/15/04 Montvale material sent to objectors has Montvale amending the Cliffside Park RCA agreement and the Garfield RCA agreement (based on Resolution #191-2004, dated 11/1/04), thus differing again from the June, 2003 FSHCP. And now, on 11/22/04 Montvale again passed a new Resolution (#205-

(7)

2004) amending the Garfield RCA. Excluding for a moment the constant amendments to the June, 2003 FSHCP, Resolution #191-2004 (11/1/04) is being legally challenged by me as invalid/illegal due to OPMA violations. I will inform COAH if I legally challenge Resolution # 205-2004 (11/22/04) as being invalid/illegal.

3) Located within the Del Ben tract is the headwaters of the Mill Brook, a Category-1 body of water since 8/2/04 thanks to ex-Governor McGreevey. As such, 300 foot non-development buffers along the streams and wetlands are automatic. Based on wetland surveys (from 1990 and 2004) there are about 350,000 square feet of wetlands (almost nine (9) acres) and 1,000,000 square feet of buffers (25 acres). That leaves **zero** space for any development, market rate or affordable housing. That is why I requested from Barbara Walsh a schematic or site plan showing where any development would be located. Plus, state law (RSIS) does not allow for unlimited cul-de-sac lengths for greater than 24 housing units. Chalk this objection up to Southampton, Howell Part I, Howell Part II.

Will COAH honor NJDEP Rulings (C-1) just as it honors another State Agency (SDRP lists Montvale as PA1)

In summation, if COAH places Montvale on the December, 2004 COAH schedule for certification review or grants Substantive Certification to Montvale it would be in violation of many state laws (OPMA, environmental, MLUL to name just a few). Of course, that is for the courts to make the ultimate decisions on these allegations - decisions which COAH honors as per Barbara Walsh and Melissa Orsen. It falls upon me to file suit in OAL and the Appellate Court because COAH disregards its own regulations and state laws.

See 92 NJ 158 at 333: "It is only if the proposed development is contrary to sound planning, or represents a substantial environmental hazard that it should be denied." My zoning lawsuits will prove that Montvale's FSHCP and COAH's certification are unrealistic, invalid, legally worthless pieces of paper.

Plus, at 8/5/04 mediation session I provided information to Melissa Orsen that Montvale is seeking to purchase 7.86 acres of Del Ben land for ballfields. This 7.86 acres is presently zoned AH-6 and its removal from AH would result in about nine (9) less AH units. This too has been ignored by Melissa Orsen.

Sincerely,

David Mann

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201-505-1429

10/13/03

Maureen Fullaway, COAH Director
PO Box 813
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Fax# 609-633-6056

Dear Ms. Fullaway,

Enclosed are my objections to Montvale's Fair Share Housing & Compliance Plan dated @6/19/03.

1) Montvale is seeking a $250,000 payment in lieu of onsite affordable housing for Site #1, for which the Montvale Planning Board has given approval to a development application for 18 market-rate single family homes.

N.J.A.C. 5:93-7.1 outlines Inclusionary Developments, including those created as part of an RCA. Given N.J.A.C. 5:93-8.10(c) and (d), which describes Development Fees, the development fee that Site #1 should generate is $800,000, based on a 32-unit RDP (see N.J.A.C. 5:93-5.6(b)1 and Montvale code 128-5.7.F(4) whereby inclusionary sites shall have a 20% set-aside). The 18 market-rate single family homes are replacing 32 low and moderate income units.

If one uses N.J.A.C. 5:93-8.10(a) and Montvale's Development Fee Ordinance (#94-973; zoning code, Chapter 57-52) then the development fee that Montvale is legally allowed to collect from Site #1 is between $90,000 (for eighteen $1 million houses) and $135,000 (for eighteen $1.5 million houses).

N.J.A.C. 5:93-8.10(c) discusses payments in lieu of building low/moderate income units within this Development Fee section. Such "payments in lieu of" are contingent on the municipal housing element & fair share plan providing a realistic opportunity for addressing the municipal fair share obligation. Since Montvale's plan is severely deficient this "payment in lieu of" should not be accepted.

As per N.J.A.C. 5:93-8.10(d) what is the financial incentive being offered to Chamberlain Developers (Site #1's contract purchaser) in return for paying a much higher development fee than legally allowed? No agreement may provide for a voluntary development fee without also providing for a comparable off-setting incentive.

This site should generate either $90,000-$135,000 or $800,000 in development fees. At the 9/17/02 Montvale Planning Board hearing for the 18 market-rate single family housing development, the issue of "extortion" arose.

2) The Dill/Rink site (Site #63) will have 72 total units with a 32-unit RCA being paid by K. Hovnanian, that site's contract purchaser since February, 2001. As per N.J.A.C. 5:93-5.6(b)1 and Montvale code 128-5.7 F(4), inclusionary sites shall have a 20% set-aside. Therefore, the maximum payment in lieu of constructing onsite affordable housing can only be valued at $350,000 (14 units= 20% of 72 total units), not the $800,000

N.J.A.C 5:93-8.10(c) discusses payments in lieu of building low/moderate income units within this Development Fee section. Such "payments in lieu of" are contingent on the municipal housing element & fair share plan providing a realistic opportunity for addressing the municipal fair share obligation. Since Montvale's plan is severely deficient this "payment in lieu of" should not be accepted.

As per N.J.A.C. 5:93-8.10(d) what is the financial incentive being offered to K. Hovnanian in return for paying a much higher development fee than legally allowed? No agreement may provide for a voluntary development fee without also providing for a comparable off-setting incentive. This site is an overlay zone in Montvale's Housing Element. N.J.A.C. 5:93-4.2(h) describes overlay zones as producing low/moderate income housing or a development fee. Therefore, N.J.A.C. 5:93-8 (Development Fee section) governs this purported "payment in lieu of".

3) Nottingham Apartments may not be able to provide any affordable housing units due to environmental reasons the town has purposely ignored.

This property is in a flood plain, flood hazard area, etc as per the NJDEP. At the 3/28/00 Mayor & Council meeting, whereby Nottingham owners sought increased development, in response to Councilmen concerns the Nottingham representative stated that engineering studies would be performed to determine if this project was feasible. To date, no such environmental results have been decided. The Nottingham owner is presently awaiting NJDEP determination, exclusive of any required permits. Based on the Howell and Southampton cases, this site is environmentally constrained and cannot provide any affordable housing.

Montvale is governed by N.J.A.C. 5:93-5.6(b)1, and its own ordinances approved by Special Master Caton and the courts- such as Montvale code 128-5.7 F(4) from Ordinances #94-974 and 94-988. Of all units developed on site in an affordable housing zone, 20% of sale units and 15% of rental units shall be for low/moderate income households. Nottingham will have 28 rental units. Therefore, only four (4) units can receive COAH credit for low/moderate income households. The Nottingham site is an overlay zone in the Montvale Housing Element. N.J.A.C. 5:93-4.2(h) governs overlay zones. Although a development fee is not involved, Montvale must answer how N.J.A.C. 5:93-8.10(d) plays into this site.

There is no proof that N.J.A.C. 5:93-7.2 (Distribution of Low & Moderate Income Units), N.J.A.C. 5:93-7.3 (Bedroom Distribution), and N.J.A.C. 5:93-7.4 (Establishing Rents) are being followed. For example, how will Nottingham create any 3-bedroom affordable units when the existing 140-unit market rate apartments are either 1-bedroom or 2-bedroom units?

Also, N.J.A.C. 5:93-5.15 was violated if the density creating the 28 units is greater than 10 units/acre and if the set-aside is greater than 15%. For rentals, a maximum of 10 units/acre must be used. What is the acreage size of this portion of Nottingham Apartments creating the 28 units?

4) The Baldanza site (site #56, 57; Block 2408, Lots 24-25): same objections as used for the Nottingham site N.J.A.C. 5:93-5.15 in violation if the set-aside is greater than 15% of total units, which it is.

5) N.J.A.C. 5:93-9.1 outlines Controls on Affordability. N.J.A.C. 5:93-9.1(b)1 and (b)4 clearly state that each applicant shall be required to provide income documentation, **including child support**. The applicant chosen to live in 421 Laurel Brook Road (Michael Millett) **falsified** his initial application with the Housing Affordability Service (HAS), when he excluded child support from his income. The then-Bergen County HAS field rep, Diane Harris, since promoted to supervisor, did not verify this person's application even though Ms. Harris knew that three children under the age of 18 would be part of this divorced father's household. The child support, if not his job income, would have placed the applicant above the income guidelines at the time of his initial application and at the time of his final certification.

Contrary to the COAH planner, income eligibility criteria used for this applicant **was not** compliant with COAH regulations. And contrary to the COAH planner, I do not allege this; **I prove this!** Just note the income documentation, including child support, from the applicant's bankruptcy.

The most recent response from the COAH planner is that maybe the divorce settlement- including child support- for the applicant/renter at 421 Laurel Brook Road, Michael Millett, was finalized after he was chosen to live in the affordable housing unit. **This response is completely incorrect**- I have the divorce settlement paperwork dated 1995- and just another excuse by COAH to disregard its own rules and the requirements conditioning Judge Ciolino's 12/16/94 Judgment of Compliance and Order of Repose.

From the 5/7/01 "Borough of Montvale's Response to COAH's Request for Additional Information": The 8/20/96 Developer's Agreement between Montvale (1st part) and US Cable (2nd part) – page #7, #G- requires the builder to comply with "the establishment, marketing, and administration of the affordable housing component associated with the site". The 4/4/95 Preliminary Site Plan Approval- page #23, #13- requires "compliance by the applicant with all design, development, marketing, and sale or rental criteria for the affordable housing units pursuant to the rules of COAH". **These requirements were not honored by the builder, Bob Meyers.**

N.J.A.C. 5:93-9.16 requires that owners of low and moderate income rental units shall not offer rental units to non-income eligible households. **Question**. Ask the developer of Bear Brook, Bob Meyers, why he chose this non-minority applicant to live at 421 Laurel Brook Road and why this developer chose his daughter (Allison Myers) to live in another affordable housing unit. **Answer: The applicant ahead of the present tenant (Michael Millett) was a Hispanic family and the builder (Bob Meyers) dare not take that choice.**

421 Laurel Brook Road does not deserve to receive COAH credit until the present tenant is evicted and replaced with an income eligible tenant. This matter is being reviewed by the Department of Community Affairs Commissioner. The COAH planner, acting belligerently, threatened to deny accepting this part of my objection, going so far as to challenge me to bring litigation against COAH and/or the State of New Jersey if I did not like that decision.

6) Montvale seeks additional credits for the Greenway development and the Bear Brook development because of non-age restricted rental units (2 in Greenway; 5 in Bear Brook).

The rental units in these developments are eligible **for only a 1.33 credit per unit**, not 2.0 units of credit per each rental unit which Montvale claims. This is because the 12/16/94 Judgment of Compliance and Order of Repose granted by Judge Peter Ciolino approving Montvale's FSHCP was based on Montvale's 1987-1993 housing obligation and the COAH rules in place at the time.

Special Master Philip Caton based all his reports and approvals on the rules in place prior to COAH's 3/15/93 proposed amended rules changes which took effect 6/6/94. See Caton's 9/17/93 report when he discusses this.

The FSHCP which Judge Ciolino approved was guided by N.J.A.C. 5:92-14.4 with regard to rental unit credits- a 1.33 credit per rental unit. The Greenway and Bear Brook developments were to have a 20% set-aside.

From the 5/7/01 "Borough of Montvale's Response to COAH's Request for Additional Information". The Greenway project's final site plan approval on page 2, dated 11/2/98, listed 12 affordable housing units- ten(10) for sale; two(2) for rent- as 20% of the 59 total housing units. This was all subject to Special Master Caton's approval, as noted in the 11/2/98 final site plan approval. **Montvale should only receive 12 credits for this project**, even taking into account N.J.A.C. 5:92-14.4.

From the 5/7/01 "Borough of Montvale's Response to COAH's Request for Additional Information": The Bear Brook final site plan approval on page 2, dated 5/7/96, listed seven(7) affordable housing units as 20% of the 33 total housing units. This too was subject to Special Master Caton's approval, as noted in the 5/7/96 final site plan approval. Five(5) rental units were to receive the seven(7) unit credit (see page 6 of the 5/7/96 final site plan approval). **This project can only receive seven(7) credits**, not the ten(10) Montvale claims.

7) The Borough claims 43 total credits for its Senior rental housing project (32 out of 36 on-site units receiving 1.33 credits each). This is incorrect.

N.J.A.C. 5:93-5.14 describes age-restricted housing, which then refers to N.J.A.C. 5:93-6.1(b)2. The number of age-restricted units in Montvale can be .25 (RDP-transferred or proposed RCA units) = .25 (188-94) = 24. Montvale is constructing 36 units; as per COAH rules only 24 units can ever receive credit.

N.J.A.C. 5:93-5.15(a) lists the rental obligation of a town, like Montvale, that seeks a vacant land adjustment pursuant to N.J.A.C. 5:93-4.2. The rental obligation = .25 (RDP) = .25 (188) = 47.

N.J.A.C. 5:93-5.15(d)2 states that no more than 50 percent of the rental obligation defined in N.J.A.C. 5:93-5.15(a) shall receive a bonus for age-restricted rental units. For Montvale this means 50% X rental obligation in N.J.A.C. 5:93-5.15(a) will receive 1.33 credits.

= 50% (47) = 24 units X 1.33 credits/unit = 32 credits

Credit for Montvale's Senior Housing = 24 + 8 = 32, not the 43 Montvale claims.

Montvale may be eligible for even less than 32 credits on its Senior Housing, possible even zero. As per the 10/15/02 Montvale Planning Board hearing minutes on the Senior Housing, it was listed that 75% of the total units shall be for moderate income and 25% of the total units shall be for low income. N.J.A.C. 5:93-7.2(b) lists that at least half of all affordable rental units within an inclusionary development shall be affordable to low income households. This is reiterated in Montvale zoning code 128-5.7.F(5).

The 10/15/02 Planning Board hearing minutes for Montvale's Senior Housing also discusses monthly rents to be charged- $830 for moderate income and $550 for low income, excluding utilities. The total rent plus utilities must be known before COAH gives credit for any units because N.J.A.C. 5:93-7.4 establishes that maximum allowable rents- plus utilities- cannot exceed 30% of the gross monthly income of the appropriate household size referenced in N.J.A.C. 5:93-7.4(a). Depending upon the utility charges, these rents may be too high for low

and moderate income households and thus ineligible for any COAH credit. This is reiterated in item #14 (p.7) of the 7/1/03 Planning Board resolution.

The size of the Borough site #46 **is not** 1.0077 acres (#16, p.8 of the 7/1/03 Planning Board resolution). Deeds show R.O.W. and/or easements on the sites not belonging to the Montvale property. These R.O.W./easements must be subtracted from the lot size. Therefore, Borough owned site #46 is less than the one (1) acre required for the Planning Board resolution and Montvale Ordinance 2000-1140 (Senior Citizen Housing Zone) to be valid. **As of now, zero Senior Housing units can be built or receive COAH credit.**

Access to the Borough site #46 is proposed via Nottingham Road except for emergency vehicles (7/1/03 Planning Board resolution, #7, p.6). There is some question as to whether the Nottingham property borders exactly with the Borough site. Montvale's present deed purchasing the site #46 is not clear in this regard. In addition, Montvale Council denied Daniel Antognini, 1 Hinson Place, Park Ridge,NJ, permission to access his Park Ridge development site using a Montvale street (Hillside Avenue) which borders exactly flush to his property. To deny Mr Antognini means Montvale must deny itself. Emergency vehicles do not have sufficient legal access via Grand Avenue- the R.O.W./easements are only 20 feet in width.

The Senior Housing project is in violation of State and Federal guidelines regarding ADA- laws which must be strictly followed in part because Montvale received HUD Community Development Block Grant money to purchase site #46.

ICC-ANSI, A117.1 (1998), and the Barrier-Free Subcode of UCC (subchapter 7) require the ground floor to be handicapped adaptable. Entrance doorways, for example, must be handicapped accessible. With regard to the three (3) handicapped parking spaces, one must be van accessible with an eight (8) foot wide access isle, the other two must be car accessible with five (5) foot wide access isles.

With regard to Residential Site Improvement Standards (RSIS), N.J.A.C. 5:21-4.14(b) requires 1.8 parking spaces/dwelling unit. As per N.J.A.C. 5:21-4.14(c), Montvale must provide documentation to support its reduction from 65 parking spaces to the 25 proposed for the Senior Housing. In addition, note b to Table 4.4 within N.J.A.C. 5:21-4.14(b) requires 0.5 visitor parking spaces/dwelling unit, or a total of 18 visitor parking spaces and not the two (2) that Montvale proposes.

I realize that COAH does not care if Seniors are herded into sardine cans. However, COAH must abide by applicable State and Federal laws. **As of now, zero Senior Housing units can be built or receive COAH credit**. This site does not meet the litmus test of being available, suitable, developable, and approvable as defined in N.J.A.C. 5:93-1. Also, Montvale has not proven that the requirements of N.J.A.C. 5:93-5.5 have been satisfied.

8) Montvale is proposing 98 RCA units.

Chamberlain- 10 units
Dill/Rink- 32 units
Janovic (old)- 15 units
Janovic (new)- 2 units
Del Ben- 39 units

As per N.J.A.C. 5:93-6.1(a)2, Montvale is eligible to RCA only .5 (RDP)= .5 (188)= 94 units. Montvale's Housing Element & Fair Share Plan is deficient by an additional four (4) units which are ineligible to be part of an RCA. These four (4) units must be part of on-site affordable housing units or the above RCA agreements are invalid.

9) Following N.J.A.C. 5:93-5.6(b)1, N.J.A.C. 5:93-8.10, and Montvale code 128-5.7.F(4), the Janovic (new) RCA is invalid. What is the financial incentive being offered in return for paying a much higher development fee or "payment in lieu of" than legally allowed? No agreement may provide for a voluntary development fee without also providing for a comparable off-setting incentive. A 5-unit inclusionary development- or one with a "payment in lieu of" providing an RCA- allows a maximum of one (1) RCA unit (20%).

10) The Axinn site violates Montvale code 128-6.3.1- no construction allowed on slopes at least 15% in grade. If this is allowed then the RDP must be revisited to add additional units that Montvale deducted based on its steep slope ordinance.

N.J.A.C. 5:93-7.3 (Bedroom Distribution) is also being violated. Exhibit B of the Montvale/Hovnanian agreement (at #5) lists bedroom distribution of: 50%- 2 Bedroom
50%- 3 bedroom

N.J.A.C. 5:93-7.3 requires between 10-20% of the affordable housing units to be one (1) bedroom while Montvale code 128-5.7.F(7) requires:

1 bedroom- 50%
2 bedroom- 35%
3 bedroom- 15%

The Axinn/Hovnanian/Montvale agreement is invalid.

11) As per N.J.A.C. 5:93-5.13(b) the DePiero site does not qualify to retain its inclusionary zoning.

In COAH's 3/8/01 report it was stated that Montvale "must provide a status update on the [DePiero] site including the criteria in the attached policy for first round sites that have not developed." COAH has allowed Montvale to defy this demand.

Montvale, as a municipality seeking a vacant land adjustment per N.J.A.C. 5:93-4.2(h), has designated the DePiero site as an overlay zone to satisfy a portion of unmet need. Overlay zones must still produce low and moderate income housing within the period of substantive certification. This will not be accomplished, as Elaine Depiero's 6/12/02 Letter-to-the-Editor of Community Life makes quite clear that the DePiero site will not produce any housing- let alone affordable- within at least the next 80 years.

Montvale's entire 255- unit affordable housing obligation must be satisfied within the period of substantive certification. Not only is this within COAH Substantive Rules, this is also part of the Fair Housing Act (NJSA 52.27D-301 et seq.), legal cases (Howell, Southampton, Toll Brothers v. West Windsor (1996), etc.)

COAH must also follow N.J.A.C. 5:93-3.5 and 5:93-5.6 to determine whether the DePiero site will produce affordable housing. In addition, a COAH release titled "Information Required for Previously Certified But Undeveloped Sites" and dated December 1994, requires, among other items, that the previously certified site "can realistically be developed within the term of the new certification". The DePiero site fails miserably on this account.

In Allan Deane Corp. v. Bedminster Township (205 NJ Super 87, 116) Judge Serpentelli wrote of intangible factors that rendered a plan unrealistic. Downgrading Elaine DePiero's 6/12/02 Letter-to-the-Editor of Community Life from tangible to intangible provides the existence of such an intangible factor that has rendered the DePiero tract a site that can no longer legitimately be counted on to produce affordable housing.

The DePiero site deserves no COAH credits whatsoever!

Sincerely,

David Mann

David Mann

cc: Maureen Alwan-Iarossi, Montvale Borough Clerk

HUNTINGTON CARVER, L.L.P.
312 Kinderkamack Road
Westwood, New Jersey 07675
(201) 666-3388
Attorneys for BOROUGH OF MONTVALE

IN RE: PETITION FOR SUBSTANTIVE CERTIFICATION OF BOROUGH OF MONTVALE, BERGEN COUNTY, NEW JERSEY

CERTIFICATION OF RICHARD PREISS IN OPPOSITION TO HENRY J. BONNABEL'S MOTION FOR ENTRY OF A SCARCE RESOURCE RESTRAINT

I, Richard Preiss, P.P., of full age, hereby certify as follows:

1. I am a professional planner licensed in the State of New Jersey, and a Vice President and Principal of Phillips Preiss Shapiro Associates, Inc., a planning and real estate consulting firm with offices in 54 Shrewsbury Avenue, Red Bank, New Jersey, and 434 Sixth Avenue, New York, New York.
2. I have been retained by the Borough of Montvale since January 2001 to provide professional planning services with regard to the preparation of a housing element and fair share plan and petition for substantive certification before COAH.
3. I am very familiar with the municipal obligation to provide low- and moderate-income housing pursuant to Southern Burlington County NAACP v. Mt. Laurel, 92 NJ 158 (1983) ("Mt. Laurel II"), the New Jersey Fair Housing Act, NJSA 52-27D-301, et seq. ("FHA"), and the Council on Affordable Housing's (COAH's) substantive rules, NJAC 5:93-1 et seq. The founder of our firm, Peter Abeles, was the planning expert on behalf of the Southern Burlington County NAACP in the original Mt. Laurel suit. After joining the firm, starting in 1984, I served as a consulting planner for numerous clients who sued municipalities

3. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false I am subject to punishment.

Dated: October 22, 2003

Russell R. Huntington, Esq.

F:\Client Files\Borough of Montvale\Bonnabel\RRH Certification 10 22 03\jk

2003-1207. In each case, Mr. Henderson, while not speaking officially on behalf of COAH, has verbally endorsed and encouraged the Borough to move forward with the rezoning.

33. Finally, to the extent that the Borough's fair share plan is deemed by COAH to fall short of meeting its full obligation, then a number of other means and other sites—including two of Mr. Bonnabel's vacant sites encompassing over 25 acres—would, as Mr. Kent-Smith has pointed out, be available to accommodate the shortfall.

34. While the Borough is confident that it will be able to meet its obligation under the presently adopted plan, the remedy by COAH should not be to impose a scarce resource order at this point in time and further delay the provision of affordable housing in the Borough and in the region, but to require modification of the Fair Share Plan so that the Borough does meet its obligation.

35. At that point in time, if the Borough cannot otherwise meet its obligation, it would consider other available sites, including two of Mr. Bonnabel's sites, for such a purpose. However, it is entirely inappropriate to impose restraints at this time where the Borough is proceeding forward in implementing a Plan that satisfies its entire affordable housing obligation.

36. Finally, Mr. Kent-Smith's allegations that the four sites to be rezoned are "unsuitable for development" or call for excessive "set-asides" or "violate the principles of planning" are completely without merit. The Axxin, Baldanza, and Janovic sites were all identified in COAH's RDP determination to be suitable for inclusionary housing developments. (The Rink site was not identified as an RDP site due to its unavailability at the time when the RDP for inclusionary housing was being calculated. It has since been identified as a site with a potential to contribute to the Borough's "unmet need," however.)

37. As evident by the concept site plans incorporated into the negotiated settlement agreements on all four sites, and the reasonableness of the zoning regulations implementing such plans in Ordinance 2003-1207, full development as envisioned in the Borough's Amended Housing Element and Fair Share Plan can and will be realized.

38. There is no basis upon which Mr. Kent-Smith can argue that the number of affordable housing units required to be provided by set-asides (on the Axxin and Baldanza properties) or the payments in lieu of providing units on-site through RCAs for which agreements have already been made (on the Janovic and Rink sites), will not be forthcoming.

Paragraph 6, below; or (2) a reference to lots on a plat that has been or will be filed simultaneously with Closing with the Clerk of Bergen County.

2. **PURCHASE PRICE/CLOSING**

A. Buyer shall pay to Seller a Purchase Price of [redacted] per residential unit purchased hereunder for which All Approvals (as defined in Paragraph 5, below) have been obtained pursuant to this Agreement (such approved residential units referred to herein as "Homes"). Buyer agrees that the homes for which All Approvals, will be sought shall be Age-restricted ("Active Adult") residential condominium units in buildings containing garage parking below two or three living levels. For example, if All Approvals are obtained for 108 Homes, the Purchase Price shall be [redacted] (number of Homes x [redacted] per Home).

B. Closing of title is anticipated to be completed in 3 phases, the 1st phase containing approx. 48 Homes, the 2nd Phase containing approx. 24 Homes, and the 3rd Phase containing approx. 36 Homes.

C. The Purchase Price shall be paid at each Phase Closing by wire transfer, bank teller's check or certified check, at Buyer's option, as follows:

(1) Phase I Purchase Price. Phase I shall consist of approximately 48 Homes. The Phase I Purchase Price shall be [redacted] ([redacted]) Dollars calculated by multiplying the 48 Homes in Phase I by [redacted]. The Phase I Closing shall take place Thirty (30) days after receipt of All Approvals (as defined in Paragraph 5, below).

(2) Phase II Purchase Price. Phase II shall consist of approximately 24 Homes. The Phase II Purchase Price shall be [redacted] ([redacted]) Dollars calculated by multiplying the 24 Homes in Phase II by [redacted]

Buyer _____ Seller _____

WJLP
ORIGINAL

AGREEMENT OF SALE

between

R2D2, L.L.C.
as "Seller"

-and-

K. Hovnanian North Jersey Acquisitions, L.L.C.
as "Buyer"

for Premises located in

Borough of Montvale & Borough of Woodcliff Lake
Bergen County
New Jersey

- dated -

July 26, 2001

D. In the event that All Approvals are received for fewer than ninety (90) Homes, Buyer may either: (1) terminate this Agreement, in which event this Agreement shall become null and void and (a) neither party shall have any further obligation to the other except for those obligations which expressly survive the termination of this Agreement, and (b) Seller shall return the Deposit to Buyer together with interest accrued thereon; or (2) proceed to the closing and pay an adjusted Purchase Price based on the number of Homes for which All Approvals are obtained; provided, however, that in the event that All Approvals are obtained for fewer than ninety (90) Homes, the Purchase Price shall nonetheless be based on ninety (90) Homes and shall be not less than [redacted] ($[redacted]) Dollars (the "Minimum Purchase Price").

E. The Phase I Closing shall take place not later than thirty (30) days after Buyer has obtained All Approvals, as defined in Paragraph 5 (A), below. The outside date on which Phase I Closing is to take place is forty-eight (48) months from the date of this Agreement, which includes four (4) six (6) month Extensions, as defined in Paragraph 5 (A), below. This time period may be extended pursuant to the tolling provision under paragraph 5 (C). Buyer shall have the right to pay the Purchase Price and close title to Phase I of the Premises before the outside date set forth above without penalty, upon ten (10) days' written notice to Seller.

F. The Purchase Price is based upon the parties' mutual understanding that no Mt. Laurel Homes (defined in this Paragraph, below) are required to be constructed on the Premises and that Buyer is able to obtain certificates of occupancy for all Market Homes (defined in this Paragraph, below) on the Premises without any requirements to construct Mt. Laurel Homes or to pay any fees in connection with such affordable housing, except, if necessary, Seller shall settle the Prerogative Writ action referenced in paragraph 5 below via the obligation for the Developer of the Premises to pay not more than ½ of 1% of the assessed value for each home

Buyer _____ Seller _____

NOTE: In accordance with Section 7(Q), Seller will endeavor to close and abandon or relocate monitoring wells located around buildings 1, 2, 3, 4, 5 & 6. If same can be accomplished before the end of the Rezoning Period this plan will be amended to re-phase the buildings as follows;

-Phase 1 - Buildings 1, 2, 3, 4, 5
-Phase 2 - Buildings 5, 6
-Phase 3 - Buildings 7, 8, 9

GOLDBERG, MUFSON & SPAR

A PROFESSIONAL CORPORATION

COUNSELLORS AT LAW

LEONARD H. GOLDBERG
ANN MUFSON (1935-1997)
MICHAEL R. SPAR
JEFFREY KANTOWITZ
DENICE P. GILCHRIST
MICHAEL S. RUBIN

200 EXECUTIVE DRIVE
WEST ORANGE, NEW JERSEY 07052
(973) 736-0100
(973) 736-0961 (TELECOPY)

OFFICES IN NEW YORK

March 31, 2003

BY TELECOPY (609) 633-6056 AND REGULAR MAIL

New Jersey Council on Affordable Housing
101 South Broad Street
P O Box 813
Trenton, New Jersey 08625-0813

Attention: Maureen Fullaway, Executive Director

Re Comment to Montvale Borough, Bergen County Mediation Report

Dear Ms. Fullaway:

We represent K. Hovnanian North Jersey Acquisitions, L L C. (KHNJA). Please accept these comments to the March 17, 2003 COAH Mediation Report in the captioned matter.

1. With respect to the site designated as Block 3301, Lots 3 and 4, please be advised that KHNJA has had extensive discussions and reached agreement with the Borough with respect to a rezoning of the property. The parties's understanding is being reduced to writing for execution and implementation by them. This re-zoning will provide for contributions in lieu of onsite development of affordable housing.

2. With respect to the "Axxin" property identified as Block 1903, Lot 1 and Block 2001, Lots 1 and 2 in the mediation report, please be advised that the Borough and KHNJA concur with respect to the zoning described in the mediation report. This re-zoning too, is being reduced to writing for execution and implementation by the respective parties.

We appreciate the opportunity to comment and participate in this matter and to assist

Montvale to satisfy its affordable housing obligation.

Very truly yours,

Jeffrey Kantowitz

JK:cai

cc: Borough of Montvale
Russell Huntington Esq
K. Hovnanian North Jersey Acquisitions, L.L.C.

EXHIBIT G

Phillips Preiss Shapiro Associates, Inc.

Planning and Real Estate Consultants

December 8, 2004

Lucy Voorhoeve, Executive Director
Council on Affordable Housing
101 South Broad Street
Trenton, New Jersey 08625

RE: **Borough of Montvale**
Comment on Mediation Report of Melissa J. Orsen, Esq.

Paul A. Phillips
Richard Preiss
John Shapiro
Kenneth Bowers
Paul Grygiel

434 Sixth Avenue
New York, NY 10011
212 475 3030
Fax 475 0913
info@ppsaplanning.com

54 Shrewsbury Avenue
Red Bank, NJ 07701
732 764 0500

Dear Ms. Voorhoeve:

I am submitting this letter on behalf of the Borough of Montvale and in support of the Mediation Report prepared by Ms. Orsen dated November 24, 2004.

We agree with Ms. Orsen's responses to individual objections raised during mediation as well as the recommendation made at its conclusion. This letter is provided to supplement the record and set forth the Borough of Montvale's position on some of the objections raised. These are set forth below:

A. Objections of David Mann

1. Payments in lieu

Mr. Mann raised a number of objections relating to the amount of fees provided in lieu of providing affordable housing in a number of instances. Montvale's Fair Share Plan and proposed zoning provide for this option in the following instances: Chamberlain—the objection to which Mr. Mann has withdrawn, Janovic 2 and the Rink/Hovnanian site.

With respect to Janovic 2, the Borough agreed to amend the zoning to increase the number of single-family homes buildable on the property from one (1) to four (4), in exchange for a payment in lieu of $50,000 to fund a 2-unit RCA with Cliffside Park. First, the payment is a reasonable exaction in exchange for the density bonus. Second, the agreement was made willingly by Mr. Janovic, a local builder who similarly built single-family homes in Montvale at higher densities than the zoning permitted in exchange for a payment of $300,000 to fund a 15-unit RCA in the first fair share cycle, and which is now complete. The homes were built and sold, and Montvale received the payment. Based upon

this experience, there is no reason to believe that the payment is either unreasonable or that the project is infeasible, particularly in light of the fact that COAH's rules do not restrict the amounts of such payments freely negotiated between a willing developer and a municipality. Finally, the Borough has passed a resolution indicating that it is prepared to bond for the two RCA units in the event the payment is not forthcoming.

With respect to the Rink/Hovnanian site, the Borough and the owner/contract purchaser willingly and freely entered into an agreement whereby an $800,000 payment was to be made in exchange for a rezoning which would permit 72 units of senior housing to be provided on the Montvale portion of the site in place of the office-research development permitted as-of-right. (A portion is located in Woodcliff Lake.) The $800,000 is to be used to fund a 32-unit RCA with the City of Garfield. Ahead of the conclusion of mediation, the Borough rezoned the property to permit such a development, and is currently working with the developer and the adjacent community of Woodcliff Lake to resolve an access issue involving an adjacent property owner and the Bergen County Transportation Department, while at the same time processing their application for site plan approval. The project, with renowned national builder K. Hovnanian Companies, has been built elsewhere in the State of New Jersey, is economically feasible, viable and proceeding in a timely fashion, indicating that it is indeed realistic. All aspects of the agreement, including the amount of the payment, its form, the use of the funds and the timing of payment, comport with COAH's rules.

2. Overlay Zoning

Mr. Mann objects to the proposed overlay zoning Montvale has adopted or intends to adopt, to address its unmet need.

Per Montvale's adopted Amended Housing Element and Fair Share Plan, three sites were identified for rezoning to affordable housing overlay zones to meet Montvale's unmet need of 67 units. They were the Nottingham site, the Rink/Hovnanian site, and the DePiero site. In the first instance, all three sites are currently zoned for affordable housing, with the following status. The Nottingham site was rezoned to permit 36 additional multifamily units, of which 8 units would be unrestricted 1- and 2-bedroom affordable rental units. This project has already received site plan approval (April 20, 2004).[1] The Rink/Hov-

[1] Mr. Mann also claims, without substantiation, that the Nottingham site is environmentally sensitive and cannot provide affordable housing. During the site approval process, all such factors were evaluated; there are no environmental constraints that would not permit the site to proceed with development as approved.

nanian property, as indicated above, has been rezoned and in accordance with the overlay zoning. An application for site plan approval has been made which is currently being reviewed by Montvale, although a zoning amendment necessitated by access issues has delayed this approval process. This amendment should be adopted by year's end and a joint review of site plan approval by Montvale and Woodcliff Lake is expected to proceed in early 2005. Thus both the Nottingham and Rink/Hovnanian projects are expected to yield affordable housing within the relatively near term.

The DePiero property is currently zoned AH-8, which would yield 160 total units, 32 of which would be inclusionary affordable units. Such zoning has been in place since 1994, resulting from the court-approved first-round compliance plan. Since Montvale was not certain that the property owner would elect to proceed within the next 6 years, it proposed to put the property into an overlay zone to meet its unmet need, which is fully compliant with COAH's rules. Montvale has also indicated its willingness to have the DePiero property remain zoned as is, in a conventional AH-8 affordable housing district, with no other underlying zoning option.

In conclusion, all three sites comport with COAH's rules for meeting its unmet need, and two of which are expected to yield affordable housing units in-town, in the near term.

3. Bedroom/Income Distribution

Mr. Mann has objected to the crediting of individual projects which do not comport with COAH's requirements for bedroom and income distribution. A waiver from NJAC 5:93-7.2 and NJAC 5:92-5.14 has been requested by Montvale, which COAH's Compliance Report (dated November 24, 2004) has recommended granting on the basis that in aggregate, the municipal-wide zoning will produce affordable housing that comports with these requirements.

4. Age-Restricted Units/Senior Housing Project

Mr. Mann objects to Montvale's senior project on the basis that it is not approvable and that units in excess of the maximum permitted by COAH's rule would be credited.

The Montvale Senior Housing project already received site plan approval on July 1, 2003, upon which basis the developer would be entitled to proceed with development. However, by mutual consent, the Borough and the applicant have entered into a subsequent agreement which would allow for the addition

of an 0.6 acre adjacent portion of land to be utilized for parking for the senior project, thereby strengthening its feasibility and allowing for a much improved design. As part of the settlement, the applicant is obligated to proceed with the approvals and development of the property in the short term. As part of the process, Montvale will amend its zoning map to include the 0.6 acre parcel in the LMSCH zone. Otherwise, the proposed development comports with the requirements of the zone. Montvale has also submitted a developer's pro-forma and proof that funding is in place to build the project, and has also adopted a resolution indicating that if necessary, the Borough itself would provide the necessary financial wherewithal for the project to be constructed.

COAH has indicated in its Compliance Report that a maximum of 32 of the 36 proposed units can be credited towards the 188-unit RDP, with a 3-unit senior rental bonus, with which Montvale agrees.

B. Objections of Reno Del Ben

1. Density

This objector has indicated that the property is suitable for development at a higher density (14 units/acre) than zoned (6 units/acre).

Montvale disagrees with this statement. COAH, in establishing the RDP for Montvale, indicated its suitability at 8 units per acre. Irrespective, COAH rules permit a municipality to determine the means whereby its affordable housing obligation is to be satisfied (except in the case where a builder is entitled to a court-ordered builder's remedy, which is not the case here). Montvale's zoning of the property at AH-6 (6 units per acre) comports with the minimum presumptive density established under COAH rules, and was established per the court-sanctioned compliance plan in the first fair share round. Montvale intends to retain such zoning in this second round.

2. One-Acre Zoned Portion of Del Ben Site

This objector indicates that the portion of the Del Ben site zoned for one-acre development should be rezoned for affordable housing. Per the court-sanctioned compliance plan, a ±13 acre portion of the site remained in the R-40 (one-acre) residential zone, and was not rezoned for affordable units. Since Montvale's plan fully provides for its fair share of low- and moderate-income housing, it is not obligated to change the zoning of this portion of the site.

3. Cost-Generating Features

The objector indicates that Montvale's affordable housing ordinance still contains unnecessary costs-generating features.

All of the sites rezoned for inclusionary development or for payment-in-lieu of affordable housing were either subject to the court-sanctioned compliance plan[2] (in which case such cost-generating features would presumptively have been eliminated), or by virtue of settlement agreements with landowners/developers[3] (in which case their agreement would indicate their willingness to accept and comply with the requisite building standards and development regulations). There are therefore no sites in the Fair Share Plan for which such cost-generating features have either not already been sanctioned by the court or agreed to by the owners/developers.

C. Citizens Groups of Upper Saddle River Road

This group has not indicated any specific or substantive objection to Montvale's Fair Share Plan, and have only recently indicated their desire to be included as an inclusionary housing site in Montvale.

This group did not indicate their willingness to be included as a fair share site in a timely fashion, i.e., in the objection period during which Montvale's RDP was being established. Moreover, no evidence has been submitted indicating that the four properties, all of which contain viable, habitable single-family homes in excellent condition, meet COAH's requirements as suitable for inclusionary development. Finally, since Montvale's plan is capable of fully addressing its fair share obligation, it is not necessary to consider the use of the sites for producing affordable housing.

D. Franklin Avenue Residents

Objections of this group relate to the rezoning of the Baldanza property for an inclusionary development of 12 apartment units, 3 of which would be unrestricted affordable rental units.[4] These objectors claim the site does not provide

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[2] This includes the following sites: Greenway, USC Cable, Janovic I, Metropolitan Homes, Rockland Built Homes, Del Ben, DePiero and Montvale Senior Housing.

[3] This includes the following sites: Janovic II, Chamberlain, Baldanza, Bonnabel, Axxin/Hovnanian, Rink/Hovnanian and Nottingham.

[4] One of the objections is related to failure to provide the public with documentation relating to the site, which Montvale has already addressed separately in a lawsuit filed in the Superior Court, and which is unrelated to COAH's substantive or procedural rules.

a realistic opportunity to provide affordable housing and fails to address relevant traffic and safety issues.

The Baldanza site has already been rezoned and a site plan application was submitted which comports with such zoning requirements. The developer of this property has built many residential projects in Montvale, and there is no basis to substantiate the claim that the proposed project is infeasible. With respect to traffic and safety issues, the settlement agreement, which includes a conceptual plan upon which basis the zoning regulations and design standards were drafted, were subjected to review by Montvale's engineer for preliminary review, and determined to meet minimum standards of health and safety, appropriate at the zoning/master plan level. Moreover, during site plan approval, a more detailed review of these issues will be conducted, ensuring that all safety- and traffic-related issues will be satisfactorily addressed.

On behalf of the Borough of Montvale, I would like to commend the COAH staff—in particular Ms. Orsen, Barbara Walsh and Keith Henderson—for their diligence, their persistence and help in mediating and fashioning the Fair Share Plan and implementation measures that are now before the Council for Substantive Certification.

Yours sincerely,

Richard M. Preiss

RMP:jr
cc: Service List
00182

BOROUGH OF MONTVALE
BERGEN COUNTY, NEW JERSEY
RESOLUTION NO. 217-2017

A Resolution Approving the Settlement Agreement with Fair Share Housing Center to Resolve the Borough's Affordable Housing Declaratory Judgment Action

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015)(Mount Laurel IV), on July 2, 2015, the Borough of Montvale (hereinafter "Montvale" or the "Borough") filed a Declaratory Judgment Complaint in Superior Court, Law Division seeking, among other things, a judicial declaration that its Housing Element and Fair Share Plan (hereinafter "Fair Share Plan"), to be amended as necessary, satisfies its "fair share" of the regional need for low and moderate income housing pursuant to the "Mount Laurel doctrine;" and

WHEREAS, the Borough simultaneously sought, and ultimately secured, a protective order providing Montvale with immunity from all exclusionary zoning lawsuits while it pursues approval of its Fair Share Plan; and

WHEREAS, the trial judge appointed Frank Banisch, P.P., A.I.C.P. as the Special Court Master (hereinafter the "Court Master"), as is customary in Mount Laurel matters adjudicated in the courts; and

WHEREAS, with assistance from the Court Master, Montvale and Fair Share Housing Center (hereinafter "FSHC") engaged in good faith negotiations which resulted in an amicable accord on the various substantive terms and conditions as set forth in the Settlement Agreement attached hereto as Exhibit A; and

WHEREAS, the Borough was represented in these negotiations by Special Counsel Jeffrey R. Surenian, Esq., as well as the Borough Attorney and the Borough Planner, with additional consultation and input received from the Planning Board Attorney and the Borough Engineer; and

WHEREAS, through this process, the Borough and FSHC agreed upon the Borough's affordable housing obligations and the compliance techniques necessary for Montvale Borough to satisfy its "fair share" of the regional need for low- and moderate-income housing; and

WHEREAS, the Borough and FSHC also agreed to present the Settlement Agreement to the Trial Judge for approval at a duly-noticed Mount Laurel Fairness Hearing; and

WHEREAS, although there is a well-established policy favoring the settlement of all forms of litigation, the settlement of Mount Laurel litigation is particularly favored because (1) it avoids the expenditure of finite public resources; and (2) expedites the construction of safe, decent housing for the region's low- and moderate-income households; and

WHEREAS, in light of the above, the Borough Council finds that it is in the best interest of the Borough of Montvale to execute the attached Settlement Agreement with FSHC and to take various other actions delineated below, which will ultimately result in approval of the Borough's Fair Share Plan which, in turn, will maintain the Borough's immunity from all Mount Laurel lawsuits for the ten-year period set forth in the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 to 329.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Montvale, County of Bergen, State of New Jersey, as follows:

1. The Borough Council hereby authorizes and directs the Mayor and Borough Clerk to execute the Settlement Agreement attached hereto as Exhibit A.

2. The Borough hereby directs its Special Affordable Housing Counsel to (a) file the fully-executed Settlement Agreement with the Court for review and approval at a duly-noticed Fairness Hearing, (b) take all actions reasonable and necessary to secure an Order approving the Settlement Agreement, and (c) work towards ultimately securing judicial approval of the Borough's Fair Share Plan, after it is drafted, adopted by the Borough's Planning Board and endorsed by the Borough Council.

3. All other appropriate Borough officials are authorized and empowered to execute all documents and take all steps necessary and appropriate to effectuate the terms and purposes of this resolution and the Settlement Agreement.

Councilmember	Motion	Second	Yes	No	Absent	Abstain
Arendacs				✓		
Curry			✓			
Gloeggler			✓			
Koelling	✓	✓	✓			
Lane	✓		✓			
Weaver				✓		

Adopted: November 14, 2017

ATTEST:

Maureen Iarossi-Alwan
Municipal Clerk

APPROVED:

Michael Ghassali
Mayor

AGREEMENT TO RESOLVE ISSUES BETWEEN THE BOROUGH OF MONTVALE AND FAIR SHARE HOUSING CENTER CONCERNING THE BOROUGH'S MOUNT LAUREL FAIR SHARE OBLIGATIONS AND THE MEANS BY WHICH THE BOROUGH SHALL SATISFY SAME.

In the Matter of the Borough of Montvale, County of Bergen, Docket No. BER-L- 6141-15

THIS SETTLEMENT AGREEMENT ("Agreement") made this 14th day of November, 2017, by and between:

BOROUGH OF MONTVALE, a municipal corporation of the State of New Jersey, County of Bergen, having an address at 12 Mercedes Drive, Montvale, NJ 07645 (hereinafter the "Borough" or "Montvale");

And

FAIR SHARE HOUSING CENTER, having an address at 510 Park Boulevard, Cherry Hill, New Jersey 08002, (hereinafter "FSHC");

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), the Borough filed the above-captioned matter on July 6, 2015 seeking, among other things, a judicial declaration that its Housing Element and Fair Share Plan (hereinafter "Fair Share Plan"), as may be further amended in accordance with the terms of this settlement, satisfies its "fair share" of the regional need for low and moderate income housing pursuant to the Mount Laurel doctrine; and

WHEREAS, the Borough simultaneously sought and ultimately secured an Order protecting Montvale from all exclusionary zoning lawsuits while it pursues approval of its Fair Share Plan; and

WHEREAS, the immunity secured by Montvale remains in place as of the date of this Agreement; and

WHEREAS, the trial court appointed a "Special Master", as is customary in a Mount Laurel case, to assist the Court; and

WHEREAS, more specifically, the Court appointed Frank Banisch, P.P., A.I.C.P. to serve as the Special Master;

WHEREAS, with Mr. Banisch's assistance, Montvale and FSHC have engaged in good faith negotiations and have reached an amicable accord on the various substantive provisions, terms and conditions delineated herein; and

WHEREAS, through that process, the Borough and FSHC agreed to settle the litigation and to present that settlement to the trial court, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households; and

WHEREAS, it is particularly appropriate where, as here, the Court has yet to make a determination of the Borough's fair share, to arrive at a settlement regarding a municipality's

fair share obligation, instead of doing so through plenary adjudication of that obligation.

NOW, THEREFORE, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties hereto, each binding itself, do hereby covenant and agree, each with the other, as follows:

Settlement Terms

The Borough and FSHC hereby agree to the following general terms, subject to any relevant conditions set forth in more detail below:

1. Montvale's "Rehabilitation" obligation is 5.

2. Montvale's "Prior Round" obligation is 255.

3. Montvale's allocation of the Round 3 regional need is 542.

4. FSHC and the Borough agree that Montvale does not accept the basis of the methodology or calculations proffered by FSHC's consultant, David N. Kinsey, PhD, P.P., F.A.I.C.P. The Parties agree to the terms in this agreement solely for purposes of settlement of this action. Although the Borough does not accept the basis of the methodology or calculations proffered by FSHC's consultant, FSHC contends, and is free to take the position before the court, that the 542-unit obligation should be accepted by the Court because it is based on the Prior Round methodology and reflects a 30-percent reduction of Dr. Kinsey's May, 2016, calculation of the Borough's Gap (1999-2015) and Third Round (2015-2025) fair share obligations.

5. For the purposes of this Agreement, the "Round 3 regional need" (also referenced as the "Third Round Prospective Need") shall be deemed to include the Gap Period Present Need, which is a measure of households formed from 1999 to 2015 that need affordable housing, that was recognized by the Supreme Court in In re Declaratory Judgment Actions filed by Various Municipalities, 227 N.J. 508 (2017).

6. Pursuant to N.J.A.C. 5:93-4.2, and as confirmed by Special Master Banisch, Montvale's current Round 3 Realistic Development Potential (hereinafter "RDP") is 181 units.

7. **Satisfaction of the Rehabilitation Obligation**: The Borough has a 5-unit rehabilitation obligation, and will work with Bergen County or hire a separate entity to implement an indigenous need rehabilitation program to address this component of its fair share.

8. **Satisfaction of the Prior Round Obligation**: The Borough has a 255-unit Prior Round obligation, which was subject to a Vacant Land Adjustment yielding a Prior Round RDP of 188 units. By way of this Settlement Agreement, the Borough proposes to address its entire 255-unit Prior Round obligation with a 24-unit surplus to be applied towards Round 3 as follows:

Development	Type	Tenure	Status	Units	Bonus	Credits
Janovic	RCA	-	Complete (2004)	15	-	15
Janovic II	RCA	-	Complete (2004)	2	-	2
Chamberlain	RCA	-	Complete (2004)	10	-	10
K. Hov/Dill (Four Seasons)	RCA	-	Complete (2004)	32	-	32
Greenway at Montvale	Inclusionary	Rental	Complete (2000/2001)	2	2	4
Greenway at Montvale	Inclusionary	4-sale	Complete (2000/2001)	10		10
Bear Brook	Inclusionary	Rental	Complete (1998(	5	5	10
Baldanza	Inclusionary	Rental	Complete (2007)	3	3	6
Nottingham	Inclusionary	Rental	Complete (2007)	8	8	16
NIFPw/D	Group Home	Rental	Complete (post-2001)	5	5	10
Axxin (Valley View)	Inclusionary	4-sale	Complete (2007-2009)	26	-	26
Montvale Senior (not senior)	100% Affordable	Rental	Completed (2013)	18	18	36
Montvale Senior (not senior)	100% Supportive	Rental	Completed (2013)	10	10	20
Del Ben	Inclusionary	Sale	Completed (2017)	6	-	6
DePiero	Group Home	Rental	Proposed	32		32
Bonnabel / Trailing Ridge	Inclusionary	Rental	Approved, Construction has started	18	13	31
127 Summit	Inclusionary	Rental	Zoned	13		13
Total				**215**	**64**	**279**
*24 Surplus Credits after meeting 255 Prior Round Obligation						

The plan components shown in the above table fully satisfy the minimums and maximums for the Prior Round, RCA cap (50% of Prior Round obligation), maximum age-restricted unit requirement (25% of Prior Round obligation less RCAs), minimum required rental units (at least 25% of Prior Round obligation), and maximum rental bonus credits (equal to rental obligation).

9. **Satisfaction of the Round 3 RDP**: The Borough has a 181-unit Round 3 RDP, and has satisfied that obligation as follows:

Development	Type	Tenure	Status	Units	Bonus	Credits
24 Surplus Credits from Prior Round				24		24
School 2 (Age Restricted and Special Needs)	100% Affordable	Rental	Under Construction	14		14
Children's Aid	Group Home	Rental	Approved and Opperating	5		5
99 Spring Valley	Inclusionary	Sale	Approved	2		2
7 Franklin Ave	Inclusionary	TBD	Application Pending	3		3
110 Summit Ave	Inclusionary (Senior)	Rental	Zoned	25		25
A&P – 2 Paragon	Inclusionary	Sale	Settlement Concept	16		16
MB	Inclusionary	Rental	Proposed	53	46	99
Hornrock	Inclusionary	Rental	Proposed	37		37
Total				179	46	225
*44 surplus credits over Round 3 RDP						

The plan components shown in the above table fully satisfy the minimums and maximums for the Third Round RDP, inclusive of maximum age-restricted units (25% of RDP less RCAs), minimum rental units (25% including at least half available to families), and maximum rental bonus credits (equal to rental obligation), including maximum rental bonus credits for age-restricted units (50% of rental obligation).

10. FSHC and the Borough agree that the Borough shall have the right to apply the 44-unit surplus generated in excess of the Borough's Round 3 obligation to any future changed circumstances, which would result in an increase in the Borough's RDP. See Fair Share Housing Center v. Cherry Hill, 173 N.J. 393 (2002) ("Cherry Hill"). Should a suitable, available, approvable and developable site become vacant that had not been vacant, available, suitable or developable at the time of the VLA, and did not contribute to the Borough's current 181-unit RDP ("additional site"), the Borough would be entitled to apply any or all of the 44-unit surplus, as may be necessary, towards addressing the increase in RDP, provided that the Borough shall be required to identify in a filing with the Court the additional site or additional sites, and the RDP generated by those sites consistent with N.J.A.C. 5:93-4.2, that it is applying all or part of the 44-unit surplus of the RDP, within forty-five (45) days after the Borough becomes aware of the changed circumstance, on notice and opportunity to be heard to FSHC, the owner of the additional site or sites, and any other interested parties. To the extent a change in circumstances results in an increase in RDP that is larger than the Borough's 44-unit surplus, the Borough shall still have an obligation to address the portion of the RDP in excess of 44 unit-surplus ("Residual RDP"), provided, however, that the Borough shall maintain the right to satisfy

any Residual RDP in a manner and location it deems appropriate pursuant to N.J.A.C. 5:93-4.2 and otherwise consistent with the requirements of this Agreement and shall not be required to utilize the site generating the increase in RDP in order to satisfy the increase in RDP. The Borough agrees that this provision specifically, and the interpretation of application of surplus units generally as it relates to other matters, has no bearing on any other settlement agreement entered into between FSHC and any other municipality. This provision is of no precedential value and cannot be used by either party or their respective attorneys as a mechanism of interpreting any other settlements in other declaratory judgment actions.

11. **Addressing the Remaining "Unmet Need"**: For the purposes of settlement, the Borough agrees to address the 361-unit remaining portion of its allocation of the Round 3 regional need or "unmet need" through the following mechanisms:

a) The Township will adopt overlay ordinances in the areas described herein and as depicted on the accompanying map ("Exhibit A"):

i. "Annie Sez";
ii. Southeast B1 District (east of the train tracks);
iii. Southeast B1 District (west of the train tracks);

b) The site identified in paragraph 11(a)(i) above will be overlaid with zoning for mixed use with a residential density of twelve(12) units per acre. The sites identified in 11(a)(ii) above will be overlaid with zoning for mixed use with a residential density of fifteen (15) units per acre, The sites identified in 11(a)(iii) above overlaid with zoning for mixed use with a residential density of twelve (12) units per acre. The overlay zones identified in 11(a) above shall permit a maximum building height of three stories for mixed-use, with setback, floor area, and other requirements making the construction of such buildings realistically possible given the character of the lots in the B-1 zone and at the Annie Sez site. For inclusionary projects resulting from paragraph 11(a) above, in which the low and moderate units are to be offered for sale, the affordable set-aside percentage shall be 20 percent; for projects in which the low and moderate income units are to be offered for rent, the affordable set-aside percentage shall be 15 percent.

c) Subject to all relevant notice and public hearing provisions pursuant to the New Jersey Municipal Land Use Law, within 120 days of the approval of this Agreement at a Fairness Hearing, the Borough will adopt an ordinance requiring a mandatory affordable housing set aside for all new multifamily residential developments of five (5) units or more. The set aside for rental developments shall be fifteen percent (15%) and the set aside for for-sale developments shall be twenty percent (20%). The provisions of the ordinance shall not apply to residential expansions, additions, renovations, replacement, or any other type of residential development that does not result in a net increase in the number of dwellings of five or more, or to specific parcels or zones identified in other paragraphs of this agreement which shall be subject to the requirements specified therein. The form of the Ordinance shall be finalized prior to the Compliance Hearing through collaboration between FSHC, Special Master Banisch, and representatives of the Borough. FSHC and the Borough, in

collaboration with the Special Master will agree upon the density upon which the ordinance shall be triggered in prior to the Compliance Hearing.

12. The Borough's RDP shall not be revisited by FSHC or any other interested party absent a substantial changed circumstance and, if such a change in circumstance occurs with the RDP, the Borough shall have the right to address the issue without negatively affecting its continuing entitlement to immunity from all Mount Laurel lawsuits through July 2, 2025. In addition, said substantial change in circumstances shall be governed by paragraph 10 above.

13. The Borough agrees to require 13% of all the affordable units referenced in this plan, with the exception of units constructed prior to July 1, 2008, and units subject to preliminary or final site plan approval prior to July 1, 2008, to be very low income units (defined as units affordable to households earning 30 percent or less of the regional median income by household size), with half of the very low income units being available to families.

14. Montvale will apply "rental bonus credits" in accordance with N.J.A.C. 5:93-5.15(d).

15. At least 50 percent of the units addressing the Borough's Third Round Prospective Need shall be affordable to a combination of very-low-income and low-income households, while the remaining affordable units shall be affordable to moderate-income households.

16. At least twenty-five percent of the Borough's Third Round Prospective Need shall be met through rental units, including at least half in rental units available to families.

17. At least half of the units addressing the Borough's Third Round Prospective Need in total must be available to families.

18. The Borough agrees to comply with COAH's Round 2 age-restricted cap of 25 percent, and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the Borough claim credit toward its fair share obligation for age-restricted units that exceed 25 percent of all units developed or planned to meet its Prior Round and Third Round fair share obligations.

19. The Borough and/or its Administrative Agent shall add the following entities to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5): Fair Share Housing Center (510 Park Boulevard, Cherry Hill, NJ 08002), the New Jersey State Conference of the NAACP, the Latino Action Network (P.O. Box 943, Freehold, NJ 07728), the Bergen County NAACP, Bergen Urban League, and Bergen County Housing Coalition. As part of its regional affirmative marketing strategies during implementation of its Housing Element and Fair Share Plan, the Borough and/or its administrative agent shall also provide notice of all available affordable housing units to the above-referenced organizations.

20. All affordable housing units created pursuant to the measures set forth in this Agreement shall comply with the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, with the exception that in lieu of 10 percent of affordable units in rental projects being required to be affordable to households earning at or below 35 percent of the regional median household income by household size, 13 percent of affordable units in such projects shall be required to be affordable to households earning at or

below 30 percent of the regional median household income by household size subject to Paragraph 13 herein, and all other applicable law. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311a and -311b and all other applicable law. The Borough, as part of the Housing Element and Fair Share Plan that will be prepared, adopted and endorsed as a result of this Agreement, shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied.

21. Upon full execution of this Agreement, Montvale shall notify the Court so that a Fairness Hearing can be scheduled to approve the Agreement. Montvale will place this Agreement on file in the Borough's municipal building and file a copy with the Court 45 days prior to the Fairness Hearing, at which the Borough will seek judicial approval the terms of this Agreement pursuant to the legal standard set forth in Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. City of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). Notice of the Fairness Hearing shall be published at least 30 days in advance of the Hearing. Within 120 days of the approval of this Agreement by the Court after a Fairness Hearing, Montvale will adopt a Housing Element and Fair Share Plan, along with a Spending Plan, and adopt all ordinances required to be adopted as part of this Agreement. The Borough will then apply to the Court for the scheduling of a "Compliance Hearing" seeking judicial approval of Montvale's adopted Housing Element and Fair Share Plan (hereinafter "Affordable Housing Plan") and other required documents. Although it is expected that the Special Master will provide the majority of the required testimony at both the Fairness Hearing and the Compliance Hearing, Montvale shall also make its consulting planner and any other relevant witnesses available for testimony at the Hearings. As long as the Affordable Housing Plan complies with the terms set forth herein, FSHC shall support the Borough's application for approval of its Affordable Housing Plan at the Compliance Hearing. If the Court approves this Agreement after a Fairness Hearing, the parties hereto agree not to appeal the Court's approval. If the Court approves the Affordable Housing Plan following a Compliance Hearing, the parties agree that the Borough will be entitled to either a "Judgment of Compliance and Repose" ("JOR") or the "judicial equivalent of substantive certification and accompanying protection as provided under the FHA," 221 N.J. at 6, which shall be determined by the trial judge. Each party may advocate regarding whether substantive certification or repose should be provided by the Court, with each party agreeing to accept either form of relief and to not appeal an order granting either repose or substantive certification. The parties further agree that the JOR shall insulate the Borough and its Planning Board from, among other things, exclusionary zoning litigation through July 6, 2025.

22. Subsequent to the signing of this Agreement, if a binding legal determination by the Judiciary, the Legislature, or any administrative subdivision of the Executive Branch determines that Montvale's Round 3 obligation is decreased to 434 or less, with any relevant appeal periods having passed, the Borough may file a proposed form of Order, on notice to FSHC and the Borough's Service List, seeking to reduce its Round 3 obligation accordingly. Such relief shall be presumptively granted. Notwithstanding any such reduction, the Borough shall be obligated to implement the Housing Element and Fair Share Plan prepared, adopted and endorsed as a result of this Agreement, including by leaving in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to this settlement agreement, maintaining all mechanisms to continue to address the remaining portion of the Borough's allocation of the Round 3 regional need, and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Borough's obligation below what is established in this Agreement does not provide a basis for seeking leave to amend this Agreement or the Fair Share Plan adopted pursuant to this Agreement or seeking leave to

amend an order or judgment pursuant to R. 4:50-1. If the Borough prevails in reducing its prospective need for Round 3, the Borough may carry over any resulting surplus credits to Round 4.

23. The Borough shall prepare a Spending Plan for approval by the Court during, or prior to, the duly-noticed Compliance Hearing. FSHC reserves its right to provide any comments or objections on the Spending Plan to the Court upon review. Upon approval by the Court, the Borough and FSHC agree that the expenditures of funds contemplated in the Borough's Spending Plan shall constitute the "commitment" for expenditure required pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period contemplated therein commencing in accordance with the provisions of applicable law. Upon approval of its Spending Plan, the Borough shall also provide an annual Mount Laurel Trust Fund accounting report to the New Jersey Department of Community Affairs, Council on Affordable Housing, Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to FSHC and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services.

24. On the first anniversary of the Judgment of Compliance and Repose, and every anniversary thereafter through the end of this Agreement, the Borough agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to FSHC, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC. In addition to the foregoing, the Borough may also post such activity on the CTM system and/or file a copy of its report with the Council on Affordable Housing or its successor agency at the State level.

25. The Fair Housing Act includes two provisions regarding actions to be taken by the Borough during the ten-year period of protection provided in this agreement. The Borough agrees to comply with those provisions as follows:

a) For the midpoint realistic opportunity review due on July 6, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough will post on its municipal website, with a copy provided to FSHC, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether the mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to FSHC, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether the mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the Court regarding these issues.

b) For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of the Judgment of Compliance and Repose, and every third year thereafter, the Borough will post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and FSHC on the issue of whether

the municipality has complied with its very low income housing obligation under the terms of this settlement.

c) In addition to the foregoing postings, the Borough may also elect to file copies of its reports with the Council on Affordable Housing or its successor agency at the State level.

26. This Agreement may be enforced by the Borough or FSHC through a motion to enforce litigant's rights or a separate action filed in Superior Court, Bergen County. If FSHC determines that such action is necessary, the Borough consents to the entry of an order providing FSHC party status as an intervenor solely for purposes of its motion to enforce litigant's rights.

27. The Borough will ensure that the sum of $25,000.00 in payment of fees and costs is conveyed to Fair Share Housing Center within 10 days of the approval of this Agreement by court order following a Fairness Hearing. By separate agreements between the Township and Hekemian and the Township and Hornrock, one-half of the fee is to be paid those two intervenors ($12,500.00 each). The Borough agrees to enter into agreements with the intervenors that requires the payment of the funds to their counsel to be held in escrow within 10 days of the execution of the agreements between the Borough and intervenors and before the fairness hearing in this matter.

28. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement. However, if an appeal of the Court's approval or rejection of the Settlement Agreement is filed by a third party, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division, and New Jersey Supreme Court, and to continue to implement the terms of the Settlement Agreement if the Agreement is approved by the Trial Court unless and until an appeal of the Trial Court's approval is successful, at which point the Parties reserve their right to return to the *status quo ante*. In this regard, the Borough and FSHC acknowledge that the parties have entered into this Agreement to settle the litigation and that each is free to take such position as it deems appropriate should the matter return to the *status quo ante*.

29. This Agreement shall be governed by and construed by the laws of the State of New Jersey.

30. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

31. This Agreement may not be modified, amended or altered in any way except by a writing signed by both the Borough and FSHC.

32. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.

33. The Borough and FSHC acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each person

to sign this Agreement is the proper person and possesses the authority to sign the Agreement, that this Agreement contains the entire understanding of the Borough and FSHC and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

34. The Borough and FSHC acknowledge that this Agreement was not drafted by the Borough and FSHC, but was drafted, negotiated and reviewed by representatives of the Borough and FSHC and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. The Borough and FSHC expressly represent that: (a) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (b) it has conferred due authority for execution of this Agreement upon the persons executing it.

35. Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both the Borough and FSHC.

36. This Agreement constitutes the entire Agreement between the Borough and FSHC hereto and supersedes all prior oral and written agreements between the Borough and FSHC with respect to the subject matter hereof except as otherwise provided herein.

37. No member, official or employee of the Borough shall have any direct or indirect interest in this Settlement Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

38. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which representatives of the Borough and FSHC have executed and delivered this Agreement.

39. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the Borough and FSHC by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days' notice as provided herein:

TO FSHC:

Adam M. Gordon, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
Email: adamgordon@fairsharehousing.org

TO THE BOROUGH:

Michael J. Edwards, Esq.
Jeffrey R. Surenian & Associates, LLC
707 Union Avenue, Suite 301
Brielle, NJ 08730
Phone: (732) 612-3100

Telecopier: (732) 612-3101
Email: MJE@Surenian.com

Joseph Voytus, Esq.
Boggia & Boggia, LLC
71 Mt Vernon St.
Ridgefield Park, NJ 07660

WITH A COPY TO THE BOROUGH ADMINISTRATOR:

Maureen Iarossi-Alwan, Administrator
Borough of Montvale
12 Mercedes Drive
Montvale, NJ 07645

In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all others identified of their successor.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be properly executed, their corporate seals affixed and attested and this Agreement to be effective as of the Effective Date.

Witness/Attest:

FAIR SHARE HOUSING CENTER:

By: _____
Kevin D. Walsh, Esq.
On Behalf of Fair Share Housing Center

Dated: 11/10, 2017

Witness/Attest:

BOROUGH OF MONTVALE:

By: _____
Michael Ghassali, Mayor
On Behalf of the Borough of Montvale

Dated: November 14th, 2017

BOROUGH OF MONTVALE
BERGEN COUNTY, NEW JERSEY
RESOLUTION NO. 214-2017

RE: A Resolution Approving the Settlement Agreement with Intervenor The S. Hekemian Group, LLC to Partially Resolve the Borough's Affordable Housing Declaratory Judgment Action

WHEREAS, The S. Hekemian Group, LLC ("SHG") is the current owner of property that was formerly the campus of Mercedes Benz consisting of three parcels, Block 2702, Lot 1, Block 2801, Lot 2, and Block 3201, Lot 6, which total approximately 36.65 acres; and

WHEREAS, pursuant to the Mount Laurel Doctrine as expressed in Southern Burl. Co. NAACP v. Tp. of Mount Laurel, 92 N.J. 158 (1983) ("Mount Laurel II"), the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq. and applicable law, the Borough has a constitutional obligation to provide its fair share of the region's need for affordable housing; and

WHEREAS, on March 10, 2015, the New Jersey Supreme Court issued its decision In re N.J.A.C. 5:96 & N.J.A.C. 5:97, 221 N.J. 1 (2015)("Mount Laurel IV"), establishing a process whereby the New Jersey trial courts would assume jurisdiction over municipal compliance with the Mount Laurel Doctrine; and

WHEREAS, pursuant to the direction of the Mount Laurel IV decision, the Borough initiated a declaratory judgment action captioned 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, Docket No.: L-6141-15 in an effort to establish the Borough's compliance with its Third Round Mount Laurel obligation (the "Borough Compliance Action"); and

WHEREAS, SHG sought and was granted intervention into the Borough Compliance Action to ensure the Borough's satisfaction with its Third Round Mount Laurel obligation, which obligation shall be determined by the trial court; and

WHEREAS, the trial court and the court-appointed Special Master, Frank Banisch, encouraged the Borough and SHG to engage in mediation and settlement discussions in order to determine whether an amicable settlement could be reached on potential development on the Property that would be fair and reasonable to the region's low- and moderate-income households and acceptable to the Borough, the Montvale Planning Board and SHG; and

WHEREAS, the Borough was represented in these negotiations by Special Counsel Jeffrey R. Surenian, Esq., as well as the Borough Attorney and the Borough Planner, with additional consultation and input received from the Planning Board Attorney and the Borough Engineer; and

WHEREAS, on October 18, 2017, the parties engaged in Court-ordered mediation in front of the Hon. Menelaos W. Toskos, J.S.C.; and

WHEREAS, the Borough and SHG have negotiated the terms of a Settlement Agreement that is acceptable to SHG and its representatives; and

WHEREAS, the Borough's professionals have recommended the approval of the proposed Settlement Agreement by the Mayor and Council; and

WHEREAS, upon approval of the Settlement Agreement, same will be subject to a Fairness Hearing before the trial court upon notice to the protected class and the general public, to determine whether the terms of the Settlement Agreement are fair and reasonable to the region's low- and moderate-income households according to the principles set forth in Morris County Fair Housing Council v. Boonton Tp., 197 N.J. Super. 359 (Law Div. 1984), affd o.b., 209 N.J. Super. 108 (App. Div. 1986) and East/West Venture v. Bor. of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996); and

WHEREAS, the Settlement Agreement is contingent upon the trial court's approval of the Settlement Agreement and the determination that the RDP for the Mercedes and Glenview sites is 70 following said Fairness Hearing.

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

1. All of the recitals above are expressly incorporated as if set forth herein at length.

2. The Mayor and Borough Clerk are hereby directed, authorized and empowered to execute the Settlement Agreement in substantially the form provided, subject to approval of any non-substantive changes by Special Counsel and the Borough Attorney.

3. Upon execution of the Settlement Agreement and approval and execution of same by the Planning Board, the Borough Administrator is authorized to request a date from the trial court for a Fairness Hearing as contemplated therein.

4. All Borough officials are hereby authorized and empowered to take all steps necessary and appropriate to effectuate the terms of this Resolution and the Settlement Agreement.

Councilmember	Motion		Second	Yes	No	Absent	Abstain
Arendacs					✓		
Curry				✓			
Gloeggler		✓	✓	✓			
Koelling		✓	✓	✓			
Lane	✓			✓			
Weaver					✓		

Adopted: November 14, 2017

ATTEST:

Maureen Iarossi-Alwan
Municipal Clerk

APPROVED:

Michael Ghassali
Mayor

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 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: November 14th, 2017

Mayor of the Borough of Montvale
For the Borough of Montvale

Dated:

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

Dated:

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.

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(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:

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(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.

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(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

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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.

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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

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(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.

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(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.

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[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.

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(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, are 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

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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.

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[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.

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(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.

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[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.

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[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.

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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 IAROSSI-ALWAN, RMC, Borough Clerk

INTRODUCED:

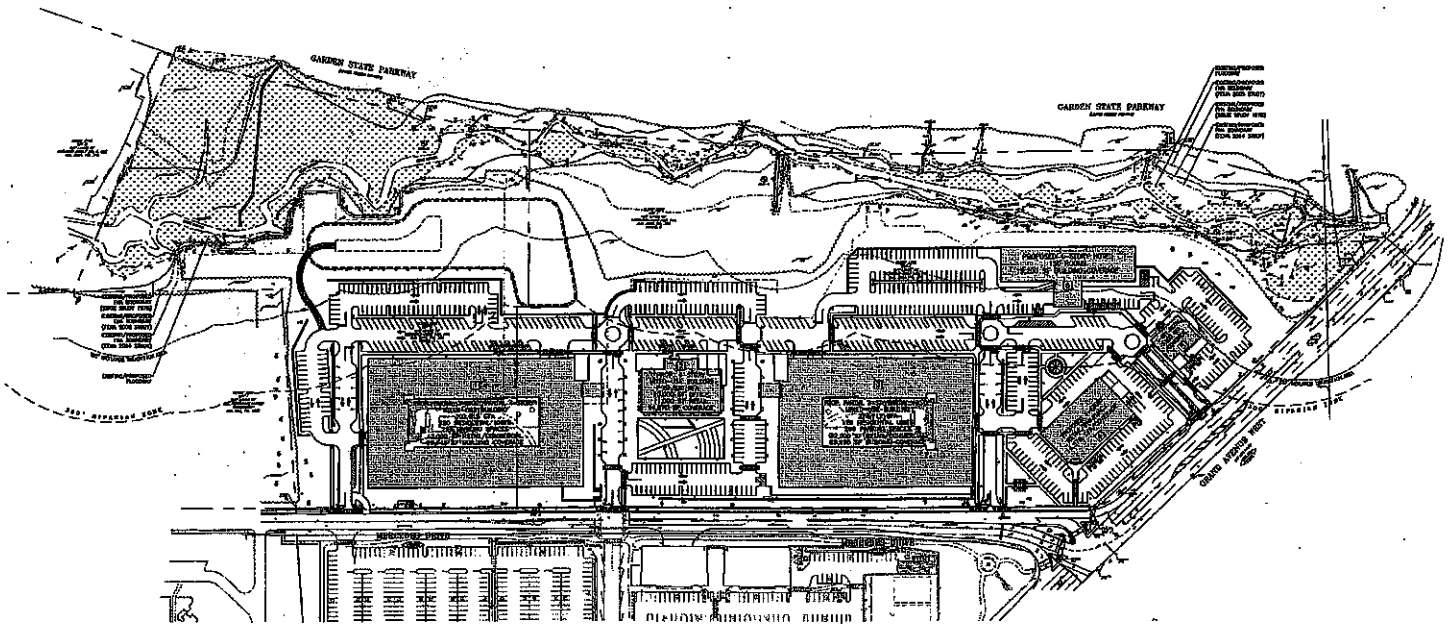
ADOPTED:

APPROVED:

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EXHIBIT B

Concept Plan



NOTES:

1. THIS PROJECT REFERENCES A SURVEY PREPARED BY:
   DOLAN SURVEYING GROUP
   121 CHURCH LANE
   SOUTH BRUNSWICK, NEW JERSEY 08852
   908.431.7600 (OFFICE)
   732.940.8300 (FAX)
   PROJECT NUMBER: 01-0141
   DATED: 10/26/2011
2. EXISTING USE: PREMIUM MICROWAREHOUSES
3. PROPOSED USE: MIXED-USE DEVELOPMENT
4. LOT AREA: 1,672,441 SQ. FT. / 38.40 AC.±
5. PROJECT LOCATION: BLOCK 2702, LOT 1.01
6. PROPERTY OWNERS: L & L PROPERTIES PARTNERSHIP, BOROUGH OF MONTVALE, NEW JERSEY 07645

ZONING TABLE (GENERAL)

BULK REQUIREMENTS	PROPOSED ZONING	PROPOSED PLAN
MINIMUM LOT AREA (Acres)	17.00 Acres	38.40 Acres
MAXIMUM DWELLING UNITS PER ACRE (DU/AC)	40.00 DU/AC	40.00 DU/AC
MAXIMUM FLOOR AREA RATIO (Commercial) (%)	50.00%	0.00%
MAXIMUM FLOOR AREA RATIO (ENTIRE DEVELOPMENT) (%)	0.50	0.00
MAXIMUM BUILDING COVERAGE (%)	0.70	0.00
MINIMUM FRONT YARD	100 Feet	100 Feet
MINIMUM SIDE YARD	100.00 Ft.	100.00 Ft.
MINIMUM REAR YARD	100.00 Ft.	100.00 Ft.
MINIMUM FLOOR AREA (Commercial) (Sq. Ft.)	500.00 Ft.	1,000.00 Ft.

1. SAID BOUNDS SET ON LOTS BOUNDED BY PUBLIC STREETS OR RIGHTS-OF-WAY, OTHER THAN CHANGES IN BOUNDARY, ARE TO BE CONSIDERED FOR THE PURPOSES OF CALCULATING ACCESSORY AREA, LAND DEDICATED TO INSURANCE, MARGINS, STRIPPING, PLANTINGS, FLOOD HAZARD AREAS, OR SIMILAR AREAS, BE INCLUDED IN ALL CALCULATIONS WHERE ADJACENT LOT AREA IS REQUIRED.
2. TO CENTERLINE OF PROPOSED AVENUE & GRAND AVENUE.

ZONING TABLE (OFFICE)

BULK REQUIREMENTS	PROPOSED ZONING	PROPOSED PLAN
MINIMUM BUILDING FRONTAGE (Sq. Ft.)	1 Story=50,000 Sq. Ft.	10 Stories=500,000 Sq. Ft.

ZONING TABLE (HOTEL & CONFERENCE CENTER)

BULK REQUIREMENTS	PROPOSED ZONING	PROPOSED PLAN
MINIMUM BUILDING FRONTAGE (Sq. Ft.)	1 Story=50,000 Sq. Ft.	10 Stories=500,000 Sq. Ft.

ZONING TABLE (MULTI-FAMILY)

BULK REQUIREMENTS	PROPOSED ZONING	PROPOSED PLAN
MINIMUM BUILDING FRONTAGE (Stories/Sq. Ft.)	1 Story=50,000 Sq. Ft.	10 Stories=500,000 Sq. Ft.
MINIMUM BUILDING FRONTAGE OF A TOWER (Sq. Ft.)	50,000 Sq. Ft.	2,100,000 Sq. Ft.

1. WHERE ZONE 2 & 3 PROVIDE THREE STORIES OF ENTERTAINMENT, LIVING AREA & CONFERENCE FACILITIES BEYOND PARKING LEVEL.

ZONING TABLE (RETAIL/COMMERCIAL)

BULK REQUIREMENTS	PROPOSED ZONING	PROPOSED PLAN
MINIMUM BUILDING FRONTAGE (Sq. Ft.)	10,000 Sq. Ft.	2,100,000 Sq. Ft.

ZONING TABLE (PARKING DECK)

BULK REQUIREMENTS	PROPOSED ZONING	PROPOSED PLAN
MINIMUM BUILDING FRONTAGE (Stories/Sq. Ft.)	1 Story=50,000 Sq. Ft.	10 Stories=500,000 Sq. Ft.

PARKING TABLE

DESCRIPTION	CALCULATION	PROPOSED ZONING	PROPOSED PLAN
RETAIL/COMMERCIAL (3 SPACES PER 1,000 SF OF GROSS FLOOR AREA)	114,240 SF/1,000 SF x 3	344 SPACES	342 SPACES
RESIDENTIAL (1.5 SPACES PER UNIT)	378 UNITS x 1.5	684 SPACES	684 SPACES
HOTEL & CONFERENCE CENTER (1 SPACE PER ROOM)	150 ROOMS x 1	150 SPACES	150 SPACES
TOTALS		1,178 SPACES	1,176 SPACES

1. APPROVAL TO REDUCE A DOWNWARD DEPARTURE FROM THE RSIS RESIDENTIAL SITE IMPROVEMENT STANDARDS.

LEGEND

	PROPOSED BUILDING
	PROPOSED CURB
	EXISTING BOROUGH ZONE LINES
	EXISTING/PROPOSED FLOOD HAZARD AREA BOUNDARY (ESTABLISHED 2016)
	EXISTING/PROPOSED FLOOD HAZARD AREA BOUNDARY (FEMA 2015 STUDY)
	EXISTING/PROPOSED FLOOD HAZARD AREA BOUNDARY (FEMA 2016 STUDY)

GRAPHIC SCALE

0 30 60 120

(IN FEET)
1" = 60'-0"

L2A
LAND DESIGN LLC
[illegible]

[illegible]

OWNER:
MONTVALE NEW YORK, LLC
261 FRANKLIN CAVITOR SUMMIT
KINNYS, OREGON 10546
(732) 212-0000 (OFFICE)

ATTORNEY:
[illegible]

ENGINEER:
DOLAN SURVEYING GROUP
121 CHURCH LANE
NORTH BRUNSWICK, NEW JERSEY 08902
908.431.7600 (OFFICE)
732.940.8300 (FAX)

NO.	REVISIONS	DATE
1	REVISED PER TOWNSHIP COMMENTS & REVISED LAYOUT	8/30/13

MONTVALE MARKET SQUARE
MEADOWLANDS & GRAND AVENUE WEST
BOROUGH OF MONTVALE
BERGEN COUNTY, NEW JERSEY
BLOCK 2702, LOT 1 & BLOCK 2703, LOT 2
TAX MAPS: 17 & 18

OVERALL SITE PLAN

SCALE:	REFER TO GRAPHIC
DATE:	8/30/13
DESIGNED:	JDF
DRAWN:	MDD
CAD FILE NO.:	1301.100
DRAWING NO.:	C-03

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.

BOROUGH OF MONTVALE
BERGEN COUNTY, NEW JERSEY
RESOLUTION NO. 216-2017

RE: A Resolution Approving the Settlement Agreement with Prospective Intervenor 2 Paragon Drive, LLC to Partially Resolve the Borough's Affordable Housing Declaratory Judgment Action

WHEREAS, 2 Paragon Drive, LLC ("2 Paragon") is the current owner of property that was formerly the campus of A&P consisting of Block 1903, Lot 7, which totals approximately 19.9 acres; and

WHEREAS, pursuant to the Mount Laurel Doctrine as expressed in Southern Burl. Co. NAACP v. Tp. of Mount Laurel, 92 N.J. 158 (1983) ("Mount Laurel II"), the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq. and applicable law, the Borough has a constitutional obligation to provide its fair share of the region's need for affordable housing; and

WHEREAS, on March 10, 2015, the New Jersey Supreme Court issued its decision In re N.J.A.C. 5:96 & N.J.A.C. 5:97, 221 N.J. 1 (2015)("Mount Laurel IV"), establishing a process whereby the New Jersey trial courts would assume jurisdiction over municipal compliance with the Mount Laurel Doctrine; and

WHEREAS, pursuant to the direction of the Mount Laurel IV decision, the Borough initiated a declaratory judgment action captioned 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, Docket No.: L-6141-15 in an effort to establish the Borough's compliance with its Third Round Mount Laurel obligation (the "Borough Compliance Action"); and

WHEREAS, 2 Paragon is seeking intervention into the Borough Compliance Action to ensure the Borough's satisfaction with its Third Round Mount Laurel obligation, which obligation shall be determined by the trial court; and

WHEREAS, the Borough and 2 Paragon have engaged in mediation and settlement discussions in order to determine whether an amicable settlement could be reached on potential development on the Property that would be fair and reasonable to the region's low- and moderate-income households and acceptable to the Borough, the Montvale Planning Board and 2 Paragon; and

WHEREAS, the Borough was represented in these negotiations by Special Counsel Jeffrey R. Surenian, Esq., as well as the Borough Attorney and the Borough Planner, with additional consultation and input received from the Planning Board Attorney and the Borough Engineer; and

WHEREAS, the Borough and 2 Paragon have negotiated the terms of a Settlement Agreement that is acceptable to 2 Paragon and its representatives; and

WHEREAS, the Borough's professionals have recommended the approval of the proposed Settlement Agreement by the Mayor and Council; and

WHEREAS, upon approval of the Settlement Agreement, same will be subject to a Fairness Hearing before the trial court upon notice to the protected class and the general public, to determine whether the terms of the Settlement Agreement are fair and reasonable to the region's low- and moderate-income households according to the principles set forth in Morris County Fair Housing Council v. Boonton Tp., 197 N.J. Super. 359 (Law Div. 1984), affd o.b., 209 N.J. Super. 108 (App. Div. 1986) and East/West Venture v. Bor. of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996); and

WHEREAS, the Settlement Agreement is contingent upon the trial court's approval of the Settlement Agreement and the determination that the RDP for the 2 Paragon site is 21 following said Fairness Hearing.

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

1. All of the recitals above are expressly incorporated as if set forth herein at length.

2. The Mayor and Borough Clerk are hereby directed, authorized and empowered to execute the Settlement Agreement in substantially the form provided, subject to approval of any non-substantive changes by Special Counsel and the Borough Attorney.

3. Upon execution of the Settlement Agreement and approval and execution of same by the Planning Board, the Borough Administrator is authorized to request a date from the trial court for a Fairness Hearing as contemplated therein.

4. All Borough officials are hereby authorized and empowered to take all steps necessary and appropriate to effectuate the terms of this Resolution and the Settlement Agreement.

Councilmember	Motion	Second	Yes	No	Absent	Abstain
Arendacs		✓	✓			
Curry		✓	✓			
Gloeggler			✓			
Koelling	✓		✓			
Lane	✓		✓			
Weaver			✓			

Adopted: November 14, 2017

ATTEST:

Maureen Iarossi-Alwan
Municipal Clerk

APPROVED:

Michael Ghassali
Mayor

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.

Dated: November 14th, 2017

Mayor of the Borough of Montvale
For the Borough of Montvale

Dated:

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

BOROUGH OF MONTVALE
BERGEN COUNTY, NEW JERSEY
RESOLUTION NO. 215-2017

RE: A Resolution Approving a Settlement Agreement with Intervenor Hornrock Properties MPR, LLC in Connection with the Borough's Affordable Housing Declaratory Judgment Action, and Authorizing a Request to the Trial Court to Hold a Fairness Hearing Concerning the Settlement Agreement

WHEREAS, Hornrock Properties, MPR, LLC is the current owner of property that consists of a total of approximately thirty-seven (37) acres and which property formerly served as corporate headquarters for Sony, Inc. (the "Sony Campus"); and

WHEREAS, approximately thirty (30) of the thirty-seven (37) acres that comprise the Sony Campus are located in the Borough of Park Ridge on property that is identified on the Park Ridge tax maps as Block 301, Lot 1 (hereinafter, the "Park Ridge Property"); and

WHEREAS, the remaining approximately seven (7) acre portion of the Sony Campus is located on property within the Borough of Montvale (the "Borough" or "Montvale"), which property is identified on the Borough tax maps as Block 3302, Lot 1 (the "Property"), and on a small piece of property within the Borough of Woodcliff Lake, which property is identified on the Woodcliff Lake tax maps as Block 204, Lot 2 (the "Woodcliff Lake Parcel); and

WHEREAS, the Property located in the Borough of Montvale must be accessed through the Park Ridge Property, approval of which access must be obtained from the Borough of Park Ridge; and

WHEREAS, pursuant to the Mount Laurel Doctrine as expressed in Southern Burl. Co. NAACP v. Tp. of Mount Laurel, 92 N.J. 158 (1983) ("Mount Laurel II"), the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq. and applicable regulations promulgated by the Council on Affordable Housing pursuant to the FHA, the Borough has a constitutional obligation to provide its fair share of the region's need for affordable housing; and

WHEREAS, on March 10, 2015, the New Jersey Supreme Court issued its decision In re N.J.A.C. 5:96 & N.J.A.C. 5:97, 221 N.J. 1 (2015)("Mount Laurel IV"), establishing a process whereby the New Jersey trial courts would assume jurisdiction over municipal compliance with the Mount Laurel Doctrine; and

WHEREAS, pursuant to the direction of the Mount Laurel IV decision, the Borough initiated a declaratory judgment action captioned 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, Docket No.: L-6141-15 in an effort to establish the Borough's compliance with its Third Round Mount Laurel obligation (the "Borough Compliance Action"); and

WHEREAS, Hornrock sought and was granted intervention into the Borough Compliance Action to ensure the Borough's satisfaction with its Third Round Mount Laurel obligation, which obligation would be determined by the trial court; and

WHEREAS, the trial court and the court-appointed Special Master, Frank Banisch, encouraged the Borough and Hornrock to engage in mediation and settlement discussions in order to determine whether an amicable settlement could be reached on a potential inclusionary development on the Property that would be fair and reasonable to the region's low- and moderate-income households and acceptable to both the Borough and Hornrock; and

WHEREAS, the Borough was represented in these negotiations by Special Counsel Jeffrey R. Surenian, Esq., as well as the Borough Attorney and the Borough Planner, with additional consultation and input received from the Planning Board Attorney and the Borough Engineer; and

WHEREAS, on October 18, 2017, the parties engaged in Court-ordered mediation in front of the Hon. Menelaos W. Toskos, J.S.C.; and

WHEREAS, the Borough and Hornrock have negotiated the terms of a Settlement Agreement that is acceptable to Hornrock and its representatives; and

WHEREAS, the Borough's professionals have recommended the approval of the proposed Settlement Agreement by the Mayor and Council; and

WHEREAS, upon approval of the Settlement Agreement, same will be subject to a Fairness Hearing before the trial court upon notice to the protected class and the general public, to determine whether the terms of the Settlement Agreement are fair and reasonable to the region's low- and moderate-income households according to the principles set forth in Morris County Fair Housing Council v. Boonton Tp., 197 N.J. Super. 359 (Law Div. 1984), affd o.b., 209 N.J. Super. 108 (App. Div. 1986) and East/West Venture v. Bor. of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996); and

WHEREAS, the Settlement Agreement is contingent upon the trial court's approval of the Settlement Agreement and the determination that the RDP for the Property is 37 following said Fairness Hearing.

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

1. All of the recitals above are expressly incorporated as if set forth herein at length.

2. The Mayor and Borough Clerk are hereby directed, authorized and empowered to execute the Settlement Agreement in substantially the form provided, subject to approval of any non-substantive changes by Special Counsel and the Borough Attorney.

3. Upon execution of the Settlement Agreement and approval and execution of same by the Planning Board, the Borough Administrator is authorized to request a date from the trial court for a Fairness Hearing as contemplated therein.

4. All Borough officials are hereby authorized and empowered to take all steps necessary and appropriate to effectuate the terms of this Resolution and the Settlement Agreement.

Councilmember	Motion	Second	Yes	No	Absent	Abstain
Arendacs				✓		
Curry			✓			
Gloeggler			✓			
Koelling		✓	✓			
Lane	✓		✓			
Weaver				✓		

Adopted: November 14, 2017

ATTEST:
Maureen Iarossi-Alwan
Municipal Clerk

APPROVED:
Michael Ghassali
Mayor

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SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") made this 14th day of November, 2017, by and between:

BOROUGH OF MONTVALE, a municipal corporation of the State of New Jersey, County of Bergen, having an address at 12 Mercedes Drive, Montvale, NJ 07645 (hereinafter the "Borough" or "Montvale");

And

HORNROCK PROPERTIES MPR, LLC ("Hornrock" or "Developer"), with a business address of 1 Sony Drive #3a, Park Ridge, NJ 07656, (hereinafter "Hornrock");

Collectively, the Borough and Hornrock shall be referred to as the "Parties."

WHEREAS, in compliance with the New Jersey Supreme Court's decision in In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 6, 2015, the Borough filed an action with the Superior Court of New Jersey ("Court"), entitled In the Matter of the Application of the Borough of Montvale, County of Bergen, Docket No. BER-L-6141-15, seeking a Judgment of Compliance and Repose approving its Affordable Housing Plan (as defined herein), in addition to related reliefs (the "Compliance Action"); and

WHEREAS, Hornrock filed a Motion to Intervene in the Compliance Action ("Hornrock Intervention") and such intervention was granted by the Court on September 16, 2015; and

WHEREAS, Hornrock is the current owner of property that consists of a total of approximately thirty-seven (37) acres and which property formerly served as corporate headquarters for Sony, Inc. (the "Sony Campus");

WHEREAS, approximately thirty (30) of the thirty-seven (37) acres that comprise the Sony Campus are located in the Borough of Park Ridge on property that is identified on the tax maps of the Borough of Park Ridge as Block 301, Lot 1 (hereinafter, the "Park Ridge Property");

WHEREAS, the remaining approximately seven (7) acre portion of the Sony Campus is located on property within the Borough of Montvale, which property is identified on the tax maps of the Borough of Montvale as Block 3302, Lot 1 (the "Property"), and on a small piece of property within the Borough of Woodcliff Lake, which property is identified on the tax maps of the Borough of Woodcliff Lakes as Block 204, Lot 2 (the "Woodcliff Lake Parcel);

WHEREAS, in evaluating properties appropriate for inclusionary development, the Borough has determined that the Property presents a suitable opportunity for such development;

WHEREAS, subject to the adoption of an ordinance with terms specified herein and subject further to Court approval of this agreement, the Borough has determined to incorporate this agreement into its Housing Element and Fair Share Plan (hereinafter "Affordable Housing Plan");

WHEREAS, the Borough has determined that this site is specially and particularly appropriate for a higher residential density then is characteristic in the Borough substantially for the following reasons:

1. Sound planning supports a holistic approach to planning for affordable housing where inclusionary neighborhoods are located near services and enhanced transportation access. Sound planning also involves the conversation of neighborhood character, an objective achieved in part by maintaining the existing scale, density and character of the Borough's core single-family neighborhoods. This can be achieved in part through a gradation of density across the Borough, maintaining higher densities and greater building heights further away from the core single-family residential zones within the Borough, and requiring lower densities and lower permitted building heights as the properties approach core single-family districts within the Borough;

2. The location of the site next to the Garden State Parkway and Lifetime Fitness eliminates any concern for impacts on residential neighbors within the Borough located to the west and north. As a result, there will not be any detrimental impacts on light, air flow, viewshed, traffic and similar concerns are diminished or nonexistent;

3. A residential apartment development serves as an effective transitional use between the core single-family residences within the Borough and the Garden State Parkway and office uses to the north and east;

4. The location of the site next to an existing fitness complex will encourage healthy lifestyle and provide an important and easily accessible fitness opportunity for residents;

5. The site is part of an existing corporate campus and is located adjacent or nearby to existing structures with increased permitted heights, including the Sony office building, Lifetime Fitness, and the Park Ridge Marriott;

6. The site contains significant existing wooded areas and natural screening and berming that minimize the visual impact upon Lifetime Fitness to the north, and from vehicles traversing Sony Drive from the east;

WHEREAS, the "Sony Campus" of which the site is a part of is located on three parcels in three municipalities;

WHEREAS, after a determination as to its affordable housing obligation, the Planning Board of the Borough of Montvale intends to prepare an Affordable Housing Plan, that will be adopted by the Planning Board, endorsed by the Borough Committee, and submitted to the Court for review and approval;

WHEREAS, the Affordable Housing Plan will include the Property as an inclusionary development at a density that will permit 185 rental residential units, including a 20% set aside (37 affordable units if 185 approved) for units to be affordable to very low, low and moderate income households (the "Inclusionary Development");

WHEREAS, Hornrock is amenable to fully and finally resolving the Hornrock Intervention premised upon securing the right to construct the Inclusionary Development on the Property;

WHEREAS, to ensure that the Inclusionary Development generates affordable housing credits to be applied to the Borough's affordable housing obligations, the affordable units within the Inclusionary Development shall comply with the Round 2 regulations of the New Jersey Council on Affordable Housing ("COAH"), the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC"), and all other applicable law, including a requirement that 13% of all affordable units are available to very low income households, and said Inclusionary Development shall be deed restricted for a period of at least 30 years pursuant to Paragraph 3.3.5 of this Agreement;

WHEREAS, all of the affordable units will be family rental units entitling the Borough to rental bonus credits up to the applicable rental bonus caps;

WHEREAS, the Parties wish to enter into this Agreement, setting forth the terms, conditions, responsibilities and obligations of the Parties, and seek the Court's approval of this Agreement at a Fairness Hearing; and

NOW, THEREFORE, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereto, each binding itself, its successors and assigns, do hereby covenant and agree, each with the other, as follows:

ARTICLE I – PURPOSE

1.1 The purpose of this agreement is (a) to create a realistic opportunity for up to 37 affordable family rental units; (b) to control the development of the Property as set forth herein; and (c) to resolve all issues amongst the parties.

1.2 The Inclusionary Development shall be substantially consistent with the concept site plans and elevations attached hereto and made a part hereof as **Exhibit A**, which has been reviewed and approved by the Borough and the Borough's professionals.

1.3 The Borough will also introduce and consider for a hearing an ordinance that includes the following essential terms, along those set forth in Section 4.1:

1.3.1 Density. The Inclusionary Development on the Property shall be developed with 185 residential units, inclusive of an affordable housing component that is described in greater detail in Section 3.3 herein.

1.3.2 Height. The Inclusionary Development on the Property shall be included in buildings, which shall not exceed four (4) residential stories exclusive of a level of parking to be provided below the residential stories. Said parking level shall not be deemed a story. Hornrock shall take all reasonable steps consistent with Exhibit A to utilize site grade, existing and new berms, trees, and other landscaping features, to minimize the height and the perceived height of the building when viewed from the Borough of Montvale;

1.3.3 Amenities. The residential development of the Property shall be designed to include amenities of the Developer's choice typical for an inclusionary development such as a pool or a gym.

1.3.4 Parking. Developer acknowledges that it will need de minimis relief from the parking requirements of the Residential Site Improvement Standards ("RSIS") such that Developer will seek a parking ratio of 1.7 spaces per residential unit within the Inclusionary Development. The Planning Board has granted such relief in the past and shall not unreasonably withhold the granting of such relief for the Inclusionary Development.

1.3.5 Architectural Design. The Developer shall seek Site Plan approval together with any variances and/or waivers from the Planning Board with architectural elevations reasonably consistent with the elevations as depicted and collectively attached hereto as **Exhibit A**, unless the Borough, Planning Board and Developer mutually agree upon different architectural elevations.

ARTICLE II - BASIC TERMS AND CONDITIONS

2.1 This Agreement is subject to Court approval following a duly noticed "Fairness Hearing." Within five (5) days of the date this Agreement is fully executed, counsel for the Borough shall contact the Court and request that the Court schedule a Fairness Hearing on a date following the adoption of the Rezoning Ordinance (hereafter defined). The Borough is responsible for the preparation and cost of the notice of the Fairness Hearing. The Parties will work together to ensure that the Court approves the Agreement at the Fairness Hearing.

2.2 In the event of any legal challenges to the Court's approval of this Agreement or Approvals, including a challenge by any third party, the Parties must diligently defend any such challenge and shall cooperate with each other regarding said defense. In addition, if any such challenge results in a modification of this Agreement or of the Inclusionary Development, the Parties must negotiate in good faith with the intent to draft a mutually-acceptable amended Agreement, provided that no such modification requires an increase or decrease in density than that provided herein.

2.3 This Agreement does not purport to resolve all of the issues before the Court raised in the Compliance Action. In the event the Borough adopts the Rezoning Ordinance and the Court approves this Settlement Agreement but the Borough is unable to reach a settlement with Fair Share Housing Center ("FSHC") or any other person or entity, all of the Parties hereto

are obligated to comply with their obligations under this Agreement including but not limited to the obligation to defend this Agreement.

ARTICLE III – HORNROCK AND DEVELOPER OBLIGATIONS

3.1 Obligation To File Development Applications In Accordance With Rezoning Ordinance, Concept Plan And The Elevations: Developer shall file development applications in accordance with the Rezoning Ordinance (hereinafter defined). All such applications shall be substantially consistent with the Concept Plan and elevations, attached hereto as Exhibit A.

3.2 Obligation To Maintain 20 Percent Affordable Housing Set-Aside And To Comply With All Affordable Housing Laws. Developer, its successors and/or assigns shall have an obligation to deed-restrict twenty percent (20%) of the residential units in the Inclusionary Development (equivalent to 37 units if the Planning Board approves an application for 185-units) as very low, low or moderate income affordable units. 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.

3.3 Obligation To Comply With All Affordable Housing Laws And Maintain Creditworthiness of Units.

3.3.1 Developer shall be responsible for all costs associated with the initial rental of the affordable units, and for the continuing administration of the affordable units and the preservation of the creditworthiness of the units. In satisfaction of this obligation, Developer shall retain Piazza & Associates ("Piazza"), or such other qualified person or entity as agreed to between the Parties, as the Administrative Agent, 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 Piazza is not available or unwilling to serve, then Developer and the Borough shall cooperate toward retaining a mutually agreeable Administrative Agent.

3.3.2 The administrative tasks include the affordable housing Administrative Agent performing its responsibilities pursuant to UHAC regulations, COAH's Round 2 regulations and 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 very low-income units, 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, (viii) enforcing any and all other UHAC requirements and requirements of the COAH or a successor agency as to the affordability of the units; and (ix) addressing any monitoring requirements may be imposed on the Borough with respect to the affordable units. For purposes of this subparagraph, the Parties assume current UHAC regulations and COAH round two regulations (N.J.A.C. 5:93-1, et seq.) shall control. However, if COAH promulgates new applicable and lawful 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.

3.3.3 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.

3.3.4 Developer shall comply with the following distribution of very low, low and moderate income units: very low (at least 10%) / low (up to 40%) / moderate (50%). To illustrate the intent of this provision, if 185 units are approved and constructed, the breakdown will be 18 moderate; 15 low and 4 very low. Developer represents that UHAC regulations currently permit an overall affordability average of fifty two percent (52%) of median for all affordable units within the Inclusionary Development and Developer shall be permitted to comply with this standard or any other applicable standard subject to Developer's obligation to maintain the creditworthiness of all the affordable units contemplated by this agreement with the distribution of very low, low and moderate income households set forth herein.

3.3.5 Each restricted unit shall remain subject to the requirements of the 30 year control period provided that the Borough shall have the option to extend such restrictions, if permitted by applicable law, for such period as may be permitted therein.

3.3.6 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 Compliance Action and treated as family affordable rental units, and that the credits will be applied as the Borough deems fit.

3.3.7 Upon written notice, Developer, its successors and/or assigns, 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.

3.4 Obligation to post Escrows: Developer shall post escrows to cover the costs of the Borough's and 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 Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. ("MLUL").

3.5 Obligation To Comply With Reasonable Conditions of Approval: 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 contested condition.

3.6 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.

3.7 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.

3.8 Obligation Not To Oppose Borough's Application for Approval of its Affordable Housing Plan. Developer will cooperate with and support the Borough's subsequent request for entry of a judgment of compliance provided that the Borough's affordable housing plan includes the inclusion of the subject property consistent with this agreement and will support the settled upon fair share, including any vacant land analysis and/or realistic development potential analysis and will not otherwise challenge the validity of the Borough's affordable housing plan.

3.9 Obligation To Furnish Documentation Concerning Creditworthiness of Units: Upon written notice, Developer shall supply the Borough and the Borough's Administrative Agent, all documents within 30 days within its possession that may be reasonably necessary to demonstrate the creditworthiness of the affordable units.

3.10 Obligation to Cooperate: Developer shall have the obligation to cooperate with Borough to advance the intent and purposes of this Agreement.

ARTICLE IV - OBLIGATIONS OF THE BOROUGH

4.1 The Rezoning Ordinance: Within fifteen (15) days of the execution of this Agreement, the Borough shall introduce an ordinance (hereinafter the "Rezoning Ordinance") that will permit the development of the Property consistent with the Rezoning Ordinance, and reasonably consistent with the attached concept site plans and elevations (collectively attached as **Exhibit A)** that allows for the development of the Property and the construction of 185 total units, of which twenty percent (20%) shall be set aside for affordable housing. The Rezoning Ordinance will require a twenty percent (20%) set-aside and will require all units to be constructed in accordance with all applicable UHAC and COAH regulations. The Rezoning Ordinance will include the provisions set forth in Section 1.3 and those set forth below.

The Rezoning Ordinance shall also include revised bulk standards and development requirements, including, but not limited to, the following provisions or standards to implement the following development aspects of the Inclusionary Development: (i) all set backs shall be measured from the property lines of the entire Sony Campus and not from zoning or lot lines that are established by municipal boundaries. By way of example and not limitation, there shall be no setback at the border between Park Ridge and Montvale because it occurs within the interior of the Sony Campus; (ii) the minimum building set back line shall be forty feet (40') from the Sony Property line which is the boundary with the right of way for the Garden State Parkway; (iii) the minimum building set back line shall be thirty feet (30') from all remaining property lines of the Sony Property; (iv) "Height" for buildings within the Inclusionary Development shall be measured as be the vertical distance between the average Ground Elevation around the foundation of the building and the elevation of the highest point of the roof deck if the building is flat, or, in the case of sloping roofs, to a point ½ the distance between the rafter plate and the uppermost point of the roof deck. It is understood by the Parties that exclusions from the definition of Height shall include, but not be limited, to the following exclusions: any parapet, structure, apparatus, amenities, and/or or equipment; (v) "Ground Elevation" shall be the elevation of the property in its final/finished grade at building wall; (vi) "Story" shall be that portion of a building included between the surface of any floor and the surface of the floor above it or, if there be no floor above it, then the space between the floor and the ceiling next above it. Notwithstanding anything to the contrary, the Parties agree that the Inclusionary Development intends to provide a level of parking that shall be partially below finished grade ("Parking Level"). The intention of the Parties in drafting the Rezoning Ordinance shall be to exclude the Parking Level from being characterized as a Story, Basement or Cellar (within the meaning of the Borough Code) or the Parking Level otherwise being included in the height calculation intended for the habitable portion of the Inclusionary Development. The Parties further agree, notwithstanding anything to the contrary, that the Inclusionary Development intends to include certain structures, apparatus, utilities, amenities, and equipment on its roof ("Roof"). The intention of the Parties in drafting the Rezoning Ordinance shall be to exclude the Roof from being characterized as a Story or otherwise being included in the height calculation intended for the habitable portion of the Inclusionary Development; (vii) the maximum building Height for the buildings within the Inclusionary Development shall be limited to 59 feet; and (ix) the maximum building Stories within the Inclusionary Development shall be limited to four (4) Stories.

4.2 Upon introduction of the Rezoning Ordinance, the Borough shall refer the

Rezoning Ordinance to the Planning Board for review and recommendation at the Planning Board's next regularly scheduled meeting, or such special meeting as may be required.

4.3 At the next regularly scheduled Borough Council meeting after a recommendation has been made by the Planning Board regarding the Rezoning Ordinance, or after the expiration of the thirty-five (35) day referral period, whichever is earlier, the Borough will vote on the approval of the Rezoning Ordinance.

4.4 In no event shall the vote on the Rezoning Ordinance occur after December 28, 2017 and the Borough agrees to schedule such special meeting(s) as necessary to act on the Rezoning Ordinance on or before December 28, 2017.

4.5 The adoption of the Rezoning Ordinance shall not await the adoption of the Affordable Housing Plan. In the event that the Rezoning Ordinance shall not be adopted as aforesaid, then the Parties to this agreement shall be restored, *status quo ante*, to their respective positions prior to the execution of this Agreement and no party shall be entitled to use this Agreement to the disadvantage of the other in any future litigation.

4.6 Obligation To Include Project Into Borough's Affordable Housing Plan. The Borough shall incorporate this Inclusionary Development, this Agreement and the Rezoning Ordinance into the Affordable Housing Plan for which it seeks the Court's approval. The Borough agrees that, absent written consent of Hornrock, the Rezoning Ordinance shall remain applicable to the Property until, at minimum, the conclusion of the Third Round compliance period (June 30, 2025).

4.7 Obligation To Cooperate: The Borough acknowledges that in order for Hornrock to construct its Inclusionary Development, Hornrock will be required to obtain any and all approvals and permits from (1) entities, boards or agencies which are under the jurisdiction of the Parties to this Agreement, and from (2) all relevant public entities and utilities; such as, by way of example only, the Borough, the Planning Board, the County of Bergen, the Bergen County Planning Board, the New Jersey Department of Environmental Protection, and the New Jersey Department of Transportation (collectively, "Required Approvals"). The Borough agrees to use all reasonable efforts to assist Hornrock in its undertakings to obtain the Required Approvals on an expedited basis provided that the taxes on the subject property are current. Hornrock and the Borough further agree that certain underground utility easements may be required across the Property to facilitate the efficient development of the Inclusionary Development. The Borough and Hornrock agree to execute any such easements in a manner which minimizes the impact upon the development potential of the Property.

The Parties cooperation shall also include the acknowledgement and agreement that the Sony Campus extends beyond the Borough's municipal boundaries, and as such, parking, stormwater and other supportive aspects of the Inclusionary Development may be physically located outside the municipal boundaries of the Borough.

4.8 Developer shall be responsible for all costs that the Borough may reasonably incur in conjunction with providing cooperation.

4.9 Obligation to Maintain Proposed Re-Zoning of Property: The Borough agrees that if a decision of a court of competent jurisdiction in Bergen County, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an affordable housing obligation for the Borough for the period 1987-2025 that would lower the Borough's affordable housing obligation beyond that established by COAH for the period 1987-1999 and/or this Court for the period 1999-2025, the Borough shall nonetheless implement the Rezoning Ordinance contemplated by this Agreement and take all steps necessary to support the development of the Inclusionary Development contemplated by this Agreement.

ARTICLE V – OBLIGATIONS OF THE PLANNING BOARD.

5.1 After the Borough introduces the Rezoning Ordinance and refers the ordinance to the Board for comment and a Master Plan consistency review, the Planning Board shall (a) entertain a resolution authorizing the execution of this agreement, (b) entertain an amendment to the Borough's Master Plan that would render the ordinance consistent with the Master Plan; and (c) refer the ordinance back to the Borough for a hearing.

5.2 Obligation to Process Developer's Development Applications with Reasonable Diligence. The Planning Board shall expedite the processing of Developer's application, development applications following Court approval of this Agreement following a duly noticed Fairness Hearing in accordance with N.J.A.C. 5:93-10.1(a) and within the time limits imposed by the MLUL. In the event of any appeal of the Court approval of this Agreement, the Board shall process and take action on any development application by Developer for the Property which decision may be conditioned upon the outcome of any pending appeal. If necessary, the Planning Board shall schedule special meetings to process Developer's applications provided that Developer shall be responsible for such costs as the Borough may incur in conjunction with such meetings..

5.3 Obligation to Refrain From Imposing Cost-Generative Requirements. The Planning Board recognizes that any Approvals and this Agreement all contemplate the development of an "inclusionary development" within the meaning of the Mount Laurel doctrine. That means that Hornrock may apply for a waiver or bulk variance from any standard imposed by the Borough's Land Use and Development Ordinance, as applicable, and a de minimis exception from RSIS as related to parking, and that the standards set forth in the MLUL shall determine if Hornrock is entitled to this relief.

ARTICLE VI – MUTUAL OBLIGATIONS

6.1 Obligations Regarding Master' s Costs:

Except as set forth herein, each Party shall be responsible for its own costs and expenses associated with seeking Court approval for and implementing this Agreement. The foregoing provision shall not be construed to preclude joint representation of Borough and Planning Board in any litigation or other proceeding. In addition to its own costs, Developer shall be responsible for one half the expenses generated by the Special Master from the date of the Special Master's appointment through the point at which the Master reviews this agreement,

submits a report on this agreement, testifies about this agreement and otherwise assists the Court in making a decision about this agreement. For this period up to the Master's review of this agreement, he has indicated that his bills through October 31, 2017 do not exceed $25,000. The Hekemian Group (hereinafter "Hekemian") shall be responsible for the remaining 50 percent of the master's fees incurred prior to the review of its agreement by the Master. It is unknown what expenses the Master will generate from the review of this agreement through the Fairness Hearing.

6.2 Obligation to Reimburse Borough for Fees Required to be Paid to FSHC.

It is anticipated that the Borough will enter into a settlement agreement with FSHC, which will call for the payment of a $25,000 fee; Hornrock agrees to pay to FSHC the sum of $12,500, representing attorneys' fees and costs incurred by FSHC in this matter. The $12,500 shall be remitted to Rick Hoff, Esq. as escrow agent within 10 days of the signing of this Agreement, and before the fairness hearing in this matter. Rick Hoff shall deposit the funds into his firm's escrow account. Within 10 days after the entry of an order approving the settlement between FSHC and Montvale, Mr. Hoff shall cause the $12,500 to be remitted to FSHC. Payment of said sum can be enforced by a motion in aid of litigant's rights brought by FSHC against Hornrock.

6.3 Obligation To Comply with State Regulations: The Parties shall comply with any and all Federal, State, County and local laws, rules, regulations, statutes, ordinances, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses, approvals, and similarly binding authority, applicable to the Inclusionary Development or the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights in connection with this Agreement.

6.4 Mutual Good Faith, Cooperation and Assistance. The Parties shall exercise good faith, cooperate, and assist each other in fulfilling the intent and purpose of this Agreement, including, but not limited to, the approval of this Agreement by the Court, the Approvals, the development of the Property consistent with the terms hereof, and the defense of any challenge with regard to any of the foregoing.

6.5 Defense of Agreement. Each Party exclusively shall be responsible for all costs which they may incur in obtaining Court approval of this Agreement and any appeal therefrom, or from obtaining Development Approvals or the approval of the Affordable Housing Plan or any part thereof. The Parties shall diligently defend any such challenge.

6.6 Notices: Any notice or transmittal of any document required, permitted or appropriate hereunder and/or any transmittal between the Parties relating to the Property (herein "Notice[s]") shall be written and shall be served upon the respective Parties by facsimile or by certified mail, return receipt requested, or recognized overnight or personal carrier such as, for example, Federal Express, with certified proof of receipt, and, where feasible (for example, any transmittal of less than fifty (50) pages), and in addition thereto, a facsimile delivery shall be provided. All Notices shall be deemed received upon the date of delivery set forth in such certified proof, and all times for performance based upon notice shall be from the date set forth

therein. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days' notice as provided herein:

To Hornrock:

Hornrock Properties MPR, LLC
1 Sony Drive #3a
Park Ridge, NJ 07656

Richard J. Hoff, Jr., Esquire
Bisgaier Hoff, LLC
25 Chestnut Street, Suite 3
Haddonfield, NJ 08033
rhoff@bisgaierhoff.com

To the Borough:

Maureen Iarossi-Alwan
Borough Clerk
Borough of Montvale
12 Mercedes Drive
Montvale, New Jersey 07645

Boggia & Boggia, LLC
71 Mt. Vernon Street
Ridgefield Park, New Jersey 07660

WITH COPIES TO:

AND TO:

Jeffrey R. Surenian and Associates, LLC
Attention: Jeffrey R. Surenian, Esq.
707 Union Avenue, Suite 301
Brielle, NJ 08730
Fax: (732) 612-3101
JRS@Surenian.com

In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all others identified of their successor.

ARTICLE VII - MISCELLANEOUS

7.1 Severability: Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provisions of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

7.2 Successors Bound: The provisions of this Agreement shall run with the land, and the obligations and benefits hereunder shall be binding upon and inure to the benefit of the Parties, their successors and assigns, including any person, corporation, partnership or other legal

entity which at any particular time may have a fee title interest in the Property which is the subject of this Agreement. This Agreement may be enforced by any of the Parties, and their successors and assigns, as herein set forth.

7.3 **Governing Law:** This Agreement shall be governed by and construed by the laws of the State of New Jersey.

7.4 **No Modification:** This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.

7.5 **Effect of Counterparts:** This Agreement may be executed simultaneously in one (1) or more facsimile or e-mail counterparts, each of which shall be deemed an original. Any facsimile or e-mail counterpart forthwith shall be supplemented by the delivery of an original counterpart pursuant to the terms for notice set forth herein.

7.6 **Voluntary Agreement:** The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possess the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

7.7 **Interpretation:** Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties, and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (a) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (b) it has conferred due authority for execution of this Agreement upon the person(s) executing it.

7.8 **Necessity of Required Approvals:** The Parties recognize that the site plans required to implement the Inclusionary Development provided in this Agreement, and such other actions as may be required of the Planning Board or Borough under this Agreement, cannot be approved except on the basis of the independent reasonable judgment by the Planning Board and the Borough Council, as appropriate, and in accordance with the procedures established by law. Nothing in this Agreement is intended to constrain that judgment or to authorize any action not taken in accordance with procedures established by law, however, in accordance with procedures established by law, the Planning Board's judgment must not be arbitrary, capricious, or unreasonable in its consideration of the application. Similarly, nothing herein is intended to preclude Developer from appealing any denials of or conditions imposed by the Planning Board in accordance with the MLUL or, subject to Paragraph 3.5, taking any other action permitted by law.

7.9 **Schedules:** Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both Parties.

7.10 **Entire Agreement:** This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior oral and written agreements between the parties with respect to the subject matter hereof except as otherwise provided herein.

7.11 **Conflict of Interest:** No member, official or employee of the Borough or the Planning Board shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

7.12 **Effective Date:** Anything herein contained to the contrary notwithstanding, the effective date ("Effective Date") of this Agreement shall be the date upon which the last of the Parties to execute this Agreement has executed and delivered this Agreement.

7.13 **Waiver.** The Parties agree that this Agreement is enforceable. Each of the Parties waives all rights to challenge the validity or the ability to enforce this Agreement. Failure to enforce any of the provisions of this Agreement by any of the Parties shall not be construed as a waiver of these or other provisions.

7.14 **Captions.** The captions and titles to this Agreement and the several sections and subsections are inserted for purposes of convenience of reference only and are in no way to be construed as limiting or modifying the scope and intent of the various provisions of this Agreement.

7.15 **Default.** In the event that any of the Parties shall fail to perform any material obligation on its part to be performed pursuant to the terms and conditions of this Agreement, unless such obligation is waived by all of the other Parties for whose benefit such obligation is intended, or by the Court, such failure to perform shall constitute a default of this Agreement. Upon the occurrence of any default, the non-defaulting Party shall provide notice of the default and the defaulting Party shall have a reasonable opportunity to cure the default within forty-five (45) days. In the event the defaulting Party fails to cure within forty-five (45) days or such reasonable period of time as may be appropriate, the Party(ies) for whose benefit such obligation is intended shall be entitled to exercise any and all rights and remedies that may be available in equity or under the laws of the State of New Jersey, including the right of specific performance to the extent available. Further, the Parties may apply to the Court for relief, by way of a motion for enforcement of litigant's rights.

7.16 **Notice of Actions.** The Parties and their respective counsel agree immediately to provide each other with notice of any lawsuits, actions or governmental declarations threatened or pending by third parties of which they are actually aware which may affect the provisions of this Agreement.

7.17 **Construction, Resolution of Disputes.** This Agreement has been entered into and shall be construed, governed and enforced in accordance with the laws of the State of New Jersey without giving effect to provisions relating to the conflicts of law. Jurisdiction of any litigation ensuing with regard to this Agreement exclusively shall be in the Superior Court of New Jersey, with venue in Bergen County. Service of any complaint may be effected consistent

with the terms hereof for the delivery of "Notices," hereinafter defined. The Parties waive formal service of process. The Parties expressly waive trial by jury in any such litigation.

7.18 Conflicts. The Parties acknowledge that this Agreement cannot be affected by the Compliance Action or any amendments to the Borough's Affordable Housing Plan or Land Use and Development Ordinances and this Agreement shall control with respect to those matters as applied to the Property. Upon the entry of a Judgment of Compliance and Repose in the Borough's Compliance Action, and after the Compliance Action is concluded, the Court shall retain jurisdiction to ensure compliance with the terms and conditions of this Agreement. As to any inconsistencies between the Approvals and this Agreement, the Approvals shall control. Any expenses of the master to resolve conflicts that may arise subsequent to the entry of this Agreement shall be split evenly between The Borough and Developer.

7.19 Recitals. The recitals of this Agreement are incorporated herein and made a part hereof.

THE REMAINDER OF THIS PAGE IS PURPOSEFULLY BLANK

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be properly executed, their corporate seals affixed and attested and this Agreement to be effective as of the Effective Date.

Attest:

Print Name: Kim Russo

Hornrock Properties MPR, LLC

By: _____

Print Name: Maurice Hornblass

Date: 11/14, 2017

Attest:

Print Name: MAUREEN D'ROSSI-ALLEN

BOROUGH OF MONTVALE,
A Municipal Corporation of the
State of New Jersey

By: _____

Print Name: Michael Amssali

Date: 11/14, 2017

THE PLANNING OF THE BOROUGH OF MONTVALE,

_____

Print Name: _____

By: _____

Print Name: _____

Date: _____, 2017

John S. Hogan
Bergen County Clerk

Bergen County Clerk
One Bergen County Plaza
Hackensack, NJ 07601
(201) 336-7000
www.bergencountyclerk.org/

INSTRUMENT # 17-078149
V 02756 0213
RECORDED DATE: 10/18/2017 09:49:57 AM

NOT A CERTIFIED COPY

Document Type: Deed - Low/Moderate Income	**Transaction #:** 9022551 **Document Page Count:** 7 **Operator Id:** CLERK

RETURN TO:

EASTERN TITLE AGENCY , INC. (CM)
2 INDUSTRIAL WAY W.
EATONTOWN NJ 07724
ERECORDED

SUBMITTED BY:

Eastern Title Agency , Inc. (CM)

800-364-0668

PRIMARY NAME	SECONDARY NAME
K HOVNANIAN AT MONTVALE II LLC	INARID BRITO
ADDITIONAL PRIMARY NAMES	**ADDITIONAL SECONDARY NAMES**

MARGINAL REFERENCES:

DOCUMENT DATE: 07/31/2017
MUNICIPALITY: MONTVALE
CONSIDERATION AMT: $105,000.00
LOT: 1
BLOCK: 302
GRANTEE ADDRESS: 31 AUTUMN WAY
MONTVALE NJ 07645

FEES / TAXES:

Recording Fee: Deed - Low/Moderate Income	$40.00
Additional Pages Fee	$60.00
Basic Fee - County	$105.00
Homeless Trust Fund - Bergen County	$3.00
Total:	$208.00

INSTRUMENT #: 17-078149
Recorded Date: 10/18/2017 09:49:57 AM

I hereby CERTIFY that this document is recorded in the Clerk's Office in Bergen County, New Jersey.

John S. Hogan
Bergen County Clerk

Recording Fees: $103.00
Realty Transfer Tax Fees: $0.00

OFFICIAL RECORDING COVER PAGE

PLEASE DO NOT DETACH

THIS PAGE IS NOW PART OF THIS LEGAL DOCUMENT

NOTE: If document data differs from cover sheet, document data always supersedes.
***COVER PAGE DOES NOT INCLUDE ALL DATA, PLEASE SEE INDEX AND DOCUMENT FOR ANY ADDITIONAL INFORMATION.**

Prepared by Christine Marketta, Authorized Representative

NEW CONSTRUCTION

Deed

DEED-RESTRICTED AFFORDABLE HOUSING UNIT WITH RESTRICTIONS ON RESALE AND REFINANCING

To State Regulated Property
With Covenants Restricting Conveyance
And Mortgage Debt

NOT A CERTIFIED COPY

THIS DEED is made on this 31st day of July, 2017 by and between

K. HOVNANIAN AT MONTVALE II, LLC, a limited liability company of the State of New Jersey, whose main office is 110 Fieldcrest Avenue, Edison, New Jersey 08837 (Grantor) and

INARID BRITO, about to reside at 31 Autumn Way, Montvale, New Jersey 07645 (collectively, Grantee).

Article 1. Consideration and Conveyance

In return for payment to the Grantor by the Grantee of One Hundred Five Thousand Dollars ($105,000.00), the receipt of which is hereby acknowledged by the Grantor, the Grantor hereby grants and conveys to the Grantee all of the land and improvements thereon as is more specifically described in Article 2, hereof (the Property).

Article 2. Description of Property

The Property consists of all of the land, and improvements thereon, that is located in the municipality of the Borough of Montvale, County of Bergen, State of New Jersey, and described more specifically as Block No. 302, Lot No. 1, Qualifier C0050 and known by the street address: 31 Autumn Way, Montvale, New Jersey 07645.

BEING known and designated as Unit No. 0813 in Building No. 8, together with an undivided percentage of interest in the common elements appurtenant thereto, as amended from time to time, in accordance with, as more specifically defined in and subject to the terms, limitations, conditions, covenants, restrictions, easements, by-laws and other provisions of the Master Deed for The Reserve at Montvale, A Condominium, recorded in the Bergen County Clerk's office in V Book 2032, page 1910, First Amendment to Master Deed recorded in V Book 2130, page 1037, Second Amendment to Master Deed recorded in V Book 2162, page 645, Corrective Second Amendment to Master Deed recorded in V Book 2211, page 282, Third Amendment to Master Deed recorded

in V Book 2240, page 1698, Fourth Amendment to Master Deed recorded in V Book 2349, page 117, Fifth Amendment to Master Deed recorded in V Book 2281, page 36, Sixth Amendment to Master Deed recorded in V Book 2360, page 1902, Seventh Amendment to Master Deed recorded in V Book 2448, page 923 and Eighth Amendment to Master Deed recorded in V Book 2519, page 1868 and any and all lawful amendments and supplements thereto.

Article 3. Grantor's Covenant

The Grantor hereby covenants and affirms that Grantor has taken no action to encumber the Property.

Article 4. Affordable Housing Covenants

Sale and use of the Property is governed by regulations known as the Uniform Housing Affordability Controls, which are found in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1, *et seq*, the "Regulations"). Consistent with the Regulations, the following covenants (the "Covenants") shall run with the land for the period of time commencing upon the earlier of (a) the date hereof or (b) the prior commencement of the "Control Period", as that term is defined in the Regulations, and terminating upon the expiration of the Control Period as provided in the Regulations.

In accordance with N.J.A.C. 5:80-26.5, each restricted unit shall remain subject to the requirements of this subchapter, the "Control Period," until the municipality in which the unit is located elects to release the unit from such requirements. Prior to such a municipal election, a restricted unit must remain subject to the requirements of this subchapter for a period of at least 30 years; provided, however, that units located in high-poverty census tracts shall remain subject to these affordability requirements for a period of at least 10 years;

A. The Property may be conveyed only to a household who has been approved in advance and in writing by approved in advance and in writing by the administrative agent appointed under the Regulations (hereinafter, collectively, the "Administrative Agent").

B. No sale of the Property shall be lawful, unless approved in advance and in writing by the Administrative Agent, and no sale shall be for a consideration greater than maximum permitted price ("Maximum Resale Price", or "MRP") as determined by the Administrative Agent.

C. No refinancing, equity loan, secured letter of credit, or any other mortgage obligation or other debt (collectively, "Debt") secured by the Property, may be incurred except as approved in advance and in writing by the Administrative Agent. At no time shall the Administrative Agent approve any such Debt, if incurring the Debt would make the total of all such Debt exceed Ninety-Five Percent (95%) of the applicable MRP.

D. The owner of the Property shall at all times maintain the Property as his or her principal place of residence.

E. Except as set forth in F, below, at no time shall the owner of the Property lease or rent the Property to any person or persons, except on a short-term hardship basis as approved in advance and in writing by the Administrative Agent.

F. If the Property is a two-family home, the owner shall lease the rental unit only to income-certified low-income households approved in writing by the Administrative Agent, shall charge rent no

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greater than the maximum permitted rent as determined by the Administrative Agent, and shall submit for written approval of the Administrative Agent copies of all proposed leases prior to having them signed by any proposed tenant.

G. No improvements may be made to the Property that would affect its bedroom configuration, and in any event, no improvement made to the Property will be taken into consideration to increase the MRP, except for improvements approved in advance and in writing by the Administrative Agent.

H. The affordable housing covenants, declarations and restrictions implemented by this Deed and by incorporation, N.J.A.C. 5:80-26.1 et seq., shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to the Affordable Unit so long as the Affordable Unit remains subject to the affordability controls being implemented by this Declaration.

Article 5. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Administrative Agent and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability Control rules found at N.J.A.C. 5:80-26, and the obligation for the provision of low and moderate-income housing. Accordingly, and as set forth in N.J.A.C. 5:80-26.18:

A. In the event of a threatened breach of any of the Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.

B. Upon the occurrence of a breach of any Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent shall have all remedies provided at law or equity including but not limited to forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code and specific performance.

EXECUTION BY GRANTOR

This Deed has been signed on the date hereof by the appropriate authorized representative of Grantor.

K. HOVNANIAN AT MONTVALE II, LLC

By: _____

Christine Marketta, Authorized Representative

Bergen County Clerk V BK 02756 PG 0216 10/18/2017 09:49 AM 4 of 8

STATE OF NEW JERSEY)
)SS:
COUNTY OF MIDDLESEX)

I acknowledge that on July 31, 2017, Christine Marketta personally appeared before me and acknowledged under oath that she:

(a) Made this Deed; and
(b) Was authorized to and did execute this Deed on behalf of and as an Authorized Representative of the Grantor named in this Deed; and K. Hovnanian at Montvale II, LLC
(c) Made this Deed for $105,000.00 consideration, as such consideration is defined in N.J.S.A. 46:15-5.

Geralyn D. DeMarco

GERALYN D. DEMARCO
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES FEB. 28, 2022

EXECUTION BY GRANTEE

By signing below, the Grantee(s) hereby do, jointly and severally, acknowledge and agree that he/she understands the covenants and restrictions set forth herein, and further that he/she shall be bound by same for so long as he/she owns the Property.

INARID BRITO

NOT A CERTIFIED COPY

SPECIFIC POWER OF ATTORNEY

I, the above named GRANTEE, do hereby irrevocably name, make, appoint, constitute and confirm K. HOVNANIAN AT MONTVALE II, LLC, a limited liability company of the State of New Jersey, whose main office is 110 Fieldcrest Avenue, Edison, New Jersey, and its assigns and successors, my true and lawful attorney-in-fact for me for those specific and limited purposes as set forth in Paragraph 14 of the Master Deed for The Reserve at Montvale, A Condominium (the "Master Deed") and for me and in my name, place and stead, execute any such amendment(s) to the Master Deed and other instrument(s) necessary to effect the purposes set forth in Paragraph 14 of the Master Deed with the same force and effect as though I were present and acting for myself and I hereby ratify and confirm all that my said attorney-in-fact shall do by virtue hereof. This Power of Attorney shall not be affected by the fact that I might become incompetent hereafter, but shall remain in full force and effect.

In witness whereof, I hereunto set my hand this 31st day of July, 2017.

INARID BRITO, GRANTEE

NOT A CERTIFIED COPY

STATE OF NEW JERSEY)
COUNTY OF Morris)SS:

Be it remembered, that on this 31st day of July, 2017, subscriber(s), Inarid Brito, personally appeared (if *more than one* person signed the foregoing deed and appeared before me, the words "subscriber," "Grantee" and "owner" shall include all such persons) and who, being duly sworn by me, deposed and made proof to my satisfaction: (i) that he/she is the Grantee/Owner named in the foregoing Deed and (ii) that he/she has executed said Deed with respect to the Property and for the purposes described and set forth herein.

SUSAN C WILLIAMS
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES JUNE 25, 2022

State of New Jersey

SELLER'S RESIDENCY CERTIFICATION/EXEMPTION

GIT/REP-3
(9-2015)

(Please Print or Type)

SELLER'S INFORMATION

Name(s)

K. Hovnanian @ Montvale II, LLC

Current Street Address

110 FIELDCREST AVENUE

City, Town, Post Office Box	State	Zip Code
EDISON	NJ	08837

PROPERTY INFORMATION

Block(s)	Lot(s)	Qualifier
302	1	C0050

Street Address
31 Autumn Way

City, Town, Post Office Box	State	Zip Code
Montvale	NJ	07645

Seller's Percentage of Ownership	Total Consideration	Owner's Share of Consideration	Closing Date
100%	$105,000.00	$105,000.00	7/31/2017

SELLER'S ASSURANCES (Check the Appropriate Box) (Boxes 2 through 14 apply to Residents and Nonresidents)

1. ☐ Seller is a resident taxpayer (individual, estate, or trust) of the State of New Jersey pursuant to the New Jersey Gross Income Tax Act, will file a resident gross income tax return, and will pay any applicable taxes on any gain or income from the disposition of this property.
2. ☐ The real property sold or transferred is used exclusively as a principal residence as defined in 26 U.S. Code section 121.
3. ☐ Seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration.
4. ☐ Seller, transferor, or transferee is an agency or authority of the United States of America, an agency or authority of the State of New Jersey, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.
5. ☒ Seller is not an individual, estate, or trust and is not required to make an estimated gross income tax payment.
6. ☐ The total consideration for the property is $1,000 or less so the seller is not required to make an estimated income tax payment.
7. ☐ The gain from the sale is not recognized for federal income tax purposes under 26 U.S. Code section 721, 1031, or 1033 (CIRCLE THE APPLICABLE SECTION). If the indicated section does not ultimately apply to this transaction, the seller acknowledges the obligation to file a New Jersey income tax return for the year of the sale and report the recognized gain.
   ☐ Seller did not receive non-like kind property.
8. ☐ The real property is being transferred by an executor or administrator of a decedent to a devisee or heir to effect distribution of the decedent's estate in accordance with the provisions of the decedent's will or the intestate laws of this State.
9. ☐ The real property being sold is subject to a short sale instituted by the mortgagee, whereby the seller agreed not to receive any proceeds from the sale and the mortgagee will receive all proceeds paying off an agreed amount of the mortgage.
10. ☐ The deed is dated prior to August 1, 2004, and was not previously recorded.
11. ☐ The real property is being transferred under a relocation company transaction where a trustee of the relocation company buys the property from the seller and then sells the house to a third party buyer for the same price.
12. ☐ The real property is being transferred between spouses or incident to a divorce decree or property settlement agreement under 26 U.S. Code section 1041.
13. ☐ The property transferred is a cemetery plot.
14. ☐ The seller is not receiving net proceeds from the sale. Net proceeds from the sale means the net amount due to the seller on the settlement sheet.

SELLER'S DECLARATION

The undersigned understands that this declaration and its contents may be disclosed or provided to the New Jersey Division of Taxation and that any false statement contained herein may be punished by fine, imprisonment, or both. I furthermore declare that I have examined this declaration and, to the best of my knowledge and belief, it is true, correct and complete. By checking this box ☐ I certify that a Power of Attorney to represent the seller(s) has been previously recorded or is being recorded simultaneously with the deed to which this form is attached.

7/31/2017
Date

Christine Markotta
Signature
(Seller) Please indicate if Power of Attorney or Attorney in Fact

7/31/2017
Date

Christine Markotta, As Authorized Representative
Signature
(Seller) Please indicate if Power of Attorney or Attorney in Fact

NOT CERTIFIED COPY

RTF-1 (Rev. 7/14/10)
MUST SUBMIT IN DUPLICATE

STATE OF NEW JERSEY
AFFIDAVIT OF CONSIDERATION FOR USE BY SELLER

(Chapter 49, P.L.1968, as amended through Chapter 33, P.L. 2006) (N.J.S.A. 46:15-5 et seq.)

BEFORE COMPLETING THIS AFFIDAVIT, PLEASE READ THE INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM.

STATE OF NEW JERSEY
} SS.
COUNTY BERGEN County Municipal Code 0236

FOR RECORDER'S USE ONLY	
Consideration	$
RTF paid by seller	$
Date	By

MUNICIPALITY OF PROPERTY LOCATION Borough of Montvale

*Use symbol "C" to indicate that fee is exclusively for county use.

(1) PARTY OR LEGAL REPRESENTATIVE *(See Instructions #3 and #4 on reverse side)*

Deponent, Christine Marketta (Name), being duly sworn according to law upon his/her oath, deposes and says that he/she is the authorized representative (Grantor, Legal Representative, Corporate Officer, Officer of Title Company, Lending Institution, etc.) in a deed dated July 31, 2017 transferring real property identified as Block number 302 Lot number 1 C0050 located at 31 Autumn Way, Montvale (Street Address, Town) and annexed thereto.

(2) CONSIDERATION $ 105,000.00 *(Instructions #1 and #5 on reverse side)* ☐ no prior mortgage to which property is subject.

(3) Property transferred is Class 4A 4B 4C (circle one). If property transferred is Class 4A, calculation in Section 3A below is required.

(3A) **REQUIRED CALCULATION OF EQUALIZED VALUATION FOR ALL CLASS 4A (COMMERCIAL) PROPERTY TRANSACTIONS:**
(See Instructions #5A and #7 on reverse side)
Total Assessed Valuation ÷ Director's Ratio = Equalized Assessed Valuation

$_____ ÷ _____% = $_____

If Director's Ratio is less than 100%, the equalized valuation will be an amount greater than the assessed value. If Director's Ratio is equal to or in excess of 100%, the assessed value will be equal to the equalized valuation.

(4) FULL EXEMPTION FROM FEE *(See Instruction #8 on reverse side)*
Deponent states that this deed transaction is fully exempt from the Realty Transfer Fee imposed by C. 49, P.L. 1968, as amended through C. 66, P.L. 2004, for the following reason(s). Mere reference to exemption symbol is insufficient. Explain in detail.

(5) PARTIAL EXEMPTION FROM FEE *(Instruction #9 on reverse side)*
NOTE: All boxes below apply to grantor(s) *only*. **ALL BOXES IN APPROPRIATE CATEGORY MUST BE CHECKED.** Failure to do so will void claim for partial exemption. Deponent claims that this deed transaction is exempt from State portions of the Basic, Supplemental, and General Purpose Fees, as applicable, imposed by C. 176, P.L. 1975, C. 113, P.L. 2004, and C. 66, P.L. 2004 for the following reason(s):

A. **SENIOR CITIZEN** Grantor(s) ☐ 62 years of age or over. * *(Instruction #9 on reverse side for A or B)*
B. **BLIND PERSON** Grantor(s) ☐ legally blind or; *
DISABLED PERSON Grantor(s) ☐ permanently and totally disabled ☐ receiving disability payments ☐ not gainfully employed*

Senior citizens, blind persons, or disabled persons must also meet **all of the following** criteria:
☐ Owned and occupied by grantor(s) at time of sale. ☐ Resident of State of New Jersey.
☐ One or two-family residential premises. ☐ Owners as joint tenants must all qualify.

*IN CASE OF HUSBAND AND WIFE, PARTNERS IN A CIVIL UNION COUPLE, ONLY ONE GRANTOR NEED QUALIFY IF TENANTS BY THE ENTIRETY.

C. **LOW AND MODERATE INCOME HOUSING** *(Instruction #9 on reverse side)*
☒ Affordable according to H.U.D. standards. ☒ Reserved for occupancy.
☒ Meets income requirements of region. ☒ Subject to resale controls.

(6) NEW CONSTRUCTION *(Instructions #2, #10 and #12 on reverse side)*
☒ Entirely new improvement. ☒ Not previously occupied.
☒ Not previously used for any purpose. ☒ "NEW CONSTRUCTION" printed clearly at top of first page of the deed.

(7) RELATED LEGAL ENTITIES TO LEGAL ENTITIES *(Instructions #5, #12, #14 on reverse side)*
☐ No prior mortgage assumed or to which property is subject at time of sale.
☐ No contributions to capital by either grantor or grantee legal entity.
☐ No stock or money exchanged by or between grantor or grantee legal entities.

(8) Deponent makes this Affidavit to induce county clerk or register of deeds to record the deed and accept the fee submitted herewith in accordance with the provisions of Chapter 49, P.L. 1968, as amended through Chapter 33, P.L. 2006.

Subscribed and sworn to before me
this 31 day of July , 20 17

Geralyn D. DeMarco

GERALYN D. DEMARCO
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES FEB. 28, 2022

Signature of Deponent

110 Fieldcrest Avenue, Edison, NJ 08837
Deponent Address

XXX-XXX- 827
Last three digits in Grantor's Social Security Number

K. Hovnanian @ Montvale II, LLC
Grantor Name

110 Fieldcrest Avenue Edison, NJ 08837
Grantor Address at Time of Sale

Name/Company of Settlement Officer

FOR OFFICIAL USE ONLY			
Instrument Number		County	
Deed Number		Book	Page
Deed Dated		Date Recorded	

County recording officers shall forward one copy of each RTF-1 form when Section 3A is completed to: **STATE OF NEW JERSEY**
PO BOX 251
TRENTON, NJ 08695-0251
ATTENTION: REALTY TRANSFER FEE UNIT

The Director of the Division of Taxation in the Department of the Treasury has prescribed this form as required by law, and may not be altered or amended without prior approval of the Director. For information on the Realty Transfer Fee or to print a copy of this Affidavit, visit the Division of Taxation website at:
www.state.nj.us/treasury/taxation/lpt/localtax.htm

Not Official Copy



John S. Hogan
Bergen County Clerk

Bergen County Clerk
One Bergen County Plaza
Hackensack, NJ 07601
(201) 336-7000
www.bergencountyclerk.org/

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INSTRUMENT # 17-019449.01

V 02551 1647

RECORDED DATE: 03/02/2017 02:10:57 PM

Document Type: Deed - Low/Moderate Income	**Transaction #:** 7416470 **Document Page Count:** 6 **Operator Id:** CLERK

RETURN TO:

WAYNE A STAHLMANN ESQ
198 BOULEVARD
HASBROUCK HEIGHTS NJ 07604

SUBMITTED BY:

PRIMARY NAME	SECONDARY NAME
K HOVNANIAN AT MONTVALE II LLC	AERI YI

ASSOCIATED DOCUMENT(S):

MUNICIPALITY: MONTVALE
CONSIDERATION AMT: $77,000.00
LOT: 1 C0051
BLOCK: 302

FEES / TAXES:

County Portion:	$77.00
Recording:	$93.00
Total:	$170.00

INSTRUMENT #: 17-019449.01
Recorded Date: 03/02/2017 02:10:57 PM

I hereby CERTIFY that this document is recorded in the Clerk's Office in Bergen County, New Jersey.

John S. Hogan
Bergen County Clerk

OFFICIAL RECORDING COVER PAGE

PLEASE DO NOT DETACH

THIS PAGE IS NOW PART OF THIS LEGAL DOCUMENT

NOTE: If document data differs from cover sheet, document data always supersedes.
***COVER PAGE DOES NOT INCLUDE ALL DATA, PLEASE SEE INDEX AND DOCUMENT FOR ANY ADDITIONAL INFORMATION.**

Prepared by April M. McHeffey, Esq.

17-019449.01 Deed - Low/Moderate Income
V Bk: 02551 Pg: 1647-1653 Rec. Fee $93.00
John S. Hogan, Bergen County Clerk
Recorded 03/02/2017 02:10:57 PM

NEW CONSTRUCTION

Deed

Consideration	: $77,000.00
Realty Transfer Fee	: $77.00
State Portion	: $0.00
County Portion	: $77.00
Municipality Portion	: $0.00

NOT A CERTIFIED COPY

DEED-RESTRICTED AFFORDABLE HOUSING UNIT WITH RESTRICTIONS ON RESALE AND REFINANCING

To State Regulated Property
With Covenants Restricting Conveyance
And Mortgage Debt

THIS DEED is made on this 24th day of February, 2017 by and between

K. HOVNANIAN AT MONTVALE II, LLC, a limited liability company of the State of New Jersey, whose main office is 110 Fieldcrest Avenue, Edison, New Jersey 08837 (Grantor) and

AERI YI and MYONG S. YI, Husband and Wife, about to reside at 33 Autumn Way, Montvale, New Jersey 07645 (collectively, Grantee).

Article 1. Consideration and Conveyance

In return for payment to the Grantor by the Grantee of Seventy-Seven Thousand Dollars ($77,000.00), the receipt of which is hereby acknowledged by the Grantor, the Grantor hereby grants and conveys to the Grantee all of the land and improvements thereon as is more specifically described in Article 2, hereof (the Property).

Article 2. Description of Property

The Property consists of all of the land, and improvements thereon, that is located in the municipality of the Borough of Montvale, County of Bergen, State of New Jersey, and described more specifically as Block No. 302, Lot No. 1, Qualifier C0051 and known by the street address: 33 Autumn Way, Montvale, New Jersey 07645.

BEING known and designated as Unit No. 0823 in Building No. 8, together with an undivided percentage of interest in the common elements appurtenant thereto, as amended from time to time, in accordance with, as more specifically defined in and subject to the terms, limitations, conditions, covenants, restrictions, easements, by-laws and other provisions of the Master Deed for The Reserve at Montvale, A Condominium, recorded in the Bergen County Clerk's office in V Book 2032, page 1910, First Amendment to Master Deed recorded in V Book 2130, page 1037, Second Amendment to Master Deed recorded in V Book 2162, page 645, Corrective Second Amendment to Master Deed recorded in V Book 2211, page 282, Third Amendment to Master Deed recorded in V Book 2240, page 1698, Fourth Amendment to Master Deed recorded in V Book 2349, page 117, Fifth Amendment to Master Deed recorded in V Book 2281, page 36, Sixth Amendment to Master Deed recorded in V Book 2360, page 1902 and Seventh Amendment to Master Deed recorded in V Book 2448, page 923 and any and all lawful amendments and supplements thereto.

Article 3. Grantor's Covenant

The Grantor hereby covenants and affirms that Grantor has taken no action to encumber the Property.

Article 4. Affordable Housing Covenants

Sale and use of the Property is governed by regulations known as the Uniform Housing Affordability Controls, which are found in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1, *et seq*, the "Regulations"). Consistent with the Regulations, the following covenants (the "Covenants") shall run with the land for the period of time commencing upon the earlier of (a) the

date hereof or (b) the prior commencement of the "Control Period", as that term is defined in the Regulations, and terminating upon the expiration of the Control Period as provided in the Regulations.

In accordance with N.J.A.C. 5:80-26.5, each restricted unit shall remain subject to the requirements of this subchapter, the "Control Period," until the municipality in which the unit is located elects to release the unit from such requirements. Prior to such a municipal election, a restricted unit must remain subject to the requirements of this subchapter for a period of at least 30 years; provided, however, that units located in high-poverty census tracts shall remain subject to these affordability requirements for a period of at least 10 years;

NOT A CERTIFIED COPY

A. The Property may be conveyed only to a household who has been approved in advance and in writing by approved in advance and in writing by the administrative agent appointed under the Regulations (hereinafter, collectively, the "Administrative Agent").

B. No sale of the Property shall be lawful, unless approved in advance and in writing by the Administrative Agent, and no sale shall be for a consideration greater than maximum permitted price ("Maximum Resale Price", or "MRP") as determined by the Administrative Agent.

C. No refinancing, equity loan, secured letter of credit, or any other mortgage obligation or other debt (collectively, "Debt") secured by the Property, may be incurred except as approved in advance and in writing by the Administrative Agent. At no time shall the Administrative Agent approve any such Debt, if incurring the Debt would make the total of all such Debt exceed Ninety-Five Percent (95%) of the applicable MRP.

D. The owner of the Property shall at all times maintain the Property as his or her principal place of residence.

E. Except as set forth in F, below, at no time shall the owner of the Property lease or rent the Property to any person or persons, except on a short-term hardship basis as approved in advance and in writing by the Administrative Agent.

F. If the Property is a two-family home, the owner shall lease the rental unit only to income-certified low-income households approved in writing by the Administrative Agent, shall charge rent no greater than the maximum permitted rent as determined by the Administrative Agent, and shall submit for written approval of the Administrative Agent copies of all proposed leases prior to having them signed by any proposed tenant.

G. No improvements may be made to the Property that would affect its bedroom configuration, and in any event, no improvement made to the Property will be taken into consideration to increase the MRP, except for improvements approved in advance and in writing by the Administrative Agent.

H. The affordable housing covenants, declarations and restrictions implemented by this Deed and by incorporation, N.J.A.C. 5:80-26.1 et seq., shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to the Affordable Unit so long as the Affordable Unit remains subject to the affordability controls being implemented by this Declaration.

Article 5. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Administrative Agent and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability Control rules found at N.J.A.C. 5:80-26, and the obligation for the provision of low and moderate-income housing. Accordingly, and as set forth in N.J.A.C. 5:80-26.18:

A. In the event of a threatened breach of any of the Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.

B. Upon the occurrence of a breach of any Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent shall have all remedies provided at law or equity including but not limited to forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code and specific performance.

EXECUTION BY GRANTOR

This Deed has been signed on the date hereof by the appropriate authorized representative of Grantor.

NOT A CERTIFIED COPY

K. HOVNANIAN AT MONTVALE II, LLC

By: _____
April M. McHeffey, Esq., Authorized Representative

STATE OF NEW JERSEY)
)SS:
COUNTY OF MIDDLESEX)

I acknowledge that on February 24, 2017, April M. McHeffey, Esq. personally appeared before me and acknowledged under oath that she:

(a) Made this Deed; and
(b) Was authorized to and did execute this Deed on behalf of and as an Authorized Representative of the Grantor named in this Deed; and
(c) Made this Deed for $77,000.00 consideration, as such consideration is defined in N.J.S.A. 46:15-5.

_____
KIM A. DONNELLY
Notary Public, State of New Jersey
My Commission Expires August 22, 2021

EXECUTION BY GRANTEE

By signing below, the Grantee(s) hereby do, jointly and severally, acknowledge and agree that he/she understands the covenants and restrictions set forth herein, and further that he/she shall be bound by same for so long as he/she owns the Property.

_____
AERI YI by MYONG YI as attorney in fact

_____
MYONG S. YI

SPECIFIC POWER OF ATTORNEY

I, the above named GRANTEE, do hereby irrevocably name, make, appoint, constitute and confirm K. HOVNANIAN AT MONTVALE II, LLC, a limited liability company of the State of New Jersey, whose main office is 110 Fieldcrest Avenue, Edison, New Jersey, and its assigns and successors, my true and lawful attorney-in-fact for me for those specific and limited purposes as set forth in Paragraph 14 of the Master Deed for The Reserve at Montvale, A Condominium (the "Master Deed") and for me and in my name, place and stead, execute any such amendment(s) to the Master Deed and other instrument(s) necessary to effect the purposes set forth in Paragraph 14 of the Master Deed with the same force and effect as though I were present and acting for myself and I hereby ratify and confirm all that my said attorney-in-fact shall do by virtue hereof. This Power of Attorney shall not be affected by the fact that I might become incompetent hereafter, but shall remain in full force and effect.

NOT A CERTIFIED COPY

In witness whereof, I hereunto set my hand this 24th day of February, 2017.

AERI YI by myong yi as attorney in fact
AERI YI, GRANTEE

MYONG S. YI, GRANTEE

STATE OF NEW JERSEY)
)SS:
COUNTY OF Morris)

Be it remembered, that on this 24th day of February, 2017, subscriber(s), Aeri Yi and Myong S. Yi, personally appeared (if more than one person signed the foregoing deed and appeared before me, the words "subscriber," "Grantee" and "owner" shall include all such persons) and who, being duly sworn by me, deposed and made proof to my satisfaction: (i) that he/she is the Grantee/Owner named in the foregoing Deed and (ii) that he/she has executed said Deed with respect to the Property and for the purposes described and set forth herein.

Lorin A. Liva

Lorin A. Liva
An Attorney At Law of New Jersey

Record and Return to:

WAYNE STAHLMANN, ESQ.
198 BOULEVARD
HASBROUCK HEIGHTS, NJ 07604

RTF-1 **(Rev. 7/14/10)**
MUST SUBMIT IN DUPLICATE

STATE OF NEW JERSEY

AFFIDAVIT OF CONSIDERATION FOR USE BY SELLER

(Chapter 49, **P.L.**1968, as amended through Chapter 33, **P.L.** 2006) **(N.J.S.A.** 46:15-5 et seq.)

BEFORE COMPLETING THIS AFFIDAVIT, PLEASE READ THE INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM.

STATE OF NEW JERSEY
} SS.
COUNTY BERGEN County Municipal Code 0236

MUNICIPALITY OF PROPERTY LOCATION Borough of Montvale

FOR RECORDER'S USE ONLY	
Consideration	$ 77,000
RTF paid by seller	$ 77-
Date 3-1-17	By

*Use symbol "C" to indicate that fee is exclusively for county use.

NOT A CERTIFIED COPY

(1) PARTY OR LEGAL REPRESENTATIVE *(See Instructions #3 and #4 on reverse side)*

Deponent, April M. McHeffey (Name), being duly sworn according to law upon his/her oath, deposes and says that he/she is the authorized representative (Grantor, Legal Representative, Corporate Officer, Officer of Title Company, Lending Institution, etc.) in a deed dated 2.24.2017 transferring real property identified as Block number 302 Lot number 1 C0051 located at 33 Autumn Way, Montvale (Street Address, Town) and annexed thereto.

(2) CONSIDERATION $ 77,000.00 *(Instructions #1 and #5 on reverse side)* ☐ no prior mortgage to which property is subject.

(3) Property transferred is Class 4A 4B 4C (circle one). If property transferred is Class 4A, calculation in Section 3A below is required.

(3A)**REQUIRED CALCULATION OF EQUALIZED VALUATION FOR ALL CLASS 4A (COMMERCIAL) PROPERTY TRANSACTIONS:**
(See Instructions #5A and #7 on reverse side)
Total Assessed Valuation ÷ Director's Ratio = Equalized Assessed Valuation

$_____ ÷ _____% = $_____

If Director's Ratio is less than 100%, the equalized valuation will be an amount greater than the assessed value. If Director's Ratio is equal to or in excess of 100%, the assessed value will be equal to the equalized valuation.

(4) FULL EXEMPTION FROM FEE *(See Instruction #8 on reverse side)*
Deponent states that this deed transaction is fully exempt from the Realty Transfer Fee imposed by **C.** 49, **P.L.** 1968, as amended through **C.** 66, **P.L.** 2004, for the following reason(s). Mere reference to exemption symbol is insufficient. Explain in detail.

(5) PARTIAL EXEMPTION FROM FEE *(Instruction #9 on reverse side)*
NOTE: All boxes below apply to grantor(s) *only*. **ALL BOXES IN APPROPRIATE CATEGORY MUST BE CHECKED**. Failure to do so will void claim for partial exemption. Deponent claims that this deed transaction is exempt from State portions of the Basic, Supplemental, and General Purpose Fees, as applicable, imposed by **C.** 176, **P.L.** 1975, **C.** 113, **P.L.** 2004, and **C.** 66, **P.L.** 2004 for the following reason(s):

A. **SENIOR CITIZEN** Grantor(s) ☐ 62 years of age or over. * *(Instruction #9 on reverse side for A or B)*
B. **BLIND PERSON** Grantor(s) ☐ legally blind or; *
DISABLED PERSON Grantor(s) ☐ permanently and totally disabled ☐ receiving disability payments ☐ not gainfully employed*

Senior citizens, blind persons, or disabled persons must also meet **all of the following** criteria:
☐ Owned and occupied by grantor(s) at time of sale. ☐ Resident of State of New Jersey.
☐ One or two-family residential premises. ☐ Owners as joint tenants must all qualify.

*IN CASE OF HUSBAND AND WIFE, PARTNERS IN A CIVIL UNION COUPLE, ONLY ONE GRANTOR NEED QUALIFY IF TENANTS BY THE ENTIRETY.

C. **LOW AND MODERATE INCOME HOUSING** *(Instruction #9 on reverse side)*
☒ Affordable according to H.U.D. standards. ☒ Reserved for occupancy.
☒ Meets income requirements of region. ☒ Subject to resale controls.

(6) NEW CONSTRUCTION *(Instructions #2, #10 and #12 on reverse side)*
☒ Entirely new improvement. ☒ Not previously occupied.
☒ Not previously used for any purpose. ☒ "**NEW CONSTRUCTION**" printed clearly at top of first page of the deed.

(7) RELATED LEGAL ENTITIES TO LEGAL ENTITIES *(Instructions #5, #12, #14 on reverse side)*
☐ No prior mortgage assumed or to which property is subject at time of sale.
☐ No contributions to capital by either grantor or grantee legal entity.
☐ No stock or money exchanged by or between grantor or grantee legal entities.

(8) Deponent makes this Affidavit to induce county clerk or register of deeds to record the deed and accept the fee submitted herewith in accordance with the provisions of Chapter 49, **P.L.** 1968, as amended through Chapter 33, **P.L.** 2006.

Subscribed and sworn to before me
this 24 day of February , 20 17

Kim A Donnelly

KIM A. DONNELLY
Notary Public, State of New Jersey
My Commission Expires August 22, 2021

April M McHeffey
Signature of Deponent

110 Fieldcrest Avenue, Edison, NJ 08837
Deponent Address

XXX-XXX- 827
Last three digits in Grantor's Social Security Number

K. Hovnanian @ Montvale II, LLC
Grantor Name

110 Fieldcrest Avenue Edison, NJ 08837
Grantor Address at Time of Sale

Grandview Title
Name/Company of Settlement Officer

FOR OFFICIAL USE ONLY			
Instrument Number		County	
Deed Number		Book	Page
Deed Dated		Date Recorded	

County recording officers shall forward one copy of each RTF-1 form when Section 3A is completed to:

STATE OF NEW JERSEY
PO BOX 251
TRENTON, NJ 08695-0251
ATTENTION: REALTY TRANSFER FEE UNIT

The Director of the Division of Taxation in the Department of the Treasury has prescribed this form as required by law, and may not be altered or amended without prior approval of the Director. For information on the Realty Transfer Fee or to print a copy of this Affidavit, visit the Division of Taxation website at:
www.state.nj.us/treasury/taxation/lpt/localtax.htm

GIT/REP-3
(9-2015)

State of New Jersey
SELLER'S RESIDENCY CERTIFICATION/EXEMPTION

(Please Print or Type)

NOT A CERTIFIED COPY

SELLER'S INFORMATION

Name(s)
K. Hovnanian @ Montvale II, LLC

Current Street Address
110 FIELDCREST AVENUE

City, Town, Post Office Box	State	Zip Code
EDISON	NJ	08837

PROPERTY INFORMATION

Block(s)	Lot(s)	Qualifier
302	1	C0051

Street Address
33 Autumn Way

City, Town, Post Office Box	State	Zip Code
Montvale	NJ	07645

Seller's Percentage of Ownership	Total Consideration	Owner's Share of Consideration	Closing Date
100%	$77,000.00	$77,000.00	2/24/2017

SELLER'S ASSURANCES (Check the Appropriate Box) (Boxes 2 through 14 apply to Residents and Nonresidents)

1. ☐ Seller is a resident taxpayer (individual, estate, or trust) of the State of New Jersey pursuant to the New Jersey Gross Income Tax Act, will file a resident gross income tax return, and will pay any applicable taxes on any gain or income from the disposition of this property.
2. ☐ The real property sold or transferred is used exclusively as a principal residence as defined in 26 U.S. Code section 121.
3. ☐ Seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration.
4. ☐ Seller, transferor, or transferee is an agency or authority of the United States of America, an agency or authority of the State of New Jersey, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.
5. ☒ Seller is not an individual, estate, or trust and is not required to make an estimated gross income tax payment.
6. ☐ The total consideration for the property is $1,000 or less so the seller is not required to make an estimated income tax payment.
7. ☐ The gain from the sale is not recognized for federal income tax purposes under 26 U.S. Code section 721, 1031, or 1033 (CIRCLE THE APPLICABLE SECTION). If the indicated section does not ultimately apply to this transaction, the seller acknowledges the obligation to file a New Jersey income tax return for the year of the sale and report the recognized gain.
   ☐ Seller did not receive non-like kind property.
8. ☐ The real property is being transferred by an executor or administrator of a decedent to a devisee or heir to effect distribution of the decedent's estate in accordance with the provisions of the decedent's will or the intestate laws of this State.
9. ☐ The real property being sold is subject to a short sale instituted by the mortgagee, whereby the seller agreed not to receive any proceeds from the sale and the mortgagee will receive all proceeds paying off an agreed amount of the mortgage.
10. ☐ The deed is dated prior to August 1, 2004, and was not previously recorded.
11. ☐ The real property is being transferred under a relocation company transaction where a trustee of the relocation company buys the property from the seller and then sells the house to a third party buyer for the same price.
12. ☐ The real property is being transferred between spouses or incident to a divorce decree or property settlement agreement under 26 U.S. Code section 1041.
13. ☐ The property transferred is a cemetery plot.
14. ☐ The seller is not receiving net proceeds from the sale. Net proceeds from the sale means the net amount due to the seller on the settlement sheet.

SELLER'S DECLARATION

The undersigned understands that this declaration and its contents may be disclosed or provided to the New Jersey Division of Taxation and that any false statement contained herein may be punished by fine, imprisonment, or both. I furthermore declare that I have examined this declaration and, to the best of my knowledge and belief, it is true, correct and complete. By checking this box ☐ I certify that a Power of Attorney to represent the seller(s) has been previously recorded or is being recorded simultaneously with the deed to which this form is attached.

2/24/2017
Date

Signature
(Seller) Please indicate if Power of Attorney or Attorney in Fact

Date

Signature
(Seller) Please indicate if Power of Attorney or Attorney in Fact

John S. Hogan
Bergen County Clerk

Bergen County Clerk
One Bergen County Plaza
Hackensack, NJ 07601
(201) 336-7000
www.bergencountyclerk.org/

INSTRUMENT # 17-035198
V 02601 0326
RECORDED DATE: 05/02/2017 02:31:03 PM

NOT A CERTIFIED COPY

Document Type: Deed - Low/Moderate Income	**Transaction #:** 7439497 **Document Page Count:** 6 **Operator Id:** lgwicks

RETURN TO:

EQUITY SETTLEMENT SERVICES INC.
444 ROUTE 111
SMITHTOWN NY
11787

SUBMITTED BY:

Equity Settlement Services Inc.

(631) 370-1158

PRIMARY NAME	SECONDARY NAME
K HOVNANIAN AT MONTVALE II LLC	ELDA ALVAREZ
ADDITIONAL PRIMARY NAMES	**ADDITIONAL SECONDARY NAMES**

MARGINAL REFERENCES:

DOCUMENT DATE: 03/31/2017
MUNICIPALITY: MONTVALE
CONSIDERATION AMT: $97,000.00
LOT: 1
BLOCK: 302
GRANTEE ADDRESS: 35 AUTUMN WAY
MONTVALE NJ 07645

FEES / TAXES:

Recording Fee: Deed - Low/Moderate Income	$40.00
Additional Pages Fee	$50.00
Basic Fee - County	$97.00
Homeless Trust Fund - Bergen County	$3.00
Total:	$190.00

INSTRUMENT #: 17-035198
Recorded Date: 05/02/2017 02:31:03 PM

I hereby CERTIFY that this document is recorded in the Clerk's Office in Bergen County, New Jersey.

John S. Hogan
Bergen County Clerk

Recording Fees: $93.00
Realty Transfer Tax Fees: $0.00

OFFICIAL RECORDING COVER PAGE

PLEASE DO NOT DETACH

THIS PAGE IS NOW PART OF THIS LEGAL DOCUMENT

NOTE: If document data differs from cover sheet, document data always supersedes.
***COVER PAGE DOES NOT INCLUDE ALL DATA, PLEASE SEE INDEX AND DOCUMENT FOR ANY ADDITIONAL INFORMATION.**

Prepared by Christine Marketta, Authorized Representative
K. Hovnanian At Montvale II, LLC
110 Fieldcrest Ave., Edison NJ 08837

NEW CONSTRUCTION

Block: 302 Lot 1 C0052
Borough of Montvale

Deed

1125740

DEED-RESTRICTED AFFORDABLE HOUSING UNIT WITH RESTRICTIONS ON RESALE AND REFINANCING

To State Regulated Property
With Covenants Restricting Conveyance
And Mortgage Debt

NOT A CERTIFIED COPY

THIS DEED is made on this 31st day of March, 2017 by and between

K. HOVNANIAN AT MONTVALE II, LLC, a limited liability company of the State of New Jersey, whose main office is 110 Fieldcrest Avenue, Edison, New Jersey 08837 (Grantor) and

ELDA ALVAREZ, about to reside at 35 Autumn Way, Montvale, New Jersey 07645 (collectively, Grantee).

Article 1. Consideration and Conveyance

In return for payment to the Grantor by the Grantee of Ninety-Seven Thousand Dollars ($97,000.00), the receipt of which is hereby acknowledged by the Grantor, the Grantor hereby grants and conveys to the Grantee all of the land and improvements thereon as is more specifically described in Article 2, hereof (the Property).

Article 2. Description of Property

The Property consists of all of the land, and improvements thereon, that is located in the municipality of the Borough of Montvale, County of Bergen, State of New Jersey, and described more specifically as Block No. 302, Lot No. 1, Qualifier C0052 and known by the street address: 35 Autumn Way, Montvale, New Jersey 07645.

BEING known and designated as Unit No. 0833 in Building No. 8, together with an undivided percentage of interest in the common elements appurtenant thereto, as amended from time to time, in accordance with, as more specifically defined in and subject to the terms, limitations, conditions, covenants, restrictions, easements, by-laws and other provisions of the Master Deed for The Reserve at Montvale, A Condominium, recorded in the Bergen County Clerk's office in V Book 2032, page 1910, First Amendment to Master Deed recorded in V Book 2130, page 1037, Second Amendment to Master Deed recorded in V Book 2162, page 645, Corrective Second Amendment

to Master Deed recorded in V Book 2211, page 282, Third Amendment to Master Deed recorded in V Book 2240, page 1698, Fourth Amendment to Master Deed recorded in V Book 2349, page 117, Fifth Amendment to Master Deed recorded in V Book 2281, page 36, Sixth Amendment to Master Deed recorded in V Book 2360, page 1902, Seventh Amendment to Master Deed recorded in V Book 2448, page 923 and Eighth Amendment to Master Deed recorded in V Book 2519, page 1868 and any and all lawful amendments and supplements thereto.

Article 3. Grantor's Covenant

The Grantor hereby covenants and affirms that Grantor has taken no action to encumber the Property.

Article 4. Affordable Housing Covenants

Sale and use of the Property is governed by regulations known as the Uniform Housing Affordability Controls, which are found in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1, *et seq*, the "Regulations"). Consistent with the Regulations, the following covenants (the "Covenants") shall run with the land for the period of time commencing upon the earlier of (a) the date hereof or (b) the prior commencement of the "Control Period", as that term is defined in the Regulations, and terminating upon the expiration of the Control Period as provided in the Regulations.

In accordance with N.J.A.C. 5:80-26.5, each restricted unit shall remain subject to the requirements of this subchapter, the "Control Period," until the municipality in which the unit is located elects to release the unit from such requirements. Prior to such a municipal election, a restricted unit must remain subject to the requirements of this subchapter for a period of at least 30 years; provided, however, that units located in high-poverty census tracts shall remain subject to these affordability requirements for a period of at least 10 years;

A. The Property may be conveyed only to a household who has been approved in advance and in writing by approved in advance and in writing by the administrative agent appointed under the Regulations (hereinafter, collectively, the "Administrative Agent").

B. No sale of the Property shall be lawful, unless approved in advance and in writing by the Administrative Agent, and no sale shall be for a consideration greater than maximum permitted price ("Maximum Resale Price", or "MRP") as determined by the Administrative Agent.

C. No refinancing, equity loan, secured letter of credit, or any other mortgage obligation or other debt (collectively, "Debt") secured by the Property, may be incurred except as approved in advance and in writing by the Administrative Agent. At no time shall the Administrative Agent approve any such Debt, if incurring the Debt would make the total of all such Debt exceed Ninety-Five Percent (95%) of the applicable MRP.

D. The owner of the Property shall at all times maintain the Property as his or her principal place of residence.

E. Except as set forth in F, below, at no time shall the owner of the Property lease or rent the Property to any person or persons, except on a short-term hardship basis as approved in advance and in writing by the Administrative Agent.

NOT A CERTIFIED COPY

F. If the Property is a two-family home, the owner shall lease the rental unit only to income-certified low-income households approved in writing by the Administrative Agent, shall charge rent no greater than the maximum permitted rent as determined by the Administrative Agent, and shall submit for written approval of the Administrative Agent copies of all proposed leases prior to having them signed by any proposed tenant.

G. No improvements may be made to the Property that would affect its bedroom configuration, and in any event, no improvement made to the Property will be taken into consideration to increase the MRP, except for improvements approved in advance and in writing by the Administrative Agent.

H. The affordable housing covenants, declarations and restrictions implemented by this Deed and by incorporation, N.J.A.C. 5:80-26.1 et seq., shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to the Affordable Unit so long as the Affordable Unit remains subject to the affordability controls being implemented by this Declaration.

NOT A CERTIFIED COPY

Article 5. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Administrative Agent and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability Control rules found at N.J.A.C. 5:80-26, and the obligation for the provision of low and moderate-income housing. Accordingly, and as set forth in N.J.A.C. 5:80-26.18:

A. In the event of a threatened breach of any of the Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.

B. Upon the occurrence of a breach of any Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent shall have all remedies provided at law or equity including but not limited to forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code and specific performance.

EXECUTION BY GRANTOR

This Deed has been signed on the date hereof by the appropriate authorized representative of Grantor.

K. HOVNANIAN AT MONTVALE II, LLC

By: _____
Christine Marketta, Authorized Representative

STATE OF NEW JERSEY)
)SS:
COUNTY OF MIDDLESEX)

I acknowledge that on March 31, 2017, Christine Marketta personally appeared before me and acknowledged under oath that she:

(a) Made this Deed; and
(b) Was authorized to and did execute this Deed on behalf of and as an Authorized Representative of the Grantor named in this Deed; and
(c) Made this Deed for $97,000.00 consideration, as such consideration is defined in N.J.S.A. 46:15-5.

Kim A. Donnelly

KIM A. DONNELLY
Notary Public, State of New Jersey
My Commission Expires August 22, 2021

NOT A CERTIFIED COPY

EXECUTION BY GRANTEE

By signing below, the Grantee(s) hereby do, jointly and severally, acknowledge and agree that he/she understands the covenants and restrictions set forth herein, and further that he/she shall be bound by same for so long as he/she owns the Property.

Elda Alvarez

ELDA ALVAREZ

State of New Jersey

SELLER'S RESIDENCY CERTIFICATION/EXEMPTION

GIT/REP-3
(9-2015)

(Please Print or Type)

SELLER'S INFORMATION

Name(s)

K. Hovnanian @ Montvale II, LLC

Current Street Address

110 FIELDCREST AVENUE

City, Town, Post Office Box	State	Zip Code
EDISON	NJ	08837

PROPERTY INFORMATION

Block(s)	Lot(s)	Qualifier
302	1	C0052

Street Address
35 Autumn Way

City, Town, Post Office Box	State	Zip Code
Montvale	NJ	07645

Seller's Percentage of Ownership	Total Consideration	Owner's Share of Consideration	Closing Date
100%	$97,000.00	100%	3/31/2017

ACCEPTED COPY

SELLER'S ASSURANCES (Check the Appropriate Box) (Boxes 2 through 14 apply to Residents and Nonresidents)

1. ☐ Seller is a resident taxpayer (individual, estate, or trust) of the State of New Jersey pursuant to the New Jersey Gross Income Tax Act, will file a resident gross income tax return, and will pay any applicable taxes on any gain or income from the disposition of this property.
2. ☐ The real property sold or transferred is used exclusively as a principal residence as defined in 26 U.S. Code section 121.
3. ☐ Seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration.
4. ☐ Seller, transferor, or transferee is an agency or authority of the United States of America, an agency or authority of the State of New Jersey, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.
5. ☒ Seller is not an individual, estate, or trust and is not required to make an estimated gross income tax payment.
6. ☐ The total consideration for the property is $1,000 or less so the seller is not required to make an estimated income tax payment.
7. ☐ The gain from the sale is not recognized for federal income tax purposes under 26 U.S. Code section 721, 1031, or 1033 (CIRCLE THE APPLICABLE SECTION). If the indicated section does not ultimately apply to this transaction, the seller acknowledges the obligation to file a New Jersey income tax return for the year of the sale and report the recognized gain.
   ☐ Seller did not receive non-like kind property.
8. ☐ The real property is being transferred by an executor or administrator of a decedent to a devisee or heir to effect distribution of the decedent's estate in accordance with the provisions of the decedent's will or the intestate laws of this State.
9. ☐ The real property being sold is subject to a short sale instituted by the mortgagee, whereby the seller agreed not to receive any proceeds from the sale and the mortgagee will receive all proceeds paying off an agreed amount of the mortgage.
10. ☐ The deed is dated prior to August 1, 2004, and was not previously recorded.
11. ☐ The real property is being transferred under a relocation company transaction where a trustee of the relocation company buys the property from the seller and then sells the house to a third party buyer for the same price.
12. ☐ The real property is being transferred between spouses or incident to a divorce decree or property settlement agreement under 26 U.S. Code section 1041.
13. ☐ The property transferred is a cemetery plot.
14. ☐ The seller is not receiving net proceeds from the sale. Net proceeds from the sale means the net amount due to the seller on the settlement sheet.

SELLER'S DECLARATION

The undersigned understands that this declaration and its contents may be disclosed or provided to the New Jersey Division of Taxation and that any false statement contained herein may be punished by fine, imprisonment, or both. I furthermore declare that I have examined this declaration and, to the best of my knowledge and belief, it is true, correct and complete. By checking this box ☐, I certify that a Power of Attorney to represent the seller(s) has been previously recorded or is being recorded simultaneously with the deed to which this form is attached.

3/31/2017 — Date

Christine D. Markett — Signature

(Seller) Please indicate if Power of Attorney or Attorney in Fact

Christine Markett As Authorized Representative — Date / Signature

(Seller) Please indicate if Power of Attorney or Attorney in Fact

RTF-1 (Rev. 7/14/10)
MUST SUBMIT IN DUPLICATE

STATE OF NEW JERSEY
AFFIDAVIT OF CONSIDERATION FOR USE BY SELLER
(Chapter 49, **P.L.**1968, as amended through Chapter 33, **P.L.** 2006) (**N.J.S.A.** 46:15-5 et seq.)
BEFORE COMPLETING THIS AFFIDAVIT, PLEASE READ THE INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM.

STATE OF NEW JERSEY
} SS.
COUNTY BERGEN (County Municipal Code 0236)

FOR RECORDER'S USE ONLY	
Consideration	$
RTF paid by seller	$
Date	By

MUNICIPALITY OF PROPERTY LOCATION Borough of Montvale

*Use symbol "C" to indicate that fee is exclusively for county use.

(1) PARTY OR LEGAL REPRESENTATIVE *(See Instructions #3 and #4 on reverse side)*

Deponent, Christine Marketta (Name), being duly sworn according to law upon his/her oath, deposes and says that he/she is the authorized representative (Grantor, Legal Representative, Corporate Officer, Officer of Title Company, Lending Institution, etc.) in a deed dated 3.31.2017 transferring real property identified as Block number 302 Lot number 1 C0052 located at 35Autumn Way, Montvale (Street Address, Town) and annexed thereto.

(2) CONSIDERATION $ 97,000.00 *(Instructions #1 and #5 on reverse side)* [X] no prior mortgage to which property is subject.

(3) Property transferred is Class 4A 4B 4C (circle one). If property transferred is Class 4A, calculation in Section 3A below is required.

(3A) **REQUIRED CALCULATION OF EQUALIZED VALUATION FOR ALL CLASS 4A (COMMERCIAL) PROPERTY TRANSACTIONS:**
(See Instructions #5A and #7 on reverse side)
Total Assessed Valuation ÷ Director's Ratio = Equalized Assessed Valuation

$_____ ÷ _____% = $_____

If Director's Ratio is less than 100%, the equalized valuation will be an amount greater than the assessed value. If Director's Ratio is equal to or in excess of 100%, the assessed value will be equal to the equalized valuation.

(4) FULL EXEMPTION FROM FEE *(See Instruction #8 on reverse side)*
Deponent states that this deed transaction is fully exempt from the Realty Transfer Fee imposed by **C.** 49, **P.L.** 1968, as amended through **C.** 66, **P.L.** 2004, for the following reason(s). Mere reference to exemption symbol is insufficient. Explain in detail.

(5) PARTIAL EXEMPTION FROM FEE *(Instruction #9 on reverse side)*
NOTE: All boxes below apply to grantor(s) *only*. **ALL BOXES IN APPROPRIATE CATEGORY MUST BE CHECKED**. Failure to do so will void claim for partial exemption. Deponent claims that this deed transaction is exempt from State portions of the Basic, Supplemental, and General Purpose Fees, as applicable, imposed by **C.** 176, **P.L.** 1975, **C.** 113, **P.L.** 2004, and **C.** 66, **P.L.** 2004 for the following reason(s):

A. **SENIOR CITIZEN** Grantor(s) [ ] 62 years of age or over. * *(Instruction #9 on reverse side for A or B)*
B. **BLIND PERSON** Grantor(s) [ ] legally blind or; *
DISABLED PERSON Grantor(s) [ ] permanently and totally disabled [ ] receiving disability payments [ ] not gainfully employed*

Senior citizens, blind persons, or disabled persons must also meet **all of the following** criteria:
[ ] Owned and occupied by grantor(s) at time of sale. [ ] Resident of State of New Jersey.
[ ] One or two-family residential premises. [ ] Owners as joint tenants must all qualify.

*IN CASE OF HUSBAND AND WIFE, PARTNERS IN A CIVIL UNION COUPLE, ONLY ONE GRANTOR NEED QUALIFY IF TENANTS BY THE ENTIRETY.

C. **LOW AND MODERATE INCOME HOUSING** *(Instruction #9 on reverse side)*
[X] Affordable according to H.U.D. standards. [X] Reserved for occupancy.
[X] Meets income requirements of region. [X] Subject to resale controls.

(6) NEW CONSTRUCTION *(Instructions #2, #10 and #12 on reverse side)*
[X] Entirely new improvement. [X] Not previously occupied.
[X] Not previously used for any purpose. [X] **"NEW CONSTRUCTION"** printed clearly at top of first page of the deed.

(7) RELATED LEGAL ENTITIES TO LEGAL ENTITIES *(Instructions #5, #12, #14 on reverse side)*
[ ] No prior mortgage assumed or to which property is subject at time of sale.
[ ] No contributions to capital by either grantor or grantee legal entity.
[ ] No stock or money exchanged by or between grantor or grantee legal entities.

(8) Deponent makes this Affidavit to induce county clerk or register of deeds to record the deed and accept the fee submitted herewith in accordance with the provisions of Chapter 49, **P.L.** 1968, as amended through Chapter 33, **P.L.** 2006.

Subscribed and sworn to before me
this 31 day of March , 20 17

Kim A. Donnelly

KIM A. DONNELLY
Notary Public, State of New Jersey
My Commission Expires August 22, 2021

Signature of Deponent

110 Fieldcrest Avenue, Edison, NJ 08837
Deponent Address

XXX-XXX- 827
Last three digits in Grantor's Social Security Number

K. Hovnanian @ Montvale II, LLC
Grantor Name

110 Fieldcrest Avenue Edison, NJ 08837
Grantor Address at Time of Sale

Equity Settlement
Name/Company of Settlement Officer

FOR OFFICIAL USE ONLY			
Instrument Number		County	
Deed Number		Book	Page
Deed Dated		Date Recorded	

County recording officers shall forward one copy of each RTF-1 form when Section 3A is completed to: **STATE OF NEW JERSEY, PO BOX 251, TRENTON, NJ 08695-0251, ATTENTION: REALTY TRANSFER FEE UNIT**

The Director of the Division of Taxation in the Department of the Treasury has prescribed this form as required by law, and may not be altered or amended without prior approval of the Director. For information on the Realty Transfer Fee or to print a copy of this Affidavit, visit the Division of Taxation website at: **www.state.nj.us/treasury/taxation/lpt/localtax.htm**

NOT CERTIFIED COPY

John S. Hogan
Bergen County Clerk

Bergen County Clerk
One Bergen County Plaza
Hackensack, NJ 07601
(201) 336-7000
www.bergencountyclerk.org/

INSTRUMENT # 17-038577
V 02613 0329
RECORDED DATE: 05/17/2017 02:53:15 PM

NOT A CERTIFIED COPY

Document Type: Deed - Low/Moderate Income	**Transaction #:** 7445271 **Document Page Count:** 7 **Operator Id:** CLERK

RETURN TO:

EASTERN TITLE AGENCY , INC. (CM)
2 INDUSTRIAL WAY W.
EATONTOWN NJ 07724
ERECORDED

SUBMITTED BY:

Eastern Title Agency , Inc. (CM)

800-364-0668

PRIMARY NAME	SECONDARY NAME
K HOVNANIAN AT MONTVALE II LLC	ERICA C. MARSON
ADDITIONAL PRIMARY NAMES	**ADDITIONAL SECONDARY NAMES**

MARGINAL REFERENCES:

DOCUMENT DATE: 05/04/2017
MUNICIPALITY: MONTVALE
CONSIDERATION AMT: $61,050.00
LOT: 1
BLOCK: 302
GRANTEE ADDRESS: 53 AUTUMN WAY
MONTVALE NJ 07645

FEES / TAXES:

Recording Fee: Deed - Low/Moderate Income	$40.00
Additional Pages Fee	$60.00
Basic Fee - County	$61.50
Homeless Trust Fund - Bergen County	$3.00
Total:	$164.50

INSTRUMENT #: 17-038577
Recorded Date: 05/17/2017 02:53:15 PM

I hereby CERTIFY that this document is recorded in the Clerk's Office in Bergen County, New Jersey.

John S. Hogan
Bergen County Clerk

Recording Fees: $103.00
Realty Transfer Tax Fees: $0.00

OFFICIAL RECORDING COVER PAGE

PLEASE DO NOT DETACH

THIS PAGE IS NOW PART OF THIS LEGAL DOCUMENT

NOTE: If document data differs from cover sheet, document data always supersedes.
***COVER PAGE DOES NOT INCLUDE ALL DATA, PLEASE SEE INDEX AND DOCUMENT FOR ANY ADDITIONAL INFORMATION.**

Prepared by Christine Marketta, Authorized Representative

NEW CONSTRUCTION

ET462209-18

Deed

DEED-RESTRICTED AFFORDABLE HOUSING UNIT WITH RESTRICTIONS ON RESALE AND REFINANCING

To State Regulated Property
With Covenants Restricting Conveyance
And Mortgage Debt

NOT A CERTIFIED COPY

THIS DEED is made on this 4th day of May, 2017 by and between

K. HOVNANIAN AT MONTVALE II, LLC, a limited liability company of the State of New Jersey, whose main office is 110 Fieldcrest Avenue, Edison, New Jersey 08837 (Grantor) and

ERICA C. MARSON, about to reside at 53 Autumn Way, Montvale, New Jersey 07645 (collectively, Grantee).

Article 1. Consideration and Conveyance

In return for payment to the Grantor by the Grantee of Sixty One Thousand Fifty Dollars ($61,050.00), the receipt of which is hereby acknowledged by the Grantor, the Grantor hereby grants and conveys to the Grantee all of the land and improvements thereon as is more specifically described in Article 2, hereof (the Property).

Article 2. Description of Property

The Property consists of all of the land, and improvements thereon, that is located in the municipality of the Borough of Montvale, County of Bergen, State of New Jersey, and described more specifically as Block No. 302, Lot No. 1, Qualifier C0039 and known by the street address: 53 Autumn Way, Montvale, New Jersey 07645.

BEING known and designated as Unit No. 0713 in Building No. 7, together with an undivided percentage of interest in the common elements appurtenant thereto, as amended from time to time, in accordance with, as more specifically defined in and subject to the terms, limitations, conditions, covenants, restrictions, easements, by-laws and other provisions of the Master Deed for The Reserve at Montvale, A Condominium, recorded in the Bergen County Clerk's office in V Book 2032, page 1910, First Amendment to Master Deed recorded in V Book 2130, page 1037, Second Amendment to Master Deed recorded in V Book 2162, page 645, Corrective Second Amendment

to Master Deed recorded in V Book 2211, page 282, Third Amendment to Master Deed recorded in V Book 2240, page 1698, Fourth Amendment to Master Deed recorded in V Book 2349, page 117, Fifth Amendment to Master Deed recorded in V Book 2281, page 36, Sixth Amendment to Master Deed recorded in V Book 2360, page 1902, Seventh Amendment to Master Deed recorded in V Book 2448, page 923 and Eighth Amendment to Master Deed recorded in V Book 2519, page 1868 and any and all lawful amendments and supplements thereto.

Article 3. Grantor's Covenant

The Grantor hereby covenants and affirms that Grantor has taken no action to encumber the Property.

Article 4. Affordable Housing Covenants

Sale and use of the Property is governed by regulations known as the Uniform Housing Affordability Controls, which are found in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1, *et seq*, the "Regulations"). Consistent with the Regulations, the following covenants (the "Covenants") shall run with the land for the period of time commencing upon the earlier of (a) the date hereof or (b) the prior commencement of the "Control Period", as that term is defined in the Regulations, and terminating upon the expiration of the Control Period as provided in the Regulations.

In accordance with N.J.A.C. 5:80-26.5, each restricted unit shall remain subject to the requirements of this subchapter, the "Control Period," until the municipality in which the unit is located elects to release the unit from such requirements. Prior to such a municipal election, a restricted unit must remain subject to the requirements of this subchapter for a period of at least 30 years; provided, however, that units located in high-poverty census tracts shall remain subject to these affordability requirements for a period of at least 10 years;

A. The Property may be conveyed only to a household who has been approved in advance and in writing by approved in advance and in writing by the administrative agent appointed under the Regulations (hereinafter, collectively, the "Administrative Agent").

B. No sale of the Property shall be lawful, unless approved in advance and in writing by the Administrative Agent, and no sale shall be for a consideration greater than maximum permitted price ("Maximum Resale Price", or "MRP") as determined by the Administrative Agent.

C. No refinancing, equity loan, secured letter of credit, or any other mortgage obligation or other debt (collectively, "Debt") secured by the Property, may be incurred except as approved in advance and in writing by the Administrative Agent. At no time shall the Administrative Agent approve any such Debt, if incurring the Debt would make the total of all such Debt exceed Ninety-Five Percent (95%) of the applicable MRP.

D. The owner of the Property shall at all times maintain the Property as his or her principal place of residence.

E. Except as set forth in F, below, at no time shall the owner of the Property lease or rent the Property to any person or persons, except on a short-term hardship basis as approved in advance and in writing by the Administrative Agent.

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F. If the Property is a two-family home, the owner shall lease the rental unit only to income-certified low-income households approved in writing by the Administrative Agent, shall charge rent no greater than the maximum permitted rent as determined by the Administrative Agent, and shall submit for written approval of the Administrative Agent copies of all proposed leases prior to having them signed by any proposed tenant.

G. No improvements may be made to the Property that would affect its bedroom configuration, and in any event, no improvement made to the Property will be taken into consideration to increase the MRP, except for improvements approved in advance and in writing by the Administrative Agent.

H. The affordable housing covenants, declarations and restrictions implemented by this Deed and by incorporation, N.J.A.C. 5:80-26.1 et seq., shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to the Affordable Unit so long as the Affordable Unit remains subject to the affordability controls being implemented by this Declaration.

Article 5. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Administrative Agent and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability Control rules found at N.J.A.C. 5:80-26, and the obligation for the provision of low and moderate-income housing. Accordingly, and as set forth in N.J.A.C. 5:80-26.18:

A. In the event of a threatened breach of any of the Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.

B. Upon the occurrence of a breach of any Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent shall have all remedies provided at law or equity including but not limited to forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code and specific performance.

EXECUTION BY GRANTOR

This Deed has been signed on the date hereof by the appropriate authorized representative of Grantor.

K. HOVNANIAN AT MONTVALE II, LLC

By: _____

Christine Marketta, Authorized Representative

NOT CERTIFIED COPY

STATE OF NEW JERSEY)
)SS:
COUNTY OF MIDDLESEX)

I acknowledge that on May 4, 2017, Christine Marketta personally appeared before me and acknowledged under oath that she:

(a) Made this Deed; and
(b) Was authorized to and did execute this Deed on behalf of and as an Authorized Representative of the Grantor named in this Deed; and
(c) Made this Deed for $61,050.00 consideration, as such consideration is defined in N.J.S.A. 46:15-5.

KATARZYNA ZIELINSKI
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES 4/15/20

NOT A CERTIFIED COPY

EXECUTION BY GRANTEE

By signing below, the Grantee(s) hereby do, jointly and severally, acknowledge and agree that he/she understands the covenants and restrictions set forth herein, and further that he/she shall be bound by same for so long as he/she owns the Property.

ERICA C. MARSON

SPECIFIC POWER OF ATTORNEY

I, the above named GRANTEE, do hereby irrevocably name, make, appoint, constitute and confirm K. HOVNANIAN AT MONTVALE II, LLC, a limited liability company of the State of New Jersey, whose main office is 110 Fieldcrest Avenue, Edison, New Jersey, and its assigns and successors, my true and lawful attorney-in-fact for me for those specific and limited purposes as set forth in Paragraph 14 of the Master Deed for The Reserve at Montvale, A Condominium (the "Master Deed") and for me and in my name, place and stead, execute any such amendment(s) to the Master Deed and other instrument(s) necessary to effect the purposes set forth in Paragraph 14 of the Master Deed with the same force and effect as though I were present and acting for myself and I hereby ratify and confirm all that my said attorney-in-fact shall do by virtue hereof. This Power of Attorney shall not be affected by the fact that I might become incompetent hereafter, but shall remain in full force and effect.

In witness whereof, I hereunto set my hand this 4th day of May, 2017.

ERICA C. MARSON, GRANTEE

NOT A CERTIFIED COPY

STATE OF NEW JERSEY)
)SS:
COUNTY OF Bergen)

Be it remembered, that on this 4th day of May, 2017, subscriber(s), Erica C. Marson, personally appeared (if more than one person signed the foregoing deed and appeared before me, the words "subscriber," "Grantee" and "owner" shall include all such persons) and who, being duly sworn by me, deposed and made proof to my satisfaction: (i) that he/she is the Grantee/Owner named in the foregoing Deed and (ii) that he/she has executed said Deed with respect to the Property and for the purposes described and set forth herein.

Record + Return to:

EASTERN TITLE AGENCY, INC.
2 INDUSTRIAL WAY WEST
EATONTOWN, NEW JERSEY 07724
PHONE: 732-389-0009/FAX: 732-389-9023

Rene D. Riddle
Notary Public of New Jersey
ID #2201199
My Commision Expires May 6, 2017

State of New Jersey

SELLER'S RESIDENCY CERTIFICATION/EXEMPTION

GIT/REP-3
(9-2015)

(Please Print or Type)

SELLER'S INFORMATION

Name(s)

K. Hovnanian @ Montvale II, LLC

Current Street Address

110 FIELDCREST AVENUE

City, Town, Post Office Box	State	Zip Code
EDISON	NJ	08837

PROPERTY INFORMATION

Block(s)	Lot(s)	Qualifier
302	1	C0039

Street Address
53Autumn Way

City, Town, Post Office Box	State	Zip Code
Montvale	NJ	07645

Seller's Percentage of Ownership	Total Consideration	Owner's Share of Consideration	Closing Date
100%	$61,050.00	$61,050.00	5/4/2017

SELLER'S ASSURANCES (Check the Appropriate Box) (Boxes 2 through 14 apply to Residents and Nonresidents)

1. ☐ Seller is a resident taxpayer (individual, estate, or trust) of the State of New Jersey pursuant to the New Jersey Gross Income Tax Act, will file a resident gross income tax return, and will pay any applicable taxes on any gain or income from the disposition of this property.
2. ☐ The real property sold or transferred is used exclusively as a principal residence as defined in 26 U.S. Code section 121.
3. ☐ Seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration.
4. ☐ Seller, transferor, or transferee is an agency or authority of the United States of America, an agency or authority of the State of New Jersey, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.
5. ☒ Seller is not an individual, estate, or trust and is not required to make an estimated gross income tax payment.
6. ☐ The total consideration for the property is $1,000 or less so the seller is not required to make an estimated income tax payment.
7. ☐ The gain from the sale is not recognized for federal income tax purposes under 26 U.S. Code section 721, 1031, or 1033 (CIRCLE THE APPLICABLE SECTION). If the indicated section does not ultimately apply to this transaction, the seller acknowledges the obligation to file a New Jersey income tax return for the year of the sale and report the recognized gain.
   ☐ Seller did not receive non-like kind property.
8. ☐ The real property is being transferred by an executor or administrator of a decedent to a devisee or heir to effect distribution of the decedent's estate in accordance with the provisions of the decedent's will or the intestate laws of this State.
9. ☐ The real property being sold is subject to a short sale instituted by the mortgagee, whereby the seller agreed not to receive any proceeds from the sale and the mortgagee will receive all proceeds paying off an agreed amount of the mortgage.
10. ☐ The deed is dated prior to August 1, 2004, and was not previously recorded.
11. ☐ The real property is being transferred under a relocation company transaction where a trustee of the relocation company buys the property from the seller and then sells the house to a third party buyer for the same price.
12. ☐ The real property is being transferred between spouses or incident to a divorce decree or property settlement agreement under 26 U.S. Code section 1041.
13. ☐ The property transferred is a cemetery plot.
14. ☐ The seller is not receiving net proceeds from the sale. Net proceeds from the sale means the net amount due to the seller on the settlement sheet.

SELLER'S DECLARATION

The undersigned understands that this declaration and its contents may be disclosed or provided to the New Jersey Division of Taxation and that any false statement contained herein may be punished by fine, imprisonment, or both. I furthermore declare that I have examined this declaration and, to the best of my knowledge and belief, it is true, correct and complete. By checking this box ☐ I certify that a Power of Attorney to represent the seller(s) has been previously recorded or is being recorded simultaneously with the deed to which this form is attached.

5/4/2017	[signature]
Date	Signature (Seller) Please Indicate if Power of Attorney or Attorney in Fact
Christine Markert A.S.	Authorized Representative
Date	Signature (Seller) Please Indicate if Power of Attorney or Attorney in Fact

NOT CERTIFIED COPY

RTF-1 (Rev. 7/14/10)
MUST SUBMIT IN DUPLICATE

STATE OF NEW JERSEY
AFFIDAVIT OF CONSIDERATION FOR USE BY SELLER
(Chapter 49, P.L.1968, as amended through Chapter 33, P.L. 2006) (N.J.S.A. 46:15-5 et seq.)
BEFORE COMPLETING THIS AFFIDAVIT, PLEASE READ THE INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM.

STATE OF NEW JERSEY
} SS.
COUNTY BERGEN County Municipal Code 0236

FOR RECORDER'S USE ONLY
Consideration $ _____
RTF paid by seller $ _____
Date _____ By _____

MUNICIPALITY OF PROPERTY LOCATION Borough of Montvale

*Use symbol "C" to indicate that fee is exclusively for county use.

(1) PARTY OR LEGAL REPRESENTATIVE *(See Instructions #3 and #4 on reverse side)*

Deponent, Christine Marketta (Name), being duly sworn according to law upon his/her oath, deposes and says that he/she is the authorized representative (Grantor, Legal Representative, Corporate Officer, Officer of Title Company, Lending Institution, etc.) in a deed dated 5.4.2017 transferring real property identified as Block number 302 Lot number 1 C0039 located at 53 Autumn Way, Montvale (Street Address, Town) and annexed thereto.

(2) CONSIDERATION $ 61,050.00 *(Instructions #1 and #5 on reverse side)* ☐ no prior mortgage to which property is subject.

(3) Property transferred is Class 4A 4B 4C (circle one). If property transferred is Class 4A, calculation in Section 3A below is required.

(3A) REQUIRED CALCULATION OF EQUALIZED VALUATION FOR ALL CLASS 4A (COMMERCIAL) PROPERTY TRANSACTIONS:
(See Instructions #5A and #7 on reverse side)
Total Assessed Valuation + Director's Ratio = Equalized Assessed Valuation

$_____ + _____% = $_____

If Director's Ratio is less than 100%, the equalized valuation will be an amount greater than the assessed value. If Director's Ratio is equal to or in excess of 100%, the assessed value will be equal to the equalized valuation.

(4) FULL EXEMPTION FROM FEE *(See Instruction #8 on reverse side)*
Deponent states that this deed transaction is fully exempt from the Realty Transfer Fee imposed by C. 49, P.L. 1968, as amended through C. 66, P.L. 2004, for the following reason(s). Mere reference to exemption symbol is insufficient. Explain in detail.

(5) PARTIAL EXEMPTION FROM FEE *(Instruction #9 on reverse side)*
NOTE: All boxes below apply to grantor(s) *only*. **ALL BOXES IN APPROPRIATE CATEGORY MUST BE CHECKED.** Failure to do so will void claim for partial exemption. Deponent claims that this deed transaction is exempt from State portions of the Basic, Supplemental, and General Purpose Fees, as applicable, imposed by C. 176, P.L. 1975, C. 113, P.L. 2004, and C. 66, P.L. 2004 for the following reason(s):

A. SENIOR CITIZEN Grantor(s) ☐ 62 years of age or over. * *(Instruction #9 on reverse side for A or B)*
B. BLIND PERSON Grantor(s) ☐ legally blind or; *
DISABLED PERSON Grantor(s) ☐ permanently and totally disabled ☐ receiving disability payments ☐ not gainfully employed*

Senior citizens, blind persons, or disabled persons must also meet all of the following criteria:
☐ Owned and occupied by grantor(s) at time of sale. ☐ Resident of State of New Jersey.
☐ One or two-family residential premises. ☐ Owners as joint tenants must all qualify.

*IN CASE OF HUSBAND AND WIFE, PARTNERS IN A CIVIL UNION COUPLE, ONLY ONE GRANTOR NEED QUALIFY IF TENANTS BY THE ENTIRETY.

C. LOW AND MODERATE INCOME HOUSING *(Instruction #9 on reverse side)*
☒ Affordable according to H.U.D. standards. ☒ Reserved for occupancy.
☒ Meets income requirements of region. ☒ Subject to resale controls.

(6) NEW CONSTRUCTION *(Instructions #2, #10 and #12 on reverse side)*
☒ Entirely new improvement. ☒ Not previously occupied.
☒ Not previously used for any purpose. ☒ "NEW CONSTRUCTION" printed clearly at top of first page of the deed.

(7) RELATED LEGAL ENTITIES TO LEGAL ENTITIES *(Instructions #5, #12, #14 on reverse side)*
☐ No prior mortgage assumed or to which property is subject at time of sale.
☐ No contributions to capital by either grantor or grantee legal entity.
☐ No stock or money exchanged by or between grantor or grantee legal entities.

(8) Deponent makes this Affidavit to induce county clerk or register of deeds to record the deed and accept the fee submitted herewith in accordance with the provisions of Chapter 49, P.L. 1968, as amended through Chapter 33, P.L. 2006.

Subscribed and sworn to before me
this 4 day of May , 2017

KATARZYNA ZIELINSKI
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES 4/15/20

Signature of Deponent

110 Fieldcrest Avenue, Edison, NJ 08837
Deponent Address

XXX-XXX- 827
Last three digits in Grantor's Social Security Number

K. Hovnanian @ Montvale II, LLC
Grantor Name

110 Fieldcrest Avenue Edison, NJ 08837
Grantor Address at Time of Sale

Name/Company of Settlement Officer

FOR OFFICIAL USE ONLY
Instrument Number _____ County _____
Deed Number _____ Book _____ Page _____
Deed Dated _____ Date Recorded _____

County recording officers shall forward one copy of each RTF-1 form when Section 3A is completed to: STATE OF NEW JERSEY
PO BOX 251
TRENTON, NJ 08695-0251
ATTENTION: REALTY TRANSFER FEE UNIT

The Director of the Division of Taxation in the Department of the Treasury has prescribed this form as required by law, and may not be altered or amended without prior approval of the Director. For information on the Realty Transfer Fee or to print a copy of this Affidavit, visit the Division of Taxation website at:
www.state.nj.us/treasury/taxation/lpt/localtax.htm

Not Certified Copy



John S. Hogan
Bergen County Clerk

Bergen County Clerk
One Bergen County Plaza
Hackensack, NJ 07601
(201) 336-7000
www.bergencountyclerk.org/

NOT A CERTIFIED COPY

INSTRUMENT # 17-024960
V 02568 2387
RECORDED DATE: 03/22/2017 11:24:31 AM

Document Type: Deed - Low/Moderate Income

Transaction #:	7423950
Document Page Count:	7
Operator Id:	CLERK

RETURN TO:

EASTERN TITLE AGENCY INCORPORATED
2 INDUSTRIAL WAY WEST
EATONTOWN NJ 07724

SUBMITTED BY:

PRIMARY NAME	SECONDARY NAME
K HOVNANIAN AT MONTVALE II LLC	DANILO MORALES

ASSOCIATED DOCUMENT(S):

MUNICIPALITY: MONTVALE
CONSIDERATION AMT: $120,000.00
LOT: 1
BLOCK: 302

FEES / TAXES:

County Portion:	$120.00
Recording:	$103.00
Total:	$223.00

INSTRUMENT #: 17-024960
Recorded Date: 03/22/2017 11:24:31 AM

I hereby CERTIFY that this document is recorded in the Clerk's Office in Bergen County, New Jersey.

John S. Hogan
Bergen County Clerk

OFFICIAL RECORDING COVER PAGE

PLEASE DO NOT DETACH

THIS PAGE IS NOW PART OF THIS LEGAL DOCUMENT

NOTE: If document data differs from cover sheet, document data always supersedes.
***COVER PAGE DOES NOT INCLUDE ALL DATA, PLEASE SEE INDEX AND DOCUMENT FOR ANY ADDITIONAL INFORMATION.**

2.C 0
7P
103

17-024960 Deed - Low/Moderate Income
V Bk: 02568 Pg: 2387-2394 Rec. Fee $103.00
John S. Hogan, Bergen County Clerk
Recorded 03/22/2017 11:24:31 AM

Prepared by Christine Marketta, Authorized Representative

NEW CONSTRUCTION

Consideration	: $120,000.00
Realty Transfer Fee	: $120.00
State Portion	: $0.00
County Portion	: $120.00
Municipality Portion	: $0.00

Deed

#CT46145

NOT A CERTIFIED COPY

DEED-RESTRICTED AFFORDABLE HOUSING UNIT WITH RESTRICTIONS ON RESALE AND REFINANCING

To State Regulated Property
With Covenants Restricting Conveyance
And Mortgage Debt

THIS DEED is made on this 10th day of March, 2017 by and between

K. HOVNANIAN AT MONTVALE II, LLC, a limited liability company of the State of New Jersey, whose main office is 110 Fieldcrest Avenue, Edison, New Jersey 08837 (Grantor) and

DANILO MORALES and GABRIELA FUENTES, husband and wife, about to reside at 55 Autumn Way, Montvale, New Jersey 07645 (collectively, Grantee).

Article 1. Consideration and Conveyance

In return for payment to the Grantor by the Grantee of One Hundred Twenty Thousand Dollars ($120,000.00), the receipt of which is hereby acknowledged by the Grantor, the Grantor hereby grants and conveys to the Grantee all of the land and improvements thereon as is more specifically described in Article 2, hereof (the Property).

Article 2. Description of Property

The Property consists of all of the land, and improvements thereon, that is located in the municipality of the Borough of Montvale, County of Bergen, State of New Jersey, and described more specifically as Block No. 302, Lot No. 1, Qualifier C0040 and known by the street address: 55 Autumn Way, Montvale, New Jersey 07645.

BEING known and designated as Unit No. 0723 in Building No. 7, together with an undivided percentage of interest in the common elements appurtenant thereto, as amended from time to time, in accordance with, as more specifically defined in and subject to the terms, limitations, conditions, covenants, restrictions, easements, by-laws and other provisions of the Master Deed for The Reserve at Montvale, A Condominium, recorded in the Bergen County Clerk's office in V Book 2032, page 1910, First Amendment to Master Deed recorded in V Book 2130, page 1037, Second Amendment to Master Deed recorded in V Book 2162, page 645, Corrective Second Amendment

to Master Deed recorded in V Book 2211, page 282, Third Amendment to Master Deed recorded in V Book 2240, page 1698, Fourth Amendment to Master Deed recorded in V Book 2349, page 117, Fifth Amendment to Master Deed recorded in V Book 2281, page 36, Sixth Amendment to Master Deed recorded in V Book 2360, page 1902, Seventh Amendment to Master Deed recorded in V Book 2448, page 923 and Eighth Amendment to Master Deed recorded in V Book 2519, page 1868 and any and all lawful amendments and supplements thereto.

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Article 3. Grantor's Covenant

The Grantor hereby covenants and affirms that Grantor has taken no action to encumber the Property.

Article 4. Affordable Housing Covenants

Sale and use of the Property is governed by regulations known as the Uniform Housing Affordability Controls, which are found in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1, *et seq*, the "Regulations"). Consistent with the Regulations, the following covenants (the "Covenants") shall run with the land for the period of time commencing upon the earlier of (a) the date hereof or (b) the prior commencement of the "Control Period", as that term is defined in the Regulations, and terminating upon the expiration of the Control Period as provided in the Regulations.

In accordance with N.J.A.C. 5:80-26.5, each restricted unit shall remain subject to the requirements of this subchapter, the "Control Period," until the municipality in which the unit is located elects to release the unit from such requirements. Prior to such a municipal election, a restricted unit must remain subject to the requirements of this subchapter for a period of at least 30 years; provided, however, that units located in high-poverty census tracts shall remain subject to these affordability requirements for a period of at least 10 years;

A. The Property may be conveyed only to a household who has been approved in advance and in writing by approved in advance and in writing by the administrative agent appointed under the Regulations (hereinafter, collectively, the "Administrative Agent").

B. No sale of the Property shall be lawful, unless approved in advance and in writing by the Administrative Agent, and no sale shall be for a consideration greater than maximum permitted price ("Maximum Resale Price", or "MRP") as determined by the Administrative Agent.

C. No refinancing, equity loan, secured letter of credit, or any other mortgage obligation or other debt (collectively, "Debt") secured by the Property, may be incurred except as approved in advance and in writing by the Administrative Agent. At no time shall the Administrative Agent approve any such Debt, if incurring the Debt would make the total of all such Debt exceed Ninety-Five Percent (95%) of the applicable MRP.

D. The owner of the Property shall at all times maintain the Property as his or her principal place of residence.

E. Except as set forth in F, below, at no time shall the owner of the Property lease or rent the Property to any person or persons, except on a short-term hardship basis as approved in advance and in writing by the Administrative Agent.

F. If the Property is a two-family home, the owner shall lease the rental unit only to income-certified low-income households approved in writing by the Administrative Agent, shall charge rent no greater than the maximum permitted rent as determined by the Administrative Agent, and shall submit for written approval of the Administrative Agent copies of all proposed leases prior to having them signed by any proposed tenant.

G. No improvements may be made to the Property that would affect its bedroom configuration, and in any event, no improvement made to the Property will be taken into consideration to increase the MRP, except for improvements approved in advance and in writing by the Administrative Agent.

H. The affordable housing covenants, declarations and restrictions implemented by this Deed and by incorporation, N.J.A.C. 5:80-26.1 et seq., shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to the Affordable Unit so long as the Affordable Unit remains subject to the affordability controls being implemented by this Declaration.

NOT A CERTIFIED COPY

Article 5. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Administrative Agent and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability Control rules found at N.J.A.C. 5:80-26, and the obligation for the provision of low and moderate-income housing. Accordingly, and as set forth in N.J.A.C. 5:80-26.18:

A. In the event of a threatened breach of any of the Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.

B. Upon the occurrence of a breach of any Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent shall have all remedies provided at law or equity including but not limited to forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code and specific performance.

EXECUTION BY GRANTOR

This Deed has been signed on the date hereof by the appropriate authorized representative of Grantor.

K. HOVNANIAN AT MONTVALE II, LLC

By: _____

Christine Marketta, Authorized Representative

STATE OF NEW JERSEY)
)SS:
COUNTY OF MIDDLESEX)

NOT A CERTIFIED COPY

I acknowledge that on March 10th, 2017, Christine Marketta personally appeared before me and acknowledged under oath that she:

(a) Made this Deed; and
(b) Was authorized to and did execute this Deed on behalf of and as an Authorized Representative of the Grantor named in this Deed; and
(c) Made this Deed for $120,000.00 consideration, as such consideration is defined in N.J.S.A. 46:15-5.

KATARZYNA ZIELINSKI
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES 4/15/20 19

EXECUTION BY GRANTEE

By signing below, the Grantee(s) hereby do, jointly and severally, acknowledge and agree that he/she understands the covenants and restrictions set forth herein, and further that he/she shall be bound by same for so long as he/she owns the Property.

DANILO MORALES

GABRIELA FUENTES

SPECIFIC POWER OF ATTORNEY

I, the above named GRANTEE, do hereby irrevocably name, make, appoint, constitute and confirm K. HOVNANIAN AT MONTVALE II, LLC, a limited liability company of the State of New Jersey, whose main office is 110 Fieldcrest Avenue, Edison, New Jersey, and its assigns and successors, my true and lawful attorney-in-fact for me for those specific and limited purposes as set forth in Paragraph 14 of the Master Deed for The Reserve at Montvale, A Condominium (the "Master Deed") and for me and in my name, place and stead, execute any such amendment(s) to the Master Deed and other instrument(s) necessary to effect the purposes set forth in Paragraph 14 of the Master Deed with the same force and effect as though I were present and acting for myself and I hereby ratify and confirm all that my said attorney-in-fact shall do by virtue hereof. This Power of Attorney shall not be affected by the fact that I might become incompetent hereafter, but shall remain in full force and effect.

NOT A CERTIFIED COPY

In witness whereof, I hereunto set my hand this 10 day of March, 2017.

DANILO MORALES, GRANTEE

GABRIELA FUENTES, GRANTEE

STATE OF NEW JERSEY)
)SS:
COUNTY OF Morris)

Be it remembered, that on this 10 day of March, 2017, subscriber(s), Danilo Morales and Gabriela Fuentes, personally appeared (if more than one person signed the foregoing deed and appeared before me, the words "subscriber," "Grantee" and "owner" shall include all such persons) and who, being duly sworn by me, deposed and made proof to my satisfaction: (i) that he/she is the Grantee/Owner named in the foregoing Deed and (ii) that he/she has executed said Deed with respect to the Property and for the purposes described and set forth herein.

SUSAN C WILLIAMS
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES JUNE 25, 2017

RETURN TO:

EASTERN TITLE AGENCY, INC.
2 INDUSTRIAL WAY WEST
EATONTOWN, NEW JERSEY 07724

GIT/REP-3
(9-2015)

State of New Jersey

SELLER'S RESIDENCY CERTIFICATION/EXEMPTION

(Please Print or Type)

NOT A CERTIFIED COPY

SELLER'S INFORMATION

Name(s)

K. Hovnanian @ Montvale II, LLC

Current Street Address

110 FIELDCREST AVENUE

City, Town, Post Office Box	State	Zip Code
EDISON	NJ	08837

PROPERTY INFORMATION

Block(s)	Lot(s)	Qualifier
302	1	C0040

Street Address
55 Autumn Way

City, Town, Post Office Box	State	Zip Code
Montvale	NJ	07645

Seller's Percentage of Ownership	Total Consideration	Owner's Share of Consideration	Closing Date
100%	$120,000.00	$120,000.00 (100%)	3/10/2017

SELLER'S ASSURANCES (Check the Appropriate Box) (Boxes 2 through 14 apply to Residents and Nonresidents)

1. ☐ Seller is a resident taxpayer (individual, estate, or trust) of the State of New Jersey pursuant to the New Jersey Gross Income Tax Act, will file a resident gross income tax return, and will pay any applicable taxes on any gain or income from the disposition of this property.
2. ☐ The real property sold or transferred is used exclusively as a principal residence as defined in 26 U.S. Code section 121.
3. ☐ Seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration.
4. ☐ Seller, transferor, or transferee is an agency or authority of the United States of America, an agency or authority of the State of New Jersey, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.
5. ☒ Seller is not an individual, estate, or trust and is not required to make an estimated gross income tax payment.
6. ☐ The total consideration for the property is $1,000 or less so the seller is not required to make an estimated income tax payment.
7. ☐ The gain from the sale is not recognized for federal income tax purposes under 26 U.S. Code section 721, 1031, or 1033 (CIRCLE THE APPLICABLE SECTION). If the indicated section does not ultimately apply to this transaction, the seller acknowledges the obligation to file a New Jersey income tax return for the year of the sale and report the recognized gain.
   ☐ Seller did not receive non-like kind property.
8. ☐ The real property is being transferred by an executor or administrator of a decedent to a devisee or heir to effect distribution of the decedent's estate in accordance with the provisions of the decedent's will or the intestate laws of this State.
9. ☐ The real property being sold is subject to a short sale instituted by the mortgagee, whereby the seller agreed not to receive any proceeds from the sale and the mortgagee will receive all proceeds paying off an agreed amount of the mortgage.
10. ☐ The deed is dated prior to August 1, 2004, and was not previously recorded.
11. ☐ The real property is being transferred under a relocation company transaction where a trustee of the relocation company buys the property from the seller and then sells the house to a third party buyer for the same price.
12. ☐ The real property is being transferred between spouses or incident to a divorce decree or property settlement agreement under 26 U.S. Code section 1041.
13. ☐ The property transferred is a cemetery plot.
14. ☐ The seller is not receiving net proceeds from the sale. Net proceeds from the sale means the net amount due to the seller on the settlement sheet.

SELLER'S DECLARATION

The undersigned understands that this declaration and its contents may be disclosed or provided to the New Jersey Division of Taxation and that any false statement contained herein may be punished by fine, imprisonment, or both. I furthermore declare that I have examined this declaration and, to the best of my knowledge and belief, it is true, correct and complete. By checking this box ☐ I certify that a Power of Attorney to represent the seller(s) has been previously recorded or is being recorded simultaneously with the deed to which this form is attached.

3/10/2017	[signature]
Date	Signature (Seller) Please indicate if Power of Attorney or Attorney in Fact
CHRISTINE MARKETH	AS AUTHORIZED REPRESENTATIVE
Date	Signature (Seller) Please indicate if Power of Attorney or Attorney in Fact

RTF-1 **(Rev. 7/14/10)**
MUST SUBMIT IN DUPLICATE

STATE OF NEW JERSEY
AFFIDAVIT OF CONSIDERATION FOR USE BY SELLER
(Chapter 49, **P.L.**1968, as amended through Chapter 33, **P.L.** 2006) **(N.J.S.A.** 46:15-5 et seq.)
BEFORE COMPLETING THIS AFFIDAVIT, PLEASE READ THE INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM.

STATE OF NEW JERSEY
} SS.
COUNTY BERGEN County Municipal Code 0236

FOR RECORDER'S USE ONLY
Consideration $ 120,000
RTF paid by seller $ 120.00
Date _____ By _____

MUNICIPALITY OF PROPERTY LOCATION Borough of Montvale

*Use symbol "C" to indicate that fee is exclusively for county use.

NOT A CERTIFIED COPY

(1) PARTY OR LEGAL REPRESENTATIVE *(See Instructions #3 and #4 on reverse side)*

Deponent, Christine Marketta (Name), being duly sworn according to law upon his/her oath, deposes and says that he/she is the authorized representative (Grantor, Legal Representative, Corporate Officer, Officer of Title Company, Lending Institution, etc.) in a deed dated 3.10.2017 transferring real property identified as Block number 302 Lot number 1 C0040 located at 55 Autumn Way, Montvale (Street Address, Town) and annexed thereto.

(2) CONSIDERATION $ 120,000.00 *(Instructions #1 and #5 on reverse side)* ☐ no prior mortgage to which property is subject.

(3) Property transferred is Class 4A 4B 4C (circle one). If property transferred is Class 4A, calculation in Section 3A below is required.

(3A)**REQUIRED CALCULATION OF EQUALIZED VALUATION FOR ALL CLASS 4A (COMMERCIAL) PROPERTY TRANSACTIONS:**
(See Instructions #5A and #7 on reverse side)
Total Assessed Valuation ÷ Director's Ratio = Equalized Assessed Valuation

$_____ ÷ _____% = $_____

If Director's Ratio is less than 100%, the equalized valuation will be an amount greater than the assessed value. If Director's Ratio is equal to or in excess of 100%, the assessed value will be equal to the equalized valuation.

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Deponent states that this deed transaction is fully exempt from the Realty Transfer Fee imposed by **C.** 49, **P.L.** 1968, as amended through **C.** 66, **P.L.** 2004, for the following reason(s). Mere reference to exemption symbol is insufficient. Explain in detail.

(5) PARTIAL EXEMPTION FROM FEE *(Instruction #9 on reverse side)*
NOTE: All boxes below apply to grantor(s) *only*. **ALL BOXES IN APPROPRIATE CATEGORY MUST BE CHECKED**. Failure to do so will void claim for partial exemption. Deponent claims that this deed transaction is exempt from State portions of the Basic, Supplemental, and General Purpose Fees, as applicable, imposed by **C.** 176, **P.L.** 1975, **C.** 113, **P.L.** 2004, and **C.** 66, **P.L.** 2004 for the following reason(s):

A. **SENIOR CITIZEN** Grantor(s) ☐ 62 years of age or over. * *(Instruction #9 on reverse side for A or B)*
B. **BLIND PERSON** Grantor(s) ☐ legally blind or; *
DISABLED PERSON Grantor(s) ☐ permanently and totally disabled ☐ receiving disability payments ☐ not gainfully employed*

Senior citizens, blind persons, or disabled persons must also meet **all of the following** criteria:
☐ Owned and occupied by grantor(s) at time of sale. ☐ Resident of State of New Jersey.
☐ One or two-family residential premises. ☐ Owners as joint tenants must all qualify.

*IN CASE OF HUSBAND AND WIFE, PARTNERS IN A CIVIL UNION COUPLE, ONLY ONE GRANTOR NEED QUALIFY IF TENANTS BY THE ENTIRETY.

C. **LOW AND MODERATE INCOME HOUSING** *(Instruction #9 on reverse side)*
☒ Affordable according to H.U.D. standards. ☒ Reserved for occupancy.
☒ Meets income requirements of region. ☒ Subject to resale controls.

(6) NEW CONSTRUCTION *(Instructions #2, #10 and #12 on reverse side)*
☐ Entirely new improvement. ☐ Not previously occupied.
☐ Not previously used for any purpose. ☐ "**NEW CONSTRUCTION**" printed clearly at top of first page of the deed.

(7) RELATED LEGAL ENTITIES TO LEGAL ENTITIES *(Instructions #5, #12, #14 on reverse side)*
☐ No prior mortgage assumed or to which property is subject at time of sale.
☐ No contributions to capital by either grantor or grantee legal entity.
☐ No stock or money exchanged by or between grantor or grantee legal entities.

(8) Deponent makes this Affidavit to induce county clerk or register of deeds to record the deed and accept the fee submitted herewith in accordance with the provisions of Chapter 49, **P.L.** 1968, as amended through Chapter 33, **P.L.** 2006.

Subscribed and sworn to before me
this 10 day of March , 20 17

KATARZYNA ZIELINSKI
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 4/15/2019

Signature of Deponent

110 Fieldcrest Avenue, Edison, NJ 08837
Deponent Address

XXX-XXX- 827
Last three digits in Grantor's Social Security Number

K. Hovnanian @ Montvale II, LLC
Grantor Name

110 Fieldcrest Avenue Edison, NJ 08837
Grantor Address at Time of Sale

Eastern Title Agency, Inc
Name/Company of Settlement Officer

FOR OFFICIAL USE ONLY
Instrument Number _____ County _____
Deed Number _____ Book _____ Page _____
Deed Dated _____ Date Recorded _____

County recording officers shall forward one copy of each RTF-1 form when Section 3A is completed to:
STATE OF NEW JERSEY
PO BOX 251
TRENTON, NJ 08695-0251
ATTENTION: REALTY TRANSFER FEE UNIT

The Director of the Division of Taxation in the Department of the Treasury has prescribed this form as required by law, and may not be altered or amended without prior approval of the Director. For information on the Realty Transfer Fee or to print a copy of this Affidavit, visit the Division of Taxation website at:
www.state.nj.us/treasury/taxation/lpt/localtax.htm

John S. Hogan
Bergen County Clerk

Bergen County Clerk
One Bergen County Plaza
Hackensack, NJ 07601
(201) 336-7000
www.bergencountyclerk.org/

INSTRUMENT # 17-063972.01
V 02705 0555
RECORDED DATE: 08/25/2017 09:08:27 AM

NOT A CERTIFIED COPY

Document Type: Deed - Low/Moderate Income	**Transaction #:** 8131563 **Document Page Count:** 7 **Operator Id:** CLERK

RETURN TO:

EASTERN TITLE AGENCY , INC. (CM)
2 INDUSTRIAL WAY W.
EATONTOWN NJ 07724
ERECORDED

SUBMITTED BY:

Eastern Title Agency , Inc. (CM)

800-364-0668

PRIMARY NAME	SECONDARY NAME
K HOVNANIAN AT MONTVALE II LLC	AHMAD S YOSOFZAD
ADDITIONAL PRIMARY NAMES	**ADDITIONAL SECONDARY NAMES**
	FATEMA N YONUS FAKHIRA YOSOFZAD

MARGINAL REFERENCES:

DOCUMENT DATE: 08/04/2017
MUNICIPALITY: MONTVALE
CONSIDERATION AMT: $140,000.00
LOT: 1
BLOCK: 302
GRANTEE ADDRESS: 57 AUTUMN WAY
MONTVALE NJ 07645

FEES / TAXES:

Recording Fee: Deed - Low/Moderate Income	$40.00
Additional Pages Fee	$60.00
Basic Fee - County	$140.00
Homeless Trust Fund - Bergen County	$3.00
Total:	$243.00

INSTRUMENT #: 17-063972.01
Recorded Date: 08/25/2017 09:08:27 AM

I hereby CERTIFY that this document is recorded in the Clerk's Office in Bergen County, New Jersey.

John S. Hogan
Bergen County Clerk

Recording Fees: $103.00
Realty Transfer Tax Fees: $0.00

OFFICIAL RECORDING COVER PAGE

PLEASE DO NOT DETACH

THIS PAGE IS NOW PART OF THIS LEGAL DOCUMENT

NOTE: If document data differs from cover sheet, document data always supersedes.
***COVER PAGE DOES NOT INCLUDE ALL DATA, PLEASE SEE INDEX AND DOCUMENT FOR ANY ADDITIONAL INFORMATION.**

Prepared by Christine Marketta, Authorized Representative

#ET46144

NEW CONSTRUCTION

Deed

DEED-RESTRICTED AFFORDABLE HOUSING UNIT WITH RESTRICTIONS ON RESALE AND REFINANCING

To State Regulated Property
With Covenants Restricting Conveyance
And Mortgage Debt

NOT CERTIFIED COPY

THIS DEED is made on this 4th day of August, 2017 by and between

K. HOVNANIAN AT MONTVALE II, LLC, a limited liability company of the State of New Jersey, whose main office is 110 Fielderest Avenue, Edison, New Jersey 08837 (Grantor) and

AHMAD S. YOSOFZAD and FATEMA N. YONUS, about to reside at 57 Autumn Way, Montvale, New Jersey 07645 (collectively, Grantee).

Article 1. Consideration and Conveyance

In return for payment to the Grantor by the Grantee of One Hundred Forty Thousand Dollars ($140,000.00), the receipt of which is hereby acknowledged by the Grantor, the Grantor hereby grants and conveys to the Grantee all of the land and improvements thereon as is more specifically described in Article 2, hereof (the Property).

Article 2. Description of Property

The Property consists of all of the land, and improvements thereon, that is located in the municipality of the Borough of Montvale, County of Bergen, State of New Jersey, and described more specifically as Block No. 302, Lot No. 1, Qualifier C0041 and known by the street address: 57 Autumn Way, Montvale, New Jersey 07645.

BEING known and designated as Unit No. 0733 in Building No. 7, together with an undivided percentage of interest in the common elements appurtenant thereto, as amended from time to time, in accordance with, as more specifically defined in and subject to the terms, limitations, conditions, covenants, restrictions, easements, by-laws and other provisions of the Master Deed for The Reserve at Montvale, A Condominium, recorded in the Bergen County Clerk's office in V Book 2032, page 1910, First Amendment to Master Deed recorded in V Book 2130, page 1037, Second

Amendment to Master Deed recorded in V Book 2162, page 645, Corrective Second Amendment to Master Deed recorded in V Book 2211, page 282, Third Amendment to Master Deed recorded in V Book 2240, page 1698, Fourth Amendment to Master Deed recorded in V Book 2349, page 117, Fifth Amendment to Master Deed recorded in V Book 2281, page 36, Sixth Amendment to Master Deed recorded in V Book 2360, page 1902, Seventh Amendment to Master Deed recorded in V Book 2448, page 923 and Eighth Amendment to Master Deed recorded in V Book 2519, page 1868 and any and all lawful amendments and supplements thereto.

Article 3. Grantor's Covenant

The Grantor hereby covenants and affirms that Grantor has taken no action to encumber the Property.

Article 4. Affordable Housing Covenants

Sale and use of the Property is governed by regulations known as the Uniform Housing Affordability Controls, which are found in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1, *et seq*, the "Regulations"). Consistent with the Regulations, the following covenants (the "Covenants") shall run with the land for the period of time commencing upon the earlier of (a) the date hereof or (b) the prior commencement of the "Control Period", as that term is defined in the Regulations, and terminating upon the expiration of the Control Period as provided in the Regulations.

In accordance with N.J.A.C. 5:80-26.5, each restricted unit shall remain subject to the requirements of this subchapter, the "Control Period," until the municipality in which the unit is located elects to release the unit from such requirements. Prior to such a municipal election, a restricted unit must remain subject to the requirements of this subchapter for a period of at least 30 years; provided, however, that units located in high-poverty census tracts shall remain subject to these affordability requirements for a period of at least 10 years;

A. The Property may be conveyed only to a household who has been approved in advance and in writing by approved in advance and in writing by the administrative agent appointed under the Regulations (hereinafter, collectively, the "Administrative Agent").

B. No sale of the Property shall be lawful, unless approved in advance and in writing by the Administrative Agent, and no sale shall be for a consideration greater than maximum permitted price ("Maximum Resale Price", or "MRP") as determined by the Administrative Agent.

C. No refinancing, equity loan, secured letter of credit, or any other mortgage obligation or other debt (collectively, "Debt") secured by the Property, may be incurred except as approved in advance and in writing by the Administrative Agent. At no time shall the Administrative Agent approve any such Debt, if incurring the Debt would make the total of all such Debt exceed Ninety-Five Percent (95%) of the applicable MRP.

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D. The owner of the Property shall at all times maintain the Property as his or her principal place of residence.

E. Except as set forth in F, below, at no time shall the owner of the Property lease or rent the Property to any person or persons, except on a short-term hardship basis as approved in advance and in writing by the Administrative Agent.

F. If the Property is a two-family home, the owner shall lease the rental unit only to income-certified low-income households approved in writing by the Administrative Agent, shall charge rent no greater than the maximum permitted rent as determined by the Administrative Agent, and shall submit for written approval of the Administrative Agent copies of all proposed leases prior to having them signed by any proposed tenant.

G. No improvements may be made to the Property that would affect its bedroom configuration, and in any event, no improvement made to the Property will be taken into consideration to increase the MRP, except for improvements approved in advance and in writing by the Administrative Agent.

H. The affordable housing covenants, declarations and restrictions implemented by this Deed and by incorporation, N.J.A.C. 5:80-26.1 et seq., shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to the Affordable Unit so long as the Affordable Unit remains subject to the affordability controls being implemented by this Declaration.

Article 5. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Administrative Agent and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability Control rules found at N.J.A.C. 5:80-26, and the obligation for the provision of low and moderate-income housing. Accordingly, and as set forth in N.J.A.C. 5:80-26.18:

A. In the event of a threatened breach of any of the Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.

B. Upon the occurrence of a breach of any Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent shall have all remedies provided at law or equity including but not limited to forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code and specific performance.

NOT A CERTIFIED COPY

EXECUTION BY GRANTOR

This Deed has been signed on the date hereof by the appropriate authorized representative of Grantor.

K. HOVNANIAN AT MONTVALE II, LLC

By: _____
Christine Marketta, Authorized Representative

STATE OF NEW JERSEY)
)SS:
COUNTY OF MIDDLESEX)

I acknowledge that on August 4, 2017, Christine Marketta personally appeared before me and acknowledged under oath that she:

(a) Made this Deed; and
(b) Was authorized to and did execute this Deed on behalf of and as an Authorized Representative of the Grantor named in this Deed; and
(c) Made this Deed for $140,000.00 consideration, as such consideration is defined in N.J.S.A. 46:15-5.

_____

KATARZYNA ZIELINSKI
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES 4/15/20

NOT A CERTIFIED COPY

EXECUTION BY GRANTEE

By signing below, the Grantee(s) hereby do, jointly and severally, acknowledge and agree that he/she understands the covenants and restrictions set forth herein, and further that he/she shall be bound by same for so long as he/she owns the Property.

_____
AHMAD S. YOSOFZAD

Fatema N. Yonus by Fakhira Yosofzad her AHyin Fact
FATEMA N. YONUS

SPECIFIC POWER OF ATTORNEY

I, the above named GRANTEE, do hereby irrevocably name, make, appoint, constitute and confirm K. HOVNANIAN AT MONTVALE II, LLC, a limited liability company of the State of New Jersey, whose main office is 110 Fieldcrest Avenue, Edison, New Jersey, and its assigns and successors, my true and lawful attorney-in-fact for me for those specific and limited purposes as set forth in Paragraph 14 of the Master Deed for The Reserve at Montvale, A Condominium (the "Master Deed") and for me and in my name, place and stead, execute any such amendment(s) to the Master Deed and other instrument(s) necessary to effect the purposes set forth in Paragraph 14 of the Master Deed with the same force and effect as though I were present and acting for myself and I hereby ratify and confirm all that my said attorney-in-fact shall do by virtue hereof. This Power of Attorney shall not be affected by the fact that I might become incompetent hereafter, but shall remain in full force and effect.

In witness whereof, I hereunto set my hand this 4th day of August, 2017.

AHMAD S. YOSOFZAD, GRANTEE

Fatema N Yonus by Lakhina Yosofzad her Atty in Fact
FATEMA N. YONUS, GRANTEE

NOT A CERTIFIED COPY

STATE OF NEW JERSEY)
)SS:
COUNTY OF Morris)

Be it remembered, that on this 8 day of August, 2017, subscriber(s), Ahmad S. Yosofzad and Fatema N. Yonus, personally appeared (if more than one person signed the foregoing deed and appeared before me, the words "subscriber," "Grantee" and "owner" shall include all such persons) and who, being duly sworn by me, deposed and made proof to my satisfaction: (i) that he/she is the Grantee/Owner named in the foregoing Deed and (ii) that he/she has executed said Deed with respect to the Property and for the purposes described and set forth herein.

SUSAN C WILLIAMS
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES JUNE 25, 2022

GIT/REP-3
(9-2015)

State of New Jersey

SELLER'S RESIDENCY CERTIFICATION/EXEMPTION

(Please Print or Type)

SELLER'S INFORMATION

Name(s)

K. Hovnanian @ Montvale II, LLC

Current Street Address

110 FIELDCREST AVENUE

City, Town, Post Office Box	State	Zip Code
EDISON	NJ	08837

PROPERTY INFORMATION

Block(s)	Lot(s)	Qualifier
302	1	C0041

Street Address
57 Autumn Way

City, Town, Post Office Box	State	Zip Code
Montvale	NJ	07645

Seller's Percentage of Ownership	Total Consideration	Owner's Share of Consideration	Closing Date
100%	$140,000.00	$140,000.00 -120470	8/4/2017

SELLER'S ASSURANCES (Check the Appropriate Box) (Boxes 2 through 14 apply to Residents and Nonresidents)

1. ☐ Seller is a resident taxpayer (individual, estate, or trust) of the State of New Jersey pursuant to the New Jersey Gross Income Tax Act, will file a resident gross income tax return, and will pay any applicable taxes on any gain or income from the disposition of this property.
2. ☐ The real property sold or transferred is used exclusively as a principal residence as defined in 26 U.S. Code section 121.
3. ☐ Seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration.
4. ☐ Seller, transferor, or transferee is an agency or authority of the United States of America, an agency or authority of the State of New Jersey, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.
5. ☒ Seller is not an individual, estate, or trust and is not required to make an estimated gross income tax payment.
6. ☐ The total consideration for the property is $1,000 or less so the seller is not required to make an estimated income tax payment.
7. ☐ The gain from the sale is not recognized for federal income tax purposes under 26 U.S. Code section 721, 1031, or 1033 (CIRCLE THE APPLICABLE SECTION). If the indicated section does not ultimately apply to this transaction, the seller acknowledges the obligation to file a New Jersey income tax return for the year of the sale and report the recognized gain.
   ☐ Seller did not receive non-like kind property.
8. ☐ The real property is being transferred by an executor or administrator of a decedent to a devisee or heir to effect distribution of the decedent's estate in accordance with the provisions of the decedent's will or the intestate laws of this State.
9. ☐ The real property being sold is subject to a short sale instituted by the mortgagee, whereby the seller agreed not to receive any proceeds from the sale and the mortgagee will receive all proceeds paying off an agreed amount of the mortgage.
10. ☐ The deed is dated prior to August 1, 2004, and was not previously recorded.
11. ☐ The real property is being transferred under a relocation company transaction where a trustee of the relocation company buys the property from the seller and then sells the house to a third party buyer for the same price.
12. ☐ The real property is being transferred between spouses or incident to a divorce decree or property settlement agreement under 26 U.S. Code section 1041.
13. ☐ The property transferred is a cemetery plot.
14. ☐ The seller is not receiving net proceeds from the sale. Net proceeds from the sale means the net amount due to the seller on the settlement sheet.

SELLER'S DECLARATION

The undersigned understands that this declaration and its contents may be disclosed or provided to the New Jersey Division of Taxation and that any false statement contained herein may be punished by fine, imprisonment, or both. I furthermore declare that I have examined this declaration and, to the best of my knowledge and belief, it is true, correct and complete. By checking this box ☐ I certify that a Power of Attorney to represent the seller(s) has been previously recorded or is being recorded simultaneously with the deed to which this form is attached.

8/4/2017
Date

Signature
(Seller) Please indicate if Power of Attorney or Attorney in Fact

Christine Markota
Date

AS Authorized Representative
Signature
(Seller) Please indicate if Power of Attorney or Attorney in Fact

NOT CERTIFIED COPY

RTF-1 (Rev. 7/14/10)
MUST SUBMIT IN DUPLICATE

STATE OF NEW JERSEY

AFFIDAVIT OF CONSIDERATION FOR USE BY SELLER

(Chapter 49, P.L.1968, as amended through Chapter 33, P.L. 2006) (N.J.S.A. 46:15-5 et seq.)

BEFORE COMPLETING THIS AFFIDAVIT, PLEASE READ THE INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM.

STATE OF NEW JERSEY }SS.

COUNTY BERGEN County Municipal Code 0236

FOR RECORDER'S USE ONLY	
Consideration	$
RTF paid by seller	$
Date	By

MUNICIPALITY OF PROPERTY LOCATION Borough of Montvale

*Use symbol "C" to indicate that fee is exclusively for county use.

(1) PARTY OR LEGAL REPRESENTATIVE (*See Instructions #3 and #4 on reverse side*)

Deponent, Christine Marketta (Name), being duly sworn according to law upon his/her oath, deposes and says that he/she is the authorized representative (Grantor, Legal Representative, Corporate Officer, Officer of Title Company, Lending Institution, etc.) in a deed dated 08.02.2017 transferring real property identified as Block number 302 Lot number 1 C0041 located at 57 Autumn Way, Montvale (Street Address, Town) and annexed thereto.

(2) CONSIDERATION $ 140,000.00 (*Instructions #1 and #5 on reverse side*) ☐ no prior mortgage to which property is subject.

(3) Property transferred is Class 4A 4B 4C (circle one). If property transferred is Class 4A, calculation in Section 3A below is required.

(3A) **REQUIRED CALCULATION OF EQUALIZED VALUATION FOR ALL CLASS 4A (COMMERCIAL) PROPERTY TRANSACTIONS:**
(*See Instructions #5A and #7 on reverse side*)
Total Assessed Valuation ÷ Director's Ratio = Equalized Assessed Valuation

$_____ ÷ _____% = $_____

If Director's Ratio is less than 100%, the equalized valuation will be an amount greater than the assessed value. If Director's Ratio is equal to or in excess of 100%, the assessed value will be equal to the equalized valuation.

(4) FULL EXEMPTION FROM FEE (*See Instruction #8 on reverse side*)
Deponent states that this deed transaction is fully exempt from the Realty Transfer Fee imposed by C. 49, P.L. 1968, as amended through C. 66, P.L. 2004, for the following reason(s). Mere reference to exemption symbol is insufficient. Explain in detail.

(5) PARTIAL EXEMPTION FROM FEE (*Instruction #9 on reverse side*)
NOTE: All boxes below apply to grantor(s) *only*. **ALL BOXES IN APPROPRIATE CATEGORY MUST BE CHECKED.** Failure to do so will void claim for partial exemption. Deponent claims that this deed transaction is exempt from State portions of the Basic, Supplemental, and General Purpose Fees, as applicable, imposed by C. 176, P.L. 1975, C. 113, P.L. 2004, and C. 66, P.L. 2004 for the following reason(s):

A. **SENIOR CITIZEN** Grantor(s) ☐ 62 years of age or over. * (*Instruction #9 on reverse side for A or B*)
B. **BLIND PERSON** Grantor(s) ☐ legally blind or; *
DISABLED PERSON Grantor(s) ☐ permanently and totally disabled ☐ receiving disability payments ☐ not gainfully employed*

Senior citizens, blind persons, or disabled persons must also meet **all of the following** criteria:
☐ Owned and occupied by grantor(s) at time of sale. ☐ Resident of State of New Jersey.
☐ One or two-family residential premises. ☐ Owners as joint tenants must all qualify.

*IN CASE OF HUSBAND AND WIFE, PARTNERS IN A CIVIL UNION COUPLE, ONLY ONE GRANTOR NEED QUALIFY IF TENANTS BY THE ENTIRETY.

C. **LOW AND MODERATE INCOME HOUSING** (*Instruction #9 on reverse side*)
☒ Affordable according to H.U.D. standards. ☒ Reserved for occupancy.
☒ Meets income requirements of region. ☒ Subject to resale controls.

(6) NEW CONSTRUCTION (*Instructions #2, #10 and #12 on reverse side*)
☒ Entirely new improvement. ☒ Not previously occupied.
☒ Not previously used for any purpose. ☒ "**NEW CONSTRUCTION**" printed clearly at top of first page of the deed.

(7) RELATED LEGAL ENTITIES TO LEGAL ENTITIES (*Instructions #5, #12, #14 on reverse side*)
☐ No prior mortgage assumed or to which property is subject at time of sale.
☐ No contributions to capital by either grantor or grantee legal entity.
☐ No stock or money exchanged by or between grantor or grantee legal entities.

(8) Deponent makes this Affidavit to induce county clerk or register of deeds to record the deed and accept the fee submitted herewith in accordance with the provisions of Chapter 49, P.L. 1968, as amended through Chapter 33, P.L. 2006.

Subscribed and sworn to before me this 4 day of August , 20 17

KATARZYNA ZIELINSKI
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES 4/15/20

Signature of Deponent

110 Fieldcrest Avenue, Edison, NJ 08837
Deponent Address

XXX-XXX- 827
Last three digits in Grantor's Social Security Number

K. Hovnanian @ Montvale II, LLC
Grantor Name

110 Fieldcrest Avenue Edison, NJ 08837
Grantor Address at Time of Sale

Eastern Title Agency, Inc
Name/Company of Settlement Officer

FOR OFFICIAL USE ONLY			
Instrument Number		County	
Deed Number		Book	Page
Deed Dated		Date Recorded	

County recording officers shall forward one copy of each RTF-1 form when Section 3A is completed to: **STATE OF NEW JERSEY, PO BOX 251, TRENTON, NJ 08695-0251, ATTENTION: REALTY TRANSFER FEE UNIT**

The Director of the Division of Taxation in the Department of the Treasury has prescribed this form as required by law, and may not be altered or amended without prior approval of the Director. For information on the Realty Transfer Fee or to print a copy of this Affidavit, visit the Division of Taxation website at: **www.state.nj.us/treasury/taxation/lpt/localtax.htm**

NOT CERTIFIED COPY

License No. GH2191

State of New Jersey

Department of Human Services

Office of Licensing

LICENSE

CHILDREN'S AID AND FAMILY SERVICES

200 Robin Rd
Paramus, NJ 07652-1414

Having met the requirements of the New Jersey Statute, P.L. 1977, c. 448, and the regulations of this Department, is hereby licensed as a

Group Home Developmental Disability

for 6 individuals

at

[redacted]

This License is effective from 03/31/2017 to 03/31/2018

Elizabeth Connolly, Acting Commissioner
Department of Human Services



John S. Hogan
Bergen County Clerk

Bergen County Clerk
One Bergen County Plaza
Hackensack, NJ 07601
(201) 336-7000
www.bergencountyclerk.org

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INSTRUMENT # 15-029157
V 01921 1508
RECORDED DATE: 04/27/2015 09:45:32 AM

Document Type: Deed

Transaction #: 6851275
Document Page Count: 28
Operator Id: CLERK

RETURN TO:

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY
637 SOUTH CLINTON AVE
PO BOX 18550 ATTN P YASENCHAK
TRENTON NJ 08650

SUBMITTED BY:

PRIMARY NAME	SECONDARY NAME
NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY	CHILDRENS AID AND FAMILY SERVICES INCORPORATED

ASSOCIATED DOCUMENT(S):

MUNICIPALITY: MONTVALE
LOT: 51
BLOCK: 2509

FEES / TAXES:

Recording Fee: Deed	$40.00
Additional Pages Fee	$270.00
Homeless Trust Fund - Bergen County	$3.00
Total:	$313.00

INSTRUMENT #: 15-029157
Recorded Date: 04/27/2015 09:45:32 AM

I hereby CERTIFY that this document is recorded in the Clerk's Office in Bergen County, New Jersey.

John S. Hogan
Bergen County Clerk

OFFICIAL RECORDING COVER PAGE

PLEASE DO NOT DETACH

THIS PAGE IS NOW PART OF THIS LEGAL DOCUMENT

NOTE: If document data differs from cover sheet, document data always supersedes.
***COVER PAGE DOES NOT INCLUDE ALL DATA, PLEASE SEE INDEX AND DOCUMENT FOR ANY ADDITIONAL INFORMATION.**

28 p 513 Chg 376 Builders

15-029157 Deed
V Bk: 01921 Pg: 1508-1536 Rec. Fee $313.00
John S. Hogan, Bergen County Clerk
Recorded 04/27/2015 09:45:32 AM

(1)

Record and Return to:

Peter Yasenchak, Paralegal
New Jersey Housing and Mortgage
Finance Agency
637 South Clinton Avenue
P.O. Box 18550
Trenton, New Jersey 08650-2085

NOT A CERTIFIED COPY

RECORD IN DEEDS

MIDDLETOWN ROAD SUPPORTIVE HOUSING
HMFA #02991
SNHPLP #052

FINANCING, DEED RESTRICTION AND REGULATORY AGREEMENT

between

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

and

CHILDREN'S AID AND FAMILY SERVICES, INC.

Prepared by:

William F. Hanna
Deputy Attorney General

Construction and Permanent Financing
Special Needs Housing
Partnership Loan Program

(Revised June 4, 2012)

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Section 41. Governing Law
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Section 43. Equal Opportunity and Nondiscrimination
Section 44. Owner's Default Under Financing Documents
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Schedule A. Legal Description

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First American
Title Insurance Company

REVISED SCHEDULE A
LEGAL DESCRIPTION

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File No. **BT31383**
REV. 4/14/14 TO ATTACH SURVEY DESCRIPTION BY LAPATKA ASSOCIATES, INC.

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

BEGINNING at the northeast corner thereof at a point in the north line of lands conveyed by Harry J. Burkhardt
And Muriel A. Burkhardt, his wife, to Donald Francis Hageman and Helen Marie Hageman, his wife, by deed dated March 31, 1954 and recorded in Book 3522 page 202, and which point is distant on a course of North 86 degrees 38 minutes 10 seconds West 540.61 feet from the northeast corner of lands conveyed to Donald Francis Hageman et ux by deed above mentioned; said point of beginning being also the northwest corner of a tract of land conveyed by Donald Francis Hageman et ux to Fred G. Jahn and Alberta M. Jahn, his wife, by deed dated April 7, 1958 and recorded in Book 3936 page 240; and running thence:

(1) North 86 degrees 38 minutes 10 seconds West 215.62 feet to east line of lands now or formerly of Meyer Hirshberg; thence

(2) South 2 degrees 43 minutes 00 seconds West 172.17 feet; thence

(3) South 86 degrees 38 minutes 10 seconds East 762.77 feet to the center line of River Vale Road, sometimes known as Middletown Road; thence

(4) North 0 degrees 32 minutes 30 seconds East along the said center line of River Vale Road, also known as Middletown Road, 25.03 feet; thence

(5) North 86 degrees 38 minutes 10 seconds West 547.82 feet to the southwesterly corner of lands conveyed by Donald Francis Hageman et ux to Fred G. Jahn et ux, hereinabove referred to; thence

(6) North 3 degrees 21 minutes 50 seconds East and along the westerly line of said Jahn 147.16 feet to the point and place of BEGINNING.

TOGETHER with and SUBJECT to an fifty foot wide easement for ingress and egress to River Vale Road, also known as Middletown Road, on record in the Bergen County Clerk's Office in Deed Books 3936 page 240; 4053 page 634; 6300 page 393; and 6489 page 397.

BEING ALSO DESCRIBED IN ACCORDANCE WITH A SURVEY MADE BY LAPATKA ASSOCIATES, INC. DATED APRIL 8, 2014, WHICH SAID DESCRIPTION IS ATTACHED HERETO AND MADE A PART HEREOF.

LAPATKA ASSOCIATES, INC.

12 Route 17 North, Suite 230
Paramus, NJ 07652
TEL: (201) 587-1600
FAX: (201) 587-0063

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April 8, 2014
Project # 14-111

RE: DESCRIPTION OF LOT 51 IN BLOCK 2509, SITUATED IN THE BOROUGH OF MONTVALE, BERGEN COUNTY, NEW JERSEY.

DEED DESCRIPTION

Beginning at a point in the westerly sideline of Middletown Road (aka Rivervale Road), (30' from centerline), said point being formed by the intersection of said westerly sideline of Middletown Road, with the southerly line of the herein described parcel, said line also being the dividing line between the Borough of Montvale, lying to the north and the Township of River Vale, lying to the south and from said point proceeding, thence;

1). North 86 degrees and 38 minutes and 10 seconds west, along said dividing line, for a distance of 733.33 feet to a point, thence;

2). North 02 degrees and 43 minutes and 00 seconds east, for a distance of 172.17 feet to a point, thence;

3). South 86 degrees and 38 minutes and 10 seconds east, for a distance of 215.62 feet to a point, thence;

4). South 03 degrees and 21 minutes and 50 seconds west, for a distance of 147.16 feet to a point, thence;

5). South 86 degrees and 38 minutes and 10 seconds east, for a distance of 518.67 feet to a point, in the aforementioned westerly sideline of Middletown Road, thence;

6). South 01 degrees and 07 minutes and 00 seconds west, for a distance of 25.03 feet to the Point or Place of Beginning.

Subject to easements and restrictions of record.

Jeffrey H. Kleine, PLS
Professional Land Surveyor.
N.J. Lic. #35848

14-111, 2014-04-08ld.docx

First American Title Insurance Company

SCHEDULE C
LEGAL DESCRIPTION

File No. **BT31383**

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FOR INFORMATIONAL PURPOSES ONLY: Also known as Lot 51 in Block 2509 on the Borough of Montvale Tax Map.

FOR INFORMATIONAL PURPOSES ONLY: BEING COMMONLY KNOWN AS: 42 Middletown Road, Montvale, NJ 07675.

THIS FINANCING, DEED RESTRICTION AND REGULATORY AGREEMENT (this "Agreement"), made and entered into as of this 7th day of April, 2015 by and between the **NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY** (the "Agency" or "Lender"), a body politic and corporate and an instrumentality exercising public and essential governmental functions of the State of New Jersey and **CHILDREN'S AID AND FAMILY SERVICES, INC.** ("Owner" or "Borrower"), a non-profit corporation organized and existing pursuant to the laws of the State of New Jersey and duly authorized to transact business in the State of New Jersey.

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WITNESSETH

In consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Agency and the Owner hereby agree as follows:

Section 1. Definitions and Interpretation. The following terms shall have the respective meanings set forth below:

"Act" means the New Jersey Housing and Mortgage Finance Agency Law of 1983, as amended from time to time, P.L. 1983, c. 530, N.J.S.A. 55:14K-1 et seq., and the regulations promulgated thereunder, as amended from time to time.

"Architectural Contract" means the agreement by and between the Owner and Z+ Architects (the "Architect") dated February 7, 2014, for the construction or rehabilitation of the Project in accordance with the plans and specifications for the Project.

"Assignment of Leases" means the Assignment of Leases by and between the Owner and Lender of even date herewith.

"Commitment" means, collectively, the commitment approval letter signed by the Executive Director of the Agency dated April 17, 2014 and the financing commitment approval recommendations of the Special Needs Housing Partnership Loan Program loan committee members in the request for consideration dated April 17, 2014, together with all amendments thereto.

"Construction Contract" means the agreement between the Owner and Bergen County United Way dated April 17, 2014, or any other agreement executed by the Owner and approved by the Agency, for the construction or rehabilitation of the Project in accordance with the plans and specifications for the Project approved by the Agency.

"Construction Period" means the period of time as defined in the Construction Contract.

"Day" or "Days" whether or not the word is a capitalized term, shall mean calendar day or day(s) unless otherwise specified.

"DCA" means the State of New Jersey, Department of Community Affairs.

"DDD" means the Division of Developmental Disabilities within the DHS.

"DHS" means the State of New Jersey, Department of Human Services.

"Event of Default" means any of the events set forth in Section 28 of this Agreement.

"First Mortgage" or **"Mortgage"** means the first mortgage and security agreement of even date herewith that will constitute a first lien on a fee simple interest in the Project and Land, given by the Owner to the Agency to secure the First Mortgage Loan.

"First Mortgage Loan" or **"Loan"** means the loan made to the Owner by the Agency to finance a portion of the cost of the development, rehabilitation and/or construction of the Project that will be located on the real property described in Schedule A attached hereto, as evidenced by the First Mortgage Note and secured by the First Mortgage.

"First Mortgage Note" or **"Mortgage Note"** or **"Note"** means the non-interest bearing, non-recourse promissory note that contains the promise of the Owner to pay the sum of money stated therein at the times stated therein and that evidences the obligation of the Owner to repay the First Mortgage Loan.

"Guidelines" means the Special Needs Housing Partnership Loan Program Guidelines as approved by the Agency's Board on March 1, 2012, as may be amended from time to time.

"Improvements" means the building together with all fixtures and utility improvements, easements and rights of way that are owned by the Owner and located on the Land.

"Land" means the real property described in Schedule A attached hereto, on which the Project is located.

"Loan Documents" means and includes this Agreement, the Mortgage Note, the Mortgage, the UCC-1 Financing Statements and the Assignment of Leases.

"Low-Income Tenants" means families that have income of **50%** or less of the area median gross income adjusted for family size.

"Permitted Encumbrances" means the Mortgage:

(i) Utility, access and other easements and rights of way, restrictions and exceptions that do not, individually or in the aggregate, materially impair the utility or value of the Project or Land for the purposes for which it is intended;

(ii) Liens that are being contested in good faith and for which the Owner has provided security satisfactory to the Agency;

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(iii) Liens subordinate to the Mortgage Loan arising due to any monies loaned in connection with the Project or other monies loaned to the Owner, provided such liens are disclosed to and approved by the Agency in writing; and

(iv) Any other encumbrances approved by the Agency in writing.

"Project" means the Improvements located on the Land together with the Land to be financed, in part, with the proceeds of the Loan.

State" means the State of New Jersey.

"UCC-1" means the UCC-1 Financing Agreement(s) of even date herewith.

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Section 2. **Background and Purpose**. The Owner owns , proposes to rehabilitate, and will operate a Project to be located on the Land. The Lender will hold a first mortgage lien on the Project in the amount of $468,881 during the term of the Mortgage at an interest rate of zero (0%) percent. Financing for the Project shall be derived from the Lender's Special Needs Housing Partnership Loan Program ("SNHPLP" or "Program").

In connection with the First Mortgage, the Owner and the Agency have entered into this Agreement.

In connection with its application for the Loan, the Owner has furnished to the Agency various details as to the Project, including the description of Land on which it is to be situated, plans and specifications for the construction/rehabilitation of the Project, the tenant population that shall be housed in the Project, the number of units of each type to be included therein, the estimated costs of providing the Project, details as to the Project income and expenses of the Project once constructed and/or rehabilitated and placed in operation, and arrangements for any tax abatement for the Project.

Section 3. **Residential Rental Property**. The Owner hereby represents, covenants, warrants and agrees that the Project to be known as Middletown Road Supportive Housing is located at Lot 51 in Block 2509 in the Borough of Montvale, Bergen County, New Jersey. The Project involves the acquisition and moderate rehabilitation of an existing ranch-style home located at 42 Middletown Road, in Montvale Township, Bergen County. The Project is a four bedroom ranch style home that will be renovated to meet the needs of 6 individuals with developmental disabilities. Each resident will have their own bedroom and will share common areas including a kitchen, living room, dining room, 2 1/2 bathrooms, common area, laundry facilities and a covered porch. The Sponsor, Children's Aid and Family Services, Inc. will provide 24 hour supervision and supportive services to the six (6) individuals with developmental disabilities. The services will include behavioral supports, routine medical supports, assistance with self-care needs, mental health supports, recreational activities and transportation.

All of the units in the Project are to be utilized at all times in accordance with the types of use as permitted by the Act and/or the Guidelines and as may be approved by the Agency. All units

shall be subject to use and occupancy and/or intake and/or occupancy or lease agreements between the Owner and the tenants/residents.

Section 4. Additional Representations, Covenants and Warranties of the Owner. The Owner represents, warrants and covenants that:

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A. The Owner (i) is a non-profit corporation, duly organized, validly existing and in good standing under the laws of the State of New Jersey and duly authorized to transact business in the State; (ii) has filed with the Agency a true and complete copy of its Certificate of Incorporation with all amendments, if any, thereto; (iii) has the power and authority to own or lease its properties and assets, including the Project and the Land, and to carry on its business as now being conducted (and as now contemplated), and to borrow the proceeds of the Loan; and (iv) has the power to execute and perform all the undertakings of this Agreement and the other Loan Documents.

B. All necessary legal action has been taken to authorize the execution, delivery and performance of the Loan Documents by the Owner.

C. The Loan Documents have been duly executed and delivered by the Owner and constitute the valid and legally binding obligations of the Owner, enforceable against the Owner in accordance with their respective terms.

D. To the best of the Owner's knowledge after due and diligent inquiry, the execution and performance of this Agreement, the Loan Documents and other instruments required pursuant to this Agreement by the Owner (i) will not violate or, as applicable, have not violated, any provision of law, rule or regulations, any order of any court or other agency or government or any provision of any document to which the Owner is a party and (ii) will not violate or, as applicable, have not violated, any provision of any indenture, agreement or other instrument to which the Owner is a party, or result in the creation or imposition of any lien, charge or encumbrance of any nature other than the Permitted Encumbrances.

E. The Owner has, at the time of execution of this Agreement and subject only to such exceptions as have been disclosed in writing to the Agency and which will not materially interfere with or impact the beneficial use of the Project and Land for purposes of the Project, good and marketable title to fee simple interest in the premises constituting the Land and the Project free and clear of any lien or encumbrance (subject to Permitted Encumbrances and encumbrances created or contemplated pursuant to this Agreement).

F. There is, after due and diligent inquiry, no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted, or as contemplated to be conducted under this Agreement, or would materially adversely affect its financial condition.

G. To the best of the Owner's knowledge after due and diligent inquiry, the operation of the Project in the manner presently contemplated and as described in this Agreement will not conflict

with any zoning, water or air pollution or other ordinance, order, law or regulation applicable thereto. The Owner has caused the Project to be designed in accordance with all applicable federal, State and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality and will proceed with due diligence to rehabilitate the Project pursuant to the Architectural Contract or the Construction Contract, as applicable.

Further, the Owner has received or shall obtain all necessary governmental approvals and building permits for construction, rehabilitation and operation of the Project in accordance with the plans and specifications and the Architectural Contract or Construction Contract, as applicable, and shall obtain in a timely manner any and all required extensions of governmental approvals, including, but not limited to, site plan approval.

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H. The Owner has filed, caused to be filed by it, or shall file all federal, state and local tax returns which are required to be filed by it, if any, and has paid or caused to be paid all taxes as shown on said return or on any assessment received by it, to the extent that such taxes have become due.

I. To the best of the Owner's knowledge, after due and diligent inquiry, the Owner is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party that may materially affect this Project.

J. The information contained in the Project description provided in the applications for the Loan is accurate in all material respects and does not contain any untrue statements of a material fact or omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

K. The Owner shall not during the term of this Agreement sell, transfer or exchange, the Project or the Land (or any part thereof or any interest therein) at any time except in accordance with the terms of the First Mortgage, this Agreement, the Act and the regulations promulgated pursuant to the Act, and unless such sale, transfer or exchange shall have been approved by the Agency. The Owner shall notify in writing and obtain the agreement in writing of any buyer or successor or other person acquiring the Project or Land or any interest therein, in a form acceptable to the Agency that such acquisition is subject to the requirements of this Agreement. This provision shall not act to waive any other restriction on such sale, transfer or exchange.

L. The Owner has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof and the First Mortgage, and in any event, the requirements of this Agreement and the First Mortgage are paramount and controlling as to the rights and obligations herein and in the First Mortgage and such requirements shall supersede any other requirements in conflict herewith and therewith.

M. All statements contained in all applications, correspondence or other materials delivered to the Agency by the Owner in connection with its consideration of the Loan to the Owner or relating to the Project are materially true and correct.

N. The representations, covenants and warranties of the Owner contained in this Agreement on the date of its execution are true and shall continue to be true at all times during the term of this Agreement.

O. No event has occurred and no condition exists which constitutes an Event of Default under this Agreement or the First Mortgage or which, but for a requirement of notice or lapse of time, or both, would constitute such an Event of Default.

P. As of the date of this Agreement, the Architectural Contract and the Construction Contract are in full force and effect and no default has occurred thereunder, and a true copy of the entire Architectural Contract and the Construction Contract with all modifications and addenda to date has been filed with the Agency.

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Section 5. **Covenants to Run With the Land.**

The Agency and the Owner hereby declare their understanding and intent that the burden of the covenants, reservations and restrictions set forth in this Agreement touch and concern the Land in that the Owner's legal interest in the Project and Land is rendered less valuable thereby. The Agency and the Owner hereby further declare their understanding and intent that the benefit of such covenants, reservations and restrictions touch and concern the Project and Land by enhancing and increasing the enjoyment and use of the Project and the Land by the tenants contemplated under this Agreement and by furthering the public purposes for which the First Mortgage Loan is made. The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project and Land. Except as provided in subsection B below, the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the Land and hereof and shall pass to and be binding upon the Owner's assigns and successors in title to the Land or Project. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project and/or the Land or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of the Project and/or Land are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Project and/or Land.

B. Upon termination of this Agreement in accordance with Section 6 hereof, said covenants, reservations and restrictions shall expire and in such event, the Agency shall, at the expense of the Owner, execute any and all instruments reasonably required to evidence of record the satisfaction, cancellation and discharge of this Agreement.

Section 6. **Term**. This Agreement shall remain in full force and effect until the maturity date as stated in the Note.

Section 7. **Construction of Project**. The Owner covenants and agrees to comply with all the provisions of the Construction Contract. The Owner covenants and agrees to diligently pursue the construction/rehabilitation of the Project to completion in accordance with the plans and

specifications set forth in the Owner's application for the Loan, the Architectural Contract, the Construction Contract and as approved by the Agency.

The Owner shall not approve or allow to occur any material change in the scope of work or plans and specifications for the Project without the express approval of the Agency. Rehabilitation or construction shall at all times be subject to the discretionary inspection, discretionary review, regulation and approval of the Agency and its duly authorized representatives. Any such inspection, regulation, review or approval of the Agency shall be solely for its benefit for the purpose of assuring that the programs and goals of the Project are being fulfilled.

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The Owner shall not knowingly do any act which would cause the release, in whole or in part, of the surety bond or bonds issued in connection with the Construction Contract, including, without limitation, deviation from the payment schedule, waiver of any material requirements imposed on the contractor or any subcontractor under the Construction Contract or consent to any major change in the in the scope of plans and specifications or scope of the work, unless such act would not cause any release because the surety has consented thereto.

Section 8. Rehabilitation or Construction and Funding.

A. Rehabilitation or Construction of Project:

The Owner covenants and agrees to comply with all provisions of the Architectural Contract and the Construction Contract. The Owner covenants and agrees to diligently pursue the rehabilitation or construction of the Project to completion, time being of the essence, in accordance with the plans and specifications for the Project as approved by the Agency.

B. Funding:

Upon and subject to the terms and conditions of this Agreement, the First Mortgage and First Mortgage Note, the Agency agrees to advance and disburse the Principal Sum of $468,881 only after the Agency has received and approved, subject to its sole discretion, all items required for closing in the Agency's Document Checklist for the SNHPLP and the satisfaction of the conditions set forth in the Commitment.

C. Conditions Precedent to Advance:

The Agency's obligations to make the other disbursements under the First Mortgage shall be subject to the satisfaction of the following conditions precedent, any of which may be waived in whole or part by the Agency.

1. Each of the Owner's covenants, agreements, representations and warranties contained in this Agreement shall continue to be true and shall not be breached.

2. The full amount of all previous advances shall have been expended for Land acquisition, Project costs approved by the Agency, and the discharge of any related lien(s).

3. All work performed and material furnished for the Project shall be in accordance with the plans and specifications for the Project and all work shall have been properly performed to the satisfaction of the Agency.

4. No event shall have occurred and no conditions shall exist that would prevent the advance from becoming a valid first mortgage lien on the Project and the Land or secured by a prior protected security interest on any other collateral mentioned in the First Mortgage. If the Agency shall deem it necessary or desirable, all or part of the advance may be disbursed in escrow to a title insurance company licensed to do business in the State of New Jersey for the purpose of discharging any construction or other lien on the Project and Land or any other security mentioned in the First Mortgage, and the Owner agrees to certify in writing that the foregoing conditions have been satisfied.

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Section 9. **Insurance; Condemnation**. The Owner shall cause the buildings on the premises and the fixtures and articles of personal property covered by the First Mortgage to be insured against loss by fire and against loss by such other hazards as may be required by the Agency for the benefit of the Agency, including, but not by way of limitation, flood insurance if any part of the Project is located in an area designated by or on behalf of the federal government as having specific flood hazard. Such insurance shall be written by such companies in an amount not less than the full insurable value of the Project exclusive of excavations and foundations and in such forms as are satisfactory to the Agency. The Owner shall assign and deliver the policies to the Agency, and the Agency shall be mortgagee, loss payee and additional insured under such policies. Such policies shall provide that the insurer may not cancel the policy and will not refuse to renew the policy except after thirty (30) days written notice to the Agency. If the Agency shall not receive evidence satisfactory to it of the existence of effective insurance coverage as required by the Agency, the Agency may (but shall not be required to) obtain such coverage and the Owner shall reimburse the Agency on demand for any premiums paid for insurance procured by the Agency, and until so reimbursed the amount of such premiums shall be added to the principal sum of the First Mortgage and shall bear interest at the same rate as under the Note. Valid participation by the Owner in a blanket insurance program offered by or through the Agency or approved by the Agency shall be satisfactory evidence of the required insurance for each type or class of coverage.

In the event of substantial damage to the Project by the occurrence of an insured casualty or the taking of a substantial portion of the Project by condemnation, if, in the sole judgment of the Agency (which judgment shall be conclusive): (a) the Project can be replaced or restored in whole or in part, and (b) the Project as so replaced will produce sufficient income to meet the obligations of the Owner under the Loan Documents, the proceeds of insurance or condemnation, together with any other money available for such purpose, if sufficient, shall be made available to the Owner, subject to the approval of the Agency. To the extent the Project is not replaced or restored, the balance of such proceeds shall be applied to the indebtedness secured thereby. Nothing in this Section shall

affect the lien of this Agreement and the obligation of the Owner under the Loan Documents to pay the entire balance of the Loan.

The Owner shall maintain continuously in effect such other insurance coverage of the types and in the amounts specified by the Agency, including workers' compensation insurance and other insurance required by law with respect to employees of the Owner, and liability insurance with limits of not less than $1,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and $1,000,000 per accident or occurrence on account of damage to the property of others and a blanket excess liability policy in an amount acceptable to the Agency, protecting the Owner and the Agency against any loss or liability or damage for personal injury or property damage with respect to the Project. Owner shall also maintain Business Income insurance covering the loss of revenues derived from the Project by reason of interruption, total or partial, of the use of the Project resulting from loss or physical damage thereto in an amount equal to 100% of the anticipated gross rental income for one (1) year at full occupancy with no coinsurance penalty. The Owner shall carry fidelity bond insurance covering all employees of the Owner authorized to handle the revenues derived from the Project in an amount equal to one-half times the maximum monthly rent roll.

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Section 10. **Taxes or Payments in Lieu of Taxes**. The Owner covenants and agrees to pay any valid municipal taxes or payments in lieu of taxes, charges, assessments, water charges and/or sewer charges, and in default thereof, the Agency may pay the same. Any such sum or sums so paid by the Agency shall be added to the principal sum secured by the First Mortgage, as determined by the Agency, and shall bear interest at the same rate as under the Note. If the Project is subject to a payments in lieu of taxes agreement with the municipality, the Owner shall not terminate or materially amend such agreement without the prior written approval of the Agency.

Section 11. **Liens and Encumbrances**. The Owner covenants and agrees to maintain its right, title and interest in the Project, Land and all items enumerated in the Loan Documents, as security for repayment of the Mortgage Loan, free and clear of all liens, security interests and other encumbrances except for Permitted Encumbrances and those exceptions identified and set forth in a certain title insurance commitment issued to the Agency by Builder's Title Agency, Inc., dated June 23, 2014 and revised March 10, 2015 and identified as Title Number BT31383, continued to the date of this Agreement, as accepted by the Agency. The foregoing covenant and agreement shall not prevent the Owner from leasing or renting the Project or Land in the manner as otherwise provided in this Agreement. Except with the written consent of the Agency, the Owner will not install any item of tangible personal property as part of the fixtures or furnishings of the Project that is subject to a purchase money lien or security interest.

The Agency may, at its sole option, pay the amount necessary to discharge any lien or other encumbrance, and the Owner shall reimburse the Agency upon demand for any amounts so paid. Until reimbursement of the Agency of any amounts so paid, such amount shall be added to the principal sum of the First Mortgage Note and shall bear interest at the same rate as under the Note.

The Owner covenants and agrees not to sell, lease or otherwise encumber the Project or the Land, or any part thereof, or the rents or revenues thereof without prior written consent of the

Agency, except by leasing to eligible residential tenants as provided by the First Mortgage and this Agreement.

Section 12. **Maintenance, Repair and Replacement.** The Owner covenants and agrees to maintain the Project and the housing units contained therein and the appurtenant equipment and grounds in good repair and condition so as to provide decent, safe and sanitary housing accommodations.

Following completion of construction, the Owner will not make any substantial alteration in the Project without the consent of the Agency, nor will the Owner permit the removal of any fixtures or articles of personal property except in connection with the replacement thereof with appropriate property of at least equal value and free of all liens or claims.

The Owner will not permit any waste with respect to the Project or any of its real or personal property without the consent of the Agency, or make any alteration which will increase the hazard of fire or other casualty.

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Section 13. **Advance Amortization Payments.** The Note is pre-payable at any time without a prepayment penalty. However, upon prepayment of the Note, this Agreement will remain in full force and effect until the maturity date set forth in the Note.

Section 14. **Compliance with the Program, the Act, the Guidelines, Agency's Regulations and Any Federal or State Subsidy Source.** The Owner covenants and agrees to comply with the Program, the Act, the Guidelines and any regulations promulgated pursuant thereto, and with any amendments or supplements to the Program, the Act, the Guidelines or regulations. Throughout the term of this Agreement, the Owner further covenants and agrees to comply with any and all requirements imposed upon it as a condition of any federal or State grant, subsidy or loan.

Section 15. **Use of Project - Leasing**. Except as otherwise expressly provided in Sections 2 and 3 of this Agreement or as otherwise agreed to in writing by the Agency, and except for facilities approved by the Agency as normally appurtenant to residential projects for non-transients (such as laundry facilities), the Project shall be used solely to provide housing for the residential population and the facilities and the amenities as described in Section 3 hereof, all as approved in the Commitment.

Section 16. **Consideration for Lease or Intake and/or Occupancy Agreement.** The Owner covenants and agrees not to require as a condition of the occupancy of any dwelling unit in the Project and not to accept or allow any employee or agent to accept any consideration other than the prepayment of the first month's rent or allowable intake and/or occupancy agreement charges, plus a security deposit not in excess of one (1) month's rent or allowable intake and/or occupancy agreement charges to guarantee the performance of the covenants of the lease or intake and/or occupancy agreement.

Section 17. **Security Deposit.** The Owner covenants and agrees to deposit all moneys, if any, paid to the Owner by any resident as a security deposit for the payment of rent or other allowable intake and/or occupancy charges under any use and occupancy agreement and/or lease in a separate interest-bearing bank account held and maintained in accordance with applicable law.

Section 18. **Account for Project Revenues/Operating Account**. The Owner covenants and agrees to establish an account for Project Revenues specific to the Project. "Project Revenues" shall mean all rents, intake, occupancy and other revenues of any type whatsoever received in respect of the Project or the Owner, except for Loan disbursements. Project Revenues shall be deposited in such account and all operating expenses should be paid from this account.

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Section 19. **Inspection of Premises**. The Owner covenants and agrees to permit the Agency, its agents or representatives, to inspect the Project at any and all reasonable times with or without notice, pursuant to the provisions of the Act and/or the Guidelines.

Section 20. **Books and Records**. The Owner covenants and agrees to maintain adequate books and records of its transactions with respect to the Project in the Owner's standard form. Such books and records shall be available for inspection and audit by the Agency or its agents at any time during business hours, with notice, pursuant to the provisions of the Act and/or the Guidelines. The Owner further covenants and agrees to cause the financial affairs with respect to the Project to be audited by independent certified public accountants and shall furnish the Agency with its audit report of such accountants as may from time to time be required by the Agency.

The Owner shall furnish to the Agency such other information and reports respecting the Project as may from time to time be required by the Agency.

Section 21. **Management Contract**. The Owner may, and if the Agency so elects, shall contract for the services of a firm experienced in real estate management to act as the managing agent for the Project. The selection of any such managing agent, the scope of the agent's duties and the basis of the agent's compensation shall be the subject of a consultation between the Agency and the Owner and any contract for the employment of any managing agent shall provide that such contract may be terminated by the Agency at any time by notice of such determination by the Agency given to the Owner and managing agent.

Section 22. **Prohibited Actions**. Except with the express approval of the Agency, which approval shall not be unreasonably withheld, the Owner shall not with Project Revenues (as defined in Section 18 hereof), or Loan disbursements:

A. incur any liabilities, except in connection with the acquisition, rehabilitation or construction and rental of the Project and its operation and maintenance;

B. engage in any business activity except the ownership and operation of the Project;

C. enter into contracts for managers, attorneys, accountants or other services without the prior written approval of the Agency;

D. pay more than fair market value thereof for goods or services; and

E. pay compensation to any officer, director or partner in such capacity or make any cash distribution to any of the foregoing.

Section 23. **Transfers of Ownership Interests**. The Owner shall not transfer or sell any interest in the Project, except to another SNHPLP- eligible applicant as set forth in the Guidelines and upon prior written notice to the Agency, or as the Executive Director of the Agency may approve.

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Section 24. **Statutory Powers and Restrictions**. The First Mortgage shall be subject to the restrictions in the Act, and in connection therewith, the Agency shall have the powers set forth in the Act and/or the Guidelines and the regulations now or hereafter promulgated pursuant to the Act, and the Owner hereby consents to such restrictions and agrees to be bound thereby. Such powers and restrictions shall be in addition to and not in limitation of the rights of the Agency expressly set forth in this Agreement.

Section 25. **Accounting in Event of Default; Estoppel**. Upon the occurrence of an Event of Default and within ten (10) business days of demand therefor by the Agency, and otherwise within ten (10) business days of written demand by the Agency, the Owner will furnish to the Agency in writing a statement of the principal sum remaining due on the Loan, together with a statement of any known defenses which may exist as to any liability of the Owner on the Note or otherwise thereunder.

Section 26. **Financing Statements**. The Owner hereby irrevocably authorizes the Agency to execute, if applicable, and file on its behalf one or more financing statements or renewals thereof in respect to any of the security interests granted by the First Mortgage.

Section 27. **Assignment by Agency**. The Owner hereby consents to any assignment of this Agreement by the Agency.

Section 28. **Defaults**. Each of the following shall be an Event of Default:

A. failure by the Owner to pay more than thirty (30) calendar days after the due date any installment of principal or interest on the Loan or any other payment required by the Owner to the Agency or any other person pursuant to the terms of this Agreement, the First Mortgage or the other Loan Documents;

B. commission by the Owner of any act prohibited by the terms of this Agreement, the First Mortgage or any other Loan Document; failure by the Owner to perform or observe in a timely fashion any action or covenant required by any of the terms of this Agreement, the First Mortgage or any other Loan Document, or failure by the Owner to produce satisfactory evidence of compliance therewith;

C. the filing by the Owner under any federal or state bankruptcy or insolvency law or other similar law of any petition in bankruptcy or for reorganization or composition with creditors or the making of an assignment for the benefit of creditors;

D. the filing against the Owner of a petition seeking its adjudication as a bankrupt or the appointment of a receiver for the benefit of its creditors which shall not have been dismissed within sixty (60) days of the filing thereof, or the adjudication of the Owner as a bankrupt or the appointment of a receiver for the benefit of its creditors; or the appointment by court order of a custodian (such as a receiver, liquidator or trustee) of the Owner or of any of its property or the taking of possession of the Owner of any of its property for the benefit of its creditors and such order remains in effect or such possession continues for more than sixty (60) days;

E. the occurrence of substantial destruction of the Project by an uninsured casualty or the inability to replace or restore the Project in accordance with Section 9; or failure to maintain insurance that fully complies with the Agency insurance requirements set forth at Section 9;

F. any representation in conjunction with the Loan and the Project by or on behalf of the Owner that is knowingly false or misleading in any respect or warranty of the Owner that is breached;

G. any breach by the Owner of its obligations or any failure to observe its covenants under this Agreement, and the other Loan Documents;

H. failure to complete the Project as approved by the Agency; and

I. failure to comply with the Guidelines, as may be amended from time to time.

The events set forth in the subsections B and G of this Section shall not constitute Events of Default until the prohibited acts, failure to perform or observe, or breaches shall remain uncured for a period of thirty (30) calendar days after the Agency's written notice to the Owner, specifying such prohibited act, failure or breach and requiring that it be remedied, unless the Agency shall agree in writing to an extension of such time prior to its expiration; provided, however, that after the Project Construction Period only, if the prohibited act, failure, or breach stated in each notice is correctable, but cannot be corrected within the 30-day period, the Agency may not unreasonably withhold its consent to an extension of up to 120 days from the delivery of the written notice referred to herein if corrective action is instituted by the Owner within the initial 30-day period and diligently pursued. The Agency will send, simultaneously with sending to the Owner any notices under B and G of this Section, a copy of the aforementioned notices to the Owner's investor limited partner or member, if any; and to the extent such Event of Default is curable, a cure tendered in full pursuant to the terms and conditions of this Agreement and the other Loan Documents by any investor limited partner or member of Owner shall be honored by the Agency.

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Section 29. **Remedies**. Upon the occurrence of any Event of Default, the Agency may at its option take any one or more of the following actions or remedies. No failure to exercise any remedy or take any action enumerated shall constitute a waiver of such right or preclude a subsequent exercise by the Agency of any such remedy:

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A. declare the entire principal sum of the First Mortgage together with any interest and all other liabilities of the Owner under the Note and the other Loan Documents to be immediately due and payable;

B. cease making disbursements to the Owner of any funds under the Loan or from reserves held by the Agency;

C. apply any reserves held by the Agency or the balance in the accounts for Project disbursements and revenues, or any combination of these monies, to the payment of the Owner's liabilities hereunder;

D. foreclose the lien of the First Mortgage on the Project and Land or a portion thereof, including, without limitation, all Improvements existing or hereafter placed in or on the Project and Land. In any action to foreclose, the Agency shall be entitled to the appointment of a receiver of the rents (which shall include all applicable intake and/or occupancy charges) and profits of the Project as a matter of right and without notice, with power to collect the rents, uses and profits of said Project, due and becoming due during the pendency of such foreclosure suit, such rents and profits being hereby expressly assigned and pledged as additional security for the payment of the indebtedness secured by the First Mortgage without regard to the value of the Project or the solvency of any person or persons liable for payment of the mortgaged indebtedness. The Owner for itself and any such subsequent owner hereby waives any and all defenses to the application for a receiver as above and hereby specifically consents to such appointment without notice, but nothing herein contained is to be construed to deprive the holder of the First Mortgage of any other right, remedy or privilege it may now have under the law to have a receiver appointed. The provisions for the appointment of a receiver of the rents and profits and the assignment of such rents and profits, is made an express condition upon which the Loan hereby secured are made. Upon such foreclosure the Agency shall have the right to have a receiver appointed for the Project and the rents from the Project;

E. pursuant to its rights under the Act, remove the Project managing agent(s) and/or service providers after consultation with the Owner, or, if the Agency, after consultation with the Owner, decides it is in the best interest of the Project and its tenants and/or residents, the Owner shall deed the Project and Land to the Agency;

F. take possession of the Project and Land or a portion thereof;

G. without judicial process, collect all rents, use and occupancy fees and other revenue including federal and State subsidies as the agent of the Owner (which upon the

occurrence of any Event of Default the Agency is deemed to have been irrevocably appointed by the Owner), and apply the same at the Agency's option either to the operation and maintenance of the Project or to the liabilities of the Owner under the Mortgage;

H. act as landlord of the Project and rent or lease the same on any terms approved by it, or dispossess by summary proceedings or other available means any tenant defaulting under the terms of the lease of a dwelling unit;

I. take possession of equipment, appliances or other tangible personal property in which a security interest has been granted by this Agreement or the First Mortgage and dispose of the same in any commercially reasonable manner. The Agency shall have the option to dispose of any such equipment and personal property either separately from the Project and Land or in conjunction with a sale of the Project and Land, and the Owner agrees that either method of disposition shall be commercially reasonable;

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J. make effective an assignment of the Architectural Contract and/or Construction Contract by the Owner to the Agency, in which event the Agency is specifically empowered by the Owner to exercise any and all rights of the Owner under the Architectural Contract and/or Construction Contract, and at the option of the Agency to proceed with the rehabilitation or construction of the Project, in which event all payments by the Owner made with respect to the Architectural Contract and/or Construction Contract shall be treated as disbursements on the Loan;

K. sue the Owner for a mandatory injunction or other equitable relief requiring performance by the Owner of any of its obligations under this Agreement or the First Mortgage or the other Loan Documents. The Owner agrees with the Agency that the Agency's remedy at law for the violation or nonperformance of the Owner's obligations under the First Mortgage or this Agreement or the other Loan Documents is not adequate by reason, among other things, of the Agency's public purpose to provide adequate, safe and sanitary dwelling units Low-Income Tenants;

L. after consultation with the Owner, sue under the Architectural Contract and/or Construction Contract or on a warranty to recover any amount payable to the Owner pursuant to the Architectural Contract and/or Construction Contract or payable to the Owner pursuant to any such warranty and to settle any such claim or liability and release the same and apply the proceeds of any such suit, settlement or release to the liabilities of the Owner under this Agreement or the First Mortgage;

M. if the Owner commits a breach or threatens to commit a breach of any of the provisions of the Mortgage or other Loan Documents, the Agency shall have the right, without posting bond or other security, to seek injunctive relief or specific performance, it being acknowledged and agreed that any such breach, or threatened

breach, will cause irreparable injury to the Agency and that money damages will not provide an adequate remedy;

N. to undertake reasonable maintenance and make reasonable repairs to the Project and to add the cost thereof to the principal sum of the First Mortgage; and/or

O. notwithstanding the above enumeration of remedies, the Agency shall have available to it all other remedies provided at law or in equity or any other action permitted by law subject to the provisions of Section 37 of this Agreement.

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Section 30. Expenses Due to Default. All expenses (including reasonable attorneys' fees and costs and allowances) incurred in connection with an action to foreclose the First Mortgage or in exercising any other remedy provided by the First Mortgage or this Agreement or the other Loan Documents, including the curing of any Event of Default, shall be paid by the Owner, together with interest at the then current rate being received by the Agency on its investments as determined in good faith by the Agency. Any such sum or sums and the interest thereon shall be a further lien on the Project, Land and Improvements, and shall be secured by this Agreement and the First Mortgage.

Section 31. Burden and Benefit. The Agency and the Owner hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the Land in that the Owner's legal interest in the Land and the Project is rendered less valuable thereby. The Agency and the Owner hereby further declare their understanding and intent that the benefit of such covenants touch and concern the Land by enhancing and increasing the enjoyment and use of the Land and the Project as permanent supportive housing for the residential population described in Section 3 of this Agreement.

Section 32. Uniformity; Common Plan. The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project and Land.

Section 33. Remedies; Enforceability. The provisions hereof are imposed upon and made applicable to the Land and shall run with the Land and shall be enforceable against the Owner or any other person or entity that has or had an ownership interest in the Project at the time of such violation or attempted violation. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation hereof at any later time or times.

Section 34. Amendments; Notices; Waivers. This Agreement and the First Mortgage may be amended only by an instrument in writing executed and acknowledged on behalf of the Agency and the Owner in such manner that the instrument may be recorded.

No waiver by the Agency in any particular instance of any Event of Default or required performance by the Owner and no course of conduct of the parties or failure by the Agency to enforce or insist upon performance of any of the obligations of the Owner under this Agreement, the First Mortgage, or under the other Loan Documents at any time shall preclude enforcement of any of

the terms of this Agreement, the First Mortgage, the First Mortgage Note, or the other Loan Documents thereafter.

Any provisions of this Agreement, the First Mortgage or other Loan Documents requiring the consent or approval of the Agency for the taking of any action or the omission of any action requires such consent by the Agency in writing signed by a duly authorized officer of the Agency. Any such consent or approval, unless it expressly states otherwise, is limited to the particular action or omission referred to therein and does not apply to subsequent similar actions or omissions.

Notice provided for under this Agreement shall be given in writing signed by a duly authorized officer and any notice required to be given hereunder shall be given by recognized private carrier with acknowledgment of delivery, or by confirmed facsimile with a hard copy sent by certified mail, return receipt requested, or by certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto.

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Agency: **Executive Director**
New Jersey Housing and Mortgage Finance Agency
637 South Clinton Avenue, CN 18550
Trenton, NJ 08650-2085

Owner: **Children's Aid and Family Services, Inc.**
Attn.: Joanne Mandry, Treasurer/CFO
200 Robin Road
Paramus, New Jersey 07652

All notices shall be deemed given when received.

Section 35. **Severability**. The invalidity of any part or provision hereof shall not affect the validity, legality and enforceability of the remaining portions hereof, and to this end the provisions of this Agreement shall be severable.

Section 36. **Successors and Assigns**. This Agreement and all rights, duties, obligations and interests arising hereunder shall bind and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns.

Section 37. **Personal Liability.** Notwithstanding any other provision contained in this Agreement, the other Loan Documents or any other document or instrument executed by the Owner in connection herewith or therewith, the Agency agrees, on behalf of itself and any future holder of the Note, that the liability of the Owner, any general or limited partner, trustee, director, officer, agent, representative, member or shareholder or the Borrower, and their respective heirs, representatives, successors and assigns for the payment of its obligations hereunder and under the other Loan Documents, including, without limitation, the payment of principal, interest and other charges due hereunder and thereunder, shall be limited to the collateral pledged under the First Mortgage and the other Loan Documents, and that the Agency shall have no right to seek a personal

judgment against the Owner, any general or limited partner, trustee, director, officer, agent, representative, member or shareholder or the Borrower, and their its respective heirs, representatives, successors and assigns individually, except to the extent necessary to subject the collateral (including the Project and Land) pledged under the First Mortgage and the other Loan Documents to the satisfaction of the First Mortgage debt, and provided, however, that the Agency shall retain the right to exercise any and all remedies granted to it under the First Mortgage, this Agreement and the other Loan Documents including, without limitation, the right to sue for injunctive or other equitable relief. The foregoing limitation of liability shall not apply to any party to the extent such party has committed fraudulent, criminal or other unlawful acts or omissions with regard to the Project or the Land and shall not apply to such amounts due to the Lender pursuant to Sections 9, 10, 11, 12 and 30 of this Agreement.

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Section 38. Counterparts. This Agreement may be executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

Section 39. Disclaimer of Warranties, Liability; Indemnification/Defense.

A. The Owner acknowledges and agrees that (i) the Agency has not heretofore and does not make any warranty or representation, either express or implied, as to the value, condition, or fitness for particular purposes of the Project or any portions thereof or any other warranty or representation with respect thereto; (ii) in no event shall the Agency and its members, directors, officers, agents, servants and employees be liable or responsible for any incidental, indirect, special or consequential damages in connection with or arising out of this Agreement or any of the other Loan Documents or the development of the Project or the existence, functioning or use of the Project or any items or services provided for in this Agreement or the other Loan Documents; and (iii) during the term of this Agreement and the other Loan Documents and to the fullest extent permitted by law, the Owner shall indemnify, defend and hold the Agency harmless against, and the Owner shall pay, any and all liability, loss, cost, damage, claims, judgments or expenses of any and all kinds or nature and however arising (including reasonable attorneys' fees), imposed by law, which the Owner and/or the Agency may sustain, be subject to, or caused or incurred by reason of any claim, suit or action based upon personal injury, death or damage to property or any other damage or loss sustained, whether real, personal or mixed, or upon or arising out of contracts entered into by the Owner, or arising out of the Owner's acquisition, construction, rehabilitation, reconstruction, repair, improvement, ownership, operation, management or maintenance of the Project or Land.

B. It is mutually agreed by the Owner and the Agency that the Agency and its members, directors, officers, agents, servants and employees shall not be liable for any action performed under this Agreement, and that the Owner shall hold them harmless, indemnify and defend them from any claim or suit of whatever nature.

C. Any claims asserted against the Agency shall be subject to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. While this statute may not be applicable by its terms to claims arising under contracts with the Agency, the Owner agrees that it shall be applicable

to claims arising under the Loan Documents. It is acknowledged by the parties that the Agency is a public entity covered by the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq.

Section 40. **Recording**. This Agreement shall be duly recorded in the Office of the Clerk for the county in which the Land is located within ten (10) days following its execution.

Section 41. **Governing Law**. This Agreement shall be governed by the laws of the State of New Jersey. The parties agree that any cause of action that may arise under this Agreement or the Loan Documents shall have jurisdiction and venue only in the Courts of the State of New Jersey in and for the County of Mercer.

Section 42. **Further Requirements as to Project**. The Owner covenants, represents, and warrants, that occupancy of the Project shall be further restricted to provide supportive housing for the residential population specified in the Commitment and Section 3 hereof.

The Owner further covenants, represents and warrants that it shall provide specialized supportive services to the tenants of the Project. The supportive services provided on-site will include, but not be limited to: behavioral supports, routine medical supports, assistance with self-care needs, mental health supports, recreational activities and transportation, all as specified in the Commitment. Service delivery for all of the on-site support services will remain consistent for the entire length of stay. Transportation will be provided, when needed, by the Project for regularly scheduled grocery shopping trips, and as needed for medical visits, outside program participation and recreation.

Failure by the Owner to comply with the above shall constitute an Event of Default, upon which the Agency may at its option take any one or more of the actions or remedies in Section 29 hereof.

Section 43. **Equal Opportunity and Non-Discrimination**. The Owner covenants and agrees that it will comply with the Agency's guidelines with respect to equal opportunity and non-discrimination in its purchase of goods and services for the operation and maintenance of the Project throughout the term of this Agreement.

Section 44. **Owner's Default Under Financing Documents**.

A. Upon the occurrence of an Event of Default set forth in this Agreement or in the event of a violation by the Owner of the terms of any agreement between the Agency and the Owner, or in the event of a violation of the rules and regulations of the Agency or in the event that the Agency shall reasonably and in good faith determine that the Loans are in jeopardy of not being repaid, the Agency shall have the right to manage the affairs of the Owner as such affairs relate to the Project or to name a designee to manage the same.

B. The delegation of authority to the Agency shall terminate upon the curing, to the satisfaction of the Agency, of the event giving rise to the delegation.

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C. The Agency and its members, designees, agents, officers, or employees shall not be personally responsible for the debts, obligations or liabilities of the Owner.

D. The admission and delegation to the Agency or its designee shall last only for a period coexistent with the duration of the event giving rise to the action hereunder or until the Agency determines in its sole discretion that such an event or one of similar nature will not reoccur.

E. The Agency or its designee shall serve without compensation, but shall be entitled to be reimbursed for all necessary expenses incurred in discharge of its duties as determined by the Agency.

F. The primary function of the Agency or its designee is to protect the interest of the Agency's Loan and the Low-Income Tenants of the Project and, in the absence of fraud or bad faith, the Agency or its designee shall not be liable for damages to the Owner or any partner, member or stockholder thereof.

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G. This Agreement and the admission of and delegation to the Agency shall not be construed as to cause a merger between any of the Loan Documents and the title to the Project.

H. The rights and remedies granted to the Agency under this Agreement are not intended to limit in any way its rights and powers under Section 7(b)(6) of the Act.

Section 45. **Applicability and Conflict of Terms and Conditions**. The terms and conditions of this Agreement are applicable for the entire term of this Agreement (as set forth in Section 6 hereof) unless otherwise set forth in this Agreement. In the event of any conflict or inconsistency between the terms and conditions of any of the Loan Documents (including this Agreement), the terms and conditions of this Agreement shall prevail. Notwithstanding the foregoing, the Owner agrees that the Agency may render a decision concerning the intent and/or applicability of any term or condition of the Loan Documents, which decision shall be final and binding, unless such decision is found to be arbitrary or capricious by a court of competent jurisdiction.

Section 46. **Miscellaneous.** Unless the context clearly requires otherwise, as used in this Agreement, words of the masculine, feminine or neuter gender shall be construed to include any other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice-versa, when appropriate. This Agreement and all the terms and provisions thereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

The titles and headings of the sections of this Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

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WITNESS/ATTEST

Clifford T. Kammerer

CHILDREN'S AID AND FAMILY SERVICES, INC.

By: Joanne E. Mandry

Joanne E. Mandry
Treasurer/CFO

WITNESS/ATTEST

Darryl D. Applegate
Director of Regulatory Affairs

Lender:
NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

By:

James E. Robertson
Chief of Legal and Regulatory Affairs

This Agreement is approved as to form:

ATTORNEY GENERAL OF NEW JERSEY

By:

William F. Hanna
Deputy Attorney General

STATE OF NEW JERSEY, COUNTY OF MERCER SS:

I CERTIFY that on April 7, 2015, Joanne E. Mandry personally came before me, the subscriber, an Attorney at Law of the State of New Jersey, and acknowledged under oath, to my satisfaction that (a) she is the Treasurer and Chief Financial officer of Children's Aid and Family Services, the non-profit corporation named in this document; and (b) she executed and delivered this document as the voluntary act of the corporation duly authorized by the Members.

James J. Della, Esq.
Attorney at law of New Jersey

STATE OF NEW JERSEY, COUNTY OF MERCER SS:

I CERTIFY that on April 7, 2015, James E. Robertson personally came before me, a Notary Public of the State of New Jersey, and acknowledged under oath to my satisfaction that a) he is the Chief of Legal and Regulatory Affairs of NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY, the Agency named in this document, and b) he executed and delivered this document as the voluntary act of the Agency, duly authorized by a proper resolution of its members, on behalf of the Agency.

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Peter D. Yasenchak
Notary Public of New Jersey
My Commission Expires January 29, 2019

Operating Manual

For the Administration of Rehabilitation Units in the Borough of Montvale

April 2018



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Working Draft

INTRODUCTION

This Rehabilitation Program Operating Manual has been prepared to assist in the administration of the Borough of Montvale Rehabilitation Program. It will serve as a guide to the program staff and applicants.

This manual describes the basic content and operation of the program, examines program purposes and provides the guidelines for implementing the program. It has been prepared with a flexible format allowing for periodic updates of its sections, when required, due to revisions in regulations and/or procedures.

This manual explains the steps in the rehabilitation process. It describes the eligibility requirements for participation in the program, program criteria, funding terms and conditions, cost estimating, contract payments, record keeping and overall program administration.

The following represents the procedures developed to offer an applicant the opportunity to apply to the program.

A. Fair Housing and Equal Housing Opportunities



It is unlawful to discriminate against any person making application to participate in the rehabilitation program or rent a unit with regard to race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, disability, nationality, sex, gender identity or expression or source of lawful income used for mortgage or rental payments.

For more information on discrimination or if anyone feels they are a victim of discrimination, please contact the New Jersey Division on Civil Rights at 1-866-405-3050 or http://www.state.nj.us/lps/dcr/index.html.

SECTION I. ELIGIBLE PARTICIPANTS

A. Categories of Participants

Both owner-occupied and renter-occupied housing units are eligible to receive funding for rehabilitation provided that the occupants of the units are determined to be low- or moderate-income households and that the units are determined to be substandard. Owners of rental properties do not have to be low- or moderate-income households. If a structure contains two or more units and an owner, who is not income eligible, occupies one unit funding may be provided for the rehabilitation of the rest of the units if income-eligible households occupy those units. Rents must be affordable to low- or moderate-income households.

B. Income Limits for Participation

The occupants of the units must have incomes that fall within the income guidelines established for Bergen County. These limits are revised annually as figures become available and can be found in Appendix A.

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For owner-occupied units, the carrying costs of the unit (taxes, mortgage, insurance) should meet the affordable housing criteria (less than 33% of gross income for families, less than 40% of gross income for seniors).

C. Program Area

This is a municipal-wide program. The rehabilitation property must be located in the Borough of Montvale.

D. Certification of Substandard

The purpose of the program is to bring substandard housing up to code. Substandard units are those units requiring repair or replacement of at least one major system. A major system is any one of the following:

1. Roof
2. Plumbing (including wells)
3. Heating
4. Electrical
5. Sanitary plumbing (including septic systems)
6. Load bearing structural systems
7. Lead paint abatement
8. Weatherization (building insulation for attic, exterior walls and crawl space, siding to improve energy efficiency, replacement storm windows and storm doors and replacement windows and doors)

Code violations will be determined by an inspection conducted by a licensed inspector**.**

SECTION II. AVAILABLE BENEFITS

A. Program Financing

Up to $20,000 per unit may be available for improvements (hard costs) to eligible owner-occupied and renter-occupied units. Municipal rehabilitation investment shall average at least $10,000 per unit in hard costs. Administrative costs may be covered in conformance with N.J.A.C 5:97-8.9.

B. Owner-occupied Units

Financing will be provided by way of a ten-year, interest-free, amortized depreciating loan, with funds from the Borough's Affordable Housing Trust Fund. If the homeowner resides in his/her unit for the ten-year period after completion of rehabilitation improvements, the loan will be forgiven. If an owner-occupied housing unit is sold prior to the end of the controls on affordability, at least part of the loan shall be recaptured and used to rehabilitate another housing unit, unless the unit is sold to a low or moderate-income household at an affordable price

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pursuant to N.J.A.C. 5:97-9.3. In the event of the death of the homeowner, the loan is an immediate obligation of the estate and/or beneficiary of the estate unless the beneficiary meets the required income-eligibility guidelines and resides in the unit or rents to an income eligible household.

The amortized depreciating loan is subject to repayment according to the following schedule:

Repayment During Years (s)	Amount of Loan/Grant to be Repaid
1 and 2	100%
3	90%
4	80%
5	65%
6	50%
7	35%
8	20%
9	10%
After 10 years	No Repayment Required

C. Renter-occupied Units

If the homeowner consents to the work being performed and signs off on the program and the renter meets the criteria set forth for the program, financing will be provided by way of a ten-year, interest free, amortized deprecating loan, with funds provided from the Borough's Affordable Housing Trust Fund. If a renter-occupied unit is sold prior to the end of the controls on affordability, at least part of the loan shall be recaptured and used to rehabilitate another housing unit, unless the unit is sold to an affordable household at an affordable price pursuant to N.J.A.C. 5:97-9.3. In the event of the death of the homeowner, the loan is an immediate obligation of the estate and/or beneficiary of the estate unless the beneficiary meets the required income-eligibility guidelines and resides in the unit or rents to an income eligible household.

D. Program Affordability Controls

Ten-year controls on affordability on both owner-occupied units and rental units are required.

E. Owner-occupied Affordability Controls

On owner-occupied units, the controls on affordability may be in the form of a lien.

F. Renter-occupied Affordability Controls

For rental units, the controls on affordability shall be in the form of a deed restriction and may also include a lien. If a unit is vacant upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low- or moderate- income household at an affordable price and affirmatively marketed pursuant to the N.J.A.C. 5:97-9. Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:97-9.

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SECTION III. ELIGIBLE PROPERTY IMPROVEMENTS

A. Eligible Improvements

Housing rehabilitation funds may be used only for repairs or system replacements necessary to bring a substandard unit into compliance with municipal health, safety and building codes, applicable code violations, as well as any other cosmetic work that is reasonable and deemed necessary or is related to the necessary repairs.

At least one major system must be replaced or included in the repairs, which include one of the following:

- Roof
- Plumbing (including wells)
- Heating
- Electrical
- Sanitary plumbing (including septic systems)
- Load bearing structural systems
- Lead paint abatement
- Weatherization (building insulation for attic, exterior walls and crawl space, siding to improve energy efficiency, replacement storm windows and storm doors and replacement windows and doors)

The related work may include, but not be limited to the following:

- Interior trim work,
- Interior and/or exterior doors
- Interior and/or exterior hardware
- Window treatment
- Interior stair repair
- Exterior step repair or replacement
- Porch repair
- Wall surface repair
- Painting
- Exterior rain carrying system repair

B. Ineligible Improvements

Work not eligible for program funding includes but is not limited to luxury improvements (improvements which are strictly cosmetic), additions, conversions (basement, garage, porch, attic, etc.), repairs to structures separate from the living units (detached garage, shed, barn, etc.), furnishings, pools and landscaping. If determined unsafe, stoves may be replaced. The replacement or repair of other appliances is prohibited. Rehabilitation work performed by property owners shall not be funded under this program.

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C. Rehabilitation Standards

Upon rehabilitation, housing deficiencies shall be corrected and the unit shall comply with the New Jersey State Housing Code, N.J.A.C. 5:28. For construction projects that require the issuance of a construction permit pursuant to the Uniform Construction Code, the unit must also comply with the requirements of the Rehabilitation Subcode (N.J.A.C. 5:23-6). In these instances, the more restrictive requirements of the New Jersey State Housing Code or the Rehabilitation Subcode shall apply. For projects that require construction permits, the rehabilitated unit shall be considered complete at the date of final approval pursuant to the Uniform Construction Code.

D. Certification of Standard

All code deficiencies noted in the inspection report must be corrected and rehabilitated units must be in compliance with the standards proscribed in sub-section C above upon issuance of a certificate of completion or occupancy. The licensed inspector must certify any structure repaired in whole or in part with rehabilitation funds to be free of any code violations.

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SECTION IV. OVERVIEW OF ADMINISTRATIVE PROCEDURES

A. Application/Interview

Property owners interested in participating in the housing rehabilitation program may submit preliminary applications to the program staff. Preliminary applications are available at the following locations:

- http://piazza-and-associates.com/afhousing.php
- Borough of Montvale Municipal Building – 12 Mercedes Drive
- Borough of Montvale Library – 12 Mercedes Drive

Upon request, the program staff will mail a preliminary application to an interested property owner.

If after the program staff reviews a preliminary application an owner-occupant appears to be income eligible, an interview will be arranged with the applicant for a formal application to the program. At the time of the interview, the applicant must present required documentation. Applicants for rental rehabilitation funding must provide a list of tenants and the rents paid by each. The program staff will contact the tenants to provide evidence of income eligibility of the occupants of the units.

Applications will be processed in the order of receipt.

B. Income Eligibility and Program Certification

For the households seeking a determination of income eligibility, both owner-occupants and renter-occupants, all wage earners 18 years of age or older in the household must submit appropriate documentation to document the household income, as further described below.

Property owners of both owner-occupied and renter-occupied units must submit the following documentation:

- Copy of the deed to the property.
- Proof that property taxes and water and sewer bills are current.
- Proof of property insurance, including liability, fire and flood insurance where necessary.

If after review of the income documentation submitted an applicant is determined to be ineligible, the applicant will receive a letter delineating the reasons for the determination of ineligibility. An applicant may be determined ineligible if the applicant's or each tenants' income exceeds the affordable housing regulation's income limits or, for owner occupied units, if the carrying costs of the unit (taxes, mortgage, insurance) exceed the affordable housing regulation's criteria (less than 33% of gross income for families, less than 40% of gross income for seniors).

The program staff will arrange for a title search of all properties entering the program.

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After the initial interview and the program staff has substantiated that the occupant is income-eligible, and the title search is favorable, the Eligible Certification Form will be completed and signed.

Upon confirmation of income eligibility of the applicant or the applicant's tenants, the program staff will send a letter, including the Eligible Certification Form, to the applicant certifying the applicant's and or tenant's eligibility. Eligibility will remain valid for six months. If the applicant has not signed a contract for rehabilitation within six months of the date of the letter of certifying eligibility, the applicant will be required to reapply for certification.

C. Housing Inspection/Substandard Certification

Once determined eligible, the program staff will arrange for a qualified, licensed, housing/building code inspector to inspect the entire residential property.

The licensed inspector will inspect the house, take photographs, and certify that at least one major system is substandard. All required repairs would be identified.

D. Ineligible Properties

If after review of the property documentation submitted and the inspection report and/or work write-up an applicant's property is determined to be ineligible, the program staff will send a letter delineating the reasons for the determination of ineligibility. An applicant's property may be determined ineligible for any one of the following reasons:

- Title search is unfavorable.
- Property does not need sufficient repairs to meet eligibility requirements.
- Real estate taxes are in arrears.
- Proof of property insurance not submitted.
- Property is listed for sale.
- Property is in foreclosure.
- Total debt on the property will exceed the value of the property.

The municipality may disqualify properties requiring excessive repairs to meet municipal housing standards. Any repairs that exceed the maximum allocation of $20,000 per unit can be disqualified.

If after review of the property documentation submitted and the inspection report and/or work write-up an applicant's property is determined to be eligible, the inspector will then certify that the dwelling is substandard by completing and signing the Certificate of Substandard Form and submitting this to the program staff.

E. Cost Estimate

The program staff will prepare or cause to be prepared a Work Write-up and Cost Estimate. This estimate will include a breakdown of each major work item by category as well as by location in the house. It will contain information as to the scope and specifics on the materials to be used.

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A Cost Estimate will be computed and included within the program documentation. The program staff will review the Preliminary Work Write-up with the property owner.

Only required repairs to units occupied by income eligible households will be funded through the housing rehabilitation program. If the property owner desires work not fundable through the program, including work on an owner-occupied unit of a rental rehabilitation project, work on a non-eligible rental unit in a multi-unit building or improvements not covered by the program, such work may be added to the work write-up if the property owner provides funds to be deposited in the municipality's Housing Trust Fund prior to the commencement of the rehabilitation of the property equivalent to (*110 percent or a higher percentage*) (NEED TO TALK TO FRANK) of the estimated cost of the elective work. Such deposited funds not expended at the time of the issuance of a certificate of completion/occupancy will be returned to the property owner with accrued interest.

F. Contractor Bidding Negotiations

After the unit and the unit occupant have been certified as eligible, the program staff will provide a list of approved, pre-qualified trade contractors for bidding. The property owner reviews this list and selects a minimum of three and a maximum of five contractors from whom to obtain bids. The program staff and property owner will then review these bids. The lowest responsible trade contractor shall then be selected. If the property owner wishes to use a contractor other than the lowest responsible bidder, the property owner shall pay the difference between the lowest bid price and the bid price of the selected contractor.

The program may permit a property owner to seek proposals from non-program participating contractors. However, the municipality must pre-approve the contractor prior to submitting a bid.

G. Contract Signing/Pre-Construction Conference

Program staff will meet with the property owner to review all bids by the various trades. This review will include a Final Work Write-up and Cost Estimate. The Contractor Agreement will be prepared by the program staff, as well as the Property Rehabilitation Agreement covering all the required terms and conditions.

The program staff will then call a Pre-Construction Conference. Documents to be executed at the Pre-construction Conference include: Contractors Agreement(s), Right of Entry Document, a Restricted Covenant, Mortgage and Mortgage Note. The property owner, program staff representative, contractor and bank representative will execute the appropriate documents and copies will be provided as appropriate. A staff member will outline project procedures to which property owner must adhere. A Proceed to Work Order, guaranteeing that the work will commence within fifteen (15) calendar days of the date of the conference and be totally completed within ninety (90) days from the start of work, will be issued to each contractor at this Conference.

H. Progress Inspections

The program staff will make periodic inspections to monitor the progress of property improvements. This is necessary to ensure that the ongoing improvements are in accordance

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with the scope of work outlined in the work write-up. It is the contractor's responsibility to notify the Building Inspector before closing up walls on plumbing and electrical improvements.

I. Change Orders

If it becomes apparent during the course of construction that additional repairs are necessary or the described repair needs to be amended, the program staff will have the qualified professional(s) inspect the areas in need of repair and prepare a change order describing the work to be done. The applicant and the contractor will review the change order with the program staff and agree on a price. Once all parties approve of the change order and agree on the price, they will sign documents amending the contract agreement to include the change order. Additionally, if the applicant is not funding the additional cost, new financing documents will be executed reflecting the increase.

J. Payment Schedule

The contract will permit three progress payments.

The contractor will submit a payment request. The applicant will sign a payment approval if both the applicant and housing/building inspector are satisfied with the work performed. The municipality will then release the payment.

Final payment will be released once all final inspections are made, a Certificate of Occupancy is issued (if applicable) and the program staff receives a Property Owner Sign-off letter.

The contractor's performance bond will be released within a minimum of three months after the final payment is made to the contractor.

K. Appeal Process

If an applicant does not approve a payment that the housing/building inspector has approved, the disputed payment will be appealed to the municipality's Rehabilitation Appeal Committee, which consists of no more than two members of the Council, the Municipal Housing Liaison, the Borough Planner and Borough Engineer, for a hearing. The municipality's Rehabilitation Appeal Committee will decide if the payment shall be released to the contractor or the contractor must complete additional work or correct work completed before the release of the payment. The municipality's Rehabilitation Appeal Committee decision will be binding on both the applicant and the contractor

L. Final Inspection

Upon notification by the contractor that all work is complete and where required a Certificate of Occupancy has been issued, a final inspection shall be conducted and photographs taken. The program staff (or a representative), the property owner, and the necessary contractors shall be present at the final inspection to respond to any final punch list items.

M. Record Restricted Covenant and Mortgage Documentation

Program staff will file the executed Restricted Covenant and Mortgage with the County Clerk.

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N. File Closing

After the final payment is made, the applicant's file will be closed by the program staff.

SECTION V. PROCEDURE FOR INCOME-ELIGIBILITY CERTIFICATION

A. Complete a Household Eligibility Determination Form

The program staff shall require each member of an applicant household who is 18 years of age or older to provide documentation to verify their income, pursuant to the Uniform Housing Affordability Controls at N.J.A.C. 5:80-16.1 et seq. (except for the asset test).[1] Income verification documentation should include, but is not limited to the following for each and every member of a household who is 18 years of age or older:

- Four current consecutive pay stubs [including both the check and the stub], including bonuses, overtime or tips, or a letter from the employer stating the present annual income figure or if self-employed, a current Certified Profit & Loss Statement and Balance Sheet.

- Copies of Federal and State income tax returns for each of the preceding three tax years - A Form 1040 Tax Summary for the past three tax years can be requested from the local Internal Revenue Service Center or by calling 1-800-829-1040.

- A letter or appropriate reporting form verifying monthly benefits such as

    - Social Security or SSI – Current award letter or computer print out letter

    - Unemployment – verification of Unemployment Benefits

    - Welfare -TANF[2] current award letter

    - Disability - Worker's compensation letter or

    - Pension income (monthly or annually) – a pension letter

- A letter or appropriate reporting form verifying any other sources of income claimed by the applicant, such as alimony or child support – copy of court order or recent original letters from the court or education scholarship/stipends – current award letter.

[1] Asset Test – N.J.A.C. 5:80-26.16(b)3 which provides that if an applicant household owns a primary residence with no mortgage on the property valued at or above the regional asset limit, a certificate of eligibility shall be denied by the administrative agent, unless the applicant's existing monthly housing costs …exceed 38 percent of the household's eligible monthly income.

[2] TANF – Temporary Assistance for Needy Families

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- Current reports of savings and checking accounts (bank statements and passbooks) and income reports from banks or other financial institutions holding or managing trust funds, money market accounts, certificates of deposit, stocks or bonds (In brokerage accounts – most recent statements and/or in certificate form – photocopy of certificates).

- Evidence or reports of income from directly held assets, such as real estate or businesses.

- Interest in a corporation or partnership – Federal tax returns for each of the preceding three tax years.

- Current reports of assets – Market Value Appraisal or Realtor Comparative Market Analysis and Bank/Mortgage Co. Statement indicating Current Mortgage Balance. For rental property attach copies of all leases.

The following is a list of various types of wages, payments, rebates and credits. Those that are considered as part of the household's income are listed under Income. Those that are not considered as part of the household's income are listed under Not Income.

Income

1. Wages, salaries, tips, commissions

2. Alimony

3. Regularly scheduled overtime

4. Pensions

5. Social security

6. Unemployment compensation (verify the remaining number of weeks they are eligible to receive)

7. TANF

8. Verified regular child support

9. Disability

10. Net income from business or real estate

11. Interest income from assets such as savings, certificates of deposit, money market accounts, mutual funds, stocks, bonds

12. Imputed interest (using a current average annual rate of two percent) from non-income producing assets, such as equity in real estate. Rent from real estate is considered income, after deduction of any mortgage payments, real estate taxes, property owner's insurance.

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13. Rent from real estate is considered income

14. Any other forms of regular income reported to the Internal Revenue Service

Not Income

1. Rebates or credits received under low-income energy assistance programs
2. Food stamps
3. Payments received for foster care
4. Relocation assistance benefits
5. Income of live-in attendants
6. Scholarships
7. Student loans
8. Personal property such as automobiles
9. Lump-sum additions to assets such as inheritances, lottery winnings, gifts, insurance settlements
10. Part-time income of dependents enrolled as full-time students
11. Court ordered payments for alimony or child support paid to another household shall be deducted from gross annual income

To calculate income, the current gross income of the applicant is used to project that income over the next 12 months.

Student Income

Only full-time income of full-time students is included in the income calculation. A full-time student is a member of the household reported to the IRS as a dependent who is enrolled in a degree seeking program for 12 or more credit hours per semester; and part-time income is income earned on less than a 35-hour workweek.

Income from Real Estate

If real estate owned by an applicant for affordable housing is a rental property, the rent is considered income. After deduction of any mortgage payments, real estate taxes, property owner insurance and reasonable property management expenses as reported to the Internal Revenue Service, the remaining amount shall be counted as income.

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If an applicant owns real estate with mortgage debt, which is not to be used as rental housing, the Administrative Agent should determine the imputed interest from the value of the property. The Administrative Agent should deduct outstanding mortgage debt from the documented market value established by a market value appraisal. Based on current money market rates, interest will be imputed on the determined value of the real estate.

B. **Records Documenting Household Composition and Circumstances**

The following are various records for documenting household information:

- Social Security records or cards. Either individual Social Security card or letter from Social Security Administration
- Adoption papers, or legal documents showing adoption in process
- Income tax return
- Birth Certificate or Passport
- Alien Registration Card

C. Certify the income eligibility of low- and moderate-income households by completing the application form. Provide the household with the original and keep a copy in the project files.

D. **Appeals**

Appeals from all decisions of an administrative agent appointed pursuant to this subchapter shall be filed in writing with the Executive Director of the Agency. When acting in this capacity, the Executive Director may appoint one or more employees of the Agency, COAH and/or the Department of Community Affairs to assist him or her in rendering the final decision, whenever he or she, in his or her sole discretion, determines that committee participation would materially promote a fair and just disposition of the appeal. A written decision of the Executive Director upholding, modifying or reversing an administrative agent's decision shall be a final administrative action.

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SECTION VI. CONTRACTOR RELATED PROCEDURES

A. Contractor Selection

Contractors must apply to the program staff to be placed on the pre-approved contractors list. Contractors seeking inclusion on the list must submit references from at least three recent general contracting jobs. Contractors also must submit documentation proving financial stability and the ability to obtain performance bonds, as performance bonds will be required on every rehabilitation project. If it is ever necessary for the municipality or the Administrative Agent to access the performance bond in order to complete a project, the contractor will be removed from the pre-approved contractors list. Contractors must carry workmen's compensation coverage and liability insurance of at least $100,000/$300,000 for bodily injury or death and $50,000 for property damage. Only licensed tradesmen will be permitted to perform specialty work such as plumbing, heating and electrical.

B. Number of Proposals Required

The property owner will select a minimum of three general contractors from a list of pre-approved contractors. Property owners may not select contractors who do not appear on the list.[3] The approved work write-up will be submitted to the selected contractors by the program staff. Contractors must visit the property and submit bids within 20 days. The contract will be awarded to the lowest bidder[4], provided that the housing/building inspector or the professional who drafted the work write-up certify that the work can be completed at the price bid and that the bid is reasonably close to the cost estimate. Bids must fall within 10 percent of the cost estimate.

C. Contractor Requirements

Upon notification of selection, the contractor shall submit all required insurance certification to the program staff. A contract signing conference will be called by the program staff to be attended by the property owner and contractor. At the time of Agreement execution, the contractor shall sign a Certification of Work Schedule prepared by the program staff.

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[3] The program may permit a property owner to seek proposals from non-program participating contractors. However, the municipality must pre-approve the contractor prior to submitting a bid.

[4] If the property owner wishes to use a contractor other than the lowest responsible bidder, the property owner shall pay the difference between the lowest bid price and the bid price of the selected contractor.

SECTION VII. MAINTENANCE OF RECORDS

A. Files To Be Maintained on Every Applicant

The program staff will maintain files on every applicant. All files will contain a preliminary application. If an applicant's preliminary application is approved, and the applicant files a formal application, the file will contain at a minimum:

- Application Form
- Tenant Information Form (Rental Units Only)
- Income Verification
- Letter of Certification of Eligibility or Letter of Determination of Ineligibility

B. Files of applicants approved for the program will also contain the following additional documentation:

- Housing Inspection Report
- Photographs - Before
- Certification of Property Eligibility or Determination of Ineligibility
- Proof of Homeowners Insurance
- Copy of Deed to Property

C. For properties determined eligible for the program where the applicants choose to continue in the program, the files shall contain the following:

- Work Write-Up/Cost Estimate
- Copies of Bids
- Applicant/Contractor Contract Agreement
- Recorded Mortgage/Lien Documents
- Copies of All Required Permits
- Contractor Requests for Progress Payments
- Progress Payment Inspection Reports
- Progress Payment Vouchers
- Change Orders (If needed)
- Final Inspection Report
- Photographs - After
- Certification of Completion
- Certification of Release of Contractor's Bond

Individual files will be maintained throughout the process.

A. Rehabilitation Log

A rehabilitation log will be maintained by the program staff that depicts the status of all applications in progress.

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B. Monitoring

For each unit the following information must be retained to be reported annually:

- Street Address
- Block/Lot/Unit Number
- Owner/Renter
- Income: Very Low/Low/Mod
- Final Inspection Date
- Funds expended on Hard Costs
- Development Fees expended
- Funds Recaptured
- Major Systems Repaired
- Unit Below Code & Raised to Code
- Effective date of affordability controls
- Length of Affordability Controls (yrs)
- Date Affordability Controls removed
- Reason for removal of Affordability Controls

SECTION VIII. PROGRAM MARKETING

The municipality will conduct a public meeting announcing the implementation of the housing rehabilitation program when the program is first initiated and then periodically thereafter. The municipality will hold informational meetings on the program to all interested contractors. For the term of the program, the municipality will include flyers once a year with the tax bills. Program information will be available at the municipal building, library, and senior center and on the municipal website. Flyers regarding the program will be placed in select retail businesses in the municipality.

Prior to commencement of the program and periodically thereafter, the municipality will hold informational meetings on the program to all interested contractors. Each contractor will have the opportunity to apply for inclusion of the municipal contractor list.

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RENTAL PROCEDURES

SECTION IX

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SECTION IX. RENTAL PROCEDURES

Rental units are subject to the Uniform Housing Affordability Controls (UHAC) at N.J.A.C. 5-80:26.1 et. seq. once the rental units are rehabilitated.

A. Fair Housing and Equal Housing Opportunities



It is unlawful to discriminate against any person making application to participate in the rehabilitation program or rent a unit with regard to race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, disability, nationality, sex, gender identity or expression or source of lawful income used for mortgage or rental payments.

For more information on discrimination or if anyone feels they are a victim of discrimination, please contact the New Jersey Division on Civil Rights at 1-866-405-3050 or http://www.state.nj.us/lps/dcr/index.html.

B. Overview of the Affordable Housing Administration Process for Rental Units

- The Municipal Housing Liaison serves as an initial point of contact for unsolicited calls to the municipality about affordable housing and where appropriate directs applicants to an Administrative Agent, who may be a nonprofit agency, State agency or consultant that may administer the rehabilitation program within the municipality.

- The Administrative Agent implements the municipality's Affirmative Marketing Plan.

- The Administrative Agent serves as the initial point of contact for all inquiries generated by the affirmative marketing efforts and sends out pre-applications to interested callers.

- The Administrative Agent will accept these returned pre-applications for a specific period of time, for example, 30 to 90 days. At the end of this time period these applications will be randomly selected, through a lottery, to create a pool of applicants.

- The Administrative Agent pre-qualifies applicants in the applicant pool for income eligibility and sends either a rejection letter to those over income or a preliminary approval letter to those who appear income-eligible.

- When a unit becomes available, the Administrative Agent will interview the applicant households and proceed with the income qualification process.

- The Administrative Agent must notify applicant households in writing of certification or denial within 20 days of the determination.

- Once certified, households are further screened to match household size to bedroom size.

- Certified households that are approved for a rental affordable housing unit will sign Appendix K and any other applicable documents, which are held in the applicant file. Applicants then make an appointment with the leasing agent. Applicant households

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seeking rental units proceed with a credit check, which is generally conducted by the developer, affordable housing sponsor or landlord. If approved, the applicant will sign the lease, pay the first month's rent and the security deposit and receive the keys.

- The certified household moves in to the affordable rental unit.

C. Roles and Responsibilities

Responsibilities of the Municipal Housing Liaison

The Municipal Housing Liaison is responsible for coordinating all the activities of the municipal government as it relates to the creation and administration of affordable housing units, in conjunction with the Municipal Attorney, where appropriate (see the section **Responsibilities of the Municipal Attorney**). The primary purpose of the Municipal Housing Liaison is to ensure that all affordable housing projects are established and administered according to the Regulations as outlined in an Operating Manual. The duties of the Municipal Housing Liaison include the following duties, and may include the responsibilities for providing administrative services as described in the next Section under, Responsibilities of an Administrative Agent.

Monitor the status of all restricted units in the municipality's Fair Share Plan. Regardless of any arrangements the municipality may have with one or more Administrative Agents, it is the Municipal Housing Liaison's responsibility to know the status of all restricted units in their community.

Serve as the municipality's primary point of contact for all inquiries from the State, Administrative Agents, developers, affordable housing sponsors, owners, property managers, and interested households. The Municipal Housing Liaison serves as the municipality's primary point of contact on affordable housing issues. Interested applicants should be provided with information on the types of affordable units within the municipality and, where applicable, the name of the Administrative Agent that manages the units and the contact information for the Administrative Agent.

Compile, verify and submit annual reporting. Administrative Agents are responsible for collecting much of the data that is ultimately included in an annual affordable housing monitoring report. However, it is the Municipal Housing Liaison's responsibility to collect and verify this data and consolidate it into the annual report. Any requests for additional information or corrections will be directed to the Municipal Housing Liaison.

Provide Administrative Services, unless those services are contracted out. The responsibilities for providing administrative services are described in the next Section under, **Responsibilities of an Administrative Agent**.

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Responsibilities of an Administrative Agent

The primary responsibility of an Administrative Agent is to establish and enforce affordability controls and ensure that units in their portfolio are rented to eligible households. Administrative Agents must:

Secure written acknowledgement from all owners that no restricted unit can be offered or in any other way committed to any person other than a household duly certified by the Administrative Agent.

Create and adhere to an Operating Manual. Administrative Agents are required to follow the policies and procedures of an Operating Manual, as applicable to the scope of services they have been contracted to perform.

Implement the municipality's Affirmative Marketing Plan. The Administrative Agent, the developer, affordable housing sponsor or owner could be responsible for implementing the Affirmative Marketing Plan adopted by the municipality. At the first meeting with the Municipal Housing Liaison, Administrative Agent, and the developer, affordable housing sponsor or owner this responsibility should be discussed. Affirmative marketing includes conducting regional outreach and advertising for available affordable units. Advertising costs may also be delegated to the developer, but this must be established by ordinance and a condition of approval of the Planning Board or Zoning Board.

Accept applications from interested households. In response to marketing initiatives or by referral from the Municipal Housing Liaison, interested households will contact the Administrative Agent. The Administrative Agent will supply applicants with applications, provide additional information on available units and accept completed applications.

Conduct random selection of applicants for rental of restricted units. The Administrative Agent is responsible for conducting the random selection in accordance with the Affirmative Marketing Plan and any related local ordinances, and as described in the Operating Manual.

Create and maintain a pool of applicant households. This includes reaching out to households in the applicant pool to determine continued interest and/or changes in household size and income.

Determine eligibility of households. The task of collecting application materials and documentation from applicant households and analyzing it for eligibility is the responsibility of an Administrative Agent. A written determination on a household's eligibility must be provided within twenty (20) days of the Administrative Agent's determination of eligibility or non-eligibility. Whether or not the household is determined to be eligible for a unit, it is an Administrative Agent's responsibility to secure all information provided by the household in individual files and to maintain strict confidentiality of all information regarding that household. An Administrative Agent is required to ensure that all certified applicants execute a certificate acknowledging the rights and requirements of renting an affordable unit, in the form of Appendix K of UHAC.

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Establish and maintain effective communication with property managers and landlords. Property managers and landlords of restricted units should be instructed and regularly reminded that the Administrative Agent is their primary point of contact. The Administrative Agent must immediately inform all property managers and landlords of any changes to the Administrative Agent's contact information or business hours.

Property managers and landlords should be instructed to immediately contact the Administrative Agent:

- Immediately upon learning that an affordable rental unit will be vacated.
- For review and approval of annual rental increases.

Provide annual notification of maximum rents. Each year when revised income limits are released, rental households must be notified of the new maximum rent that may be charged for their unit. The Administrative Agent's contact information must be included on such notification in case the tenant is being overcharged.

Serve as the custodian of all legal documents. An Administrative Agent is responsible for maintaining originals of all legal instruments for the units in their portfolio. Throughout the duration of a control period, an Administrative Agent must maintain a file containing its affordability control documents. This includes, but is not limited to, the recorded Declarations of Covenants, Conditions and Restrictions, Deed Restrictions, Deeds, Repayment Mortgages, Repayment Mortgage Notes, Leases and Appendix K.

Serve as point of contact on all matters relating to affordability controls. It is recommended that the Administrative Agent develop a system to be notified by lenders when a unit is at risk of foreclosure. In the event of a foreclosure, the Administrative Agent should work with the foreclosing institution to ensure that the affordability controls are maintained. The Administrative Agent should seek the counsel of the municipality's attorney on legal matters that threaten the durability of the affordability controls.

Provide annual activity reports to Municipal Housing Liaison for use in the annual monitoring report. An Administrative Agent is responsible for collecting the reporting data on each unit in their portfolio.

Maintain and distribute information on HUD-approved Housing Counseling Programs.

Responsibilities of the Municipal Attorney

The Municipal Attorney assists the municipality with developing, administrating, and enforcing affordability controls, including but not limited to

- Providing all reasonable and necessary assistance in support of the Administrative Agent's efforts to ensure compliance with the housing affordability controls.

Responsibilities of Owners of Rental Units

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Open and direct communication between the Owners of rental units, the Municipal Housing Liaison and the Administrative Agent is essential to ongoing administration of affordability controls. Although the Administrative Agent is required to serve as the primary point of contact with households, the Owner must provide the Municipal Housing Liaison and Administrative Agent with information on vacancies. Owners of rental units are also responsible for working with the Administrative Agent to ensure that the Municipal Housing Liaison has all necessary information to complete the annual reporting.

Responsibilities of Landlords and Property Managers

Landlords and property managers must place a notice in all rental properties annually informing residents of the rent increase for the year and the contact information for the Administrative Agent.

D. Affirmative Marketing

Overview of the Requirements of an Affirmative Marketing Plan

All affordable units are required to be affirmatively marketed using the Borough of Montvale's Affirmative Marketing Plan. An Affirmative Marketing Plan is a regional marketing strategy designed to attract households of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age, or number of children to housing units which are being marketed by an Administrative Agent or a developer, sponsor, owner or property manager of affordable housing. The primary objectives of an Affirmative Marketing Plan are to target households who are least likely to apply for affordable housing, and to target households throughout the entire housing region in which the units are located.

The Borough of Montvale's Affirmative Marketing Plan can be found in the Appendix.

Every Affirmative Marketing Plan must include all of the following:

- Publication of at least one advertisement in a newspaper of general circulation within the housing region; and

- At least one additional regional marketing strategy such as a neighborhood newspaper, religious publication, organizational newsletter, advertisement(s) with major employer(s), or notification through community and regional organizations such as non-profit, religious and civic organizations.

For each affordable housing opportunity within the municipality, the Affirmative Marketing Plan must include the following information:

- The address of the project and development name, if any

- The number of rental units

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- The price ranges of the rental units

- The name and contact information of the Municipal Housing Liaison, Administrative Agent, property manager or landlord

- A description of the Random Selection method that will be used to select applicants for affordable housing.

- Disclosure of required application fees, if any.

Advertisements must contain the following information for each affordable housing opportunity:

- The unit address

- A range of prices for the housing units

- The bedroom size(s) of the units

- The maximum income permitted to qualify for the housing units

- The locations of applications for the housing units

- The business hours when interested households may obtain an application for a housing unit

- Application fees, if any

Regional Preference

The Borough of Montvale has by ordinance provided that households that live or work in COAH Housing Region 1 comprised of the following counties Bergen, Hudson, Passaic and Sussex shall be selected for an affordable housing unit before households from outside this region. Units that remain unoccupied after households who live or work in the region are exhausted, may be offered to the households outside the region.

Implementation of the Affirmative Marketing Plan

The affirmative marketing process for affordable units shall begin at least four months prior to expected occupancy. In implementing the marketing program, the Administrative Agent shall undertake all of the strategies outlined in the Borough of Montvale's Affirmative Marketing Plan. Advertising and outreach shall take place during the first week of the marketing program and each month thereafter until all the units have been sold. Applications for affordable housing shall be available in several locations in accordance with the Affirmative Marketing Plan. The time period when applications will be accepted will be posted with the applications. Applications shall be mailed to prospective applicants upon request.

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An applicant pool will be maintained by the Administrative Agent for re-rentals.

When a re-rental affordable unit becomes available, Administrative Agent applicants will be selected from the applicant pool and, if necessary, the unit will be affirmatively marketed as described above.

The selection of applicants from the applicant pool is described in more detail in this manual under the section **Random Selection & Applicant Pool(s)**.

E. Random Selection & Applicant Pool(s)

Randomization after Certification

Random selection is conducted when a unit is available, and only certified households seeking the type and bedroom size of the available unit are placed in the lottery. The process is as follows:

After advertising is implemented, applications are accepted for 30 days.

All applications are reviewed and households are either certified or informed of non-eligibility. (The certification is valid for 180 days, and may be renewed by updating income-verification information.)

Eligible households are placed in applicant pools based upon the number of bedrooms needed (and any other special requirements, such as regional preference or the need for an accessible unit)

When a unit is available, only the certified households in need of that type of unit are selected for a lottery.

Households are informed of the date, time, and location of the lottery and invited to attend.

After the lottery is conducted, the first household selected is given 10 days to express interest or disinterest in the unit. (If the first household is not interested in the unit, this process continues until a certified household selects the unit.)

Applications are accepted on an ongoing basis, certified households are added to the pool for the appropriate household income and size categories, and advertising and outreach is ongoing, according to the Affirmative Marketing Plan.

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F. Matching Households To Available Units

In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to implement the following policies:

- Provide an occupant for each unit bedroom;
- Provide children of different sex with separate bedrooms;
- Prevent more than two persons from occupying a single bedroom;
- Require that all the bedrooms be used as bedrooms; and
- Require that a couple requesting a two-bedroom unit provide a doctor's note justifying such request.

The Administrative Agent cannot require an applicant household to take an affordable unit with a greater number of bedrooms, as long as overcrowding is not a factor.

A household can be eligible for more than one unit category, and should be placed in the applicant pool for all categories for which it is eligible.

G. Application Fees

The Administrative Agent's fee schedule can be found in the Appendix.

H. Maximum Monthly Payments

The percentage of funds that a household can contribute toward housing expenses is limited. However, an applicant may qualify for an exception based on the household's current housing cost (see below). The Administrative Agent will strive to place an applicant in a unit with a monthly housing cost equal to or less than the applicant's current housing cost.

UHAC states that a certified household is not permitted to lease a restricted rental unit that would require more than 35 percent of the verified household income (40 percent for age-restricted units) to pay rent and utilities. However, at the discretion of the Administrative Agent, this limit may be exceeded if:

- The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent and the proposed rent will reduce the household's housing costs;
- The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;

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- The household is currently in substandard or overcrowded living conditions;

- The household documents the existence of assets, with which the household proposes to supplement the rent payments; or

- The household documents proposed third party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the Owner of the unit; and

- The household receives budget counseling.

I. Housing Counseling

The Administrative Agent is responsible for providing housing counseling, or providing referrals for counseling, as a part of the Affirmative Marketing Plan and during the application process. Although housing counseling is recommended, a household is only required to attend counseling if their monthly housing expense exceeds UHAC standards. A HUD-approved housing counseling agency, or a counseling agency approved by the NJ Department of Banking and Insurance, meets UHAC's requirements for an experienced Housing Counseling Agency. If the Administrative Agent is not approved by HUD or by the NJ Department of Banking and Insurance, the Agent will make referrals to one of the HUD-approved housing counseling agencies in New Jersey. This counseling to low- and moderate-income housing applicants will focus on subjects such as budgeting, credit issues, and mortgage qualification, and is free of charge. A list of non-profit counselors approved by HUD and/or the New Jersey Department of Banking and Insurance is included on COAH's website and is available from the Administrative Agent.

J. The Applicant Interview

Ideally, the prospective applicant will be available to meet with the Administrative Agent to review the certification and random selection processes in detail and ask any questions they may have about the project or the process. However, scheduling time off from work may prove burdensome to the applicant. Applicants may also have mobility issues or special needs that also pose an obstacle to an interview. Therefore, the Administrative Agent is prepared to complete the certification process via telephone and mail. If an interview is to be conducted, the Administrative Agent will attempt to achieve the following objectives:

- Confirm and update all information provided on the application.

- Explain program requirements, procedures used to verify information, and penalties for providing false information. Ask the head of household, co-head, spouse and household members over age 18 to sign the Authorization for Release of Information forms and other verification requests.

- Review the applicant's identification and financial information and documentation, ask any questions to clarify information on the application, and obtain any additional information needed to verify the household's income.

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- Make sure the applicant has reported all sources for earned and benefit income and assets (including assets disposed of for less than fair market value in the past two years). Require the applicant to give a written certification as to whether any household member did or did not dispose of any assets for less than fair market value during the past two years.

K. PROCEDURE FOR INCOME-ELIGIBILITY CERTIFICATION

1. Complete a Household Eligibility Determination Form

The program staff shall require each member of an applicant household who is 18 years of age or older to provide documentation to verify their income, pursuant to the Uniform Housing Affordability Controls at N.J.A.C. 5:80-16.1 et seq.. Income verification documentation should include, but is not limited to the following for each and every member of a household who is 18 years of age or older:

- Four current consecutive pay stubs [including both the check and the stub], including bonuses, overtime or tips, or a letter from the employer stating the present annual income figure or if self-employed, a current Certified Profit & Loss Statement and Balance Sheet.

- Copies of Federal and State income tax returns for each of the preceding three tax years - A Form 1040 Tax Summary for the past three tax years can be requested from the local Internal Revenue Service Center or by calling 1-800-829-1040.

- A letter or appropriate reporting form verifying monthly benefits such as

  - Social Security or SSI – Current award letter or computer print out letter

  - Unemployment – verification of Unemployment Benefits

  - Welfare -TANF[5] current award letter

  - Disability - Worker's compensation letter or

  - Pension income (monthly or annually) – a pension letter

- A letter or appropriate reporting form verifying any other sources of income claimed by the applicant, such as alimony or child support – copy of court order or recent original letters from the court or education scholarship/stipends – current award letter.

- Current reports of savings and checking accounts (bank statements and passbooks) and income reports from banks or other financial institutions holding or managing trust funds, money market accounts, certificates of deposit, stocks or bonds (In brokerage accounts – most recent statements and/or in certificate form – photocopy of certificates).

[5] TANF – Temporary Assistance for Needy Families

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- Evidence or reports of income from directly held assets, such as real estate or businesses.

- Interest in a corporation or partnership – Federal tax returns for each of the preceding three tax years.

- Current reports of assets – Market Value Appraisal or Realtor Comparative Market Analysis and Bank/Mortgage Co. Statement indicating Current Mortgage Balance. For rental property attach copies of all leases.

The following is a list of various types of wages, payments, rebates and credits. Those that are considered as part of the household's income are listed under Income. Those that are not considered as part of the household's income are listed under Not Income.

Income

1. Wages, salaries, tips, commissions

2. Alimony

3. Regularly scheduled overtime

4. Pensions

5. Social security

6. Unemployment compensation (verify the remaining number of weeks they are eligible to receive)

7. TANF

8. Verified regular child support

9. Disability

10. Net income from business or real estate

11. Interest income from assets such as savings, certificates of deposit, money market accounts, mutual funds, stocks, bonds

12. Imputed interest (using a current average annual rate of two percent) from non-income producing assets, such as equity in real estate. Rent from real estate is considered income, after deduction of any mortgage payments, real estate taxes, property owner's insurance.

13. Rent from real estate is considered income

14. Any other forms of regular income reported to the Internal Revenue Service

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Not Income

1. Rebates or credits received under low-income energy assistance programs

2. Food stamps

3. Payments received for foster care

4. Relocation assistance benefits

5. Income of live-in attendants

6. Scholarships

7. Student loans

8. Personal property such as automobiles

9. Lump-sum additions to assets such as inheritances, lottery winnings, gifts, insurance settlements

10. Part-time income of dependents enrolled as full-time students

11. Court ordered payments for alimony or child support paid to another household shall be deducted from gross annual income

To calculate income, the current gross income of the applicant is used to project that income over the next 12 months.

Student Income

Only full-time income of full-time students is included in the income calculation. A full-time student is a member of the household reported to the IRS as a dependent who is enrolled in a degree seeking program for 12 or more credit hours per semester; and part-time income is income earned on less than a 35-hour workweek.

Real Estate Asset Limit

Except for federal programs, if an applicant's primary residence, which is to be sold upon purchase of an affordable unit, has no mortgage debt and is valued at or above the regional asset limit as published annually, the household must be determined ineligible for certification.

However, if the applicant's existing monthly housing costs including taxes, homeowner insurance, and condominium or homeowner association fees exceed 38 percent of the household's eligible monthly income, the household will be exempt from the asset limit.

An applicant must provide a recent, Market Value Appraisal or Realtor Comparative Market Analysis, on the home they own unless the applicant has mortgage debt on the home or can

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demonstrate that the existing monthly housing costs exceed 38 percent of the household's eligible monthly income, in which case the applicant is exempt from the asset limit.

Before obtaining a professional appraisal, the applicant should review the property's tax appraisal and the current market value and compare it to the asset limit to avoid any unnecessary expense. For instance, if homes are commonly selling in the applicant's neighborhood for over $250,000, it is unlikely that an appraisal will determine a value below the asset limit. The maximum asset limit for Region 1 in 2006, for example, is $139,396.

Income from Real Estate

If real estate owned by an applicant for affordable housing is a rental property, the rent is considered income. After deduction of any mortgage payments, real estate taxes, property owner insurance and reasonable property management expenses as reported to the Internal Revenue Service, the remaining amount shall be counted as income.

If an applicant owns real estate with mortgage debt, which is not to be used as rental housing, the Administrative Agent should determine the imputed interest from the value of the property. The Administrative Agent should deduct outstanding mortgage debt from the documented market value established by a market value appraisal. Based on current money market rates, interest will be imputed on the determined value of the real estate.

2. **Records Documenting Household Composition and Circumstances**

The following are various records for documenting household information:

- Social Security records or cards. Either individual Social Security card or letter from Social Security Administration
- Adoption papers, or legal documents showing adoption in process
- Income tax return
- Birth Certificate or Passport
- Alien Registration Card

3. Certify the income eligibility of low- and moderate-income households by completing the application form. Provide the household with the original and keep a copy in the project files.

L. Approving or Rejecting a Household

Administrative Agents must notify applicant households of their eligibility within twenty (20) days of the Administrative Agent's determination.

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Households with a verified total household income that exceeds 80 percent of the regional income limit for the appropriate family size are ineligible for purchase or rental of restricted units. A letter rejecting the household's application shall be mailed to the household.

Similarly, households with a verified total household income that is within the income limits, but too low to afford any of the units administered by the Administrative Agent shall be sent a letter rejecting the household's application, and/or referring them to housing counseling.

Households with a verified total household income of less than 80 percent shall be issued a letter certifying eligibility. This certification is valid for 180 days. If the Administrative Agent is unable to place the household in a restricted unit at the conclusion of 180 days, an extension may be granted once the household's eligibility is verified.

Once the applicant is certified and matched to an available unit, the Administrative Agent must secure from the applicant a signed and notarized acknowledgement of their requirements and responsibilities in renting a restricted unit. UHAC's Appendix K shall be forwarded to the applicants.

In addition to non-eligibility based on income, the Administrative Agent may deny a certification because of the household's failure or inability to document household composition, income, assets, sufficient funds for down payment, or any other required facts and information. A household may also be denied certification if the Administrative Agent determines that there was a willful or material misstatement of fact made by the applicant.

M. Dismissal of Applications

Applications can be dismissed for the following reasons:

1. The application is not signed or submitted on time.

2. The applicant commits fraud, or the application is not truthful or complete.

3. The applicant cannot or does not provide documentation to verify their income or other required information when due.

4. The household income does not meet the minimum or maximum income requirements for a particular property.

5. The applicant owns assets that exceed the Asset Limit.

6. The applicant fails to respond to any inquiry in a timely manner.

7. The applicant is non-cooperative or abusive with the staff, property manager or landlord.

8. The applicant changes address or other contact information without informing the Administrative Agent in writing.

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9. The applicant does not meet the credit standard or other requirement set forth by managers of rental properties.

10. The applicant fails to verify attendance in a credit counseling program when required to do so by the program rules.

11. The applicant does not respond to periodic update inquiry in a timely fashion.

12. The applicant fails to sign the Compliance Certification, Certificate for Applicant, Lease Document, as may be required.

13. The applicant, once approved, fails to sign the lease in a timely manner.

14. Applicants will also be removed from all lists held by the Administrative Agent once they have been approved for an affordable unit. However, these applicants may re-apply for other opportunities in that municipality once they have occupied their unit.

Applicants who are dismissed must re-apply. A minimum time period of six months applies in most situations where the applicant has been withdrawn for fraud, poor credit, uncooperative behavior or other serious matters.

Applicants are not automatically removed from rental lists if they do not respond to a Notice of Availability.

Applications may be held in abeyance for a period not to exceed 60 days if there is an error on the credit report, so that the applicant can correct the error and re-apply. Units will not be held open for that applicant. However, once the credit report is corrected, the applicant will be given a priority for the next opportunity at that property.

N. Appeals

Appeals from all decisions of an administrative agent appointed pursuant to this subchapter shall be filed in writing with the Executive Director of the Agency. When acting in this capacity, the Executive Director may appoint one or more employees of the Agency, COAH and/or the Department of Community Affairs to assist him or her in rendering the final decision, whenever he or she, in his or her sole discretion, determines that committee participation would materially promote a fair and just disposition of the appeal. A written decision of the Executive Director upholding, modifying or reversing an administrative agent's decision shall be a final administrative action.

O. Determining Affordable Rents

To determine the initial rents the Administrative Agent uses the COAH calculators located at http://www.nj.gov/dca/affiliates/coah/resources.calculators.html.

Pricing by Household Size. Initial rents are based on targeted "model" household sizes for each size home as determined by the number of bedrooms. Initial rents must adhere to the following

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rules. These maximum sales prices and rents are based on Annual Regional Income Limits Chart at the time of occupancy:

- A studio shall be affordable to a one-person household;
- A one-bedroom unit shall be affordable to a one- and one-half person household;
- A two-bedroom unit shall be affordable to a three-person household;
- A three-bedroom unit shall be affordable to a four- and one-half person household; and
- A four-bedroom unit shall be affordable to a six-person household.

Size of Unit	Household Size Used to Determined Max Rent
Studio/Efficiency	1
1 Bedroom	1.5
2 Bedrooms	3
3 Bedrooms	4.5
4 Bedrooms	6

The above rules are only to be used for setting initial rents. They are not guidelines for matching household sizes with unit sizes. The pricing of age-restricted units may not exceed affordability based on a two-person household.

Split Between Low- and Moderate-income Rental Units. At least 50 percent of the affordable units within each bedroom distribution (unit size) must be low-income units and at least 10 percent of the affordable units within each bedroom distribution must be affordable to households earning no more than 35 percent of the regional median income. The remainder of the affordable units must be affordable to moderate-income households.

Affordability Average. The average rent for all affordable units cannot exceed 52 percent of the regional median income. At least one rent for each bedroom type must be offered for both low-income and moderate-income units. Calculation of the affordability average is available on COAH's website.

Maximum Rent. The maximum rent of restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of the regional median income.

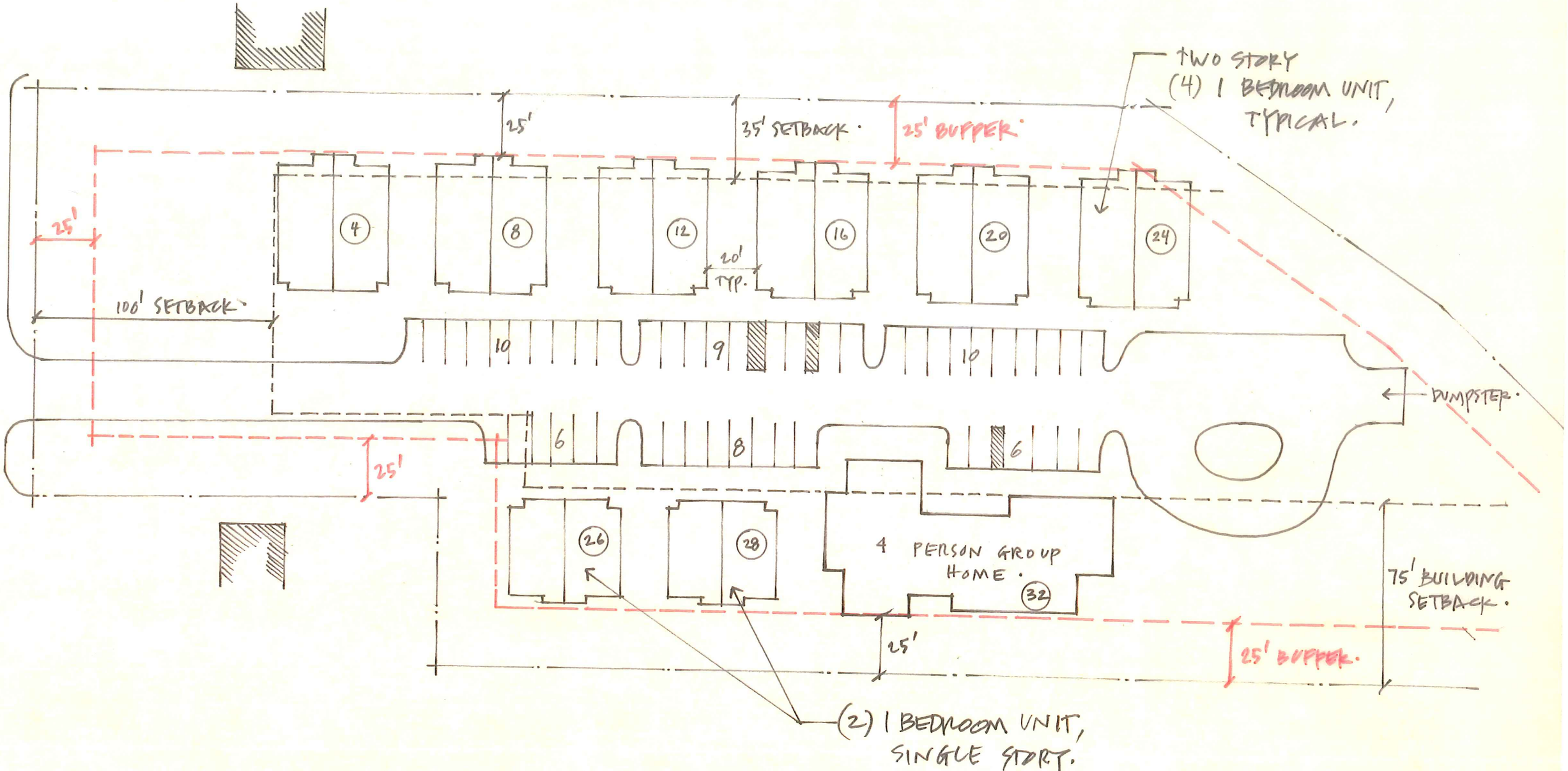
P. Determining Rent Increases

Annual rent increases are permitted in affordable units. Rent increases are permitted at the anniversary of tenancy according to Annual Regional Income Limits Chart. These increases must be filed with and approved by the Administrative Agent. Property managers or landlords who have charged less than the permissible increase may use the maximum allowable rent with the next tenant with permission of the Administrative Agent. The maximum allowable rent would be calculated by starting with the rent schedule approved as part of initial lease-up of the development, and calculating the annual approved increase from the initial lease-up year to the present. Rents may not be increased more than once a year, may not be increased by more than one approved increment at a time, and may not be increased at the time of new occupancy if this

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occurs less than one year from the last rental. No additional fees may be added to the approved rent without the express written approval of the Administrative Agent.

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CONCEPTUAL SITE PLAN. SUMMIT AVE.

1" = 40'-0".

4.10.18

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY
MULTI-FAMILY - with or without TAX CREDITS
SCHEDULE 10-A: PROJECT DESCRIPTION-CONSTRUCTION (ONLY) AND CONSTRUCTION& PERMANENT LOANS

		Date Action Taken
	Inducement	
	Commitment	
	Re-Commitment	
	Mtg. Extension	
	Bond Sale	
	Closing	

Indicate Closing Type By Date

Home Express:	
Special Needs:	
Other:	
Other:	

HMFA#
Date: **4/12/18**
Prepared by:
Reviewed by:

Summit Ave Commons
Project Name

Summit Ave Montvale, NJ Zip Code:
Project Street Address

Municipality: Montvale — Block No. — Lot No.
County: Bergen

Type of Development
(Select either Family or Senior Citizens (NOT BOTH))

Family	
Senior Citizens	X

Provide the following:

Legislative District:	
Congressional District:	
Census Tract:	
No. of dwelling units	28
No. of occupied units	
Special Needs Units	1
Special Needs Population	
Construction Term	(mos.)
Rent-up Period	(mos.)

Type of Loan

Construction Loan Only	
Construction & Permanent Loan	
Permanent Loan Only	

Cost Summary

Type of Construction

New Construction	X
Modular	
Moderate Rehabilitation	
Substantial Rehab.	
Conversion	
Rehabilitation/Occupied	
Historic	

Parking

Total Number of Parking Spaces	
Ratio of parking to D.U.'s	: 1

Type of Financing

Tax Exempt	X
Taxable	

Tax Credits — **Check One**

4%	
9%	
Historic	

Affordability - Check One

**** 40% AT 60%**	
***** 20% AT 50%**	

Term of Mortgage (in years):

Mortgage Interest Rate: Note I
Note II

The Project is in a: **Y or N**

QCT	
Smart Growth	
Planning Area:	
	(designate area)

ENTER DOLLAR AMOUNT

Type of Subsidy

City Living	$
FRM-CDBG	$
Amt. Of FRM-CDBG/Unit:	
Green Funds	$
Fire Supression	$
Balanced Housing	$
Ready to Rent (Bal. Hous. Funds)	$
Loan:	$
Subsidy:	$

Cost of Land and/or Improvements	$0 per DU	$0 per Sqft.
Construction Cost	$233,651 per DU	$234 per Sqft.
Total Project Cost	$280,632 per DU	$281 per Sqft.

Types of Residential Structures*	No. of Bldgs.	No. of Stories Each	Unit Type (No. of BR's)	Average Unit Size in Sq. Ft.	No. of Units	Net Rentable = Area
1	6	2	1	928	24	22,260
1	2	1	1	928	4	3,710
1	1	1	1	2,946	1	2,946
Basement/Crawl Space						
****Garage Parking						
Commercial Space						
Common/Other Space						

Total Project Cost	$8,138,322
Minus Eligible Costs:	
Reserves	$7,250
Deferred Developer Fee	
Non Basis Off Site Improvements	
=	$8,131,072
Cost Per DU	$280,382

Totals: 9 Buildings — UNITS: 29 | 28,916 Sq. Ft.

*Low - Rise (1 - 3), Mid/Hi - Rise (4 + stories), Townhouse or Semi-detached
** 40-60 set-aside means 40% or more of the residential units will be restricted and occupied by households whose income is 60% or less than the area median income.
*** 20-50 set-aside means 20% or more of the residential units will be rent restricted and occupied by households whose income is 50% or less of area median income.
****Includes only parking beneath the building and/or parking structure

SCHEDULE 10-B: EST. DEVELOPMENT COSTS AND CAPITAL REQUIREMENTS

HMFA#

_____ Inducement
_____ Commitment
_____ Re-Commitment
_____ Bond Sale
_____ Closing

Prepared by:
Reviewed by:
(Director of Technical Services) _____ Date
(Director of MF Programs & Lending) _____ Date
Chief Financial Officer:
Senior Director of Programs

1. SOURCES OF FUNDS DURING CONSTRUCTION:

	Enter total Amt. of Grant/Loan Here	**Will loan/s be repaid from project revenues?** (If Source is a grant, enter "G".) Y, or N, or G	
a) Federal Home Loan Bank		3,100,000	$ 3,100,000
b) Bergen County HOME (senior apts)		500,000	$ 500,000
c) Bergen County HOME (group home)		200,000	$ 200,000
d) HMFA Tax Credit		4,338,322	$ 4,338,322
e)			$
f)			$
g)			$
h) **Deferred Developer's Fee**			$
TOTAL SOURCES OF CONSTRUCTIONS FUNDS:			$ 8,138,322

2. USES of FUNDS DURING CONSTRUCTION:

			% of Cons't Cost OR Cost/Unit	
A. ACQUISITION COSTS:				
a) Land @ ($ _____ per Acre)		$ 1		
b) Building Acquisition	**Should be between $15,000 & $25,000 per units**			
c) Relocation				
d) Other:	**Total Acquisition as a percent of Total Project Costs: 0.00%**			1
B. CONSTRUCTION COSTS				
a) Demolition	**NOTE: Payment and Performance bonds are required through the constru**	$		
b) Off-site Improvements	**and for a two-year period after the Certificate of Occupancy.**			
c) Residential Structures (including all on-site improvement)		6,631,414		
d) Community Building				
e) Environmental Clearances				
f) Surety & Bonding	**should be between .75% and 2% of Construction Costs**	99,471	**1.47%**	
g) Building Permits	**To be waived**	45,000		
h) Garage Parking	**garage should be approx $15,000/space; parking lot around $700/space**			
i) General Requirments	**should be about 6% of construction costs**			
j) Contractor Overhead & Profit -	**should not exceed 8% of cons't costs total - usually 2% for Overhead and 6% for Profit**			
k) Green Features				
l) Other				
m) Other	**Total Cons't Costs as a percent of Total Project Costs: 87.33%**			6,775,885
C. DEVELOPERS FEE - CONSTR/REHAB	**6.96%**	529,295		
DEVELOPERS FEE - BUILDING				
D. CONTINGENCY				529,295
a) Hard Costs	**5% for New Construction & 10% for Rehabilitation**	331,570		
b) Soft Costs	**should be a Maximum of 5%**	55,558		387,128
E. PROFESSIONAL SERVICES				
a) Appraisal & Market Study		$		
b) Architect		183,863		
c) Site Engineer		75,000		
d) Attorney		30,000		
e) Cost Certification/Audit -	**should not exceed $35,000**			
f) Environmental Consultant		25,000		
g) Historical Consultant				
h) Geotechnical Consultant		20,000		
i) Surveyor				
j) Professional Planner:				
k) Other	**Total Professional fees as a % of Total Project Costs: 4.10%**			333,863
F. PRE-OPERATIONAL EXPENSES *				
a) Operator fees (pre-construction completion) *		$		
b) Advertising and Promotion (pre-construction completion)*				
c) Staffing and Start-up Supplies (pre-construction completion)*				
d) Other: *				
e) Other: *	**Total Pre Opt Costs as a % of Total Project Costs:**			

HMFA Policy is that the Developer fee is earned as a percentage of construction completion.

Non-Deferred Amt.:	$529,295	**6.96%**

HMFA CONS'T & PERM. BLENDED RATE

Construction Interest Rate Calculation	
Note I Weighted:	
Note II Weighted:	
TOTAL:	
Cons't. Int. Rate:	

*** Non-eligible costs in TC basis**

Should Not Exceed $250.00

G. CARRYING AND FINANCING COSTS DURING CONSTRUCTION							**(percentage of total development costs)**		**1.29%**	
a) Interest @	%	for	(	mos.)	on	$ 1,800,000				
b) R.E. Tax $	(per annum)	x		Yrs.			none			
c) Insurance $ 34,000	(per annum)	x	1.00	Yrs.			34,000			
d) Title Insurance and Recording Expenses										
e) Points To Reduce HMFA Servicing Fee **[Cons't. & Perm. Only]**					on	$				
f) HMFA Second Note Financing Fee **[Cons't & Perm Only]**					on	$ 500,000				
g) HMFA Constr.Loan Serv.Fee	%	for	(	mos.)	on	N/A				
h) Other Lender Construction Financing Fee										
i) Tax Credit Fees										
j) Negative Arbitrage (**if Bonds are sold during Construction**)									**(ESTIMATE)**	
k) Cost of Issuance **(If Bonds are sold during Construction)**									**(ESTIMATE)**	
l) Furniture, Fixtures & Equiptment (F,F&E)										
m) Utility Connection Fees	**Total Carrying/Fin. Costs as % of Total Project Costs: 1.29%**						70,900			104,900

If the HMFA will be selling Bonds for the project either before or during the time the Development is under construciton, these costs should be accounted for during the construction period.

H. Working Capital Escrow		
a) Debt Service & Operating Expenses		
b) Rental Agent Rent-up Fee (during Rent-up)		
c) Advertising and Promotion (during Rent-up)		
I. Other Escrows		
a) Insurance (1/2 YR.)		$ 7,250
b) Taxes (1 Qtr.)		$
c) Debt Service Payment & Servicing Fee for 1 Month		$
d) Mortgage Insurance Premium (MIP) 1 year plus 3 months		$
e) Repair & Replacement Reserves		$
f) HMFA Operating Deficit Reserve		$
g) Other:		$
h) Other:		$
i) Other:	**Total Escrows as a % of Total Project Costs: 0.09%**	$

3. USES OF FUNDS DURING CONSTRUCTION: $ **8,138,322**

4. BALANCE OF FUNDS NEEDED FOR CONSTRUCTION (overage / shortage): $

This memorandum contains advisory, consultative and deliberative materials and is intended for the person(s) named as recipient(s).

5. SOURCES OF FUNDS FOR PERMANENT CLOSE-OUT: Y, or N, or G

a)			$
b)			$
c)			$
d)			$
e)			$
f)			$
	TOTAL SOURCES FOR PERMANENT CLOSE-OUT:		$

6. USES of FUNDS FOR PERMANENT Close-out:

A. DEVELOPER'S FEE:			$
B. CONSTRUCTION LOAN PAYOFF			$
C. Negative Arbitrage *	**(ESTIMATE)**		$
D. Cost of Issuance *	**(ESTIMATE)**		$
E. Tax Credit Fees			$
F. Other:			$
7. TOTAL of NUMBER 6 A-F ABOVE:			$
8. BALANCE NEEDED TO CLOSE (overage / shortage):			$
9. TOTAL PROJECT COSTS			$ 8,138,322
10. MAXIMUM MORTGAGE LOAN	% of Item 10		$

*** Non-eligible costs in TC basis**

Total Costs at Perm. Closeout as % of Total Project Costs:

11. 55% of Basis Test:

Aggregate Basis:	**$ 8,131,072**
55% of Basis (estimated):	**4,472,090**
Less 1st Mtg., 1st Note:	
Equals 1st. Mtg., 2nd Note Needed:	**4,472,090**

Check each line item for Eligibility

12. REPAYMENT OF SECOND NOTE (IFAPPLICABLE)

Interest @ ( ) mos.

Principal $
$
Total $

Total $

List Source

$
$
$
$

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

By: (Developer or Authorized Signatory)

By: NJHMFA Executive Director or Designee

SCHEDULE 10-C: OPERATING EXPENSES

Borrowing Entity:
Dev. Name: Summit Ave Commons

HMFA#
Prepared by:
Reviewed by:
Director of Property Management

04/12/18
Date

I. ADMINISTRATIVE EXPENSE

Stationery & Suppl.	600
Telephone	2,000
Dues & Sub.	
Postage	100
Insp. & Other Fees	500
Advertising	
Legal Services	2,000
Auditing (Year End)	4,000
Soc. Serv. Suppl.	
Misc. Adm. Expenses	
Bookkeeping/Accounting	
and/or Computer Charges	2,297
Other:	
TOTAL $	11,497

II. SALARIES & RELATED CHARGES

	# of Employees	Total Wages inc benefits
Superintendent		
Janitorial	1.00	16,000
Grounds & Landscaping		
Security		
Social Services		
Site Office & Admin		
Maintenance		
Other Salaries:		
Empl. Benefits		
Empl. Payroll Taxes		
Worker's Comp.		
Other:		
TOTAL $	1.00	16,000

III. MAINTENANCE AND REPAIRS

Masonary	
Carpentry	7,500
Plumbing	7,500
Electrical	7,500
Kitchen Equipment	7,500
Elevator	2,000
Windows & Glass	7,500
Vehicles & Equip.	
Snow Removal	6,500
Grounds & Landscaping	
Paint & Dec. Supl.	3,000
Small Equip. & Tools	3,000
Janit. Sup. & Tools	4,000
HVAC Supplies	2,000
Misc. Maint. Suppl.	
Other: Fire Sprinkler Maint.	15,000
TOTAL $	73,000

IV. MAINTENANCE CONTRACTS

Security	
Elevator	4,000
Rubbish Removal	10,000
Heating & AC Maint.	4,000
Grounds, Parking & Landscaping	12,500
Exterminating	2,400
Cyclical Apt. Painting	3,383
Other:	
TOTAL $	36,283

V. UTILITY EXPENSE

Water Charges	7,500
Sewer Charges	3,000
Electricity	32,000
Gas	26,000
Fuel	
Less Solar Energy Savings	
TOTAL $	68,500

VI. REAL ESTATE TAX CALCULATION FOR TAX ABATEMENT

Gross Rents	$	324,252		
Less Vacancy	(-)	16,213		
Less Utilities (if applicable)	(-)	68,500		
Gross Sheltered Rents	$	239,539		
x Rate	x	%		ACTUAL TAXES
Real Estate Taxes	$		OR	IF NO P.I.L.O.T.

SCHEDULE 10-D : ANTICIPATED GROSS RENTS

Mortgage Amount _____
Mortgage Interest Rate _____ %
Term (years) _____ Yrs.
Amortization (Y,S,M) _____
FMR Area Bergen

The Interest rate has been reduced by: _____ basis points as the Cost-of-Issuance is being paid out-of-pocket by the sponsor.

HMFA # _____
Prepared by: _____
Reviewed by: _____
04/12/18
Date

Date of Income Limits Chart Used: _____
Date of Utility Chart Used: _____

ANTICIPATED GROSS RENTS

	No. of Bedrooms	No. of Units	Target ** Occupancy	Gross Rent	Allowance for Tenant Paid Utilities***	Net Rent	Monthly	Annual	Square Feet of Individual Units
	1	19	Senior	1,069	100	969	18,411	220,932	700
	1	9	Senior	790	100	690	6,210	74,520	700
	4	1	Special Needs	2,400		2,400	2,400	28,800	
Super's Apt.*									
	TOTALS	**29**					**27,021**		

Anticipated Annual Rents: **324,252**

* Indicate on a separate line which apartment is for the Superintendent.
If it's rent-free, put $0 in the Rent column.

** Indicate "Low", "Mod" or "Mkt" AND the percentage of median income.
Low Income - 50% or less of median income
Moderate Income - 50% to 80% of median income
Market Income - 80%+ of median income
NOTE: For Underwriting Purposes Only, Target Occupancy is based on (1) person per Bedroom

*** Where tenants pay their own utilities, a "utility allowance" must be subtracted from the maximum chargeable rent when determining their rental charge.

NOTE: The percentage listed in this section is merely the percentage of the Gross Rent as to the applicable Area Median Income.

EQUIPMENT AND SERVICES

(a) Equipment:		(b) Services:	Gas, Electric or Oil	Individual or Master Meter	Paid by Tenant
Ranges		Heat			
Refrigerator		Hot Water			
Air Conditioning		Cooking			
Laundry Facilities		Air Conditioning			
Disposal		Household Electric			
Dishwasher		Water			
Carpet		Sewer			
Drapes		Parking			
Swimming Pool		Other:			
Tennis Court		Other:			
Other:					

UTILITY ALLOWANCE METHODS (Yes or No)

DCA Utility Allowance Chart		**Utility Company Estimates**	
HUD Utility Schedule Model		**Energy Consumption Model**	

COMMERCIAL SPACE
(Include all utility costs associated with the commercial space in your description)

SCHEDULE 10-E : SUMMARY OF ANTICIPATED ANNUAL INCOME AND EXPENSES

Borrowing Entity: _____ HMFA# _____

Prepared by: _____ 04/12/18

Dev. Name: Summit Ave Commons Reviewed by: _____ _____

(Director of Property Management - Expenses Only) Date

RENTAL INCOME

Apartment Rents			$ 324,252	
Vacancy Loss	(5.00 %)	-	16,213	
NET APT. RENTS			308,039	
Commercial Income	_____ per Sq. Ft.		$	
Garage & Parking	_____ per Sq. Ft.			
Commercial Vacancy	_____ %			
NET COMMERCIAL RENTALS				
TOTAL RENTAL INCOME			$ 308,039	

OTHER INCOME

Laundry Machines		$	
Other:			
TOTAL OTHER INCOME		$	
TOTAL REVENUE			$ **308,039**

EXPENSES

Administrative	(Schedule I)		$ 11,497	
Salaries	(Schedule II)		16,000	
Maint. & Repairs	(Schedule III)		73,000	
Maint. Contracts	(Schedule IV)		36,283	
Utilities	(Schedule V)		68,500	
Management Fee	51.00 per unit		1,479	* Should be between $51 & $66 per unit
P.I.L.O.T. on Commercial Income(	_____ %)			
Real Estate Taxes	(Schedule VI)			
Insurance	$500 per Unit		14,500	**2-Story & below - $500; 3-Story & above - $550**
Reserve for Repair and Replacement	925.00 per unit		12,025	
TOTAL EXPENSES				$ **233,284**
NET OPERATING INCOME				$ **74,755**

DEBT SERVICE

1. Principal and Interest		$	
2. Mortg & Bond Serv Fee	_____ %		
3. MIP	_____ %		
4. Debt Service on Other			
Mortgage Loans	$ _____	$	
AGENCY DEBT SERVICE		$	
DEBT SERVICE **NOT** TO BE			
CONSIDERED IN DSR		$	
TOTAL DEBT SERVICE			$
NET INCOME			$ **74,755**
Less Return on Equity	(_____ % on $ _____)	- $	
Project Profit/(Loss)			$ **74,755**

DEBT SERVICE RATIO CALCULATION :

$$DSR = \frac{\text{NET OPERATING INCOME}}{\text{AGENCY DEBT SERVICE}} =$$

New Mortgage Amount

Form 10

(Click on any of the items below)

Schedule 10-A: Project Description

Schedule 10-B: Est. Development Costs and Capital Requirements

Schedule 10-C: Operating Expenses

Schedule 10-D: Anticipated Gross Rents

Schedule 10-E: Summary of Anticipated Annual Income and Expenses

Schedule: Cash Flow

Mortgage Calculation

Print Menu

If applying for Tax Credits proceed to LIHTC Part IV

This memorandum contains advisory, consultative and deliberative materials and is intended for the person(s) named as recipient(s).

DEVELOPMENT COSTS

HMFA#: 0

Project Name: Summit Ave Commons **Total Project Costs:** 8,138,322

Total No. of Units: 28 **Project's Total Sq. Ft.:** 28,916

Acquisition Costs	$1
Construction Costs	$6,775,885
Professional Fees	$333,863
Developer Fee	$529,295

Date: 04/12/18

Financial Information:

						% of Total Devel Costs
Acquisition	$1	$0	/DU	$0	/SF	0.00%
Construction Costs (include. Contr. Fee)	$6,775,885	$241,996	/DU	$234	/SF	83.26%
Contingencies	$387,128	$13,826	/DU	$13	/SF	4.76%
Developer's Fee	$529,295	$18,903	/DU	$18	/SF	6.50%
Professional Fees	$333,863	$11,924	/DU	$12	/SF	4.10%
Carrying, Financing Costs	$104,900	$3,746	/DU	$4	/SF	1.29%
Other Charges	$7,250	$259	/DU	$0	/SF	0.09%
TOTAL DEVELOPMENT COST	$8,138,322	$290,654	/DU	$281	/SF	100.00%

LESS PROPOSED SOURCES

<List the sources that apply to your project and place $ amount in Column D>

HMFA First Mortgage, Note I	$3,100,000	$110,714	/DU
Note II plus interest (if applicable)	$0	$0	/DU
sellers note	$0	$0	/DU
cdbg	$0	$0	/DU
		$0	/DU
Small Rental Subsidy Loan ***(if applicable)***		$0	/DU
LIHTC Equity	$200,000	$7,143	/DU
HOPE VI Funds (if applicable)		$0	/DU
Defer'd Devel. Fee ***(To be pd. Thru cash flow)***	$0	$0	/DU
Additional Sponsor Equity		$0	/DU
		$0	/DU
TOTAL PROPOSED SOURCES	$3,300,000		
Difference	$4,838,322	$172,797	/DU

<Add the following if there is a second note>

REPAYMENT OF HMFA SECOND NOTE PLUS INTEREST

HMFA Note II ***(if applicable***	0	$0	/DU
Note II Interest	$0	$0	/DU
		$0	/DU
Note II Escrow	$0	$0	/DU

*Escrowed at permanent closing for Note II repayment:

cdbg	$0	$0
lihtc	$0	$0

		$0
Note II plus Interest	0	$0

DRAFT - for discussion purposes only and subject to change

MULTIFAMILY CASH FLOW

DEVELOPMENT:	Summit Ave Commons					**Annual % of Rent Increase:**		**3.00%**		**Permanent Mortgage (1st Note)**		0		**2nd Note/Mortgage (Amortizing)**								**DEVELOPMENT:**	Summit Ave Commons		
HMFA #:	0					**Annual Expense Increase:**		**4%**		**Interest Rate:**		0.00		**Interest Rate:**		0.000000						**HMFA #:**	0		
LOAN OFFICER:	0					**Vacancy:**		5.00	$16,213	**Term:**		0		**Term in Years:**		0						**LOAN OFFICER:**	0		
DATE:	4/12/18					**Commercial Rent Increase:**				**Annual Payment:**		0		**Annual Payment:**		**$0.00**						**DATE:**	4/12/18		
						Commercial Vacancy:		**0.00 %**		**Servicing Fee:**	0.000	0		**Servicing Fee:**		$0									
Number of Bedrooms	Number of Units	Unit Sq.Ft.	Gross Rent	Target Occupancy	Tenant Paid Utilities	Net. Rent	Monthly Rent	Annual Rent		**MIP:**	0.000	0				**$0**									
1	19	928	1,069	Senior	100	969	18,411	220,932																	
1	9	928	790	Senior	100	690	6,210	74,520						**FRM-CDBG**		0									
4	1	2,946	2,400	Special Needs	0	2,400	2,400	28,800		**PILOT Calculation**		Year 1		**Interest Rate Annually:**											
0	0	0	0	0	0	0	0	0		**Rental Income**				**First Years Balance:**		0									
0	0	0	0	0	0	0	0	0		Gross Rental Income		324,252													
0	0	0	0	0	0	0	0	0		Less: Vacancy		-16,213													
0	0	0	0	0	0	0	0	0		Net Rental Income		308,039													
0	0	0	0	0	0	0	0	0		Less: Owner-pd Utilities		-68,500													
0	0	0	0	0	0	0	0	0		Basis for PILOT Calc.		239,539													
0	0	0	0	0	0	0	0	0		PILOT Rate		0.00													
0	0	0	0	0	0	0	0	0		PILOT Payment Estimate		$0													
0	0	0	0	0	0	0	0	0		**Commercial:**			**Square Ft.**												
0	0	0	0	0	0	0	0	0		Gross Commercial Income		0	0												
0	0	0	0	0	0	0	0	0		Less: Vacancy	(	0.00	)	**Commercial**											
0	0	0	0	0	0	0	0	0		Net Commercial Income		0		**$/sq. ft.**											
0	0	0	0	0	0	0	0	0		PILOT Rate		0.00%		$0											
0	0	0	0	0	0	0	0	0		PILOT Payment Estimate		0													
0	0	0	0	0	0	0	0	0																	
0	0		0	0	0	0	0	0																	
0	0		0	0	0	0	0	0																	
Total	**29**							**324,252**																	
		%																							

PROJECTIONS		**Year 1**	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Year 6**	**Year 7**	**Year 8**	**Year 9**	**Year 10**	**Year 11**	**Year 12**	**Year 13**	**Year 14**	**Year 15**	**Year 16**	**Year 17**	**Year 18**	**Year 19**	**Year 20**	**Year 21**	**Year 22**	**Year 23**
RENTAL INCOME																								
Apartment Rents		324,252	333,980	343,999	354,319	364,948	375,897	387,174	398,789	410,753	423,075	435,768	448,841	462,306	476,175	490,460	505,174	520,329	535,939	552,017	568,578	585,635	603,204	621,300
Less Vacancy Loss	5 %	-16,213	-16,699	-17,200	-17,716	-18,247	-18,795	-19,359	-19,939	-20,538	-21,154	-21,788	-22,442	-23,115	-23,809	-24,523	-25,259	-26,016	-26,797	-27,601	-28,429	-29,282	-30,160	-31,065
NET APT. RENTS		308,039	317,281	326,799	336,603	346,701	357,102	367,815	378,850	390,215	401,922	413,979	426,399	439,191	452,366	465,937	479,915	494,313	509,142	524,416	540,149	556,353	573,044	590,235
Commercial Income	$0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Garage & Parking	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Less Commerical Vacancy	0.00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NET COMMERCIAL RENTALS		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL RENTAL INCOME:		**308,039**	**317,281**	**326,799**	**336,603**	**346,701**	**357,102**	**367,815**	**378,850**	**390,215**	**401,922**	**413,979**	**426,399**	**439,191**	**452,366**	**465,937**	**479,915**	**494,313**	**509,142**	**524,416**	**540,149**	**556,353**	**573,044**	**590,235**
OTHER INCOME																								
Laundry Machines	$0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other:	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL OTHER INCOME		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL REVENUE		308,039	317,281	326,799	336,603	346,701	357,102	367,815	378,850	390,215	401,922	413,979	426,399	439,191	452,366	465,937	479,915	494,313	509,142	524,416	540,149	556,353	573,044	590,235
	Yearly																							
OPERATING EXPENSES	Per Unit Cost																							
Administrative	$396	11,497	11,957	12,435	12,932	13,450	13,988	14,547	15,129	15,734	16,364	17,018	17,699	18,407	19,143	19,909	20,705	21,533	22,395	23,290	24,222	25,191	26,199	27,246
Salaries and Benefits	$552	16,000	16,640	17,306	17,998	18,718	19,466	20,245	21,055	21,897	22,773	23,684	24,631	25,617	26,641	27,707	28,815	29,968	31,166	32,413	33,710	35,058	36,460	37,919
Miantenance & Repairs	$2,517	73,000	75,920	78,957	82,115	85,400	88,816	92,368	96,063	99,906	103,902	108,058	112,380	116,875	121,550	126,412	131,469	136,728	142,197	147,885	153,800	159,952	166,350	173,004
Maintenance Contracts	$1,251	36,283	37,735	39,244	40,814	42,446	44,144	45,910	47,746	49,656	51,642	53,708	55,857	58,091	60,414	62,831	65,344	67,958	70,676	73,503	76,444	79,501	82,681	85,989
Utilities	$2,362	68,500	71,240	74,090	77,053	80,135	83,341	86,674	90,141	93,747	97,497	101,397	105,453	109,671	114,058	118,620	123,365	128,299	133,431	138,768	144,319	150,092	156,096	162,339
Management Fee 51.00	$1,479	1,479	1,523	1,569	1,616	1,665	1,715	1,766	1,819	1,874	1,930	1,988	2,047	2,109	2,172	2,237	2,304	2,373	2,445	2,518	2,593	2,671	2,751	2,834
PILOT on Housing 0.00	$0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Insurance	$500	14,500	15,080	15,683	16,311	16,963	17,641	18,347	19,081	19,844	20,638	21,464	22,322	23,215	24,144	25,109	26,114	27,158	28,245	29,374	30,549	31,771	33,042	34,364
Replacement Reserves	$925	$12,025	26,825	26,825	26,825	26,825	26,825	26,825	26,825	26,825	26,825	26,825	26,825	26,825	26,825	26,825	26,825	26,825	26,825	26,825	26,825	26,825	26,825	26,825
PILOT on Comm.	$0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL EXPENSES		233,284	256,920	266,108	275,664	285,601	295,936	306,683	317,860	329,483	341,570	354,141	367,214	380,809	394,947	409,650	424,941	440,842	457,379	474,577	492,462	511,062	530,404	550,520
Total Per Unit Cost		8,044	8,859	9,176	9,506	9,848	10,205	10,575	10,961	11,361	11,778	12,212	12,663	13,131	13,619	14,126	14,653	15,201	15,772	16,365	16,981	17,623	18,290	18,983
Expense/Income Ratio		0.76	0.81	0.81	0.82	0.82	0.83	0.83	0.84	0.84	0.85	0.86	0.86	0.87	0.87	0.88	0.89	0.89	0.90	0.90	0.91	0.92	0.93	0.93
INCOME AVAIL. FOR DEBT		74,755	60,361	60,691	60,939	61,100	61,166	61,132	60,990	60,732	60,351	59,838	59,185	58,382	57,419	56,287	54,975	53,470	51,763	49,839	47,687	45,292	42,640	39,715
Debt Service-1st Mortgage		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Debt Service-2nd Note/Mortgage (amortizing)		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Debt Service		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Debt Service Ratio		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
DSR from Operations and Reserve		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
CASH FLOW After Debt Service		74,755	60,361	60,691	60,939	61,100	61,166	61,132	60,990	60,732	60,351	59,838	59,185	58,382	57,419	56,287	54,975	53,470	51,763	49,839	47,687	45,292	42,640	39,715
FRM-CDBG %		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
%		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Remaining Cash Flow		74,755	60,361	60,691	60,939	61,100	61,166	61,132	60,990	60,732	60,351	59,838	59,185	58,382	57,419	56,287	54,975	53,470	51,763	49,839	47,687	45,292	42,640	39,715
											622,218					913,329								
OPERATING RESERVE:																								
Beginning Reserve Balance		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Interest Income		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Less Neg. Cash Flow		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ending Reserve Balance		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

DRAFT - for discussion purposes only and subject to change

MULTIFAMILY CASH FLOW

Year 24	Year 25	Year 26	Year 27	Year 28	Year 29	Year 30
639,939	659,138	678,912	699,279	720,257	741,865	764,121
-31,997	-32,957	-33,946	-34,964	-36,013	-37,093	-38,206
607,942	626,181	644,966	664,315	684,245	704,772	725,915
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	0	0	0	0	0	0
607,942	**626,181**	**644,966**	**664,315**	**684,245**	**704,772**	**725,915**
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	0	0	0	0	0	0
607,942	626,181	644,966	664,315	684,245	704,772	725,915
28,336	29,470	30,649	31,875	33,150	34,475	35,855
39,435	41,013	42,653	44,360	46,134	47,979	49,898
179,924	187,121	194,606	202,390	210,486	218,905	227,662
89,428	93,005	96,725	100,594	104,618	108,803	113,155
168,833	175,586	182,610	189,914	197,511	205,411	213,628
2,919	3,007	3,097	3,190	3,285	3,384	3,485
0	0	0	0	0	0	0
35,738	37,168	38,655	40,201	41,809	43,481	45,220
26,825	26,825	26,825	26,825	26,825	26,825	26,825
0	0	0	0	0	0	0
571,439	593,195	615,820	639,348	663,817	689,264	715,728
19,705	20,455	21,235	22,046	22,890	23,768	24,680
0.94	0.95	0.95	0.96	0.97	0.98	0.99
36,503	32,986	29,147	24,967	20,427	15,508	10,187
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0.00	0.00	0.00	0.00	0.00	0.00	0.00
0.00	0.00	0.00	0.00	0.00	0.00	0.00
36,503	32,986	29,147	24,967	20,427	15,508	10,187
0	0	0	0	0	0	0
0	0	0	0	0	0	0
36,503	32,986	29,147	24,967	20,427	15,508	10,187
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	0	0	0	0	0	0

AGENDA REVIEW LOAN COMMITTEE

PROJECT PRESENTATION

Credit Officer 0

Project Name Summit Ave Commons

HMFA # 0

Action Requested

1. Project Background:

Name of Sponsoring Entity:

Name of Principal:

# of Units: 0

Type of Construction:

Market (Affordable/Market Rate/Mixed Income/etc. .. Breakout):

Type of Population:

Municipality: Montvale

County: Bergen

Type of Financing:

2. Issues/Comments/Related Actions:

Has form 10 been reviewed by PM & TS?
Has a site inspection been conducted?

3. Disclosure of Current Arrearages with HMFA

4. Are they up-to-date on HMFA Subordinate Loans or Indicate NA:

Home Express:
SZL:
Others:

5. Are they up-to-date on submission of on Indicate NA:

Audit:
Budget:
Monthly Operational Reports:

6. Total Development Costs	$8,138,322		
Acquisition	$1		
Percentage of Total Development Costs	0%		
Construction Cost + Hard Cost Contingency + Utility Connection Fee		$7,107,455	
Percentage of Total Development Costs	87%		
**Remaining Soft Cost	$1,030,866		
Percentage of Total Development Costs	13%		
Percentage of Construction Costs	15%		

****If the percentage of soft costs are over 20%, please justify what could have caused this percentage to go over 20% (ie: escrows, negative arb, deferred developer fee)**

** Remaining Soft Cost	$1,030,866		
Less			
Negative Arbitrage:	$0		
COI:			
Deferred Developer Fee:	$0		
Escrows:	$7,250		
Other: ie tax credit fees			
construction interest , points	$0		
TOTAL	$7,250		
Net Soft Cost	$1,023,616		
Percentage of Total Development Costs	13%		
Percentage of Construction Costs	14%		

BREAKOUT OF PER UNIT COST			
Total Development Cost	$8,138,322	$281	DU
Less			
Eligible Soft Costs (see above calculation)	$7,250	$259	DU
Other: (ie Davis Bacon premium or other extraordinary costs)		$0	DU
NET TOTAL DEVELOPMENT COSTS	$8,131,072	$290,395	DU

DRAFT- for discussion purposes only and subject to change

New Jersey Housing and Mortgage Finance Agency
P. O. Box 18550, 637 South Clinton Avenue
Trenton, NJ 08650-2085

LOAN CLOSING STATEMENT

Construction or Construction and Permanent Financing

Project Name: Summit Ave Commons
Name of Borrower: 0
Address:
(Borrower's Mailing Address)

HMFA # : 0
Closing Date: 04/12/18
Prepared By: 0

A. Funding Sources:

		TOTAL Cash Sources	Sources used at Closing	Non-Cash Sources
TOTAL LOAN AMOUNT:				
PLUS:	**Indemnification/Commitment Fee** **Includes Interest of: $**			
PLUS:				
PLUS:				
PLUS:				
PLUS:	**Developer's fee:** pledged ☐ deferred ☐			
	Total of Funding Sources:	0.00		
	Subtotal of Funding Sources Used at Closing:		$0.00	$0.00
PLUS:	**CASH/CHECK from Borrower:**	0.00		
	Total of Funding Sources plus Cash from Borrower:	**$0.00**		

TOTAL ALL (Cash & Non-Cash)FUNDING SOURCES: **$0.00**

B. Disbursements:

Form 10 Line	Payee:	Purpose of Payment:	Disbursement Amount	Check #
		Taxes due at closing		
		Title Insurance & Recording Fees		
		Borrower's Attorney Fees		
		Disbursements/Reimbursements:	**$0.00**	

C. Fees Paid Out of Sources:

Form 10 Line	Payee:	Purpose of Payment:	Disbursement Amount	Check #
	HMFA	Points		
	HMFA	Tax Credit Fees		
	HMFA	3% Sp. Nds. 1-time serv. fee (if applicable)		
		Total Fees Paid Out of Sources:	**$0.00**	

D. Reserves/Escrows Deposited w/NJHMFA

Form 10 Line	Purpose	Description	Insert # Mos.	Insert $ per mo.	Disbursement Amount	Check #
2 I (b)	Real Estate Taxes				0.00	
2 I (a)	Insurance				0.00	
1 I (c)	Debt Service&Servicing Fee(1mo.)	Escrow for HMFA Debt Service & Servicing			0.00	
2 H	Working Capital*	Escrow for Expens during Rent-up incld Debt Serv			0.00	
2 I (f)	HMFA Operating Deficit Reserve	Escrow to cover DSR short fall in later years			0.00	
				Insert $ per mo.		
2 I (d)	Mortgage Insurance Premium		**15** months		0.00	
2 I (e)	Repair & Replacement	Escrow to cover R & R			0.00	
	Other:					
		Total of Reserves/Escrows:			**$0.00**	

* Wk. Cap includes Rent-up Fees & Advertising/Promotion

TOTAL DISBURSEMENTS, REIMBURSEMENTS, RESERVES & ESCROWS: **$0.00**

E. Net Settlement:

TOTAL CASH SOURCES:	**$0.00**
Less TOTAL DISBURSEMENTS, REIMBURSEMENTS, RESERVES & ESCROWS:	$0.00
Balance left for Construction ☐ **or**	**$0.00**
(check one) → **Amount to be used for Rehabilatation** ☐	

Agreed and Accepted by:

(Type Borrower's Name Here)

By: _____
(Type Name & Title Here)

and

By: _____
Tanya Murray, Director of Multifamily Programs and Lending

New Jersey Housing and Mortgage Finance Agency

By: _____
(Type Name & Title Here)

Developer Fee Recap	
Total Developer Fee (form 10B):	$529,295.00
less Amt. Pledged/Deferred @ Closing:	$0.00
Bal. Dev. Fee Payable during construction:	$529,295.00

Part IV - Project Costs

(Click on any of the items below)

- Signature Page
- Rent Qualification Chart
- Eligible Basis Limits
- Breakdown of Costs and Basis
- Carryover
- Tie Breaker
- Percentage Limits
- Operating Income
- Net Operating Income

Print Menu

Return to Form 10 Contents

15-YEAR OPERATING PROFORMA
REQUIRED SIGN-OFFS

We acknowledge the attached pro forma substantially matches the assumptions used in our underwriting of the mortgage (equity investment).

1st Mortgagee _____

OR

Syndicator/Investor _____
(if no lender)

BREAKDOWN OF COSTS AND BASIS
REQUIRED SIGN-OFFS

The undersigned acknowledges review of the attached Breakdown of Costs and Basis.

☐ Application/Re-Application, or 42(m) Determination

1st Mortgagee _____

Syndicator/Investor _____

☐ Carryover **OR** ☐ 8609

1st Mortgagee _____

Syndicator/Investor _____

Accountant _____

CURRENT INDICATIONS

Print Date	4/13/2018 9:32
Net Income (Year 1)	$301,554
Net Expense (Year 1)	$233,284
Qualified Basis	$0
Annual Tax Credit Amount	

TAX CREDIT RENT QUALIFICATION CHART

The purpose of this chart is to show that the **rent charged for each tax credit eligible unit** is at or below the set-aside selected. See N.J.A.C. 5:80-33.12(c)(7)(i).

a	b	c	d	e	f	g = e + f	h = g x 12	i	j = i x 30%	k = h / j
# of Units	Studio, Eff, SRO o # of Bedrooms	Unit Square Footage	# of Bathrooms	Net Rent	Tenant Utility Allowances	Gross Rent	Annual Gross Rent	County Income Limit (100%) Adjusted for Family Size	30% of County Median Income	Affordability Percentage
19	1	700		$969.00	$100.00	$1,069.00	$12,828.00		$0.00	#DIV/0!
9	1	700		$690.00	$100.00	$790.00	$9,480.00		$0.00	#DIV/0!
1	4	0		$2,400.00	$0.00	$2,400.00	$28,800.00		$0.00	#DIV/0!
0	0	0		$0.00	$0.00	$0.00	$0.00		$0.00	#DIV/0!
0	0	0		$0.00	$0.00	$0.00	$0.00		$0.00	#DIV/0!
0	0	0		$0.00	$0.00	$0.00	$0.00		$0.00	#DIV/0!
0	0	0		$0.00	$0.00	$0.00	$0.00		$0.00	#DIV/0!
0	0	0		$0.00	$0.00	$0.00	$0.00		$0.00	#DIV/0!
0	0	0		$0.00	$0.00	$0.00	$0.00		$0.00	#DIV/0!
0	0	0		$0.00	$0.00	$0.00	$0.00		$0.00	#DIV/0!
0	0	0		$0.00	$0.00	$0.00	$0.00		$0.00	#DIV/0!
0	0	0		$0.00	$0.00	$0.00	$0.00		$0.00	#DIV/0!
0	0	0		$0.00	$0.00	$0.00	$0.00		$0.00	#DIV/0!
0	0	0		$0.00	$0.00	$0.00	$0.00		$0.00	#DIV/0!
0	0	0		$0.00	$0.00	$0.00	$0.00		$0.00	#DIV/0!
0	0	0		$0.00	$0.00	$0.00	$0.00		$0.00	#DIV/0!
0	0	0		$0.00	$0.00	$0.00	$0.00		$0.00	#DIV/0!
0	0	0		$0.00	$0.00	$0.00	$0.00		$0.00	#DIV/0!
0	0	0		$0.00	$0.00	$0.00	$0.00		$0.00	#DIV/0!
0	0	0		$0.00	$0.00	$0.00	$0.00		$0.00	#DIV/0!
Provide information for Superintendent's Unit(s) below:										

Column A: Show the number of units for each bedroom size. If you need more lines, you may duplicate this chart. Show all units in the project on this chart, including market rate units.

Column B: 1BR, 2BR, 3BR, etc.

Column C: Unit Square Footage

Column D: 1 Bath, 1.5 Baths, 2 Baths, etc.

Column E: Show the amount of rent charged for each unit. This is the actual rent a non-subsidized tenant will pay. If the unit will be a Section 8 Project Based Assistance unit, you may show Fair Market Rent (FMR). Only Project Based Section 8 may show FMRs. Even if you anticipate renting to Section 8 Certificate holders, you must still reflect rents at or below 50% or 60% (depending on elected set-aside).

Column F: Calculate the utility allowance for each tax credit unit using the chart provided. Refer to IRS Final Regulation TD 8520 for requirements relating to the calculation of utility allowances.

Column G: Add the utility allowance to the monthly rent to find the Gross Rent.

Column H: Multiply the Gross Rent by 12 to get the Annualized Gross Rent.

Column I: List the county median income limit for the appropriate size household. Assume 1.5 persons per bedroom. Refer to the chart titled "New Jersey Income Limits by County Adjusted by Family Size".

Column J: Multiply the County Median Income Limit by 30%.

Column K: Divide the number in Column H by the number in Column J. The Code does not allow for the rounding down of affordability percentages.

In allocating the units in a project which shall be occupied by individuals of low and moderate income, the distribution must reflect low and moderate income units among the different sized units to reflect the same percentage distribution as the number of different sized units bears to the total number of units. A greater percentage of the low and moderate income units may, however, be allocated to the larger units. Additionally, low and moderate income units shall be distributed throughout the project such that the tenants of such units will have equal acess to and enjoyment of all common facilities of the project. N.J.A.C. 5:80-8.3.

2015 ELIGIBLE BASIS LIMITS WORKSHEET

Project: Summit Ave Commons

Municipality: Montvale

County: Bergen

Special Needs Cycle (Y or N)

Volume Cap Tax Credits (Y or N)

Total Units (including Super) **0**

Total # of Residential Floors

Bedrooms	# of Units (include all units)	Per Unit Elig Basis Limit	# of Units x Per Unit Limit
EFFICIENCIES		#N/A	
1-BR		#N/A	
2-BR		#N/A	
3-BR		#N/A	
4-BR		#N/A	
5-BR		#N/A	
TOTAL			**$0**

Eligible Basis Limits (per unit)	
4 residential floors or less	$250,000
5 or 6 residential floors	$275,000
7 residential floors and above	$300,000

Additional Items Added to Eligible Basis Limits:	
Community Service Facility	**$0**
Garage Parking	**$0**
Total	**$0**

Total Eligible Basis	**$0**

Limits apply to total eligible basis for rehabilitation or new construction tax credits BEFORE any applicable 130% adjustment for project location within a DDA or QCT.

BREAKDOWN OF COSTS & BASIS -- 2015

Project Name: Summit Ave Commons
Municipality: Montvale
County: Bergen

Reviewer:
Stage:

QCT	**(Y or N)**
DDA	**(Y or N)**
Special Needs	**(Y or N)**
Scattered Site Single/Duplex	**(Y or N)**
Davis Bacon Wages	**(Y or N)**

Print Date: 13-Apr-18

		Development Cost	Non-Depreciable Costs	Non-Eligible Costs	Eligible Basis for Rehab / NC	Eligible Basis for Acquisition
ACQUISITION						
Building						
Relocation						
Other:						
CONSTRUCTION						
Demolition						
Off-Site Improvements						
Residential Structures		$6,631,414			$6,631,414	
Environmental Clearances						
Surety & Bonding		$99,471			$99,471	
Building Permits		$45,000			$45,000	
Community Service Facility						
Garage Parking						
Fire Suppression System						
Green Features (for Solar and LEED Certification costs only)						
Other:						
CONTRACTOR FEE						
Contractor Overhead & Profit						
General Requirements						
CONTINGENCY						
Hard Contingency	4.89%	$331,570			$331,570	
Soft Contingency	12.66%	$55,558			$55,558	
PROFESSIONAL SERVICES						
Appraiser & Market Study						
Architect		$183,863			$183,863	
Attorney		$30,000			$30,000	
Cost Certification / Audit						
Engineering		$75,000			$75,000	
Environmental Consultant		$25,000			$25,000	
Historical Consultant						
Professional Planner						
Soil Investigation Geotec Eng)		$20,000			$20,000	
Surveyor						
LEED Provider contract fees, etc.						
CARRYING & FINANCING						
Interest						
Points & Bank Fees						
R.E. Taxes						
Insurance		$34,000			$34,000	
Title Insurance & Recording						
Utility Connection Fees		$70,900			$70,900	
Other Impact Fees						
Tax Credit Fees						
Neg. Arb. & Cost of Issuance						
FF&E						
SUB-TOTAL		**$7,601,776**			**$7,601,776**	
DEVELOPER FEE - CONSTRUCTION/REHAB	6.96%	$529,295			$529,295	
DEVELOPER FEE - EXISTING BUILDING						
LAND		$1	$1	X	X	
ORGANIZATIONAL COSTS				X	X	
SYNDICATION EXPENSES				X	X	
MARKETING EXP & HAS FEE				X	X	
ESCROWS: Working Capital				X	X	
Replacement Reserves				X	X	
Operating Deficit Escrow				X	X	
Debt, Serv. Fees, MIP & Insur.		$7,250	$7,250	X	X	
Tax				X	X	
Other Escrows:				X	X	
Other Escrows:				X	X	
TOTAL		**$8,138,322**	**$7,251**		**$8,131,071**	

First Mortgage DSCR #NUM!

<PERMANENT PHASE NEEDS ANALYSIS>

FUNDING SOURCE	INTEREST RATE	AMORTIZATION	AMOUNT
Federal Home Loan Bank			**$3,100,000**
HOPE VI/Choice Neighborhood			
Mandatory Deferred Fee - Constr/Rehab			
INVESTOR PROCEEDS NEEDED FROM LOW INC HSG TAX CREDITS			**$5,038,322**
SYNDICATOR			
LP or Non-Voting Member %			
PRICING			
FEDERAL LOW INCOME HOUSING TAX CREDITS NEEDED			

	Eligible Basis Limit		
	Lesser of Total or Limit		
x	QCT / DDA Adjustment	100%	
=	Basis as Adjusted		
x	Applicable Fraction	100.00%	100.00%
=	Qualified Basis		
x	Tax Credit Percentage	7.50%	3.20%
=	Tax Credits based on Qualified Basis		

Total Maximum LIHTC

Carryover Test	**$821,238**
Development Cost / Unit	
Construction Cost / Unit	

****9% projects cannot exceed $250,0**

CARRYOVER -- 2015

Project Name: Summit Ave Commons
Municipality: Montvale
County: Bergen

		Development Cost	*Reasonably Expected Basis*	*Costs Incurred through*
ACQUISITION				
Building		**$0**		
Relocation		**$0**		
Other:	$0	**$0**		
CONSTRUCTION				
Demolition		**$0**	**$0**	
Off-Site Improvements		**$0**		
Residential Structures		**$6,631,414**	**$6,631,414**	
Environmental Clearances		**$0**		
Surety & Bonding		**$99,471**	**$99,471**	
Building Permits		**$45,000**	**$45,000**	
Community Service Facility		**$0**		
Garage Parking		**$0**		
Fire Suppression System		**$0**		
Green Features (for Solar and LEED Cert. costs only)		**$0**		
Other:	$0	**$0**		
CONTRACTOR FEE				
Contractor Overhead & Profit		**$0**		
General Requirements		**$0**		
CONTINGENCY				
Hard Contingency (10% Rehab / 5% New)		**$331,570**	**$331,570**	
Soft Contingency		**$55,558**	**$55,558**	
PROFESSIONAL SERVICES				
Appraiser & Market Study		**$0**		
Architect		**$183,863**	**$183,863**	
Attorney		**$30,000**	**$30,000**	
Cost Certification / Audit		**$0**		
Engineering		**$75,000**	**$75,000**	
Environmental Consultant		**$25,000**	**$25,000**	
Historical Consultant		**$0**		
Professional Planner		**$0**		
Soil Investigation (Geotec Eng.)		**$20,000**	**$20,000**	
Surveyor		**$0**		
LEED Provider contact fees, etc.		**$0**		
CARRYING & FINANCING				
Interest		**$0**		
Points & Bank Fees		**$0**		
R.E. Taxes		**$0**		
Insurance		**$34,000**	**$34,000**	
Title Insurance & Recording		**$0**		
Utility Connection Fees		**$70,900**	**$70,900**	
Other Impact Fees		**$0**		
Tax Credit Fees		**$0**	**$0**	
Neg. Arb. & Cost of Issuance (Paid during Cons't)		**$0**		
FF & E		**$0**		
SUB-TOTAL		**$7,601,776**	**$7,601,776**	**$0**
DEVELOPER FEE - Constr/Rehab		**$529,295**	**$529,295**	
DEVELOPER FEE - Building		**$0**		
LAND		**$1**	**$1**	
ORGANIZATIONAL COSTS		**$0**	**X**	**X**
SYNDICATION EXPENSES		**$0**	**X**	**X**
MARKETING EXP & HAS FEE		**$0**	**X**	**X**
ESCROWS:	Working Capital	**$0**	**X**	**X**
	Replacement Reserves	**$0**	**X**	**X**
	Operating Deficit Escrow	**$0**	**X**	**X**
	Debt, Serv. Fees, MIP & Insur.	**$7,250**	**X**	**X**
	Tax	**$0**	**X**	**X**
	$0	**$0**	**X**	**X**
		$0	**X**	**X**
TOTAL		**$8,138,322**	**$8,131,072**	**$0**

CARRYOVER PERCENTAGE **0.00%**

DEVELOPER PERCENTAGE INCURRED **0.00%**

2015 TIEBREAKER WORKSHEET

Project Name: **Montvale**

Tiebreaker #1: Non-HOPE VI/Choice Neighborhood Projects

Note: Only income qualified units are eligible *(DO NOT include Super's unit).

Family / Supported Housing Cycle = Least amount of Tax Credits Per Bedroom

Senior Cycle = Least amount of Tax Credits Per Unit

Please indicate "Y" in ap

Family / Supp Hsg ____

Senior ____

Unit Size	# of Units		# of Bedrooms
Studio, SRO, etc.		x .75 =	
1BR		x 1 =	
2BR		x 2 =	
3BR		x 3 =	
4BR		x 4 =	
5BR		x 5 =	
TOTAL			

Tax Credit Amount:

Family / Supp Hsg Tie-Breaker

Senior Tie-Breaker

Tiebreaker #1: HOPE VI and Choice Neighborhood Projects

HOPE VI/Choice Neighborhood Funds Committed

Total Development Cost

Tie-Breaker

Tiebreaker #2: Lowest Total Development Cost Per Bedroom

# of Bedrooms in Project:

Unit Size	# of Units		# of Bedrooms
Studio, SRO, etc.		x .75 =	
1BR		x 1 =	
2BR		x 2 =	
3BR		x 3 =	
4BR		x 4 =	
5BR		x 5 =	

# of Bedrooms in Project:

Total Development Cost:

Total Development Cost Per Bedroom = **Total Development Cost / # of Bedrooms**

Tie-Breaker =

ɔpropriate box
(Y or N)

(Y or N)

2015 PERCENTAGE LIMITS

Project Name: **Summit Ave Commons**

Contractor Profit/Overhead Limits

Construction Contract Amount			Bracket %		Maximum Fee for Lower Brackets
Bracket Minimum		Bracket Maximum			
$1	to	$500,000	11.75%		$0
$500,001	to	$1,000,000	10.75%	of amount over $ 500,000 +	$58,750
$1,000,001	to	$5,000,000	9.50%	of amount over $ 1,000,000 +	$112,500
$5,000,001	to	$10,000,000	8.50%	of amount over $ 5,000,000 +	$492,500
$10,000,001	to	$15,000,000	7.00%	of amount over $10,000,000 +	$917,500
$15,000,001	to	$20,000,000	6.70%	of amount over $15,000,000 +	$1,267,500
$20,000,001	and over		6.20%	of amount over $20,000,000 +	$1,602,500

Example Calculation of Maximum Contractor Profit/OH

Construction Contract	$12,300,000
- Bracket Minimum	$10,000,001
Difference	$2,299,999
x Bracket % for Contract Amount	7.00%
Difference x Bracket %	$161,000
+Maximum Fee for Lower Brackets	$917,500
Maximum Profit & OH	$1,078,500

	Amounts included in Construction Contract
Demolition	$
Off-Site Improvements	$
Residential Structures	$6,631,414
Environmental Clearances	$
Surety & Bonding	$99,471
Building Permits	$45,000
Community Service Facility	$
Garage Parking	$
Fire Suppression System	$
Green Features	$
Other: _____	$
General Requirements	$
Construction Contract Amount	$6,775,885

Calculation of Maximum Contractor Profit & Overhead

Construction Contract	$6,775,885
- Bracket Minimum	$5,000,001
Difference	$1,775,884
x Bracket % for Contract Amount	8.50%
Difference x Bracket %	$150,950
+ Maximum Fee for Lower Brackets	$492,500
Maximum Profit & OH	$643,450
Budgeted Contractor Profit & OH	

Developer Fee Limits

Projects with 25 Units or Less	20.00%
Projects serving a Special Needs Population	20.00%
Scattered Site Single Family or Duplex Projects	20.00%
General Rule*	15.00%
Acquisition	8.00%

New Const. / Rehab. Developer Fee Subtotal
6.96%

*Building Acquisition Costs Excluded if Related Party Transaction

Substantial v. Minimum Rehabilitation (NOTE: Minimum Rehab. is now defined as less than $25,000/unit)

Rehabilitation expenses per unit = $\frac{\text{Construction Cost + Contractor Fee}}{\text{Total Number of Units}}$ per unit

FEDERAL LOW INCOME HOUSING TAX CREDITS CALENDAR YEAR -- 2015

OPERATING INCOME

Summit Ave Commons
Montvale
Bergen

	PER UNIT or %	ANNUAL TRENDING	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10	YEAR 11	YEAR 12	YEAR 13	YEAR 14	YEAR 15
INCOME																	
TAX CREDIT UNITS																	
GROSS RENT		**2.00%**	$324,252	$330,737	$337,351	$344,098	$350,979	$357,998	$365,157	$372,460	$379,909	$387,507	$395,257	$403,162	$411,225	$419,449	$427,837
LAUNDRY		**1.00%**	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
PARKING		**1.00%**	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
OTHER		**1.00%**	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
SUBTOTAL			$324,252	$330,737	$337,351	$344,098	$350,979	$357,998	$365,157	$372,460	$379,909	$387,507	$395,257	$403,162	$411,225	$419,449	$427,837
VACANCY																	
PHYSICAL	**6%**		-$19,455	-$19,844	-$20,241	-$20,646	-$21,059	-$21,480	-$21,909	-$22,348	-$22,795	-$23,250	-$23,715	-$24,190	-$24,674	-$25,167	-$25,670
COLLECTION	**1%**		-$3,243	-$3,307	-$3,374	-$3,441	-$3,510	-$3,580	-$3,652	-$3,725	-$3,799	-$3,875	-$3,953	-$4,032	-$4,112	-$4,194	-$4,278
NET			**$301,554**	**$307,586**	**$313,736**	**$320,011**	**$326,410**	**$332,938**	**$339,596**	**$346,387**	**$353,315**	**$360,382**	**$367,589**	**$374,940**	**$382,439**	**$390,088**	**$397,889**
SUBSIDIES																	
SECTION 8																	
SECTION 9																	
OTHER																	
SUBTOTAL			**$0**	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
VACANCY	**5%**		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
NET			**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**
NON TAX CREDIT UNITS																	
GROSS RENT		**2.00%**		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
LAUNDRY		**1.00%**		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
PARKING		**1.00%**		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
OTHER		**1.00%**		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
SUBTOTAL			$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
VACANCY																	
PHYSICAL	**9%**		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
COLLECTION	**1%**		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
NET			**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**
COMMERCIAL INCOME																	
GROSS RENT		**2.00%**	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
PARKING		**1.00%**		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
OTHER:		**1.00%**		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
OTHER		**1.00%**		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
SUBTOTAL			$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
VACANCY																	
PHYSICAL	**9%**		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
COLLECTION	**1%**		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
NET			**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**
EFFECTIVE INCOME			**$301,554**	**$307,586**	**$313,736**	**$320,011**	**$326,410**	**$332,938**	**$339,596**	**$346,387**	**$353,315**	**$360,382**	**$367,589**	**$374,940**	**$382,439**	**$390,088**	**$397,889**

FEDERAL LOW INCOME HOUSING TAX CREDITS **CALENDAR YEAR -- 2015**

NET OPERATING INCOME

Summit Ave Commons
Montvale
Bergen

Tenant Population
Elevator (Y or N)
Rehab or New

	PER UNIT or %	ANNUAL TRENDING	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10	YEAR 11	YEAR 12	YEAR 13	YEAR 14	YEAR 15
EFFECTIVE INCOME			**$301,554**	**$307,586**	**$313,736**	**$320,011**	**$326,410**	**$332,938**	**$339,596**	**$346,387**	**$353,315**	**$360,382**	**$367,589**	**$374,940**	**$382,439**	**$390,088**	**$397,889**
EXPENSES																	
ADMINISTRATION		**3.00%**	$11,497	$11,841	$12,196	$12,561	$12,937	$13,325	$13,724	$14,135	$14,559	$14,995	$15,444	$15,907	$16,384	$16,875	$17,381
SALARIES		**3.00%**	$16,000	$16,480	$16,974	$17,483	$18,007	$18,547	$19,103	$19,676	$20,266	$20,873	$21,499	$22,143	$22,807	$23,491	$24,195
M&R		**3.00%**	$73,000	$75,190	$77,445	$79,768	$82,161	$84,625	$87,163	$89,777	$92,470	$95,244	$98,101	$101,044	$104,075	$107,197	$110,412
MAINTENANCE CONTRACTS		**3.00%**	$36,283	$37,371	$38,492	$39,646	$40,835	$42,060	$43,321	$44,620	$45,958	$47,336	$48,756	$50,218	$51,724	$53,275	$54,873
INSURANCE		**3.00%**	$14,500	$14,935	$15,383	$15,844	$16,319	$16,808	$17,312	$17,831	$18,365	$18,915	$19,482	$20,066	$20,667	$21,287	$21,925
SUBTOTAL			**$151,280**	**$155,817**	**$160,490**	**$165,302**	**$170,259**	**$175,365**	**$180,623**	**$186,039**	**$191,618**	**$197,363**	**$203,282**	**$209,378**	**$215,657**	**$222,125**	**$228,786**
UTILITIES		**3.00%**	$68,500	$70,555	$72,671	$74,851	$77,096	$79,408	$81,790	$84,243	$86,770	$89,373	$92,054	$94,815	$97,659	$100,588	$103,605
MANAGEMENT FEE	**0.50%**	net rent	$1,479	$1,508	$1,538	$1,568	$1,599	$1,630	$1,662	$1,695	$1,728	$1,762	$1,797	$1,832	$1,868	$1,905	$1,943
REAL ESTATE TAXES	**0.00%**	net rent	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
RESERVES		**3.00%**	$12,025	$12,385	$12,756	$13,138	$13,532	$13,937	$14,355	$14,785	$15,228	$15,684	$16,154	$16,638	$17,137	$17,651	$18,180
SOCIAL SERVICES		**3.00%**	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
OTHER:		**3.00%**		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
OTHER:		**3.00%**		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
OTHER:		**3.00%**		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
TOTAL OPERATING EXPENSES			**$233,284**	**$240,265**	**$247,455**	**$254,859**	**$262,486**	**$270,340**	**$278,430**	**$286,762**	**$295,344**	**$304,182**	**$313,287**	**$322,663**	**$332,321**	**$342,269**	**$352,514**
NET OPERATING INCOME			**$68,270**	**$67,321**	**$66,281**	**$65,152**	**$63,924**	**$62,598**	**$61,166**	**$59,625**	**$57,971**	**$56,200**	**$54,302**	**$52,277**	**$50,118**	**$47,819**	**$45,375**
DEBT SERVICE																	
FIRST HARD DEBT SERVICE			#NUM!	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
FIRST HARD DEBT SERVICING FEE	**0.00**	**bp**	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
SECOND HARD DEBT SERVICE																	
CASH FLOW AFTER HARD DEBT			**#NUM!**	**$67,321**	**$66,281**	**$65,152**	**$63,924**	**$62,598**	**$61,166**	**$59,625**	**$57,971**	**$56,200**	**$54,302**	**$52,277**	**$50,118**	**$47,819**	**$45,375**
HOME EXPRESS DEBT SERVICE (If Applicable)			#NUM!	$33,661	$33,141	$32,576	$31,962	$31,299	$30,583	$29,813	$28,986	$28,100	$27,151	$26,139	$25,059	$23,910	$22,688
RATIO ANALYSIS																	
FIRST HARD DEBT COVERAGE RATIO			#NUM!	0	0	0	0	0	0	0	0	0	0	0	0	0	0
EXPENSE : EFFECTIVE INCOME			0.77	0.78	0.79	0.8	0.8	0.81	0.82	0.83	0.84	0.84	0.85	0.86	0.87	0.88	0.89
OPERATING DEFICIT RESERVE																	
INTEREST INCOME	**0.00%**	%	$0	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!
UTILIZATION FOR CASH FLOW SHORTFALL			#NUM!	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
BALANCE	**$0**		#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!

Summit Ave, Montvale, NJ Preliminary Project Proforma 4/12/2018

Proposed SF	Buildings	1 bedroom units	4 bedroom group home	Total Units	Total Beds
28,916	9	28	1	29	32

	Budget Numbers	
Site Work & Construction Cost	$	6,631,414.00
Construction Contingency	$	331,570.70
	$	6,962,984.70
Architect And Mechanical Fees	$	183,863.63
Civil Engineering	$	75,000.00
Attorney	$	30,000.00
Environmental	$	25,000.00
Geotechnical	$	20,000.00
Insurances	$	34,000.00
Developers Fee	$	529,295.00
Sewer Connection Fees	$	45,900.00
O&R Connection Fees	$	25,000.00
Permit Fees	$	45,000.00
Bonding Fees	$	99,471.21
	$	1,112,529.84
Soft Cost Contingency	$	55,626.49
	$	1,168,156.33
	$	8,131,141.03
Cost Per Unit	$	254,098.16

Proposed Rents	Number of Units	Net Rent amount*	Monthly Income	Rent Income Range
	19	$ 969	$ 18,411	Moderate
	9	$ 690	$ 6,210	Low
	Group Home	$ 2,400	$ 2,400	Very Low
Total estimated monthly income			**$ 27,021**	

*estimated $100 monthly for utilities

2018

Planning Board Approval: May 1, 2018

Council Approval: May 8, 2018

BOROUGH OF MONTVALE

2018 Affordable Housing Trust Fund Spending Plan

1) INTRODUCTION

The Borough of Montvale, Bergen County is in the processing of preparing a new Housing Element and Fair Share Plan in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Fair Housing Act (N.J.S.A. 52:27D-301) and the November 14, 2017 Settlement Agreement. On August 9, 1984 COAH and the Borough simultaneously approved/adopted a development fee ordinance. COAH approved an amended development fee ordinance on January 2, 2007, which was then adopted by the Borough on February 13, 2007.[1]

2) REVENUES FOR CERTIFICATION PERIOD

As of January 31, 2018, the Borough of Montvale has collected $3,942,207.85 and expended $2,855,18.88, resulting in a balance of $1,087,018.97. All development fees, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, and interest generated by the fees are deposited in a separate interest-bearing affordable housing trust fund in Wells Fargo for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:97-8.7-8.9, as described in the sections that follow.

To calculate a projection of revenue anticipated during the period of third round substantive certification, the Borough of Montvale considered the following:

(a) Development fees:

1. Residential and non-residential projects that have had development fees imposed upon them at the time of preliminary or final development approvals;

2. All projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy; and

3. Future development that is likely to occur based on historical rates of development.

(b) Payment in lieu (PIL):

Actual and committed payments in lieu (PIL) of construction from developers as follows: Woodland Heights was approved in 2008 with a payment-in-lieu provision. Eight homes remain to be constructed. The payment-in-lieu is $140,000. The developer is required to pay the fee in two parts. Fifty percent is due upon issuance of the last home building permit and the remaining 50% is due upon issuance of the final home certificate of occupancy.

(c) Other funding sources:

Funds from other sources, including, but not limited to, the sale of units with extinguished controls, repayment of affordable housing program loans, rental income and proceeds from the sale of affordable units. No funds are anticipated at this time.

(d) Projected interest:

Interest on the projected revenue in the municipal affordable housing trust fund at the current average interest rate.

The Borough of Montvale projects a total of $439,481.78 in revenue to be collected between February 1, 2018 and December 31, 2025. This projected amount, when added to the Borough of Montvale's trust fund balance as of January 31, 2018, results in an anticipated total revenue of $1,526,500.75 available to fund and administer its affordable housing plan. All interest earned on the account shall be used only for the purposes of affordable housing.

Projected Revenues – Affordable Housing Trust Fund									
Source of Funds	2018	2019	2020	2021	2022	2023	2024	2025	Total
(a) Development fees:									
Development Pending Approval									$0
Approved Development	$0	$0	$0	$0	$0	$0	$0	$0	$0.00
Projected Residential Development	$7,818	$39,089	$15,636	$31,271	$7,818	$23,453	$46,907	$31,271	$203,262.15
Projected Non-Res. Development			$32,000	$32,000	$32,000				$96,000.00
(b) Payments in Lieu of Construction		$140,000							$140,000
(c) Other Funds									$0
(d) Interest	$4	$90	$24	$32	$20	$12	$23	$16	$220
Total	$7,821.68	$179,178.42	$47,659.37	$63,302.74	$39,837.68	$23,465.05	$46,930.10	$31,286.74	$439,481.78

*For purposes of projecting revenues, we have utilized historic residential Certification of Occupancy data that occured between 2010 and 2017. Projections assume the estimated value of a new home is $521,185. The value is then multipled by 1.5%.

3) ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by the Borough of Montvale:

(a) Collection of development fee revenues:

Collection of development fee revenues shall be consistent with the Borough of Montvale's development fee ordinance for both residential and non-residential developments in accordance with COAH's rules and P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7) and with the November 14, 2017 Settlement Agreement.

(b) Distribution of development fee revenues:

The Administration forwards a resolution to the governing body recommending the expenditure of development fee revenues as set forth in this spending plan. The governing body reviews the request for consistency with the spending plan and adopts the recommendation by resolution. The release of the funds requires the adoption of the governing body resolution in accordance with the Court-approved spending plan. Once a request is approved by resolution, the Chief Financial Officer releases the requested revenue from the trust fund for the specific use approved in the governing body's resolution.

4) DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS

(a) Rehabilitation and new construction programs and projects

- **Rehabilitation program:** a minimum of $125,000. The Borough of Montvale will dedicate a minimum of $125,000 to rehabilitation as the Borough presently has a Rehabilitation Obligation of 5 units.

- **New construction project(s)**: The Borough will dedicate approximately $80,000 to School #2, which is currently under construction. This funding will assist with a funding gap and enable United Way/Madeline to finish construction and occupy the building this year.

(b) Alternative Living Arrangement (N.J.A.C. 5:93-5.8)

- The Borough will dedicate up to $50,000 (depending on development fees collected) to assist a group home provider looking to locate within Montvale.[2] The Borough could structure the program to offer $10,000 per creditable bedroom. This money will allow a group home provider to make the necessary structural changes to accommodate residents. It should be noted that this is an option the Borough may wish to pursue but is not built into the HEFSP. If the opportunity arises, the Borough would like the flexibility to take advantage of this mechanism to generate affordable housing due to its limited remaining vacant and developable land.

(c) Market to Affordable (N.J.A.C. 5:97-6.9)

- The Borough will dedicate up to $450,000 (depending on development fees collected) to buy existing homes within the Borough and deed restrict the units as affordable units with a minimum 30-year deed restriction.[3] The Rolling Ridge condominium development presents the opportunity to purchase two existing market-rate units and convert them to affordable units. Units in the development have recently sold for $160,000 to $235,000 over the last three years. It should be noted that this is an option the Borough may wish to pursue but is not built into the HEFSP. If the opportunity arises, the Borough would like the flexibility to take advantage of this mechanism to generate affordable housing due to its limited remaining vacant and developable land.

(d) Affordability Assistance (N.J.A.C. 5:97-8.8)

Municipalities are required to spend a minimum of 30% of development fee revenue to render existing affordable units more affordable and one-third of that amount must be dedicated to very low-income households (i.e. households earning less than 30% of the regional median income). The actual affordability assistance minimums will be calculated on an ongoing basis in the CTM system based on actual revenues so long as COAH continues to provide access to the CTM system.

According to the chart on page 6, the Borough of Montvale is required to dedicate $663,086.48 from the affordable housing trust fund to render units more affordable, including $221,028.83 to render units more affordable to households earning 30% or less of median income by region, as follows:

- **Rental Assistance.** Montvale will set aside a minimum of $120,000 for rental assistance.[4] The Borough has 56 affordable rental units within the community currently. Ten of these units are within group home facilities. The Borough anticipates on providing approximately $2,000 in rental assistance per unit. This may be a one time or multiple payment of all or a portion of the monthly rent. Assistance will be provided on a first-come, first-serve basis to existing income-eligible renters with good credit standing.

- **HOA Assistance**. Montvale will set aside a minimum of $84,000 for HOA assistance.[5] The Borough has 42 existing affordable for-sale units within the community. The Borough anticipates on providing approximately $2,000 in HOA assistance per unit. This may be a one time or multiple payment of all or a portion of the HOA monthly fee. Assistance will be provided on a first-come, first-serve basis to existing income-eligible homeowners with good credit standing.

- **Green building strategies.** Montvale will set aside up to $100,000 to fund one or more solar panel installations on 100% affordable developments.[6] There are three existing 100% affordable facilities. (A fourth facility is anticipated to open this year.) Solar panels would reduce the building's utility expenses and make it more affordable for residents living within the structure. Assistance will be provided on a first-come, first-serve basis to the existing 100% affordable facilities.
    - The Borough will target the existing very-low income developments to ensure compliance with the requirement to spend one-third of the affordability assistance on very-low income units.

- **Conversion of moderate- to low-income units.** Montvale will reserve a maximum of $375,000 to fund the conversion of moderate-income units to low-income units.[7] The DePiero development is anticipated to contain 32 affordable rental units in a 100% affordable development. The Borough has been working with Bergen County United Way to bring the development to fruition. United Way initially expressed interest in constructing a facility with a majority of units as moderate-income. However, the Borough has indicated that the development must provide a 50/50 split between low- and moderate-income units. In an effort to offset the income loss, the Borough is open to making a payment to United Way to convert units from moderate- to low-income.

AFFORDABILITY ASSISTANCE CALCULATION			
Actual development fees through 1/31/2018		$	2,804,926.74
Actual interest earned through 1/31/2018	+	$	74,781.11
Development fees projected 2018-2025	+	$	299,262.15
Interest projected 2018-2025	+	$	219.63
Less housing activity expenditures through 1/31/2018	-	$	968,901.35
Total	=	$	2,210,288.28
Calculate 30 percent	x .30 =	$	663,086.48
Less Affordability assistance expenditures through 1/31/2018	-	$	-
Projected Minimum Affordability Assistance Requirement 2/1/2018 through 12/31/2025	=	$	663,086.48
Projected Minimum Very Low-Income Affordability Assistance Requirement 2/1/2018 through 12/31/2025	÷ 3 =	$	221,028.83

(e) Administrative Expenses (N.J.A.C. 5:97-8.9)

Municipalities are permitted to use affordable housing trust fund revenue for related administrative costs up to a 20% limitation pending funding availability after programmatic and affordability assistance expenditures. The actual administrative expense maximum is calculated on an ongoing basis in the CTM system based on actual revenues.[8]

ADMINISTRATIVE EXPENSE CALCULATION		
Actual dev fees and interest thru 1/31/2018		$2,879,707.85
Projected dev fees and interest 2018 thru 2025	+	$439,481.78
Payments-in-lieu of construction and other deposits thru 1/31/2018	+	$1,062,500.00
Less RCA expenditures thru 1/31/2018	-	$1,475,000.00
Total	=	$2,906,689.63
Calculate 20 percent	x .20 =	$581,337.93
Less admin expenditures thru 1/31/2018	-	$411,287.53
Projected Maximum available for administrative expenses 2/1/2018 thru 12/31/2025	=	$170,050.40

The Borough of Montvale projects that $170,050.40 will be available from the affordable housing trust fund to be used for administrative purposes. Projected administrative expenditures, subject to the 20% cap, are as follows:

- Borough Attorney, Engineer and Planner fees as well as consulting fees related to the administration and implementation of the Borough's affordable housing program(s).
- Salaries and benefits for municipal employees for administration and implementation of the housing plan and program(s).
- Municipal Housing Liaison and Administrative Agent training and on-going continuing education.
- Completion of annual trust fund and affordable housing activity monitoring as detailed in the November 14, 2017 Settlement Agreement.
- Completion of very-low income monitoring every three years as detailed in the Settlement Agreement.
- Completion of the mid-point realistic opportunity review due on July 1, 2020 as detailed in the Settlement Agreement.

5) EXPENDITURE SCHEDULE

The Borough of Montvale intends to use affordable housing trust fund revenues for the creation and/or preservation of affordable housing units. It should be noted that the amount spent in a given year for any line item may actually span multiple years in reality. The chart on page 8 provides an estimated timeline for expenditure and does not restrict the Borough from spending the money sooner or later in the Third Round period.

Projects/Programs	Number of Units Projected	2018	2019	2020	2021	2022	2023	2024	2025	Total
Rehabilitation Program (Hard Costs)	8	$40,000	$40,000	$20,000						$100,000.00
School #2	14	$80,000								$80,000.00
Purchase Existing Market-Rate Units	2+/-		$225,000	$225,000						$450,000.00
Group Home Assistance	4		$50,000							$50,000.00
Affordability Assistance										
Rental Assistance	56+/-	$25,000	$25,000	$25,000	$25,000	$20,000				$120,000.00
HOA Assistance	42+/-	$20,000	$20,000	$20,000	$24,000					$84,000.00
Green Building Strategies	TBD				$50,000	$50,000				$100,000.00
Conversion of Units	TBD		$200,000	$175,000						$375,000.00
Administration		$5,000	$10,000	$12,501	$20,000	$20,000	$25,000	$25,000	$25,000	$142,500.75
Rehabilitation Admininistration		$10,000	$10,000	$5,000						$25,000.00
Total		$180,000	$580,000	$482,501	$119,000	$90,000	$25,000	$25,000	$25,000	$1,526,500.75

6) EXCESS OR SHORTFALL OF FUNDS

In the event of any unexpected revenue shortfall, where funds are not sufficient to implement the plan, the Borough of Montvale will approve a resolution of intent to bond. The only two mechanisms that require funding under this Spending Plan are the Rehabilitation Program and the affordability assistance required to date. Furthermore, if the 100% affordable DePiero development failed to be fully funded from outside sources, the Borough would need to issue a resolution of intent to bond to fill the funding gap.

In the event more funds than anticipated are collected, projected funds exceed the amount necessary to implement the Fair Share Plan, or the Borough of Montvale is reserving funds for affordable housing projects to meet a future affordable housing obligation, these excess funds will be used to make additional capital repairs, purchase additional existing market-rate units or provide additional group home assistance for new providers within the community.

7) BARRIER FREE ESCROW

Collection and distribution of barrier free funds shall be consistent with the Borough of Montvale's Affordable Housing Ordinance (2018-1450), in accordance with N.J.A.C. 5:97-8.

8) SUMMARY

The Borough of Montvale intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:97-8.7 through 8.9 and consistent with the housing programs outlined in the Housing Plan Element and Fair Share Plan dated April 17, 2018.

The Borough of Montvale has a balance of $1,087,018.97 as of January 31, 2018 and anticipates an additional $439,481.78 in revenues through 2025 for a total of $1,526,500.75. To date, the Borough has expended a total of $2,855,188.88 on RCAs, administration and other housing activity. This Spending Plan demonstrates the Borough's **commitment to expend** $1,526,500.75 through December 31, 2025, including a commitment to expend with respect to the following:

- Commitment to expend up to $100,000 towards hard costs for a rehabilitation program;
- Commitment to expend $80,000 to assist with the construction of School #2;
- Commitment to expend up to $450,000 towards a market to affordable program;
- Commitment to expend up to $50,000 towards the creation of new group homes within the Borough;
- Commitment to expend at least $679,000 on affordability assistance; and
- Commitment to expend up to $167,500.75 towards administrative costs.

SPENDING PLAN SUMMARY		
Balance as of January 31, 2018		$1,087,018.97
Projected Revenue 2018-2025		
Development fees	+	$299,262.15
Payments in lieu of construction	+	$140,000.00
Other funds	+	$0.00
Interest	+	$219.63
TOTAL REVENUE	=	$1,526,500.75
Projected Expenditures 2018-2025		
Funds used for Rehabilitation (Hard Costs)	-	$100,000.00
Funds used for Projects		
1. School #2	-	$80,000.00
2. Market to Affordable	-	$450,000.00
3. Group Home Assistance	-	$50,000.00
Affordability Assistance	-	$679,000.00
Administration	-	$167,500.75
Total Projected Expenditures	=	$1,526,500.75
Remaining Balance	=	$0.00

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[1] COAH approval dates from COAH Tracking and Monitoring website.

[2] This amount assumes the trust fund receives $440,000 as illustrated by the chart on page 3. If the Borough collects less than the projected amount, this amount may be reduced, as seen fit by the governing body.

[3] Ibid.

[4] Ibid.

[5] Ibid.

[6] Ibid.

[7] Ibid.

[8] This assumes COAH continues to allow access to the CTM system.

Introduced by: Mayor Zeller

Seconded by: Mr. Vogt

BOROUGH OF MONTVALE

PLANNING BOARD

RESOLUTION GRANTING PRELIMINARY AND FINAL SITE PLAN APPROVAL, A MAJOR SOIL MOVEMENT PERMIT, AND APPROVAL OF AN ENVIRONMENTAL IMPACT STATEMENT TO METROPOLITAN HOME DEVELOPMENT AT WERIMUS, LLC FOR PREMISES DESIGNATED AS BLOCK 301, LOT 3

WHEREAS, application has been made to the Planning Board of the Borough of Montvale (the "Planning Board") by Metropolitan Home Development At Werimus, LLC (the "applicant"), 50 Tice Boulevard, Woodcliff Lake, New Jersey for preliminary and final site plan approval, together with approval of an Environmental Impact Statement ("EIS"), and a major soil movement permit relating to premises known as Block 301, Lot 3 as depicted on the tax assessment map of the Borough of Montvale ("the premises" or "the property"); and

WHEREAS, the application is made with the consent of the property owner of record, Henry J. Bonnabel ("the property

owner"), 101 West Street, Hillsdale, New Jersey; and

WHEREAS, an application has also been submitted for a major soil movement permit; and

WHEREAS, public hearings were held on said application on notice to all property owners within two hundred (200) feet therefrom and was published in the official newspaper of the Municipality, at least ten (10) days next preceding the date of hearing; and

WHEREAS, the Planning Board has had the benefit of the reports of its professionals and has deliberated on the matters brought forth at said public hearings, at which time members of the public were afforded an opportunity to be heard; and

WHEREAS, the Planning Board has made certain findings of fact and conclusions with respect to said application.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Borough of Montvale that the following facts are made and determined:

1. The subject property is located on the westerly side of Spring Valley Road, contiguous in part to the New York State border, and comprises a land area of 377,382 square feet, or 8.663 acres. The site is a long, somewhat irregularly shaped and narrow parcel with only 93 feet of frontage on Spring Valley Road.

Approximately two-thirds of the property has been utilized for farming activities and the northerly portion of the site, near the State line, contains a two and one-half (2½) story frame dwelling, as well as two detached garages and smaller accessory structures. Currently access to the property and to the existing dwelling is via a gravel driveway on the adjacent lot to the north on the New York State side. A former farm stand, now abandoned, is located on the property along Spring Valley Road. Access to the site, and in particular the farm stand, from this roadway occurs across the entire frontage of the property.

2. The property was the subject of a Settlement Agreement mediated by the Council On Affordable Housing ("COAH") in connection with an objection filed by the property owner. An Agreement For Affordable Housing dated November 16, 2004 and amended by Agreement dated August 8, 2006 permits the construction of 70 units, with 56 being multi-family attached townhouse units, together with 14 dwelling units of rental affordable housing. These Agreements provide for the creation of an AH-8A Affordable Housing District and establish area, yard and bulk requirements, as well as certain requirements pertaining to design standards pertaining to the proposed development. The subject property has in fact been re-zoned consistent with these Agreements to AH-8A,

which permits a maximum number of 8.1 units per acre and requires that 14 of the units be low and moderate income units, and that 80% of the units be townhouses. The 14 affordable units will be in partial satisfaction of the Borough's **Mt. Laurel II** housing obligation.

3. In addition to the use contemplated for the premises, the applicant further proposes to construct on the premises an internal access road, as well as loop roads, parking areas including interior garages, drainage improvements, lighting, utilities, landscaping and sidewalks as shown on certain plans and renderings submitted in connection with the application.

4. At the initial public hearing held on the within matter on January 16, 2007, the applicant was represented by Antimo A. Del Vecchio, Esq. who provided the Board with an overview of the development proposal, noting the applicable zoning, the proposal for 70 units, of which 14 would be affordable rental units, and the AH-8A Zone requirement as established by the COAH mediation settlement. According to Mr. Del Vecchio, the plan complies with all applicable zoning and design requirements pertaining the AH-8A District.

5. Marked into evidence at the outset of the hearing were the following exhibits:

Exhibit A-1: The Affidavit of Public Notice, inclusive of the Affidavit of Publication

Exhibit A-2: The application binder and reduced size drawings comprising 21 sheets prepared by Schwanewede/Hals Engineering dated October 19, 2006

Exhibit A-3: Schwanewede/Hals Engineering drawings dated October 19, 2006

Exhibit A-4: Landscaping plans comprising 6 sheets prepared by Lawrence J. Tencza, Architect, dated October 26,

Exhibit A-5: Architectural renderings comprising 4 sheets prepared by Minno & Wasko, Architects and Planners dated October 5, 2006

Exhibit A-6: Environmental Impact Statement prepared by Schwanewede/Hals Engineering dated October 16, 2006

Exhibit A-7: Drainage Calculations prepared by Schwanewede/Hals Engineering dated October 16, 2006

Exhibit A-8: Traffic Impact Study prepared by Vollmer Associates LLP dated January 5, 2007

6. The applicant presented as its first witness David J. Minno, who was qualified in the field of architecture and who

prepared the architectural renderings relating to the proposed townhouse development. Marked into evidence as Exhibit A-9 was a board consisting of a color rendering of Sheet 2 of the Schwanewede/Hals Engineering drawings. The architect described the proposed main access road off of Spring Valley Road, a small divided entry area, and the banks of townhomes which would be perpendicular to the main access road and served via loop roads. The townhouses are comprised of both level and uphill buildings, with reasonable areas of green space. The 14 affordable units are designed to look like townhomes, but will consist of stacked units all on level sites.

7. Marked into evidence as Exhibit A-10 was a colorized front elevation rendering dated January 12, 2007 which depicts the typical uphill building, with a low grade in the front and a sloped area of floor in the rear. The witness described the grouping of the dwelling units and the proposed materials to be used in construction, which would be brick and true stucco with a synthetic finish. Deck elements are proposed for the rear of the buildings, some of which would have railing balconies and an operable door adjoining such amenity. There would be varied fascia heights and bay windows along the front facades. Exhibit A-11 is another colorized rendering dated January 12, 2007

depicting a level unit building and a level grade being identical in the front and in the rear. The witness described the stucco and brick materials proposed and noted that the roof lines would be broken up with dormers and gables.

8. It was noted by the witness that the new regulations governing COAH units require that affordable townhouse and first floor units be adaptable for use by disabled and elderly individuals with certain requirements set forth in N.J.S.A. 52:27D-123.15 which mandates an adaptable entrance to the dwelling unit, an adaptable kitchen and full-service bathroom on the first floor, an adaptable room with a door to permit use of space as a bedroom on the first floor, and an accessible interior route of travel. These regulations require that the affordable units be on a level grade so as to permit accessibility.

9. Marked into evidence as Exhibit A-12 was an affordable unit floor plan dated January 12, 2007 which depicts the ground floor plan of an affordable unit dwelling, its accessibility with a living and dining area and den convertible to a bedroom, a bath, and a galley kitchen. Two additional bedrooms on the second floor are also provided. Mr. Minno described the configuration of the other affordable units and noted that the new accessibility requirements govern only COAH units, there being no

similar requirements for the market rate units. Seven of the affordable units will be fully accessible and the entire compliment of 14 units will be rental units.

10. Marked into evidence as Board Exhibit 1 was the report of its planner, Richard Preiss, who provided testimony and noted that he had worked with both the architect and engineer for the applicant to insure that the plans conform to the design guidelines as reflected in the Settlement Agreement and Amendment. It was his opinion that the plan meets the design guidelines. The applicant's architect noted that the single garage doors have a width of 16 feet and are designed to appear as two doors, with molding divisions and raised panels accomplishing this objective. According to Mr. Preiss, the affordable units will blend well with the market rate units and he noted the glazing, roof design, and other features intending to make the development attractive not only to the site, but to adjoining properties.

11. It was noted by Mr. Minno that the size of the affordable units are almost double the minimum floor space under COAH rules. The HVAC units will be principally located to the rear of the units and under decking. The break in the roof line recessing bay windows and other features are intended to eliminate the possibility of a solid wall and to provide a better aesthetic

feature. He stated that the color and sample materials to be used in the facade and construction on the rear portions of the development will be identical to those used on the front facade.

12. At the continued public hearing held January 23, 2007 revised landscaping plans dated January 11, 2007 were marked into evidence as Exhibit A-13. The applicant called as its next witness David Hals, a licensed professional engineer, professional planner and land surveyor who was qualified in all fields.

13. Commencing his testimony, Mr. Hals stated he had visited the property and had familiarized himself with the applicable land use regulations. He prepared the engineering drawings (Exhibits A-2 and A-3), the EIS (Exhibit A-6), and the drainage calculations (Exhibit A-7). He referred to Sheet 20 of the plans, the Site Survey, noting the property's area of 8.663 acres, with the tract fronting on Spring Valley Road between this roadway and the Garden State Parkway and contiguous to the New York State line. The property slopes from Spring Valley Road to approximately 1,100 feet into the site and he described the two separate drainage areas flowing to Spring Valley and the Garden State Parkway.

14. The site is in the AH-8A Affordable Housing Zone, with the applicant proposing to construct 70 units consistent with

the applicable Ordinance, of which 56 would be market rate units and 14 low and moderate income. The units would be located in 10 buildings, with 63 separate units. The engineer described the drainage patterns on the site, the existing soil types and existing conditions, including a residence, as well as a second home in New York on property over the State line. An abandoned farm stand is sited on Spring Valley Road. He advised the Board that soil testing was performed for compounds, with some contaminants found pertaining to farming operations, with two components detected at concentrations exceeding DEP residential standards, which were dreldrin and arsenic. He described the soil blending intended to reduce the level of contamination, with blending operations being continued to remediate pesticide levels to below the DEP residential criteria. He indicated that the development has been designed to meet impacts associated with soil management and stormwater management measures.

15. Continuing his testimony, Mr. Hals described the layout of the proposed townhouse plan as depicted on Sheet 2 and noted that the Zoning Table reflects that the design will conform to meet the standards applicable to the AH-8A District. The 10 buildings have a different number of units, with 63 separate unit squares, each being 24 feet by 56 feet in dimension, with 70 units

contained therein. The 14 low and moderate income units are situated in Building No. 1 (2 units), Building No. 5 (4 units), and Building Nos. 9 and 10 (4 units each). The bedroom distribution for the affordable units is reflected on Note 3 on Sheet 2.

16. The development will be accessed from Spring Valley Road and the engineer described the divided accessway, with an island which will be landscaped. A guard house could be located within this area as reflected on the alternate entrance on Sheet 5. There will, for the most part, be full circulation around the site, with only Building Nos. 1 and 2 having a "dead end" without full circulation.

17. The engineer next addressed the requirements of RSIS and indicated that the number of parking spaces exceeds the minimum requirement. The 63 unit squares will each have two car garages, with the low and moderate income units each sharing a garage. A total of 126 spaces are located in garage areas (63 X 2). An additional 63 spaces are located in front of the garages, plus 10 spaces allocated for parking on the westerly portion of the site near the Garden State Parkway. Finally, along the northerly part of the driveway there exists parallel parking and a total of 30 spaces. The 229 spaces exceed the RSIS minimum of

166 spaces. The engineer also addressed the three widths pertaining to the roadway, noting that the northerly road has a paved cartway of 28 feet, the roads in front of the units have a 24 foot paved width, sufficient to allow exiting cars out of the garage areas and sufficient room for turns. The southerly drive has a 20 foot paved width, which Mr. Hals indicated is designed to discourage parking in order that there be adequate room for circulation and emergency access. In his opinion, the 20 foot wide pavement is inadequate for parking.

18. According to Mr. Hals, the site will have adequate service for all utilities, gas, electric, water and cable, noting that Spring Valley Road has lines for sewer, water and gas service. He also described the extension of the water mains along Upper Saddle Road intended to provide both fire protection and domestic water. The water main will be extended to Upper Saddle River Road and to an easterly direction to a point just west of Serrell Drive in an existing United Water connection. The looping of the water main is intended to provide adequate supply to the units, added water quality, and additional fire protection. The extension of this main will provide fire protection along a portion of Upper Saddle River Road where it does not presently exist. The sanitary sewer will be extended up Upper Saddle River

Road and into the development, with the line being gravity fed to Spring Valley Road. All utilities will be underground.

19. The design of the stormwater management facilities is intended to meet governing regulations as to quantity, flow rate and quality standards. The engineer indicated that the water table on the site is low, with the soil adequate to provide ground water recharge. He also described the proposed underground storm detention basins designed to handle roof runoff. He provided the Board with the technical details pertaining to the drainage facilities and the route that drainage would flow to a storm drainage system in the street with discharge from the various units, and explained how stormwater would be channeled to quality and detention basins, its discharge, and release from site. According to Mr. Hals, there existed an informal agreement involving a neighboring property to the south relating to a drainage pipe, although no easement document has been located. The plan is to be revised to provide that stormwater will be redirected to an existing 24 inch culvert in Upper Saddle River Road. The design will meet all stormwater regulations and reduction requirements.

20. The engineer next addressed site lighting depicted on Sheet 4 and the campus series global-type fixture. He

expressed a concern as to whether adding additional pole lighting directly in front of the units would result in excessive illumination, noting that each unit will have a door light, which he believes will be adequate. He calculated the soil movement at 10,850 cubic yards, of a total of 14,500 cubic yards of soil movement, representing the amount of the cut primarily for road and building construction, together with underground detention facilities. A total of 3,650 cubic yards will be required to be imported, mostly during the initial development phase. He summarized his testimony as noting the plan complies with all requirements of the AH-8A Zone, RSIS, and good design and practices from an engineering standpoint.

21. Marked into evidence as Board Exhibit 2 was the Boswell Mc Clave report of January 8, 2007. Mr. Tombalakian discussed the issue of drainage flow and in response to his comment, Mr. Hals indicated that the plan would not result in paved areas discharging within the vicinity of the Garden State Parkway. Mr. Hals further described the water quality basins and the overflow mechanisms in each. He described how the drainage system would run on the existing culvert approximately 4 feet below this structure and that all work would be done within the boundaries of the property without utilizing any off-site property

or right-of-way.

22. There next ensued a discussion on the issue of a guard house as depicted on the alternate plan on Sheet 5, with the Board indicating that it would favor the construction of this structure provided that access is not impeded. The applicant's engineer also noted that with regard to the parking allocation, in addition to the garage space, one space has been counted in each driveway and that there is a need for 35 visitor spaces. The design and layout, coupled with RSIS requirements, essentially yields the 229 parking spaces proposed.

23. The applicant's engineer discussed site lighting depicted on Sheet 4, noting the proposed globe-type fixture. He indicated that inasmuch as each unit will have a door light, that additional pole lights directly in front of the units might overlight the development.

24. The issue of soil movement was addressed, with total soil movement being 14,500 cubic yards, with a cut of 10,850 cubic yards and 3,650 cubic yards being imported. Most soil movement operations will occur during the initial phase of the development and will relate to roadway and building construction, as well as the underground detention basin. Mr. Hals indicated that the plan complies with all standards of the AH-8A Zone, RSIS and good

design and practices from an engineering standpoint.

25. Discussion next ensued pertaining to drainage flow, with the applicant's engineer indicating that the paved areas will not discharge in the vicinity of the Garden State Parkway. The engineer explained the water quality basins and the direction of drainage and addressed a number of technical issues pertaining to this issue. The 20 foot wide portion of the property extending to Upper Saddle River Road would be adequate for the installation of the water main, with all work pertaining to the drainage improvements occurring on the subject property without utilizing any right-of-way. Mr. Hals noted the existing culvert on Spring Valley Road, with the system designed to run under the existing culvert.

26. Other issues that were discussed at this hearing including the details pertaining to a guard house as shown on Sheet 5 and that the existing home on the property in New York will remain as it is presently occupied. A small portion of the drive providing access to this residence will be relocated. The retaining walls will not have the tunnel visual effect that sometimes occurs with these structures, according to Mr. Hals. Sidewalks will not directly adjoin these structures.

27. At the outset of the public hearing held on March

6, 2007 there was marked into evidence as Exhibit A-14 revised Schwanewede/Hals Engineering drawings comprising 21 sheets with a revision date of February 26, 2007; the Lawrence J. Tencza Associates Tree Removal Plan comprising 15 sheets with a revision date of February 26, 2007; as Exhibit A-16 updated drainage calculations; and as Exhibit A-17 a corrected Environmental Impact Statement revised to February 28, 2007.

28. The applicant called as its next witness Louis Luglio, a licensed professional engineer who was qualified in the field of traffic engineer and who prepared Exhibit A-8, Traffic Impact Study. He testified that he was aware of site and area conditions and conducted a standard traffic impact study for the proposed 70 unit development, of which 56 would be townhouses and 14 apartment-type units. He described his methodology as based on industry standards and collected data from the Summit Avenue/Spring Valley Road intersection on April 6, 2006, a Thursday during the morning from 7:00 a.m. to 9:00 a.m. and afternoon from 4:00 p.m. to 6:30 p.m. The morning, or a.m. peak hour, was from 8:00 a.m. to 9:00 a.m. and afternoon peak hour from 4:45 p.m. to 5:45 p.m.

29. The traffic engineer testified that he first analyzed a "no build" condition at the intersection and that a

"build" condition as to how many new vehicles would enter and leave the site, based upon proposed development. During the morning peak hour there would be a total of 44 vehicular movements impacting the site, 7 inbound and 37 outbound. In the p.m. peak hour there would be a total of 63 vehicles, 42 entering the site and 21 leaving. He analyzed the impact the additional vehicles would have on the intersection, and based upon existing counts two-thirds would travel southbound on Spring Valley Road and one-third in a northerly direction. The no build and build conditions for 2009 are detailed on Exhibit 9 of Mr. Luglio's report. He described the site drive at an acceptable or D level of service, or better. The traffic signal at the intersection was also studied and he has suggested signal timing changes during the p.m. peak and also possibly in the a.m. peak. The Traffic Impact Study also looked at build conditions, with Mr. Luglio noting that the development would not be a high generator of traffic. The number of parking spaces proposed on site, 229, exceeds both the Ordinance requirement and the 166 spaces mandated by the Residential Site Improvement Standards ("RSIS").

30. The engineer next addressed sight distances and speed limits along Spring Valley Road and he described the topography of the roadway, noting the curve in the road in New

York State just before the state boundary. He described the sight distances required for the various speed limits and from the site to the north the sight distance is 250 feet and 400 feet to the south based upon the applicable speed limits, which he concluded consists of acceptable sight distances in both directions. He also advised the Board that few accidents occurred in this area and referred to the memorandum from the Chief of Police dated January 29, 2007.

31. Next the witness addressed on-site traffic circulation, noting the driveway entryway with a gate or gate house and a turn around provided in this area should a vehicle not be able to enter the property, this area could be utilized rather than a vehicle backing out of the access drive. There is space for stacking of five vehicles from the road to the access gate. The entire site has been designed so as to provide roadway configuration and aisle widths consistent with RSIS standards. It was the opinion of Mr. Luglio that there would be no adverse impact to the roadway network or the Spring Valley Road/Summit Avenue intersection and that the site would operate in a safe and efficient manner for residents as well as persons accessing the premises.

32. Marked into evidence as Board Exhibit 3 was the

Boswell Mc Clave traffic review letter of January 30, 2007. Mr. Tombalakian, the author of this report, inquired as to whether supplemental counts had been performed, which Mr. Luglio indicated he felt were not necessary based upon traffic volumes that would be attributable to the development. Mr. Tombalakian expressed a concern as to North Avenue being used as a cut-through and bearing additional volumes of traffic. It was Mr. Luglio's opinion that he would not anticipate any exacerbation or increase of cut-throughs within this area and that the development would not add significant traffic to North Avenue.

33. Marked into evidence as Exhibit A-18 was an aerial photograph of the area dated March 6, 2007 and Mr. Luglio described the posted speeds along Spring Valley Road from New York to New Jersey, with the road having posted limits of 30 miles per hour, a 25 mile per hour advisory speed, and south of Upper Saddle River and North Avenue a 40 mile per hour posted limit. In his analysis he utilized a 30 mile per hour speed limit. It was Mr. Tombalakian's opinion that the site should be evaluated using a 40 mile per hour speed and whether there was adequate sight stopping distance at the property. It was Mr. Luglio's opinion that if any speed study requires additional sight distance, same would necessarily relate to factors unrelated to anything that could be

done to mitigate such conditions in connection with the subject premises, but that it would involve improvements required in New York. Mr. Luglio also noted that the recommendation for 22 foot wide loop roads has been accommodated on the plan.

34. At the continued public hearing held on March 12, 2007 Mr. Luglio resumed his testimony and indicated that he performed a speed study on Spring Valley Road during the a.m. peak hour and looked at two fixed points, analyzing the time a vehicle would take to travel between these points to obtain an average measured speed. The results indicate that from over 50 samples, the average speed was 43 miles per hour, with a range of between 37 and 50 miles per hour. He also measured gaps in traffic during the same time period and from 65 samples, the time from one vehicle passing to the next was within a range of from 4 to 8 seconds, with an average of 5.5 seconds based upon vehicles leaving the site. It was his opinion that this study demonstrated sufficient gaps in traffic to allow egress during the a.m. peak hour.

35. In addition, the traffic engineer conducted a sight distance study with Board engineer Tombalakian and marked into evidence as Exhibit A-19 was a sight distance field measurement dated March 12, 2007, the purpose of which was to identify sight

distance, and he indicated that the requirement of a 15 foot offset from the edge of the pavement allows a 300 foot actual sight distance. He referred to the two insets on Exhibit A-19 and the placement of the cone 300 feet from the egress driveway which reflects that the 300 foot actual sight distance exceeds the Bergen County requirement.

36. The engineer also addressed cut-through traffic utilizing North Avenue and he provided the Board with data as to the number of vehicles that would utilize North Avenue traveling west on Summit Avenue to North Avenue and then to Spring Valley Road. Those proceeding west on Summit Avenue and utilizing North Avenue to Spring Valley Road, approximately 60% will go in a northerly direction while those utilizing North Avenue from the south, a lower percentage would proceed in a southbound direction. It was Mr. Luglio's opinion that traffic would not be added by the development to North Avenue. He indicated that the overall design complies with County requirements as to sight distance and other conditions and that visitors to, and residents of the development, can ingress and egress the site in a safe manner. It was his recommendation that there be a posted speed limit of 30 miles per hour on Spring Valley Road within the vicinity of the development.

37. The Board received testimony from Mr. Tombalakian,

who indicated that he met with Mr. Luglio in the field on the morning of March 12, 2007 and confirmed the measurements and distances as testified to by Mr. Luglio. He also indicated that the speed is higher than the advisory posted speed along the roadway and that there may be room for upgrades and enhancement of sight distances to the north, which would involve the removal of certain vegetation on properties across the state line. Mr. Tombalakian also confirmed that most engineering issues had been addressed, although some of the off-site drainage improvements remain under review, including the rerouting of the drainage line under the culvert in Upper Saddle River Road.

38. Board planner Richad Preiss noted that the applicant has addressed the new COAH requirement that the affordable units be handicapped accessible. It was noted that the roadway network and drainage system would be owned and maintained by the Association, subject to the Municipal Services Act. It was also determined that the Board would approve as an alternative design the location of the gate house as shown on the plans, with the applicant indicating a desire to allow future residents to determine whether the gate house should be constructed. Accordingly, the gate house may be permitted consistent with the design as shown on the plan in the future, should construction

thereof be desired by either the applicant or future residents of the development, without a need to return to the Board.

39. The final issue focused on by the Board and applicant related to site lighting. It was noted that on Sheet 4, a provision has been made that the lighting will be appropriately shielded. Mr. Preiss indicated that the lighting fixtures appeared to be low enough in height, with adequate shielding so that there will be no spillage or glare over the property line. Mr. Hals indicated that five pole lights are proposed for the property which are twelve feet high and it was determined that as a condition of approval, the foundations for the pole lighting would be installed and once the project is completed, a determination will be made as to whether the pole light fixtures are required for appropriate and safe illumination and if they are not, the poles will be eliminated from the plan.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Borough of Montvale that based upon the findings of fact, that the following conclusions are made and determined:

1. The Planning Board has considered the within application which proposes the construction of a total of 70 residential units, with 56 being attached townhouse units, plus 14 dwelling units of rental affordable housing on a land area of

8.663 acres. The development proposal is in accordance with an Agreement for Affordable Housing dated November 16, 2004 and amended by Agreement dated August 8, 2006, as well as the zoning standards reflected in these Agreements which rezone the subject property to AH-8A, which permits a maximum of 8.1 units per acre, that 14 of the units be available for persons of low and moderate income, and that 80% of the units will be townhouses.

2. The development proposal is, in addition, consistent with the Housing Element and Fair Share Plan and the grant of certification received by the Borough from COAH in December of 2004.

3. The plan as presented complies with the standards applicable to the AH-8A Zone. No variances or waivers are required and the proposal conforms to the standards in the RSIS. The Board notes that the 70 units proposed to be developed on the site, inclusive of the 14 affordable units, constitutes an optimum level of development for the land, and that the density of development is compliant with the 8.1 units per acre as provided in the AH-8A Zone.

4. The Board believes that the applicant's approach to the development of the site is appropriate and that the proposed density, in addition to complying with the Zoning Ordinance, is

also consistent with accepted planning principles and at the same time will satisfy the Borough's affordable housing obligation as to this parcel.

5. While the Board recognizes that the subject property is proximate to a single-family residential neighborhood in Montvale, the Board believes that the overall development design, layout and configuration of the buildings and the landscaping plan proposed will be adequate so that there will be no detrimental impact on this nearby area. The applicant has worked with the Board and its professionals, as well as nearby residents, to design a plan conducive, to the extent practicable, with adjoining land uses.

6. The Board finds that the Environmental Impact Statement (Exhibit A-6) satisfies the criteria enumerated in Section 128-17.5 and that approval thereof may be granted pursuant to Section 128-7.7. In this regard, the EIS submitted addresses the information and analysis required by Ordinance and accordingly may be approved.

7. The Board has also considered the need for the issuance of a major soil movement permit pursuant to Chapter 104 of the Borough Code. This movement of soil is necessitated as a consequence of the proposed development, the construction of the

loop road, access drives, and parking areas. The Board finds that the applicant has complied with the procedures enumerated in the Soil Removal Ordinance so as to permit the issuance of a major soil movement permit. In this regard, the Board is of the opinion that in its review of the factors to be considered in conjunction with the within application, as defined in the Soil Removal Ordinance, that the proposed operations will be in conformity with the standards established by Ordinance and that the operations may be conducted without adversely impacting upon existing soil and drainage conditions for the public health and safety.

8. Finally, the Board concludes that the applicant has addressed the criteria for preliminary and final site plan approval consistent with Article VIII of the Zoning Ordinance. The plans as presented provide the requisite information as set forth in Section 128-8.7D and 128-8-9D and further address the performance standards in Section 128-8.11. These conclusions, together with the fact that the application meets the standards of the AH-8A Zone, require a conclusion that preliminary and final site plan approval may be granted to the applicant.

BE IT FURTHER RESOLVED by the Planning Board of the Borough of Montvale that based upon the above findings of fact and conclusions that site plan approval, a major soil movement permit,

and approval of an Environmental Impact Statement, be and are hereby granted to the applicant subject to the following conditions:

1. Those pole lights proposed to be installed along the southerly property line as reflected on the plan, being five in number, shall not be constructed until such time as a determination is made by the Board engineer as to whether existing lighting is adequate. Should the pole lighting be determined to be necessary, such fixtures will contain appropriate shielding so as to ensure that there is no spillage of or glare on neighboring adjoining properties.

2. Approval of the Environmental Commission as to the landscaping plan.

3. The applicant, or its successor in interest, shall be responsible for the maintenance of all roadways and driveways within the development provided that any successor association may apply for service or reimbursement in accordance with the provisions of the Municipal Services Act.

4. The applicant, or its successor in interest, shall be responsible to secure the services of a contractor for the removal of garbage and trash, without any responsibility of the Borough.

5. The low and moderate income units shall be constructed in such phases and in accordance with the schedule and criteria established by COAH. In addition, these units shall be affirmatively marketed in such manner as required by the Borough and COAH so as to insure that the Borough receives appropriate crediting as required under its approved Housing Plan.

6. Approval by the Bergen County Planning Board, Bergen County Soil Conservation District, New Jersey Department of Environmental Protection, Department of the Army, New York District Corps. of Engineers, and such other federal, state, county and municipal agencies having jurisdiction over the proposed use. In the event any approval by any other agency results in an alteration or modification of the application as approved by the Planning Board, the applicant shall be required to resubmit the application.

7. The execution by the applicant of a Developer's Agreement to be prepared by the Board attorney and the full performance by the applicant of the obligations, terms and conditions of said Developer's Agreement including, but not limited to, the payment of all fees and the posting and maintenance of all deposits and escrows thereby required.

8. Compliance with all present letter requirements of

the Board engineer, future letter requirements of the Board engineer made pursuant to any Developer's Agreement to be entered into in accordance herewith, future letter requirements of the Board engineer relating to the conditions of the within approval, and subject to the future letter requirements which entail minimal deviation from the plan hereby approved and are necessitated by field conditions hereafter discovered.

9. Submission by the applicant of an appropriate certification evidencing that all taxes and assessments have been paid on the subject premises up to the date of the within approval.

10. The applicant shall be required to comply with the design and site details as shown on all plans submitted through their respective dates. Any deviation from any such development designs or details shall require further review and approval by the Board.

11. Posting of a bond in such amount as determined by the Board engineer so as to guarantee performance of the work herein required and approved, as well as the maintenance of said work after completion.

12. Posting of all fees and deposits as required by the applicable ordinance of the Borough of Montvale, which shall

include the posting of such deposits as are necessary to reimburse the Municipality for money paid to its professionals for review of the within application and the inspection of the work to be performed incidental thereto. Such fees and deposits shall be promptly paid and no demolition, building or other permits may be issued should such fees and deposits be outstanding.

13. The applicant shall conform with all requirements of the Construction Official, Board engineer, Police and Fire Departments and any other official having jurisdiction with respect to the use of the subject premises.

14. All utilities to serve the residences to be constructed shall be placed underground.

15. The applicant shall submit written confirmation from applicable utilities verifying that permission has been granted for the service of the properties to be developed within the subject premises.

16. Soil movement operations shall be in accordance with the directives of the Board engineer and shall include the installation of drainage swales to direct and divert drainage away from adjoining properties during the periods when the soil operations are on-going.

17. The applicant shall be required to comply with all

conditions of Chapter 104 of the Montvale Borough Code.

18. Approval by the Police Department as to the route trucks accessing and leaving the site will utilize, subject to requirements of County officials having jurisdiction.

19. The applicant shall be required to pay the cost of any police personnel deemed necessary by the Police Department to provide traffic control and monitor operations at the site or at intersections within the vicinity of the site.

20. The exact date for commencement of operations shall be provided to the Borough at least ten (10) days prior to the commencement thereof in order that the public may be informed through posting on the Borough's web site and through other means.

21. The applicant shall be responsible for the cost of cleaning streets in conjunction with the soil moving operations. Any spillage shall promptly be cleaned at applicant's expense.

22. The hours of operation shall be required to be approved by the Police Department.

23. No operations may commence until a copy of the application and plan are submitted to the Police Department and the Department has determined as to the appropriate routes to be utilized to access the site, hours of operation, and traffic control issues. The determinations of the Police Department shall

be required to be adhered to, subject to requirements of County officials having jurisdiction.

24. Posting of a bond as required by Section 104-10 of the Borough Code and in such amount as may be determined to be necessary by the Board engineer.

BE IT FURTHER RESOLVED that the Secretary of the Planning Board of the Borough of Montvale is hereby directed to mail a copy of this resolution to the applicant and to file a copy thereof with the Borough Clerk and to cause a notice of this determination of the Planning Board to be forwarded to an official newspaper of the Municipality within ten (10) days of the date hereof and thereafter to be published accordingly.

JOHN DE PINTO, Chairman

Dated: April 1, 2007

Certified to be a true copy of a Resolution adopted by the Planning Board of the Borough of Montvale at its regular meeting on Monday, April 1, 2007.

R. LORRAINE HUTTER, Secretary

Introduced by: Mr. Vogt

Seconded by: Mayor Zeller

BOROUGH OF MONTVALE

PLANNING BOARD

RESOLUTION GRANTING AMENDED SITE PLAN APPROVAL, AN EXCEPTION PERTAINING TO AN ENVIRONMENTAL IMPACT STATEMENT, AND A MAJOR SOIL MOVEMENT PERMIT TO METROPOLITAN HOME DEVELOPMENT AT WERIMUS, LLC FOR PREMISES DESIGNATED AS BLOCK 301, LOTS 2 AND 3

WHEREAS, application has been made to the Planning Board of the Borough of Montvale (hereinafter "Planning Board" or "the Board") by Metropolitan Home Development At Werimus, LLC (hereinafter "the applicant"), maintaining offices at 50 Tice Boulevard, Woodcliff Lake, New Jersey for amended site plan approval, an exception pertaining to an Environmental Impact Statement (hereinafter "EIS"), and a major soil movement permit relating to premises known as Block 301, Lots 2 and 3 as depicted on the tax assessment map of the Borough of Montvale (hereinafter "the property" or "the premises"); and

WHEREAS, the application is made with the consent of the property owner of record, Henry J. Bonnabel, 101 West Street, Hillsdale, New Jersey; and

WHEREAS, public hearings were held on the within application, on notice to all property owners within two hundred (200) feet therefrom and was published in the official newspaper of the Municipality, at least ten (10) days next preceding the date of hearing; and

WHEREAS, the Planning Board has had the benefit of the reports of its professionals and has deliberated on the matters brought forth at said public hearings, at which members of the public were afforded an opportunity to be heard; and

WHEREAS, the Planning Board has made certain findings of fact and conclusions with respect to said application.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Borough of Montvale that the following facts are made and determined:

1. The subject property is located on the westerly side of Spring Valley Road and is contiguous, in part, to the New York State border. One of the parcels, Lot 3, was previously the subject of a site plan application earlier in 2007. More particularly, Lot 3, comprising an area of 377,382 square feet, or 8.663 acres, received approval for the construction of seventy (70) units by resolution dated April 1, 2007. This approval permits the construction of fifty-six (56) attached townhouse

units, being market rate units, and fourteen (14) dwelling units of rental affordable housing. This approval was consistent with a Settlement Agreement mediated by the Council On Affordable Housing (hereinafter "COAH") and enter into on November 16, 2004 and amended on August 8, 2006. These Agreements permitted the construction of the seventy (70) units as described aforesaid consistent with a rezoning of the property to AH-8A and was intended to satisfy, in part, the Borough's **Mt. Laurel II** housing obligation.

2. Subsequent to said approval, the applicant became the contract purchaser of a triangular and adjoining piece of land known as Lot 2, which is contiguous to Lot 3 at its northern and western boundary. Lot 2 also adjoins the New York State border and comprises an additional land area of 1.233 acres. An additional ten (10) units are proposed, of which seven (7) would be market-rate townhouses and three (3) would be rental affordable units. Accordingly, the new plan proposes a total of eighty (80) residential units, sixty-three (63) of which would be market rate townhouses and seventeen (17) would be rental affordable apartments in a total of eleven (11) buildings. The affordable units would be interspersed throughout the development with stacking of units, consistent with the design of the previously

approved plan. The aggregate land area, as a result of the addition of Lot 2, is now 9.896 acres.

3. At the initial public hearing held on September 18, 2007, the applicant was represented by Antimo A. Del Vecchio, Esq. He provided the Board with an overview of the development plan, noting that the applicant is under contract to purchase Lot 2 from Anthony Gaess and that Lot 2 is also governed by the AH-8A zoning requirements. A total of ten (10) units would be added to the plan as a result of the inclusion of the new land area, with three (3) additional affordable units being included, in addition to seven (7) market rate townhouses. In addition to amended preliminary and final site plan approval, a minor subdivision is required to consolidate the two parcels, as well as a major soil movement permit and approval of an EIS.

4. Marked into evidence by the applicant's attorney were the following exhibits:

Exhibit A-1	Affidavit of Public Notice, including the Affidavit of Publication
Exhibit A-2	Schwanewede/Hals Engineering drawings consisting of 23 sheets and revised to July 16, 2007
Exhibit A-3	Environmental Impact Statement dated July 18, 2007

Exhibit A-4	Drainage calculations revised to June 27, 2007
Exhibit A-5	Color rendering depicting architectural features prepared by Minno & Wasko, Architects and Planners and dated October 5, 2006 (uphill building)
Exhibit A-6	Rear elevation of typical uphill building
Board Exhibit 1	Report of Board planner Richard Preiss dated September 17, 2007

5. The applicant presented testimony from David Hals, a licensed professional engineer who was qualified in this field and who was the design engineer in connection with the prior application that was approved this past spring. He noted the addition of Lot 2, with the land area increasing from 8.663 acres encompassed in Lot 3 by an additional 1.233 acres, the land area of Lot 2. The existing site, Lot 3, was approved for seventy (70) units, with the design remaining the same, as well as the road location with the triangular piece designated as Lot 2 being added and accessed via the proposed road previously approved. A total of ten (10) additional units would be added and he noted the eight (8) attached units which include three (3) affordable units and are depicted on Sheet 2, the amended site plan drawing.

6. According to Mr. Hals, the prior plan included thirty (30) parallel parking spaces along the access drive, ten (10) of which would be on the most westerly lot adjoining the Garden State Parkway. This number has been reduced to fifteen (15) with a more traditional layout. The new buildings would have the same architecture as the structures previously approved, with a walk-out from the units onto grade, similar to the uphill units. A retention basin is proposed for the most westerly portion of the property adjoining the Garden State Parkway, which is intended to accommodate additional impervious area. He described the roof drainage system and its connection to an underground detention system with an overflow into a storm detention system. He also referred to the small passive recreation area depicted on the plan.

7. All units will have decks and there will be no distinction in exterior design between the affordable and market rate units. He described the quantities of soil to be moved as in excess of 4,000 cubic yards. A retaining wall on the prior plan is to be removed, which will allow excavation for parking areas, as well as regrading for the passive recreation area and detention basin. Of the more than 4,000 cubic yards of soil to be moved, a total of 320 cubic yards would be imported, which Mr. Hals

believes will minimize truck traffic and will constitute an overall better design.

8. The entry to the development will continue to be off Spring Valley Road and there will be no change to the loop water main system previously approved. Fire hydrants will be located consistent with Residential Site Improvement Standards (hereinafter "RSIS"), with a distance of no more than 400 feet to any unit from a hydrant. Applications are pending for the amended plan with the Bergen County Planning Board and Bergen County Soil Conservation District.

9. The engineer reviewed the zoning requirements, both with respect to the previously approved plan and the new plan, noting that the proposal fully complies with the AH-8A standards. The EIS has been slightly modified to include the additional triangular property.

10. Discussion ensued concerning the number of parking spaces and comments pertaining to this issue addressed in the report of the Board's planner. It was noted that since eighty (80) units are provided, a total of forty (40), fifty (50%) percent of the total number of units, would be required for visitor parking. The plan proposes a total of 258 spaces, of which 142 would be garage spaces, 71 would be located in

driveways, 30 within the parking lot area, and 15 along the common driveway.

11. According to Mr. Hals, landscaping will not be modified in the southern portion, and he described the enhanced buffering along the New York State border. Mr. Hals is of the opinion that the buffering and landscaping will be enhanced as a result of the addition of Lot 2 to the plan. The only detention basin being enlarged is the upper structure in order to meet water quality standards, with the remaining facilities being unchanged.

12. Marked into evidence as Exhibit A-7 was a color version of Sheet 2, the amended site plan drawing.

13. At the continued public hearing held on October 2, 2007, there was marked into evidence as Board Exhibit 2 the report of Boswell Mc Clave Engineering dated September 14, 2007. Board engineer Berge V. Tombalakian, the author of this report, provided comments pertaining to the need for additional details regarding grading and utilities and noted that the sanitary sewer for the new building is designed differently, with shared laterals for a number of units. The engineer discussed the grading detail pertaining to the drainage basin, as well as the water main extension from Upper Saddle River Road, and Mr. Del Vecchio indicated that the applicant would agree to the recommendations

detailed in Mr. Tombalakian's report.

14. Board planner Preiss expressed concerns as to the number of parking spaces, noting that 187 would be required under RSIS, with the applicant proposing 258. It was his recommendation that 15 parallel spaces along the main access drive be eliminated. Mr. Hals stated that RSIS requires that there be provided for visitor parking a number of spaces equal to one-half (½) the number of units. While Mr. Preiss indicated the locations where the 15 spaces could be eliminated, Mr. Hals stated that removing these spaces would not permit a shrinkage of pavement area. He also described the number of spaces allocated to each unit as to interior garage, as well as exterior driveway parking.

15. The 17 affordable units will be interspersed throughout five (5) buildings, with two (2) units in Building No. 1, four (4) each in Building Nos. 5, 9 and 10, and three (3) in Building No. 11. One of the eight (8) townhouses will contain all three (3) stacked affordable units. According to Mr. Hals, in calculating parking under RSIS, since the driveways are only 16 feet in width, the regulation allows the counting of only one (1) driveway space. Under the revised plan, total impervious coverage will be 54.4%, less than the 56.6% approved under the original plan.

16. Marked into evidence as Board Exhibit 3 was a report of the Fire Department, as Board Exhibit 4 a report of the Police Department, and as Board Exhibit 5 a report of the Environmental Commission, all dated August 8, 2007. It was noted that the Fire Department recommended the addition of a hydrant, which Mr. Hals indicated may be added to the plan, but he stated that the water main under the previous approved plan provided for a loop system with eight (8) inch mains and that the providing of a twelve (12) inch main would not result in any additional pressure or water flow. He noted that the eight (8) inch line is permitted by RSIS and that the applicant will perform fire flow tests to demonstrate adequate pressure. The Chair recommended that the applicant's engineer communicate with the author of the report on behalf of the Fire Department. It was noted that the applicant would be unable to provide any extension of the United Water main in New York State.

17. The report of the Police Department suggested possibly moving the guard house farther west, and it was noted that the Board previously approved this location and that there would be no need to move the structure inasmuch as there will continue to be adequate space for the stacking of vehicles. More particularly, Mr. Hals stated that the location of the guard house

would allow for stacking of five (5) vehicles, which both Mr. Preiss and Mr. Tombalakian indicated would be sufficient. The applicant did agree to the placement of a "STOP" sign at the southwest corner of the "T" section of the exit of the complex onto Spring Valley Road. With respect to lighting, it was the Board engineer's recommendation that one additional fixture, rather than two, would be installed within the vicinity of Spring Valley Road. In addition, Mr. Tombalakian suggested that a warning sign be placed to advise motorists of the entryway along Spring Valley Road.

18. With regard to the Environmental Commission report, Mr. Vogt indicated that the landscaping plan is to be amended by the applicant and that the Commission will undertake a review of the plan.

19. A discussion ensued by the Board as to the amount of parking, with the Board determining to allow the number of spaces depicted on the applicant's plan. However, based upon the recommendation of Mr. Hals, it was determined that the parallel parking spaces not be striped and that the fifteen (15) spaces be reserved if needed for additional parking in the future. A de minimis exception will be required from RSIS in connection with the non-striping of the parallel parking spaces.

BE IT FURTHER RESOLVED by the Planning Board of the Borough of Montvale that based upon the findings of fact, that the following conclusions are made and determined:

1. The Planning Board has considered the within application which proposes the addition of ten (10) residential units to a previously approved seventy (70) unit plan which received preliminary and final site plan approval on April 1, 2007. The original seventy (70) unit plan as approved provides for fourteen (14) units of rental affordable housing interspersed throughout the development. The within application is as a result of the applicant's acquisition of an additional land area of 1.233 acres known as Lot 2, which is contiguous to Lot 3, the property which previously received approval.

2. As a result of the acquisition of this additional land area, the applicant proposes to construct another ten (10) units, of which seven (7) would be townhouses and three (3) would be rental affordable units. As a result of this amendment, the development would have a total of eighty (80) units, of which seventeen (17) would be rental affordable units.

3. The development proposal will be consistent with the Borough's Housing Element and Fair Share Plan as approved by COAH in December of 2004.

4. This new amended plan complies with the standards applicable to the AH-8A Zone in that no variances are required. The plan further conforms, with one exception, to RSIS. This one exception pertains to not striping a total of fifteen (15) parking spaces as originally proposed, which area will be reserved for parking in the future. Accordingly, a de minimis exception would be required from RSIS pertaining to not striping these spaces.

5. The Board is of the opinion that such de minimis exception should be granted. First, as has been testified to by Mr. Preiss, as well as detailed in his report, the spaces provided will be in excess of the number of spaces and he recommended that fifteen (15) on-street spaces be eliminated. Should the need arise for additional parking, the applicant, or its successor in interest such as a condominium association which may ultimately be formed, will be permitted to provide these spaces by striping these areas consistent with the approved site plan.

6. The Board reiterates its conclusion, as previously expressed in its prior approving resolution, that the development of the site is appropriate and that the proposed density will be consistent with the Zoning Ordinance, in accord with accepted zoning principles, and will satisfy the Borough's affordable housing obligation as to this parcel. In this regard, the

addition of the ten (10) units permitted as a result of the applicant's acquisition of 1.233 acres will allow the ten (10) additional units to be constructed, of which three (3) will be affordable units resulting in seventeen (17), as opposed to fourteen (14) affordable units that would have been generated under the prior plan.

7. The Board further reiterates its determination that the development, as modified by the additional land area and the ten (10) new units, will not create any detrimental impact on the nearby residential neighborhood. Furthermore, actual impervious coverage will decrease from the previously approved 56.6% to 54.4%. This further confirms the Board's finding that the plan has been designed, to the extent practicable, to be conducive to nearby land uses.

8. In the prior action the Board approved an EIS and the Board's finding that the criteria addresses the Ordinance requirements as now reflected in the EIS amended to include Lot 2 is equally applicable to the within submission.

9. A major soil movement permit may be granted, and the movement of soil is necessitated as a consequence of the additional units to be constructed and related improvements.

10. The Board finds that the applicant has complied with

the procedures enumerated in the Soil Removal Ordinance so as to permit the issuance of a major soil movement permit. In this regard, the Board is of the opinion that in its review of the factors to be considered in conjunction with the within application, as defined in the Soil Removal Ordinance, that the proposed operations will be in conformity with the standards established by Ordinance and that the operations may be conducted without adversely impacting upon existing soil and drainage conditions for the public health and safety.

11. Finally, the Board concludes that the applicant has addressed the criteria for amended preliminary and final site plan approval consistent with Article VIII of the Zoning Ordinance. The plans as presented provide the requisite information as set forth in Section 128-8.7D and 128-8-9D and further address the performance standards in Section 128-8.11. These conclusions, together with the fact that the application meets the standards of the AH-8A Zone, require a conclusion that amended preliminary and final site plan approval may be granted to the applicant.

BE IT FURTHER RESOLVED by the Planning Board of the Borough of Montvale that based upon the above findings of fact and conclusions that amended preliminary and final site plan approval, minor reverse subdivision approval, a major soil movement permit,

and a de minimis exception from RSIS, be and are hereby granted to the applicant subject to the following conditions:

1. Compliance with all of the conditions detailed in the prior approving resolution of the Board dated April 1, 2007, which conditions are hereby incorporated by reference.

BE IT FURTHER RESOLVED that the Secretary of the Planning Board of the Borough of Montvale is hereby directed to mail a copy of this resolution to the applicant and to file a copy thereof with the Borough Clerk and to cause a notice of this determination of the Planning Board to be forwarded to an official newspaper of the Municipality within ten (10) days of the date hereof and thereafter to be published accordingly.

John DePinto, Chairman

Dated: November 20, 2007

Certified to be a true copy of a Resolution adopted by the Planning Board of the Borough of Montvale at its regular meeting on Monday, November 20, 2007.

R. Lorraine Hutter

R. Lorraine Hutter, Secretary

Introduced By:

Seconded By:

BOROUGH OF MONTVALE

PLANNING BOARD

RESOLUTION

WHEREAS, the Planning Board of the Borough of Montvale granted site plan approval and other relief to Metropolitan Home Development Corp. (hereinafter "the applicant") for the construction of 70 units on premises designated as Block 301, Lot 3 by resolution dated April 1, 2007, which approval permitted the construction of 56 attached townhouse units, being market rate units, and 14 dwelling units of rental affordable housing; and

WHEREAS, subsequent to said approval, the applicant obtained amended site plan approval so as to encompass Block 301, Lot 2, in addition to Lot 3, which amended approval is dated November 20, 2007 and permits the construction of 80 units on Lots 2 and 3, with 63 being market rate units and 17 rental affordable apartments; and

WHEREAS, the applicant received minor subdivision approval in connection with property known as Block 302, Lot 13 by resolution dated May 20, 2008 ("the 2008 approval") which includes

as a condition that the applicant provide one additional affordable unit in the Trailing Ridge Development; and

WHEREAS, as a result of this condition in the 2008 approval, an amended approval is required for the Trailing Ridge Development so as to increase the number of units from 80 to 81, with 63 remaining as market rate townhouse units and an increase in the affordable rental component by one to 18 units.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Borough of Montvale that it does hereby approve amended site plan approval for the Trailing Ridge Development to add one additional affordable unit, in a stacked format, which results in the Trailing Ridge Development having a total of 81 units, 63 being market rate townhouses and 18 affordable rental units; and

BE IT FURTHER RESOLVED that the within approval is contingent upon the applicant satisfying all of the conditions of the approvals detailed in prior resolutions of the Planning Board dated April 1, 2007 and November 20, 2007, both of which relate to the Trailing Ridge Development.

Dated: August 19, **2008**

PLANNING BOARD OF THE BOROUGH OF MONTVALE

By: _____
John DePinto, Chairman

Certified to be a true copy of a Resolution adopted by the Planning Board of the Borough of Montvale at its regular meeting on Tuesday, August 19th, 2008.

R Lorraine Hutter

R. LORRAINE HUTTER, Secretary

Introduced by: Mr. Teagno

Seconded by: Mr. Stefanelli

BOROUGH OF MONTVALE

PLANNING BOARD

**RESOLUTION GRANTING
MINOR SUBDIVISION APPROVAL,
TO BCUW/MADELINE HOUSING PARTNERS, LLC
FOR PREMISES DESIGNATED AS BLOCK 1606, LOT 6**

WHEREAS, application has been made to the Planning Board of the Borough of Montvale (hereinafter "the Planning Board" or "the Board") by BCUW/Madeline Housing Partners, LLC (hereinafter "the applicant"), 6 Forest Avenue, Paramus, New Jersey, for minor subdivision approval relating to premises known as Block 1606, Lot 6 as depicted on the tax assessment map of the Borough of Montvale, being more commonly known as 11 Grand Avenue East (hereinafter "the property", "the premises" or "the parcel"); and

WHEREAS, the applicant is the contract purchaser of a portion of the property, once subdivided, from the Borough of Montvale; and

WHEREAS, a public hearing was held on the respective application, on notice to all property owners within two hundred (200) feet therefrom and was published in the official newspaper of the Municipality, at least ten (10) days next preceding the date of hearing; and

WHEREAS, the applicant has requested that the Planning Board exercise is ancillary powers pursuant to *N.J.S.A. 40:55D-60* and grant

variances implicated by the development proposal pursuant to *N.J.S.A. 40:55D-70c*, as well as waivers and exceptions pursuant to *N.J.S.A. 40:55D-51(b)*; and

WHEREAS, the Planning Board has had the benefit of the reports of its professionals and has deliberated on the matters brought forth at said public hearing held on December 2, 2014, at which members of the public were afforded an opportunity to be heard; and

WHEREAS, the Planning Board has made certain findings of fact and conclusions with respect to said application.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Borough of Montvale that the following facts are made and determined:

1. The subject property comprises 45,358 square feet and is situated in the Affordable Housing Senior District ("AHS"), being situated on the northerly side of Grand Avenue East at the intersection of Waverly Place. Presently, the property is improved with a vacant former public school which, upon closure of the school, was used as the Borough Library. This building has been vacant for approximately a decade. By resolution dated January 6, 2015, various approvals were granted to the applicant pertaining to the subject property. More particularly, this included preliminary and final site plan approval for Lot 6 whereby the existing building would be retrofitted to be used for ten (10) affordable senior housing units. A new structure would also be developed on the property for four (4) units of special needs housing. Minor subdivision approval was also granted whereby Lot 6.01 comprising 23,753 square feet, or 0.5453 acres, would continue to be used as a ball field and for recreational purposes. Lot 6.01 is to remain in the ownership of the Borough.

The minor subdivision approval results in Lot 6 being comprised of an area of 45,358 square feet.

2. Subsequent to the aforesaid approval, the applicant also sought approval of a further subdivision of Lot 6. Under this plan, Lot 6 would comprise 35,944 square feet, on which would be situated the former school building to be converted into ten (10) affordable senior apartments. The four (4) housing units for development disabilities would be located in a separate structure on Lot 6.02. Under this further subdivision, Lot 6 would comprise 35,944 square feet and Lot 6.02, the parcel for the four (4) person group home, would contain 9,414 square feet.

3. This additional minor subdivision would implicate several variances pertaining to the AHS bulk standards. These pertain to lot width and lot frontage for Lot 6, which would be 152.5 feet and 152.93 feet, respectively. The lot width and lot frontage of Lot 6.02 would each be 76.72 feet. The depth of Lot 6.02 would be 122.71 feet and the rear yard ten (10) feet. In addition, a lot area variance is required for Lot 6.02.

4. The Planning Board was advised that this further subdivision of Lot 6 is required in connection with the financing for the affordable senior units in the former school and the new group home.

BE IT FURTHER RESOLVED by the Planning Board of the Borough of Montvale that based upon the above findings of fact, that the following conclusions are made and determined:

1. The within application for minor subdivision approval relates to Lot 6, which has been approved for an affordable senior housing

development and a new structure for persons with developmental disabilities. The subdivision of Lot 6 into two (2) parcels, one for the senior affordable development and one for the new group home, is solely related to the applicant's financing arrangements pertaining to the overall development.

2. The variances implicated may be granted in that the proposed uses on the respective parcels are both inherently beneficial and will further promote various goals and objectives of the Municipal Land Use Law ("MLUL"). More particularly, approval of the variances will promote the general welfare, provide adequate light, air and open space, promote a desirable visual environment through creative development techniques and good civic design and arrangement, and encourage senior citizen housing, all purposes of the MLUL as set forth in *N.J.S.A. 40:55D-2a, c, i* and *l*. Accordingly, the Board believes that the positive criteria for variance relief have been satisfied.

3. Granting of the variances will not impair the intent and purpose of the zone plan and Zoning Ordinance. The subdivision of Lot 6 into two (2) parcels for the two (2) buildings solely relates to the applicant's financing arrangements. From a visual perspective, the subdivision will have no impact in terms of the use of the property. For these reasons, the Board believes that the negative criteria for variance relief have been met.

BE IT FURTHER RESOLVED by the Planning Board of the Borough of Montvale that based upon the above findings of fact and conclusions, that minor subdivision approval be and is hereby granted to the applicant, subject to the following conditions:

1. Compliance with the conditions detailed in the resolution of the Planning Board granting site plan approval, variances and other relief to the applicant dated January 6, 2015.

2. Perfection of minor subdivision approval consistent with the time requirements set forth in *N.J.S.A. 40:55D-47*.

BE IT FURTHER RESOLVED that the Secretary of the Planning Board of the Borough of Montvale is hereby directed to mail a copy of this resolution to the applicant and to file a copy thereof with the Borough Clerk and to cause a notice of this determination of the Planning Board to be forwarded to an official newspaper of the Municipality within ten (10) days of the date hereof and thereafter to be published accordingly.

_____

JOHN J. DE PINTO, Chairman

Dated: January 6, 2015

Certified to be a true copy of a Resolution adopted by the Planning Board of the Borough of Montvale at its regular meeting on Tuesday, January 6, 2015.

_____

R. LORRAINE HUTTER, Secretary/Land Use Administrator

RECORD AND RETURN TO:
Robert T. Regan, Esq.
345 Kinderkamack Road
P.O. Box 214
Westwood, New Jersey 07675

Prepared By:_____
ROBERT T. REGAN, ESQ.

THIS AGREEMENT made this 7th day of July, 2016,

BETWEEN:

BOROUGH OF MONTVALE, a municipal corporation of the State of New Jersey, maintaining offices at 12 Mercedes Drive, Montvale, County of Bergen and State of New Jersey, hereinafter referred to as the "**Borough**";

PLANNING BOARD OF THE BOROUGH OF MONTVALE, a municipal corporation of the State of New Jersey, maintaining offices at 12 Mercedes Drive, Montvale, County of Bergen and State of New Jersey, hereinafter referred to as the "**Board**";

AND BCUW/MADELINE HOUSING PARTNERS, LLC, 6 Forest Avenue, Paramus, New Jersey, hereinafter referred to as the "**Developer**";

W I T N E S S E T H:

WHEREAS, BCUW/MADELINE HOUSING PARTNERS, LLC, as contract purchaser of premises known as a portion of Block 1606, Lot 6 (hereinafter "the premises" or "the property"), as the same appears on the current Assessment Map of the Borough of Montvale, made application for preliminary and final site plan

approval, minor subdivision approval, together with variance relief, waivers, and exceptions, and a major soil movement permit; and

WHEREAS, the aforesaid applicant more specifically requested approval so as to construct and retrofit an existing vacant building into ten (10) affordable senior housing units and to construct a new structure to be developed with four (4) units of special needs housing as more particularly set forth in the approving resolution; and

WHEREAS, the aforementioned site plan approval, minor subdivision approval, variances and waivers, exceptions, and a major soil movement permit, were granted to the Developer by resolution dated January 6, 2015, a copy of which is attached hereto as Exhibit A; and

WHEREAS, a second minor subdivision approval was granted to Developer by resolution dated January 6, 2015, a copy of which is attached hereto as Exhibit B; and

WHEREAS, pursuant to the aforementioned approvals, Lot 6 is subdivided into three (3) parcels: Lot 6.01, comprising 23,753 square feet (0.543 acres, ownership of which will remain in the Borough; Lot 6, comprising 35,944 square feet will be occupied by the existing building to be converted into ten (10) affordable senior apartments; and Lot 6.02, comprising 9,414 square feet, will be improved with the four (4) units of special needs housing; and

WHEREAS, the Developer is desirous of obtaining building permits so as to

allow the construction of certain of the improvements as delineated on the plans hereinafter referenced and as otherwise specified by the Borough; and

WHEREAS, it is required that certain fees and deposits be paid to the Borough of Montvale as required by Ordinance; and

WHEREAS, it is agreed and acknowledged that the site improvements herein required must be installed in accordance with the approved plans and meet the specifications currently in effect, and must be inspected during construction by the Borough Engineer subject to modifications as allowed by *N.J.S.A. 40:55D-49(a)*, and that such must be completed in a good and workmanlike manner as a condition precedent to the issuance of required permits and approvals; and

WHEREAS, the parties desire to memorialize their respective rights and obligations consistent with the approving Resolution and applicable ordinances; and

WHEREAS, the Developer has agreed to and accepted the conditions set forth in the Resolution of the Planning Board and its other obligations as hereinafter set forth.

NOW THEREFORE, in consideration of the covenants hereinafter contained, the parties hereto agree as follows:

1. **PLAN SCHEDULE.**

A. The Developer shall, within a period of twenty-four (24) months following the effective date of this Agreement, complete all of the improvements as

shown on the plans referenced on page 1 of correspondence from Maser Consulting, PA dated September 3, 2015 attached hereto as Exhibit C. The effective date shall be the date that the Agreement is fully executed by all parties and the Developer has taken title to the Property.

In particular, the Developer shall complete the site improvements including the new and reconfigured parking areas, means of ingress and egress, guiderails, inlets, and other work as may be approved or required by the appropriate agency having jurisdiction thereof; storm drains, catch basins, manholes, sanitary disposal facilities, water mains with necessary fittings, fire hydrants where shown, underground wiring, lighting, retaining walls with necessary footings, in accordance with plans submitted for approval, and where applicable, approval of Public Service Electric & Gas Company, Rockland Electric Company, United Water Resources, Inc., the County of Bergen and the State of New Jersey, as and if applicable, and the planting of trees, shrubs, screening and landscaping set forth on the landscaping plan and as required by the ordinances of the Borough of Montvale and as is otherwise shown in accordance with the plans above referenced. The applicant shall be permitted to request an extension of the time to complete, which request shall not be unreasonably denied or withheld by the Borough and/or Board.

B. The Planning Board resolutions of site plan and subdivision approval and the maps and plans referenced therein are made a part hereof by

reference. In connection therewith, the Developer shall be required to adhere to the conditions of said resolution and plans, except for such necessary changes as may be required and approved by the Borough Engineer or his designee as work progresses, with such changes being limited to minor field changes.

C. It is agreed by and between the parties to this Agreement that, absent further review and approval by the Planning Board, that the plans referenced herein shall be adhered to and that the Developer shall install such improvements shown on the plans in a manner deemed reasonably necessary to effectuate the intent and purpose of the ordinances of the Borough of Montvale as determined by the Borough Engineer or such other agent of the Borough acting within the scope of his authority, it being further agreed that the certification on said plans represents that the design standards employed in such plans minimally meet the requirements of the ordinances of the Borough of Montvale. To the extent that any design standard does not meet the minimum requirements as set forth in the ordinances of the Borough of Montvale as of the date of approval, where no variance or waiver has been granted, the Developer shall be required to comply with the appropriate standards as stated in the ordinance. Where a variance or waiver has been granted by the Planning Board, the Developer shall be required to comply with the conditions and the appropriate standards concerning such variance and waivers.

2. **COMPLIANCE WITH LOCAL LAWS AND RESOLUTION**.

Developer agrees to comply with the terms and conditions of the Resolutions of approval attached hereto as Exhibits A and B and except as otherwise provided for in said Resolutions, the terms and provisions of the Code of the Borough of Montvale as may be applicable and the reasonable directives of the Borough Engineer in all matters pertaining to this project.

3. **ESTIMATE OF COST OF IMPROVEMENTS.**

Attached hereto and made a part hereof is the present estimate of the costs of improvements to be installed on site, which has been designated as Exhibit C.

4. **PERFORMANCE SECURITY**.

Upon the execution of this Agreement and prior to the issuance of the required permits, the Developer shall, in accordance with *N.J.S.A. 40:55D-53*, post cash, performance bonds or a letter of credit in a form permitted by *N.J.A.C. 5:36-4, et seq.* as confirmed by the Board Attorney for the purpose of securing the completion of the site improvements all as specified on Exhibit C, together with cash deposits to provide for the payment of any legal, engineering or other expenses incurred by the Borough as set forth in paragraph 5 herein.

5. **PROFESSIONAL CHARGES**.

The Developer agrees to post with the Borough of Montvale, in advance, such monies as are determined to be reasonably necessary to reimburse the Borough of Montvale for expenses incurred by it on account of the services

performed by its professionals in accordance with *N.J.S.A. 40:55D-53* and *53.2* in reviewing the application, preparing this Agreement, processing the project, and inspecting the improvements as they are installed. The amounts deposited as provided for herein are to be considered estimates and shall be increased when required, it being understood that the Developer's obligation is to reimburse the Borough for all charges on account of professional fees reasonably incurred in connection with this project and authorized by Ordinance. Any charges not paid by Developer shall become a lien on the property. The total amount of fees charged is subject to the limits specified in *N.J.S.A. 40:55D-53h* and may be posted in installments in accordance with *N.J.S.A. 40:55D-53h.*

Prior to the issuance of approvals, the Developer shall post the sum of $23,680.80 to reimburse the Borough for engineering, inspection, legal and other professional fees expended on account of the review of the site development plan.

The amount set forth in the immediate preceding paragraph is to be considered an estimate and shall be increased and decreased at the reasonably exercised discretion of the Borough Engineer from time to time so as to provide sufficient funds for the performance of the requirements herein set forth. The Developer shall be required to deposit such additional sums within ten (10) consecutive calendar days after being advised that the amount of the deposit is inadequate to meet required costs. No approvals shall be issued, nor inspections performed, until such additional deposit has been made. Subject to *N.J.S.A.*

40:55D-53.2 and *53.2a*, Developer hereby authorizes the Borough to disburse the said deposits in payment of such services as are rendered upon proper vouchers therefore duly sworn by the persons rendering the services, and any monies not expended shall be returned by the Borough to the Developer after the work has been certified to be completed in a good and workmanlike manner and duly accepted by the Borough. Developer shall be provided with copies of bills and invoices consistent with the requirements of *N.J.S.A. 40:55D-53.2*.

6. **CONSTRUCTION AND ADMINISTRATION OF AFFORDABLE UNITS.**

Developer acknowledges that ten (10) units to be developed in the existing building on Lot 6 will be occupied by eligible senior citizens qualifying under applicable affordable housing rules promulgated by COAH or any successor entity or tribunal. The special needs housing units for four (4) persons on Lot 6.02 shall similarly be renovated. Developer acknowledges that the affordable units will be administered by Piazza and Associates ("the Agency") which has been designated by the Borough as the administrative agency for its affordable housing units. Occupancy of the units shall be limited to qualified applicants, which restrictions shall continue in force and in effect until such time as same are eliminated or deemed to have no applicability by the Borough. Developer agrees to cooperate with the Borough and the Agency in the administration of the units, including in the selection of qualified applicants.

7. **RELEASE OF PERFORMANCE GUARANTEE AND DEPOSITS**.

Upon the completion of all of the subject improvements in a good and workmanlike manner and such certification by the Developer, its successors or assigns, and a conforming certification by the Borough Engineer, the Governing Body by resolution shall release the performance guarantee and cash deposits where applicable upon the Developer's submission to the Borough Clerk of a maintenance guarantee pursuant to *N.J.S.A. 40:55D-53*, in an amount equal to fifteen (15%) percent of the total cost of such improvements as set forth in Exhibit C. Said guarantee shall run for two (2) years from the date of acceptance by the Borough. Said bond shall be issued in accordance with and in a form permitted by *N.J.A.C. 5:36-4, et seq.* by a reputable insurance company doing business in New Jersey. Notwithstanding the foregoing, the Developer may seek a partial release of the performance guarantee, provided that such request has been approved by all officials having jurisdiction.

Except as where required by statute, no security shall be released until the occurrence of all of the following events:

A. All of the improvements herein provided for have been certified in writing by the Borough Engineer to have been completed in a good and workmanlike manner and in accordance with the approved plans.

B. "As Built" plans have been submitted and approved for the work performed.

C. All requirements of this Agreement, the local approving agency and any other governmental agency have been met.

D. All taxes and escrow charges have been paid which may be due

on the property.

E. A resolution approving the reduction or release has been adopted by the Governing Body.

8. **PERFORMANCE BOND EMBRACES DEVELOPER'S AGREEMENT.**

Subject to *N.J.S.A. 40:55D-53a and N.J.A.C. 5:36-4 et seq.*, the within Agreement shall in its entirety be incorporated by reference and attached and made a part of the Performance Bond to be secured by the Developer. Subject to *N.J.S.A. 40:55D-53a* and *N.J.A.C. 5:36-4 et seq.* the issuing authority of the Performance Bond shall by such reference and annexation agree to be bound to the same extent as the Developer for the costs of all of the improvements provided for herein and otherwise. In the event the work is not completed within the time span allowed by this Agreement or any time extension thereof, or if the Developer abandons the job, files a petition in bankruptcy or insolvency, or is declared bankrupt or insolvent, or suffers any type of receivership, insolvency, bankruptcy or other similar proceeding to be filed against them, or ceases work for a period of thirty (30) consecutive days other than for reasons beyond Developer's control and without the permission of the Borough Engineer (as used herein and hereinafter, the term "Borough Engineer" shall mean the person holding such position or his or her designee) and fails to resume work within ten (10) consecutive calendar days after receipt of notice by certified mail at the address stated in this Agreement, then it shall be the duty of the surety to immediately undertake the

completion of the work at the expense of the Developer and their surety, or to pay the Borough the cost of the completion of the work at the expense of the Developer and their surety, or to pay to the Borough the cost of the completion of the work as a local improvement pursuant to the provisions of *N.J.S.A. 40:56-1, et seq.*

9. **GOVERNING BODY ENFORCEMENT POWERS.**

It is agreed between the parties that in the event the work required herein is not being completed in a good and workmanlike manner, or in accordance with the plans and specifications and terms of this Agreement, or in the further event that the continuation of the work is adversely impacting on other lands, all as may be determined in the reasonable judgment of the Borough Engineer, the Borough Engineer may give the Developer ten (10) business days notice to cure the defect, or a shorter notice if irreparable harm is anticipated, forwarding a copy of said notice to the Municipal Administrator. In the event that said defect is not cured within the required time period or commenced if it could not reasonably be performed within such time period and Developer is proceeding in good faith, the Governing Body shall be empowered to serve upon the Developer a notice to appear before it, on forty-eight (48) hours notice. Should the Governing Body then determine that the Developer has unjustifiably failed to comply with the request of the Borough Engineer, it shall be empowered to suspend the work until such time as the Developer has complied. Developer consents to inspection of the premises during the course of construction by

Borough officials, and agrees that such persons may enter the site to inspect, evaluate or investigate the property or the work done thereon. Any entry onto the premises by Borough officials must be done: (1) on reasonable notice to the Developer and (2) is made at the Borough official's own risk with recognition that the premises is under on-going construction.

10. **ACCEPTANCE OF IMPROVEMENTS.**

Upon complete and full performance of the terms and conditions of this Agreement by the Developer, the Borough shall have the option to accept by adoption of an appropriate resolution by its Governing Body, such improvements as are intended for public use and the Governing Body believes to be in the public interest over which the Borough shall exercise jurisdiction and control thereof as public works. Upon release of the performance guarantee, or portion thereof, the Borough shall be deemed to have accepted the improvement applicable thereto. Said acceptance shall be without assessment for the construction of improvements as set forth in the plans and specifications.

11. **GOVERNING BODY'S AND DEVELOPER'S AUTHORITY.**

Nothing herein contained shall be construed as preventing the Borough or the Developer from exercising in any court of law or elsewhere any rights or duties which it may have by statute, ordinance or other law. Nothing herein contained shall be deemed a waiver by any party of any ordinance or state statute or other law, or be construed as an abridgement, preemption or waiver of

the powers of any Borough Board, agency, public body or Developer. This clause shall not operate to confer upon any such public body any powers, rights or duties it does not now possess, nor abridge the rights of the Developer vis-a-vis any such public body.

12. **DEEDS AND EASEMENTS.**

The Developer shall prepare restricted Deeds, Deeds of Dedication or Easements, as the circumstances may require and if applicable, for all lands to be so restricted pursuant to the site plan approval, which shall include restrictions pertaining to the marketing/leasing of the affordable units. No right to the issuance of a certificate of occupancy or the release of the performance security referred to in paragraph 4 shall accrue to the Developer until such time as the grants and contingencies provided for above have been made to the Borough.

13. **GENERAL STANDARDS OF COMPLIANCE.**

In performing all improvements in a good and workmanlike manner, the Developer shall perform in accordance with the requirements of this Agreement, of the Site Plan Ordinance of the Borough of Montvale, Board of Health Ordinance of the Borough of Montvale, ordinances which the Borough has adopted, and such other reasonable requirements as may be imposed by the Borough Engineer, subject only to appropriate field changes.

The parties mutually agree that in the event changed circumstances or unforeseen conditions in the field demonstrate that it would be impractical for

the Developer to complete the improvements in accordance with the plans or that any particular site improvement as planned will not function for its intended purpose as a result of such a field condition, reasonable modifications as recommended by the Borough Engineer shall be effected in order to carry the project to completion in accordance with the basic intention of the design and Resolution above recited and the ordinances of the Borough. This provision is not intended to confer any right on the Developer to obtain permission to deviate from the design submitted to the local approving agency; the sole purpose of this provision is to empower the Borough Engineer to compel improvements to the plan or to rectify any oversight in design. Any change approved by the Borough Engineer shall be treated as a requirement of the local approving agency except that the Borough Engineer shall have no power to approve a change which renders the property more non-conforming or which confers any economic windfall.

14. **ORDINANCE REVISION.**

In addition to the conditions contained herein, the Developer agrees during construction to be bound by the amendments or supplements to the ordinances of the Borough of Montvale as they relate to other than general terms and conditions, provided same are permitted under *N.J.S.A. 40:55D-49.*

15. **NATURE OF WORK.**

As stated heretofore, the completion of the subject work shall

include the grading and construction of all necessary portions of roadways, means of ingress and egress, guiderails, parking facilities, curbs, sidewalks where required and where shown, inlets, headwalls, detention facilities, storm drains, catch basins, manholes, sanitary disposal facilities, water mains with necessary fittings, fire hydrants where shown, underground wiring, lighting, retaining walls with necessary footings and landscaping. In addition to the above, Developer shall be responsible, as a prerequisite to being released from the provisions of this Agreement, to complete, if applicable, any required off-site work in accordance with applicable standards. In addition, all parts of public roads disturbed shall be repaired in accordance with Borough standards and to the satisfaction of the Borough Engineer.

16. **ENGINEERING INSPECTION PROCEDURES.**

The Borough of Montvale contemplates the inspection of all facilities as set forth in the Performance Bond Estimate appended hereto. The Borough Engineer shall inspect the installation of storm drains, sanitary sewers, road improvements and all other facilities which will be maintained by private utility companies.

The Developer shall notify the Borough Engineer at least forty-eight (48) hours prior to the commencement of construction of any such facilities. In the event of a temporary suspension of construction, the Borough Engineer shall be notified at least forty-eight (48) hours in advance of the renewed starting date of

construction of any such facilities. Backfilling after the laying of potable water supply, drainage or sanitary sewer pipes, or other facilities in connection therewith, shall be absolutely forbidden except after the inspection and approval of the Borough Engineer or his duly authorized representative.

17. **SEWER CONNECTION CHARGES.**

Prior to the issuance of any building permit, all required sanitary sewer connection fees, if applicable, shall be paid consistent with Borough Ordinance requirements. Under no circumstances may any building permit or other approvals be issued so as to permit operations to take place on the property until such time as such sewer connection fees and charges have been paid. All charges and assessments shall be paid, and absent such payment, shall become a lien on the property which may be enforced by the Borough in the same manner as unpaid taxes and other assessments.

18. **AS-BUILT PLANS.**

The Developer shall submit "as-built" plans prepared by a licensed New Jersey Land Surveyor to the Borough Engineer for his review and approval. The Borough Engineer shall certify to the Governing Body and to the Construction Code Official that all of the work required by this Agreement has been completed in a good and workmanlike manner in accordance with the approved plans. Such certification shall be a condition precedent for Developer's bond release.

19. **SOIL MOVEMENT.**

A. Permit: Before the removal of any soil is commenced on the lands subject to this Agreement, the Developer shall satisfy all conditions of approval pertaining to the major soil movement permit. All ordinance requirements relating to soil movement shall be adhered to during the development process.

B. Conservation: All soil conservation measures, including revegetation of disturbed areas required under all soil permit applications, or as specified by the Borough Engineer or the Bergen County Soil Conservation District shall be adhered to by the Developer.

20. **LANDSCAPING; MAINTENANCE OF IMPROVEMENTS.**

A. Landscaping shall be in accordance with the standards set forth in the applicable Ordinances of the Borough of Montvale, as shown on the approved plan. In addition, landscaping shall be placed as shown on the plan approved by the local approving agency and approved by the Environmental Commission with plantings to be first quality nursery stock planted in accordance with generally accepted practices.

B. The Developer agrees on a continuing basis to maintain, and replace when necessary, all landscaping installed on the premises. In addition, all site amenities, curbs, traffic and advisory signs, lights, and buffers shall be kept and maintained as shown on the Site Plan as a continuing condition of Developer's rights under this Agreement. The foregoing obligations shall be

deemed to run with the land, and shall be binding on the Developer's successors in interest and assigns.

21. **HOLD HARMLESS AGREEMENT TO BOROUGH.**

A. The Developer agrees to hold the said Borough harmless from any damage or liability which might arise due to the action(s) or failure to act by the Developer due to the discharge of surface waters upon lands abutting the property being developed by them as shown on the subject plans herein referred to, and further agrees to alleviate any and all conditions which may arise by reason of the unplanned discharge of water, soil, dirt or other materials upon said abutting properties. The Developer further agrees to grade the premises so as to avoid the collection of water or drainage causing gullies or erosion and the deposit of soil on abutting properties. The Developer shall further be responsible for the removal of any silt deposited downstream caused by the Developer's act(s) during any construction phase.

B. In the event litigation arises from the construction undertaken pursuant to this Agreement and the Borough is made a party defendant to any lawsuit instituted and it becomes necessary for the Borough to defend such suit, the Developer agrees to indemnify and hold the Borough harmless from any and all claims, judgments or liabilities thereunder which relate to acts of the Developer, its subcontractors, agents, servants or employees, unless such litigation is between the Developer and the Borough arising out of this Agreement

concerning the failure of the parties to perform its obligations thereunder and/or arises from the sole acts or negligence of the Borough, its subcontractors, agents, servants or employees. The Developer, or its successors in interest shall defend any such litigation on behalf of the Borough at the Developer's expense and employ counsel satisfactory to the Borough, provided such counsel fees are reasonable and customary for insurance liability claims in Bergen County, New Jersey. In addition, the Developer hereby waives all claims against the Borough for damages or injuries to persons or property arising out of or asserted to have arisen from their construction project unless such claim arises from or relates to the acts or omissions, negligent or otherwise, of the Borough and its agents, servants or employees.

22. **INSURANCE.**

A. The Developer shall furnish to the Borough a certificate showing that the employees of the contractors engaged in said work are covered by a Worker's Compensation Policy from a duly recognized responsible insurance company, authorized to do business in the State of New Jersey with maximum statutory limits.

B. The Developer agrees to deliver to the Borough a certificate issued by a recognized insurance company authorized to do business in the State of New Jersey that the Developer's contractor has commercial general liability insurance for bodily injury and/or property damage arising out of or in connection with the

work to be undertaken with regard to the completion of the improvements herein set forth, with minimum limits of protection against claims for bodily injury with limits of $2,000,000.00. The Developer also agrees to deliver to the Borough a certificate of insurance from a recognized insurance company, showing that the Developer's contractor has commercial auto liability insurance on motor vehicles owned or rented by the Developer's contractor used in connection with the work to be performed under this Agreement covering bodily injury or liability and property damage with combined single limits of $2,000,000.00 each accident; limits may be met with a combination of primary and excess liability policies.

C. The Developer will require that the contractor keep the foregoing insurance policies in full force and effect until all work provided for herein shall have been completed as reasonably determined by the Borough of Montvale. Said certificates shall provide that ten (10) days written notice shall be given to the Borough prior to any cancellation of such policies.

D. The Developer will indemnify and hold the Borough harmless, including its agents, servants and employees from all loss, cost and expense including reasonable attorney's fees and court costs for all claims of property damage or injury including death arising out of the Developer's activities pursuant to the project covered under this Agreement unless such damage, injury or death is the result of any act or omission, negligent or otherwise of the Borough, its officers, employees or agents.

23. **NUISANCE.**

The Developer agrees not to commit a public or private nuisance by reason of dirt, dust, debris, air pollution, gas, smoke, or other annoyance resulting from construction, trucking or other operations.

A. Tires shall be cleaned before leaving the property and, in the event any soil is to be removed, tarpaulins shall be placed over the trucks.

The Developer agrees to provide for the proper maintenance of Borough and County streets which its construction vehicles use during the course of construction, which shall be performed on a daily basis, to ensure that they are clean from dirt and debris which may accumulate from the excavation and construction on the development site.

B. The Developer shall comply with the reasonable requests of the Borough and shall take whatever steps are necessary to ensure that the construction of this development project will not unreasonably interfere with adjoining land owners. In connection therewith, the Borough shall have the right to limit the use of certain Borough streets and regulate the hours of operation during the course of construction as may be established by Ordinance or by the Police Department. If required by the Borough, the Developer shall submit a construction schedule outlining the phase of construction so that the Borough may coordinate the use of streets and roads so as to not unreasonably interfere with the use thereof by other members of the public.

Upon completion of the work, the Developer shall remove all rubbish and debris, scaffolding, temporary construction tools and surplus materials such as mounds of dirt, and shall leave the site in a clean suitable condition. During construction, the site shall be cleaned regularly to insure that it remains in an acceptable condition.

24. **DRAINAGE SYSTEM MAINTENANCE.**

A. The Developer shall install all drainage facilities including manholes, inlets, and pipes in accordance with the approved plans, together with such other additional facilities as may be reasonably necessary in order to achieve zero percent increase in the rate of surface water run-off, as was the intention of the Planning Board.

B. Any and all aids to additional drainage, including on-site grading, contour landscaping, swales, retaining walls which may reasonably be deemed necessary to the Borough Engineer shall be installed by the Developer where conditions may warrant, whether or not the present plans provide for the same, as a condition of the release of the Developer and the surety from the performance obligation, provided the said present plans are in the reasonable judgment of the Borough Engineer unworkable.

C. During and at the conclusion of construction, the Developer shall clean the drainage system of all silt and debris and restore the same to its design section and volume prior to acceptance by the Borough.

25. **OTHER APPROVALS.**

The Developer represents, to its knowledge and to the extent required, that they have heretofore complied and that they will in the future comply with all requirements of the County Planning Board, County Engineer, Bergen County Road Department, Bergen County Soil Conservation District, Bergen County Department of Public Works, New Jersey Department of Environmental Protection Agency and hereby further represents that before commencing work they will secure all County, State, Federal and other approvals required for the contemplated work.

The Developer agrees to comply with all laws, orders or regulations of the Federal, State or local government or any of their respective subordinate agency, departments or commissions, which may relate to the performance of this Agreement or the construction of any improvements upon the property of the construction. In addition, the Developer agrees to abide by any orders issued by duly constituted officials as may be determined necessary to protect the public health, safety and welfare.

26. **MINIMUM ELEVATIONS.**

In addition to the above, the Developer agrees to maintain, if applicable, all elevations as shown on the approval plans, nor shall the building elevations as proposed in the plan otherwise be modified without the consent of the Borough Engineer.

27. **DEMOLITION.**

In the event construction of the proposed development requires demolition work, same shall not be performed unless a separate plan regarding the demolition work shall have been approved by the Code Enforcement Officer in writing. Any such plan shall, in particular, specify the safety precautions to be utilized in connection with the demolition and the control and reduction of dust and debris from same. In addition, the Developer shall deliver a certification from a pest control company current to within two (2) weeks of the demolition indicating that the building to be demolished has been treated so as to exterminate any vermin or pests living therein.

28. **MEMORANDUM OF AGREEMENT TO BE RECORDED.**

This Agreement shall be recorded in the Bergen County Clerk's Office at the Developer's expense. If recorded, this Agreement shall subordinate to all financing, provided Developer and to all financing provided Developer is in compliance with the terms and conditions detailed herein and in the approving Resolution, Borough shall issue a certificate evidencing the Developer's good standing and compliance with the terms of this Agreement within seven (7) days of Developer's request; and shall cause a discharge of this Agreement, in a form acceptable to Developer and at Developer's cost to be recorded in the Bergen County Clerk's Office within seven (7) days of the release of the Performance Guarantee.

29. **REMEDIES.**

If permitted by *N.J.S.A. 40:55D-1 et seq.*, the cash deposit and performance bond may be utilized by the Borough for the performance and completion of the improvements described in this Agreement upon default of the Developer, as well as for other costs as set forth in this Agreement. It is understood that the performance guarantee is given pursuant to *N.J.S.A. 40:55D-53*, and the Borough and Developer shall be entitled to all of the rights and remedies provided thereby, as well as all rights and remedies provided by general law. If permitted by *N.J.S.A. 40:55D-1 et seq.*, the Developer agrees that in the event the Developer defaults under the terms of this Agreement, that the Developer shall be responsible for not only the costs of completing the improvements, but also all ancillary costs and reasonable counsel fees expended by the Borough in order to enforce the provisions of this Agreement. If permitted by *N.J.S.A. 40:55D-1 et seq.*, it is agreed that the cash deposit and/or performance bond may be utilized by the Borough for the performance and completion of the improvements required to be constructed by the Developer in accordance with this Agreement and other costs incurred by the Borough upon the default of the Developer. If contained in the standard form established by *N.J.A.C. 5:36-4 et seq.*, the performance bond shall contain a provision allowing the immediate utilization of the proceeds of the bond in the event of the Developer's default as aforesaid.

The Developer agrees that any time the said Developer fails to comply with any of the terms of this Agreement or any obligations referenced in the approving resolution, or violates the terms and conditions thereof, or constructs the project contrary to the approved plans, the Borough Engineer, Construction Code Official or the Police Department, as to public safety matters, may forthwith stop all further work on said improvement until the work has been corrected or otherwise made to comply with the terms of this Agreement and the said specifications.

Notwithstanding anything to the contrary herein contained, in the event conditions detrimental to health, life, limb or property are created by the Developer, they shall be promptly corrected at the expense of the Developer. If any emergency shall arise, the Borough will immediately notify the Developer on the site or if the emergency permits, in the sole discretion of the Borough Engineer, by notice, hand delivered or sent by Certified Mail, to the address provided herein for notices. If no action is promptly taken by the Developer, the Borough is hereby empowered to take such corrective measures as in its sole discretion it may deem necessary and charge the same against the performance guarantees. If this cost shall exceed the performance guarantees, the Developer shall be liable to the Borough for such excess cost plus reasonable attorney's fees if suit shall be necessary to enforce collection.

30. **DEFAULT OF DEVELOPER.**

The Borough has the right to declare the Developer in default under this Agreement in any one of the following eventualities:

A. Developer becomes insolvent;

B. Developer makes an assignment for the benefit of creditors;

C. Voluntary Petition in Bankruptcy is filed by the Developer;

D. An involuntary Petition in Bankruptcy is filed against the Developer and Developer is adjudicated bankrupt;

E. A Receiver or Receivers are appointed to take charge of the property of Developer and such Receiver or Receivers are not discharged within ninety (90) days;

F. The Developer abandons the construction of the improvement for a period of sixty (60) consecutive days;

G. The Developer fails to complete all of the above described improvements within five (5) years from the issuance of the full building permit unless such delay is caused by acts of God, strikes or other events beyond the Developer's control, then in that event the time period shall be extended during the pendency of such events.

In the event a default is declared by the Borough, the Borough may direct the Construction Code Official to place a stop notice on the construction site of the effected site and withdraw the building permits. Further, the Borough may undertake to complete those improvements which are necessary

to insure the health and safety of the Borough's residents, or to restore the site, under the terms of the Performance Guarantees.

31. **DISPUTE RESOLUTION.**

The Borough and Developer agree that in the event of any dispute between the Borough Engineer and the Developer as to compliance with this Agreement, the Developer reserves the right to a hearing before the Governing Body and as otherwise permitted by applicable law.

32. **SUCCESSORS AND ASSIGNS.**

This Agreement shall be binding upon the parties hereto and their successors in interest and assigns.

33. **MODIFICATIONS.**

This Agreement may only be changed, modified or amended by a written instrument signed by all the parties hereto.

34. **SEVERABILITY.**

The provisions of this Agreement are severable. If any one provision be determined unenforceable, this shall have no effect on the balance of the provisions, which shall remain in full force and effect.

35. **SUBORDINATION.**

This Agreement and any liens or charges created hereunder against the property or any portion thereof shall be the subject and subordinate to any construction or permanent mortgage now or hereafter to be placed on said

property to the extent that such mortgage funds are used for the actual construction of site improvements on the property, inclusive of the structures to be created.

IN WITNESS WHEREOF, the Borough has caused these presents to be signed by its Mayor, attested by its Clerk, and the Borough Seal of the Borough to be hereto affixed, pursuant to a resolution duly adopted, and the Developer has hereunto set their hands and seals, the day and year first above written.

ATTEST:

Maureen Iarossi-Alwan,
Municipal Clerk

BOROUGH OF MONTVALE

By: _____ (L.S.)
Michael Ghassali, Mayor

ATTEST:

R. Lorraine Hutter,
Secretary/Land Use
Administrator

PLANNING BOARD OF THE BOROUGH OF MONTVALE

By: _____ (L.S.)
John J. De Pinto, Chairman

ATTEST:

Notary

MICHELE R. DEJESUS
NOTARY PUBLIC
STATE OF NEW JERSEY
ID #2341560
MY COMMISSION EXPIRES 3/8/16

BCUW/MADELINE HOUSING PARTNERS, LLC

By: _____ (L.S.)
Thomas M. Toronto
Co-Manager

STATE OF NEW JERSEY)
: SS:
COUNTY OF BERGEN)

BE IT REMEMBERED that on this 7th day of July, 2016, before me the subscriber, personally appeared Maureen Iarossi-Alwan, who being by me duly sworn on her oath deposes and makes proof to my satisfaction that she is the Municipal Clerk of the Borough of Montvale, the municipal corporation named in the within instrument; that Roger Fyfe is the Mayor of said municipal corporation; that the execution as well as the making of this instrument has been duly authorized by a proper resolution of the Governing Body of the Borough of Montvale; that deponent well knows the corporate seal of said municipal corporation; and that the seal affixed to said instrument is the proper corporate seal and was thereto affixed and said instrument was signed and delivered by said Mayor as and for the voluntary act and deed of said municipal corporation, in the presence of deponent, who thereupon subscribed her name thereto as attesting witness.

Maureen Iarossi-Alwan
MAUREEN IAROSSI-ALWAN

Sworn and Subscribed to before me this 7th day of July, 2016.

Marly Lopes Frasciello

MARLY LOPES FRASCIELLO
NOTARY PUBLIC OF NEW JERSEY
ID # 2358864
My Commission Expires 4/19/2017

STATE OF NEW JERSEY)
: SS:
COUNTY OF BERGEN)

BE IT REMEMBERED that on this 7th day of July, 2016, before me the subscriber, personally appeared R. Lorraine Hutter, who being by me duly sworn on her oath deposes and makes proof to my satisfaction that she is the Secretary of the Planning Board of the Borough of Montvale, the municipal corporation named in the within instrument; that John J. De Pinto is the Chairman of said municipal corporation; that the execution as well as the making of this instrument has been duly authorized by a proper resolution of the Planning Board of the Borough of Montvale; that deponent well knows the corporate seal of said municipal corporation; and that the seal affixed to said instrument is the proper corporate seal and was thereto affixed and said instrument was signed and delivered by said Chairman as and for the voluntary act and deed of said municipal corporation, in the presence of deponent, who thereupon subscribed her name thereto as attesting witness.

R. Lorraine Hutter
R. LORRAINE HUTTER

Sworn and Subscribed to before me this 7th day of July, 2016.

Marly Lopes Frasciello

MARLY LOPES FRASCIELLO
NOTARY PUBLIC OF NEW JERSEY
ID # 2358864
My Commission Expires 4/19/2017

STATE OF NEW JERSEY)
: *SS:*
COUNTY OF BERGEN)

BE IT REMEMBERED that on this 3rd day of March, 2016, before me the subscriber, personally appeared Thomas M. Toronto, who being by me duly sworn on his/her oath deposes and makes proof to my satisfaction that he/she is the Co-Manager of BCUW/MADELINE HOUSING PARTNERS, LLC, that the execution as well as the making of this instrument has been duly authorized by a proper resolution of the Managing Members; that deponent well knows the seal of said BCUW/MADELINE HOUSING PARTNERS, LLC, and that the seal was thereto affixed and said instrument was signed and delivered by the said Thomas M. Toronto as and for the voluntary act and deed of said BCUW/MADELINE HOUSING PARTNERS, LLC, in the presence of deponent, who thereupon subscribed his/her name thereto as attesting witness.

Thomas M. Toronto, Co-Manager of
BCUW/Madeline Housing Partners, LLC

Sworn and Subscribed to before me this 3 day of March, 2016.

(Notary)

MICHELE R. DEJESUS
NOTARY PUBLIC
STATE OF NEW JERSEY
ID #2341560
MY COMMISSION EXPIRES 3/8/16

EXHIBIT A

Introduced by: Mr. Culhane

Seconded by: Mr. Teagno

BOROUGH OF MONTVALE

PLANNING BOARD

RESOLUTION GRANTING PRELIMINARY AND FINAL SITE PLAN APPROVAL, RELATED VARIANCES, MINOR SUBDIVISION APPROVAL, A MAJOR SOIL MOVEMENT PERMIT AND WAIVERS FROM REQUIRING THE SUBMISSION OF AN ENVIRONMENTAL IMPACT STATEMENT AND THE DEPICTION OF DRAINAGE FACILITIES WITHIN 500 FEET TO BCUW/MADELINE HOUSING PARTNERS, LLC FOR PREMISES DESIGNATED AS BLOCK 1606, LOT 6

WHEREAS, application has been made to the Planning Board of the Borough of Montvale (hereinafter "the Planning Board" or "the Board") by BCUW/Madeline Housing Partners, LLC (hereinafter "the applicant"), 6 Forest Avenue, Paramus, New Jersey, for preliminary and final site plan approval, related variances, minor subdivision approval, a major soil movement permit, and waivers from the requirement of submission of an Environmental Impact Statement (hereinafter "EIS") and the depiction of drainage facilities within five hundred (500) feet relating to premises known as Block 1606, Lot 6 as depicted on the tax assessment map of the Borough of Montvale, being more commonly known as 11 Grand Avenue East (hereinafter "the property", "the premises" or "the parcel"); and

WHEREAS, the applicant is the contract purchaser of a portion of the property, once subdivided, from the Borough of Montvale; and

WHEREAS, a public hearing was held on the respective application, on notice to all property owners within two hundred (200) feet therefrom and was published in the official newspaper of the Municipality, at least ten (10) days next preceding the date of hearing; and

WHEREAS, the applicant has requested that the Planning Board exercise is ancillary powers pursuant to *N.J.S.A. 40:55D-60* and grant variances implicated by the development proposal pursuant to *N.J.S.A. 40:55D-70c*, as well as waivers and exceptions pursuant to *N.J.S.A. 40:55D-51(b)*; and

WHEREAS, the Planning Board has had the benefit of the reports of its professionals and has deliberated on the matters brought forth at said public hearing held on December 2, 2014, at which members of the public were afforded an opportunity to be heard; and

WHEREAS, the Planning Board has made certain findings of fact and conclusions with respect to said application.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Borough of Montvale that the following facts are made and determined:

1. The subject property comprises a land area of 69,111 square feet and is situated in the Affordable Housing Senior District ("AHS"), being situated on the northerly side of Grand Avenue East at the intersection of Waverly Place. Presently, the property is improved with a vacant former public school which, upon closure of the school, was used as the Borough Library. This building has been vacant for approximately a decade. The within application proposes to subdivide the existing parcel into two (2) lots, one of

which will remain the existing ball field and recreation area of the Borough. Under the subdivision plan, the ball field parcel would comprise 23,753 square feet, or 0.5453 acres and would be designated as Lot 6.01. The remaining land area, which would be designated as Lot 6, would comprise an area of 45,358 square feet, or approximately 1.04 acres. The existing vacant building would be retrofitted to be used for ten (10) affordable senior housing units. A new structure, which would be to the west of the existing former school building, would be developed with four (4) units of special needs housing. Other improvements relate to parking areas, lighting, landscaping and drainage upgrades.

2. The subject property has been located in the AHS Zone since September 30, 2014 pursuant to Ordinance No. 2014-1393 (hereinafter "the Ordinance") which permits apartments and community residences for the developmentally disabled as defined in *N.J.S.A. 40:55D-66.2a.* The Ordinance establishes various bulk standards, including a minimum lot area of 20,000 square feet, a minimum lot width of 200 feet, as well as other bulk standards. Several variances are implicated by the within application pertaining to lot width and lot frontage of proposed Lot 6.01, the ball field parcel, with width and frontage proposed to be 118.99 feet, less than the 200 foot requirement. The applicant also seeks a waiver from the requirement of the submission of an EIS pursuant to the standards in §128-17.10 and from submitting a map showing drainage as required by §56-27B(16).

3. At the public hearing held on the within application December 2, 2014, the applicant was represented by Gail L. Price, Esq. who provided the Board with an overview of the proposed development and that initially the applicant seeks a subdivision of the property into two (2) lots, one for the development, with the remainder constituting the existing recreation or ball field area, title to which will remain in the Borough. She advised the Board that if approved, a second subdivision would be sought so as to subdivide Lot 6 for financing purposes, with the former school building on one (1) parcel and the new structure for the developmentally disabled units on a separate tax lot. In addition to site plan approval, the applicant also seeks approval of a major soil movement permit. She noted that while *N.J.S.A. 40:55D-12b* requires notice to the owners of all real property within two hundred (200) feet of the subject premises, the applicant went beyond this requirement and provided notice to property owners within a distance of three hundred (300) feet of the premises.

4. The applicant presented as its first witness Gina Plotino, its Vice President of Operations, who was sworn simultaneously with Borough Engineer Andrew R. Hipolit. Ms. Plotino testified that prior to her current position, she served for ten years as Director of Human Services for Bergen County, the largest department in County government. She described the plan, which proposes ten (10) units of senior housing in the former school building and a new structure which would contain four (4) housing units for persons with developmental disabilities. She described the proposed population as

"complementary", involving caring communities who share each other's strengths and help each other. The senior units will be affordable, and occupants of the special needs units will also be required to meet income criteria and to document disabilities. Occupants of the special needs housing must be able to function independently, and the applicant employs a housing services coordinator so that the occupants receive those benefits which were committed to them upon the commencement of their tenancy.

5. Continuing her testimony, Ms. Plotino noted the urgent need for these type of housing units in Bergen County, with a waiting list of some 8,000 for developmentally disabled units. The application process is open and the selection done through affirmative marketing and fair share policies. To date, the applicant has done fifteen (15) projects in the area, with two (2) having recently received approvals in Mahwah and Tenafly, with Allendale and Ramsey having similar projects. Residents of the special needs housing receive assistance with daily living, including socialization and nutrition, but are active and work and volunteer in the community. The special needs housing will have four (4) bedrooms and will be staffed by three (3) shifts of eight (8) hours each by persons who are trained and credentialed in special needs support and assistance. The former school house structure will have ten (10) senior housing units, all of which will have one (1) bedroom.

6. The applicant presented as its next witness Michael Scro, an architect who was qualified in the field, and marked into evidence were the following exhibits:

Exhibit A-1	Rendering of the proposed improvements from Grand Avenue (Drawing No. A-5)
Exhibit A-2	View of the property, westerly portion of the site (Drawing A-6)
Exhibit A-3	Depiction of improvements at northeast corner of property (Drawing A-4)
Exhibit A-4	Floor Plan (Drawing A-1)
Exhibit A-5	Exterior elevations (Drawing A-2)
Exhibit A-6	Exterior elevations, east to west (Drawing A-3)

7. Commencing his testimony, Mr. Scro described the condition of the existing former school building as "quite sound". The proposal's objective is to keep, restore and refurbish this building. An additional vestibule with an elevator is proposed to be added to the rear area and stairs to bring the property into ADA compliance. The proposed new structure is intended to blend in with the character of the school, the same color brick and will have a residential design. The architect referred to and described the various drawings marked into evidence and noted that the refurbishing of the building includes maintaining the existing cupola and bell tower on the former school. Portions of the existing brick work on the school building will be required to be repointed. He described the proposed windows and that the windows on the two buildings would be similar in design. The entire development will be ADA compliant and the architect described the proposed ramp and curb cuts. The senior units in the school will all be barrier free, with roll-in showers. The foundation for the new structure will be slab on grade, with the brick façade intended to match the brick on the existing school building.

8. Testimony in support of the application was presented by the applicant's engineer, Richard L. Eichenlaub who was sworn and qualified in the field of civil engineering. The plans prepared by him revised to November 17, 2014 (five sheets) were marked into evidence as Exhibit A-7. Commencing his testimony, Mr. Eichenlaub stated that the existing configuration of the site would be maintained, with the westerly portion of the property designated on the plan as Lot 6.01 and containing the existing ball field which would be subdivided off and remain the property of the Borough. The total land area of the entire Lot 6 is 69,111 square feet, with the ball field portion being 23,753 square feet. The existing former school property on Lot 6 would be maintained, with a vestibule constructed off the back area, together with the handicapped ramps to facilitate access.

9. The proposed new group home would be sited between the existing ball field and school and entirely on Lot 6, with a ten (10) foot offset to the property line. Between the existing school building and the group home structure would be a patio gathering area. The engineer next described the access to the site, noting the location of one off of Waverly Place, which would be two (2) way for entry and exit, as well as access from the site onto Grand Avenue, with right hand turns only. Vehicles exiting the site will travel out onto Waverly Place to access Grand Avenue. The driveway width from Waverly Place is being increased.

10. The plan depicts a total of twenty (20) parking spaces on the premises, with ninety (90°) degree parking in the easterly parking area. The

existing timber retaining wall will be removed and a concrete wall constructed in its place. Parking is set back a minimum of eight (8) feet from the property line, in excess of the five (5) foot offset required. Adequate turning radii has been provided so as to permit vehicles such as a refuse truck to turn on site. The twenty (20) parking spaces will be allocated so that each of the ten (10) units in the senior building will have a space. Mr. Eichenlaub indicated that two employees would be on site at any time, and he described the parking as providing an excess amount so as to accommodate visitors. He also described the drop-off areas and handicapped spaces and the access to the senior building and group home. Grading is not proposed to be changed on the site.

11. Addressing the issue of drainage, Mr. Eichenlaub stated that two (2) inlets presently service the property. The plan depicts two (2) "E" inlets on the easterly portion of the property and another on the southerly end of the parking area near the boundary with proposed Lot 6.01. He described the proposed reconstruction of a seepage pit to retain flows, with the overall drainage design intended to minimize and reduce flow from the site. Although the impervious area would increase by 6,000 square feet, flow will be reduced and the seepage pits are designed so as to be capable of handling roof runoff for a hundred year storm. The plan does not constitute a major development, which would require an increase in impervious area, or disturbance greater than an acre. The increase in impervious area as noted above is only 6,000 square feet, and the area of disturbance only 28,000 square feet and

consequently does not constitute a major development under stormwater management regulations.

12. The applicant's engineer next addressed site lighting depicted on Sheet 4 of Exhibit A-7. The plan proposes two (2) Borough standard decorative street lighting fixtures on Grand Avenue, three (3) lantern-type fixtures along the walkway on Grand Avenue, and seven (7) fourteen (14) foot high shoebox-type fixtures at various areas in the parking lot.

13. The application for a soil movement permit was addressed, with Mr. Eichenlaub indicating that due to changes in the easterly parking area, the retaining wall is being moved to the east, which requires some soil movement, and in addition a cut is required for the seepage pits and soil movement for the foundation for the new group home. Total soil movement aggregates 923 cubic yards, with a total of 119 cubic yards (8 truckloads) being removed from the site.

14. As noted above, two (2) variances are required pertaining to lot frontage and lot width, both of which aggregate 118.99 feet, less than the 200 foot requirement, and pertain to proposed Lot 6.01. Mr. Eichenlaub stated that the site is fully developed and that an EIS would serve no useful purpose, and he agreed to provide a letter addressing the criteria for a waiver from the requirement of submitting an EIS under §128-17.10. He also described the landscaping plan, the trees to removed, some of which are diseased, and the proposed landscaping along the northerly property line so as to provide screening from adjoining properties.

15. Marked into evidence as Board Exhibit 1 was the report of Borough Engineer Andrew R. Hipolit of Maser Consulting dated December 2, 2014, and Mr. Hipolit provided testimony pertaining to his report. He first noted existing site conditions and the required variances, as well as the waiver from the requirement of submitting an EIS and the depiction of drainage facilities within five hundred (500) feet, to which he has no objection. The issue pertaining to the access by emergency vehicles has been addressed and ADA requirements are also satisfied. He noted that parking is in excess of the fourteen (14) spaces required and takes no exception to the quantum of soil movement proposed for the project. In addition, Mr. Hipolit noted that the project does not constitute a major development under stormwater management standards. A soil test will be required to determine the percolation rate to insure functionality of the seepage pits. He requested that Items 19 through 26 be noted as conditions of any approval, and confirmed that the two (2) lighting fixtures on Grand Avenue are the Borough standard decorative street lighting and indicated that the lighting for the site is appropriate.

16. Also marked into evidence as Board Exhibit 2 was a report of the Montvale Fire Department dated December 1, 2014 indicating that the special needs home be assigned a distinct address separate from the senior development in the former school house. Correspondence from the Bergen County Planning Board dated November 21, 2014 requesting copies of the plan for the project was marked into evidence as Board Exhibit 3.

BE IT FURTHER RESOLVED by the Planning Board of the Borough of Montvale that based upon the above findings of fact, that the following conclusions are made and determined:

1. The Planning Board has considered the applicant's proposal which seeks site plan and minor subdivision approval, ancillary variances and waivers, and a major soil movement permit in connection with property presently owned by the Borough of Montvale, a portion of which will be conveyed by the Borough to the applicant which contains a land area of 45,358 square feet and is designated as Lot 6. This portion of the property contains the former School No. 2/Montvale Library which will be converted into ten (10) affordable senior housing apartments. To the west of this existing structure is a new building containing four (4) units of housing for persons that are developmentally disabled which will be constructed on the site. Lot 6 will also contain a patio or gathering area, various walkways and driveways, and twenty (20) parking spaces. The portion of Lot 6 not conveyed to the applicant by the Borough designated as proposed Lot 6.01 and comprising a land area of 23,753 square feet will remain in ownership of the Borough and continue to be used for recreation purposes.

2. The subject property is located in the AHS District, and the proposed use for Lot 6 for affordable senior apartments and housing for the developmentally disabled is permitted pursuant to §128-5.11G(1) of the Zoning Ordinance. The plan meets all of the requirements and standards applicable to the AHS District, except as to lot frontage and lot width for proposed Lot 6.01,

the ball field property. More particularly, frontage and width are required to be two hundred (200) feet, and the frontage and width for proposed Lot 6.01 would be at 118.99 feet, thereby necessitating variance relief. Lot 6, which would contain the housing units, would fully conform to the standards of the AHS District.

3. The Board is of the opinion that the variance relief pertaining to frontage and width for Lot 6.01 may be granted pursuant to *N.J.S.A. 40:55D-70c(2)*. Granting of these two variances will permit the Borough to maintain a portion of the property for recreational purposes while at the same time allowing the development of affordable housing for senior citizens and the developmentally disabled on Lot 6. The overall development plan is consistent with the Borough's Housing Element and Fair Share Plan and the fundamental policy of promoting the construction of affordable housing. Various goals and objectives of the Municipal Land Use Law ("MLUL") will be advanced by the granting of deviation relief. These include the appropriate use or development of land consistent with the general welfare, the providing of adequate open space, the establishment of appropriate population densities, and the promotion of a desirable visual environment through creative development techniques and good civic design and arrangement, and the construction of senior citizen housing. See *N.J.S.A. 40:55D-2a, c, e, i* and *l*.

4. More particularly, the general welfare purpose will be advanced by the production of affordable housing, both for senior citizens and the developmentally disabled, and the testimony presented during the public

hearing indicated that there is a substantial need for such housing units in Bergen County. The subdivision design will provide adequate open space evidenced by the continued maintenance of the ball field area for recreational purposes, together with the fact that the housing units sited for Lot 6 will be on a parcel significantly greater in size than the minimum standard under the AHS District and a density less than the maximum permitted. The goal of appropriate population density is met by the plan's consistency with this density standard as well. The objective of providing a desirable visual environment through good civic design is advanced by the aesthetics of the upgraded former school building and the new structure, with the architect's renderings depicting that the character of the school building is maintained, that the new structure will be consistent with this character, and that the overall appearance of the project will be aesthetically appropriate for the site and the surrounding neighborhood. The bell tower and cupola on the existing school building will be maintained and refurbished. The architect's renderings support a conclusion that a desirable visual environment will be realized by the proposed development.

5. The Board finds that the two (2) variances may be granted without substantial detriment to the zone plan and Zoning Ordinance. There are a number of reasons which are supportive of this conclusion. First, the proposed use of the property is consistent with the Master Plan and the AHS District. The proposal is also consistent with the Borough's Housing Element. The plan complies with the overwhelming number of standards applicable to

the AHS District and the density of 13.44 units proposed for Lot 6 is less than the sixteen (16) units per acre permitted in the District. Approval of the variances will permit the development of the affordable units on Lot 6 and permit the Borough to address its housing obligation. For these reasons, the Board finds that the negative criteria for the granting of variance relief have been satisfied.

6. The Board is of the opinion that the subdivision of the property into two (2) parcels is appropriate, with each of the lots meeting the minimum lot area applicable to the AHS District. Furthermore, the subdivision allows the construction of affordable units on Lot 6 and the continued maintenance by the Borough on Lot 6.01 of a recreational area. Accordingly, minor subdivision approval may be granted to the applicant.

7. The Board is of the opinion that waivers may be granted from the requirement of submitting of an EIS under §128-17.10 in that the site is fully developed and submission of an EIS would serve no useful purpose. Essentially, only one (1) new building is being added to the premises and drainage is being improved. None of the facts relevant to an EIS are implicated by the plan. The fully developed nature of the site also permits a conclusion that the depiction of drainage and other structures within five hundred (500) feet need not be depicted. Accordingly, these two (2) waivers may be granted.

8. The Board has also considered the need for the issuance of a major soil movement permit pursuant to Chapter 104 of the Borough Code. This movement of soil is necessitated as a consequence of the proposed

development due to the foundation for the group home, the movement of the retaining wall and the cut for the seepage pits. Total soil movement of 923 cubic yards is not significant, with the total quantum of soil exported being only 119 cubic yards, or approximately eight (8) truckloads.

9. The Board is of the opinion that the applicant has satisfied the criteria for preliminary and final site plan approval. The Borough engineer has determined that the proposal does not constitute a major development under stormwater management regulations. Additional drainage improvements in the form of seepage pits will collect stormwater and reduce runoff from the site. In addition, the applicant has addressed issues pertaining to site access, lighting and utilities. The plans as presented provide the requisite information as set forth in §128-8.7D and 8.9D, as well as the performance standards in §128-8.11. Based upon the foregoing, preliminary and final site plan approval may be granted.

10. The Board finds that the applicant has complied with the procedures enumerated in the Soil Removal Ordinance so as to permit the issuance of a major soil movement permit. In this regard, the Board is of the opinion that in its review of the factors to be considered in conjunction with the within application, as defined in the Soil Removal Ordinance, that the proposed operations will be in conformity with the standards established by Ordinance and that the operations may be conducted without adversely impacting upon existing soil and drainage conditions and the public health and safety.

BE IT FURTHER RESOLVED by the Planning Board of the Borough of Montvale that based upon the above findings of fact and conclusions that preliminary and final site plan approval, ancillary variances and waivers, minor subdivision approval, and approval of a major soil movement permit, be and are hereby granted to the applicant, subject to the following conditions:

1. Perfection of minor subdivision approval consistent with the time requirements set forth in *N.J.S.A. 40:55D-47.*

2. Compliance with the conditions detailed in the report of Maser Consulting dated December 2, 2014 (Board Exhibit 1), together with any subsequent letter requirements.

3. Construction of the improvements herein approved shall commence within two (2) years of the date of this resolution. Should construction not begin within this time period, the title to Lot 6 shall revert to the Borough consistent with the applicant's Purchase Agreement with the Borough.

4. Submission by the applicant's engineer of correspondence addressing the requirements for a waiver of an EIS, which letter shall address the standards set forth in §128-17.10.

5. Adherence to all representations made by the applicant and its representatives and professionals during the course of the public hearing, which representations are made conditions of the within approval.

6. Adherence to plans, renderings and engineering drawings and other exhibits submitted by the applicant. Any deviation from such submissions shall require the applicant to return to the Board for further review and any necessary approvals.

7. The affordable units shall be affirmatively marketed in such manner as required by the Borough and the Council On Affordable Housing ("COAH") so as to insure that the Borough receives appropriate crediting as required under its Housing Plan and any amendments thereto.

8. Approval by the Bergen County Planning Board, Bergen County Soil Conservation District, New Jersey Department of Environmental Protection, Department of the Army, New York District Corps. of Engineers, and such other federal, state, county and municipal agencies having jurisdiction over the proposed use. In the event any approval by any other agency results in an alteration or modification of the application as approved by the Planning Board, the applicant shall be required to resubmit the application.

9. The execution by the applicant of a Developer's Agreement to be prepared by the Board attorney and the full performance by the applicant of the obligations, terms and conditions of said Developer's Agreement including, but not limited to, the payment of all fees and the posting and maintenance of all deposits and escrows thereby required.

10. Compliance with all present letter requirements of the Board engineer, future letter requirements of the Board engineer made pursuant to

any Developer's Agreement to be entered into in accordance herewith, future letter requirements of the Board engineer relating to the conditions of the within approval, and subject to the future letter requirements which entail minimal deviation from the plan hereby approved and are necessitated by field conditions hereafter discovered.

11. The applicant shall be required to comply with the design and site details as shown on all plans submitted through their respective dates. Any deviation from any such development designs or details shall require further review and approval by the Board.

12. Posting of a bond in such amount as determined by the Board engineer so as to guarantee performance of the work herein required and approved, as well as the maintenance of said work after completion.

13. Posting of all fees and deposits as required by the applicable Ordinance of the Borough of Montvale, which shall include the posting of such deposits as are necessary to reimburse the Municipality for money paid to its professionals for review of the within application, consistent with the Settlement Agreement, and the inspection of the work to be performed incidental thereto. Such fees and deposits shall be promptly paid and no demolition, building or other permits may be issued should such fees and deposits be outstanding.

14. The applicant shall conform with all requirements of the Construction Official, Board engineer, Police and Fire Departments and any other official having jurisdiction with respect to the use of the subject premises.

15. All utilities to serve the residences to be constructed on the property shall be placed underground.

16. The applicant shall submit written confirmation from applicable utilities verifying that permission has been granted for the service of the properties to be developed within the subject premises.

17. Soil movement operations shall be in accordance with the directives of the Board engineer and shall include the installation of drainage swales to direct and divert drainage away from adjoining properties during the periods when the soil operations are on-going.

18. The applicant shall be required to comply with all conditions of Chapter 104 of the Montvale Borough Code.

19. Approval by the Police Department as to the route trucks accessing and leaving the site will utilize, subject to requirements of County officials having jurisdiction.

20. The applicant shall be required to pay the cost of any police personnel deemed necessary by the Police Department to provide traffic control and monitor operations at the site or at intersections within the vicinity of the site.

21. The exact date for commencement of operations shall be provided to the Borough at least ten (10) days prior to the commencement thereof in order that the public may be informed through posting on the Borough's website and through other means.

22. The applicant shall be responsible for the cost of cleaning streets in conjunction with the soil moving operations. Any spillage shall promptly be cleaned at applicant's expense.

23. The hours of operation shall be required to be approved by the Police Department.

24. No operations may commence until a copy of the application and plan are submitted to the Police Department and the Department has determined as to the appropriate routes to be utilized to access the site, hours of operation, and traffic control issues. The determinations of the Police Department shall be required to be adhered to, subject to requirements of County officials having jurisdiction.

25. Posting of a bond as required by §104-10 of the Borough Code and in such amount as may be determined to be necessary by the Board engineer.

26. Approval by the Environmental Commission of the landscaping plan.

27. Submission of revised plans reflecting changes agreed to by the applicant during the public hearing, which shall be required to be approved by the Board Engineer.

BE IT FURTHER RESOLVED that the Secretary of the Planning Board of the Borough of Montvale is hereby directed to mail a copy of this resolution to the applicant and to file a copy thereof with the Borough Clerk and to cause a notice of this determination of the Planning Board to be

forwarded to an official newspaper of the Municipality within ten (10) days of the date hereof and thereafter to be published accordingly.

JOHN J. DE PINTO, Chairman

Dated: January 6, 2015

Certified to be a true copy of a Resolution adopted by the Planning Board of the Borough of Montvale at its regular meeting on Tuesday, January 6, 2015.

R. Lorraine Hutter

R. LORRAINE HUTTER, Secretary/Land Use Administrator

EXHIBIT B

Introduced by: Mr. Teagno

Seconded by: Mr. Stefanelli

BOROUGH OF MONTVALE

PLANNING BOARD

RESOLUTION GRANTING
MINOR SUBDIVISION APPROVAL,
TO BCUW/MADELINE HOUSING PARTNERS, LLC
FOR PREMISES DESIGNATED AS BLOCK 1606, LOT 6

WHEREAS, application has been made to the Planning Board of the Borough of Montvale (hereinafter "the Planning Board" or "the Board") by BCUW/Madeline Housing Partners, LLC (hereinafter "the applicant"), 6 Forest Avenue, Paramus, New Jersey, for minor subdivision approval relating to premises known as Block 1606, Lot 6 as depicted on the tax assessment map of the Borough of Montvale, being more commonly known as 11 Grand Avenue East (hereinafter "the property", "the premises" or "the parcel"); and

WHEREAS, the applicant is the contract purchaser of a portion of the property, once subdivided, from the Borough of Montvale; and

WHEREAS, a public hearing was held on the respective application, on notice to all property owners within two hundred (200) feet therefrom and was published in the official newspaper of the Municipality, at least ten (10) days next preceding the date of hearing; and

WHEREAS, the applicant has requested that the Planning Board exercise is ancillary powers pursuant to *N.J.S.A. 40:55D-60* and grant

variances implicated by the development proposal pursuant to *N.J.S.A. 40:55D-70c*, as well as waivers and exceptions pursuant to *N.J.S.A. 40:55D-51(b)*; and

WHEREAS, the Planning Board has had the benefit of the reports of its professionals and has deliberated on the matters brought forth at said public hearing held on December 2, 2014, at which members of the public were afforded an opportunity to be heard; and

WHEREAS, the Planning Board has made certain findings of fact and conclusions with respect to said application.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Borough of Montvale that the following facts are made and determined:

1. The subject property comprises 45,358 square feet and is situated in the Affordable Housing Senior District ("AHS"), being situated on the northerly side of Grand Avenue East at the intersection of Waverly Place. Presently, the property is improved with a vacant former public school which, upon closure of the school, was used as the Borough Library. This building has been vacant for approximately a decade. By resolution dated January 6, 2015, various approvals were granted to the applicant pertaining to the subject property. More particularly, this included preliminary and final site plan approval for Lot 6 whereby the existing building would be retrofitted to be used for ten (10) affordable senior housing units. A new structure would also be developed on the property for four (4) units of special needs housing. Minor subdivision approval was also granted whereby Lot 6.01 comprising 23,753 square feet, or 0.5453 acres, would continue to be used as a ball field and for

recreational purposes. Lot 6.01 is to remain in the ownership of the Borough. The minor subdivision approval results in Lot 6 being comprised of an area of 45,358 square feet.

2. Subsequent to the aforesaid approval, the applicant also sought approval of a further subdivision of Lot 6. Under this plan, Lot 6 would comprise 35,944 square feet, on which would be situated the former school building to be converted into ten (10) affordable senior apartments. The four (4) housing units for development disabilities would be located in a separate structure on Lot 6.02. Under this further subdivision, Lot 6 would comprise 35,944 square feet and Lot 6.02, the parcel for the four (4) person group home, would contain 9,414 square feet.

3. This additional minor subdivision would implicate several variances pertaining to the AHS bulk standards. These pertain to lot width and lot frontage for Lot 6, which would be 152.5 feet and 152.93 feet, respectively. The lot width and lot frontage of Lot 6.02 would each be 76.72 feet. The depth of Lot 6.02 would be 122.71 feet and the rear yard ten (10) feet. In addition, a lot area variance is required for Lot 6.02.

4. The Planning Board was advised that this further subdivision of Lot 6 is required in connection with the financing for the affordable senior units in the former school and the new group home.

BE IT FURTHER RESOLVED by the Planning Board of the Borough of Montvale that based upon the above findings of fact, that the following conclusions are made and determined:

1. The within application for minor subdivision approval relates to Lot 6, which has been approved for an affordable senior housing development and a new structure for persons with developmental disabilities. The subdivision of Lot 6 into two (2) parcels, one for the senior affordable development and one for the new group home, is solely related to the applicant's financing arrangements pertaining to the overall development.

2. The variances implicated may be granted in that the proposed uses on the respective parcels are both inherently beneficial and will further promote various goals and objectives of the Municipal Land Use Law ("MLUL"). More particularly, approval of the variances will promote the general welfare, provide adequate light, air and open space, promote a desirable visual environment through creative development techniques and good civic design and arrangement, and encourage senior citizen housing, all purposes of the MLUL as set forth in *N.J.S.A. 40:55D-2a, c, i* and *l.* Accordingly, the Board believes that the positive criteria for variance relief have been satisfied.

3. Granting of the variances will not impair the intent and purpose of the zone plan and Zoning Ordinance. The subdivision of Lot 6 into two (2) parcels for the two (2) buildings solely relates to the applicant's financing arrangements. From a visual perspective, the subdivision will have no impact in terms of the use of the property. For these reasons, the Board believes that the negative criteria for variance relief have been met.

BE IT FURTHER RESOLVED by the Planning Board of the Borough of Montvale that based upon the above findings of fact and

conclusions, that minor subdivision approval be and is hereby granted to the applicant, subject to the following conditions:

1. Compliance with the conditions detailed in the resolution of the Planning Board granting site plan approval, variances and other relief to the applicant dated January 6, 2015.

2. Perfection of minor subdivision approval consistent with the time requirements set forth in *N.J.S.A. 40:55D-47.*

BE IT FURTHER RESOLVED that the Secretary of the Planning Board of the Borough of Montvale is hereby directed to mail a copy of this resolution to the applicant and to file a copy thereof with the Borough Clerk and to cause a notice of this determination of the Planning Board to be forwarded to an official newspaper of the Municipality within ten (10) days of the date hereof and thereafter to be published accordingly.

JOHN J. DE PINTO, Chairman

Dated: January 6, 2015

Certified to be a true copy of a Resolution adopted by the Planning Board of the Borough of Montvale at its regular meeting on Tuesday, January 6, 2015.

R. Lorraine Hutter

R. LORRAINE HUTTER, Secretary/Land Use Administrator

EXHIBIT C

MASER CONSULTING P.A.

Engineers
Planners
Surveyors
Landscape Architects
Environmental Scientists

400 Valley Road, Suite 304
Mount Arlington, NJ 07856
T: 973.398.3110
F: 973.398.3199
www.maserconsulting.com

September 3, 2015

VIA E-MAIL & REGULAR MAIL

Robert Regan, Esq.
345 Kinderkamack Road
Westwood, NJ 07675

Re: Plan Review, Bonding/Escrow Requirement
BCUW / Madeline Housing Partners, LLC
Block 1606, Lots 6.0 and 6.02
Borough of Montvale, Bergen County, NJ
Our File No. MVP-337

Dear Mr. Regan:

The Applicant for the above-referenced matter has submitted copies of documents relative to the above-referenced application summarized below:

- Site plan set entitled, "BCUW / Madeline Housing Partners, LLC, Block 1606, Lots 6.0 and 6.02, Montvale, New Jersey," prepared by Richard L. Eichenlaub, PE, consisting of five (5) sheets, dated 12/2/2013 and last revised 11/20/2014;

- Cost estimate entitled "Engineer's Cost Estimate for BCUW / Madeline Housing Partners, LLC, Block 1606, Lots 6.0 and 6.02, Montvale, New Jersey", prepared by Richard L. Eichenlaub, PE, of R.L. Engineering, Inc., undated.

Based on our review of these documents, we take no exception to the finalization of the Developer's Agreement. It appears the Applicant has met all conditions of the Resolution relating to plan set revisions. We do, however, offer the following:

Escrow and Bonding Requirements

As required in the Resolution, we offer the following information in the matter of required escrow, performance and maintenance bonds that are to be posted by the Applicant:

1. The Engineer's construction cost estimate, undated, prepared by R.L. Engineering (attached) for both site work and landscaping is $473,616.00.

2. N.J.S.A. 40:55D-53 allows the Borough to require the developer to post a Performance Guarantee of an amount not to exceed 120% of the cost of installation of the improvements. It also allows the Borough to require the developer to post no more than 10% of the guarantee in the form of cash. Therefore, a Performance Guarantee of $568,339.20 of which

$56,833.92 should be in the form of cash and remainder $511,505.28, may be in the form of a bond.

3. After the Borough accepts the site improvements, a maintenance bond shall be posted. N.J.S.A. 40:55D-53 allows the Borough to require the developer to post 15% of the cost of installation of improvements, which would result in a $71,042.40 maintenance bond. N.J.S.A. 40:55D-53 restricts the time this bond can be held for two (2) years from acceptance of improvements.

4. N.J.S.A. 40:55D-53h allows for the Borough to collect fees in the amount not to exceed the greater of $500 or 5% of the cost of the improvements to cover inspection services. Therefore, the Borough will require the Applicant to post $23,680.80 in an escrow account to cover the Borough's inspection fees.

Conditions of Developer's Agreement Recommendation

This office takes no exception to entering into the Developer's Agreement, however we do offer the following comments:

5. The Applicant must comply with all of the terms and conditions within the Resolutions.

6. The Applicant shall obtain Fire Department approval with regard to the fire truck circulation plan. This plan must include the location of the fire hydrants and all necessary signage with correlation to the emergency access roads.

7. Any designs pertaining to retaining walls four (4) feet in height or greater has to be prepared by a licensed New Jersey engineer for review, and must be approved by the Borough engineer. Post construction certifications as well as as-built plans will be required.

8. The Applicant must submit all appropriate consents to the Borough of Montvale as to permit *Title 39* enforcement pertaining to traffic and parking related issues.

9. The Applicant must receive approval by the Bergen County Planning Board, Bergen County Soil Conservation District, New Jersey Department of Environmental Protection, Department of the Army, New York District Corps. Of Engineers, and other federal, state, and county municipalities having jurisdiction over the proposed land use. The Applicant will be required to resubmit the application to the Board in the event that review by other agencies results in any modification to the plans.

10. The Applicant shall offer written confirmation from necessary utilities to prove applicable permission has been acknowledged for the service of the properties to be developed in the future.

Thank you for your kind attention in this matter. Please contact me should you have any questions.

Very truly yours,

MASER CONSULTING P.A.

Andrew R. Hipolit, P.E., P.P., C.M.E.
Borough Engineer

ARH/dw

cc: Planning Board, via Board Secretary (via e-mail)
Lorraine Hutter, Board Secretary (via e-mail)
Francine Chesler, Esq.
Patricia Ruskan, P.E. (via e-mail)
Jeffrey Fette, Construction Official (via e-mail)

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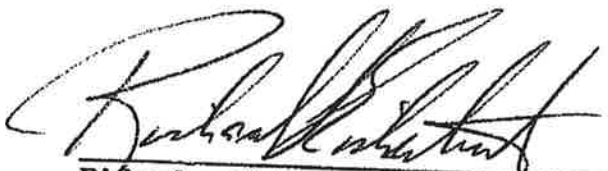
ENGINEER'S COST ESTIMATE

For

BCUW / MADELINE HOUSING PARTNERS, LLC
BLOCK 1606, LOTS 6.0 AND 6.02
MONTVALE, NEW JERSEY

PREPARED BY:
R. L. ENGINEERING, INC.
24 WAMPUM ROAD, SUITE B
PARK RIDGE, NEW JERSEY
(201) 391-5855

JOB NUMBER 26-041



Richard L. Eichenlaub, NJPE 27805

ENGINEERING ESTIMATE
BCUW/MADELINE HOUSING PARTNERS
BLOCK 1606, LOT 6.0 & 6.02
MONTVALE, NEW JERSEY

NOTES	DESCRIPTION	UNIT	UNIT PRICE	QUANTITY	TOTAL COST
I. SOIL EROSION MEASURES					
	TEMPORARY CONSTRUCTION ACCESS PAD	LS	$23,000	1	$23,000
	PROPOSED SEDIMENT FENCE				
	PROPOSED INLET PROTECTION				
	PROPOSED TREE PROTECTION				
II.SITE CLEANING / DEMOLITION					
	REMOVE EXISTING PAVEMENT	SY	$8.00	1,310	$10,480
	REMOVE EXISTING CURBS	LF	$6.00	625	$3,750
	REMOVE EXISTING CONCRETE SIDEWALKS	SY	$10.00	155	$1,550
	REMOVE ASPHALT SIDEWALKS	SY	$5.00	128	$640
	REMOVE EXISTING DRAINAGE INLET	EA	$750	1	$750
	REMOVE EXISTING TIMBER TIE WALL	SF	$5.00	452	$2,260
	REMOVE EXISTING STEPS TO BALLFIELD	LS	$800	1	$800
	CLEAR STUMPS	EA	$500	2	$1,000
	REMOVE TREES ≥ 24" Ø	EA	$1,800	5	$9,000
	REMOVE TREES< 24" Ø	EA	$800	3	$2,400
	REMOVE EXISTING CONCRETE CHAMBER	LS	$2,500	1	$2,500
III. ROUGH GRADING					
	EXCAVATION	CY	$15	521	$7,815
	FILL	CY	$9.00	402	$3,618
	SOIL EXPORT	CY	$22	119	$2,618
IV. SITE IMPROVEMENTS					
	NEW 'A' INLET	EA	$3,300	1	$3,300
	NEW 'E' INLET SEEPAGE PIT	EA	$5,200	1	$5,200
	NEW TRIPLE SEEPAGE PIT SYSTEM	EA	$9,300	1	$9,300
	NEW DRAINAGE MANHOLES	EA	$3,400	2	$6,800
	15" Ø HDPE	LF	$68	152	$10,336
	CONCRETE CURB	LF	$26	934	$24,284
	CONCRETE SIDEWALKS / TERRACE (4"THICK)	SY	$32	435	$13,920
	NEW DROP CURB (WAVERLY PLACE)	LF	$32	52	$1,664
	NEW STEPS TO BALLFIELD	LS	$3,800	1	$3,800
	NEW DUMPSTER PAD (6" CONC)	SY	$65	23	$1,444
	DUMPSTER ENCLOUSURE (6' FENCING)	LF	$24	38	$912
	NEW PAVED PARKING LOT AND DRIVES	SY	$62	1,498	$92,876
	NEW EAST CONCRETE RETAINING WALL (3'-6")	SF	$180	400	$72,000
	NEW WEST BLOCK RETAINING WALL	SF	$40	144	$5,760
	TIMBER GUIDE RAIL	LF	$48	70	$3,360
	PAVERS ALONG GRAND	SF	$24	410	$9,840
	INTERIOR LIGHTING (FREE STANDING)	EA	$3,200	7	$22,400
	DECORATIVE TOWN LIGHITNG (DETAIL 1)	EA	$4,200	2	$8,400

	DECORATIVE TOWN LIGHITNG (DETAIL 2)				
	4' HIGH SCREENING FENCE (GREY PVC)	LF	$46	122	$5,612
		EA	$3,800	3	$11,400
V. UTILITY SERVICES					
	PROPOSED AERIAL (ELEC, TELE, CABLE)				
	PROPOSED WATER SERVICES	EA	$4,500	2	$9,000
	PROPOSED GAS SERVICES	EA	$8,500	2	$17,000
	PROPOSED SANITARY LATERAL	EA	$4,500	2	$9,000
		EA	$6,500	1	$6,500
VI. PAVEMENT MARKINGS & SIGNS					
	FIRE ZONE STRIPPING				
	HANDICAP PARKING LINES	LF	$8	440	$3,520
	HANDICAP PARKING SYMBOLS	LF	$6.00	136	$816
	PARKING STALL LINES	EA	$225	2	$450
	STOP BARS.	LF	$3.00	252	$756
	DOUBLE DRIVEWAY LINES	EA	$160	2	$320
	NO PARKING OR STANDING FIRE ZONE SIGN	LF	$6.00	30	$180
	STOP SIGN	EA	$250	5	$1,250
	HANDICAP SIGN ASSEMBLY	EA	$250	2	$500
		EA	$550	2	$1,100
VII. LANDSCAPING / FINAL RESTORATION					
	ORNAMENTAL TREES				
	STREET TREES	EA	$375	5	$1,875
	FIR/EVERGREEN TREES	EA	$450	2	$900
	SHRUBS (15"-24")	EA	$350	40	$14,000
	SHRUBS(24"-48")	EA	$60	135	$8,100
	GROUND COVER	EA	$90	36	$3,240
	PACHYSANDRA/PERIWINKLE	EA	$50	66	$3,300
	FINAL GRADING	FLAT	$200	15	$3,000
	FERTILIZER/SEED	SY	$1.50	1200	$1,800
		SY	$1.85	1200	$2,220
				TOTAL=	$473,616.00

RECORD AND RETURN TO:
Robert T. Regan, Esq.
345 Kinderkamack Road
P.O. Box 214
Westwood, New Jersey 07675

Prepared By:_____
ROBERT T. REGAN, ESQ.

THIS AGREEMENT made this 2nd day of _____,

2017

BETWEEN:

BOROUGH OF MONTVALE, a municipal corporation of the State of New Jersey, maintaining offices at 12 Mercedes Drive, Montvale, County of Bergen and State of New Jersey, hereinafter referred to as the "**Borough**";

PLANNING BOARD OF THE BOROUGH OF MONTVALE, a municipal corporation of the State of New Jersey, maintaining offices at 12 Mercedes Drive, Montvale, County of Bergen and State of New Jersey, hereinafter referred to as the "**Board**";

AND 99 LLC, a New Jersey Limited Liability Company, maintaining offices at 2050 Center Avenue, Suite 410, Fort Lee, New Jersey, hereinafter referred to as the "**Developer**";

W I T N E S S E T H:

WHEREAS, Baldanza Construction Company ("the applicant"), as owner of premises known as Block 403, Lot 2 (hereinafter referred to as "the premises" or "the property"), as said parcel appears on the current Assessment Map of the Borough of Montvale, made application for site plan approval, together with certain variances and waivers, a major soil movement permit, and a waiver of the

requirement of submitting an Environmental Impact Statement ("EIS"); and

WHEREAS, the applicant requested approval so as to construct twelve (12) townhouse units, of which ten (10) would be market-rate units and two (2) affordable housing units, as more particularly set forth in the approving resolution; and

WHEREAS, the aforementioned site plan approval, variances, waivers, a major soil movement permit and waiver of the EIS requirement were granted to the Developer by resolution dated December 15, 2015 ("the approving resolution"), a copy of which is attached hereto as Exhibit A; and

WHEREAS, 99 LLC, a New Jersey Limited Liability Company ("the Developer") has contracted to purchase the property from the applicant and has agreed to be subject to the terms and conditions as set forth in the approving resolution; and

WHEREAS, the Developer is desirous of obtaining building permits so as to allow the construction of the improvements and site modifications as delineated on the plans hereinafter referenced and as otherwise specified by the Borough; and

WHEREAS, it is required that certain fees and deposits be paid to the Borough of Montvale as required by Ordinance; and

WHEREAS, it is agreed and acknowledged that the site improvements herein required must be installed in accordance with the approved plans and meet

the specifications currently in effect, and must be inspected during construction by the Borough Engineer subject to modifications as allowed by *N.J.S.A. 40:55D-49(a)*, and that such must be completed in a good and workmanlike manner as a condition precedent to the issuance of required permits and approvals, such as a certificate of occupancy; and

WHEREAS, the parties desire to memorialize their respective rights and obligations consistent with the approving Resolution and applicable ordinances; and

WHEREAS, the Developer has agreed to and has accepted the conditions set forth in the Resolution of the Planning Board and its other obligations as hereinafter set forth.

NOW THEREFORE, in consideration of the covenants hereinafter contained, the parties hereto agree as follows:

1. **PLAN SCHEDULE.**

A. The Developer shall, within a period of twenty-four (24) months following its procurement of site plan approval, complete all of the improvements as shown on the plans scheduled as follows:

"Site Plan For 12 Townhouse
Unit Condominiums
99 Spring Valley Road
Block 403, Lot 2
Montvale, Bergen County, NJ"
dated July 13, 2015
revised to October 21, 2015
Scale: 1"=20'

being Sheet No. 1 of 6

"Grading Plan For 12 Townhouse
Unit Condominiums
99 Spring Valley Road
Block 403, Lot 2
Montvale, Bergen County, NJ"
dated July 13, 2015
revised to October 12, 2015
Scale: 1"=20'
being Sheet No. 2 of 6

"Drainage & Utility Plan For 12 Townhouse
Unit Condominiums
99 Spring Valley Road
Block 403, Lot 2
Montvale, Bergen County, NJ"
dated July 13, 2015
revised to October 21, 2015
Scale: 1"=20'
being Sheet No. 3 of 6

"Lighting Plan For 12 Townhouse
Unit Condominiums
99 Spring Valley Road
Block 403, Lot 2
Montvale, Bergen County, NJ"
dated July 13, 2015
revised to September 23, 2015
Scale: 1"=10'
being Sheet No. 4 of 6

"Landscape Plan For 12 Townhouse
Unit Condominiums
99 Spring Valley Road
Block 403, Lot 2
Montvale, Bergen County, NJ"
dated July 13, 2015
revised to October 21, 2015
Scale: 1"=20'
being Sheet No. 5 of 6

"General Details For 12 Townhouse
Unit Condominiums
99 Spring Valley Road
Block 403, Lot 2
Montvale, Bergen County, NJ"
dated July 13, 2015
revised to October 21, 2015
Scale: NTS
being Sheet No. 6 of 6

all of which were prepared by George D. Cascino, P.E.-P.P., Professional Engineer & Planner, 2 East Greenbrook Road, North Caldwell, New Jersey 07006.

In particular, the Developer shall complete the site improvements, the new and reconfigured parking areas, means of ingress and egress, guiderails, curbs, sidewalks where shown, inlets, and other work as may be approved or required by the appropriate agency having jurisdiction thereof; storm drains, catch basins, manholes, sanitary disposal facilities, water mains with necessary fittings, fire hydrants where shown, underground wiring, lighting, retaining walls with necessary footings, in accordance with plans submitted for approval, and where applicable, approval of Public Service Electric & Gas Company, Rockland Electric Company, Suez Water New Jersey, the County of Bergen and the State of New Jersey, as and if applicable, and the planting of trees, shrubs, screening and landscaping set forth on the landscaping plan and as required by the ordinances of the Borough of Montvale and as is otherwise shown in accordance with the plans above referenced.

B. The Planning Board resolution of site plan approval and the maps

and plans referenced therein are made a part hereof by reference. In connection therewith, the Developer shall be required to adhere to the conditions of said resolution and plans, except for such necessary changes as may be required and approved by the Borough Engineer or his designee as work progresses, with such changes being limited to minor field changes.

C. It is agreed by and between the parties to this Agreement that, absent further review and approval by the Planning Board, that the plans referenced herein shall be adhered to and that the Developer shall install such improvements as may be deemed reasonably necessary to effectuate the intent and purpose of the ordinances of the Borough of Montvale as determined by the Borough Engineer or such other agent of the Borough acting within the scope of his or her authority, it being further agreed that the certification on said plans represents that the design standards employed in such plans minimally meet the requirements of the ordinances of the Borough of Montvale. To the extent that any design standard does not meet the minimum requirements as set forth in the ordinances of the Borough of Montvale, where no variance or exception has been granted, the Developer shall be required to comply with the appropriate standards as stated in the ordinance. Where a variance or exception has been granted by the Planning Board, the Developer shall be required to comply with the conditions and the appropriate standards concerning such variance and exceptions.

2. **COMPLIANCE WITH LOCAL LAWS AND RESOLUTION**.

Developer agrees to comply with the terms and conditions of the Resolution of approval attached hereto as Exhibit A and except as otherwise provided for in said Resolution, the terms and provisions of the Code of the Borough of Montvale and the reasonable directives of the Borough Engineer in all matters pertaining to this project.

3. **ESTIMATE OF COST OF IMPROVEMENTS.**

Attached hereto and made a part hereof is the present estimate of the costs of improvements to be installed on site which has been designated as Exhibit B.

4. **PERFORMANCE SECURITY.**

Upon the execution of this Agreement and prior to the issuance of the required permits, the Developer shall, in accordance with *N.J.S.A. 40:55D-53*, post cash, performance bonds or a letter of credit in a form permitted by *N.J.A.C. 5:36-1, et seq.* and satisfactory to the Board Attorney for the purpose of securing the completion of the site improvements applicable to the scope of work to be undertaken all as specified on Exhibit B, together with cash deposits to provide for the payment of their expenses permitted by *N.J.S.A. 40:55D-53* including, but not limited to, any legal, engineering or other expenses incurred by the Borough as set forth in paragraph 5 herein.

5. **PROFESSIONAL CHARGES.**

The Developer agrees to post with the Borough of Montvale, in

advance in one lump sum, such monies as are determined to be reasonably necessary to reimburse the Borough of Montvale for expenses incurred by it on account of the services performed by its professionals pursuant to *N.J.S.A. 40:55D-53* and *53.2* in reviewing the application, preparing this Agreement, processing the project, and inspecting the improvements as they are installed. The amounts deposited as provided for herein are to be considered estimates and shall be increased when required, it being understood that the Developer's obligation is to reimburse the Borough for all charges on account of professional fees reasonably incurred in connection with this project and authorized by Ordinance. Any charges not paid by Developer shall become a lien on the property.

Prior to the issuance of permits, the Developer shall post the sum of **$16,637.65** to reimburse the Borough for engineering, inspection, legal and other professional fees expended on account of the review of the site development plan.

The amount set forth in the immediate preceding paragraph is to be considered an estimate and shall be increased and decreased subject to *N.J.S.A. 40:55D-1 et seq.* at the reasonably exercised discretion of the Borough Engineer from time to time so as to provide sufficient funds for the performance of the requirements herein set forth. The Developer shall be required to deposit such additional sums within ten (10) consecutive calendar days after being advised that the amount of the deposit is inadequate to meet required costs. No permits shall

be issued until such additional deposit has been made. Developer hereby authorizes the Borough to disburse the said deposits in payment of such services as are rendered upon proper vouchers therefor duly sworn by the persons rendering the services unless a written objection to the same is made by the Developer to the Borough, and any monies not expended shall be returned by the Borough to the Developer after the work has been certified to be completed in a good and workmanlike manner and duly accepted by the Borough. Developer shall be provided with copies of bills and invoices consistent with the requirements of *N.J.S.A. 40:55D-53.2.*

6. **CONSTRUCTION AND ADMINISTRATION OF AFFORDABLE UNITS.**

Developer acknowledges that two (2) of the twelve (12) units are to be affordable units, both of which are to be two (2) bedroom units. The square footage of the units shall meet the minimum standards as set forth in the rules of the Council On Affordable Housing ("COAH") or any successor Agency. Of the two (2) units, one (1) shall be for persons of moderate income, and one (1) for persons of low income. Developer acknowledges that the affordable units will be administered by Piazza and Associates ("the Administrative Agent") which has been designated by the Borough as the administrative agency for its affordable housing units. The two (2) affordable units shall be restricted to eligible persons qualifying under COAH rules, or such other laws applicable to affordable units in the State, for a minimum of thirty (30) years. Developer agrees to cooperate with

the Borough and the Administrative Agent in the administration of affordable units, including in the selection of qualified applicants for the affordable housing units. In addition, Developer further agrees that the affordable units shall be constructed, phased-in and occupied consistent with COAH regulations or other applicable law.

7. **RELEASE OF PERFORMANCE GUARANTEE AND DEPOSITS**.

Upon the completion of all of the subject improvements applicable to the phase of the work to be undertaken in a good and workmanlike manner and such certification by the Developer, its successors or assigns, and a conforming certification by the Planning Board and Borough Engineer, the Governing Body by resolution shall release the performance guarantee and cash deposits where applicable upon the Developer's submission to the Borough Clerk of a maintenance guarantee pursuant to *N.J.S.A. 40:55D-53*, in an amount equal to fifteen (15%) percent of the total cost of such improvements as set forth in Exhibit B. Said guarantee shall run for two (2) years from the date of acceptance by the Borough. Said bond shall be issued by a reputable insurance company doing business in New Jersey. Notwithstanding the foregoing, the Developer may seek a partial release of the performance guarantee, provided that such request has been approved by all officials having jurisdiction.

Except as where required by statute, no full release of security shall be released until the occurrence of all of the following events:

A. All of the improvements provided for have been certified in writing by the Borough Engineer to have been completed in a good and workmanlike manner and in accordance with the approved plans.

B. "As Built" plans have been submitted and approved for the work performed.

C. All requirements of this Agreement, the local approving agency and any other governmental agency have been met.

D. All taxes and escrow charges have been paid which may be due on the property.

E. A resolution approving the reduction or release has been adopted by the Governing Body.

8. **PERFORMANCE BOND EMBRACES DEVELOPER'S AGREEMENT.**

Subject to *N.J.S.A. 40:55D-1 et seq.* and *N.J.A.C. 5:36-1 et seq.*, the within Agreement shall in its entirety be incorporated by reference and attached and made a part of the Performance Bond to be secured by the Developer. The issuing authority of the Performance Bond shall by such reference and annexation agree to be bound to the same extent as the Developer for the costs of all of the improvements applicable to the phase of construction as provided for herein. In the event the work is not completed within the time span allowed by this Agreement or any time extension thereof, or if the Developer abandons the job, files a petition in bankruptcy or insolvency, or is declared bankrupt or insolvent, or suffers any type of receivership, insolvency, bankruptcy or other similar proceeding to be filed against them, or ceases work for a period of thirty (30)

consecutive days other than for reasons beyond Developer's control and without the permission of the Borough Engineer (as used herein and hereinafter, the term "Borough Engineer" shall mean the person holding such position or his or her designee) and fails to resume work within ten (10) consecutive calendar days after receipt of notice by certified mail at the address stated in this Agreement, then it shall be the duty of the surety to immediately undertake the completion of the work at the expense of the Developer and their surety, or to pay the Borough the cost of the completion of the work at the expense of the Developer and their surety, or to pay to the Borough the cost of the completion of the work as a local improvement pursuant to the provisions of *N.J.S.A. 40:56-1, et seq.*

9. **GOVERNING BODY ENFORCEMENT POWERS.**

It is agreed between the parties that in the event the work required herein is not being completed in a good and workmanlike manner, or in accordance with the plans and specifications and terms of this Agreement, or in the further event that the continuation of the work is adversely impacting on other lands, all as may be determined in the reasonable judgment of the Borough Engineer, the Borough Engineer may give the Developer five (5) business days notice to cure the defect, or a shorter notice if irreparable harm is anticipated, forwarding a copy of said notice to the Municipal Administrator. In the event that said defect is not cured within the required time period, the Governing Body shall be empowered to serve upon the Developer a notice to appear before it, on forty-

eight (48) hours notice. Should the Governing Body then determine that the Developer has unjustifiably failed to comply with the request of the Borough Engineer, it shall be empowered to suspend the work until such time as the Developer has complied. Developer consents to inspection of the premises during the course of construction by Borough officials, and agrees that such persons may enter the site to inspect, evaluate or investigate the property or the work done thereon.

10. **ACCEPTANCE OF IMPROVEMENTS.**

Upon complete and full performance of the terms and conditions of this Agreement by the Developer, the Borough shall have the option to accept by adoption of an appropriate resolution by its Governing Body, such improvements as are intended for public use and the Governing Body believes to be in the public interest over which the Borough shall exercise jurisdiction and control thereof as public works. Said acceptance shall be without assessment for the construction of improvements as set forth in the plans and specifications.

11. **GOVERNING BODY'S AUTHORITY.**

Nothing herein contained shall be construed as preventing the Borough or Developer from exercising in any court of law or elsewhere any rights or duties which it may have by statute, ordinance or other law. Nothing herein contained shall be deemed a waiver by any party of any ordinance or state statute or other law, or be construed as an abridgement, preemption or waiver of the

powers of any Borough Board, agency or public body. This clause shall not operate to confer upon any such public body any powers, rights or duties it does not now possess, nor abridge the rights of the Developer vis-a-vis any such public body.

12. **TITLE CERTIFICATION.**

Upon execution and delivery of this Agreement, the Developer shall file with the Borough of Montvale a Certificate of Title, issued by an Attorney-at-Law of the State of New Jersey or by a reputable title company doing business in the State of New Jersey, certifying to the Borough of Montvale that title to all of the lands shown on the aforesaid maps is validly vested in the Developer as Owner.

13. **DEEDS AND EASEMENTS.**

The Developer shall prepare restricted Deeds, Deeds of Dedication or Easements, as the circumstances may require and if applicable, for all lands to be so restricted pursuant to the amended site plan approval, which shall include restrictions pertaining to the marketing and leasing of the affordable units. No right to the issuance of a certificate of occupancy or the release of the performance security referred to in paragraph 4 shall accrue to the Developer until such time as the grants and conveyances provided for above have been made to the Borough.

14. **GENERAL STANDARDS OF COMPLIANCE.**

In performing all improvements in a good and workmanlike manner,

the Developer shall perform in accordance with the requirements of this Agreement, of the Site Plan Ordinance of the Borough of Montvale, Board of Health Ordinance of the Borough of Montvale, ordinances which the Borough has adopted, and such other reasonable requirements as may be imposed by the Planning Board and Borough Engineer, subject only to appropriate field changes.

The parties mutually agree that in the event changed circumstances or unforeseen conditions in the field demonstrate that it would be impractical for the Developer to complete the improvements in accordance with the plans or that any particular site improvement as planned will not function for its intended purpose as a result of such a field condition, reasonable modifications as recommended by the Borough Engineer shall be effected in order to carry the project to completion in accordance with the basic intention of the Resolution above recited and the ordinances of the Borough. This provision is not intended to confer any right on the Developer to obtain permission to deviate from the design submitted to the local approving agency; the sole purpose of this provision is to empower the Borough Engineer to compel improvements to the plan or to rectify any oversight in design. Any change approved by the Borough Engineer shall be treated as a requirement of the local approving agency except that the Borough Engineer shall have no power to approve a change which renders the property more non-conforming or which confers any economic windfall.

15. **ORDINANCE REVISION.**

In addition to the conditions contained herein, the Developer agrees during construction to be bound by the amendments or supplements to the ordinances of the Borough of Montvale as they relate to other than general terms and conditions, provided same are permitted under *N.J.S.A. 40:55D-49* and *N.J.S.A. 40:55D-10.5.*

16. **NATURE OF WORK.**

As stated heretofore, the completion of the subject work shall include the grading and construction of all necessary portions of roadways, means of ingress and egress, guiderails, parking facilities, curbs, sidewalks where required and where shown, inlets, headwalls, detention facilities, storm drains, catch basins, manholes, sanitary disposal facilities, water mains with necessary fittings, fire hydrants where shown, underground wiring, lighting, retaining walls with necessary footings and landscaping. In addition to the above, Developer shall be responsible, as a prerequisite to being released from the provisions of this Agreement, to complete, if applicable, any required off-site work in accordance with applicable standards. In addition, all parts of public roads disturbed shall be repaired in accordance with Borough standards and to the satisfaction of the Borough Engineer.

17. **ENGINEERING INSPECTION PROCEDURES.**

The Borough of Montvale contemplates the inspection of all facilities as set forth in the Performance Bond Estimate appended hereto. The Borough

Engineer shall inspect the installation of storm drains, sanitary sewers, road improvements and all other facilities which will be maintained by private utility companies.

The Developer shall notify the Borough Engineer at least forty-eight (48) hours prior to the commencement of construction of any such facilities. In the event of a temporary suspension of construction, the Borough Engineer shall be notified at least forty-eight (48) hours in advance of the renewed starting date of construction of any such facilities. Backfilling after the laying of potable water supply, drainage or sanitary sewer pipes, or other facilities in connection therewith, shall be absolutely forbidden except after the inspection and approval of the Borough Engineer or his duly authorized representative.

18. **SEWER CONNECTION CHARGES.**

Prior to the issuance of any building permit, all required sanitary sewer connection fees, if applicable, shall be paid consistent with Borough Ordinance requirements. Under no circumstances may any building permit or other approvals be issued so as to permit operations to take place on the property until such time as such sewer connection fees and charges have been paid. All charges and assessments shall be paid, and absent such payment, shall become a lien on the property which may be enforced by the Borough in the same manner as unpaid taxes and other assessments.

19. **AS-BUILT PLANS**.

The Developer shall submit "as-built" plans prepared by a licensed New Jersey Land Surveyor to the Borough Engineer for his review and approval. The Borough Engineer shall certify to the Governing Body and to the Construction Code Official that all of the work required by this Agreement has been completed in a good and workmanlike manner in accordance with the approved plans. Such certification shall be a condition precedent for Developer's bond release.

20. **SOIL MOVEMENT.**

A. Permit: Before the removal of any soil is commenced on the lands subject to this Agreement, the Developer shall satisfy all conditions of approval pertaining to the major soil movement permit. All ordinance requirements relating to soil movement shall be adhered to during the development process.

B. Conservation: All soil conservation measures, including revegetation of disturbed areas required under all soil permit applications, or as specified by the Borough Engineer or the Bergen County Soil Conservation District shall be adhered to by the Developer.

21. **LANDSCAPING; MAINTENANCE OF IMPROVEMENTS.**

A. Landscaping shall be in accordance with the standards set forth in the applicable Ordinances of the Borough of Montvale, as shown on the approved plan. In addition, landscaping shall be placed as shown on the plan approved by the local approving agency as modified and approved by the Environmental Commission with plantings to be first quality nursery stock planted in accordance

with generally accepted practices.

B. The Developer agrees on a continuing basis to maintain, and replace when necessary, all landscaping installed on the premises, except as may be modified by an amendment to the site plan. In addition, all site amenities, curbs, traffic and advisory signs, lights, and buffers shall be kept and maintained as shown on the Site Plan as a continuing condition of Developer's rights under this Agreement. The foregoing obligations shall be deemed to run with the land, and shall be binding on the Developer's successors in interest and assigns.

22. **HOLD HARMLESS AGREEMENT TO BOROUGH.**

A. The Developer agrees to hold the said Borough harmless from any damage or liability which might arise due to the discharge of surface waters upon lands abutting the property being developed by them as shown on the subject plans herein referred to, and further agrees to alleviate any and all conditions which may arise by reason of the unplanned discharge of water, soil, dirt or other materials upon said abutting properties. The Developer further agrees to grade the premises so as to avoid the collection of water or drainage causing gullies or erosion and the deposit of soil on abutting properties. The Developer shall further be responsible for the removal of any silt deposited downstream during any construction phase. Nothing contained herein shall serve to indemnify or hold harmless the Borough for any acts or omissions of the Borough, its agents, servants or employees.

B. In the event litigation arises from the construction undertaken pursuant to this Agreement and the Borough is made a party defendant to any lawsuit instituted and it becomes necessary for the Borough to defend such suit, the Developer agrees to indemnify and hold the Borough harmless from any and all claims, judgments or liabilities thereunder which relate to acts of the Developer, its subcontractors, agents, servants or employees, unless such litigation is between the Developer and the Borough arising out of this Agreement concerning the failure of the Developer to perform its obligations thereunder. The Developer, or its successors in interest shall defend any such litigation on behalf of the Borough at the Developer's expense and employ counsel satisfactory to the Borough. In addition, the Developer hereby waives all claims against the Borough for damages or injuries to persons or property arising out of or asserted to have arisen from their construction project unless such claim is due to the negligence of the Borough and its agents, servants or employees.

23. **INSURANCE.**

A. The Developer shall furnish to the Borough a certificate showing that the employees of the contractors engaged in said work are covered by a Worker's Compensation Policy from a duly recognized responsible insurance company, authorized to do business in the State of New Jersey with maximum statutory limits.

B. The Developer agrees to deliver to the Borough a certificate issued

by a recognized insurance company authorized to do business in the State of New Jersey that the Developer's contractor is insured against claim for personal injury and/or property damage arising out of or in connection with the work to be undertaken with regard to the completion of the improvements herein set forth, with minimum limits of protection against claims for personal injury to one person in the sum of $2,000,000.00. The Developer also agrees to deliver to the Borough a certificate of insurance from a recognized insurance company, showing that the Developer's contractor has comprehensive liability insurance on motor vehicles owned or rented by the Developer's contractor used in connection with the work to be performed under this Agreement covering personal injury or liability with limits of $1,000,000.00 per person injured or killed in any one accident, together with property damage liability with a limit of $300,000.00.

C. The Developer will require that the contractor keep the foregoing insurance policies in full force and effect until all work provided for herein shall have been completed as determined by the Borough of Montvale. Said certificates shall provide that ten (10) days written notice shall be given to the Borough prior to any cancellation of such policies.

D. The Developer will indemnify and hold the Borough harmless, including its agents, servants and employees from all loss, cost and expense including reasonable attorney's fees and court costs for all claims of property damage or injury including death arising out of the Developer's activities pursuant

to the project covered under this Agreement unless such damage, injury or death is the result of any act or omission, negligent or otherwise of the Borough, its officers, employees or agents.

24. **NUISANCE.**

The Developer agrees not to commit a public or private nuisance by reason of dirt, dust, debris, air pollution, gas, smoke, or other annoyance resulting from construction, trucking or other operations.

A. Tires shall be cleaned before leaving the property and, in the event any soil is to be removed, tarpaulins shall be placed over the trucks.

The Developer agrees to provide for the proper maintenance of Borough and County streets which its construction vehicles use during the course of construction, which shall be performed on a daily basis, to ensure that they are clean from dirt and debris which may accumulate from the excavation and construction on the development site.

B. The Developer shall comply with the reasonable requests of the Borough and shall take whatever steps are necessary to ensure that the construction of this development project will not interfere with adjoining land owners. In connection therewith, the Borough shall have the right to limit the use of certain Borough streets and regulate the hours of operation during the course of construction. If required by the Borough, the Developer shall submit a construction schedule outlining the phase of construction so that the Borough

may coordinate the use of streets and roads so as to not unreasonably interfere with the use thereof by other members of the public.

Upon completion of the work, the Developer shall remove all rubbish and debris, scaffolding, temporary construction tools and surplus materials such as mounds of dirt, and shall leave the site in a clean suitable condition. During construction, the site shall be cleaned regularly to insure that it remains in an acceptable condition.

25. **DRAINAGE SYSTEM MAINTENANCE.**

A. The Developer shall install all drainage facilities including manholes, inlets and pipes in accordance with the approved plans, together with such other additional facilities as may be reasonably necessary in order to achieve zero percent increase in the rate of surface water run-off, as was the intention of the Planning Board.

B. Any and all aids to additional drainage, including on-site grading, contour landscaping, swales, retaining walls which may reasonably be deemed necessary to the Borough Engineer shall be installed by the Developer where conditions may warrant, whether or not the present plans provide for the same, as a condition of the release of the Developer and the surety from the performance obligation, provided the said present plans are in the reasonable judgment of the Borough Engineer unworkable.

C. During and at the conclusion of construction, the Developer shall

clean the drainage system of all silt and debris and restore the same to its design section and volume prior to acceptance by the Borough.

26. **OTHER APPROVALS.**

The Developer represents, to the extent required, that they have heretofore complied and that they will in the future comply with all requirements of the County Planning Board, County Engineer, Bergen County Road Department, Bergen County Soil Conservation District, Bergen County Department of Public Works, New Jersey Department of Environmental Protection Agency and hereby further represents that before commencing work they will secure all County, State, Federal and other approvals required for the contemplated work.

The Developer agrees to comply with all laws, orders or regulations of the Federal, State or local government or any of their respective subordinate agency, departments or commissions, which may relate to the performance of this Agreement or the construction of any improvements upon the property of the construction. In addition, the Developer agrees to abide by any orders issued by duly constituted officials as may be determined necessary to protect the public health, safety and welfare.

27. **MINIMUM ELEVATIONS.**

In addition to the above, the Developer agrees to maintain, if applicable, all elevations as shown on the approval plans, nor shall the building

elevations as proposed in the plan otherwise be modified without the consent of the Borough Engineer.

28. **MEMORANDUM OF AGREEMENT TO BE RECORDED.**

This Agreement or the Memorandum of Agreement shall be recorded in the Bergen County Clerk's Office at the Developer's expense. Following the acceptance of the improvements and posting of the maintenance guarantee, the Borough shall execute a release of this Agreement which shall be recorded in the Bergen County Clerk's Office at the Developer's expense.

29. **REMEDIES.**

Subject to *N.J.S.A. 40:55D-1 et seq.* and *N.J.A.C. 5:36-1 et seq.*, the cash deposit and performance bond may be utilized by the Borough for the performance and completion of the improvements described in this Agreement upon default of the Developer, as well as for other costs as set forth in this Agreement. It is understood that the performance guarantee is given pursuant to *N.J.S.A. 40:55D-53*, and the Borough and the Developer shall be entitled to all of the rights and remedies provided thereby, as well as all rights and remedies provided by general law. The Developer agrees that in the event the Developer defaults under the terms of this Agreement, that the Developer shall be responsible for not only the costs of completing the improvements, but also all ancillary costs and reasonable counsel fees expended by the Borough in order to enforce the provisions of this Agreement. It is agreed that the cash deposit and/or

performance bond may be utilized by the Borough for the performance and completion of the improvements required to be constructed by the Developer in accordance with this Agreement and other costs incurred by the Borough upon the default of the Developer. Subject to *N.J.A.C. 5:36-1 et seq.*, the performance bond shall contain a provision allowing the immediate utilization of the proceeds of the bond in the event of the Developer's default as aforesaid.

The Developer agrees that any time the said Developer fails to comply with any of the terms of this Agreement or any obligations referenced in the approving resolutions, or violates the terms and conditions thereof, or constructs the project contrary to the approved plans, the Borough Engineer, Construction Code Official or the Police Department, as to public safety matters, may forthwith stop all further work on said improvement until the work has been corrected or otherwise made to comply with the terms of this Agreement and the said specifications.

Notwithstanding anything to the contrary herein contained, in the event conditions detrimental to health, life, limb or property are created by the Developer, they shall be promptly corrected at the expense of the Developer. If any emergency shall arise, the Borough will immediately notify the Developer on the site or if the emergency permits, in the sole discretion of the Borough Engineer, by notice, hand delivered or sent by Certified Mail, to the address provided herein for notices. If no action is promptly taken by the Developer, the

Borough is hereby empowered to take such corrective measures as in its sole discretion it may deem necessary and charge the same against the performance guarantees. If this cost shall exceed the performance guarantees, the Developer shall be liable to the Borough for such excess cost plus reasonable attorney's fees if suit shall be necessary to enforce collection.

30. **DEFAULT OF DEVELOPER.**

The Borough has the right to declare the Developer in default under this Agreement in any one of the following eventualities:

A. Developer becomes insolvent;

B. Developer makes an assignment for the benefit of creditors;

C. Voluntary Petition in Bankruptcy is filed by the Developer;

D. An involuntary Petition in Bankruptcy is filed against the Developer and Developer is adjudicated bankrupt;

E. A Receiver or Receivers are appointed to take charge of the property of Developer and such Receiver or Receivers are not discharged within ninety (90) days;

F. The Developer abandons the construction of the improvement for a period of six (6) months, unless such abandonment is caused by any of the delay items set forth in Paragraph G.

G. The Developer fails to complete all of the above described improvements within five (5) years from the issuance of the full building permit

unless such delay is caused by acts of God, strikes or other events beyond the Developer's control, then in that event the time period shall be extended during the pendency of such events.

In the event a default is declared by the Borough, the Borough may direct the Construction Code Official to place a stop notice on the construction site of the effected site and withdraw the building permits. Further, the Borough may undertake to complete those improvements which are necessary to insure the health and safety of the Borough's residents, or to restore the site, under the terms of the Performance Guarantees.

31. **DISPUTE RESOLUTION.**

The Borough and Developer agree that in the event of any dispute between the Borough Engineer and the Developer as to compliance with this Agreement, the Developer reserves the right to a hearing before the Governing Body.

32. **SUCCESSORS AND ASSIGNS.**

This Agreement shall be binding upon the parties hereto and their successors in interest and assigns.

33. **MODIFICATIONS.**

This Agreement may only be changed, modified or amended by a written instrument signed by all the parties hereto.

34. **SEVERABILITY.**

The provisions of this Agreement are severable. If any one provision be determined unenforceable, this shall have no effect on the balance of the provisions, which shall remain in full force and effect.

35. **SUBORDINATION.**

This Agreement and any liens or charges created hereunder against the property or any portion thereof shall be the subject and subordinate to any construction or permanent mortgage now or hereafter to be placed on said property to the extent that such mortgage funds are used for the actual construction of site improvements on the property, inclusive of the structures to be created.

IN WITNESS WHEREOF, the Borough has caused these presents to be signed by its Mayor, attested by its Clerk, and the Borough Seal of the Borough to be hereto affixed, pursuant to a resolution duly adopted, and the Developer has hereunto set their hands and seals, the day and year first above written.

ATTEST:

Maureen Iarossi-Alwan,
Municipal Clerk

BOROUGH OF MONTVALE

By: _____ **(L.S.)**
Michael Ghassali, Mayor

ATTEST:

R. Lorraine Hutter

R. Lorraine Hutter,
Secretary

PLANNING BOARD OF THE BOROUGH OF MONTVALE

By: _____ **(L.S.)**
John J. De Pinto, Chairman

ATTEST:

Vincent Lyppino
Member

99 LLC, a New Jersey Limited Liability Company, Developer

By: _____ **(L.S.)**
Russ Lyppino, Managing Member

STATE OF NEW JERSEY)
: ss:
COUNTY OF BERGEN)

BE IT REMEMBERED that on this 28th day of April, 2017, before me the subscriber, personally appeared Maureen Iarossi-Alwan, who being by me duly sworn on her oath deposes and makes proof to my satisfaction that she is the Municipal Clerk of the Borough of Montvale, the municipal corporation named in the within instrument; that Michael Ghassali is the Mayor of said municipal corporation; that the execution as well as the making of this instrument has been duly authorized by a proper resolution of the Governing Body of the Borough of Montvale; that deponent well knows the corporate seal of said municipal corporation; and that the seal affixed to said instrument is the proper corporate seal and was thereto affixed and said instrument was signed and delivered by said Mayor as and for the voluntary act and deed of said municipal corporation, in the presence of deponent, who thereupon subscribed her name thereto as attesting witness.

Maureen Iarossi Alwan
MAUREEN IAROSSI-ALWAN

Sworn and Subscribed to before me this 28th day of April, 2017.

JMera

Jesus del Sagrario Mena
Notary Public of New Jersey
ID # 2453458
My Commission Expires August 27, 2020

STATE OF NEW JERSEY)
: ss:
COUNTY OF BERGEN)

BE IT REMEMBERED that on this 28th day of April, 2017, before me the subscriber, personally appeared R. Lorraine Hutter, who being by me duly sworn on her oath deposes and makes proof to my satisfaction that she is the Secretary of the Planning Board of the Borough of Montvale, the municipal corporation named in the within instrument; that John J. De Pinto is the Chairman of said municipal corporation; that the execution as well as the making of this instrument has been duly authorized by a proper resolution of the Planning Board of the Borough of Montvale; that deponent well knows the corporate seal of said municipal corporation; and that the seal affixed to said instrument is the proper corporate seal and was thereto affixed and said instrument was signed and delivered by said Chairman as and for the voluntary act and deed of said municipal corporation, in the presence of deponent, who thereupon subscribed her name thereto as attesting witness.

R. Lorraine Hutter
R. LORRAINE HUTTER

Sworn and Subscribed to before me this 28th day of April, 2017.

JM Mena

Jesus del Sagrario Mena
Notary Public of New Jersey
ID # 2453458
My Commission Expires August 27, 2020

STATE OF NEW JERSEY)
: SS:
COUNTY OF BERGEN)

BE IT REMEMBERED that on this 4th day of April, 2017, before me the subscriber, personally appeared Russ Lupino, who being by me duly sworn on his/her oath deposes and makes proof to my satisfaction that he/she is a Managing Member of 99 LLC; that the execution as well as the making of this instrument has been duly authorized by a proper resolution of the Managing Members; that deponent well knows the seal of said 99 LLC, and that the seal was thereto affixed and said instrument was signed and delivered by the said Managing Member as and for the voluntary act and deed of said 99 LLC, in the presence of deponent, who thereupon subscribed his/her name thereto as attesting witness.

Russ Lupino, Managing Member

Sworn and Subscribed to before me this 4th day of April, 2017.

Mark J. Sokolich
Attorney At Law Of The
State Of New Jersey

EXHIBIT A

Introduced by: **Mr. Lintner**

Seconded by: **Mr. Teagno**

BOROUGH OF MONTVALE

PLANNING BOARD

RESOLUTION GRANTING PRELIMINARY AND FINAL SITE PLAN APPROVAL, VARIANCE RELIEF, A MAJOR SOIL MOVEMENT PERMIT, AND A WAIVER FROM REQUIRING THE SUBMISSION OF AN ENVIRONMENTAL IMPACT STATEMENT TO BALDANZA CONSTRUCTION COMPANY FOR PREMISES DESIGNATED AS BLOCK 403, LOT 2

WHEREAS, application has been made to the Planning Board of the Borough of Montvale (hereinafter "the Planning Board" or "the Board") by Baldanza Construction Company (hereinafter "the applicant"), 6 Lexington Lane, Montvale, New Jersey, for preliminary and final site plan approval, variance relief, a major soil movement permit, and a waiver from the requirement of submission of an Environmental Impact Statement (hereinafter "EIS") relating to premises known as Block 403, Lot 2 as depicted on the tax assessment map of the Borough of Montvale, being more commonly known as 99 Spring Valley Road (hereinafter "the property", "the premises" or "the parcel"); and

WHEREAS, the applicant is the owner of the property; and

WHEREAS, public hearings were held on the respective application, on notice to all property owners within two hundred (200) feet

therefrom and was published in the official newspaper of the Municipality, at least ten (10) days next preceding the date of hearing; and

WHEREAS, the Planning Board has had the benefit of the reports of its professionals and has deliberated on the matters brought forth at said public hearings, at which members of the public were afforded an opportunity to be heard; and

WHEREAS, the Planning Board has made certain findings of fact and conclusions with respect to said application.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Borough of Montvale that the following facts are made and determined:

1. The subject property comprises a land area of 46,680 square feet, or 1.071 acres, and is located in the B-2 Business District. The parcel is situated on the easterly side of Spring Valley Road between Summit Avenue and Laurel Brook Road. While the property is located in the B-2 District, several zones are in close proximity to the premises, which are the R-40 District to the south and east, the Affordable AH-6 District, and the Office and Research OR-3 District across from the property and located on the westerly side of Spring Valley Road.

2. Presently, the property has an existing two-story office-commercial and multi-family dwelling, which structure is more than 100 years old. The applicant proposes to demolish the existing structure and to develop a twelve (12) unit townhouse condominium complex which would include two (2) affordable housing units and ten (10) market rate units.

3. As has been noted, the property is currently zoned B-2 and residential townhouse units are not a permitted use in this District. Accordingly, a use variance pursuant to *N.J.S.A. 40:55D-70d(1)* is required. In addition, a variance pursuant to *N.J.S.A. 40:55D-70d(6)* is implicated in that the proposed townhouse dwellings would have a height of twenty-eight (28) feet, in excess of the fifteen (15) foot height limitation applicable to the B-2 District.

4. The applicant also requires the following variance relief pursuant to *N.J.S.A. 40:55D-70c*:

A. *Maximum Building Coverage:* The applicant proposes a building coverage of twenty-four (24%) percent, in excess of the twenty (20%) percent maximum permitted.

B. *Total Side Yard Width:* Pursuant to the standard set forth in §128-5.3 and the Limiting Schedule, a total side yard of 60.7 feet is required and 42.4 feet would be provided.

C. *Side Yard Set Back:* A fifty (50) foot side yard setback from a residential district is required in the B-2 Zone. The applicant proposes a southerly side yard of 21.3 feet.

D. *Rear Yard Set Back:* The B-2 District requires a fifty (50) foot rear yard setback from an adjacent residential district and 25.5 feet is proposed.

E. *Location of Parking Spaces (2 Variances):* Section 128-7.1E provides that parking spaces not be within ten (10) feet of any building,

which provision is also applicable to multi-family residential uses pursuant to §128-7.3B. A total of four (4) parking spaces are proposed to be located within ten (10) feet of the townhouse dwellings. In addition, the six (6) guest parking spaces are proposed along the driveway, the access to the development, contrary to the prohibition against parking along access ways.

F. *Screening of Parking Areas:* The Ordinance requires parking areas to be screened to a minimum height of six (6) feet by the use of appropriate plantings of sufficient height and density to obscure their visibility from adjoining streets and properties. While landscaping is proposed along the frontage of the premises, as proposed same would not meet the Ordinance requirements.

G. *Identification Sign:* A variance is required for an identification sign under §128-9.7A.6A since the use is not permitted in the B-2 District.

5. At the initial public hearing held on the within application on September 15, 2015, the applicant was represented by Raymond F. Flood, Esq. who provided the Board with an overview of the development plan. More particularly, the applicant proposes to construct twelve (12) townhouse units, with three (3) units within each building in a total of four (4) buildings. A total of thirty-nine (39) parking spaces are proposed, inclusive of one (1) garage space and two (2) driveway spaces per unit, plus three (3) overflow parking spaces, of which one would be an accessible parking space. Counsel for the

applicant noted the need for a *d(1)* use variance in view of the premises being situated in the B-2 District, as well as other variance relief.

6. The applicant presented as its first witness George D. Cascino, a licensed professional engineer and planner who was qualified in both fields. Marked into evidence as Exhibit A-1 were engineering drawings revised to August 10, 2105, with the exception of Sheet 5, the Landscaping Plan, which has a revision date of August 17, 2015. Also marked into evidence was a color version of Sheet 1 of Exhibit A-2, which is the site plan. Commencing his testimony, Mr. Cascino noted the property's location on the easterly side of Spring Valley Road in the B-2 District, with the parcel's configuration essentially square in shape and comprising just over one (1) acre in land area. The single building on the property houses office space and three (3) apartments and is thus a mixed-use property, with the structure constructed around 1870. The applicant proposes to demolish the building to construct twelve (12) condominium townhouse units in four (4) buildings, each of which would contain three (3) units. The property is set back seventy-five (75) feet from the centerline of Spring Valley Road, in excess of the fifty (50) foot requirement, and a twenty-four (24) foot wide access drive running east to west would serve the development. Each of the dwelling units would have a garage and a driveway, and Mr. Cascino indicated that a total of forty (40) off-street parking spaces would be provided, thirty-four (34) of which would be garage or driveway spaces. Two (2) affordable units are proposed, which would be located in the center of the two (2) front buildings, and these units would be no

different in appearance than the market rate units. He testified that the design is intended to assimilate the proposed use in the neighborhood, noting the existence of residential dwellings to the east and south, a townhouse development to the west, and commercial uses to the north and west.

7. Marked into evidence as Exhibit A-3 was a Google area map dated October 11, 2014. Referencing this exhibit, Mr. Cascino noted the subject premises being outlined and described surrounding uses, including a three-story office building to the north, to the west a parking area for another office building, to the southwest the Bear Brook Condominium development, to the south a single-family home on Spring Valley Road, and to the east the rear yard of a single-family home fronting on Summit Avenue.

8. Continuing his testimony, Mr. Cascino noted the property's location in the B-2 District, which has considerably different bulk regulations than either single-family or multi-family residence districts in the Borough. As a result, a number of bulk variances are implicated, including rear and side yard variances, as well as the fact that a fifty (50) foot buffer is required when a property in a B-2 District abuts a residential zone. Even though the proposed use of the premises would be residential, nevertheless the fifty (50) foot requirement applies as the property is in the B-2 District. Similarly, in the Engineer's view, while a sixty (60) foot combined side yard width is required, in his opinion this standard should not be applicable in view of the fact that a residential use would adjoin a residential property. He noted that the intent is to demolish the existing building and provide site grading, and impervious

coverage would be reduced from 41.1% to 38.9%. He indicated that the plans, with a revision date of August 10, 2015 (Exhibit A-1), address most of the comments in Borough Engineer Hipolit's letter of July 29, 2015[1]

9. Addressing the sewering of the property, Mr. Cascino testified that a fifteen (15) foot wide existing sewer and drainage easement is located along the southerly property line which relates to a major subdivision to the south. The applicant proposes to tie drainage and sewerage into this existing easement. While the sanitary sewerage could be directed to a line in Spring Valley Road, he believes that instead of disturbing the street, it is more appropriate for flow to go into the existing sanitary line already connected to the line in the roadway, thereby precluding disturbance of the street. The Engineer also noted that the Landscape Plan (Sheet 5) had been revised to August 17, 2015 to depict trees to be removed and their caliper. He indicated that the applicant will work with the Environmental Commission as to the landscaping plan.

10. Testimony was provided by Borough Engineer Andrew R. Hipolit and his report dated July 29, 2015 was marked into evidence as Board Exhibit 1. He noted the variances required by the plan and deferred to the Board's Planner in this regard and requested that testimony be provided as to lighting and landscaping issues, as well as the standards and design pertaining to the proposed identification sign. He requested that a Stormwater Management Report be prepared, which the applicant's Engineer agreed to

[1] As will be seen, infra, this letter was subsequently marked into evidence as Board Exhibit 1 (see ¶10).

provide. Further evidence will be required as to the proposed impervious coverage, and Mr. Hipolit indicated that the issue as to the utilization of the existing drainage easement to the south has been addressed by Mr. Cascino. The applicant will be required to address the adequacy of the existing storm drain system in Spring Valley Road to handle additional runoff.

11. While the number of parking spaces at forty (40) appears to be compliant, a determination needs to be made as to whether a single accessible parking space is adequate, or whether an additional accessible space is required. Mr. Hipolit suggested that the applicant consider the possibility of a cul-de-sac turnaround, even though the Residential Site Improvement Standards ("RSIS") do not mandate such a design. He advised the applicant that County approval may be required for access to the water and gas lines in Spring Valley Road and the responsibility of the applicant for restoration.

12. A number of other issues outlined in Mr. Hipolit's report will be conditions of any approval. Proposed fencing of the dumpster area was also discussed and will be required to be addressed, and a tree plan has now been provided which will be subject to review by the Environmental Commission. Further details will be forthcoming as to whether a fire hydrant will be required on the premises.

13. Marked into evidence as Board Exhibit 2 was a report of the Montvale Fire Department dated August 25, 2015 indicating "No Comments". Mr. Hipolit referenced that other approvals will be required in connection with

the application, including Bergen County Planning Board, NJDEP and Bergen County Soil Conservation District.

14. Addressing the number of variances, Mr. Cascino stated that most relate to the regulations applicable to the B-2 District, and he is of the opinion that the design is most appropriate in light of these applicable standards. He testified that the Lighting Plan complies, and that no spillage would occur on adjoining properties. Mr. Hipolit indicated that any light fixtures at the rear of the buildings, including on the facades, need to be included in the calculation of lighting intensity. He also stated he believes that one accessible parking space is sufficient and with respect to the access drive terminating in a cul-de-sac, he stated that under RSIS, since the driveway is less than three (300) feet, such a design would not be required. He also stated that a cul-de-sac would require additional pavement, which is unnecessary.

15. Addressing soil movement, Mr. Cascino stated that 4,000 cubic yards are proposed to be disturbed and a total of 750 cubic yards would be exported from the premises. Several other issues were discussed at the conclusion of the hearing, including the need for a concrete pad for the dumpster, as well as its possible relocation, and an alternative to the proposed wooden fence. It was also suggested that one (1) parking space be eliminated to address vehicles turning on the premises instead of the discussed cul-de-sac, to which the applicant agreed.

16. At the outset of the continued public hearing held on October 6, 2015, there was marked into evidence as Exhibit A-4 revised site

plan drawings, with a revision date of September 23, 2015. The applicant's Engineer, George D. Cascino, resumed his testimony and provided the Board with a summary of the testimony at the initial public hearing. He referenced Exhibit A-3, the aerial map, and described the existing property as being a mixed-use building housing both commercial and residential space. The proposed site plan details four (4) buildings, with three (3) townhouse units in each, all of which would be two (2) bedroom and would front on a driveway running easterly from Spring Valley Road. Each of the units would have a garage, and the ten (10) market rate units would have a two (2) car driveway, with the two (2) affordable units having a one (1) car driveway in addition to a garage. Under RSIS, a total of twenty-eight (28) parking spaces are required and forty (40) are depicted on the plan, all of which would be within garages or driveway areas, except for six (6) spaces for visitors, inclusive of two (2) handicapped accessible spaces. He noted that the initial plans provide for only a single handicapped space, and that at the northwest corner of the parking area a second handicapped space will be provided, with a regular space being converted to an accessible space. The plan has been revised to eliminate dumpster and recycling bins which will now be within each garage area and the landscaping, which previously surrounded the dumpster, being moved in an easterly direction to provide an additional buffer to an adjoining property.

17. A turnaround area is now depicted on the plan situated between the two (2) buildings on the north side. The plan also depicts an existing fire hydrant. The lighting plan has been revised to depict twelve (12)

lights at the rear exits of the units, which do not reflect on adjoining properties. A Stormwater Management Report dated September 24, 2015 was marked into evidence as Exhibit A-5, with Mr. Cascino noting that the plans provide for a reduction in impervious coverage compared to existing site conditions. He indicated that the Stormwater Management Report notes that there is adequate capacity in an existing drainage pipe on the southerly section of the property, with the capacity being 21.8 cfs, with only approximately 5 cfs being discharged from the site based upon proposed improvements. Acting Board Engineer Carl O'Brien from Andrew Hipolit's office testified that he had reviewed the drainage report and that both he and Mr. Hipolit concur with the findings therein.

18. Marked into evidence as Exhibit A-6 was a Planning Report prepared by Mr. Cascino dated July 31, 2015. Addressing the report, Mr. Cascino testified that sufficient reasons exist for the granting of a use variance pursuant to *N.J.S.A. 40:55D-70d(1)* and *N.J.S.A. 40:55D-70d(6)*, as well as the bulk variances pursuant to *N.J.S.A. 40:55D-70c.* In preparing his report, Mr. Cascino indicated that he viewed the property on a number of occasions, reviewed the Borough Zoning Ordinance, Master Plan and Housing Element, and familiarized himself with the character of the surrounding area, which includes single-family homes to the east and south, commercial buildings to the north and west, as well as a condominium development, also to the west of the premises.

19. Continuing his planning testimony, Mr. Cascino addressed the *d(1)* use variance and *d(6)* height variance, noting that special reasons must be shown to satisfy the positive criteria for such relief. Meeting and advancing certain goals of the Municipal Land Use Law ("MLUL") will satisfy the special reasons requirement. In his opinion, the granting of these variances would encourage municipal action and the appropriate use or development of land in a manner which will promote the general welfare (see *N.J.S.A. 40:55D-2a*). Under the ***Medici*** decision, there must be a showing that the use is particularly suited for the proposed location. A number of conditions were cited by Mr. Cascino as to this requirement. He stated that the existing mixed-use of the property is outdated and that the proposed townhouse use would serve as a buffer between low density residential areas to the south and east and commercial areas to the west. The uses permitted under the B-2 District zoning are not as compatible with adjacent residential uses as the proposed townhouse development. He stated that the development will generate a low traffic demand as referenced on Exhibit A-4 and Exhibit A-6. He also noted that the proposed development has an affordable housing component, which promotes the general welfare.

20. The Planner also indicated that the use and height variances would provide sufficient space for a variety of uses in accordance with *N.J.S.A. 40:55D-2g*. He noted the recent adoption by the Planning Board in June of this year of a Housing Element and Fair Share Plan which identifies the subject

property for inclusionary development, thereby determining that the premises is appropriate for the proposed development.

21. The Planner also addressed the negative criteria pertaining to the use and height variances and stated that the relief may be granted without substantial detriment to the public good and without impairing the intent and purpose of the zone plan and Zoning Ordinance. He described the uses proximate to the subject premises, noting that adjoining residential areas will be appropriately buffered by existing trees and proposed landscaping and will incur no detriment. He also noted that the traffic will not be significantly different than existing site conditions. Furthermore, the uses permitted in the B-2 District would be of a greater intensity and create more traffic than the twelve (12) unit townhouse plan. The fact that the property has also been designated in the Housing Element further demonstrates that the proposal would not be inimical to the zoning plan and would not create any substantial impairment to either the Ordinance or Master Plan.

22. The Planner next addressed the *c* variances which are implicated by the proposal. In his opinion, a total of eight (8) variances pursuant to *N.J.S.A. 40:55D-70c* are required. As noted previously, these variances relate to building coverage, combined side yard, southerly side yard setback, rear yard setback from a residential district, location of parking spaces (2 variances), screening of parking areas, and identification sign. In Mr. Cascino's opinion, relief may be justified pursuant to *N.J.S.A. 40:55D-70c(2)* and he cited the holding in ***Kaufmann v. Planning Board for Township of***

Warren, 110 N.J. 551 (1988). He stated that approval of the variance relief will promote purposes of the MLUL, constituting a better zoning alternative and will create no substantial detriment to the public good or to the Zoning Ordinance and Master Plan, and that the benefits will outweigh any detriment.

23. In the Planner's opinion, the better planning alternative is met by the fact that the B-2 District allows various business and retail uses less compatible with adjacent residential properties than the proposed condominium development. In his opinion, the development plan is a better zoning alternative rather than a more intense commercial use, thereby promoting the general welfare. In addition, he testified that there will be no detriment to the public good and addressed the potential impact of the variances as to neighboring properties. More particularly, a twenty-four (24%) percent building coverage is proposed, in excess of the twenty (20%) percent permitted; however, maximum lot coverage permitted is 60% and only 37.4% is proposed. The combined side yard and southerly side yard variances he believes to be more appropriate to a proposed commercial use on the property, as is the case with the proposed rear yard. The fifth variance pertaining to the identification sign is only necessary since the Ordinance only permits uses allowed in the B-2 District to have a sign. The benefits of the proposal will significantly outweigh any detriment in that a modern townhouse development will replace an aging mixed-use building and will provide for an inclusionary development with two (2) affordable housing units, which advances the Housing Element and the public good. Concluding the planning testimony, Mr.

Cascino stated that the bulk variances can be granted without substantially impairing the intent and purpose of the zone plan and Zoning Ordinance.

24. Discussion ensued pertaining to County requirements relative to Spring Valley Road, and Mr. Cascino indicated that he spoke with Eric Timsak of the County Planning Board pertaining to connecting to existing utility lines in the roadway and was advised that the connection could be made with a narrow trench. The Chairman asked Acting Board Engineer O'Brien to communicate with Mr. Timsak as to other issues, including future road widening and the need for any easements.

25. At this point in the proceeding, a report dated October 2, 2015 of Borough Engineer Hipolit was marked into evidence as Board Exhibit 3, and a report of Borough Planner Darlene A. Green dated October 1, 2015 was marked into evidence as Board Exhibit 4. Ms. Green first testified pertaining to three (3) variances which may be required as outlined in paragraphs 5, 6 and 7 of her report, and the applicant's Engineer disagreed that variance relief is required as to these three (3) items.

26. More particularly §128-7.1E requires that parking spaces or access drives not be closer than ten (10) feet to any building. It was determined that the parking space opposite the turnaround area which would have implicated the variance would be landscaped, thereby eliminating this variance. The applicant's Engineer stated that he had no technical disagreement with Ms. Green's finding that the proposed landscaping of the parking areas was inadequate. While contending that the applicant believes

that the landscaping plan is sufficient, Mr. Cascino agreed that the application would be amended to include this variance, and relief from §128-7.1F. The Board also determined that a variance would be required for the six (6) parking spaces for guest parking along the driveway inasmuch as §128-7.1F precludes parking along access ways or traffic aisles. Ms. Green indicated that she had yet to receive details for the identification sign for the proposed development, with such sign requiring a variance.

27. Continuing her testimony, Ms. Green raised the issue of building height, with the plan indicating twenty-eight (28) feet, and measurement of the building elevations indicating that the height is 25.5 feet. The applicant's Engineer indicated that this would be addressed by the architect. Issues pertaining to landscaping and plantings will be deferred to the Environmental Commission, and the applicant agreed that signage details will be provided in advance of the next hearing. A Stormwater Management Plan has been submitted and Mr. Cascino indicated that the turnaround area will be striped. Mr. Cascino deferred to the architect as to the affordable housing issues detailed in the Planner's report. In a discussion between Ms. Green and Mr. Cascino, both agreed that the size of the lot, which is oversized, and its location on Spring Valley Road constitute factors to be considered in evaluating the plan and whether the variances should be approved. She did indicate that the proposal would be more appropriate for the parcel and area than its current use or uses that could be developed consistent with the requirements of the B-2 District.

28. The applicant presented as its next witness Charles L. Baldanza, a licensed architect who was qualified in this field, and a number of exhibits were marked into evidence prior to the commencement of his testimony. These include the following:

Exhibit A-7	Building Plans & Elevations Typical All Market Rate Units Dated: July 14, 2015 Sheet A.1
Exhibit A-8	Floor Plans & Elevations Affordable Unit Dated: July 14, 2015 Sheet A.2
Exhibit A-9	Colorized Version Renderings North View
Exhibit A-10	Colorized Version Renderings South View

29. Commencing his testimony, Mr. Baldanza described the four (4) proposed buildings, each of which would include three (3), two (2) bedroom units. He described the unit layouts. The units would include a finished basement with a family room, utility closet and powder room. The first floor, in addition to the garage, would have an open floor plan, including the kitchen, dining room and living room, together with a powder room. The second floor in each unit will have a master bedroom and bath with a walk-in closet, and a second bedroom with a full bath. The two (2) affordable units will have most of the amenities and will indistinguishable on the exterior from the market rate units.

30. Continuing his testimony, Mr. Baldanza indicated that the facades would be comprised of hard plank siding, which he described as high-quality and durable, and a cultured stone on the elevations. The siding would have a grey tone and the roof a black or charcoal color. Mr. Baldanza noted that the affordable units will not be age-restricted and that those units will be constructed concurrently with the market rate units.. The height of the buildings he has calculated at just over twenty-seven (27) feet, which he rounded upward to twenty-eight (28) feet on the plan. The driveway areas would be comprised of pavers and Belgian block curbing. He also addressed several concerns raised by Ms. Green in her report and advised that the affordable units would be Deed-restricted for thirty (30) years, and that the applicant would be responsible for the cost of an Administrative Agent to administer the affordability controls.

31. At the continued public hearing held on October 20, 2015, the applicant recalled Mr. Cascino and plans prepared by him with a revision date of October 12, 2015 were marked into evidence as Exhibit A-11. Mr. Cascino described the changes to the plans, which include the addition of a second handicap space on the site plan. The identification sign for the development with dimensions of two (2) feet by four (4) feet was referenced by the witness on the detail sheet. A total of six (6) guest parking spaces are required, and a variance will be required in that a space is located four (4) feet from a building, less than the ten (10) foot requirement. In response to a

comment, Mr. Cascino stated that two (2) signs will be provided to identify guest parking.

32. The Drainage and Utility Plan (Sheet 3) was next addressed by Mr. Cascino. The plan depicts the connection to an existing eighteen (18) inch PVC pipe in Spring Valley Road, and he noted that capacity is addressed in the Drainage Calculations Report, revised to October 12, 2015, which was marked into evidence as Exhibit A-12. This Report details that adequate capacity exists in this pipe to accommodate the development. Borough Engineer Hipolit stated that he reviewed Exhibit A-12 and determined the findings therein to be acceptable.

33. The engineer next referenced the Detail Sheet (Sheet 6) and described the proposed identification sign having dimensions of two (2) feet by four (4) feet with stone pillars on each side. He also described the turnaround sign and the pervious pavers, and Mr. Hipolit indicated that a maintenance protocol will be required, which the applicant agreed to submit. Mr. Hipolit confirmed that except as discussed, the issues detailed in his report dated October 2, 2015 (Board Exhibit 3) have been addressed.

34. Marked into evidence as Board Exhibit 5 was a report of Borough Planner Green dated October 16, 2015. In her testimony, she first referenced building height, with the plan containing discrepancies. More particularly, Sheet 1 indicates a height of twenty-eight (28) feet, and the Height Calculations sheet dated October 9, 2015 indicates a height of twenty-seven (27) feet zero (0) inches. This issue will be required to be addressed. Windows

being added to the side walls will be required to be addressed, as well as the criteria for a waiver from an EIS.

35. The applicant's engineer next addressed the criteria for an exemption from the requirement of submitting an EIS as set forth in §128-17.10. He stated that soil is stable, and that Bergen County Soil Conservation approval is required. Drainage issues have been addressed, and no springs or significant wildlife are present. The proposal will not increase traffic significantly, no critical slopes are present, and sewer infrastructure is adequate. Since the property is developed, industrial waste is not an issue. He concluded his testimony by stating that the proposal will not create any adverse environmental conditions. Borough Planner Green indicated that she had no objections to Mr. Cascino's analysis.

36. The applicant's architect Charles Baldanza provided additional testimony relating to building height. He stated that he reviewed the Cascino Grading Plan and calculated average grade, analyzed the plan in view of the Ordinance, and arrived at a conclusion that no building will be higher than twenty-eight (28) feet. Marked into evidence as Exhibit A-13 was the Height Calculation prepared by Mr. Baldanza. Borough Engineer Hipolit indicated his agreement with the height calculations.

37. It was determined that each of the buildings should be numbered. The buildings on the north side of the driveway will be numbered 1 (northwest) and 3 (northeast). The buildings on the south will be assigned numbers 2 (southwest) and 4 (southeast). Mr. Cascino confirmed that the

identification sigh has been moved ten (10) feet in an easterly direction, ten (10) feet off the driveway, consistent with the Code standard.

38. Marked into evidence as Board Exhibits 6 and 7 were two reports of the Police Department dated September 1, 2015 and August 4, 2015. The Department requested consent of the applicant for enforcement of Title 39 and Borough Ordinances. The Board requested that no parking signs be posted along the access drive, instead of yellow paintings and markings.

39. Marked into evidence as Board Exhibits 8 and 9 were reports of the Environmental Commission dated July 21, 2014 and August 24, 2015. A number of issues were raised in the July 21st report, most of which were addressed as indicated in the August 24th report. Mr. Vogt requested that four (4) trees along Spring Valley Road need to be changed. He also expressed a concern as to the lack of privacy between the units and suggested additional screening of the parking areas. It was determined that a field inspection will be made by the Environmental Commission prior to the commencement of soil movement operations. A final report of the Environmental Commission will be submitted.

40. The final item discussed was whether a fence should be installed along the easterly property boundary. After considerable discussion, the Board determined that a fence in this area should not be required.

41. Marked into evidence as Exhibit A-12 were revised site plan drawings with a revision date of October 21, 2015. Depictions of signs for guest parking and no parking are shown, as well as a STOP sign and stop bar

at Spring Valley Road, the relocation of the identification sign at a ten (10) foot setback, and the numbering of the four (4) buildings. A note has been added to the Drainage and Utility Plan relative to storm pipe cleaning and repair. The Landscape Plan (Sheet 5) also has been modified, with landscaped screening between patios, a note to provide sod, and a six (6) foot landscaped screen adjacent to the parking spaces near Spring Valley Road. Also marked into evidence as Exhibit A-13 was Pervious Paver Maintenance Protocol dated October 22, 2015.

BE IT FURTHER RESOLVED by the Planning Board of the Borough of Montvale that based upon the above findings of fact, that the following conclusions are made and determined:

1. The Planning Board has considered the applicant's proposal which seeks site plan approval, variance relief pursuant to *N.J.S.A. 40:55D-70d(1)* and *d(6)* and *N.J.S.A. 40:55D-70c*, a major soil movement permit and a waiver from the requirement of submitting an EIS in connection with a proposal to develop a site consisting of 1.071 acres with a twelve (12) unit townhouse condominium complex, inclusive of two (2) affordable housing units. The property is located in the B-2 District wherein such a use is not permitted. Consequently, a *d(1)* use variance is required. The existing zoning designation triggers the need for the majority of the variances which are implicated by the plan.

2. The property presently contains a mixed use development, including office space and three (3) residential units. The parcel is surrounded

by varied uses, including single-family residences to the east, south and southeast, an inclusionary residential development to the southwest across Spring Valley Road, and office buildings to the west and to the north. The Board is of the opinion that these varied uses permit a finding that the development proposal is appropriate for the premises and would be better suited for the site than the uses permitted in the B-2 District, which include retail uses, restaurants, banking and office uses, and personal service establishments.

3. The Board recognizes that in considering an application for a use variance pursuant to *N.J.S.A. 40:55D-70d(1)*, that an applicant is required to show special reasons, which may be satisfied by demonstrating that the proposal advances purposes of zoning as set forth in *N.J.S.A. 40:55D-2*. While there is a total of fifteen (15) purposes of zoning as enumerated in this provision, the Supreme Court has held that promotion of the general welfare, *N.J.S.A. 40:55D-2a* as the purpose which "most clearly amplifies the meaning of special reasons". ***Medici v. BPR Co.***, 107 N.J. 1 (1987). Pursuant to this decision, an applicant must prove that the use promotes the general welfare because the site is particularly suitable for the proposed use[2]. Id. at 4.

4. The Board is of the opinion that special reasons exist for the granting of a *d(1)* use variance and that promotion of the general welfare will be advanced in that the proposed residential use is particularly suited for the

[2] The Board notes that the special reasons requirement may be addressed by proof of undue hardship, i.e., that the property cannot reasonably be developed with a conforming use. No claim of undue hardship was advanced by the applicant during the public hearings on the application.

property. As has been noted, the property adjoins residential areas to the east and southeast and commercial office buildings to the north and northwest. The Board accepts the testimony of Mr. Cascino that the proposed twelve (12) unit townhouse development may serve as a buffer between these areas. The uses permitted in the B-2 District which include various commercial uses, such retail establishments and office complexes are considerably more intensive uses than a twelve (12) unit townhouse development and not as compatible with the adjacent single-family uses to the south and east. Furthermore, permitted uses would generate more traffic than a townhouse development. These findings permit a conclusion that the special reasons standard is satisfied in that the property is particularly suitable for the proposed townhouse development, which will be considerably more harmonious with the surrounding area than uses permitted in the B-2 District.

5. The Board has also considered the fact that of the twelve (12) units proposed, two (2) would be affordable units for low and moderate income persons. It is recognized that a development which includes affordable housing as a relatively small component of a larger residential development does not transform the project into an inherently beneficial use which would satisfy the positive criteria for a *d(1)* variance. See ***Advance at Branchburg II, LLC v. Tp. of Branchburg Bd. of Adjustment***, 433 N.J. Super. 247, 258 (App. Div. 2013). In ***Branchburg***, the affordable component was twenty (20%) percent, greater than the proposed affordable set aside in this application. Nevertheless, the provision of affordable housing will promote the general

welfare. ***Holmdel Builders Association v. Tp. of Holmdel***, 121 N.J. 550, 568 (1990). The Board finds that the provision of the two (2) affordable units proposed will advance the general welfare purpose of zoning as set forth in *N.J.S.A. 40:55D-2a.*

6. Granting of the *d(1)* use variance will also promote the objective of providing sufficient space for a variety of uses, a purpose of the MLUL as set forth in *N.J.S.A. 40:55D-2g.* In this regard, the Board has previously adopted in June of 2015, a new Housing Element and Fair Share Plan ("HE/FSP") which includes the property as an inclusionary development generating two (2) affordable units. The HE/FSP was subsequently endorsed by the Mayor and Council. The Board is of the opinion that this objective will also be advanced by the granting of the *d(1)* use variance.

7. The conclusions detailed above pertaining to the *d(1)* use variance are equally applicable to the required height variance pursuant to *N.J.S.A. 40:55D-70d(6).* As has been noted, the property is located in the B-2 District wherein the maximum permitted height is fifteen (15) feet. It is impractical for any residential development to adhere to this fifteen (15) foot height requirement. Indeed, those properties to the east and south located in the R-40 District are permitted to have structures with a maximum height of twenty-eight (28) feet. Properties in the AH-6 and OR-3 Zones to the west are permitted to have a building height of thirty-five (35) feet. The four (4) proposed buildings will have a height not exceeding twenty-eight (28) feet, which is clearly consistent with building height on neighboring properties. The

Board determines that the buildings having a height of twenty-eight (28) feet will be harmonious and consistent with other structures in the area, thereby promoting the general welfare and providing a basis for determining that special reasons exist for the granting of the *d(6)* height variance as well.

8. The *d(1)* use and *d(6)* height variances may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and Zoning Ordinance. The subject property, while contiguous to single-family residences to the south and east, is also proximate to an inclusionary townhouse development to the northwest, and commercial office development to the north and west. The residential areas which adjoin the site will be buffered by significant landscaping and there will be no adverse impact to any of these areas. The Board concurs with the testimony of the applicant's engineer and planner that traffic from the proposed development will not be significantly different than present conditions. More particularly, such testimony indicated that existing trips total 10.45 which would increase to 11.5 trips under the proposed development (Exhibit A-6, Board Exhibit 4).

9. As discussed, the B-2 District permits various commercial uses that may be significantly greater in activity and intensity than the proposed townhouse development. The Board is of the opinion that a townhouse development will be far more consistent with the character of the surrounding area than a restaurant, retail mall or bank, all of which are permitted in the District. The fact that the property is designated for

inclusionary development is a particularly relevant consideration in determining whether the negative criteria has been met. The Board believes that these factors, and those enumerated in paragraph 8 above, requires a determination that the use and height variances may be granted without being inimical to the public good and without substantially impairing the intent and purpose of the zone plan and Zoning Ordinance.

10. The Board also considered the variance relief required by the proposal under *N.J.S.A. 40:55D-70c.* As noted above, these variances relate to building coverage, combined side yard, southerly side yard setback, rear yard setback from a residential district, location of parking spaces (2 separate variances), and identification sign. The Board is of the opinion that these variances may be granted pursuant to *N.J.S.A. 40:55D-70c(2)* in that purposes of the MLUL will be advanced, that there will be no substantial detriment to the public good, the benefits would substantially outweigh any detriment, and there will be no substantial detriment to the Zoning Ordinance or Master Plan.

11. Approval of the *c* variances will constitute a better zoning alternative for the premises, thereby promoting goals and objectives of the MLUL. As has been noted, as a result of the property's location in the B-2 District, various commercial uses are permitted, which the Board finds will be far less compatible and less intensive than the proposed condominium development. The proposed twelve (12) residential units will provide a buffer between the single-family uses to the south and east and the commercial office uses to the north and northwest. Permitting this better zoning alternative will,

as testified to by Mr. Cascino, promote several purposes of the MLUL. More particularly, the granting of these variances will constitute municipal action to guide the appropriate use and development of land which will promote the public health, safety, morals and general welfare. See *N.J.S.A. 40:55D-2a.* In addition, approval will provide sufficient space in an appropriate location for a residential use that will blend in more with the surrounding area. See *N.J.S.A. 40:55D-2g.*

12. The variances pursuant to *N.J.S.A. 40:55D-70c(2)* may be granted without substantial detriment to the public good. Although building coverage at twenty-four (24%) percent is in excess of the twenty (20%) percent maximum permitted, maximum lot coverage at 37.4% is substantially below the sixty (60%) percent ceiling. The remaining variances are generally attributable to the fact that the applicable regulations relate to a commercial zone, whereas a multi-family use is proposed. The benefits of the plan substantially outweigh any detriment, in that a modern residential development will replace an aging mixed use commercial-like structure. Even more significant is the fact that the proposal will advance the Borough's HE/FSP by providing two (2) affordable units as contemplated therein. As is the case with the *d(1)* and *d(6)* variances, the *c* variances may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and Zoning Ordinance.

13. The Board is of the opinion that a waiver may be granted from the requirement of submitting an EIS under §127-17.10 in that the site is

already fully developed and submission of an EIS would serve no useful purpose. The Board accepts the testimony of Mr. Cascino that the proposal will not create any adverse environmental conditions, a conclusion that was not disputed by either the Borough Engineer or Planner. Accordingly, the Board concludes that this waiver may be granted.

14. The Board has also considered the need for the issuance of a major soil movement permit pursuant to Chapter 104 of the Borough Code. The total soil movement aggregates 4,000 cubic yards, with 750 cubic yards to be exported from the premises. The movement of soil is necessitated as a consequence of the proposed development due to the foundations of the buildings, drainage and other site improvements. The Board finds that the applicant has complied with the procedures enumerated in the Soil Removal Ordinance so as to permit the issuance of a major soil movement permit. In this regard, the Board is of the opinion that in its review of the factors considered in conjunction with the within application, that the proposed operations will be in conformity with the standards established by Ordinance and that the operations may be conducted without adversely impacting upon existing soil and drainage conditions and the public health and safety. Accordingly, a major soil movement permit may be approved.

15. The Board is of the opinion that the applicant has satisfied the criteria for preliminary and final site plan approval. The Borough Engineer has determined that the proposed development is exempt from the stormwater requirements as outlined in the Residential Site Improvement Standards

("RSIS"). Issues such as drainage, parking, circulation and vehicular access, lighting, and landscaping have been reviewed and determined by the Board to be compliant with applicable standards. The plans as presented provide the requisite information as set forth in §128-8.7D and 8.9D, as well as the performance standards in §128-8.11. Based upon the foregoing, preliminary and final site plan approval may be granted.

BE IT FURTHER RESOLVED by the Planning Board of the Borough of Montvale that based upon the above findings of fact and conclusions that preliminary and final site plan approval, variance relief pursuant to *N.J.S.A. 40:55D-70d(1), d(6)* and *c*, a major soil movement permit, and a waiver from the requirement of submitting an EIS, be and are hereby granted to the applicant, subject to the following conditions:

1. Approval by Bergen County in connection with any opening of Spring Valley Road for providing utility service to the development.

2. Signage related to parking prohibition along the access drive shall be limited to posted signage as depicted on the plans. Yellow painting and markings shall be prohibited.

3. Approval by the Environmental Commission of the Landscaping Plan. In addition, a field inspection by a representative of the Environmental Commission shall be required prior to the commencement of soil movement operations.

4. Submission of a consent to the enforcement of Title 39 and Borough Ordinances, as requested by the Police Department.

5. Compliance with the conditions detailed in the report of Borough Engineer Andrew R. Hipolit of Maser Consulting dated October 2, 2015 (Board Exhibit 3), together with any subsequent letter requirements.

6. Compliance with the conditions detailed in the reports of Borough Planner Darlene A. Green of Maser Consulting dated October 1 and 16, 2015 (Board Exhibits 4 and 5), together with any subsequent letter requirements.

7. Approval by the Board Attorney of the Public Offering Statement ("POS") for the development.

8. Adherence to all representations made by the applicant and its representatives and professionals during the course of the public hearing, which representations are made conditions of the within approval.

9. Adherence to plans, renderings and engineering drawings and other exhibits submitted by the applicant. Any deviation from such submissions shall require the applicant to return to the Board for further review and any necessary approvals.

10. The affordable units shall be affirmatively marketed in such manner as required by the Borough and the Council On Affordable Housing ("COAH") or any successor agency so as to insure that the Borough receives appropriate crediting as required under its Housing Plan and any amendments thereto.

11. Approval by the Bergen County Planning Board, Bergen County Soil Conservation District, New Jersey Department of Environmental

Protection, Department of the Army, New York District Corps. of Engineers, and such other federal, state, county and municipal agencies having jurisdiction over the proposed use. In the event any approval by any other agency results in an alteration or modification of the application as approved by the Planning Board, the applicant shall be required to resubmit the application.

12. The execution by the applicant of a Developer's Agreement to be prepared by the Board attorney and the full performance by the applicant of the obligations, terms and conditions of said Developer's Agreement including, but not limited to, the payment of all fees and the posting and maintenance of all deposits and escrows thereby required.

13. Compliance with all present letter requirements of the Board engineer, future letter requirements of the Board engineer made pursuant to any Developer's Agreement to be entered into in accordance herewith, future letter requirements of the Board engineer relating to the conditions of the within approval, and subject to the future letter requirements which entail minimal deviation from the plan hereby approved and are necessitated by field conditions hereafter discovered.

14. The applicant shall be required to comply with the design and site details as shown on all plans submitted through their respective dates. Any deviation from any such development designs or details shall require further review and approval by the Board.

15. Posting of a bond in such amount as determined by the Board engineer so as to guarantee performance of the work herein required and approved, as well as the maintenance of said work after completion.

16. Posting of all fees and deposits as required by the applicable Ordinance of the Borough of Montvale, which shall include the posting of such deposits as are necessary to reimburse the Municipality for money paid to its professionals for review of the within application, consistent with the Settlement Agreement, and the inspection of the work to be performed incidental thereto. Such fees and deposits shall be promptly paid and no demolition, building or other permits may be issued should such fees and deposits be outstanding.

17. The applicant shall conform with all requirements of the Construction Official, Board Engineer, Police and Fire Departments and any other official having jurisdiction with respect to the use of the subject premises.

18. All utilities to serve the residences to be constructed on the property shall be placed underground.

19. The applicant shall submit written confirmation from applicable utilities verifying that permission has been granted for the service of the properties to be developed within the subject premises.

20. Soil movement operations shall be in accordance with the directives of the Board engineer and shall include the installation of drainage swales to direct and divert drainage away from adjoining properties during the periods when the soil operations are on-going.

21. The applicant shall be required to comply with all conditions of Chapter 104 of the Montvale Borough Code.

22. Approval by the Police Department as to the route trucks accessing and leaving the site will utilize, subject to requirements of County officials having jurisdiction.

23. The applicant shall be required to pay the cost of any police personnel deemed necessary by the Police Department to provide traffic control and monitor operations at the site or at intersections within the vicinity of the site.

24. The exact date for commencement of operations shall be provided to the Borough at least ten (10) days prior to the commencement thereof in order that the public may be informed through posting on the Borough's website and through other means.

25. The applicant shall be responsible for the cost of cleaning streets in conjunction with the soil moving operations. Any spillage shall promptly be cleaned at applicant's expense.

26. The hours of operation shall be required to be approved by the Police Department.

27. No operations may commence until a copy of the application and plan are submitted to the Police Department and the Department has determined as to the appropriate routes to be utilized to access the site, hours of operation, and traffic control issues. The determinations of the Police

Department shall be required to be adhered to, subject to requirements of County officials having jurisdiction.

28. Posting of a bond as required by §104-10 of the Borough Code and in such amount as may be determined to be necessary by the Board Engineer.

BE IT FURTHER RESOLVED that the Secretary of the Planning Board of the Borough of Montvale is hereby directed to mail a copy of this resolution to the applicant and to file a copy thereof with the Borough Clerk and to cause a notice of this determination of the Planning Board to be forwarded to an official newspaper of the Municipality within ten (10) days of the date hereof and thereafter to be published accordingly.

JOHN J. DE PINTO, Chairman

Dated: December 15, 2015

Certified to be a true copy of a Resolution adopted by the Planning Board of the Borough of Montvale at its regular meeting on Tuesday, December 15, 2015.

Doreen Rowland for

R. LORRAINE HUTTER, Secretary/Land Use Administrator

EXHIBIT B

MASER CONSULTING P.A.

Engineers
Planners
Surveyors
Landscape Architects
Environmental Scientists

400 Valley Road, Suite 304
Mount Arlington, NJ 07856
T: 973.398.3110
F: 973.398.3199
www.maserconsulting.com

March 7, 2017

VIA EMAIL

Lorraine Hutter
Planning Board Secretary
Borough of Montvale
12 Mercedes Drive, 2nd Floor
Montvale, NJ 07645

Re: V&R Developers, Inc.
Resolution Compliance Review
99 Spring Valley Road
Block 403, Lot 2
Borough of Montvale, Bergen County, NJ
MC Project No. MVP-411

Dear Ms. Hutter:

Our office is in receipt of copies of documents relative to the above-referenced application, summarized in Exhibit 1.

Based on our review of these documents, we offer the following comments in this matter:

General

The Contract Purchaser in this matter is:

Russell Luppino, Jr.
V&R Developers, Inc.
2050 Center Ave, Suite 410
Fort Lee, N.J. 07024

From the original Applicant:

Baldanza Construction Company
6 Lexington Lane
Montvale, NJ 07645

The Applicant shall notify the Board of any change in the above-mentioned information.

At the December 15, 2015 Planning Board Meeting, the Board granted approval of the requested Preliminary and Final Site Plan Approval, Variance Relief, a Major Soil Movement Permit, and a Waiver from requiring the submission of an Environmental Impact Statement to Baldanza Construction Company, with the following conditions:

1. Approval by Bergen County in connection with any opening of Spring Valley Road for providing utility service to the development;

2. Signage related to parking prohibition along the access drive shall be limited to posted signage as depicted on the plans. Yellow painting and markings shall be prohibited;

3. Approval by the Environmental Commission of the Landscaping Plan. In addition, a field inspection by a representative of the Environmental Commission shall be required prior to commencement of soil movement operations;

4. Submission of a consent to the enforcement of Title 39 and Borough Ordinances, as requested by the Police Department;

5. Compliance with the conditions in the report of the Borough Engineer Andrew R. Hipolit of Maser Consulting dated October 2, 2015 (Board Exhibit 3), together with any subsequent letter requirements;

6. Compliance with the conditions detailed in the reports of Borough Planner Darlene A. Green of Maser Consulting dated October 1, 2015 (Board Exhibits 4 and 5), together with any subsequent letter requirements;

7. Approval by the Board Attorney of the Public Offering Statement ("POS") for the development;

8. Adherence to all representations made by the Applicant and its representatives and professionals during the course of the public hearing, which representations are made conditions of the within approval;

9. Adherence to plans, renderings and engineering drawings and other exhibits submitted by the Applicant. Any deviation from such submissions shall require the Applicant to return to the Board for further review and any necessary approvals;

10. The Affordable units shall be affirmatively marketed in such a manner by the Borough and the Council On Affordable Housing ("COAH") or any successor agency so as to insure that the Borough receives appropriate crediting as required under its Housing Plan and any amendments thereto;

11. Approval by the Bergen County Planning Board, Bergen County Soil Conservation District, New Jersey Department of Environmental Protection, Department of the Army, New York District Corps. Of Engineers, and such other Federal, State, County and Municipal agencies having jurisdiction over the proposed use. In the event any approval by any other agency results in an alteration or modification of the application as approved by the Planning Board, the Applicant shall be required to resubmit the application;

12. The execution by the Applicant of a Developer's Agreement to be prepared by the Board Attorney and the full performance by the Applicant of the obligations, terms and conditions of said Developer's Agreement including, but not limited to, the payment of all fees and the posting and maintenance of all deposits and escrows thereby required;

13. Compliance with all present letter requirements of the Board Engineer, future letter requirements of the Board Engineer made pursuant to any Developer's Agreement to be entered into in accordance herewith, future letter requirements of the Board Engineer relating to the conditions of the within approval and subject to the future letter requirements, which entail minimal deviation from the plan hereby approved and are necessitated by field conditions hereafter discovered;

14. The Applicant shall be required to comply with the design and site details as shown on all plans submitted through their respective dates. Any deviation from any such development designs or details shall require further review and approval by the Board;

15. Posting of a Bond in such amount as determined by the Board Engineer so as to guarantee performance of the work herein required and approved, as well as the maintenance of said work after completion;

    a. ***Based on the proposed work schedule, the Applicant has submitted a construction cost estimate, in the amount of $320,000.00 (attached). Based on our review of the site plan set, this office has provided a revised estimate in the amount of $332,753.00. See Maser estimate attached.***

    b. ***N.J.S. 40:55D-53 allows the Borough to acquire a Performance Guarantee of an amount not to exceed 120% of the cost of installation of the improvements. It also allows the Borough to acquire ten percent (10%) of that guarantee in the form of cash. Therefore, a Performance Guarantee of $399,303.60 of which $39,930.36 should be in the form of cash, and $359,373.24 in the form of a bond shall be posted by the Applicant.***

    c. ***After the Borough accepts the site improvements, a maintenance bond shall be posted. N.J.S. 40:55D-53 allows the Borough to acquire fifteen percent (15%) of the cost of installation of improvements, which would result in a $49,912.95 maintenance bond. N.J.S. 40:53D-53 restricts the time this bond can be held to two (2) years.***

    d. ***N.J.S. 40:55D-53h allows the Borough to collect fees in the amount not to exceed the greater of $500 or five percent (5%) of the cost of the improvements to cover inspection services. Therefore, the Borough will require the Applicant to post $16,637.65 in an escrow to cover the Borough's inspection fees.***

16. Posting of all fees and deposits as required by the applicable Ordinance of the Borough of Montvale, which shall include the posting of such deposits as are necessary to reimburse the Municipality for money paid to its professionals for review of the within application, consistent with the Settlement Agreement, and the inspection of the work to be performed incidental thereto. Such fees and deposits shall be promptly paid and no demolition, building or other permits may be issued should such fees and deposits be outstanding;

17. The Applicant shall conform with all requirements of the Construction Official, Board Engineer, Police and Fire Departments and any other official having jurisdiction with respect to the use of the subject premises;

18. All utilities to serve the residences to be constructed on the property shall be placed underground;

19. The Applicant shall submit written confirmation from applicable utilities verifying that permission has been granted for the service of the properties to be developed within the subject premises;

20. Soil movement operations shall be in accordance with the directives of the Board Engineer and shall include the installation of drainage swales to direct and divert drainage away from adjoining properties during the periods when the soil operations are on-going;

21. The Applicant shall be required to comply with all conditions of Chapter 104 of the Montvale Borough Code;

22. Approval by the Police Department as to the route trucks accessing and leaving the site will utilize, subject to requirements of County officials having jurisdiction;

23. The Applicant shall be required to pay the cost of any Police personnel deemed necessary by the Police Department to provide traffic control and monitor operations at the site or at intersections within the vicinity of the site;

24. The exact date for commencement of operations shall be provided to the Borough at least ten (10) days prior to commencement thereof, in order that the public may be informed through posting on the Borough's website and through other means;

25. The Applicant shall be responsible for the cost of cleaning streets in conjunction with the soil moving operations. Any spillage shall promptly be cleaned at the Applicant's expense;

26. The hours of operation shall be required to be approved by the Police Department;

27. No operations may commence until a copy of the application and plan are submitted to the Police Department and the Department has determined the appropriate routes to be

utilized to access the site, hours of operation, and traffic control issues. The determinations of the Police Department shall be required to be adhered to, subject to requirements of County officials having jurisdiction;

28. Posting of a Bond as required by §104-10 of the Borough Code and in such amount as may be determined to be necessary by the Board Engineer.

Thank you for your kind attention in this matter and please contact me should you have any questions.

Very truly yours,

MASER CONSULTING P.A.

Andrew R. Hipolit, P.E., P.P., C.M.E.
Borough Engineer

ARH/cd
cc: Montvale Planning Board (via Secretary)
Robert Regan, Esq. (via email)
Darlene Green, P.P., AICP, Board Planner (via email)
George D. Cascino, P.E., P.P. (via email)

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EXHIBIT 1

SUMMARY OF DOCUMENTS SUBMITTED FOR THE 99 SPRING VALLEY ROAD APPLICATION

The following is a summary of the documents and information submitted in the matter of the review of the 99 Spring Valley Road application:

a. Estimate of Site Improvement Costs, Linda Vista Condominiums Block 403, Lot 2, Montvale, New Jersey, prepared by Cascino Engineering, dated 2/16/17.

CASCINO ENGINEERING

LINDA VISTA CONDOMINIUMS
BLOCK 403, LOT 2, MONTVALE, NEW JERSEY

ESTIMATE OF SITE IMPROVEMENT COSTS*

Item	Quantity	Unit	Unit Cost $	Total Cost $
Asphalt pavement **	18,846	s.f.	2.50	47,115
Pervious pavers	4,440	s.f.	10.00	44,400
Belgian block curbing	862	l.f.	15.00	12,930
4' concrete sidewalks (replace)	700	s.f.	10.00	7,000
SCS Pad	1	Per	3,500.00	3,500
SCS Fence	1,000	l.f.	3.00	3,000
SCS Inlet protection	5	Per	50.00	250
Landscaping – Topsoil	2,000	s.y.	3.00	6,000
Landscape Plantings	See Plan	Lump	N/A	30,000
Landscape Sodding	19,000	s.f.	1.00	19,000
Lighting	5	Per	1,000.00	5,000
Sanitary sewer mains	728	l.f.	56.00	40,768
Sanitary sewer manholes	3	Per	4,700.00	14,100
Storm – 15" HDPE	300	l.f.	45.00	13,500
Storm – 12" PVC	82	l.f.	40.00	3,280
Storm manholes	2	Per	3,000.00	6,000
Storm inlets	3	Per	2,750.00	8,250
Storm trench drain	1	Per	7,000.00	7,000
Storm connection @ exist. Manhole	1	Per	650.00	650
Storm roof drains	722	l.f.	25.00	18,050
Water main***	210	l.f.	39.00	8,190
Water laterals	465	l.f.	40.00	18,600
Driveway apron	25	s.y.	100.00	2,500
TOTAL	-	-	-	**$319,083** **Say $320,000**

*Site Plan for 12 Townhouse Unit Condominiums, prepared by George D. Cascino, P.E., dated 7/13/15, revised through 2/1/16.

**1.5" FABC surface course (I-5), 3.5" Base course (I-2), 6" Dense graded aggregate base course.

***As modified by SUEZ Water.

CASCINO ENGINEERING
2 East Greenbrook Road
North Caldwell, NJ 07006

2/14/17

MASER CONSULTING P.A.

Engineers
Planners
Surveyors
Landscape Architects
Environmental Scientists

400 Valley Road, Suite 304
Mount Arlington, NJ 07856
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www.maserconsulting.com

BONDING ESTIMATE
99 Spring Valley Road, Montvale, NJ
Block 403, Lot 2
MASER PROJECT # - MVP-411

		BOND			
ITEM No.	**DESCRIPTION**	**UNIT**	**QTY**	**UNIT PRICE**	**TOTAL PRICE**
1	ASPHALT PAVEMENT (SURFACE, BASE & AGGREGATE)	SF	18,846	$2.50	$ 47,115.00
2	PERVIOUS PAVERS	SF	4,440	$10.00	$ 44,400.00
3	BELGIAN BLOCK CURBING	LF	862	$25.00	$ 21,550.00
4	4 FOOT CONCRETE SIDEWALKS	SF	700	$10.00	$ 7,000.00
5	SCS PAD	UNIT	1	$3,500.00	$ 3,500.00
6	SCS FENCE	LF	1,000	$3.00	$ 3,000.00
7	SCS INLET PROTECTION	UNIT	5	$50.00	$ 250.00
8	LANDSCAPING - TOPSOIL	SY	2,000	$3.00	$ 6,000.00
9	LANDSCAPE PLANTINGS	UNIT	1	$30,000.00	$ 30,000.00
10	LANDSCAPE SODDING	SF	19,000	$1.00	$ 19,000.00
11	LIGHTING	UNIIT	5	$1,000.00	$ 5,000.00
12	SANITARY SEWER MAINS	LF	728	$56.00	$ 40,768.00
13	SANITARY SEWER MANHOLES	UNIT	3	$4,700.00	$ 14,100.00
14	STORM SEWER PIPING - 15" HDPE	LF	300	$45.00	$ 13,500.00
15	STORM SEWER PIPING - 12" PVC	LF	82	$40.00	$ 3,280.00
16	STORM MANHOLES	UNIT	2	$3,000.00	$ 6,000.00
17	STORM INLETS	UNIT	3	$2,750.00	$ 8,250.00
18	STORM TRENCH DRAIN	UNIT	1	$7,000.00	$ 7,000.00
19	STORM CONNECTION@ EXISTING MANHOLE	UNIT	1	$650.00	$ 650.00
20	ROOF DRAINS	LF	722	$25.00	$ 18,050.00
21	WATER MAIN (AS MODIFIED BY SUEZ)	LF	210	$39.00	$ 8,190.00
22	WATER LATERALS	LF	465	$40.00	$ 18,600.00
23	DRIVEWAY APRON	SY	25	$100.00	$ 2,500.00
24	ELECTRIC SERVICE	LF	80	$15.00	$ 1,200.00
25	TRAFFIC STRIPING, 4" THICK	LF	100	$1.00	$ 100.00
26	TRAFFIC MARKINGS	SF	50	$5.00	$ 250.00
27	REGULATORY TRAFFIC SIGNS	UNIT	2	$250.00	$ 500.00
28	COUNTY CONCRETE MONUMENTS	UNIT	2	$500.00	$ 1,000.00
30	FULL DEPTH CONCRETE CURBING	LF	40	$30.00	$ 1,200.00
31	GAS SERVICE	LF	80	$10.00	$ 800.00
	SUB-TOTAL				**$ 332,753.00**

N.J.S.40:55D-53 Allows the Borough to require a Performance Guarantee of the amount not to exceed 120% of the cost of installation of the improvements

	Performance Guarantee	**$**	**399,303.60**
	10% Cash Portion	$	**39,930.36**
	90% Bond Portion	$	**359,373.24**
	N.J.S.40:55D-53 allows the Borough to require a 15% Two-Year Maintenance Bond for the Cost of Installation of Improvements	$	**49,912.95**
	N.J.S.40:55D-53h allows the Borough to collect fees in the amount not to exceed the greater of $500 or five percent (5%) of the cost of improvements to cover inspection services	$	**16,637.65**

Revised:3/3/2017

Introduced by: **Mr. Lintner**

Seconded by: **Ms. Russo**

BOROUGH OF MONTVALE

PLANNING BOARD

RESOLUTION GRANTING PRELIMINARY AND FINAL SITE PLAN APPROVAL, VARIANCE RELIEF, A MAJOR SOIL MOVEMENT PERMIT, AND A WAIVER FROM REQUIRING THE SUBMISSION OF AN ENVIRONMENTAL IMPACT STATEMENT TO RICHARD QUEEN FOR PREMISES DESIGNATED AS BLOCK 2408, LOT 26

WHEREAS, application has been made to the Planning Board of the Borough of Montvale ("the Planning Board" or "the Board") by Richard Queen ("the applicant"), 107 Lake Street, Upper Saddle River, New Jersey, for preliminary and final site plan approval, variance relief, a major soil movement permit, and a waiver from the requirement of submission of an Environmental Impact Statement ("EIS") relating to premises known as Block 2408, Lot 26 as depicted on the tax assessment map of the Borough of Montvale, being more commonly known as 7 Franklin Avenue ("the property", "the premises", "the parcel" or "the site"); and

WHEREAS, the applicant is the contract purchaser of the subject premises and consent to the filing of the within application has been made by the property owner of record, Anthony Sorrentino, 15 Booth Avenue, Englewood Cliffs, New Jersey; and

WHEREAS, public hearings were held on the respective applications, on notice to all property owners within two hundred (200) feet therefrom and were published in the official newspaper of the Municipality, at least ten (10) days next preceding the date of hearing; and

WHEREAS, the Planning Board has had the benefit of the reports of its professionals and has deliberated on the matters brought forth at said public hearings, at which members of the public were afforded an opportunity to be heard; and

WHEREAS, the Planning Board has made certain findings of fact and conclusions with respect to said application.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Borough of Montvale that the following facts are made and determined:

1. The subject property comprises a land area of 34,489 square feet and is located in the B-1 Business District. The parcel is situated on the north side of Franklin Avenue, approximately 100 feet east of the intersection with Kinderkamack Road. Surrounding uses proximate to the subject property include Anchor Seafood fronting on Kinderkamack Road, the Charlestowne Court apartment development to the east, Montvale Square, a mixed-use retail building to the north, and the Amazing Grace building, which includes a medical use and graphic design business, also to the north fronting on East Grand Avenue. The subject site is currently vacant.

2. The applicant initially sought to develop a two-story sixteen (16) unit apartment building with twelve (12) of the units being two bedroom

and four (4) being one bedroom units, and a total of thirty-one (31) tenant parking spaces[1].

3. As has been noted, the property is located in the B-1 District. Variances pursuant to *N.J.S.A. 40:55D-70d(3)* are required. More particularly, §128-5.3H(1)(c) permits multi-family residential units above the first floor if the property has at least 150 feet of frontage on Kinderkamack Road. The site does not have any frontage on Kinderkamack Road. Section 128-5.3H(1)(d) does not permit apartments on the ground floor and units are proposed at this level. In addition, §128-5.3H(1)(f) limits density to ten (10) residential units per acre, and a density in excess of this standard is proposed.

4. The initial plan also required the following variance relief pursuant to *N.J.S.A. 40:55D-70c*:

Section 128-7.1E – Variance for parking setback. The Ordinance requires a ten-foot parking setback from the rear and side yards.

The applicant proposes a parking setback of four (4) feet along the western side yard and the rear yard. A setback of 5.93 feet is proposed along the eastern side yard.

Section 128-7.1F – Variance for parking screening. The Ordinance requires all parking areas to be well screened to a minimum height of six (6) feet.

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[1] As will be seen infra, the number of units were later reduced to thirteen (13), inclusive of three (3) affordable units.

The applicant has improved the plans to increase the plant height. However, the twelve (12) proposed Dwarf Periwinkle along the front yard are not six (6) feet tall.

Section 128-7.1K – Variance for parking lot landscaping. The Ordinance requires landscaped islands in the parking lot at a rate of five (5%) percent of the total parking area per 10,000 square feet of parking lot area.

The applicant is proposing a 12,417 square foot parking lot and refuse area with no landscaped islands within the parking lot.

Section 128.Attachment 1 – Variance for front yard setback from road. The Ordinance requires a front yard setback of fifty (50) feet.

The applicant proposes a front yard setback of 32.85 feet.

Section 128.Attachment 1 – Variance for side yard setback from a residential zone. The Ordinance requires a side yard setback of fifty (50) feet from a residential zone.

The applicant proposes a setback of 20.20 feet.

5. At the initial public hearing held on the application on December 5, 2017, the applicant was represented by Bruce E. Whitaker, Esq. who provided the Board with an overview of the application. He stated that the applicant is the contract purchaser of the property and proposes a sixteen (16) unit residential development with a set aside for affordable housing. Of the sixteen (16) units, twelve (12) would be two bedroom apartments comprising approximately 1,000 square feet of floor area and four (4) units would be one bedroom, each with an area of approximately 700 square feet. He stated that

the proposal is intended to provide an attractive development from an architectural standpoint, and he believes it would be a good transition from residential development on one side and commercial on the other and would be an asset to assisting in the revitalization of the downtown area.

6. Testimony in support of the application was provided by Michael Hubschman, a licensed professional engineer who was qualified in this field. The Site Plan Application and Notice documents were marked into evidence as Exhibits A-1 and A-2. Marked into evidence as Exhibit A-3 was Sheet 5, Existing Conditions Plan, revised to November 17, 2017. An aerial photo of the site was marked into evidence as Exhibit A-4 and a Building Height Schematic prepared by Mr. Hubshman and dated December 4, 2017 was marked into evidence as Exhibit A-5. He described the site as comprising a land area of .79 acres, or approximately 34,000 square feet, in the B-1 Business District. He described the surrounding development and applicable zoning, and noted that the location of the property is one hundred (100) feet from the corner of Kinderkamack Road. The proposed plan on Exhibit A-3 sets the building to the front of the parcel and away from the adjoining residential area. The proposed building would have a footprint of one hundred forty-four (144) feet in length and sixty-one (61) feet in width, with eight (8) units per floor and entrances on the north and south sections of the building. The thirty-one (31) parking spaces proposed meet the requirements of the Residential Site Improvement Standards ("RSIS"). A twenty-five (25) foot wide driveway would provide ingress and egress, with one way in and out, and a road widening

easement of 9.15 feet is depicted on the plan. He described the location of the refuse area, which is away from the front of the property and that the two (2) ADA spaces would conform to the applicable requirement.

7. Continuing his testimony, Mr. Hubschman referred to the proposed Landscaping Plan shown on Sheet 4 and described the various plantings proposed, with an evergreen buffer facing the adjoining townhouse development, all of which would be six (6) feet in height. Plantings are also proposed around the refuse area. He also described the bollard lighting around the sidewalk areas and the three (3) light fixtures, one of which would be moved farther away from the adjoining townhouse development as recommended in the reports of the Board's Engineer and Planner. The proposed lighting would be seventeen (17) foot high LED fixtures and meet the Ordinance requirement. The Engineer also described the drainage improvements which would connect to a basin at Franklin Avenue and Kinderkamack Road. A total of four (4) seepage pits six (6) feet in diameter surrounded by three (3) feet of crushed stone are intended to accommodate runoff from the building. He stated that the drainage design will meet Borough standards and RSIS.

8. Marked into evidence as Board Exhibit 1 was a report of Board Engineer Andrew R. Hipolit of Maser Consulting dated November 29, 2017, and Mr. Hipolit's associate Chris Dour provided testimony. It was confirmed that the building height would be 26.74 feet and that lot coverage would be 65.42%. The balconies depicted are faux, and Mr. Hubschman stated

that the bathrooms will be ADA compliant. The HVAC compressors will be ground-mounted. Mr. Hubschman stated that soil movement will be limited to the construction of the basement area and that a soil movement application will be submitted. He stated that the revised size of the refuse area (7.5 feet by 10 feet) is adequate to service the development. In addition, Mr. Whitaker stated that Comments 26 through 31 of Mr. Hipolit's report of November 29, 2017 will be met.

9. The Board Chairman indicated that the applicant should consider the use of pervious pavers to mitigate the proposed lot coverage. He also recommended that the HVAC units be kept away as far as possible from the townhomes to the east, which should be concealed with fencing and landscaping. Mr. Hubschman also indicated that a drain will be added to the seepage pit to address Item 27 in Mr. Hipolit's letter. He stated that the proposed bollard lighting will be three and one-half (3½) feet in height with a low intensity and twenty-four (24) wattage. The three (3) light fixtures would be 17.5 feet in height, and the Chairman requested that the design be ornamental, and that the two (2) lights along Franklin Avenue match the existing Borough street lights.

10. Marked into evidence as Board Exhibit 2 was a report of the Police Department dated September 26, 2017 which questioned the width of the twenty-five (25) foot access driveway. In response, Mr. Hubschman stated that this constitutes a standard aisle width and meets the twenty-four (24) foot RSIS requirement. Also marked into evidence as Board Exhibit 3 was a report

of the Fire Department dated September 18, 2017 which requested that a hydrant be installed on the island on the west side of the proposed driveway. Mr. Hubschman stated that the building will be sprinklered and the hydrant will be located consistent with the Department's recommendations. Mr. Fette recommended that any approval should be conditioned upon the removal of snow from the property so as not to obstruct traffic aisles and parking spaces.

11. Testimony in support of the application was provided by Matthew G. Evans, a licensed architect who was qualified in this field. The architect's plans were marked into evidence as Exhibit A-6 which comprise two sheets: the Floor Plans (Sheet A-1) and Elevations (Sheet A-2). Also marked into evidence as Exhibit A-7 was a rendering of the exterior. The Board was advised by Mr. Evans that there would be eight (8) units on each floor and that the sixteen (16) units would be comprised of four (4) one bedroom and twelve (12) two bedrooms. The first floor units will also be handicapped accessible, which will not be the case with the second floor units since no elevator is proposed. One-half of the basement area will be unfinished and will be available for storage, with the balance being for mechanicals and a utility room on the Franklin Avenue side.

12. Continuing his testimony, Mr. Evans referenced the Elevations (Sheet A-2 of Exhibit A-7) and described the view from Franklin Avenue and the surrounding area. The building would have a stone veneer with Hardie plank and Hardie shake siding with three dimensional shingles and dormers and gables. He described the balconies as "decorative Juliet

balconies" and noted the shutters and the earth tone colors. The building and one-half of the basement will be sprinklered. Referencing the dormers, he described them in detail. The architect confirmed that the building is below thirty (30) feet in height and thus compliant.

13. At the continued public hearing held on February 20, 2018, Mr. Whitaker stated that the applicant had re-noticed for the hearing and that an application has been filed for a major soil movement permit. Marked into evidence were the following exhibits:

Exhibit A-8	Revised Site Plan Drawings (revised December 29, 2017)
Exhibit A-9	Soil Movement Application (undated)
Exhibit A-10	Cross-Sections dated December 29, 2017
Exhibit A-11	Soil Moving Report dated December 29, 2017
Exhibit A-12	Drainage Report

14. The applicant's engineer resumed his testimony, and Mr. Hubschman discussed revisions to the site plan depicted on Exhibit A-8. The northern drive has been reduced to a width of twenty-four (24) feet to permit a five (5) foot wide planting strip. Impervious lot coverage has been reduced to 64.86%, and the air conditioning units are depicted. The size of the refuse area has been increased to 10.5 feet by 11.5 feet from 7.5 feet by 10 feet. Two (2) Montvale streetscape lights have been added along the property frontage. The engineer discussed the utility plan and drainage along the easterly property line to a seepage pit. A fire hydrant will be added at the front of the property,

with the location to be determined by the Fire Department. A ground light has been added to the project sign, and the Lighting Plan (Sheet 4 of Exhibit A-8) was referenced, with one (1) overhead light moved to reduce intensity. Plantings will be provided around the refuse area, and shade trees have been relocated. The stormwater calculations have been updated in Exhibit A-12.

15. Continuing his testimony, Mr. Hubschman stated that a total of 1,470 cubic yards of soil will be exported from the site, with total soil movement having been reduced by nearly half. He stated that the drainage report complies with Stormwater Management requirements. Variances pertaining to screening of parking areas and lighting at property lines have been eliminated. A total of four "*c*" variances are now required (parking setback, parking lot landscaping, front yard setback from road, and side yard setback from a residential zone). In addition, three *d(3)* conditional use variances are required, relating to the lack of property frontage on Kinderkamack Road (§128-5.3H(1)(c)) and density (§128-5.3H(1)(f)) and ground floor apartments instead of retail on the first level (§128-5.3).

16. The report of Borough Engineer Andrew R. Hipolit of Maser Consulting was marked into evidence as Board Exhibit 4 which details changes to the plan. The applicant agreed to comply with the conditions and recommendations in Mr. Hipolit's letter, with Mr. Hipolit noting that the revised plan reduces imperious coverage by 1.68%.

17. Testimony in support of the application was provided by Joseph Burgis, a licensed professional planner who was qualified in this field.

Commencing his testimony, Mr. Burgis testified that he visited the site, reviewed the Master Plan and Zoning Ordinance, and provided input in the design of the plan. He described the property as comprising .79 acres, "irregularly configured", with one hundred sixty (160) feet of frontage on Franklin Avenue. He marked into evidence as Exhibit A-13 a copy of the Zoning Map depicting neighboring land uses in the vicinity of the site. The red markings on the Map denote commercial development. Commercial uses are located to the north, west and south of the property, with a twelve (12) unit townhouse development located to the east, and single-family homes to the east of the townhouses. He noted that the property lacks frontage on Kinderkamack Road, which is a requirement for a conditional use in the B-1 District.

18. The planner marked into evidence as Exhibit A-14 an aerial view of the property and surrounding area. Describing the site as "cut off" from Kinderkamack Road, he stated that the property is not an attractive location for non-residential development, which needs an orientation to the roadway. Existing structures on Kinderkamack and Grand block visibility of the site. Referencing the 2008 Master Plan and Housing Element, he stated that several goals would be advanced, including aiding in revitalizing the business district, protecting the character of surrounding residential development, and engendering a high-quality design. Mr. Burgis stated that the 2016 Reexamination reiterates the 2008 goals, and while not recommending a

change to the land use designation, did suggest the need for downtown improvements.

19. The planner next addressed the three (3) conditional use variances implicated by the plan relating to locating residential use on the first floor, the lack of one hundred fifty (150) feet of frontage on Kinderkamack Road, and density. He stated that under the Supreme Court decision in ***Coventry Square v. Westwood Board of Adjustment***, the standard for a *d(3)* conditional use variance, as well as other "*d*" variances except a *d(1)* use variance, is different. The test under this decision is whether the site will function well. Mr. Burgis stated that the proposed building is "well-placed" at the southeast portion of the property. Parking is compliant and the twenty-four (24) foot access aisle permits two-way traffic.

20. Addressing the special reasons or positive criteria for *d(3)* variance relief, Mr. Burgis reiterated that the site functions well and that the property is particularly suitable for the proposed use, and would be a "transition location" between townhouse and commercial uses. Purposes of the Municipal Land Use Law ("MLUL") would be advanced, including the appropriate use of land to promote the general welfare (*N.J.S.A. 40:55D-2a*). The property constitutes a vacant lot, and Mr. Burgis referenced the Master Plan which has as a goal the redevelopment of vacant properties. In addition, the general welfare would be advanced by the affordable housing component in the plan. The goal of appropriate population densities (*N.J.S.A. 40:55D-2e*) would be advanced by a higher density development along a commercial

corridor and near mass transit opportunities. A desirable visual environment (*N.J.S.A. 40:55D-2i*) would also be promoted, with the planner describing the architecture of the proposed building as being attractive in design. The special reasons requirement is also met, according to the planner, by the plan advancing goals and purposes of the Master Plan as he previously noted.

21. The planner opined that the negative criteria will be satisfied and that the public good will be enhanced, with no detriment to the Zone Plan or Zoning Ordinance. The development will be similar to those in other downtown areas, such as Ridgewood and Summit, and will be appropriate for a transitional use.

22. Marked into evidence as Board Exhibit 5 was a report of Board Planner Darlene Green of Maser Consulting dated January 10, 2018. She confirmed her agreement with Mr. Burgis that three (3) *d(3)* variances are required relating to apartments on the ground floor, the lack of frontage on Kinderkamack Road, and density. A total of four (4) "*c*" variances are required relating to parking setback, parking lot landscaping, front yard setback, and side yard setback from a residential zone. Two "*c*" variances have been eliminated pertaining to parking areas which will be screened to a height of six (6) feet and lighting will not exceed .5 fc at the property line. She noted that impervious coverage of 64.86% will be in compliance.

23. Ms. Green next discussed the three (3) affordable units. While the applicant initially proposed that two of the units would be for moderate income with a single low income unit, it was ultimately agreed, after

discussion, that the single one (1) bedroom unit would be low income. Of the two (2) two bedroom units, one would be low income and one moderate income. None of the units will be a three (3) bedroom, to which the Board agreed to grant a waiver in view of the fact that there are no three (3) bedroom units proposed for the development.

24. Considerable discussion next ensued as to whether density could be reduced so as to lessen the number of variances. While Mr. Whitaker suggested a reduction of two (2) units (11 market, 3 affordable), a majority of Board members indicated a preference for ten (10) market and three (3) affordable units. The applicant agreed to revise the plan for a thirteen (13) unit development.

25. At the continued public hearing held on March 6, 2018, the applicant's counsel marked into evidence as Exhibit A-15 Zoning Tables containing a sixteen (16) unit and thirteen (13) unit development as to the bulk standards applicable to the B-1 District. Also marked into evidence were revised Site Plan drawings with a revision date of February 28, 2018 (Exhibit A-16) and architectural plans, floor plans and elevations (Exhibit A-17) for a thirteen (13) unit development with a revision date of February 21, 2018. Mr. Whitaker stated that the issues raised in Board Planner Green's most recent report will be addressed and resolved.

26. The applicant's planner Joseph Burgis resumed his testimony and stated that the plan has been reduced from sixteen (16) to thirteen (13) units, of which three (3) units will be one-bedroom and ten (10)

two-bedroom. Of the ten (10) market-rate units, the one-bedroom units will contain a floor area of 712 square feet and the two (2) two-bedroom units an area of 1,070 square feet. The three (3) affordable units will consist of two (2) two-bedroom units (Unit Nos. 102 and 104) and will have a floor area of 1,070 square feet. The single one-bedroom affordable unit (Unit No. 103) will have a floor area of 700 square feet. There will be one (1) moderate income two-bedroom unit, one (1) low-income two-bedroom unit, and one (1) low-income one-bedroom unit. All of the affordable units will be located on the first floor.

27. Addressing the changes reflected in the thirteen (13) unit plan, Mr. Burgis stated that the front yard setback variance has been eliminated, with the setback increasing from 32.8 feet to a compliant 50 feet. The *d(3)* conditional use relief pertaining to the lack of frontage on Kinderkamack Road, residential units on the first floor and density remains unchanged. Density has been reduced from 20.2 units per acre to 16.5 units per acre. The parking and driveway setback to the side and rear lines has been increased from four (4) to five (5) feet, which continues to require a variance. The parking setback also remains noncompliant, although the proposed aisle width is conforming. The sixteen (16) unit plan did not provide for landscaped islands in the parking area, with five (5%) percent of the total parking area required to include landscaped islands. The revised plan for thirteen (13) units provides for landscaped islands comprising 5.39% of the parking area, thereby eliminating a variance. Based upon the revised plan, two (2) variances (front yard setback, lack of landscaped islands in parking area) have been eliminated

and two (2) have been reduced as to nonconformity (density and parking/driveway setback to lot lines).

28. A discussion next ensued as to whether the building should be moved to the west on the property, moving the parking area closer to the easterly lot line. Mr. Burgis stated that the neighboring property owners to the east favored the current design. Board Engineer Hipolit provided an Exhibit (Board Exhibit 6) depicting such a modification, which he noted may result in several additional parking spaces. Mr. Burgis expressed a concern as to the impact on property to the east, as did Board Planner Green who noted vehicle headlights may cause a detriment to the adjoining property if the parking area was moved to the east section of the site. A poll of the Board resulted in the majority of Board members expressing a preference for the applicant's plan.

29. Marked into evidence as Board Exhibit 7 was a report of Board Planner Green dated March 6, 2018. She referred to Comment 4 (on page 7) as to the rear elevation not matching the floor plans, which discrepancy the applicant agreed to eliminate. She noted that the affordable units have been appropriately identified. The information she requested at paragraphs 9, 11 and 12 will be provided in the revised plans to be submitted. These issues relate to screening of the air conditioning units and discrepancies between the architectural and site plans pertaining to the covered porch and windows and doors on the front elevation, all of which the applicant agreed to correct in the revised plans.

30. The report of Borough Engineer Hipolit of March 5, 2018 was marked into evidence as Board Exhibit 8. He referenced Comment 34 pertaining to the sidewalk along Franklin Avenue, which should be pushed back to allow better access for tenants to the front door, while allowing a four (4) foot wide strip for plantings. This will be addressed in the revised plan. In addition, discussed as a condition of approval was the requirement that the monument sign be set back ten (10) feet from the property line and have an area compliant with §128-9.7A.6. In addition, the revised plans will be required to have a detail sheet pertaining to fencing of the dumpster or refuse area.

31. At the continued public hearing held on April 3, 2018, there was marked into evidence as Exhibit A-18 revised site plan drawings consisting of five (5) sheets prepared by Hubschman Engineering with a revision date of March 23, 2018. These plans depict a trash/recycling detail (Sheet 3) with a board-on-board fence with metal corner posts and metal line posts. Bollards have been added to the interior of the enclosure. A garbage truck turning radius is also shown. Sign notes have been added (Sheet 1) indicating compliance with Ordinance requirements. The sidewalk on Franklin Avenue has been moved closer to the building, and the eighteen (18) inch overhang on Franklin Avenue is now consistent with the architectural plan. The holly planting in front of the air conditioning units is shown to be a minimum of three (3) feet in height.

BE IT FURTHER RESOLVED by the Planning Board of the Borough of Montvale that based upon the above findings of fact, that the following conclusions are made and determined:

1. The Planning Board has considered the applicant's proposal which seeks site plan approval, variance relief pursuant to *N.J.S.A. 40:55D-70d(3)* and *N.J.S.A. 40:55D-70c*, a major soil movement permit and a waiver from the requirement of submitting an EIS in connection with a proposal to develop a vacant parcel comprising 34,489 square feet, or .79 acres, with a thirteen (13) unit two-story residential building. It is noted that the original plan consisted of sixteen (16) units, three (3) of which would be affordable units which are included in the Borough's Housing Plan and detailed in an Order Approving a Settlement between the Borough and Fair Share Housing Center ("FSHC"), which Order was entered by the Honorable Menelaos W. Toskos dated February 12, 2018. The revised plan for thirteen (13) units provides for the three (3) required affordable units in addition to ten (10) market-rate units.

2. The subject property is located in the B-1 District. Pursuant to §128-5.3H, residential apartments above the first floor are permitted, subject to certain conditions detailed in this provision. The proposal fails to comply with three (3) of these conditions. These include the property proposed for development must have at least 150 feet of frontage on Kinderkamack Road, with the property having no frontage on this Roadway. Apartments are limited to the second floor, with no ground floor units, and the applicant proposes ground level units. Maximum permitted density is ten (10) units per acre, and

the thirteen (13) unit plan provides for a density of 16.4 units per acre. Accordingly, three (3) conditional use variances are required pursuant to *N.J.S.A. 40:55D-70d(3).*

3. The Board recognizes that in considering an application for a conditional use a variance, that the standard is different, and less burdensome to an applicant, than a *d(1)* use variance, as enunciated in ***Coventry Square v. Westwood Zoning Board of Adjustment***, 138 N.J. 285 (1994). In that case, the Supreme Court determined that imposing on applicants for a conditional use variance the same burden as required to be met by an applicant for a *d(1)* use variance is inappropriate and does not adequately reflect the differences between a prohibited use for which approval is sought even though not permitted by zoning ordinance, and a use permitted but subject to certain conditions. The fact that certain conditions may not be satisfied "need not materially affect the appropriateness of the site for the conditional use". Id. at 297). A conditional use variance applicant "must show that the site will accommodate the problems associated with the use even though the proposal does not comply with the conditions the ordinance established to address those problems". Id. at 299. Or as stated by the applicant's planner, the test "is whether the site will function well".

4. The Board accepts the testimony of the applicant's planner, which was not contradicted by any evidence, that the site will function in an appropriate and safe manner. Parking and aisle width will be conforming, and the proposal complies with the majority of the bulk standards applicable to the

B-1 District. As has been noted, the property adjoins a residential townhouse development to the east and commercial uses to the north, south and west. The Board concurs with the opinion of Mr. Burgis that the site would be an appropriate "transition location" between the townhouse and commercial uses. It is to be noted that uses permitted in the B-1 District include various commercial uses such as retail establishments, offices and banks which are considerably more intensive uses than a thirteen (13) unit residential building and not as compatible with the adjacent townhouse development and other residential properties to the east. Furthermore, permitted uses would generate more traffic than the proposed residential complex. The fact that the site will function appropriately and that the proposal will be more harmonious with residential development nearby, permit a conclusion that the property is suitable for the proposed thirteen (13) unit residential development.

5. The special reasons for positive criteria for *d(3)* variance relief is further satisfied in that the proposal will advance various goals and objectives of the Municipal Land Use Law ("MLUL"). The application will promote the goal of an appropriate use of land consistent with the general welfare. See *N.J.S.A. 40:55D-2a.* The significant affordable unit set-aside (in excess of 23%) will clearly promote the general welfare. See ***Holmdel Builders Association v. Tp. of Holmdel***, 121 N.J. 550, 568 (1990). As has been noted, the Borough's Housing Plan allocates three (3) affordable units to the property, which is further referenced and confirmed in the Court Order approving the Borough's settlement with FSHC. This conclusion is equally applicable to the

MLUL goal of providing sufficient space for a variety of uses pursuant to *N.J.S.A. 40:55D-2g* in that the property has been designated in the Housing Plan as a site for inclusionary development. The Board also accepts the testimony of Mr. Burgis that several other goals of the MLUL will be advanced by the proposal. These include the establishment of appropriate population densities, which would be realized by a higher density development along a commercial corridor and near mass transit. See *N.J.S.A. 40:55D-2e.* In addition, the objective of a desirable visual environment would be promoted in view of the attractive architectural design which characterizes the development proposed for a long-vacant property. See *N.J.S.A. 40:55D-2i.* In addition, various goals and objectives of the Master Plan will be met, including revitalizing downtown Montvale (Goal 2), engendering higher-quality design (Goal 11) and diversifying the housing stock (Goal 14). These constitute additional reasons supportive of the granting of the *d(3)* conditional use variance.

6. The *d(3)* conditional use variances may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and Zoning Ordinance. As has been noted, the subject property is contiguous to a townhouse project, an inclusionary development to the east, and commercial development to the north, south and west. Consistent with the conclusions above (at ¶4), permitted uses in the B-1 District may be significantly greater in activity and intensity than the proposed residential development. The Board is of the

opinion that the proposed use represents an appropriate transition between this townhouse development and proximate commercial uses and will not cause damage to the character of the neighborhood. The fact that the Housing Plan designates the property for inclusionary development with three (3) affordable units further compels a conclusion that the negative criteria has been satisfied. The Board believes that these factors require a determination that the conditional use variances may be granted without being inimical to the public good and without substantially impairing the intent and purpose of the zone plan and Zoning Ordinance.

7. The Board has also considered the variance relief required by the proposal pursuant to *N.J.S.A. 40:55D-70c.* Under the final iteration of the plan for a thirteen (13) unit development, the number of variances has been reduced and several others have been mitigated as to nonconformity. These variances relate to minimum setback to a residential development (50 feet required, 20.2 feet provided), minimum parking/driveway setback, side and rear yards (10 feet required, 5 feet provided), minimum parking/driveway setback to building (10 feet required, 4 feet provided), and minimum sidewalk distance to building (5 feet required, 4.5 feet provided). As it has found with respect to the *d(3)* conditional use variances, purposes of the MLUL will be advanced by granting this relief, and accordingly these variances may be granted pursuant to *N.J.S.A. 40:55D-70c(2),* and that the benefits of granting such relief would substantially outweigh any detriment, particularly in view of the inclusionary nature of the proposed development. The Board reiterates its

conclusions made above with respect to the *d(3)* variances in that other uses permitted will be less compatible and more intensive than the proposed development. Approval of the "*c*" variances will permit a better zoning alternative for the premises, and will promote goals and objectives of the MLUL and Master Plan as noted above. For these reasons, the Board finds that the positive criteria for the granting of variances under the *c(2)* standard have been satisfied.

8. The Board's conclusions (at ¶6 above) pertaining to the negative criteria for the *d(3)* conditional use variance relief are equally applicable to the "*c*" variances. Except for the proposed nonconforming setback to the residential development to the east, the extent of the deviation relief is not significant. It is to be noted that the residential development to the east, an inclusionary townhouse development, is somewhat similar in character to the proposal before the Board. Significantly, the developer of that complex testified in support of the application during the public hearings. Goals and objectives of the MLUL and Master Plan are being advanced, as well as the Borough's Housing Plan. Accordingly, the Board concludes that the "*c*" variances may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and Zoning Ordinance.

9. The Board is of the opinion that a waiver may be granted from the requirement of submitting an EIS under §128-17-10, and that the applicant has satisfied the criteria for the granting of this relief. The Board

believes that the proposal will not create any adverse environmental conditions, nor cause a detriment to any of the factors to be considered in granting a waiver. Accordingly, the Board concludes that this waiver may be granted.

10. The Board has considered the need for the issuance of a major soil movement permit pursuant to Chapter 104 of the Borough Code. An estimated 1,470 cubic yards of soil will be required to be exported from the site in connection with the construction of the building. The Board finds that the applicant has complied with the procedures enumerated in the Soil Removal Ordinance so as to permit the issuance of a major soil movement permit. In this regard, the Board is of the opinion that in its review of the factors considered in conjunction with the within application, that the proposed operations will be in conformity with the standard established by Ordinance and that the operations may be conducted without adversely impacting upon existing soil and drainage conditions and the public health and safety. Accordingly, a major soil movement permit may be approved.

11. The Board is of the opinion that the applicant has satisfied the criteria for preliminary and final site plan approval. Issues such as drainage, parking, circulation and vehicular access, lighting and landscaping have been reviewed and determined by the Board to be compliant with applicable standards. The plans as presented provide the requisite information as set forth in §128-8.7D and 8.9D, as well as the performance standards in 8.11. Based upon the foregoing, preliminary and final site plan approval may be granted.

BE IT FURTHER RESOLVED by the Planning Board of the Borough of Montvale that based upon the above findings of fact and conclusions, that preliminary and final site plan approval, variance relief pursuant to *N.J.S.A. 40:55D-70d(3)* and *c*, a major soil movement permit, and a waiver from the requirement of submitting an EIS, be and are hereby granted to the applicant, subject to the following conditions:

1. During periods when snow has fallen, the snow shall be removed from the property and not stockpiled within parking areas and spaces.

2. The three (3) affordable units which shall be rental units, shall consist of one (1) one-bedroom unit, which shall be low income, and two (2) two-bedroom units, one of which shall be low income and one moderate income.

3. The affordable units shall be affirmatively marketed for rental in such manner as required by the Borough and applicable regulations so as to ensure that the Borough receives appropriate crediting under its Housing Plan and any amendments thereto. In this regard, applicant shall use the services of the administrative agent as determined by the Borough for the marketing and administration of the affordable units. The applicant shall be responsible for the fees incurred by the Borough for the services of the Administrative Agent, and the three (3) affordable units shall be deed-restricted, being required to be occupied by persons qualifying for affordable housing, for a minimum period of thirty (30) years.

4. Compliance with the conditions detailed in the report of Borough Planner Darlene Green of Maser Consulting dated March 6, 2018 (Board Exhibit 7), together with any subsequent letter requirements.

5. Compliance with the conditions detailed in the report of Borough Engineer Andrew R. Hipolit of Maser Consulting dated March 5, 2018 (Board Exhibit 8), together with any subsequent letter requirements.

6. The sidewalk leading to the front entrance from the parking lot shall be placed closer to the building, in a location as approved by the Borough Engineer, with adequate spacing so as to provide a four (4) foot strip for planting and landscaping. The plans shall be modified to reflect this change.

7. The plans shall be amended to provide that the monument sign shall be located ten (10) feet from the property line, the area and dimensions of which shall comply with Ordinance standards and requirements.

8. A detail sheet shall be added to the plans to depict the fencing surrounding the refuse/dumpster area, the design of which shall be subject to the approval of the Board and the Borough Engineer.

9. Submission of a consent to the enforcement of Title 39 and Borough Ordinances, as requested by the Police Department.

10. Adherence to all representations made by the applicant and its representatives and professionals during the course of the public hearings, which representations are made conditions of the within approval.

11. Adherence to plans, renderings and engineering drawings and other exhibits submitted by the applicant. Any deviation from such submissions shall require the applicant to return to the Board for further review and any necessary approvals.

12. Approval by the Bergen County Planning Board, Bergen County Soil Conservation District, New Jersey Department of Environmental Protection, Department of the Army, New York District Corps. of Engineers, and such other federal, state, county and municipal agencies having jurisdiction over the proposed use. In the event any approval by any other agency results in an alteration or modification of the application as approved by the Planning Board, the applicant shall be required to resubmit the application.

13. The execution by the applicant of a Developer's Agreement to be prepared by the Board attorney and the full performance by the applicant of the obligations, terms and conditions of said Developer's Agreement including, but not limited to, the payment of all fees and the posting and maintenance of all deposits and escrows thereby required.

14. Compliance with all present letter requirements of the Board engineer, future letter requirements of the Board engineer made pursuant to any Developer's Agreement to be entered into in accordance herewith, future letter requirements of the Board engineer relating to the conditions of the within approval, and subject to the future letter requirements which entail minimal deviation from the plan hereby approved and are necessitated by field

conditions hereafter discovered. In addition, the applicant shall comply with the updated landscaping plan provided by the Board Engineer.

15. The applicant shall be required to comply with the design and site details as shown on all plans submitted through their respective dates. Any deviation from any such development designs or details shall require further review and approval by the Board.

16. Posting of a bond in such amount as determined by the Board engineer so as to guarantee performance of the work herein required and approved, as well as the maintenance of said work after completion.

17. Posting of all fees and deposits as required by the applicable Ordinance of the Borough of Montvale, which shall include the posting of such deposits as are necessary to reimburse the Municipality for money paid to its professionals for review of the within application, consistent with the Settlement Agreement, and the inspection of the work to be performed incidental thereto. Such fees and deposits shall be promptly paid and no demolition, building or other permits may be issued should such fees and deposits be outstanding.

18. The applicant shall conform with all requirements of the Construction Official, Board Engineer, Police and Fire Departments and any other official having jurisdiction with respect to the use of the subject premises.

19. The applicant shall submit written confirmation from applicable utilities verifying that permission has been granted for the service of the properties to be developed within the subject premises.

20. Soil movement operations shall be in accordance with the directives of the Board engineer and shall include the installation of drainage swales to direct and divert drainage away from adjoining properties during the periods when the soil operations are on-going.

21. The applicant shall be required to comply with all conditions of Chapter 104 of the Montvale Borough Code.

22. Approval by the Police Department as to the route trucks accessing and leaving the site will utilize, subject to requirements of County officials having jurisdiction.

23. The applicant shall be required to pay the cost of any police personnel deemed necessary by the Police Department to provide traffic control and monitor operations at the site or at intersections within the vicinity of the site.

24. The exact date for commencement of operations shall be provided to the Borough at least ten (10) days prior to the commencement thereof in order that the public may be informed through posting on the Borough's website and through other means.

25. The applicant shall be responsible for the cost of cleaning streets in conjunction with the soil moving operations. Any spillage shall promptly be cleaned at applicant's expense.

26. The hours of operation shall be required to be approved by the Police Department.

27. No operations may commence until a copy of the application and plan are submitted to the Police Department and the Department has determined as to the appropriate routes to be utilized to access the site, hours of operation, and traffic control issues. The determinations of the Police Department shall be required to be adhered to, subject to requirements of County officials having jurisdiction.

28. Posting of a bond as required by §104-10 of the Borough Code and in such amount as may be determined to be necessary by the Board Engineer.

BE IT FURTHER RESOLVED that the Secretary of the Planning Board of the Borough of Montvale is hereby directed to mail a copy of this resolution to the applicant and to file a copy thereof with the Borough Clerk and to cause a notice of this determination of the Planning Board to be forwarded to an official newspaper of the Municipality within ten (10) days of the date hereof and thereafter to be published accordingly.

JOHN J. DE PINTO, Chairman

Dated: April 3, 2018

Certified to be a true copy of a Resolution adopted by the Planning Board of the Borough of Montvale at its regular meeting on Tuesday, April 3, 2018.

R. LORRAINE HUTTER, Secretary/Land Use Administrator

BOROUGH OF MONTVALE

ORDINANCE NO. 2017-1423

NOTICE IS HEREBY GIVEN that the following Ordinance was introduced and passed on the first reading at the regular meeting of the Mayor and Council on the 31st day of January 2017, and that said Ordinance will be taken up for further consideration for final passage at a regular meeting of the Mayor and Council to be held on the 28th day of February 2017 at 7:30 pm or as soon thereafter as said matter can be reached, at which time and place all persons who may be interested therein will be given an opportunity to be heard concerning same.

Maureen Iarossi Alwan, Municipal Clerk
Borough of Montvale

ORDINANCE NO. 2017-1423

AN ORDINANCE OF THE BOROUGH OF MONTVALE, COUNTY OF BERGEN, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING CHAPTER 128, "ZONING," OF THE BOROUGH CODE IN ORDER TO AMEND CERTAIN ZONING REGULATIONS FOR THE OFFICE-RESEARCH (OR) DISTRICTS IN THE BOROUGH TO IMPLEMENT THE RECOMMENDATIONS OF THE MASTER PLAN REEXAMINATION ADOPTED BY THE PLANNING BOARD ON JULY 19, 2016

WHEREAS, the Borough of Montvale recognizes that in order to stay competitive with the corporate market and in order to encourage reinvestment in Montvale's existing office complexes, it is necessary to re-examine the zoning ordinances applicable to the Borough's Office and Research (OR) districts; and

WHEREAS, in furtherance thereof, the Borough of Montvale Planning Board did undertake a Reexamination of the Borough of Montvale's Master Plan in order to specifically analyze how to guide the development and redevelopment of properties located in the OR districts, and to determine whether the regulations pertaining to such uses needed to be updated to advance the goals of the Master Plan in light of any changed goals or assumptions regarding such uses; and

WHEREAS, the Master Plan Reexamination Report was prepared by Darlene A. Green, P.P., AICP of Maser Consulting, P.A.; and

WHEREAS, the Reexamination Report made a number of recommendations concerning the OR districts, including new and amended definitions and new lot size and bulk requirements; and

WHEREAS, after complying with the statutory requirements pertaining to the adoption of a Master Plan Reexamination under the *Municipal Land Use Law, N.J.S.A.* 40:55D-1, et seq., the Reexamination Report was adopted by the Borough of Montvale Planning Board on July 19, 2016; and

WHEREAS, the Governing Body is desirous of adopting an Ordinance to implement the recommendations contained in the 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 is hereby amended and supplemented by adding the following definition alphabetically in Section 128-3.1(B):

ASSISTED LIVING RESIDENCE

A residential health-care facility which is licensed by the State of New Jersey Department of Health to provide housing with congregate dining and a coordinated array of supportive personal and health-care services, available twenty-four hours a day to elderly and/or handicapped residents unrelated to the proprietor. Each unit in an assisted living facility shall, as part of the living quarters, include a private bathroom, kitchenette and lockable entrance doors. Common dining, recreational and laundry facilities, housekeeping and maintenance services, personal and health-care services and community and administrative facilities and services, all in support of and for the sole benefit of the residents of the facility, shall be considered customary accessory uses to an assisted living facility.

NURSING HOME or CONVALESCENT HOME

Any home, house or other place conducted or maintained by any person or entity which is advertised or held out by such person or entity as a rest home, hospital, or sanitarium where one or more persons are cared for or attended during a convalescent period or the attending of the aged. This term shall not include an Assisted Living Residence as that term is defined herein.

Section 2. Chapter 128 of the Code of the Borough of Montvale, Section 128-5.4, is hereby amended and supplemented by adding the underlined text and deleting the [bracketed] text, as follows:

§ 128-5.4 Office and Research OR-1, OR-2, OR-3 or OR-4 Districts.

In the Office and Research Districts, no building or land shall be used and no building or other structure shall be built, altered or erected to be used for any purpose other than those specified in Subsections A through F of this section.

A. Office buildings, including buildings housing professional offices.

B. Scientific or research laboratories, testing, experimental or computation centers, provided that there shall be no use thereof that is noxious, offensive or hazardous by reason of emission of odor, dust, smoke, noise or electric, magnetic or radioactive waves.

C. Medical center buildings, hospitals, medical and dental offices, clinics and offices for the practice of veterinary medicine. Nursing homes are specifically prohibited.

D. Public and private schools (subject to the provisions of § 128-9.5.1 et seq.).

E. Municipal buildings, libraries, playgrounds, parks, recreation and essential municipal uses.

F. Conditional uses.

(1) Fitness centers and hotels shall be permitted only in the OR-4 District, provided such uses are located on lots of at least five acres in size and with a minimum lot width of 300 feet. Additionally, fitness centers and hotels shall also adhere to the requirements of § 128-7.5.1. Relief from the requirements of § 128-7.5.1 shall be treated as "c" variances pursuant to N.J.S.A. 40:55D-70(c).

(2) Public utility building or structure other than an electricity generating plant, gas manufacturing plant or gasometer, subject to the conditional use standards of § 128-9.10.2.

(3) Assisted Living Residences shall be permitted in the OR-3 or OR-4 District provided that a minimum of 10% of the units are reserved for Medicaid-eligible persons such that the units will qualify as affordable units for the purposes of the Borough of Montvale's Housing Element and Fair Share Plan and that the following requirements are met:

(a) Primary access shall be achieved from a road under the jurisdiction of Bergen County.

(b) Minimum lot size: ten (10) acres.

(c) Minimum lot width: two hundred (200) feet.

(d) Minimum front yard setback: seventy-five (75) feet.

(e) Minimum side yard setback: fifty (50) feet. Aggregate minimum side yard setback (both sides): one hundred (100) feet.

(f) Minimum rear yard setback: fifty (50) feet.

(g) Maximum lot coverage: as regulated in the underlying zone.

(h) Maximum FAR: 0.35.

(i) Maximum building height: fifty (50) feet and three stories.

(j) Parking: 0.5 parking spaces per residential unit.

(k) Building exteriors shall have vertical and/or horizontal offsets and variations of construction materials to create visual breaks on the exterior.

(l) There shall be provided a safe and convenient system of sidewalks, accessible to all occupants. Due consideration should be given in planning walks, paths, and ramps to prevent slipping or stumbling. Handrails and ample space for rest shall be provided. All walks, paths and risers shall be designed according to the requirements of the Americans with Disabilities Act (ADA).

(m) A buffer area as defined in §128-3.1, which shall be no less than 15 feet in width from all external property lines of the site.

(n) Sign regulations: as regulated in the underlying zone.

(o) Maximum 25 units per acre.

G. Accessory uses. Within the OR-1, OR-2, OR-3 and OR-4 Districts, the following accessory uses shall be permitted:

(1) Storage of materials or supplies incidental to the principal uses permitted in this district, provided that the materials or supplies are stored within an enclosed building.

(2) Only within the principal building itself and not as freestanding uses, banks and financial institutions and other service establishments where no products are manufactured, processed or sold, such as the offices of a real estate broker, insurance broker and travel agency.

(3) Heliports, helistops and related facilities intended for the takeoff and landing of helicopters and other forms of aircraft are specifically prohibited as an accessory use within the districts.

(4) Uses customary and incidental to the principal use.

(5) [In the OR-4 District only, m]Multilevel parking garages, provided the lot is more than five acres in size and subject to the provisions of § 128-7.5E.

H. (Reserved)

I. (Reserved)

J. Access to apartment, condominium, or townhouse development in the RCO District.

(1) A roadway or driveway through land in the OR-2 Office and Research District shall be permitted by conditional use to apartment, condominium, or townhouse development in the RCO-Retirement Community Overlay District, meeting the following requirements:

(a) The roadway or driveway shall meet minimum standards as required by the residential site improvement standards.

(b) The roadway or driveway shall be reviewed and approved by the Montvale Fire and Police Departments for purposes of assuring safe access for emergency vehicles.

Section 3. Chapter 128 of the Code of the Borough of Montvale, Section 128-7.5, is hereby amended and supplemented by adding the underlined text and deleting the [bracketed] text, as follows:

§ 128-7.5 Off-street parking in the OR-1, OR-2, OR-3 and OR-4 Districts.

A. [A.] Except for fitness centers and hotels, as pursuant to § 128-7.5.1, and for Assisted Living Residences pursuant to § 128-5.4(F)(3), all uses in the OR-1, OR-2, OR-3 and OR-4 Office and Research Districts shall provide a minimum of one parking space for each 300 square feet of building floor area and a maximum of one parking space for every 200 square feet of building floor area.

B. Except as provided for in § 128-7.5.1C:

   (1) No more than 15% of the total number of parking spaces provided on the lot shall be permitted in the front yard, and shall be utilized primarily for visitors parking, and no more than 15% of the maximum permitted lot or impervious surface coverage shall be devoted to parking areas in the front yard inclusive of parking spaces, aisles and driveways; and

   (2) No front yard parking areas or access drives shall be located closer than 75 feet to the front property line.

C. Notwithstanding anything herein to the contrary, no on-surface parking, driveways or access-ways shall be located less than 50 feet from a boundary line of a residential district except where such boundary line lies in the bed of a mapped street. The location of multilevel parking garages [in the OR-4 District], in relation to property lines and adjacent uses and zones, shall meet the minimum requirements of § 128-7.5E.

D. On sites designated as corner lots, parking shall be permitted in the front yard where such yard does not lie adjacent or opposite to the main entrance to the building, provided that at least one front yard is designated and to the extent that such parking does not extend beyond the building wall associated with such remaining front yard in accordance with the setback requirements established in this article; provided, however, that the setback from the front property line as defined in this ordinance shall not be less than 50 feet.

E. Multilevel parking garages shall be permitted [in the OR-4 District] subject to the following requirements.

   (1) No multilevel parking garage shall be permitted on a lot that is smaller than five acres in size.

   (2) For the purposes of calculating floor area ratio (FAR), the floor area of multilevel parking garages shall not be counted towards the maximum permitted FAR within the district.

   (3) The aggregate floor area of all levels of such multilevel parking garages, excluding that level at or nearest the finished grade, shall not exceed 20% of the total lot area.

(4) The maximum permitted lot coverage shall be reduced by one percentage point, or proportion thereof, for each five percentage points calculated in § 128-7.5E(3) above.

(5) No more than one multilevel parking garage structure shall be permitted per lot, except that a second multilevel parking garage shall be permitted on a lot that exceeds fifteen acres in size.

(6) No multilevel parking garage shall exceed two levels above grade surface parking. The height of the multilevel parking garage shall be at least five feet lower than the height of the principal building on the lot. Nothing contained in this Subsection E(6) is intended to limit the number of cellar levels of a multilevel parking garage. Notwithstanding the foregoing, a multilevel parking garage that is built into a slope may have a maximum of three levels above grade surface parking on the downhill side; provided, however, that the uphill side of the garage shall remain limited to two levels above grade, and the highest point of the downhill side shall not exceed the highest point of the uphill side.

(7) A roof shall not be required to cover the top level of the multilevel parking garage, provided that a parapet or similar structure is provided around the entire perimeter of the top level. Such parapet or similar structure shall be sufficiently tall to screen all permanently fixed structures, such as stairways or mechanical space, as well as parked vehicles which are to be located on the top level, when viewed from the front, side or rear lot lines.

(8) The minimum required setbacks for multilevel parking garages, which may be attached or detached from the principal building, shall be the same as that required for a principal building in that district. However, if the lot on which the multilevel parking garage is to be built adjoins a residential district, the setback from the property line adjoining the residential district shall be increased by an additional 50 feet.

(9) A multilevel parking garage may be attached to a principal building or may be connected to the principal building by roofed bridges or other similar covered walkways. The floor area of such bridges or walkways shall be excluded from the calculation of maximum permitted floor area ratio and the required yard setbacks in the zone, provided such roofed bridges or walkways are no closer than 25 feet to a property line.

(10) No detached multilevel parking garage shall be located more than 100 feet from the principal building.

(11) A multilevel parking garage shall be architecturally consistent or compatible with the principal building, and all exposed exterior walls and appurtenances shall be faced with finished materials such as brick or masonry and the like. No more than 50% of any exterior facade shall be open, and a solid wall of not less than 3 1/2 feet in height above each floor level along the exterior of each level of the multilevel garage shall be provided.

(12) A solid screen vegetated buffer of at least 15 feet in width shall be provided and maintained between the multilevel parking garage and any rear or side lot line.

(13) On the top level of any above-grade multilevel parking garage, no light stanchion shall be located within 40 feet of the façade wall of the multilevel parking garage. Lighting for that portion of the top level of the multilevel parking garage in which light stanchions are not permitted may be provided by fixtures mounted below the top of the parapet wall. All light fixtures shall be so arranged and shielded so as to reflect light downward and away from all adjoining properties, residential districts and streets. Illumination levels on the top level of a multilevel parking garage shall be reduced to code minimum egress levels 1/2 hour before the use it serves is closed and no earlier than 1/2 hour before it opens, but in no event shall it exceed code minimum levels between 11:00 p.m. and 5:30 a.m. Light fixtures used to provide code minimum egress lighting after hours shall not be mounted above the top of the parapet wall.

(14) Section § 128-7.1, Subsections B and K shall not apply to multilevel parking garages.

(15) Landscaping or berming or a combination thereof shall be provided around the perimeter of a multilevel parking garage, except for those portions of perimeter walls that face a principal building or those portions of the multilevel parking garage which are used for access to the parking garage. The height of such landscaping and berming shall be a minimum of eight feet and may consist of existing and new plant material.

(16) No above-grade multilevel parking garages shall be permitted above or below habitable space of the principal building. No parking levels of cellar parking garages located below habitable space of the principal building shall be visible above the finished grade of the lot upon which it is situated.

(17) Relief from the requirements of this subsection 128-7.5E shall be treated as a "c" variance pursuant to N.J.S.A. 40:55D-70(c).

Section 4. Chapter 128 of the Code of the Borough of Montvale, Section 128-7.5.1, is hereby amended and supplemented by adding the underlined text and deleting the [bracketed] text, as follows:

§ 128-7.5.1 Supplementary requirements for fitness centers and hotels.

A. Fitness centers in the OR-4 District shall provide a minimum of one parking space for each 250 square feet of gross floor area and a maximum of one parking space for each 150 square feet of gross floor area.

B. Hotels in the OR-4 District shall provide a minimum of one parking space per hotel room or 0.75 spaces per hotel room, plus one space per three seats for any restaurant, conference or meeting room within the hotel, whichever is greater.

C. Parking in the front yard shall be permitted, but shall be limited to visitors only, and shall not be located closer than 25 feet to the front of the property line.

D. The maximum impervious lot coverage shall be 50[45]% utilizing standard impervious parking techniques for all paved surfaces. However, alternative porous paving systems may be used to attain a total lot coverage of 70%, with no more than 50[45]% of the lot coverage being impervious surface and up to 20[25] additional percent of the lot coverage being pervious paving surfaces.

E. The following paving types shall be counted as alternative porous paving systems:

(1) Pavers, over a pervious base or turf blocks, both of which are suitable for pedestrian-only surfaces, or overflow parking areas and emergency-only accessways; and

(2) Porous pavement, suitable for more general and heavier-use vehicular surface applications. Upon approval, an approved, bonded maintenance plan incorporating best management practices shall be required for all pervious surface areas, to minimize siltation of porous paving areas.

F. In the OR-4 zone the maximum height of fitness centers shall be three stories and 45 feet, whichever is less, and the maximum height for hotels shall be four stories and 60 feet, whichever is less. The maximum height of accessory structures for these uses, such as water slides, umbrellas, lifeguard stations, playground equipment and similar installations, shall be 20 feet.

Section 5. Chapter 128, Schedule A, "Limiting Schedule," shall be amended and supplemented by replacing the existing Limiting Schedule with the revised version attached hereto. The revised Limiting Schedule adds a new footnote with reference to standards for assisted living residences, and adds or removes footnotes from various locations on the schedule. The Limiting Schedule has been further amended to implement the various zoning amendments set forth in Sections 1 through 4 of this Ordinance and to correct clerical errors in the existing Limiting Schedule.

Section 6. 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 7. 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 8. Effective date.

This Ordinance shall take effect immediately upon final passage and publication as required by law.

Section 9. 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.

MICHAEL GHASSALI, Mayor

ATTEST:

MAUREEN IAROSSI-ALWAN, RMC
Borough Clerk

INTRODUCED: January 31, 2017

ADOPTED: February 28th, 2017

APPROVED: February 28th, 2017

BOROUGH OF MONTVALE
ORDINANCE NO. 2017-1423

PLEASE TAKE NOTICE that at the January 31, 2017 meeting of the Mayor and Council of the Borough of Montvale, County of Bergen, the following Ordinance No. 2017-1423 was introduced and passed upon first reading:

Title: AN ORDINANCE OF THE BOROUGH OF MONTVALE, COUNTY OF BERGEN, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING CHAPTER 128, "ZONING," OF THE BOROUGH CODE IN ORDER TO AMEND CERTAIN ZONING REGULATIONS FOR THE OFFICE-RESEARCH (OR) DISTRICTS IN THE BOROUGH TO IMPLEMENT THE RECOMMENDATIONS OF THE MASTER PLAN REEXAMINATION ADOPTED BY THE PLANNING BOARD ON JULY 19, 2016

Purpose:
This Ordinance is intended to implement certain recommendations contained in the Master Plan Reexamination Report, prepared by Darlene A. Green, P.P., AICP, and adopted by the Montvale Planning Board on July 19, 2016. This Reexamination Report was prepared in order to determine whether the regulations pertaining to the OR districts needed to be updated to advance the goals of the Master Plan in light of any changed goals or assumptions regarding same. The Reexamination Report made a number of recommendations concerning the Office and Research (OR) districts, including new and amended definitions and bulk requirements. These changes are consistent with the Housing Element and Fair Share Plan and the Land Use Element of the Borough of Montvale Master Plan.

Explanation:
The Ordinance makes a number of changes to the zoning regulations for the OR districts in Chapter 128 of the Borough Code, including the addition of Assisted Living Residences as conditional uses in the OR-3 and OR-4 districts, as that term is defined in the Ordinance. The Ordinance sets forth specific requirements as to location, lot size, set-backs, FAR, density, building height, parking, and other on-site infrastructure applicable to Assisted Living Residences, and sets a requirement that at least ten percent (10%) of the units qualify as "affordable units" for the purposes of the Borough of Montvale's Housing Element and Fair Share Plan.

The Ordinance also amends Borough zoning regulations to permit multi-level parking garages as an accessory use in all OR districts, which were previously only permitted in the OR-4 zone. The Ordinance limits multi-level garages to one garage per lot, except that a second garage may be located on a lot that is greater than fifteen acres in size, subject to the garages complying with the other requirements of the Ordinance. The Ordinance also sets standards for height in the case of a garage that is built into a slope, to allow for a maximum of three levels above grade on the downhill side, provided that there is compliance with the limitation of two levels above grade on the uphill side. The Ordinance also clarifies that relief from the requirements related to parking garages shall be deemed a "c" variance pursuant to N.J.S.A. 40:55D-70(c).

The Ordinance also updates certain requirements applicable to the OR districts, including allowing for increased impervious coverage and amended standards concerning the use of porous paving systems. The above changes and other amendments to the OR district regulations are fully set forth in Ordinance No. 2017-1423, which also includes a revised Limiting Schedule, which is on file with the Borough Clerk and available for public inspection. The updated Limiting Schedule also fixes clerical errors in the existing Limiting Schedule and contains other amendments intended to ensure consistency with the existing zoning regulations and the amended regulations contained in the Ordinance.

Notice of Public Hearing:
The public hearing for the above Ordinance shall be held at a meeting of the Mayor and Council of the Borough of Montvale on Tuesday, February 28, 2017, at 7:30 p.m. or shortly thereafter. A copy of the Ordinance may be obtained without cost by any member of the general public at the Borough of Montvale Municipal Building, 12 Mercedes Drive, Montvale, New Jersey. The Ordinance is intended to be effective upon final adoption and publication as provided by law.

Maureen Iarossi Alwan
Municipal Clerk/Administrator
Borough of Montvale

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MEMORANDUM

To: **Montvale Mayor and Council**

From: **Darlene A. Green, P.P., AICP**

Date: **February 13, 2017**

Re: **Limiting Schedule Changes Summary**
MC Project No. MPP-040A

The following table summarizes the standards being changed in the Limiting Schedule under Ordinance #2017-1423. These changes are only occurring in the OR-1, OR-2, OR-3 and OR-4 Districts.

	Current Requirement	Proposed Requirement
Stories	2	3
Height	35	45
Floor area ratio	25%	35%
Maximum lot coverage	45%	50%

General changes to the Limiting Schedule include the following:

1. Changed all floor area numbers to percentages as the definition indicates floor area is a percentage.
2. Removed the duplicative line for RI-40B.
3. Removed footnotes that were blank, that were not referenced in the chart, etc.

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BOROUGH OF MONTVALE
ORDINANCE NO. 2017-1437

NOTICE IS HEREBY GIVEN that the following Ordinance was introduced and passed on the first reading at the regular meeting of the Mayor and Council on the 28th day of November 2017, and that said Ordinance will be taken up for further consideration for final passage at a regular meeting of the Mayor and Council to be held on the 11th day of December 2017 at 7:30 pm or as soon thereafter as said matter can be reached, at which time and place all persons who may be interested therein will be given an opportunity to be heard concerning same.

Maureen Iarossi Alwan, Municipal Clerk
Borough of Montvale

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 compliance with the New Jersey Supreme Court's decision in In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 6, 2015, the Borough filed an action with the Superior Court of New Jersey ("Court"), entitled In the Matter of the Application of the Borough of Montvale, County of Bergen, Docket No. BER-L-6141-15, seeking a Judgment of Compliance and Repose approving its Affordable Housing Plan (as defined herein), in addition to related reliefs (the "Compliance Action"); and

WHEREAS, in order to partially settle the Compliance Action, the Borough of Montvale and the Montvale Planning Board approved a Settlement Agreement with Two Paragon Drive, LLC, at their public meetings of November 14, 2017 and November 21, 2017, respectively; and

WHEREAS, the Borough is desirous of adopting an Ordinance intended to implement the provisions of the Settlement Agreement.

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 acres[5]
(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 feet[3]
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]

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[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.

(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

(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 spilt. 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.

(vi) Monument signs shall utilize a solid base surrounded by appropriate ornamental plantings. No monument sign shall be located in a sight triangle.

(f) Additional applicable provisions to the AH-6A District. The following sections of the Montvale Zoning Code (Chapter 128) shall apply to development in the AH-6A District.

(i) Article X, Enforcement.

(ii) Article XI, Interpretation.

(iii) Article XIII, Violations and Penalties.

(iv) Article XIV, Validity.

(v) Article XVI, Effect.

(vi) Article XVIII, Site Work Permit.

Section 3. The Official Map shall be amended to include the AH-6A District.

Section 4. 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 5. 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 6. 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 November 14, 2017, between the Borough of Montvale, the Planning Board of the Borough of Montvale, and Two Paragon Drive, LLC in the litigation *In re Montvale,* Docket No. BER-L-6141-15.

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 IAROSSI-ALWAN, RMC, Borough Clerk
INTRODUCED: 11/28/2017

Councilmember	Yes	No
Arendacs	X	
Curry	X	
Gloeggler	X	
Koelling	X	
Lane	X	
Weaver	X	

ADOPTED: 12/11/17
APPROVED: 12/11/17

ADOPTION RECORDED VOTE:

COUNCILMEMBER	
ARENDACS	YES
CURRY	YES
GLOEGGLER	YES
KOELLING	YES
LANE	YES
WEAVER	ABSENT

BOROUGH OF MONTVALE
ORDINANCE NO. 2017-1436

NOTICE IS HEREBY GIVEN that the following Ordinance was introduced and passed on the first reading at the regular meeting of the Mayor and Council on the 28th day of November 2017, and that said Ordinance will be taken up for further consideration for final passage at a regular meeting of the Mayor and Council to be held on the 11th day of December 2017 at 7:30 pm or as soon thereafter as said matter can be reached, at which time and place all persons who may be interested therein will be given an opportunity to be heard concerning same.

Maureen Iarossi Alwan, Municipal Clerk
Borough of Montvale

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 compliance with the New Jersey Supreme Court's decision in In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 6, 2015, the Borough filed an action with the Superior Court of New Jersey ("Court"), entitled In the Matter of the Application of the Borough of Montvale, County of Bergen, Docket No. BER-L-6141-15, seeking a Judgment of Compliance and Repose approving its Affordable Housing Plan (as defined herein), in addition to related reliefs (the "Compliance Action"); and

WHEREAS, on August 7, 2017, the Court granted The S. Hekemian Group's Motion to Intervene in the Compliance Action; and

WHEREAS, in order to partially settle the Compliance Action, the Borough of Montvale and the Montvale Planning Board approved a Settlement Agreement with The S. Hekemian Group, LLC, at their public meetings of November 14, 2017 and November 21, 2017, respectively; and

WHEREAS, the Borough is desirous of adopting an Ordinance intended to implement the provisions of the Settlement Agreement.

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.

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%

[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

(2) Standards for Block 3201 Lot 6:

Standard	Requirement
Minimums:	
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.

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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.

(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, are 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

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 November 14, 2017, 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 IAROSSI-ALWAN, RMC, Borough Clerk
INTRODUCED: November 28, 2017
RECORDED VOTE:

Councilmember	Yes	No
Arendacs		X
Curry	X	
Gloeggler	X	
Koelling	X	
Lane	X	
Weaver		X

ADOPTED: 12/11/17
APPROVED: 12/11/17

ADOPTION RECORDED VOTE:

COUNCILMEMBER	
ARENDACS	NO
CURRY	YES
GLOEGGLER	YES
KOELLING	YES
LANE	YES
WEAVER	ABSENT

BOROUGH OF MONTVALE
ORDINANCE NO. 2017-1438

NOTICE IS HEREBY GIVEN that the following Ordinance was introduced and passed on the first reading at the regular meeting of the Mayor and Council on the 11th day of December 2017, and that said Ordinance will be taken up for further consideration for final passage at a regular meeting of the Mayor and Council to be held on the 26th day of December 2017 at 7:30 pm or as soon thereafter as said matter can be reached, at which time and place all persons who may be interested therein will be given an opportunity to be heard concerning same.

Maureen Iarossi Alwan, Municipal Clerk
Borough of Montvale

AN ORDINANCE OF THE BOROUGH OF MONTVALE AMENDING AND SUPPLEMENTING CHAPTER 128 OF THE CODE OF THE BOROUGH OF MONTVALE TO ESTABLISH A NEW AH-26 AFFORDABLE HOUSING DISTRICT AND TO SET FORTH THE STANDARDS AND CRITERIA APPLICABLE THERETO

WHEREAS, the Borough Council of the Borough of Montvale desires to create a realistic opportunity for the creation of affordable housing within the Borough; and

WHEREAS, the Borough Council has determined that certain lands comprised of approximately 7.043 acres within the OR-4 Office and Research District commonly referred to as Block 3302, Lot 1 are suited for inclusionary development; and

WHEREAS, the Borough has a constitutional obligation to create a realistic opportunity for the construction of its fair share of the region's need for affordable housing; and

WHEREAS, the Borough wishes to foster development that provides an affordable housing set-aside; and

WHEREAS, the location of the site next to the Garden State Parkway and neighboring fitness facility eliminates any concern for impacts on residential neighbors within the Borough located to the west and north; and

WHEREAS, a residential apartment development serves as an effective transitional use between the core single-family residences within the Borough and the Garden State Parkway and office uses to the north and east; and

WHEREAS, the location of the site next to an existing fitness complex will encourage a healthy lifestyle and provide an important and easily accessible fitness opportunity for residents; and

WHEREAS, the site is located adjacent or nearby to existing structures with increased permitted heights; and

WHEREAS, the site contains significant existing wooded areas and natural screening and berming that minimize the visual impact of the development with respect to Sony Drive from the east.

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Montvale in the County of Bergen and the State of New Jersey 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-26 Affordable Housing District

Section 2. AH-26 Affordable Housing District. Chapter 128 of the Code of the Borough of Montvale is hereby amended and supplemented by adding a new Section 128-5.17, "AH-26 Affordable Housing District" as follows:

§ 128-5.17. AH-26 Affordable Housing District. The following standards shall apply to development within the AH-26 District. All other provisions of Chapter 128, Zoning of the Montvale Borough Code shall apply to development in the AH-26 District only where specifically indicated as applicable in **§ 128-5.17** of the Montvale Code. When the standards herein conflict with other provisions of Chapter 128, the standards herein shall apply.

A. **Purpose and planning rationale.** The purpose of the AH-26 District is to provide a realistic opportunity for the construction of affordable housing as part of a comprehensively planned inclusionary development, in conformance with the regulations of this chapter governing affordable housing. In addition, the Borough has determined that this site is specially and particularly appropriate for a higher residential density than is characteristic in the Borough substantially for the following reasons:

   1. Sound planning supports a holistic approach to planning for affordable housing where inclusionary neighborhoods are located near services. Sound planning also involves the conservation of neighborhood character, an objective achieved in part by maintaining the existing scale, density and character of the Borough's core single-family neighborhoods. This can be achieved in part through a gradation of density across the Borough, maintaining higher densities and greater building heights further away from the core single-family residential zones within the Borough, and requiring lower densities and lower permitted building heights as the properties approach core single-family districts within the Borough.

B. **Definitions.** The following definitions shall apply only within the AH-26 District, shall supplement any non-conflicting definitions within Chapter 128 of the Borough Code, and shall supersede any conflicting definitions in the Borough Code:

   (1) "*Building Height*" shall be defined as the vertical distance in feet between the average Ground Elevation around the foundation of the building and the elevation of the roof deck if the building is flat, or in the case of sloping roofs, to a point half the distance between the rafter plate and the uppermost point of the roof. Exclusions from the definition of Building Height shall include the following: any parapet, structure, apparatus, amenities and/or equipment located on the roof.

(2) *"Ground Elevation"* shall be the elevation of the property in its final/finished grade at building wall.

(3) "*Story*" shall be defined as that portion of a building included between the surface of any floor and the surface of the floor above it or, if there be no floor above it, then the space between the floor and the ceiling next above it. Any structures, apparatus, utilities, amenities, and equipment on the roof shall not constitute a Story. Any level of parking, structures, apparatus, utilities, amenities, and equipment that is below or partially below finished grade and underneath a residential story within the AH-26 District shall be explicitly excluded from being characterized as a Story, Basement, or Cellar, and shall not count towards the Building Height.

(4) "*Tract*" shall be defined as contiguous parcels of land under common ownership, at least one of which is located within the AH-26 District. The parcels making up a Tract may be located within or without the Borough of Montvale.

(5) "*Wall Sign*" shall be defined as all flat signs of duramesh, or windscreen which are placed against a building or other structure and attached to the exterior front, rear or side wall of any building or other structure so that the display surface is parallel with the plane of the wall.

C. **Application Requirements.**

(1) Any application for development for any portion or the entirety of the AH-26 District shall be submitted in accordance with the requirements of **§ 128-8.4** through **§ 128-8.9**.

(2) Contribution of the pro-rata share of off-site improvements shall be governed by **§ 128-8.15**. Notwithstanding the foregoing, consistent with N.J.A.C. 5:93-10.1(b), no unnecessary cost generative provisions of the Montvale Borough Code shall apply to any proposed Inclusionary Development within the AH-26 District.

D. **Permitted uses.** In the AH-26 District, the following uses shall be permitted:

(1) Permitted Principal Uses. Inclusionary multi-family residential development in accordance with the provisions below and the development standards enumerated in Subsection E:

a. All units within the Inclusionary Development shall be apartment-style units.

(i) Residential market-rate units shall have the following minimum unit sizes:

One-bedroom – 700 square feet

Two-bedroom – 850 square feet

Three-bedroom – 1,100 square feet

(ii) A maximum of 10% of the market-rate units may be three-bedroom units.

b. Twenty (20) percent of all units shall be set aside for low- (including very-low-) and moderate-income households ("Affordable units").

c. Affordable units shall be governed by deed restrictions ensuring long-term affordability controls in accordance with **§ 128-5.12(G)**.

d. The development, unit distribution and marketing of all Affordable units shall be undertaken consistent with the Uniform Housing Affordability Controls, **Section 5.12** of this Chapter, and all other applicable laws, rules and regulations, including applicable COAH regulations, the Fair Housing Act and its requirement that at least ten (10) percent of all affordable units associated with this project be made affordable to very-low-income households.

e. Developer shall be responsible for all costs associated with the initial rental of the affordable units, and for the continuing administration of the affordable units and the preservation of the creditworthiness of the units.

f. All uses not expressly permitted are deemed prohibited.

(2) Permitted Accessory Uses. In connection with a permitted principal use, the following may be permitted as an accessory use:

a. Recreational facilities, lobbies, fitness facilities, outdoor barbecues, fire pits, gazebos, leasing and management offices, club rooms, lounges, libraries, business centers, game rooms, pool rooms, community gardens, rec rooms, children's play rooms, private theater rooms, community kitchens for tenant use, bath house, locker rooms, mail rooms, package storage areas, valet spaces, or related mechanical equipment, and similar interior tenant amenities

b. Sports facilities, including but not limited to fields, courts, putting greens and swimming pools

c. Playground facilities

d. Dog park or dog run

e. Dog spa or grooming facility, not including boarding or veterinarian services, only for the residents of the inclusionary multi-family residential development

f. Storage spaces unattached to the units, but used by occupants of units, which are incorporated into the multi-family residential building

g. Waste and recycling receptacles

h. Parking structures incorporated into the multi-family residential building for storage of vehicles, and loading area spaces

i. Any use customary and incidental to a permitted principal use

j. Signs

k. Fences

l. Landscaping and buffering

E. **Development standards.**

(1) Area, Yard and Bulk Standards.

Requirement	AH-26 District Regulation
Minimum Lot Size	7 Acres
Minimum Setbacks	
Inter-Municipal Boundary Within a Tract	0 Feet
Garden State Parkway/Front Yard[1]	40 Feet
Rear Yard[2]	30 Feet
Side Yard[3]	30 Feet
From internal access road	0 feet
Maximum Building Height – Flat Roof (Feet)	59 Feet
Accessory Building Height (Feet)	14 Feet
Maximum Building Height (Story)	4 Stories
Maximum Number of Units per Acre	26.5 Units/Acre
Maximum Building Coverage (%)	45%
Maximum Lot Coverage (%)	60% (up to 70% with pervious materials)

(2) All setbacks shall be measured from the property lines of the entire Tract and not from zoning or lot lines that are established by municipal boundaries. No internal setbacks shall apply to any structure, parking, public or private street, driveway, or municipal boundary line internal to the Tract as a whole, except as required by New Jersey Building and/or Fire Codes. Retaining walls, sidewalks, walkways, fences, freestanding signs, above and below-ground storm water detention basins, and above-ground and underground utilities, shall be permitted within the setbacks.

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[1] The portion of the property fronting on the Garden State Parkway shall be considered the "Front Yard" of the property located in the AH-26 Zone. Notwithstanding the foregoing, the property is only accessible via adjacent properties located in a neighboring municipality.

[2] In the event that any Rear Yard fronts upon an Inter-Municipal Boundary, the Inter-Municipal Boundary Minimum Setback shall supersede the Rear Yard Minimum Setback and control.

[3] In the event that any Side Yard fronts upon an Inter-Municipal Boundary, the Inter-Municipal Boundary Minimum Setback shall supersede the Side Yard Minimum Setback and control.

(3) Signage. Within the AH-26 District, the following shall apply:

a. **§ 128-9.7A.1** through **§ 128-9.7A.4**.

b. **§ 128-9.7A.8** through **§ 128-9.7A.15**, except that **§ 128-9.7A.9A(1), § 128-9.7A.9A(3), § 128-9.7A.9A(6), § 128-9.7A.9C, § 128-9.7A.9G, § 128-9.7A.9N** and **§ 128-9.7A.9Q** shall not apply.

c. Notwithstanding **§ 128-9.7A.3,** the area of a sign face shall be computed by drawing a square or rectangle that encompasses the extreme limits of the verbiage, logo or emblem.

d. Two (2) freestanding signs per parcel shall be permitted in accordance with the following:

i. One freestanding sign fronting along the Garden State Parkway shall be permitted, which may be a maximum of four (4) feet high. In addition, the sign may be placed atop a base that is a maximum of two (2) feet in height, or a maximum of three (3) feet in height in the event that landscaping is to be installed at the base. The maximum area of a sign fronting along the Garden State Parkway shall be sixty (60) square feet.

ii. One freestanding sign that does not front along the Garden State Parkway shall be permitted, which may have a maximum area of thirty-six (36) square feet and a maximum height of six (6) feet.

iii. Notwithstanding Section 128-9.7A.9J of the Borough Code, freestanding signs may include three colors, assuming one of the colors is white or black.

iv. No freestanding sign shall be located in a sight triangle.

v. External illumination shall be permitted for freestanding signs.

e. Wall Signs.

i. One (1) temporary Wall Sign is also permitted on one (1) façade of the building not facing the Garden State Parkway, which Wall Sign may not exceed one hundred forty four (144) square feet. Such temporary Wall Sign may remain for a six month period, which period may be extended for to two (2) additional six (6) month periods upon application to the Borough Planning Board.

ii. Notwithstanding Section 128-9.7A.9J of the Borough Code, Wall Signs may include three colors, assuming one of the colors is white or black.

f. Wayfinding and directional signs, building identification signs, parking restriction and other community restriction signs shall be permitted throughout the AH-26 District, to the extent necessary.

(4) Parking Requirements. The following parking requirements shall apply:

Requirement	AH-26 District Regulation
Parking Spaces	In accordance with Residential Site Improvement Standards (RSIS)
Parking Dimensions (Aisle Width)	Parallel Parking – 12 feet 30 degree angle – 12 feet 45 degree angle – 13 feet 60 degree angle – 18 feet Perpendicular Parking – 24 feet
Parking Dimensions (Parking Space)	9 feet x 18 feet
Parking Dimensions (Compact Parking Space)	8.5 feet x 16 feet

a. Up to ten percent (10%) of parking spaces may be Compact Parking Spaces.

b. The Planning Board may liberally grant de minimis waivers and exceptions from RSIS to facilitate the Inclusionary Development within the AH-26 District.

F. Site Standards.

(1) Circulation.

a. Walkways shall link all residential buildings within the development.

b. Where sections of walkways branch off or join up, a decorative marker, signpost, or circle is recommended. Where walkways traverse vehicular driveways, crosswalks shall be provided and marked with textured paving in a contrasting material and color.

c. Benches are encouraged to be located throughout the development along the pedestrian walkway network.

(2) Retaining Walls. Notwithstanding anything to the contrary in Chapter 39, Section 2 of the Borough Code:

a. 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.

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

c. Fences shall be installed along the tops of all retaining walls that exceed a height of four (4) feet. Chain-link fencing, including vinyl-coated chain-link fencing, is prohibited.

d. 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.

(3) Architecture.

a. 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.

b. The maximum spacing between building wall offsets shall be 80 feet.

c. The minimum projection or depth of any individual vertical offset shall be 1.0 feet.

d. The maximum spacing between roof offsets shall be 80 feet.

e. 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.

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

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

h. 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.

i. All rooftop mechanical equipment, inclusive of solar equipment, shall be screened from view from all vantage points at grade or below the roof.

j. Placement of any packaged terminal air conditioner units within the façade is prohibited.

k. Balconies are prohibited to be included on the outward facing sides of any building, except that all corner residential units may have balconies. Nonfunctional, decorative "Juliet" balconies, which cannot be accessed from the interior of a unit, shall be permitted on the outward facing sides of any building. Inward-facing balconies shall also be permitted.

(4) Trash.

a. 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.

(5) Lighting.

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

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

(6) Landscaping.

a. A mix of deciduous and evergreen trees and low ground cover landscaping shall be planted along the entire site perimeter, with the exception of any Inter-Municipal Boundary, 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.

b. Eighty percent (80%) of the perimeter of the building(s) shall be surrounded on all sides by a landscaped, planted strip at least three feet in width. Paved walkways leading to pedestrian entrances may cross this landscape strip in a perpendicular fashion.

c. Use of berming, retaining walls, trees and other vegetation shall be utilized to the extent practicable in order to minimize the visual impact of the development on adjacent properties. Where possible to accommodate an inclusionary development, existing, mature trees shall remain in place in order to provide sufficient visual buffering.

G. Miscellaneous.

(1) Consistent with N.J.A.C. 5:93-10.1(b), no unnecessary cost generative provisions of the Montvale Borough Code shall apply to any proposed Inclusionary Development within the AH-26 District.

(2) Additional applicable provisions to the AH-26 District. The following sections of Chapter 128 of the Montvale Borough Code shall apply to development in the AH-26 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 3. The Official Zoning Map shall be changed for Block 3302, Lot 1 from OR-4 Office and Research District to AH-26 Affordable Housing District.

Section 4. The Planning Board hearing an application for an Inclusionary Development within the AH-26 District shall be authorized to grant such variances, waivers, and exceptions as are necessary to facilitate the Inclusionary Development.

Section 5. If any section or provision of this Ordinance shall be held invalid in any Court of competent jurisdiction, the same shall not affect the other sections or provisions of this Ordinance, except so far as the section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

Section 6. All Ordinances or parts of Ordinances, which are inconsistent herewith are hereby repealed to the extent of such inconsistency.

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 November 14, 2017, between the Borough of Montvale, the Planning Board of the Borough of Montvale, and Hornrock Properties MPR, LLC in the litigation In re Montvale, Docket No. BER-L-6141-15.

MICHAEL GHASSALI, Mayor

ATTEST:
MAUREEN IAROSSI-ALWAN, RMC
Municipal Clerk

INTRODUCED: 12/11/2017

Councilmember	Yes	No
Arendacs		X
Curry	X	
Gloeggler	X	
Koelling	X	
Lane	X	
Weaver – ABSENT		

ADOPTED: 12/26/2017

Councilmember	Yes	No
Arendacs		X
Curry	X	
Gloeggler	X	
Koelling	X	
Lane	X	
Weaver		X

BOROUGH OF MONTVALE
BERGEN COUNTY, NEW JERSEY
ORDINANCE NO. 2018-1452

NOTICE IS HEREBY GIVEN that the following Ordinance was introduced and passed on the first reading at the regular meeting of the Mayor and Council on the 8th day of May 2018, and that said Ordinance will be taken up for further consideration for final passage at a regular meeting of the Mayor and Council to be held on the 29th day of May 2018 at 7:30 pm, or as soon thereafter as said matter can be reached, at which time and place all persons who may be interested therein will be given an opportunity to be heard concerning same.

Maureen Iarossi Alwan, Municipal Clerk
Borough of Montvale

AN ORDINANCE OF THE BOROUGH OF MONTVALE AMENDING AND SUPPLEMENTING CHAPTER 128 OF THE CODE OF THE BOROUGH OF MONTVALE TO RENAME SECTION 128-5.5 TO BE ENTITLED "OVERLAY DISTRICTS" AND TO ESTABLISH THE MIXED-USE INCLUSIONARY 1 (MI-1) OVERLAY DISTRICT, THE MIXED-USE INCLUSIONARY 2 (MI-2) OVERLAY DISTRICT, AND THE MIXED-USE INCLUSIONARY 3 (MI-3) OVERLAY DISTRICT AND TO SET FORTH THE STANDARDS AND CRITERIA APPLICABLE THERETO

WHEREAS, the Borough of Montvale has a constitutional obligation to create a realistic opportunity for the construction of its fair share of the region's need for affordable housing; and

WHEREAS, the Borough Council of the Borough of Montvale desires to create a realistic opportunity for the creation of affordable housing within the Borough; and

WHEREAS, the Borough voluntarily brought a timely declaratory judgment action pursuant to the procedures set forth by the Supreme Court in In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) ("Mt. Laurel IV") seeking approval of a Housing Element and Fair Share Plan that satisfies the Borough's obligation to provide for its fair share of the regional need of low- and moderate-income housing; and

WHEREAS, after a Fairness Hearing held on January 25, 2018, by Order dated February 12, 2018, Hon. Menelaos W. Toskos, J.S.C. approved a series of settlement agreements between the Borough of Montvale, Fair Share Housing Center and three developer-intervenors, which were intended to establish the Borough's affordable housing obligations; and

WHEREAS, pursuant to the requirements of the February 12, 2018 Order, the Borough of Montvale intends to supplement its Zoning Ordinance to include provisions addressing Montvale's constitutional obligation to provide for its fair share of low- and moderate-income housing, as directed by the Superior Court and consistent with N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985; and

WHEREAS, the Montvale Planning Board has adopted a Housing Element and Fair Share Plan dated April 17, 2018 pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq., which addresses the requirements of N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq. as amended and supplemented, and the New Jersey Fair Housing Act of 1985; and

WHEREAS, this Ordinance is intended to implement the above-referenced Housing Element and Fair Share Plan, which has been endorsed by the Governing Body; and

WHEREAS, the Borough Council has determined that certain lands comprised of Block 703, Lot 7 within the B-1 Business District are suited for overlay zoning to permit mixed-use inclusionary residential development (the "Mixed-Use Inclusionary 1 (MI-1) Overlay District"); and

WHEREAS, the Borough Council has determined that certain lands comprised of Block 1601, Lots 1, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23 (partial) and 24 (partial), Block 1603, Lot 1, and Block 2401, Lots 2, 3 and 4, within the B-1 Business District are suited for overlay zoning to permit mixed-use inclusionary development (the "Mixed-Use Inclusionary 2 (MI-2) Overlay District"); and

WHEREAS, the Borough Council has determined that certain lands comprised of Block 1604, Lots 1 and 2, Block 1605, Lots 1 and 2, Block 1606, Lots 1, 2, 3, 4 and 5, Block 2402, Lots 1, 2, 3, 5, 6, 7, 8 and 9, Block 2403, Lot 1, Block 2404, Lot 1, Block 2405, Lots 1, 2, 3, 4, 25 and 26, Block 2406, Lots 1, 2 and 3, and Block 2408, Lots 2 and 3 within the B-1 Business District are suited for overlay zoning to permit mixed-use inclusionary development (the "Mixed-Use Inclusionary 3 (MI-3) Overlay District"); and

WHEREAS, the locations of these sites are proximate to other multi-family housing developments.

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Montvale in the County of Bergen and the State of New Jersey 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.

MI-1 Mixed-Use Inclusionary 1 Overlay District
MI-2 Mixed-Use Inclusionary 2 Overlay District
MI-3 Mixed-Use Inclusionary 3 Overlay District

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

INDOOR RECREATION

A recreational land use conducted entirely within a building, including but not limited to an arcade, rock climbing, bowling alley, community center, gymnasium, swimming pool or tennis courts.

PERSONAL SERVICE ESTABLISHMENT

Establishments primarily engaged in providing services involving the care of a person or his or her personal goods or apparel. Personal service establishments include, but are not limited to, cleaning and garment services, clothing rental, carpet and upholstery cleaning, photograph studios, beauty shops, barbershops, tailors, travel agents, shoe repair, funeral services and domestic services.

Section 3. Chapter 128 of the Code of the Borough of Montvale is hereby amended and supplemented by renaming Section 128-5.5 "Overlay Districts," and amending and supplementing said section to read as follows:

§ 128-5.5 Overlay Districts

A. The Borough of Montvale has established the following Overlay Districts within the Borough of Montvale:

1. MI-1 Mixed-Use Inclusionary 1 Overlay District

2. MI-2 Mixed Use Inclusionary 2 Overlay District

3. MI-3 Mixed Use Inclusionary 3 Overlay District

B. Mixed-Use Inclusionary 1 ("MI-1") Overlay District. The following standards shall apply to development within the MI-1 Overlay District. When the standards herein conflict with other provisions of Chapter 128, the standards herein shall apply.

1. Purpose. The purpose of the MI-1 Overlay District is to provide a realistic opportunity for the construction of affordable housing as part of a mixed-use inclusionary development. The MI-1 Overlay District shall be applied as an overlay zone to the underlying B-1 District. This approach provides property owners and developers with the opportunity to utilize either set of zoning regulations as they deem preferable.

2. Permitted principal uses. In the MI-1 Overlay District, the following uses shall be permitted:

a. Restaurants. However, no drive-thru, drive-in or curb-service restaurants shall be permitted.

b. Retail stores where goods are sold or services are rendered and where nothing is fabricated or manufactured or converted or altered except for such retail trade. Specifically excepted from the foregoing are any uses which involve the repair and/or maintenance of vehicles, which are prohibited.

c. Offices, banks and financial institutions, including medical and professional offices.

d. Personal service establishments.

e. Child-care centers.

f. Multi-family residential units above the ground floor.

g. A mixture or combination of the above uses.

3. Permitted accessory uses.

a. Tenant amenities including but not limited to recreational and fitness facilities, lobbies, leasing and management offices and mail rooms.

b. Outdoor dining, associated with permitted restaurant uses, subject to the following conditions:

i. Tables shall be located on private property and not in the public right-of-way.

ii. Fencing, bollards or planters shall be used to define the outdoor dining area.

iii. No outdoor dining shall be permitted after 12:00 a.m.

iv. All lighting shall be downward-facing and shall be turned off no later than 12:30 a.m.

v. Outdoor dining shall not include an outdoor bar or any other similar outdoor accessory use that serves only beverages, nor does it include any drive-through or take-out windows.

vi. Approval shall not be construed as approval by the Borough Council for extension and/or renewal of any license under ABC jurisdiction.

vii. No amplified music shall be permitted.

viii. Outdoor seating shall count for purposes of calculating parking requirements.

c. Waste and recycling receptacles.

d. Surface parking and parking incorporated into the building design.

e. Any use customary and incidental to a permitted principal use.

f. Signs.

g. Fences and walls.

4. Bulk area and other dimensional standards.

a. Minimum lot area – 4 acres

b. Minimum front yard – 100 feet (measured from street center line)

c. Minimum side yard – 20 feet

d. Minimum rear yard – 60 feet

e. Maximum building coverage – 60%

f. Maximum lot coverage – 85%

g. Maximum density – 12 units per acre

h. Maximum building height – 3 stories and 40 feet

i. Retaining walls, sidewalks, walkways, fences, above-ground and underground utilities shall be permitted within the setbacks.

5. Affordable Housing requirements

a. 20% of all for-sale units in the MI-1 Overlay District shall be set aside for affordable households.

b. 15% of all rental units in the MI-1 Overlay District shall be set aside for affordable households.

c. Affordable units shall be governed by deed restrictions ensuring long-term affordability controls in accordance with Chapter 2B, "Affordable Housing Regulations."

d. The development, unit distribution and marketing of all affordable units shall be undertaken consistent with Chapter 2B, "Affordable Housing Regulations," the Uniform Housing Affordability Controls, and all other applicable laws, rules and regulations, including applicable COAH regulations, the Fair Housing Act and its requirement that at least 13% of all affordable units associated with this project be made affordable to very-low income households.

e. The Developer shall be responsible for all costs associated with the initial sale or rental of the affordable units, and for the continuing administration of the affordable units and the preservation of the creditworthiness of the units.

6. Architecture

a. Long, monotonous, uninterrupted walls or roof planes shall be avoided. 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.

i. The maximum spacing between building wall offsets shall be 50 feet.

ii. The minimum projection or depth of any individual vertical offset shall be 1.5 feet.

iii. The maximum spacing between roof offsets shall be 50 feet.

iv. Projecting balconies are prohibited along front or side façades. Where located along a rear façade, projecting balconies may encroach up to 3 feet into a required rear yard setback.

b. 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.

c. Fenestration

i. Windows shall be architecturally compatible with the style, materials, colors and details of the building. Windows shall be vertically proportioned.

ii. All ground-level restaurant, retail and service uses shall have clear glass on at least 60% of their façades (applicable to all façades visible from the public street) between 3 and 8 feet above grade.

7. Parking. Any structured or stilted parking area beneath a building must be disguised or obscured with no less than 50% of the ground floor frontage occupied by an active use (residential lobbies included), and the remainder shall have window openings to match the floors above and evergreen foundation plantings no less than 3 feet in height to soften the impact of the wall.

8. Entrances.

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

   b. Residential units must be accessed by a secure lobby separate from any other uses taking place within the building.

9. Mechanicals and utilities.

   a. Heating, ventilating and air-conditioning systems, utility meters and regulators, exhaust pipes and stacks, satellite dishes and other telecommunications receiving devices shall not be visible from the public right-of-way except where required by the public utility. The requirements of §128-6.4, regarding satellite antennas, shall apply.

   b. All rooftop mechanical equipment, inclusive of solar equipment, shall be screened from view from all vantage points at grade or below the roof.

   c. Placement of any packaged terminal air conditioner units within the façade is prohibited.

10. Sidewalks and landscaping. Sidewalks and landscaped beds fronting any building shall be no less than 8 feet in depth combined.

11. Refuse and Recycling.

   a. Regulations of §128-7.8 apply for mixed-use structures with residential units.

   b. Refuse and recycling must be located either:

      i. Interior to a building in a designated refuse storage area, or

      ii. Located in a side or rear yard setback area, no closer than 5 feet to any adjacent lot line, enclosed on all four sides, and screened using durable materials.

12. Landscaping. Pervious areas shall be landscaped with a mix of deciduous and evergreen trees and low ground cover or grass.

13. Parking.

   a. Parking areas shall be subject to landscaping requirements per §128-7.1(K).

b. Parking areas between the street line and front façade must provide a sidewalk providing a safe pedestrian connection between the public right-of-way and the building entrance(s). Such sidewalk must be a minimum of 5 feet wide, buffered by 2 feet of landscaping on each side where adjacent to a parking area, driveway, or drive aisle.

c. Minimum parking requirements.

i. Retail uses, offices including medical and professional uses, banks, financial institutions, and personal services uses: one off-street parking space for each 200 square feet of floor area.

ii. Restaurants and any establishment which engages in the serving of food and/or beverages for consumption on and/or off the premises: one off-street parking space for every three seats provided and, in addition thereto, one parking space for every ten square feet of floor area made available to customers for off-premises consumption services.

iii. Child care centers: one off-street parking space for each 300 feet of floor area.

iv. Residential uses: as required by RSIS.

d. Location of parking

i. All structured or stilted parking shall be accessed only from the rear or side of the site. No parking garage egress shall be available from the front of the building.

ii. Surface parking between buildings and the street line is permitted, in accordance with §128-7.1.

e. Additional parking requirements. Where uses share access to parking spaces, the required ratios above may 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.

C. Mixed-Use Inclusionary 2 ("MI-2") Overlay District. The following standards shall apply to development within the MI-2 Overlay District. When the standards herein conflict with other provisions of Chapter 128, the standards herein shall apply.

1. Purpose. The purpose of the MI-2 Overlay District is to provide a realistic opportunity for the construction of affordable housing as part of a mixed-use inclusionary development. The MI-2 Overlay District shall be applied as an overlay zone to the underlying B-1 District. This approach provides property owners and developers with the opportunity to utilize either set of zoning regulations as they deem preferable.

2. Permitted principal uses. In the MI-2 Overlay District, the following uses shall be permitted:

   a. Restaurants. However, no drive-thru, drive-in or curb-service restaurants shall be permitted.

   b. Retail stores where goods are sold or services are rendered and where nothing is fabricated or manufactured or converted or altered except for such retail trade. Specifically excepted from the foregoing are any uses which involve the repair and/or maintenance of vehicles, which are prohibited.

   c. Offices, banks and financial institutions, including medical and professional offices.

   d. Personal service establishments.

   e. Child-care centers.

   f. Indoor recreation.

   g. Multi-family residential units above the ground floor.

   h. A mixture or combination of the above uses.

3. Permitted accessory uses.

   a. Tenant amenities including but not limited to recreational and fitness facilities, lobbies, leasing and management offices and mail rooms.

   b. Outdoor dining, associated with permitted restaurant uses, subject to the following conditions:

      i. Tables shall be located on private property and not in the public right-of-way.

      ii. Fencing, bollards or planters shall be used to define the outdoor dining area.

      iii. No outdoor dining shall be permitted after 12:00 a.m.

      iv. All lighting shall be downward-facing and shall be turned off no later than 12:30 a.m.

      v. Outdoor dining shall not include an outdoor bar or any other similar outdoor accessory use that serves only beverages, nor does it include any drive-through or take-out windows.

      vi. Approval shall not be construed as approval by the Borough Council for extension and/or renewal of any license under ABC jurisdiction.

      vii. No amplified music shall be permitted.

viii. Outdoor seating shall count for purposes of calculating parking requirements.

c. Waste and recycling receptacles.

d. Surface parking.

e. Any use customary and incidental to a permitted principal use.

f. Signs.

g. Fences and walls.

4. Bulk area and other dimensional standards.

a. Minimum lot area – 7,500 square feet

b. Minimum lot width – 75 feet

c. Minimum front yard – 5 feet (measured from property line)

d. Maximum front yard – 10 feet (measured from property line)

e. Minimum side yard – 5 feet (one); 15 feet (aggregate)

f. Minimum rear yard – 30 feet

g. Maximum building coverage – 60%

h. Maximum lot coverage – 90%

i. Maximum density – 12 units per acre

j. Maximum building height – 3 stories and 40 feet

k. Retaining walls, sidewalks, walkways, fences, above-ground and underground utilities shall be permitted within the setbacks.

5. Affordable Housing requirements

a. 20% of all for-sale units in the MI-2 Overlay District shall be set aside for affordable households.

b. 15% of all rental units in the MI-2 Overlay District shall be set aside for affordable households.

c. Affordable units shall be governed by deed restrictions ensuring long-term affordability controls in accordance with Chapter 2B, "Affordable Housing Regulations."

d. The development, unit distribution and marketing of all affordable units shall be undertaken consistent with Chapter 2B, "Affordable Housing Regulations," the Uniform Housing Affordability Controls, and all other applicable laws, rules and regulations, including applicable COAH regulations, the Fair Housing Act and its requirement that at least 13% of all affordable units associated with this project be made affordable to very-low income households.

e. The Developer shall be responsible for all costs associated with the initial sale or rental of the affordable units, and for the continuing administration of the affordable units and the preservation of the creditworthiness of the units.

6. Architecture

a. Long, monotonous, uninterrupted walls or roof planes shall be avoided. 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.

i. The maximum spacing between building wall offsets shall be 40 feet.

ii. The minimum projection or depth of any individual vertical offset shall be 1.5 feet.

iii. The maximum spacing between roof offsets shall be 40 feet.

iv. Projecting balconies are prohibited along front or side façades. Where located along a rear façade, projecting balconies may encroach up to 3 feet into a required rear yard setback.

b. 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.

c. Fenestration

i. Windows shall be architecturally compatible with the style, materials, colors and details of the building. Windows shall be vertically proportioned.

ii. All ground-level restaurant, retail and service uses shall have clear glass on at least 60% of their façades (applicable to all façades visible from the public street) between 3 and 8 feet above grade.

7. Entrances.

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

   b. Residential units must be accessed by a secure lobby separate from any other uses taking place within the building.

8. Mechanicals and utilities.

   a. Heating, ventilating and air-conditioning systems, utility meters and regulators, exhaust pipes and stacks, satellite dishes and other telecommunications receiving devices shall not be visible from the public right-of-way except where required by the public utility. The requirements of §128-6.4, regarding satellite antennas, shall apply.

   b. All rooftop mechanical equipment, inclusive of solar equipment, shall be screened from view from all vantage points at grade or below the roof.

   c. Placement of any packaged terminal air conditioner units within the façade is prohibited.

9. Sidewalks and landscaping. Sidewalks and landscaped beds fronting any building shall be no less than 8 feet in depth combined.

10. Refuse and Recycling.

   a. Regulations of §128-7.8 apply for mixed-use structures with residential units.

   b. Refuse and recycling must be located either:

      i. Interior to a building in a designated refuse storage area, or

      ii. Located in a side or rear yard setback area, no closer than 5 feet to any adjacent lot line, enclosed on all four sides, and screened using durable materials.

11. Landscaping. Pervious areas shall be landscaped with a mix of deciduous and evergreen trees and low ground cover or grass.

12. Parking.

   a. Parking areas shall be subject to landscaping requirements per §128-7.1(K).

   b. Minimum parking requirements.

i. Retail uses, offices including medical and professional uses, banks, financial institutions, and personal services uses: one off-street parking space for each 200 square feet of floor area.

ii. Restaurants and any establishment which engages in the serving of food and/or beverages for consumption on and/or off the premises: one off-street parking space for every three seats provided and, in addition thereto, one parking space for every ten square feet of floor area made available to customers for off-premises consumption services.

iii. Child care centers: one off-street parking space for each 300 feet of floor area.

iv. Indoor recreation: one space per 200 square feet of floor area

v. Residential uses: as required by RSIS.

c. Location of parking. All parking shall be located to the side or rear of a building. Said parking shall be well-screened to a minimum height of four feet by the use of appropriate plantings of sufficient height and density so as to obscure the view of such parking areas from all streets. Where a parking lot abuts a residential zone, no parking shall be located closer than 15 feet to said zone boundary.

d. In cases where adjacent property owners agree to provide a shared access driveway, the following applies:

i. Minimum one-way driveway width: 12 feet

ii. Minimum two-way driveway width: 24 feet

iii. Maximum driveway width: 30 feet

iv. Driveways may be centered on the shared lot line or offset to any degree as agreed to by the property owners.

v. A permanent easement for shared access to rear parking areas shall be filed with the property deeds.

e. Parking shall be subject to additional requirements per §128-7.1 and loading per §128-7.6.

D. Mixed-Use Inclusionary 3 ("MI-3") Overlay District. The following standards shall apply to development within the MI-3 Overlay District. When the standards herein conflict with other provisions of Chapter 128, the standards herein shall apply.

1. Purpose. The purpose of the MI-3 Overlay District is to provide a realistic opportunity for the construction of affordable housing as part of a mixed-use inclusionary development. The MI-3 Overlay District shall be applied as an overlay zone to the underlying B-1 District. This approach provides property owners and developers with the opportunity to utilize either set of zoning regulations as they deem preferable.

2. Permitted principal uses. In the MI-3 Overlay District, the following uses shall be permitted:

   a. Restaurants. However, no drive-thru, drive-in or curb-service restaurants shall be permitted.

   b. Retail stores where goods are sold or services are rendered and where nothing is fabricated or manufactured or converted or altered except for such retail trade. Specifically excepted from the foregoing are any uses which involve the repair and/or maintenance of vehicles, which are prohibited.

   c. Offices, banks and financial institutions, including medical and professional offices.

   d. Personal service establishments.

   e. Child-care centers.

   f. Multi-family residential units above the ground floor.

   g. A mixture or combination of the above uses.

3. Permitted accessory uses.

   a. Tenant amenities including but not limited to recreational and fitness facilities, lobbies, leasing and management offices and mail rooms.

   b. Outdoor dining, associated with permitted restaurant uses, subject to the following conditions:

      i. Tables shall be located on private property and not in the public right-of-way.

      ii. Fencing, bollards or planters shall be used to define the outdoor dining area.

      iii. No outdoor dining shall be permitted after 12:00 a.m.

      iv. All lighting shall be downward-facing and shall be turned off no later than 12:30 a.m.

v. Outdoor dining shall not include an outdoor bar or any other similar outdoor accessory use that serves only beverages, nor does it include any drive-through or take-out windows.

vi. Approval shall not be construed as approval by the Borough Council for extension and/or renewal of any license under ABC jurisdiction.

vii. No amplified music shall be permitted.

viii. Outdoor seating shall count for purposes of calculating parking requirements.

c. Waste and recycling receptacles.

d. Surface parking.

e. Any use customary and incidental to a permitted principal use.

f. Signs.

g. Fences and walls.

4. Bulk area and other dimensional standards.

a. Minimum lot area – 7,500 square feet

b. Minimum lot width – 75 feet

c. Minimum front yard – 5 feet (measured from property line)

d. Maximum front yard – 10 feet (measured from property line)

e. Minimum side yard – 5 feet (one); 15 feet (aggregate)

f. Minimum rear yard – 30 feet

g. Maximum building coverage – 60%

h. Maximum lot coverage – 90%

i. Maximum density – 15 units per acre

j. Maximum building height – 3 stories and 40 feet

k. Retaining walls, sidewalks, walkways, fences, above-ground and underground utilities shall be permitted within the setbacks.

5. Affordable Housing requirements

   a. 20% of all for-sale units in the MI-3 Overlay District shall be set aside for affordable households.

   b. 15% of all rental units in the MI-3 Overlay District shall be set aside for affordable households.

   c. Affordable units shall be governed by deed restrictions ensuring long-term affordability controls in accordance with Chapter 2B, "Affordable Housing Regulations."

   d. The development, unit distribution and marketing of all affordable units shall be undertaken consistent with Chapter 2B, "Affordable Housing Regulations," the Uniform Housing Affordability Controls, and all other applicable laws, rules and regulations, including applicable COAH regulations, the Fair Housing Act and its requirement that at least 13% of all affordable units associated with this project be made affordable to very-low income households.

   e. The Developer shall be responsible for all costs associated with the initial sale or rental of the affordable units, and for the continuing administration of the affordable units and the preservation of the creditworthiness of the units.

6. Architecture

   a. Long, monotonous, uninterrupted walls or roof planes shall be avoided. 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.

      i. The maximum spacing between building wall offsets shall be 40 feet.

      ii. The minimum projection or depth of any individual vertical offset shall be 1.5 feet.

      iii. The maximum spacing between roof offsets shall be 40 feet.

      iv. Projecting balconies are prohibited along front or side façades. Where located along a rear façade, projecting balconies may encroach up to 3 feet into a required rear yard setback.

b. 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.

c. Fenestration

i. Windows shall be architecturally compatible with the style, materials, colors and details of the building. Windows shall be vertically proportioned.

ii. All ground-level restaurant, retail and service uses shall have clear glass on at least 60% of their façades (applicable to all façades visible from the public street) between 3 and 8 feet above grade.

7. Entrances.

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

b. Residential units must be accessed by a secure lobby separate from any other uses taking place within the building.

8. Mechanicals and utilities.

a. Heating, ventilating and air-conditioning systems, utility meters and regulators, exhaust pipes and stacks, satellite dishes and other telecommunications receiving devices shall not be visible from the public right-of-way except where required by the public utility. The requirements of §128-6.4, regarding satellite antennas, shall apply.

b. All rooftop mechanical equipment, inclusive of solar equipment, shall be screened from view from all vantage points at grade or below the roof.

c. Placement of any packaged terminal air conditioner units within the façade is prohibited.

9. Sidewalks and landscaping. Sidewalks and landscaped beds fronting any building shall be no less than 8 feet in depth combined.

10. Refuse and Recycling.

a. Regulations of §128-7.8 apply for mixed-use structures with residential units.

b. Refuse and recycling must be located either:

i. Interior to a building in a designated refuse storage area, or

ii. Located in a side or rear yard setback area, no closer than 5 feet to any adjacent lot line, enclosed on all four sides, and screened using durable materials.

11. Landscaping. Pervious areas shall be landscaped with a mix of deciduous and evergreen trees and low ground cover or grass.

12. Parking.

a. Parking areas shall be subject to landscaping requirements per §128-7.1(K).

b. Minimum parking requirements.

i. Retail uses, offices including medical and professional uses, banks, financial institutions, and personal services uses: one off-street parking space for each 200 square feet of floor area.

ii. Restaurants and any establishment which engages in the serving of food and/or beverages for consumption on and/or off the premises: one off-street parking space for every three seats provided and, in addition thereto, one parking space for every ten square feet of floor area made available to customers for off-premises consumption services.

iii. Child care centers: one off-street parking space for each 300 feet of floor area.

iv. Residential uses: as required by RSIS.

c. Location of parking. All parking shall be located to the side or rear of a building. Said parking shall be well-screened to a minimum height of four feet by the use of appropriate plantings of sufficient height and density so as to obscure the view of such parking areas from all streets. Where a parking lot abuts a residential zone, no parking shall be located closer than 15 feet to said zone boundary.

d. In cases where adjacent property owners agree to provide a shared access driveway, the following applies:

i. Minimum one-way driveway width: 12 feet

ii. Minimum two-way driveway width: 24 feet

iii. Maximum driveway width: 30 feet

iv. Driveways may be centered on the shared lot line or offset to any degree as agreed to by the property owners.

v. A permanent easement for shared access to rear parking areas shall be filed with the property deeds.

e. Parking shall be subject to additional requirements per §128-7.1 and loading per §128-7.6.

Section 4. Signs in non-residential districts. Chapter 128 of the Code of the Borough of Montvale is hereby amended and supplemented by revising §128-9.7A.6 "Signs in nonresidential districts" by adding the underlined text as follows:

§ 128-9.7A.6 Signs in non-residential districts.

A. In the instance of any use permitted in any non-residential zoning district, there shall be permitted the location of one sign to be erected on any parcel or lot on which there is a building, which sign may be freestanding or affixed to said structure as hereinafter provided.

(1) If attached to a building, the horizontal linear dimensions of such sign shall not exceed 30% of the width of the building wall to which it is to be affixed. The maximum height of such sign shall not exceed two feet if the building wall is 40 feet or less in width; 21/2 feet if the building wall is more than 40 feet but less than 80 feet in width; and three feet if the building wall is 80 feet or more in width.

(2) Any freestanding sign in the OR-1, OR-2, OR-3 and SED Zoning Districts, which sign may be two-sided, shall not be located more than 21/2 feet above the lowest grade elevation below it. The height of the sign shall not exceed six feet, nor shall its width exceed 12 linear feet. The maximum area of any such sign shall not exceed 32 square feet

(3) Any freestanding sign in the B-1 and B-2 Zoning Districts and in the MI-1, MI-2 and MI-3 Overlay Districts, which sign may be two-sided, shall be located not more than 41/2 feet above the lowest grade elevation below it. The height of the sign shall not exceed 91/2 feet. The maximum area of such freestanding sign shall not exceed 20 square feet, provided that in the event there exists on the premises to which such sign is to be located more than 15 business units, then in such event the area of such sign may be increased by one square foot for each such business unit, which area as extended shall nevertheless not exceed 25 square feet.

B. Where a developed tract or parcel on which there is a building is bordered along front and back property lines by parallel roads, streets, avenues or highways, there shall be permitted two freestanding or affixed signs, one oriented to the back of the property and one oriented to the front of the property. Should application be made for erection of two signs pursuant to this provision, approval shall be contingent upon a showing of total conformance to bulk, color and location requirements detailed and provided in Subsection A above.

C. In the B-1 and B-2 Districts, and in the MI-1, MI-2 and MI-3 Overlay Districts, in addition to any sign or signs permitted pursuant to this section, a sign or signs, limited to demonstrate or evidence membership in a retail or professional organization or credit card or credit association or plan or to show manufacturers' or required licenses or advertisements referable to sales within, 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 20% of the total window area.

Section 5. The Official Zoning Map shall be changed for the following Blocks and Lots to add the following overlay zoning designations to the underlying B-1 District zoning:

MI-1 Overlay District: Block 703, Lot 7

MI-2 Overlay District: Block 1601, Lots 1, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23 (partial) and 24 (partial)
Block 1603, Lot 1
Block 2401, Lots 2, 3 and 4

MI-3 Overlay District: Block 1604, Lots 1 and 2
Block 1605, Lots 1 and 2
Block 1606, Lots 1, 2, 3, 4 and 5
Block 2402, Lots 1, 2, 3, 5, 6, 7, 8 and 9
Block 2403, Lot 1
Block 2404, Lot 1
Block 2405, Lots 1, 2, 3, 4, 25 and 26
Block 2406, Lots 1, 2 and 3
Block 2408, Lots 2 and 3

Section 6. Repeal of Inconsistent Ordinances.
All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Section 7. Savings Clause.
Nothing in this Ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed pursuant to this Ordinance, nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

Section 8. Severability.
The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

Section 9. Effective Date.
This ordinance shall become effective upon adoption and publication as required by law and upon approval of same by the Superior Court after a duly-noticed Compliance Hearing.

MICHAEL GHASSALI, MAYOR

ATTEST:

MAUREEN IAROSSI-ALWAN, RMC
Municipal Clerk

INTRODUCED: 5/08/18

Councilmember	Yes	No
Arendacs		✓
Curry - Absent		
Gloeggler	✓	
Koelling	✓	
Lane	✓	
Weaver		✓

ADOPTED: 5/29/18

Councilmember	Yes	No
Arendacs		✓
Curry	✓	
Gloeggler	✓	
Koelling	✓	
Lane	✓	
Weaver		✓

BOROUGH OF MONTVALE
BERGEN COUNTY, NEW JERSEY
ORDINANCE NO. 2018-1449

NOTICE IS HEREBY GIVEN that the following Ordinance was introduced and passed on the first reading at the regular meeting of the Mayor and Council on the 8th day of May 2018, and that said Ordinance will be taken up for further consideration for final passage at a regular meeting of the Mayor and Council to be held on the 29th day of May 2018 at 7:30 pm, or as soon thereafter as said matter can be reached, at which time and place all persons who may be interested therein will be given an opportunity to be heard concerning same.

Maureen Iarossi Alwan, Municipal Clerk
Borough of Montvale

AN ORDINANCE OF THE BOROUGH OF MONTVALE AMENDING AND SUPPLEMENTING CHAPTER 128 OF THE CODE OF THE BOROUGH OF MONTVALE TO ESTABLISH A BOROUGH-WIDE SET-ASIDE REQUIREMENT AND TO SET FORTH THE STANDARDS AND CRITERIA APPLICABLE THERETO

WHEREAS, the Borough Council of the Borough of Montvale desires to create a realistic opportunity for the creation of affordable housing within the Borough; and

WHEREAS, the Borough voluntarily brought a timely declaratory judgment action pursuant to the procedures set forth by the Supreme Court in *In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (201) ("Mt. Laurel IV")* seeking approval of a Housing Element and Fair Share Plan that satisfied the Borough's obligation to provide for its fair share of the regional need of low- and moderate-income housing; and

WHEREAS, after a Fairness Hearing held on January 25, 2018, by Order dated February 12, 2018, Hon. Menelaos W. Toskos, J.S.C. approved a series of settlement agreements between the Borough of Montvale, Fair Share Housing Center, and three developer-intervenors intended to establish the Borough's affordable housing obligations; and

WHEREAS, pursuant to the requirements of the February 12, 2018 Order, the Borough of Montvale intends to supplement its Zoning Ordinance to include provisions addressing Montvale's constitutional obligation to provide for its fair share of low- and moderate-income housing, as directed by the Superior Court and consistent with N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985; and

WHEREAS, the Montvale Planning Board has adopted a Housing Element and Fair Share Plan dated April 17, 2018 pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq., which addresses the requirements of N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C.5:80-26.1, et seq. as amended and supplemented, and the New Jersey Fair Housing Act of 1985; and

WHEREAS, this Ordinance is intended to provide assurances that low- and moderate-income units ("affordable units") are required when certain types of applications are approved; and

WHEREAS, this Ordinance is intended to implement the above-referenced Housing Element and Fair Share Plan, which has been endorsed by the Governing Body.

NOW, THEREFORE, BE IT ORDAINED, by the Governing Body of the Borough of Montvale, as follows:

Section 1. Chapter 128 of the Code of the Borough of Montvale, Article IX, entitled "Miscellaneous District Regulations," Section 9.2, is hereby amended and supplemented by renaming the section "Borough-Wide Set-Aside Requirements," and amending and supplementing said section to read as follows:

§128-9.2 Borough-Wide Set-Aside Requirements.

A. Any property in the Borough of Montvale that receives a zoning change, density variance, use variance or approval of a redevelopment or rehabilitation plan to permit multi-family residential development, which multi-family residential development will yield five (5) or more new dwelling units, shall provide a minimum affordable housing set-aside of:

   1. fifteen (15%) percent if the affordable units will be for rent; or

   2. twenty (20%) percent set-aside if the affordable units will be for sale.

B. This requirement shall not apply to residential development on sites that are zoned for inclusionary residential development as part of the Borough's Housing Element and Fair Share Plan, which are subject to the affordable housing set-aside requirements set forth in the applicable zoning.

C. This requirement does not, and shall not be construed to, grant any property owner or developer the right to any rezoning, variance or other relief, nor does this requirement establish any obligation on the part of the Borough of Montvale to grant any such rezoning, variance or other relief.

D. A property shall not be permitted to be subdivided so as to avoid compliance with this requirement.

E. All affordable units created pursuant to this Section shall be governed by the provisions of Chapter 2B, "Affordable Housing Regulations"

Section 2. Repeal of Inconsistent Ordinances.
All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Section 3. Savings Clause.
Nothing in this Ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed pursuant to this Ordinance, nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

Section 4. Severability.
The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

Section 5. Effective Date.
This ordinance shall become effective upon adoption and publication as required by law.

MICHAEL GHASSALI, MAYOR

ATTEST:
MAUREEN IAROSSI-ALWAN, RMC
Municipal Clerk

INTRODUCED: 5/08/18

Councilmember	Yes	No
Arendacs		✓
Curry – absent		
Gloeggler	✓	
Koelling	✓	
Lane	✓	
Weaver		✓

ADOPTED: 5/29/18

Councilmember	Yes	No
Arendacs		✓
Curry	✓	
Gloeggler	✓	
Koelling	✓	
Lane	✓	
Weaver		✓

AFFIRMATIVE FAIR HOUSING MARKETING PLAN
For Borough of Montvale **(REGION 1)**

I. APPLICANT AND PROJECT INFORMATION
(Complete Section I individually for all developments or programs within the municipality.)

<table>
<tr><td colspan="2">1a. Administrative Agent Name, Address, Phone Number
Administrative Agent:

Contact Name: Frank Piazza
Piazza & Associates, Inc.
216 Rockingham Row
Princeton, NJ 08540
609-786-1100, ext. 301</td><td colspan="2">1b. Development or Program Name, Address

N/A</td></tr>
<tr><td>1c.
Number of Affordable Units: N/A
Number of Rental Units: N/A

Number of For-Sale Units: N/A</td><td colspan="2">1d. Price or Rental Range

From N/A

To</td><td>1e. State and Federal Funding Sources (if any)</td></tr>
<tr><td>1f.
☐ Age Restricted
☐ Non-Age Restricted</td><td colspan="3">1g. Approximate Starting Dates

Advertising: Occupancy:</td></tr>
<tr><td colspan="2">1h. County
Bergen, Hudson, Passaic, Sussex</td><td colspan="2">1i. Census Tract(s):
N/A</td></tr>
<tr><td colspan="4">1j. Managing/Sales Agent’s Name, Address, Phone Number

N/A</td></tr>
<tr><td colspan="4">1k. Application Fees (if any):</td></tr>
</table>

(Sections II through IV should be consistent for all affordable housing developments and programs within the municipality. Sections that differ must be described in the approved contract between the municipality and the administrative agent and in the approved Operating Manual.)

II. RANDOM SELECTION

Describe the random selection process that will be used once applications are received.

1. RENTAL PROCESS:

A. An initial deadline date, no less than 60 days after the start of the marketing process, will be established. All of the preliminary applications received by Piazza & Associates, on or before the initial deadline date, shall be deemed received on that date.

B. Households that apply for very low-income housing will be prescreened by Piazza & Associates for preliminary income eligibility by comparing their total income and household size to the very low-income limits pursuant to the New Jersey Fair Housing Act, N.J.S.A. 52:27-D-304 (“NJFHA”). Households that apply for low and moderate-income housing will be prescreened by Piazza & Associates for preliminary income eligibility by comparing their total income and household size to the low and moderate-income limits pursuant to the Uniform Housing Affordability Controls, 5:80-26.1 et seq. (“UHAC”). All households will be notified as to their preliminary status.

C. A drawing will be held under the direction of Piazza & Associates to determine the priority order

of the pre-qualified applications received on or before the initial deadline date. All preliminary applications received after the initial deadline, will be processed on a "first come, first served" basis.

D. In order to ensure an adequate supply of qualified applicants, the advertising phase will continue until there are at least ten (10) pre-qualified applicants for each low and moderate-income unit available, or until all of the low and moderate-income units within the development have been rented.

E. Final applications will be mailed by Piazza & Associates to an adequate number of pre-qualified applicants, in priority order, for each available very low, low and moderate-income unit. The final application will require the applicants to supply documents to verify their identity and household composition as well as their income and assets.

F. Completed final applications will be forwarded to Piazza & Associates. Piazza & Associates will make a determination as to their eligibility for a low or moderate-income unit. Applicants will receive a letter from Piazza & Associates with respect to the status of their application each time a review is performed.

G. At the same time, applicants will also be subject to any criteria set forth by the Owner, pursuant to the Tenant Selection Criteria, attached. The criteria shall comply with all fair housing standards and be set forth in a policy statement made available to all applicants in the leasing office. The Owner will be responsible for the assessment of all criteria beyond the income and household size criteria set forth in "C" above.

H. Subsequent to the initial rent-up period, a list of pre-qualified applicants will be maintained by Piazza & Associates for each type of very low, low and moderate-income unit.

2. SALE PROCESS:

A. An initial deadline date, no less than 60 days after the start of the marketing process, will be established. All of the preliminary applications received by Piazza & Associates, on or before the initial deadline date, shall be deemed received on that date.

B. Households that apply for low and moderate income housing will be prescreened by Piazza & Associates for preliminary income eligibility by comparing their total income and household size to the low and moderate income limits adopted by COAH or its successors and other program restrictions that may apply. All households will be notified as to their preliminary status.

C. A drawing will be held under the direction of Piazza & Associates to determine the priority order of the pre-qualified applications received on or before the initial deadline date. All preliminary applications received after the initial deadline, will be processed on a "first come, first served" basis after the applicants who were in the initial random selection.

D. In order to ensure an adequate supply of qualified applicants, the advertising phase will continue until there are at least ten (10) pre-qualified applicants for each low and moderate income unit available, or until all of the low and moderate income units within the development have been sold.

E. Final applications will be mailed by Piazza & Associates to an adequate number of pre-qualified applicants, in priority order, for each available low and moderate income unit. The final application will require the applicants to supply documents to verify their identity and household composition as well as their income and assets.

F. Completed final applications will be forwarded to Piazza & Associates. Piazza & Associates will make a determination as to their eligibility for a low or moderate income unit. Applicants will receive a letter from Piazza & Associates with respect to the status of their application each time a review is performed.

G. When submitting final applications, applicants will also be asked to provide a pre-qualification letter from a qualified lending institution.

H. Certified applicants will be given 15 days to sign a sales agreement with the developer. Mortgage contingencies may not be an acceptable term of the agreement.

I. The sales agreement may also limit closing to a reasonable time to be approved by Piazza & Associates in advance of the process.

3. RESALE PROCESS:

A. The Seller submits a Preliminary Notice with a copy of their recorded deed in order to determine the maximum resale price

B. We will respond to the Seller in writing, explaining some of the details of the process and informing the Seller of the Maximum Sales Price (based on the change in median income as set forth by the New Jersey Dept. of Community Affairs) as well as the Maximum Income allowed for potential purchasers, as adjusted for family size. A form, entitled, "Notice of Intent to Sell", is attached.

C. We will also send a "Notice of Availability" to households on our waiting list for an affordable home of the same size and income category. We will include about 20 copies of Preliminary Applications, specifically marked with the address of the affordable home at the top, to the Seller. The Notice will ask interested households to contact the Seller or their agent, directly, to make an appointment to see the affordable home within a two-week time frame. The Seller may want to prepare a flyer for us to distribute with our notice of availability. We reserve the right to limit the number of notices that are mailed, based on the chronological order in which the prequalified applications were received. If the notices are limited in this way, applicants receiving notices will have a priority over those who do not.

D. With permission of the Seller, we automatically place a notification of the availability on NJHRC.gov. The Seller or their agent may also want to advertise. Ads should include the "Equal Housing Opportunity" logo and should be sent to our office for review prior to distribution.

E. The Seller or their agent, upon showing the home, provides potential buyers with a copy of the Preliminary Application (which may be duplicated if necessary). All interested parties must receive a specially marked Preliminary Application, whether or not they have already submitted an application to our office or are on our waiting list. Also, the Seller or their agent must keep a record of the name, address and telephone number of everyone who viewed the home.

F. At the end of the two-week time period, our office collects all of the Preliminary Applications submitted for a particular home. They are prioritized on the basis of a blind selection process or lottery. Preference may be given to households that can utilize all of the bedrooms, as well as handicap accommodations, when applicable.

G. The first two applicants on the prioritized list are sent a letter which requires them to complete a final application within seven days.

H. When an applicant is approved, the Seller may begin to negotiate a contract with the potential Buyer at this time, but there must be a contingency clause in the contract which voids the contract, without penalty to the buyer, if the potential buyer is not able to obtain financing within 30 days.

I. The remaining applicants are maintained on the waiting list for this home or other homes in the same size and income categories. In the event that the potential buyer is not able and/or willing to purchase the affordable home, the next applicant on the prioritized list is notified pursuant to the process described above.

J. The Seller must sell the affordable home with the same or comparable appliances and amenities that were in the home when it was first sold as an affordable home.

K. The Seller may NOT charge more than the Maximum Selling Price for any reason, except the addition of a room, the installation of central air conditioning (where there was none before) or comparable upgrade, but ONLY with prior written approval from us. For the most part, condominiums in this program are NOT eligible for such upgrades and/or adjustments to the selling price. The cost of broker fees; municipal inspections and required repairs that may be necessary to receive a Certificate of Occupancy; new appliances, carpeting or other flooring upgrades; and decorating and remodeling projects are NOT eligible costs for an increase in the Maximum Sales Price.

L. A copy of the Sales Contract must be submitted to our office prior to closing.

M. During the final stages of the process, it will be necessary for the Buyer to make arrangement for the Affordable Housing Agreement and Mortgage Note to be satisfied with respect to the Seller and new documents filed with respect to the Buyer. Our office typically provides the Buyer's attorney with the name and phone number of the attorney who can address these issues.

N. A copy of the HUD Closing Statement or Closing Disclosure form required by the TILA-RESPA Integrated Disclosure Rule, as appropriate, must be submitted to our office after the sale of the home.

O. Note: We do not guarantee that the Buyer can sell an affordable home for the Maximum Sales Price. An affordable home is also susceptible to market conditions, and the Fair Market Value of an affordable home may be lower than the Maximum Selling Price. In this case, the Seller may not be able to sell the home for more than its Fair Market Value

P. This outline is meant to describe the process utilized prior to the expiration of the deed restrictions. It is not meant to be a legal representation of the rights or responsibilities of any party, nor is it meant to modify the Affordable Housing Agreement, Mortgage Note or other Deed Restrictions. Buyers and Sellers are encouraged to seek legal counsel for specific questions in this regard.

Q. Our office is available to both the Seller and the Buyer throughout the process to answer any questions that they may have.

III. MARKETING

3a.Direction of Marketing Activity: Based on demographic data from the 2010 census, this table provides a comparison of race and ethnic origin between the Housing region 1 and the Borough of Montvale. The most significant negative differences point to the greatest need for affirmative marketing. In this case, African Americans (-10.5%) and Hispanic (-25.5%) represent the clearest differences between the municipality and the region.

Subject	RACE							HISPANIC OR LATINO	
	Total population	Race alone or in combination with one or more other races: [4]						Total population	
		White	Black or African American	American Indian and Alaska Native	Asian	Native Hawaiian and Other Pacific Islander	Some Other Race	Hispanic or Latino (of any race)	Not Hispanic or Latino
Bergen	905,116	668,395	59,235	5,016	140,413	1,259	55,012	145,281	759,835
Sussex	501,226	328,081	70,517	6,124	29,024	977	86,234	185,677	315,549
Hudson	634,266	362,592	93,248	7,828	91,810	1,614	106,846	267,853	366,413
Passaic	501,226	328,081	70,517	6,124	29,024	977	86,234	185,677	315,549
Region 1	2,541,834	1,687,149	293,517	25,092	290,271	4,827	334,326	784,488	1,757,346
% Region 1	100%	66.4%	11.5%	1.0%	11.4%	0.2%	13.2%	30.9%	69.1%
Montvale	7,844	6,654	81	6	866	-	128	419	7,425
% Montvale	100%	84.8%	1.0%	0.1%	11.0%	0.0%	1.6%	5.3%	94.7%
Difference		**18.5%**	**-10.5%**	**-0.9%**	**-0.4%**	**-0.2%**	**-11.5%**	**-25.5%**	**25.5%**

[4] In combination with one or more of the other races listed. The six numbers may add to more than the total population, and the six percentages may add to more than 100 percent because individuals may report more than one race. Source: U.S. Census Bureau, 2010 Census of Population and Housing, Demographic Profile Summary File: Technical Documentation, 2011.

☐ White (non-Hispanic X Black (non-Hispanic) X Hispanic ☐ American Indian or Alaskan Native

☐ Asian or Pacific Islander ☐ Other group:

3b. Web Sites

HOUSING RESOURCE CENTER (www.NJHRC.gov) A free, online listing of affordable housing X

PIAZZA & ASSOCIATES, INC. (www.HousingQuest.com) The Administrative Agent's online listing X

BOROUGH OF MONTVALE (www.montvale.org) Referral to HousingQuest.com X

3c. Commercial Media (required) (Check all that applies)

	DURATION & FREQUENCY OF OUTREACH	**NAMES OF REGIONAL NEWSPAPER(S)**	**CIRCULATION AREA**
TARGETS ENTIRE HOUSING REGION 1			
Daily Newspaper			
X	Once at the start of the Affirmative Marketing Process	Star-Ledger	Northern and Central New Jersey

Daily Newspaper			
X	Once at start of Affirmative Marketing Process with additional monthly advertising if necessary.	Record, The	Bergen
X	Once at start of Affirmative Marketing Process with additional monthly advertising if necessary.	Jersey Journal	Hudson
X	Once at start of Affirmative Marketing Process with additional monthly advertising if necessary.	Herald News	Passaic
X	Once at start of Affirmative Marketing Process with additional monthly advertising if necessary.	New Jersey Herald	Sussex

TARGETS ENTIRE HOUSING REGION 1

	Duration & Frequency of Outreach	**Names of Regional TV Station(s)**	**Circulation Area and/or Racial/Ethnic Identification of Readers/Audience**
☐		2 WCBS-TV Cbs Broadcasting Inc.	NYC Metropolitan Area
☐		4 WNBC NBC Telemundo License Co. (General Electric)	NYC Metropolitan Area
☐		5 WNYW Fox Television Stations, Inc. (News Corp.)	NYC Metropolitan Area
☐		7 WABC-TV American Broadcasting Companies, Inc (Walt Disney)	NYC Metropolitan Area
☐		11 WPIX Wpix, Inc. (Tribune)	NYC Metropolitan Area
☐		13 Wpix, Inc. (Tribune) Educational Broadcasting Corporation	NYC Metropolitan Area
☐		25 WNYE-TV New York City Dept. Of Info Technology & Telecommunications	NYC Metropolitan Area
☐		31 WPXN-TV Paxson Communications License Company, Llc	NYC Metropolitan Area
☐		41 WXTV Wxtv License Partnership, G.p. (Univision Communications Inc.)	NYC Metropolitan Area, Spanish-language
☐		47 WNJU NBC Telemundo License Co. (General Electric)	NYC Metropolitan Area, Spanish-language
☐		50 WNJN New Jersey Public Broadcasting Authority	New Jersey
☐		62 WRNN-TV Wrnn License Company, Llc	Hudson Valley
☐		63 WMBC-TV Mountain Broadcating Corporation	Northern New Jersey, Various ethnic

☐		66 WFME-TV Family Stations Of New Jersey, Inc.	Northern New Jersey, Christian
☐		68 WFUT-TV Univision New York Llc	NYC Metropolitan Area, Spanish-language
TARGETS PARTIAL HOUSING REGION 1			
☐		8 WTNH Wtnh Broadcasting, Inc. (LIN TV Corp.)	Bergen
☐		49 WEDW Connecticut Public Broadcasting, Inc.	Bergen
☐		17 WEBR-CA K Licensee, Inc.	Bergen, Hudson (Christian)
☐		26 WNXY-LP Island Broadcasting Company	Bergen, Hudson
☐		32 WXNY-LP Island Broadcasting Company	Bergen, Hudson
☐		35 WNYX-LP Island Broadcasting Company	Bergen, Hudson
☐		39 WNYN-LP Island Broadcasting Company	Bergen, Hudson (Spanish)
☐		21 WLIW Educational Broadcasting Corporation	Bergen, Hudson, Passaic
☐		60 W60AI Ventana Television, Inc.	Bergen, Hudson, Passaic
☐		6 WNYZ-LP Island Broadcasting Co.	Bergen, Sussex
☐		22 WMBQ-CA Renard Communications Corp.	Hudson
☐		34 WPXO-LP Paxson Communications License Company, Llc	Hudson
☐		42 WKOB-LP Nave Communications, Llc	Hudson (Christian)
☐		3 WBQM-LP Renard Communications Corp.	Hudson, Sussex
☐		52 WNJT New Jersey Public Broadcasting Authority	Hudson, Sussex
☐		28 WBRE-TV Nexstar Broadcasting, Inc.	Passaic, Sussex
☐		36 W36AZ New Jersey Public Broadcasting Authority	Passaic, Sussex
☐		16 WNEP-TV New York Times Co.	Sussex
☐		22 WYOU Nexstar Broadcasting, Inc.	Sussex
☐		23 W23AZ Centenary College	Sussex
☐		38 WSWB Mystic Television of Scranton Llc	Sussex
☐		39 WLVT-TV Lehigh Valley Public Telecommunications Corp.	Sussex
☐		44 WVIA-TV Ne Pa Ed Tv Association	Sussex
☐		49 W49BE New Jersey Public Broadcasting	Sussex

		Authority	
☐		56 WOLF-TV Wolf License Corp	Sussex
☐		60 WBPH-TV Sonshine Family Television Corp	Sussex
☐		64 WQPX Paxson Communications License Company, Llc (Ion Media Networks)	Sussex
☐		69 WFMZ-TV Maranatha Broadcasting Company, Inc.	Sussex

	Duration & Frequency of Outreach	**Names of Cable Provider(s)**	**Broadcast Area**
TARGETS PARTIAL HOUSING REGION 1			
☐		Time Warner Cable of Bergen & Hudson Counties	Partial Bergen
☐		Comcast of the Meadowlands	Partial Bergen
☐		Cablevision of New Jersey, Oakland, Ramapo, and Rockland	Partial Bergen
☐		US Cable of Paramus-Hillsdale	Partial Bergen
☐		Cablevision of NJ (Bayonne System), Hudson	Partial Hudson
☐		Comcast of Jersey City, Meadowlands, NJ (Union System)	Partial Hudson
☐		Time Warner Cable of Bergen & Hudson Counties	Partial Hudson
☐		Cablevision of Oakland, Paterson	Partial Passaic
☐		Hometown Online	Partial Passaic
☐		Cable Vision of Morris, Warwick	Partial Sussex
☐		Hometown Online	Partial Sussex
☐		Service Electric Broadband Cable	Partial Sussex
☐		Time Warner Cable of Bergen & Hudson Counties	Partial Bergen
☐		Comcast of the Meadowlands	Partial Bergen
☐		Cablevision of New Jersey, Oakland, Ramapo, and Rockland	Partial Bergen
☐		US Cable of Paramus-Hillsdale	Partial Bergen
☐		Cablevision of NJ (Bayonne System), Hudson	Partial Hudson
☐		Comcast of Jersey City, Meadowlands, NJ (Union System)	Partial Hudson
☐		Time Warner Cable of Bergen & Hudson Counties	Partial Hudson

☐		Cablevision of Oakland, Paterson	Partial Passaic
☐		Hometown Online	Partial Passaic
☐		Cable Vision of Morris, Warwick	Partial Sussex
☐		Hometown Online	Partial Sussex
☐		Service Electric Broadband Cable	Partial Sussex
☐		Time Warner Cable of Bergen & Hudson Counties	Partial Bergen
☐		Comcast of the Meadowlands	Partial Bergen
☐		Cablevision of New Jersey, Oakland, Ramapo, and Rockland	Partial Bergen
☐		US Cable of Paramus-Hillsdale	Partial Bergen
☐		Cablevision of NJ (Bayonne System), Hudson	Partial Hudson
☐		Comcast of Jersey City, Meadowlands, NJ (Union System)	Partial Hudson
☐		Time Warner Cable of Bergen & Hudson Counties	Partial Hudson
☐		Cablevision of Oakland, Paterson	Partial Passaic
☐		Hometown Online	Partial Passaic
☐		Cable Vision of Morris, Warwick	Partial Sussex
☐		Hometown Online	Partial Sussex
☐		Service Electric Broadband Cable	Partial Sussex

	DURATION & FREQUENCY OF OUTREACH	**NAMES OF REGIONAL RADIO STATION(S)**	**BROADCAST AREA AND/OR RACIAL/ETHNIC IDENTIFICATION OF READERS/AUDIENCE**
TARGETS ENTIRE HOUSING REGION 1			
AM			
☐		WFAN 660	
☐		WOR 710	
☐		WABC 770	
☐		WCBS 880	
☐		WBBR 1130	
FM			
☐		WFNY-FM 92.3	

☐		WPAT-FM 93.1	Spanish
☐		WNYC-FM 93.9	
☐		WFME 94.7	Christian
☐		WPLJ 95.5	
☐		WQXR-FM 96.3	
☐		WQHT 97.1	
☐		WSKQ-FM 97.9	Spanish
☐		WAWZ 99.1	Christian
☐		WBAI 99.5	
☐		WHTZ 100.3	
☐		WHUD 100.7	
☐		WCBS-FM 101.1	
☐		WQCD 101.9	
☐		WNEW 102.7	
☐		WKTU 103.5	
☐		WAXQ 104.3	
☐		WWPR-FM 105.1	
☐		WLTW 106.7	
☐		WBLS 107.5	
TARGETS PARTIAL HOUSING REGION 1			
AM			
☐		WEEX 1230	Bergen
☐		WKDM 1380	Bergen, Hudson (Chinese/ Mandarin)
☐		WMCA 570	Bergen, Hudson, Passaic (Christian)
☐		WNYC 820	Bergen, Hudson, Passaic
☐		WRKL 910	Bergen, Hudson, Passaic (Polish)
☐		WPAT 930	Bergen, Hudson, Passaic (Caribbean, Mexican, Mandarin)
☐		WWDJ 970	Bergen, Hudson, Passaic (Christian)
☐		WINS 1010	Bergen, Hudson, Passaic
☐		WEPN 1050	Bergen, Hudson, Passaic
☐		WVNJ 1160	Bergen, Hudson, Passaic

☐		WLIB 1190	Bergen, Hudson, Passaic (Christian)
☐		WADO 1280	Bergen, Hudson, Passaic (Spanish)
☐		WWRV 1330	Bergen, Hudson, Passaic (Spanish)
☐		WNSW 1430	Bergen, Hudson, Passaic (Portuguese)
☐		WZRC 1480	Bergen, Hudson, Passaic (Chinese/Cantonese)
☐		WQEW 1560	Bergen, Hudson, Passaic
☐		WWRL 1600	Bergen, Hudson, Passaic
☐		WWRU 1660	Bergen, Hudson, Passaic (Korean)
☐		WMTR 1250	Passaic
☐		WGHT 1500	Passaic
☐		WNNJ 1360	Sussex
FM			
☐		WSOU 89.5	Bergen, Hudson
☐		WCAA 105.9	Bergen, Hudson (Latino)
X	Once at the start of the affirmative marketing.	WBGO 88.3	Bergen, Hudson, Passaic
☐		WFDU 89.1	Bergen, Hudson, Passaic
☐		WKCR-FM 89.9	Bergen, Hudson, Passaic
☐		WNYU-FM 89.1	Bergen, Hudson, Passaic
☐		WFUV 90.7	Bergen, Hudson, Passaic
☐		WFMU 91.1	Bergen, Hudson, Passaic
☐		WNYE 91.5	Bergen, Hudson, Passaic
☐		WRKS 98.7	Bergen, Hudson, Sussex
☐		WRTN 93.5	Bergen, Hudson, Sussex
☐		WHCR-FM 90.3	Bergen, Passaic
☐		WPSC-FM 88.7	Passaic
☐		WRHV 88.7	Passaic
X	Once at the start of the affirmative marketing.	WNJP 88.5	Sussex
☐		WNTI 91.9	Sussex
☐		WCTO 96.1	Sussex
☐		WSUS 102.3	Sussex
☐		WNNJ-FM 103.7	Sussex

☐		WDHA -FM 105.5	Sussex
☐		WHCY 106.3	Sussex
☐		WWYY 107.1	Sussex

3d. Other Publications (such as neighborhood newspapers, religious publications, and organizational newsletters) (Check all that applies)

		NAME OF PUBLICATIONS	**OUTREACH AREA**	**RACIAL/ETHNIC IDENTIFICATION OF READERS/AUDIENCE**
TARGETS ENTIRE HOUSING REGION 1				
Bi-weekly				
☐		Al Manassah		Arab-American
Monthly				
X	Once at the start of the affirmative marketing process.	Sino Monthly	North Jersey/NYC area	Chinese-American
TARGETS PARTIAL HOUSING REGION 1				
Daily				
☐		24 Horas	Bergen, Essex, Hudson, Middlesex, Passaic, Union Counties	Portuguese-Language
Weekly				
☐		Arab Voice Newspaper	North Jersey/NYC area	Arab-American
☐		La Voz	Hudson, Union, Middlesex Counties	Cuban community
☐		Italian Tribune	North Jersey/NYC area	Italian community
☐		Jewish Standard	Bergen, Passaic, Hudson Counties	Jewish community
X	Once at the start of marketing	El Especialito	Union City	Spanish-Language
☐		El Nuevo	Hudson County	Spanish-Language
X	Once at the start of marketing	Reporte Hispano	Regional	Spanish-Language
☐		Su Guia	Bergen and Passaic	Spanish-Language
☐		Banda Oriental Latinoamérica	North Jersey/NYC area	South American community
☐		Ukranian Weekly	New Jersey	Ukranian community

3e. Employer Outreach (names of employers throughout the housing region that can be contacted to post advertisements and distribute flyers regarding available affordable housing) (Check all that applies)

DURATION & FREQUENCY OF OUTREACH	**NAME OF EMPLOYER/COMPANY**	**LOCATION**
Hudson County		
X A flyer and Preliminary Application will be mailed to	United Parcel Service Inc. NY Corp	492 County Ave, Secaucus

	all of the employers, below, once at the start of the affirmative marketing process.		
X		USPS	80 County Road, Jersey City
X		Liz Claiborne Inc	1 Claiborne Ave, North Bergen
X		Maxim Staffing Solutions	26 Journal Square, Jersey City
X		Ritter Sysco Food Service	20 Theodore Conrad Dr. Jersey City
X		Jersey City Medical Center Inc.	55 Meadowlands Pkwy. , Secaucus
X		Marsh USA Inc.	121 River St, Hoboken
X		National Retail Systems Inc.	2820 16th St North Bergen
X		Community Corrections Corp	Lincoln Hwy Kearny
X		Marine Personnel & Provisioning Inc.	1200 Harbor Blvd Weehawken
X		Port Authority of NY and NJ	241 Erie St. Jersey City and 120 Academy St. Jersey City
X		Christ Hospital Health Service	176 Palisade Ave, Jersey City
X		Bayonne Hospital	29th Street and Ave E, Bayonne
X		Salson Logistics Inc.	2100 88th St. North Bergen, NJ
X		National Financial Service	499 Washington Blvd. Fl 5, Jersey City
X		Fleet NJ Company Development Corp.	10 Exchange Place, Jersey City
X		Maidenform Inc	154 Ave E, Bayonne
X		Lord Abbett & Company	90 Hudson City, Jersey City
X		Liberty Health Plan Inc.	115 Christopher Columbus Dr. Jersey City
X		Port Imperial Ferry Corp.	4800 Ave. at Port Imperial Blvd. Weehawken, NJ
X		Hudson News	1305 Paterson Plank Rd, North Bergen
X		Palisades General Hospital	7600 River Rd North Bergen, NJ
X		Equiserve Inc.	525 Washington Blvd Jersey city
X		Meadowlands Hospital Medical Center	Meadowlands Pkwy Secaucus
X		Retailers & Manufacturers Dist Marking Serv.	50 Metro Way Secaucus
X		Dynamic Delivery Corp	20 Central Ave Kearny, NJ
X		Bowne Business Communications Inc.	215 County Ave Secaucus
X		North Hudson Community Action Corp.	5301 Broadway West New York 07093
X		Goya Foods Inc.	100 Seaview Dr. Secaucus

Bergen County			
X		Hackensack University Medical Center	30 Prospect Ave, Hackensack, NJ 07601
X		Professional Employer Group Service	2050 Center Ave Ste 336 Fort Lee
X		Cristi Cleaning Service	77 Trinity Pl. Hackensack, NJ
X		Society of the Valley Hospital	223 N Van Dien Ave Ridgewood
X		NJ Sports & Expo Authority	50 State Highway 120 East Rutherford
X		Merck-Medco Managed Care LLC	100 Parsons Pond Dr. Franklin Lakes 07417
X		Quest Diagnostics Incorporated	1 Malcolm Ave Teterboro ,NJ 07608
X		AT&T	15 E Midland Ave Paramus
X		Englewood Hospital and Medical Center	350 Engle St. Englewood
X		Aramark Svcs Management of NJ Inc	50 Route 120 East Rutherford
X		Holy Name Hospital	718 Teaneck Road Teaneck
X		Doherty Enterprises Inc	7 Pearl Ct Allendale
X		Bergen Regional Medical Center	230 East Ridgewood Ave Paramus
X		Inserra supermarkets, Inc.	20 Ridge Rd Mahwah
X		Howmedica Osteonics Corp	325 Corporate Dr. Mahwah, NJ &59 Rt 17 Allendale, NJ
X		Becton Dickinson & Company Corp	1 Becton Dr. Franklin Lakes
X		Pearson Education, Inc.	1 Lake St. Upper Saddle River

Passaic County			
X		D&E Pharmaceutical Co.	206 Macoprin Rd Bloomingdale, NJ 07403
X		Acme Markets	467 AllWood Rd Clifton, NJ 07012
X		St. Mary's Hospital	350 Boulevard Passaic, NJ 07055
X		Merry Maids	14 Riverside Square Mall, Bloomingdale, NJ 07403
X		Health Center at Bloomingdale	255 Union Ave Bloomingdale, NJ 07403
X		Sommers Plastic Product Co. Inc.	825 Bloomfield Ave. Clifton, NJ 07012
X		St. Joseph's Hospital	703 Main St. Paterson, NJ 07503
X		BAE Systems	150 Parish Dr. Wayne, NJ 07470
X		Drake Bakeries Inc	75 Demarest Dr, Wayne, NJ 07470
X		Toys R Us National Headquarters	1 Geoffrey Way, Wayne, NJ 07470
X		GAF Materials Corporation	1361 Alps Rd, Wayne, NJ 07470

X		Valley National Bank Headquarters	1455 Valley Road Wayne, New Jersey 07470

Sussex County			
X		Selective Insurance	40 Wantage Ave, Branchville, NJ
X		Andover Subacute and Rehab Center	99 Mulford Rd Bldg 2, Andover, NJ
X		Mountain Creek Resorts	200 State Rt 94, Vernon, NJ
X		Newton Memorial Hospital Inc.	175 High St, Newton, NJ
X		Vernon Township Board of Education	539 State Rt 515, Vernon, NJ
X		F.O. Phoenix (Econo-Pak)	1 Wiebel Plz, Sussex, NJ
X		Hopatcong Board of Education	2 Windsor Ave, Hopatcong, NJ
X		Saint Clare's Hospital	20 Walnut St, Sussex, NJ
X		Ames Rubber Corp	19 Ames Blvd, Hamburg, NJ

3f. Community Contacts (names of community groups/organizations throughout the housing region that can be contacted to post advertisements and distribute flyers regarding available affordable housing)

Name of Group/Organization	Outreach Area	Racial/Ethnic Identification of Readers/Audience	Duration & Frequency of Outreach
See attached	Region	All	A flyer and Preliminary Application will be mailed to everyone on the attached list, once at the start of the affirmative marketing process and as needed thereafter.

IV. APPLICATIONS

Applications for affordable housing for the above units will be available at the following locations:

4a. County Administration Buildings and/or Libraries for all counties in the housing region (list county building, address, contact person) (Check all that applies)

	BUILDING	**LOCATION**
X	Danforth Memorial Library	250 Broadway, Paterson, NJ 07501
X	Johnson Free Public Library	274 Main Street Hackensack, NJ 07601
X	Hudson County Library	25 Journal Sq. Jersey City, N J 07306
X	Sussex County Main Library	125 Morris Turnpike, Newton, NJ 07860
X	Montvale Free Public Library	12 Mercedes Dr., Montvale, NJ 07645

X	County of Sussex	One Spring Street, Newton, NJ 07860
X	Hudson County Administration Building	595 Newark Avenue, Jersey City, NJ 07306
X	Passaic County Administration Building	401 Grand Street, Paterson, NJ 07505 (973) 225-3632
X	Bergen County Administration Building	One Bergen County Plaza, Hackensack, NJ 07601 (201)336-6000

4b. Municipality in which the units are located (list municipal building and municipal library, address, contact person)

Lorraine Hutter
Land Use Administrator
Borough of Montvale
Business Administrator / CFO
12 Mercedes Drive
Montvale, NJ 07645
Phone (201) 391-5700 ext. 5700
Fax (201) 391-9317

4c. Sales/Rental Office for units (if applicable)

N/A

V. CERTIFICATIONS AND ENDORSEMENTS

I hereby certify that the above information is true and correct to the best of my knowledge. I understand that knowingly falsifying the information contained herein may affect the Municipality's substantive certification.

Frank Piazza, President, Piazza & Associates, Inc.

_____

Name (Type or Print)

Administrative Agent, Borough of Montvale

_____

Title/Municipality

_____

Signature Date

Passaic County Office on Aging
209 Totowa Rd.
Wayne, NJ 07470

Hudson County Office on Aging
595 Newark Avenue
Jersey City, NJ 07306

Bergen County Dept. of Human Services
One Bergen County Plaza, 2nd Floor
Hackensack, NJ 07601

New Jersey Community Development Corporation
32 Spruce Street
Paterson, New Jersey 07501

Urban League of Bergen County
106 West Palisade Avenue
Englewood, NJ 07631

New Jersey Tenant Organization
96 Linwood Plz #233
Fort Lee, NJ 07024

Catholic Family & Community Services (Diocese of Paterson)
24 DeGrasse Street
Paterson, NJ 07505-2001

Northwest New Jersey Community Action Program, Inc. (Philipsburg)
350 Marshall St
Phillipsburg, NJ 08865-3273

Urban League of Hudson County
253 Martin Luther King Dr.
Jersey City, NJ 07305

Fairmount Housing Corp.
270 Fairmount Ave.
Jersey City, NJ 07306

SonRise Development Corp.
351 Englewood Ave.
Englewood, NJ 07631

Catholic Charities (Diocese of Newark)
321 Central Ave
Newark, NJ 07103

St. Joseph House
81 York Street
Jersey City, NJ 07302

Jersey City Episcopal CDC
514 Newark Ave.
Jersey City, NJ 07306

Episcopal Community Development
31 Mulberry St.
Newark, NJ 07102

St. Paul's Community Development Corp.
451 Van Houten St.
Paterson, NJ 07501

Sussex County Office on Aging
1 Cochran Plaza, 2nd floor
Newton, NJ 07860

Monticello Community Development Corp.
99 Monticello Ave.
Jersey City, NJ 07304

New Jersey Tenant Organization
389 Main Street
Hackensack, NJ 07601

Bergen County Housing Coalition
389 Main St.
Hackensack, NJ 07601

Paterson Habitat for Humanity
146 North 1st Street
PO Box 2585
Paterson, NJ 07509

Department of Community Affairs
100 First St., Suite 207 1st flr
Hackensack, NJ 07601

New Jersey Citizen Action
744 Broad Street #2060
Newark, NJ 07102

Bergen County Board of Social Services
216 Route 17 N.
Rochelle Park, NJ 07662-3300

Latin Action Network
P.O. Box 943
Freehold, NJ 07728

Fair Share Housing Center
510 Park Blvd.
Cherry Hill, NJ 08002

Bergen County NAACP
PO Box 1136
Englewood, NJ 07631

NAACP-Passaic Branch
114 Prospect Street
Passaic, NJ 07055

Warren/Sussex County NAACP
PO Box 229
Washington, NJ 07882

Jersey City NAACP
153 Martin Luther King Drive, #B
Jersey City, NJ 07305

NJ NAACP State Office
13 East Front Street
Trenton, New Jersey 08608

NAACP Bayonne
PO Box 1764
1195 East 21st Street
Bayonne, NJ 07002

NAACP Teaneck
PO Box 1136
Teaneck, NJ 07666

NAACP Hoboken
MPO 1219
Hoboken, NJ 07030

NAACP Paterson
PO Box AQ
Paterson, NJ 07509

Bergen County Housing Authority
25 Rockwood Pl, Ste. 110
Englewood, NJ 07631

Senior Housing Services
300 Teaneck Rd.
Teaneck, NJ 07666

SEED Corp.
333 Dodd Street, Ste. 3
East Orange, NJ 07017

SERV Behavioral Health
20 Scotch Rd.
West Trenton, NJ 08628

Fairmont Housing Corp.
270 Fairmont Ave.
Jersey City, NJ 07306

Interreligious Fellowship for the Homeless
of Bergen County
479 Maitland Avenue
Teaneck, NJ 07666

Habitat for Humanity
10 Banta Place
Hackensack, NJ 07601

Lutheran Ministries of New Jersey
1056 Stuyvesant Ave.
Trenton, NJ 08618

BOROUGH OF MONTVALE
BERGEN COUNTY, NEW JERSEY
RESOLUTION NO. 130-2018

RE: Resolution Adopting The 'Affirmative Marketing Plan' For The Borough Of Montvale

WHEREAS, in accordance with the New Jersey Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26-1, *et seq.*, the Borough of Montvale is required to adopt an Affirmative Marketing Plan to ensure that all affordable housing units created within the Borough of Montvale are affirmatively marketed to low- and moderate-income households, particularly those living and/or working within Housing Region 1, the COAH Housing Region encompassing the Borough of Montvale.

NOW, THEREFORE, BE IT RESOLVED, by the Governing Body of the Borough of Montvale, that the Borough does hereby adopt the following Affirmative Marketing Plan:

Affirmative Marketing Plan

Affirmative marketing required. All affordable housing units in the Borough of Montvale shall be marketed in accordance with the provisions herein.

Applicability; developer obligations. The Borough of Montvale has a Prior Round Obligation and a Third Round Obligation covering the years from 1999-2025. This Affirmative Marketing Plan shall apply to all developments that contain or will contain low- and moderate-income units, including those that are part of the Borough's Prior Round Fair Share Plan and its current Fair Share Plan and those that may be constructed in future developments not yet anticipated by the Fair Share Plan. All developers/owners of very-low, low- and moderate-income housing units shall be required to undertake and pay the costs of the marketing of the affordable units in their respective developments, and all such advertising and affirmative marketing shall be subject to approval and oversight by the designated Administrative Agent.

Purpose of Affirmative Marketing Plan. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer or sponsor of affordable housing. The Borough of Montvale is located in COAH Housing Region 1, consisting of Bergen, Hudson, Passaic and Sussex Counties. The Affirmative Marketing Plan is intended to target those potentially-eligible persons who are least likely to apply for affordable units in Region 1. It is a continuing program that directs all marketing activities toward Region 1 and covers the entire period of the deed restriction for each restricted housing unit.

Implementation by Administrative Agent. The Affirmative Marketing Plan shall be implemented by one or more Administrative Agent(s) designated by and/or under contract to the Borough of Montvale, in accordance with Borough Code, Chapter 2B, "Affordable Housing Regulations."

The Administrative Agent shall have the following duties and responsibilities:

To income qualify very-low, low- and moderate- income households;

To place income eligible households in very-low, low- and moderate-income units upon initial occupancy;
To provide for the initial occupancy of very-low, low- and moderate-income units with income qualified households;
To continue to qualify households for re-occupancy of units as they become vacant during the period of affordability controls;
To assist with outreach to very-low, low- and moderate-income households; and
To enforce the terms of the deed restriction and mortgage loan as per N.J.A.C. 5:80-26-1, *et seq.*

The Administrative Agent shall also provide the Municipal Housing Liaison with the information required to comply with monitoring and reporting requirements pursuant to N.J.A.C. 5:80-26-1, *et seq.*

Affirmative Marketing Plan requirements. The Affirmative Marketing Plan shall meet the following requirements:

The primary marketing shall take the form of at least one press release and/or a paid display advertisement in the below-identified newspapers. Additional advertising and publicity shall be on an "as needed" basis. The developer/owner shall disseminate all public service announcements and pay-for-display advertisements. The developer/owner shall provide proof of all publications to the Administrative Agent. All press releases and advertisements shall be approved in advance by the Administrative Agent.

All newspaper articles, announcements and requests for applications for very-low, low- and moderate-income units shall appear in *The Record, Jersey Journal, Herald News* and *New Jersey Herald.* Once at the start of the affirmative marketing process, a paid advertisement or press release shall appear in the *Star Ledger.*

The advertisement or press release shall include a description of the:

Address of the units;
Range of prices for the units;
Number of bedrooms of the units;
Maximum income permitted to qualify for the units;
Where to obtain applications;
Business hours when applications may be obtained; and
Application fees.

Applications shall be mailed by the Administrative Agent and Municipal Housing Liaison to prospective applicants upon request. Applications shall also be available at the developer's sales/rental office.

All applications, brochure(s), sign(s) and/or poster(s) used as part of the affirmative marketing program shall be available/posted in the following locations:

Montvale Municipal Building
Danforth Memorial Library
Johnson Free Public Library
Hudson County Library
Sussex County Main Library
Montvale Free Public Library
County of Sussex Administrative Center

Hudson County Administration Building
Passaic County Administration Building
Bergen County Administration Building
Developer's Sales/Rental Offices

Community contacts; agencies; employers. The Administrative Agent shall develop, maintain and update a list of community contact person(s) and/or organization(s) in Bergen, Hudson, Passaic and Sussex Counties that will aid in the affirmative marketing program with particular emphasis on contacts that will reach out to groups that are least likely to apply for housing within the region, including major regional employers identified in Attachment A, Part III, Marketing, Section 3d of COAH's ***Affirmative Fair Housing Marketing Plan for Affordable Housing in Region 1*** (attached to and hereby made part of this Resolution).
Once at the start of the affirmative marketing process, and as necessary thereafter, a flyer and preliminary application shall be sent to:

Fair Share Housing Center
The New Jersey State Conference of the NAACP,
The Latino Action Network,
The Bergen County NAACP,
Bergen Urban League and
Bergen County Housing Coalition.

Once at the start of the affirmative marketing process, and as necessary thereafter, a flyer and preliminary application shall be sent to the administrators of each of the following agencies within the counties of Bergen, Hudson, Passaic and Sussex:

Rental Assistance Office (local office of DCA)
Office on Aging

Once at the start of the affirmative marketing process, a flyer and preliminary application shall be sent to the chief personnel administrators of all of the major employers within the region, as listed on Attachment A, Part III, Marketing, Section 3d.

Counseling requirements. The Administrative Agent shall provide or direct qualified very-low, low- and moderate-income applicants to counseling services on subjects such as budgeting, credit issues, mortgage qualifications, rental lease requirements and landlord/tenant law and shall develop, maintain and update a list of entities and lenders willing and able to perform such services. The following is a listing of community contact person(s) and/or organizations in Bergen, Hudson, Passaic and Sussex counties that will aid in the affirmative marketing program and provide guidance and counseling services to prospective occupants of very-low, low- and moderate-income units:

Housing Resource Center – www.njhrc.gov

Selection process; preferences. A random selection method to select occupants of very-low, low- and moderate-income housing will be used by the Administrative Agent, in conformance with N.J.A.C. 5:80-26.16 (1). The Affirmative Marketing Plan shall provide a regional preference for very-low, low- and moderate-income households that live and/or work in COAH Housing Region 1, comprised of Bergen, Hudson, Passaic and Sussex Counties. Pursuant to the New Jersey Fair Housing Act (C.52:27D-311), a preference for very-low, low- and moderate-income veterans duly-qualified under N.J.A.C. 54:4-8.10

may also be exercised, provided an agreement to this effect has been executed between the developer or landlord and the Borough prior to the affirmative marketing of the units.

Timing. The implementation of the Affirmative Marketing Plan for a development that includes affordable housing shall commence at least 120 days before the issuance of either a temporary or permanent certificate of occupancy. The implementation of the Affirmative Marketing Plan shall continue until all very-low, low- and moderate-income housing units are initially occupied and for as long as the affordable units remain deed restricted such that qualifying new tenants and/or purchasers continues to be necessary.

Councilmember	Motion	Second	Yes	No	Absent	Abstain	No Vote
Arendacs			✓				
Curry			✓				
Gloeggler			✓				
Koelling			✓				
Lane			✓				
Weaver			✓				

Adopted: May 29, 2018

ATTEST:

Maureen Iarossi-Alwan
Municipal Clerk

APPROVED:

Michael Ghassali
Mayor

BOROUGH OF MONTVALE
BERGEN COUNTY, NEW JERSEY
ORDINANCE NO. 2018-1450

NOTICE IS HEREBY GIVEN that the following Ordinance was introduced and passed on the first reading at the regular meeting of the Mayor and Council on the 8th day of May 2018, and that said Ordinance will be taken up for further consideration for final passage at a regular meeting of the Mayor and Council to be held on the 29th day of May 2018 at 7:30 pm, or as soon thereafter as said matter can be reached, at which time and place all persons who may be interested therein will be given an opportunity to be heard concerning same.

Maureen Iarossi Alwan, Municipal Clerk
Borough of Montvale

AN ORDINANCE RENAMING CHAPTER 2B OF THE CODE OF THE BOROUGH OF MONTVALE, "AFFORDABLE HOUSING REGULATIONS," AND REPLACING THE ENTIRE CONTENTS THEREOF TO ADDRESS THE REQUIREMENTS OF THE FAIR HOUSING ACT AND THE UNIFORM HOUSING AFFORDABILITY CONTROLS (UHAC) REGARDING COMPLIANCE WITH THE BOROUGH'S AFFORDABLE HOUSING OBLIGATIONS

WHEREAS, the Borough of Montvale has a constitutional obligation to create a realistic opportunity for the construction of its fair share of the region's need for affordable housing; and

WHEREAS, the Borough Council of the Borough of Montvale desires to create a realistic opportunity for the creation of affordable housing within the Borough; and

WHEREAS, the Borough voluntarily brought a timely declaratory judgment action pursuant to the procedures set forth by the Supreme Court in In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) ("Mt. Laurel IV") seeking approval of a Housing Element and Fair Share Plan that satisfies the Borough's obligation to provide for its fair share of the regional need of low- and moderate-income housing; and

WHEREAS, after a Fairness Hearing held on January 25, 2018, by Order dated February 12, 2018, Hon. Menelaos W. Toskos, J.S.C. approved a series of settlement agreements between the Borough of Montvale, Fair Share Housing Center and three developer-intervenors, which were intended to establish the Borough's affordable housing obligations; and

WHEREAS, the Montvale Planning Board has adopted a Housing Element and Fair Share Plan dated April 17, 2018 pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq., which addresses the requirements of N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq. as amended and supplemented, and the New Jersey Fair Housing Act of 1985; and

WHEREAS, the Borough is desirous of amending and supplementing the Borough Code to implement the above-referenced Housing Element and Fair Share Plan, which has been endorsed by the Governing Body, and include provisions addressing Montvale's constitutional obligation to provide for its fair share of low and moderate income housing, as directed by the Superior Court and consistent with N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985; and

WHEREAS, this Ordinance is intended to provide assurances that low- and moderate-income units ("affordable units") are created with controls on affordability over time and that low- and moderate-income households shall occupy those units.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Borough of Montvale, County of Bergen, State of New Jersey, as follows:

Section 1. Montvale Borough Code Chapter 2B, is hereby renamed "Affordable Housing Regulations" and replaced in its entirety, as follows:

CHAPTER 2B

AFFORDABLE HOUSING REGULATIONS

Article I
Affordable Housing Requirements

§2B-1 Purpose.
§2B-2 Monitoring requirements.
§2B-3 Definitions.
§2B-4 Applicability.
§2B-5 Rehabilitation Program.
§2B-6 Alternative living arrangements.
§2B-7 Inclusionary zoning.
§2B-8 Phasing schedule for inclusionary zoning.
§2B-9 Fractional units.
§2B-10 New construction.
§2B-11 Utilities.
§2B-12 Occupancy standards.
§2B-13 Control periods for restricted ownership units and enforcement measures.
§2B-14 Price restrictions for restricted ownership units, homeowner association fees and resale prices.
§2B-15 Buyer income eligibility.
§2B-16 Limitations on indebtedness secured by ownership unit; subordination.
§2B-17 Capital improvements to ownership units.
§2B-18 Control periods for restricted units.
§2B-19 Rent Restrictions for Rental Units; Leases
§2B-20 Tenant income eligibility.

Article II
Municipal Housing Liaison

§2B-21 Municipal Housing Liaison

Article III
Administrative Agent

§2B-22 Administrative Agent.

Article IV
Affirmative Marketing Requirements

§2B-23 Affirmative marketing requirements.

Article V
Enforcement

§2B-24 Enforcement of affordable housing regulations.
§2B-25 Appeals.

Article I
Affordable Housing Requirements

§2B-1 Purpose.

A. The purpose of this Chapter is to provide for and regulate affordable housing in the Borough of Montvale. This Ordinance is intended to assure that low- and moderate-income units ("affordable units") are created with controls on affordability over time and that low- and moderate-income individuals and households shall occupy these units.

B. The Borough of Montvale Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Housing Element and Fair Share Plan has been endorsed by the Borough Council. The Fair Share Plan describes the ways the Borough of Montvale shall address its fair share for low- and moderate-income housing as determined by the New Jersey Superior Court and documented in the Housing Element.

C. This Ordinance implements and incorporates the Housing Element and Fair Share Plan and addresses the requirements of N.J.A.C. 5:97, as it may be amended and supplemented.

§2B-2 Monitoring requirements.

A. On the first anniversary of the entry of the Order granting Montvale a Final Judgment of Compliance and Repose in IMO Application of the Borough of Montvale, Docket No.: BER-L-6141-15, and every anniversary thereafter through the end of 2025, the Borough shall provide annual reporting of its Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs (DCA), Council on Affordable Housing (COAH), Local Government Services (LGS) or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center (FSHC) and posted on the municipal website, using forms developed for this purpose by the DCA, COAH or LGS.

B. On the first anniversary of the entry of the Order granting Montvale a Final Judgment of Compliance and Repose in IMO Application of the Borough of Montvale, Docket No.: BER-L-6141-15, and every anniversary thereafter through the end of 2025, the Borough shall provide annual reporting of the status of all affordable housing activity within the Borough through posting on the municipal website, with copies provided to FSHC, using forms previously developed for this purpose by COAH or any other forms endorsed by the Court-appointed Special Master and FSHC. In addition to the foregoing, the Borough may also post such activity on the CTM system and/or file a copy of its report with COAH or its successor agency at the State level.

C. For the midpoint realistic opportunity review, due on July 6, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough shall post on its municipal website, with copies provided to FSHC, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the Borough, with copies provided to FSHC, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may, by motion, request a hearing before the Court regarding these issues.

D. For the review of very-low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of the entry of the Order granting Montvale a Final Judgment of Compliance and Repose in IMO Application of the Borough of Montvale, Docket No.: BER-L-6141-15, and every third year thereafter, the Borough will post on its municipal website, with copies provided to FSHC, a status report as to its satisfaction of its very-low income requirements, including the family very-low income requirements referenced in the Settlement Agreement. Such posting shall invite any interested party to submit comments to the Borough, with copies provided to FSHC, on the issue of whether the Borough has complied with its very-low income housing obligation under the terms of the Settlement Agreement.

§2B-3 Definitions.

The following terms when used in this Chapter shall have the meanings given herein:

ACT

The Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.)

ADAPTABLE

Constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

ADMINISTRATIVE AGENT

The entity designated by the Borough to administer affordable units in accordance with this Ordinance, N.J.A.C. 5:93, and UHAC (N.J.A.C. 5:80-26).

AFFIRMATIVE MARKETING

A regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

AFFORDABILITY AVERAGE

The average percentage of median income at which new restricted units in an affordable housing development are affordable to low- and moderate-income households.

AFFORDABLE

A sales price or rent level that is within the means of a low or moderate income household as defined within N.J.A.C. 5:93-7.4, and, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as it may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as it may be amended and supplemented.

AFFORDABLE HOUSING DEVELOPMENT

A development included in or approved pursuant to the Housing Element and Fair Share Plan or otherwise intended to address the Borough's fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable housing development.

AFFORDABLE HOUSING PROGRAM(S)

Any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

AFFORDABLE UNIT

A housing unit proposed or created pursuant to the Act and approved for crediting by the Court and/or funded through an affordable housing trust fund.

AGENCY

The New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1, et seq.).

AGE-RESTRICTED UNIT

A housing unit designed to meet the needs of, and exclusively for, the residents of an age- restricted segment of the population such that: 1) all the residents of the development wherein the unit is situated are 62 years of age or older; or 2) at least 80% of the units are occupied by one person who is 55 years of age or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

ALTERNATIVE LIVING ARRANGEMENTS

A structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangements include, but are not limited to: transitional facilities for the homeless; Class A, B, C, D and E boarding homes as regulated by the State of New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

ASSISTED LIVING RESIDENCE

A facility that is licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

CERTIFIED HOUSEHOLD

A household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

COAH

The Council on Affordable Housing, as established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301, et seq.), or any successor agency charged with the administration of the Act.

COURT

The Superior Court of New Jersey, Law Division, Bergen County.

DCA

The State of New Jersey Department of Community Affairs.

DEFICIENT HOUSING UNIT

A housing unit with health and safety code violations that requires the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

DEVELOPER

Any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land included in a proposed development including the holder of an option to contract to purchase, or other person having an enforceable proprietary interest in such land.

DEVELOPMENT

The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1, et seq.

INCLUSIONARY DEVELOPMENT

A development containing both affordable units and market rate units. This term includes, but is not limited to: new construction, the conversion of a non-residential structure to residential use and the creation of new affordable units through the gut rehabilitation or reconstruction of a vacant residential structure.

LOW-INCOME HOUSEHOLD

A household with a total gross annual household income equal to 50% or less of the regional median household income by household size.

LOW INCOME UNIT

A restricted unit that is affordable to a low-income household.

MAJOR SYSTEM

The primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and load bearing structural systems.

MARKET-RATE UNITS

Housing not restricted to low- and moderate-income households that may sell or rent at any price.

MEDIAN INCOME

The median income by household size for the applicable housing region, as adopted annually by COAH or a successor entity approved by the Court.

MODERATE-INCOME HOUSEHOLD

A household with a total gross annual household income in excess of 50% but less than 80% of the regional median household income by household size.

MODERATE-INCOME UNIT

A restricted unit that is affordable to a moderate-income household.

MULTIFAMILY UNIT

A structure containing five or more dwelling units.

NON-EXEMPT SALE

Any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary and the transfer of ownership by court order.

RANDOM SELECTION PROCESS

A process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

REGIONAL ASSET LIMIT

The maximum housing value in each housing region affordable to a four-person household with an income at 80% of the regional median as defined by duly adopted Regional Income Limits published annually by COAH or a successor entity.

REHABILITATION

The repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

RENT

The gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

RESTRICTED UNIT

A dwelling unit, whether a rental unit or an ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as amended and supplemented, but does not include a market-rate unit financed under UHORP or MONI.

UHAC

The Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26, et seq.

VERY-LOW INCOME HOUSEHOLD

A household with a total gross annual household income equal to 30% or less of the regional median household income by household size.

VERY-LOW INCOME UNIT

A restricted unit that is affordable to a very-low income household.

WEATHERIZATION

Building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for purposes of a rehabilitation program.

§2B-4 Applicability.

A. The provisions of this Ordinance shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Borough of Montvale pursuant to the Borough's most recently adopted Housing Element and Fair Share Plan.

B. Moreover, this Ordinance shall apply to all developments that contain low and moderate income housing units, including any currently anticipated future developments that will provide low- and moderate-income housing units.

§2B-5 Rehabilitation Program.

A. Montvale's rehabilitation program shall be designed to renovate deficient housing units occupied by low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28.

B. Both owner-occupied and renter-occupied units shall be eligible for rehabilitation funds.

C. All rehabilitated units shall remain affordable to low- and moderate-income households for a period of 10 years (the control period). For owner occupied units the control period will be enforced with a lien and for renter occupied units the control period will be enforced with a deed restriction.

D. The Borough of Montvale shall dedicate a maximum of $20,000 for each unit to be rehabilitated through this program.

E. The Borough of Montvale shall adopt a resolution committing to fund any shortfall in the rehabilitation programs for the Borough.

F. The Borough of Montvale shall designate, subject to the approval of the Court, one or more Administrative Agents to administer the rehabilitation program in accordance with N.J.A.C. 5:96 and N.J.A.C. 5:97. The Administrative Agent(s) shall provide a rehabilitation manual for the owner-occupancy rehabilitation program and a rehabilitation manual for the rental-occupancy rehabilitation program to be adopted by resolution of the governing body and subject to approval of the Court. Both rehabilitation manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).

G. Units in a rehabilitation program shall be exempt from N.J.A.C. 5:97-9 and Uniform Housing Affordability Controls (UHAC), but shall be administered in accordance with the following:

1. If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low- or moderate-income household at an affordable rent and affirmatively marketed pursuant to N.J.A.C. 5:97-9 and UHAC.

2. If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rate of rent shall be the lesser of the current rent or the maximum permitted rent pursuant to N.J.A.C. 5:97-9 and UHAC.

3. Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:97-9.

4. Applicant and/or tenant households shall be certified as income-eligible in accordance with N.J.A.C. 5:97-9 and UHAC, except that households in owner occupied units shall be exempt from the regional asset limit.

§2B-6 Alternative living arrangements.

A. The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:93-5.8 and UHAC, with the following exceptions:

1. Affirmative marketing (N.J.A.C. 5:80-26.15), provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by COAH or the Court.

2. Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).

B. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least 30 year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by COAH or the Court.

1. The service provider for the alternative living arrangement shall act as the Administrative Agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

§2B-7 Inclusionary zoning.

To implement the fair share plan in a manner consistent with the terms of the Settlement Agreement executed on November 14, 2017, ensure the efficient use of land through compact forms of development and to create realistic opportunities for the construction of affordable housing, inclusionary zoning shall be permitted on the following properties consistent with the provisions of the Borough of Montvale's Housing Plan Element and Fair Share Plan, and the terms of the settlement agreement:

A. For-Sale Developments. Inclusionary zoning in Planning Area 1 permits residential development at a presumptive minimum gross density of eight units per acre and a presumptive maximum affordable housing set-aside of 25 percent of the total number of units in the development. The Borough's affordable housing zones, including those adopted as a result of settlement agreements with prospective developers, are set forth in Chapter 128, "Zoning."

B. Rental Developments. Inclusionary zoning permits a presumptive minimum density of 12 units per acre and a presumptive maximum affordable housing set-aside of 20 percent of the total number of units in the development and the zoning provides for at least 10 percent of the affordable units to be affordable to households earning 30 percent or less of the area median income for the COAH region. The Borough's affordable housing zones, including those adopted as a

result of settlement agreements with prospective developers, are set forth in Chapter 128, "Zoning."

§2B-8 Phasing schedule for inclusionary zoning.

In inclusionary developments the following schedule shall be followed:

Maximum Percentage of Market-Rate Units Completed	Minimum Percentage of Low- and Moderate-Income Units Completed
25	0
25+1	10
50	50
75	75
90	100

§2B-9 Fractional units.

Inclusionary developments that result in an affordable housing obligation that is fractional shall round up and provide the additional affordable unit.

§2B-10 New construction.

A. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:

1. The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit. At least 13% of all restricted rental units shall be very-low income units (affordable to a household earning 30% or less of median income). The very-low income units shall be counted as part of the required number of low income units within the development.

2. At least 25% of the obligation shall be met through rental units, including at least half in rental units available to families.

3. A maximum of 25% of the Borough's obligation may be met with age restricted units. At least half of all affordable units in the Borough's Plan shall be non-restricted.

4. In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be low income units.

5. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:

   a. The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total low- and moderate-income units;

b. At least 30% of all low- and moderate-income units shall be two-bedroom units;

c. At least 20% of all low- and moderate-income units shall be three-bedroom units; and

d. The remaining units may be allocated among two- and three-bedroom units at the discretion of the developer.

6. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. This standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit. The Borough shall not be permitted to claim credit to satisfy its obligations under the Settlement Agreement for age-restricted units that exceed 25% of all units developed.

B. Accessibility Requirements

1. The first floor of all restricted townhouse dwelling units and all restricted units in all other multi-story buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

2. All restricted townhouse dwelling units and all restricted units in other multi-story buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:

a. An adaptable toilet and bathing facility on the first floor; and

b. An adaptable kitchen on the first floor; and

c. An interior accessible route of travel on the first floor; and

d. An adaptable room that can be used as a bedroom, with a door or casing for the installation of a door, on the first floor; and

e. If not all of the foregoing requirements in (2)(a) through (2)(d) can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit, but if all of the terms of paragraphs (2)(a) through (2)(d) above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and

f. An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a, et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that Montvale has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:

i. Where a unit has been constructed with an adaptable entrance, upon the request of a person with disabilities who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.

ii. To this end, the builder of restricted units shall deposit funds within the Borough of Montvale's Affordable Housing Trust Fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.

iii. The funds deposited under paragraph (f)(2) above shall be used by the Borough of Montvale for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.

iv. The developer of the restricted units shall submit a design plan and cost estimate to the Construction Official of the Borough of Montvale for the conversion of adaptable to accessible entrances.

v. Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough's Affordable Housing Trust Fund in care of the Borough Chief Financial Officer who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.

vi. Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site impracticable" to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7.

C. Design.

1. In inclusionary developments, to the extent possible, low- and moderate-income units shall be integrated with the market units.

2. In inclusionary developments, low- and moderate-income units shall have access to all of the same common elements and facilities as the market units.

D. Maximum Rents and Sales Prices.

1. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the regional income limits established by COAH or a successor entity.

2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of median income, and the average rent for restricted rental units shall be affordable to households earning no more than 52% of median income.

3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 13% of all low- and moderate-income rental units shall be affordable to very-low income households, earning 30% or less of the regional median household income, with such very-low income units counted the low-income housing requirement.

4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of median income, and each affordable development must achieve an affordability average of 55% for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different sales prices for each bedroom type, and low-income ownership units must be available for at least two different sales prices for each bedroom type.

5. In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted units other than assisted living facilities and age-restricted developments, the following standards shall be used:

    a. A studio shall be affordable to a one-person household;

    b. A one-bedroom unit shall be affordable to a one and one-half person household;

    c. A two-bedroom unit shall be affordable to a three-person household;

    d. A three-bedroom unit shall be affordable to a four and one-half person household; and

    e. A four-bedroom unit shall be affordable to a six-person household.

6. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:

a. A studio shall be affordable to a one-person household;

b. A one-bedroom unit shall be affordable to a one and one-half person household; and

c. A two-bedroom unit shall be affordable to a two-person household or two one-person households.

7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as it may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as it may be amended and supplemented.

8. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate size household, including an allowance for tenant paid utilities, as determined under N.J.A.C. 5:80-26.4, as it may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as it may be amended and supplemented.

9. The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the Administrative Agent be lower than the last recorded purchase price.

10. The rent of low- and moderate-income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low income housing tax credit regulations shall be indexed pursuant to the regulations governing low income housing tax credits.

§2B-11 Utilities.

A. Affordable units shall utilize the same type of heating source as market units within an inclusionary development.

B. Tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by HUD for its Section 8 program.

§2B-12 Occupancy standards.

In referring certified households to specific restricted units, the Administrative Agent shall, to the extent feasible and without causing an undue delay in the occupancy of a unit, strive to:

A. Provide an occupant for each bedroom;

B. Provide children of different sexes with separate bedrooms;

C. Provide separate bedrooms for parents and children; and

D. Prevent more than two persons from occupying a single bedroom.

§2B-13 Control periods for restricted ownership units and enforcement measures.

A. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80- 26.5, as it may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Ordinance for a period of at least 30 years, until Montvale takes action to release the unit from such requirements; prior to such action, a restricted ownership unit shall remain subject to the requirements of N.J.A.C. 5:80-26.1, as it may be amended and supplemented.

B. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.

C. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.

D. At the time of the initial sale of the unit, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.

E. The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.

F. A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all Code standards upon the first transfer of title following the removal

of the restrictions provided under N.J.A.C. 5:80-26.5(a), as it may be amended and supplemented.

§2B-14 Price restrictions for restricted ownership units, homeowner association fees and resale prices.

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80- 26.1, as it may be amended and supplemented, including:

A. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.

B. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.

C. The master deeds of inclusionary developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers.

D. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom. See **§2B-17**.

§2B-15 Buyer income eligibility.

A. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as it may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50% of median income, and moderate-income ownership units shall be reserved for households with a gross household income less than 80% of median income.

B. Notwithstanding the foregoing, however, the Administrative Agent may, upon approval by the Borough Council, and subject to the Court's approval, permit moderate-income purchasers to buy low income units in housing markets if the Administrative Agent determines that there is an insufficient number of eligible low-income purchasers to permit prompt occupancy of the units. All such low-income units to be sold to moderate income households shall retain the required pricing and pricing restrictions for low income units.

C. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit.

D. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low income household or a moderate

income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33% of the household's eligible monthly income.

§2B-16 Limitations on indebtedness secured by ownership unit; subordination.

A. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent for a determination in writing that the proposed indebtedness complies with the provisions of this Section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.

B. With the exception of First Purchase Money Mortgages, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of the unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C.5:80-26.6(b).

§2B-17 Capital improvements to ownership units.

A. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that adds an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.

B. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price, which shall be subject to 10-year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

§2B-18 Control periods for restricted units.

A. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80- 26.11, as it may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance for a period of at least 30 years, until Montvale takes action to release the unit from such requirements. Prior to such action, a restricted rental unit shall remain subject to the requirements of N.J.A.C. 5:80-26.1, as it may be amended and supplemented.

B. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Bergen. The deed shall also identify each affordable unit by apartment number and/or address and whether that unit is designated as a very-low, low- or moderate-income unit. Neither the unit nor its affordability designation shall change throughout the term of the deed restriction. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.

C. A restricted rental unit shall remain subject to the affordability controls of this Ordinance despite the occurrence of any of the following events:

1. Sublease or assignment of the lease of the unit;

2. Sale of other voluntary transfer of the ownership of the unit; or

3. The entry and enforcement of any judgement of foreclosure on the property containing the unit.

§2B-19 Rent restrictions for rental units; leases.

A. A written lease shall be required for all restricted rental units and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.

B. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.

C. Application fees (including the charge for any credit check) shall not exceed five percent of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

§2B-20 Tenant income eligibility.

A. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as it may be amended and supplemented, and shall be determined as follows:

1. Very-low income rental units shall be reserved for households with a gross household income less than or equal to 30% of median income.

2. Low income rental units shall be reserved for households with a gross household income less than or equal to 50% of median income.

3. Moderate income rental units shall be reserved for households with a gross household income less than 80% of median income.

B. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very-low income household, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as it may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

1. The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;

2. The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;

3. The household is currently in substandard or overcrowded living conditions;

4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or

5. The household documents reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.

C. The applicant shall file documentation sufficient to establish the existence of the circumstances in A(1) through B(5) above with the Administrative Agent, who shall counsel the household on budgeting.

Article II
Municipal Housing Liaison

§2B-21 Municipal Housing Liaison.

A. The Borough of Montvale shall appoint a specific municipal employee to serve as a Municipal Housing Liaison responsible for administering the affordable housing program, including affordability controls, the Affirmative Marketing Plan, monitoring and reporting, and, where applicable, supervising any contracted Administrative Agent. The Municipal Housing Liaison shall be appointed by the governing body and may be a full- or part-time municipal employee.

B. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for Montvale, including the following responsibilities which may not be contracted out to the Administrative Agent:

1. Serving as Montvale's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;

2. Monitoring the status of all restricted units in Montvale's Fair Share Plan;

3. Compiling, verifying and submitting annual monitoring reports as may be required by the Court;

4. Coordinating meetings with affordable housing providers and Administrative Agents, as needed; and

5. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing at least annually and more often as needed.

C. Subject to the approval of the Court, the Borough of Montvale shall designate one or more Administrative Agent(s) to administer newly constructed affordable units in accordance with UHAC. An Operating Manual for each affordable housing program shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of the Court. The Operating Manual(s) shall be available for public inspection in the office of the Borough Clerk, in the office of the Municipal Housing Liaison, and in the office(s) of the Administrative Agent(s). The Municipal Housing Liaison shall supervise the contracting Administrative Agent(s).

D. Compensation. Compensation shall be fixed by the governing body at the time of the appointment of the Municipal Housing Liaison.

Article III
Administrative Agent

§2B-22 Administrative Agent.

The Administrative Agent shall be an independent entity serving under contract to and reporting to the Borough. For new sale and rental developments, all of the fees of the Administrative Agent shall be paid by the owners of the affordable units for which the services of the Administrative Agent are required. For resales, single family homeowners and condominium homeowners shall be required to pay three percent of the sales price for services provided by the Administrative Agent related to the resale of their homes. That fee shall be collected at closing and paid directly to the Administrative Agent. The Administrative Agent shall perform the duties and responsibilities of an Administrative Agent as set forth in UHAC, including those set forth in Sections 5:80-26.14, .16 and .18 thereof, which include:

A. Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Borough of Montvale and the provisions of N.J.A.C. 5:80-26.15; and

B. Providing counseling or contracting to provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

C. Household Certification:

1. Soliciting, scheduling, conducting and following up on interviews with interested households;

2. Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;

3. Providing written notification to each applicant as to the determination of eligibility or non-eligibility;

4. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:80-26.1 et seq.;

5. Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located; and

6. Employing a random selection process as provided in the Affirmative Marketing Plan of the Borough of Montvale when referring households for certification to affordable units.

D. Affordability Controls:

1. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;

2. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;

3. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Bergen County Register of Deeds or County Clerk's office after the termination of the affordability controls for each restricted unit;

4. Communicating with lenders regarding foreclosures; and

5. Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.

E. Sales and Re-rentals:

1. Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or re-rental; and

2. Instituting and maintaining an effective means of communicating information to low- and moderate-income households regarding the availability of restricted units for resale or re-rental.

F. Processing Requests from Unit Owners:

1. Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this Chapter;

2. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems;

3. Notifying the Borough of an owner's intent to sell a restricted unit; and

4. Making determinations on requests by owners of restricted units for hardship waivers.

G. Enforcement:

1. Securing annually from the Borough a list of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;

2. Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;

3. The posting annually in all rental properties, including two-family homes, of a notice as to the maximum permitted rent together with the telephone number of the Administrative Agent where complaints of excess rent or other charges can be made;

4. Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;

5. Establishing a program for diverting unlawful rent payments to the Borough's Affordable Housing Trust Fund; and

6. Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent, to be approved by the Borough Council and the Court, setting forth procedures for administering the affordability controls.

H. Additional Responsibilities:

1. The Administrative Agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.

2. The Administrative Agent shall prepare monitoring reports for submission to the Municipal Housing Liaison in time to meet any monitoring requirements and deadlines imposed by the Court.

3. The Administrative Agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

Article IV
Affirmative Marketing Requirements

§2B-23 Affirmative Marketing Requirements.

A. The Borough of Montvale shall adopt by resolution an Affirmative Marketing Plan, subject to the approval of the Court that is compliant with N.J.A.C. 5:80-25.15, as it may be amended and supplemented.

B. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. In addition, as a result of the Settlement Agreement with FSHC, the Affirmative Marketing Plan shall require the notification of the FSHC, New Jersey State Conference of the NAACP, the Latino Action Network, Bergen County NAACP, Bergen Urban League and the Bergen County Housing Coalition of affordable housing opportunities. It is a continuing program that directs marketing activities toward Housing Region 1 and is required to be followed throughout the period of restriction.

C. The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 1, comprised of Bergen, Hudson, Passaic and Sussex Counties.

D. The Borough has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Program, including initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the Borough of Montvale shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units.

E. In implementing the Affirmative Marketing Plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

F. The Affirmative Marketing Plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Plan, the Administrative Agent shall consider the use of language translations where appropriate.

G. The affirmative marketing process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.

H. Applications for affordable housing shall be available in several locations, including, at a minimum, the Bergen County Administration Building, the Passaic County Administration Building, Hudson County Administration Building, County of Sussex (Newton), Montvale Free Public Library, Sussex County Main Library, Hudson County Library, Johnson Free Public Library (Hackensack), the Danforth Memorial Library (Paterson), the Montvale Municipal Building and the developer's rental office. Pre-applications may be emailed to prospective applicants upon request. Otherwise, hard copies are available from the Borough's Municipal Housing Liaison.

I. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.

Article V
Enforcement

§2B-24 Enforcement of Affordable Housing Regulations.

A. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant, the Borough shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, a requirement for household recertification, acceleration of all sums due under a mortgage, recuperation of any funds from a sale in violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.

B. After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the Borough may take the following action(s) against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:

1. The Borough may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation or violations of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is adjudged by the Court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the Court:

   a. A fine of not more than $500.00 per day or imprisonment for a period not to exceed 90 days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense. In the case of an Owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough of Montvale Affordable Housing Trust Fund of the gross amount of rent illegally collected;

b. In the case of an Owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.

2. The Borough may file a court action in the Superior Court seeking a judgment that would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any such judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- or moderate-income unit:

a. The judgment shall be enforceable, at the option of the Borough, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the Borough, including attorney's fees. The violating Owner shall have his right to possession terminated as well as his title conveyed pursuant to the Sheriff's sale.

b. The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the Borough for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the Borough in full as aforesaid, the violating Owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the Borough in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the Borough for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the Borough for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the Borough. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the Borough, whether such balance shall be paid to the Owner or forfeited to the Borough.

c. Foreclosure by the Borough due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.

d. If there are no bidders at the Sheriff's sale, or if insufficient amounts are bed to satisfy the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage an any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low and moderate income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.

e. Failure of the low and moderate income unit to be either sold at the Sheriff's sale or acquired by the Borough shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the Borough, with such offer to purchase being equal to the maximum resale price of the low and moderate income unit as permitted by the regulations governing affordable housing units.

f. The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

§2B-25 Appeals.

Appeals from all decisions of an Administrative Agent appointed pursuant to this Chapter shall be filed in writing with the Executive Director of COAH or with the Superior Court, Bergen County Vicinage.

Section 2. Repeal of Inconsistent Ordinances.

All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Section 3. Savings Clause.

Nothing in this Ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed pursuant to this Ordinance, nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

Section 4. Severability.

The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

Section 5. Effective Date.

This ordinance shall become effective upon adoption and publication as required by law and upon approval of same by the Superior Court after a duly-noticed Compliance Hearing.

ATTEST:

MAUREEN IAROSSI-ALWAN, RMC
Municipal Clerk

MICHAEL GHASSALI, Mayor

INTRODUCED: 5/08/18

Councilmember	Yes	No
Arendacs		✓
Curry – Absent		
Gloeggler	✓	
Koelling	✓	
Lane	✓	
Weaver		✓

ADOPTED: 5/29/18

Councilmember	Yes	No
Arendacs	✓	✓
Curry	✓	
Gloeggler	✓	
Koelling	✓	
Lane	✓	
Weaver		✓

BOROUGH OF MONTVALE
BERGEN COUNTY, NEW JERSEY
ORDINANCE NO. 2018-1451

NOTICE IS HEREBY GIVEN that the following Ordinance was introduced and passed on the first reading at the regular meeting of the Mayor and Council on the 8th day of May 2018, and that said Ordinance will be taken up for further consideration for final passage at a regular meeting of the Mayor and Council to be held on the 29th day of May 2018 at 7:30 pm, or as soon thereafter as said matter can be reached, at which time and place all persons who may be interested therein will be given an opportunity to be heard concerning same.

Maureen Iarossi Alwan, Municipal Clerk
Borough of Montvale

AN ORDINANCE AMENDING CHAPTER 57 THE LAND USE PROCEDURES ORDINANCE ARTICLE VII DEVELOPMENT FEES OF THE BOROUGH OF MONTVALE TO PROVIDE FOR THE COLLECTION OF DEVELOPMENT FEES IN SUPPORT OF AFFORDABLE HOUSING AS PERMITTED BY THE NEW JERSEY FAIR HOUSING ACT

WHEREAS, in Holmdel Builder's Association v. Holmdel Borough, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27d-301, et seq., and the State Constitution, subject to the adoption of Rules by the Council on Affordable Housing (COAH); and

WHEREAS, pursuant to P.L. 2008, c. 46, Section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH was authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans, and municipalities that were under the jurisdiction of COAH and that are now before a court of competent jurisdiction and have a Court-approved Spending Plan may retain fees collected from non-residential and residential development; and

WHEREAS, the Borough of Montvale has prepared a Spending Plan to submit to Hon. Menelaos W. Toskos, J.S.C. in connection with its pending declaratory judgment action concerning the Borough's affordable housing obligations, which incorporates the residential and non-residential development fees set forth in this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Montvale, County of Bergen, State of New Jersey, as follows:

Section 1. Chapter 57 of the Borough Code, entitled "Land Use Procedures," Article VII, entitled "Development Fees," is hereby deleted in its entirety and replaced to read as follows:

Article VII
Development Fees

§57-50 Purpose.
§57-51 Court approval required.
§57-52 Definitions.
§57-53 Residential Development Fees.
§57-54 Non-Residential Development Fees.
§57-55 Collection procedures.
§57-56 Affordable Housing Trust Fund.
§57-58 Monitoring.
§57-59 On-going collection of fees.

§57-50 Purpose.

This Article establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with COAH's regulations developed in response to P.L. 2008, c. 46, Sections 8 and 32-38 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7). Fees collected pursuant to this Article shall be used for the purpose of providing very-low, low- and moderate-income housing in accordance with a Court-approved Spending Plan.

§57-51 Court approval required.

A. This Article shall not be effective unless and until approved by the Superior Court in connection with the Borough of Montvale's declaratory judgment action concerning its Third Round affordable housing obligations, Docket No. BER-L-6141-15.

B. The Borough of Montvale shall not spend development fees collected pursuant to this Article unless and until the Superior Court has approved a Spending Plan for such fees.

§57-52 Definitions.

The following terms, as used in this Article, shall have the following meanings:

AFFORDABLE HOUSING DEVELOPMENT
A development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipally-sponsored construction project or a 100% affordable housing development.

COAH OR THE COUNCIL
The New Jersey Council on Affordable Housing established under the Fair Housing Act, or any successor agency.

DEVELOPMENT FEE
Money paid by a developer for the improvement of property as authorized by Holmdel Builder's Association v. Holmdel Borough, 121 N.J. 550 (1990) and the Fair Housing Act of 1985, N.J.S.A. 52:27d-301, et seq., and regulated by applicable COAH Rules.

DEVELOPER
The legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

EQUALIZED ASSESSED VALUE
The assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with Sections 1, 5, and 6 of P.L. 1973, c.123 (C.54:1-35a through C.54:1-35c).

GREEN BUILDING STRATEGIES
Strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

§57-53 Residential Development Fees.

A. Imposition of Fees.

1. Within the Borough of Montvale, all residential developers, except for developers of the types of developments specifically exempted below and developers of developments that include affordable housing, shall pay a fee of 1.5% of the equalized assessed value for all new residential development provided no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.

2. When an increase in residential density is permitted pursuant to a "d" variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a "bonus" development fee of 6% of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

B. Eligible Exactions, Ineligible Exactions and Exemptions for Residential Developments.

1. Affordable housing developments and/or developments where the developer has made a payment in lieu of on-site construction of affordable units, if permitted by Ordinance or by Agreement with the Borough of Montvale, shall be exempt from the payment of development fees.

2. Developments that have received preliminary or final site plan approval prior to the adoption of this Ordinance shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where site plan approval is not applicable, the issuance of a Zoning Permit and/or Construction Permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the Development Fee Ordinance in effect on the date that the Construction Permit is issued.

3. Owner-occupied residential structures demolished and replaced as a result of a fire, flood, or natural disaster shall be exempt from paying a development fee.

4. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirements. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

§57-54 Non-Residential Development Fees.

A. Imposition of Fees.

1. Within all zoning districts, non-residential developers, except for developers of the types of developments specifically exempted below, shall pay a fee equal to 2.5% of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.

2. Within all zoning districts, non-residential developers, except for developers of the types of developments specifically exempted below, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.

3. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvements and the equalized assessed value of the newly improved structure, i.e. land and improvements, and such calculation shall be made at the time a final Certificate of Occupancy is issued. If the calculation required under this Section results in a negative number, the non-residential development fee shall be zero.

B. Eligible Exactions, Ineligible Exactions and Exemptions for Non-residential Development.

1. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to a 2.5% development fee, unless otherwise exempted below.

2. The 2.5% development fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within the existing footprint, reconstruction, renovations and repairs.

3. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption". Any exemption claimed by a developer shall be substantiated by that developer.

4. A developer of a non-residential development exempted from the non-residential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final Certificate of Occupancy for the non-residential development, whichever is later.

5. If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this Section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the Borough of Montvale as a lien against the real property of the owner.

§57-55 Collection procedures.

A. Upon the granting of a preliminary, final or other applicable approval for a development, the approving authority or entity shall notify or direct its staff to notify the Construction Official responsible for the issuance of a Construction Permit.

B. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/ Exemption" to be completed as per the instructions provided. The developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The Construction Official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.

C. The Construction Official responsible for the issuance of a Construction Permit shall notify the Borough Tax Assessor of the issuance of the first Construction Permit for a development which is subject to a development fee.

D. Within 90 days of receipt of such notification, the Borough Tax Assessor shall prepare an estimate of the equalized assessed value of the development based on the plans filed.

E. The Construction Official responsible for the issuance of a final Certificate of Occupancy shall notify the Borough Tax Assessor of any and all requests for the scheduling of a final inspection on a property which is subject to a development fee.

F. Within 10 business days of a request for the scheduling of a final inspection, the Borough Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.

G. Should the Borough of Montvale fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b. of Section 37 of P.L. 2008, c.46 (C.40:55D-8.6).

H. Except as provided in §57-54A(3) hereinabove, 50% of the initially calculated development fee shall be collected at the time of issuance of the Construction Permit. The remaining portion shall be collected at the time of issuance of the Certificate of Occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the Construction Permit and that determined at the time of issuance of the Certificate of Occupancy.

I. Appeal of Development Fees.

1. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest-bearing escrow account by the Borough of Montvale. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1, et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

2. A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the Borough of Montvale. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1, et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

§57-56 Affordable Housing Trust Fund.

A. There is hereby created a separate, interest-bearing Affordable Housing Trust Fund to be maintained by the Chief Financial Officer of the Borough of Montvale for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.

B. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:

1. Payments in lieu of on-site construction of a fraction of an affordable unit, where permitted by Ordinance or by Agreement with the Borough of Montvale;

2. Funds contributed by developers to make 10% of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;

3. Rental income from municipally operated units;

4. Repayments from affordable housing program loans;

5. Recapture funds;

6. Proceeds from the sale of affordable units; and

7. Any other funds collected in connection with Montvale's affordable housing program.

C. In the event of a failure by the Borough of Montvale to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the judgment of compliance or a revocation of the judgment of compliance; or a failure to implement the approved Spending Plan and to expend funds within the applicable required time period as set forth in In re Tp. of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563); or the expenditure of funds on activities not approved by the Court; or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services (LGS), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the Borough of Montvale, or, if not practicable, then within the County.

Any party may bring a motion before the Superior Court presenting evidence of such condition(s), and the Court may, after considering the evidence and providing the municipality a reasonable opportunity to respond and/or to remedy the non-compliant condition(s), and upon a finding of continuing and deliberate non-compliance, determine to authorize LGS to direct the expenditure of funds in the Trust Fund. The Court may also impose such other remedies as may be reasonable and appropriate to the circumstances.

D. Interest accrued in the Affordable Housing Trust Fund shall only be used to fund eligible affordable housing activities approved by the Court.

§57-57 Use of Funds.

A. The expenditure of all funds shall conform to a Spending Plan approved by the Superior Court. Funds deposited in the Affordable Housing Trust Fund may be used for any activity approved by the Court to address the Borough of Montvale's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market to affordable program; Regional Housing Partnership programs; conversion of existing non-residential buildings to create new affordable units; green building strategies designed to be cost saving and in accordance with accepted national or State standards; purchase of land for affordable housing; improvement of land to be used for affordable housing; extensions or improvements of roads and infrastructure to affordable housing sites; financial assistance designed to increase affordability; administration necessary for implementation of the Housing Element and Fair Share Plan; and/or any other activity permitted by the Court and specified in the approved Spending Plan.

B. Funds shall not be expended to reimburse the Borough of Montvale for past housing activities.

C. At least 30% of all development fees collected and interest earned on such fees shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30% or less of the median income for Housing Region 1, in which Montvale is located.

1. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners' association or condominium fees and special assessments, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.

2. Affordability assistance to households earning 30% or less of median income may include buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30% or less of median income. The specific programs to be used for very-low income affordability assistance shall be identified and described within the Spending Plan.

3. Payments in lieu of constructing affordable housing units on site, if permitted by Ordinance or by Agreement with the Borough of Montvale, and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.

D. The Borough of Montvale may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including its programs for affordability assistance.

E. No more than 20% of all revenues collected from development fees may be expended on administration, including but not limited to salaries and benefits for municipal employees or consultants' fees necessary to develop or implement a new construction program, prepare a Housing Element and Fair Share Plan, and/or administer an affirmative marketing program or a rehabilitation program.

1. In the case of a rehabilitation program, the administrative costs of the rehabilitation program shall be included as part of the 20% of collected development fees that may be expended on administration.

2. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or actions are not eligible uses of the Affordable Housing Trust Fund.

§57-58 Monitoring.

The Borough of Montvale shall provide annual reporting of Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs, COAH and Local Government Services or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, COAH or Local Government Services.

§57-59 Ongoing collection of fees.

A. The ability of the Borough of Montvale to impose, collect and expend development fees shall be permitted through the expiration of the repose period covered by its Judgment of Compliance and shall continue thereafter so long as the Borough of Montvale has filed an adopted Housing Element and Fair Share Plan with the Court or with a designated State administrative agency, has petitioned for a Judgment of Compliance from the Court or for Substantive Certification or its equivalent from a State administrative agency authorized to approve and administer municipal affordable housing compliance and has received approval of its Development Fee Ordinance from the entity that will be reviewing and approving the Housing Element and Fair Share Plan.

B. If the Borough of Montvale is not pursuing authorization to impose and collect development fees after the expiration of its Judgment of Compliance, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to Section 20 of P.L. 1985, c. 222 (C. 52:27D-320).

C. After the expiration of the Judge of Compliance, if the Borough does not pursue or obtain continued authorization, the Borough of Montvale shall not impose a residential development fee on a development that receives preliminary or final site plan approval, retroactively impose a development fee on such a development, or expend any of its collected development fees.

Section 2. Repeal of Inconsistent Ordinances.
All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Section 3. Savings Clause.
Nothing in this Ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed pursuant to this Ordinance, nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

Section 4. Severability.
The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

Section 5. Effective Date.
This ordinance shall become effective upon adoption and publication as required by law and upon approval of same by the Superior Court after a duly-noticed Compliance Hearing.

MICHAEL GHASSALI, MAYOR

ATTEST:
MAUREEN IAROSSI-ALWAN, RMC
Municipal Clerk

INTRODUCED: 5/08/18

Councilmember	Yes	No
Arendacs	✓	
Curry – Absent		
Gloeggler	✓	
Koelling	✓	
Lane	✓	
Weaver	✓	

ADOPTED: 5/29/18

Councilmember	Yes	No
Arendacs	✓	
Curry	✓	
Gloeggler	✓	
Koelling	✓	
Lane	✓	
Weaver		✓

BOROUGH OF MONTVALE
BERGEN COUNTY, NEW JERSEY
RESOLUTION NO. 75-2018

RE: A Resolution Appointing Lorraine Hutter as the Municipal Housing Liaison for the Borough of Montvale

WHEREAS, the Borough of Montvale has petitioned the Superior Court of New Jersey for a Declaratory Judgment that it has met its constitutional obligation to provide its fair share of the regional need for very low-, low-, and moderate-income housing; and

WHEREAS, the Court held a Fairness Hearing on January 25, 2018, concerning the Borough of Montvale's Settlement Agreements with Fair Share Housing Center and three developer-intervenors, and approved said agreements by Order dated February 12, 2018; and

WHEREAS, the Governing Body of the Borough of Montvale has determined to appoint and designate Lorraine Hutter as its Municipal Housing Liaison, to fulfill the duties set forth in Borough Code §2B-3, which creates the position of Municipal Housing Liaison;

NOW, THEREFORE, BE IT RESOLVED, by the Governing Body of the Borough of Montvale, that the Borough of Montvale hereby appoints Lorraine Hutter as its designated Municipal Housing Liaison.

Councilmember	Motion	Second	Yes	No	Absent	Abstain	No Vote
Arendacs			✓				
Curry	✓		✓				
Gloeggler			✓				
Koelling		✓	✓				
Lane			✓				
Weaver			✓				

Adopted: February 13, 2018

ATTEST:

Maureen Iarossi-Alwan
Municipal Clerk

APPROVED:

Michael Ghassali
Mayor

BOROUGH OF MONTVALE
BERGEN COUNTY, NEW JERSEY
RESOLUTION NO. 31-2018

RE: Award Professional Service Contract Administrative Agent for the Borough consistent with N.J.A.C. 5:80-26.14 and to coordinate the affirmative marketing, review and approval of the sale and rental of affordable units in the Borough of Montvale/Piazza & Associates, Inc.

WHEREAS, the Borough of Montvale requires the services of an experienced, qualified agency to serve as Administrative Agent for the Borough consistent with N.J.A.C. 5:80-26.14 and to coordinate the affirmative marketing, review and approval of the sale and rental of affordable units in the Borough of Montvale, and the income qualification of the applicants who seek to reside in such units; and

WHEREAS, such services have previously been provided to the Borough by the Bergen County Housing Authority, which has advised the Borough that it will no longer be providing such services in connection with affordable rental units in the Borough and future sale units; and

WHEREAS, the Borough is in receipt of a proposal from Piazza & Associates, Inc., 216 Rockingham Row, Princeton Forrestal Village, Princeton, New Jersey 08540 to perform such services as is more particularly detailed in a document entitled, "Proposal Submitted To The Borough of Montvale, Bergen County, New Jersey, which is hereto attached to the original of this resolution; and

WHEREAS, said services constitute a professional service under the Local Public Contracts Law; and

WHEREAS, the Chief Financial Officer of the Borough has certified that funding is available for such services.

NOW THEREFORE BE IT RESOLVED by the Mayor and Council of the Borough of Montvale that it does hereby approve the aforesaid proposal with Piazza & Associates, Inc. for a one (1) year period in accordance with the draft Contract, provided that Piazza & Associates, Inc. submits documentation consistent with N.J.S.A. 19:44A-8 and 16 that it has not made a reportable contribution to any candidate for local office in Montvale or any political committee in the Borough; and

BE IT FURTHER RESOLVED that Mayor Michael Ghassali and Borough Clerk/Administrator Maureen Iarossi-Alwan be and are hereby authorized to execute the Contract on behalf of the Borough.

Councilmember	Motion	Second	Yes	No	Absent	Abstain	No Vote
Arendacs					✓		
Curry		✓	✓				
Gloeggler			✓				
Koelling	✓		✓		✓		
Lane	✓		✓				
Weaver			✓				

Adopted: January 9, 2018

ATTEST:

Maureen Iarossi-Alwan
Municipal Clerk

APPROVED:

Michael Ghassali
Mayor

Piazza & Associates
Affordable Housing Services

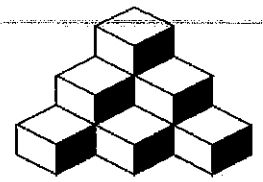
Proposal

submitted to

The Borough of Montvale

Bergen County, New Jersey

2018



BACKGROUND

The Borough of Montvale (the "Borough") is responsible for the compliance monitoring of residential units in that municipality, which were or are being developed to help the Borough satisfy its affordable housing obligation as defined by the New Jersey Fair Housing Act (NJFHA) and regulated by the Uniform Housing Affordability Controls N.J.A.C. 5:80-26.1 et seq. (UHAC), as well as applicable local ordinances (hereafter, collectively referred to as the "Regulations"). Among other things, the Regulations govern the affirmative marketing, accessibility, unit mix, rental rates, sales prices, income qualifications of the renters and buyers of the affordable units.

The Borough is seeking an experienced, qualified agency or entity to coordinate the affirmative marketing, review and approve the sale and rental of the affordable homes and the income qualifications of the applicants. By way of this document, Piazza & Associates, Inc. ("P&A"), an experienced firm that provides such affordable housing services, proposes to function as the Administrative Agent for the Borough (N.J.A.C. 5:80-26.14) with respect to those units not otherwise administered by the Housing Authority of Bergen County, to:

1. Implement the Affirmative Marketing Plan for the Borough in accordance with N.J.A.C. 5:80-26.15.

2. Prepare an Operating Manual for the Administration of Affordable Housing and Controls for submission to the Borough, in accordance with N.J.A.C. 5:80-26.1 et seq.

3. Establish a database of applicants for affordable housing.

4. Implement a randomization process of the prequalified applicants.

5. Certify all applicants of affordable housing according to the Regulations.

6. Establish and maintain affordability controls and enforcement powers, in compliance with the regulations set forth in N.J.A.C. 5:80-26.1 et seq.

7. Provide annual and monthly reports as may be required to a designated authority.

SCOPE OF SERVICES

Specifically, Piazza & Associates will provide the following services under this proposal.

A) Consulting Services

1. P&A will share its extensive expertise in the monitoring and compliance of affordable housing with the Borough so as to assist it in the planning and development of affordable units in the municipality.

2. P&A will consult with the Borough to assist in the development of policies and best practices in the administration of affordable units and the development of an operating manual that sets forth the procedures to implement those policies and practices.

B) Preliminary Application Services

1. P&A will assist the Borough with the development of an Affirmative Marketing Plan and implement that plan relative to specific projects that contain affordable housing units.

2. P&A will develop a complete set of application documents specifically designed to meet the requirements of the Regulations, including a Preliminary Application for Affordable Housing, a Final Application for Affordable Housing, Income Verification Forms and other such forms as may be required by the Regulations.

3. P&A will make applications available through the New Jersey Housing Resource Center (www.NJHousing.gov), for direct downloading on its own website (www.HousingQuest.com), at the municipal building and other such places as may be required. The application and other information can also be made available to be linked from the Borough web site if desired by the Borough.

4. P&A will mail Preliminary Applications upon request, and answer questions, via telephone and e-mail, as needed. A special e-mail address will be established that will be dedicated to the affordable housing services of the Borough.

5. P&A will collect all of the Preliminary Applications, and process such applications as necessary, keeping a complete record of the information, and responding to all applicants appropriate to their submission. Applications will be subject to random selection as may be required by the Regulations, but P&A will maintain the priority order of applicants (waiting list) once the applicants have been subject to a random selection process.

6. P&A will provide to the Borough, the Owners and Managers a list of available pre-qualified applicants by unit type as needed.

7. Upon notification that units are or will be available, P&A will send notices and final applications to a representative number of prequalified applicants, who will be asked to contact the Owner or its agent, and, at the same time, to submit the final application to Piazza & Associates.

8. P&A will complete a review of the final application and notify both the applicant and the Owner or its agent as to the status of that application, i.e., Approved, Not Approved or Incomplete.

C) Sales Units

1. P&A will determine the maximum re-sales prices for the Owner - Seller and certify to the Borough that said price is in compliance to the Regulations.

2. P&A will coordinate a process to notify potential purchasers of an available unit and determine the priority order of interested parties.

3. P&A will determine the eligibility of prospective buyers and certify the applicant with respect to their adherence to all income limitations as set forth in the Regulations, and notify the Owner accordingly with a written certification.

4. P&A will work with Township's legal counsel to provide the form of documentation and coordinate the execution and recording of the documentation (Certification, Deed, Mortgage and Note and other such documents that may be required by the Regulations) for the closing and transfer of title, necessary to maintain the affordable housing restrictions, as required by the Regulations.

5. P&A will maintain accurate records of the status of all certification and recertification work on an ongoing basis.

6. P&A will provide compliance reports to the Borough and regulatory agencies as necessary.

D) Rental Units

1. On an annual basis, P&A will inform the Landlord of the rental rates for the Affordable Units that are in compliance with the Regulations and viable relative to local market conditions.

2. P&A will certify to the Borough that the rental rates for the Affordable Units are in compliance to the Regulations.

3. P&A will provide a written certification form to the Manager for all approved applications, and ask the Manager to return the certification forms, signed by the applicant, together with a copy of the lease agreement.

4. P&A will communicate the status of the compliance plan to the Manager and the Borough on an ongoing basis, and be available to meet with representatives of both as reasonable and appropriate.

5. P&A will maintain accurate records of the status of all certification work on an on-going basis.

6. P&A will provide compliance reports to the Borough and regulatory agencies as necessary.

E) Proposal Requirements and UHAC Regulations

Notwithstanding anything herein to the contrary, P&A will provide all services required of an Administrative Agent pursuant to the Uniform Housing Affordability Controls (N.J.A.C 5:80-26.14(a)).

TERMS AND CONDITIONS

A. Contract Administration: All work performed by P&A under this proposal shall be accomplished in close consultation with and under the direction of the Borough or its designee. Although we envision that the bulk of the work described in the Scope of Services, herein, will be done from its main office, P&A will be available to meet with applicants in the Borough by appointment. Depending on the demand, P&A will schedule regular local hours.

B. Professionalism: At all times, P&A will endeavor to maintain a sense of professionalism with respect to the services performed on behalf of the Borough.

C. Implementation of Services: P&A will begin the implementation of its services immediately upon the approval of the Borough and receipt of a signed engagement letter or contract with the Borough.

D. Confidentiality: All data provided by the Borough, the Owner and its applicants will be considered strictly confidential and shall be used solely for the purposes delineated in this proposal. Likewise, the materials developed by P&A on behalf of the Owner and/or the Borough shall be considered proprietary and may only be used by the Owner and/or Borough for its own affordable housing endeavors in the future.

E. Insurance: P&A, Inc. will provide for itself and at its own expense Professional Liability Errors and Omission Insurance coverage with a limit of liability of one million dollars ($1,000,000).

F. Files and Documentation: P&A will look to the Borough or Owner (as applicable) to provide files, documents and notices necessary for it to implement its compliance services.

G. Certain Services Not Provided Herein: Under this proposal, P&A shall not be responsible for:

1. The obligation of the Borough to meet its affordable housing obligation aside from the certifications as provided in the Scope of Services herein for the units administered by P&A;

2. Any additional requirements set forth by COAH, its successor, the Courts or any other regulatory agency or entity that represent a material change in the services necessary to comply with the Regulations; and

3. All legal and real estate related services associated with the rental or sale and transfer of an affordable property, including, but not limited to compliance to Federal and State Fair Housing laws.

H. No Financial Interest: P&A certifies and warranties that it has no financial interest in the units in the Borough that are restricted under the Regulations.

TERM

The term of this Agreement shall be one (1) year, commencing January 1, 2018. The Agreement is renewable for successive terms and can be terminated at the discretion of the Borough with 60 days written notice without cause.

COMPENSATION

In return for its compliance efforts (as detailed in the Scope of Services above), P&A will be compensated as follows:

- CONSULTING, LIST MAINTENANCE, AND RESPONDING TO INQUIRIES: $300 per month to be paid by the Borough;
- EXISTING UNITS / RE-SALES: $700 per resale certification fee to be paid by the seller upon transfer of title;
- EXISTING UNITS / RE-RENTALS: $450 per re-occupancy certification fee to be paid by the landlord upon occupancy;
- FUTURE NEW SALE UNITS: $400 per unit setup and marketing fee*, plus $800 per unit certification fee that are paid by the developer at a predetermined timetable;
- FUTURE NEW RENTAL UNITS: $400 per unit setup & marketing fee*, plus $450 per unit certification fee that are paid by the developer at a predetermined timetable;
- REFINANCING: $200 to be paid by the unit owner; and
- LIEN SATISFACTIONS: No charge.
- OTHER PROGRAMS: The cost to provide compliance services for programs, such as Accessory Apartments, Market to Affordable, etc., are contingent upon the number of units and the scope of services required for each.
- ADDITIONAL SERVICES: In the event that the Borough and/or Owner requests services in addition to the Scope of Services above, a mutually agreed upon rate for such services shall be determined prior to implementation.
- In addition to its fee, P&A shall be reimbursed by the Landlord, Owner or Borough as appropriate, for postage to residents and applicants. However, all management and compliance reports outlined above, all forms, web and e-mail services, telephone calls, travel expenses and meeting time, to a reasonable extent, shall be included in the basic fee above.

* There is a $3,500 minimum per project / developer fee that applies if the new unit or units require the implementation of an exclusive advertising and affirmative marketing process pursuant to the Regulations. There is no minimum fee for new units created as part of a series of units that are already marketed.

SUBMITTED

BY: Piazza & Associates, Inc., a New Jersey Corporation.

BY: _____ Date: December 18, 2017

Frank Piazza, Jr.
Its President

ACCEPTANCE

Accepted on behalf of the Borough of Montvale

BY: _____ Date: 1/18/2018

Administrative Clerk
Borough of Montvale

STATE OF NEW JERSEY
BUSINESS REGISTRATION CERTIFICATE

Taxpayer Name:	PIAZZA & ASSOCIATES, INC.
Trade Name:	
Address:	216 ROCKINGHAM ROW PRINCETON, NJ 08540-5758
Certificate Number:	0632930
Effective Date:	September 28, 1994
Date of Issuance:	December 04, 2017

For Office Use Only:

20171204103559215

Certification 32379

CERTIFICATE OF EMPLOYEE INFORMATION REPORT

RENEWAL

This is to certify that the contractor listed below has submitted an Employee Information Report pursuant to N.J.A.C. 17:27-1.1 et. seq. and the State Treasurer has approved said report. This approval will remain in effect for the period of 15-MAY-2016 to 15-MAY-2023

PIAZZA & ASSOCIATES, INC.
216 ROCKINGHAM ROW
PRINCETON NJ 08540

FORD M. SCUDDER
Acting State Treasurer

OPERATING MANUAL FOR THE

BOROUGH OF MONTVALE

RENTAL PROGRAM

PREPARED BY

PIAZZA & ASSOCIATES, INC.

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D. Applicant Questionnaire and Document Checklist
E. Affirmative Marketing Plan

INTRODUCTION

This Operating Manual has been prepared by Piazza & Associates, Inc., the Administrative Agent for the Borough of Montvale, to assist in the administration of rental units. General questions regarding its content can be addressed to Piazza & Associates, Inc. 216 Rockingham Row, Princeton, NJ 08540; by telephone to 609-786-1100; or by email at info@HousingQuest.com.

This manual describes the basic content and operation of the program, examines program purposes and provides the guidelines for implementing the program. It has been prepared with a flexible format allowing for periodic updates of its sections, when required, due to revisions in regulations and/or procedures.

This manual explains the steps in the rental process. It describes the eligibility requirements for participation in the program, record keeping and overall program administration.

Implementation of any procedure, even if it is not included in this Operating Manual, shall be in accordance with the Federal Fair Housing Act and Equal Opportunities laws[1], the Uniform Housing Affordability Controls (UHAC) N.J.A.C. 5:80-26.1 et seq.[2], the substantive rules of the Council on Affordable Housing N.J.A.C. 5:96[3] and 5:97[4]and the affordable housing regulations of the Borough of Montvale (hereafter referred to as the "Regulations").

FAIR HOUSING AND EQUAL HOUSING OPPORTUNITIES



In accordance with the Federal Fair Housing Act, it is unlawful to discriminate against any person making application to buy or rent a home with regard to age, race, religion, national origin, sex, handicapped or familial status. In addition, New Jersey Law prohibits discrimination in housing on the basis of race, creed, color, national origin, ancestry, nationality, marital or domestic partnership or civil union status, familial status, sex, gender identity or expression, affectional or sexual orientation, disability, source of lawful income or source of lawful rent payment (including Section 8) by all persons including real estate agents or brokers, financial institutions, property owners, landlords, or building superintendents, and their agents and employees with respect to the sale, rental or lease of real property, listing or advertising of real property, receipt or transmittal of offers to purchase or rent real property, application and terms of a mortgage or other loan. See Exhibit A.

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[1] https://www.hud.gov/program_offices/fair_housing_equal_opp/FHLaws

[2] http://www.nj.gov/dca/affiliates/coah/regulations/uhac.html

[3] http://www.nj.gov/dca/services/lps/hss/statsandregs/596.pdf

[4] http://www.nj.gov/dca/services/lps/hss/statsandregs/597.pdf

WHAT IS AFFORDABLE HOUSING?

Affordable housing, unlike market rate housing, has affordability controls limiting the price for at least 30 years. The Regulations considers housing "affordable" if the household pays approximately 28% or less of the household's gross income on housing costs. Affordable housing is priced to be affordable to households earning up to 80% of the area median income for the region in which the affordable housing is located.

WHO QUALIFIES FOR AFFORDABLE HOUSING?

In order to be eligible for affordable housing in New Jersey, a household's income will be below the income limit for the region in which the affordable housing is located, either for low or moderate levels. A moderate-income household is classified as earning between 50 percent and 80 percent of the area median income. A low-income household is classified as earning less than 50 percent of area median income. The New Jersey Fair Housing Act (NJFHA) has included a new category for very low-income households, which are classified as earning less than 30 percent of area median income. Municipalities shall decide what projects will be required to help meet this obligation. Existing rental projects have a minimum requirement for very low income apartments, priced at 35% of the AMI; and new rental projects have an obligation to provide very low-income units at 30% of the AMI to very low-income households.

The COAH Regional Income Limits Chart (Exhibit B) provides information about income limits for each of COAH's six housing regions. Each region has different calculated median incomes, which are adjusted periodically. The Borough of Montvale is located in Bergen County, which is part of Region 1, together with Hudson, Passaic, and Sussex Counties.

LOCAL AFFORDABLE HOUSING PROGRAMS FOR RENT

The following affordable housing program is currently being administered for the Borough of Montvale:

1. **Bear Brook Village:** Completed in 1999, Bear Brook Village is a condominium community that is primarily market-owner-occupied, but within that community, there are 5 affordable rental units. These include a selection of low- and moderate-income, 1, 2, and 3 bedroom apartments.

2. **Nottingham Manor:** This rental community includes 8 low- and moderate- income, 1 and 2 bedroom apartments.

A copy of the Borough of Montvale Housing Element and Fair Share Plan is available at the municipal building, located at 12 Mercedes Drive, Montvale, NJ 07645.

OTHER AFFORDABLE HOUSING PROGRAMS AND OPPORTUNITIES

In addition to affordable rental opportunities, the Borough of Montvale has purchase opportunities. Please contact Piazza & Associates, Inc., for further information: http://www.piazza-and-associates.com/afhousing.php?pa=Montvale.

Affordable housing throughout the State of New Jersey is administered by a wide variety of organizations and agencies. Further information can be found at http://www.nj.gov/dca/affiliates/coah/resources/looking.html.

Individuals interested in applying for affordable housing should contact the Municipal Housing Liaison in the municipality in which they are interested in living. Each municipality has a Municipal Housing Liaison who is responsible for administering the municipality's affordable housing program. Some municipalities administer their own affordable housing and have their own application process. If not, the Municipal Housing Liaison can direct applicants to developers, nonprofit agencies, State agencies or consultants that may administer the affordable housing within the municipality. A list of Municipal Housing Liaisons can be found at: http://www.nj.gov/dca/divisions/lps/hss/admin_files/muniliaisons.pdf

The New Jersey Housing and Mortgage Finance Agency has established New Jersey's Housing Resource Center, an on-line, searchable database of affordable housing in the State. The Housing Resource Center provides a listing posted by developers, landlords, and municipalities of available affordable housing. Available units are listed with contact and application information. Look for the Housing Resource Center at www.njhrc.gov.

The New Jersey Guide to Affordable Housing, which can be found at http://www.state.nj.us/dca/divisions/codes/publications/guide.html, is a listing compiled by the New Jersey Department of Community Affairs Division of Codes and Standards. It lists all types of affordable housing by county. The housing units on the list have a variety of qualification requirements, including age-restricted housing and housing for the developmentally disabled. **Applicants who do not have access to the Internet should call 211 for assistance.**

Piazza & Associates, Inc., also provides information on many affordable housing programs throughout the state of New Jersey. Detailed information about these affordable housing opportunities can be found at www.HousingQuest.com.

OVERVIEW OF THE AFFORDABLE HOUSING ADMINISTRATION PROCESS FOR NEW RENTALS AND RE-RENTALS

- The Municipal Housing Liaison serves as an initial point of contact for unsolicited calls to the municipality about affordable housing and where appropriate directs applicants to an Administrative Agent, who may be developers, nonprofit agencies, State agencies or consultants that may administer the affordable housing within the municipality.

- The Administrative Agent implements the municipality's Affirmative Marketing Plan.

- The Administrative Agent serves as the initial point of contact for all inquiries generated by the affirmative marketing efforts and sends out pre-applications to interested callers.

- An initial deadline date, no less than 60 days after the start of the marketing process, will be established. All of the preliminary applications received by the Administrative Agents, on or before the initial deadline date, shall be deemed received on that date.

- Households that apply for very low-income housing will be prescreened by Piazza & Associates for preliminary income eligibility by comparing their total income and household size to the very low-income limits pursuant to the New Jersey Fair Housing Act, N.J.S.A. 52:27-D-304 ("NJFHA"). Households that apply for low and moderate-income housing will be prescreened by Piazza & Associates for preliminary income eligibility by comparing their total income and household size to the low and moderate-income limits pursuant to the Uniform Housing Affordability Controls, 5:80-26.1 et seq. ("UHAC"). All households will be notified as to their preliminary status.

- A drawing will be held under the direction of the Administrative Agent to determine the priority order of the pre-qualified applications received on or before the initial deadline date. All preliminary applications received after the initial deadline, will be processed on a "first come, first served" basis after the applicants who were in the initial random selection.

- In order to ensure an adequate supply of qualified applicants, the advertising phase will continue until there are at least ten (10) pre-qualified applicants for each low and moderate-income unit available, or until all of the low and moderate income units within the development have been sold.

- When units become available, final applications will be mailed by the Administrative Agent to an adequate number of pre-qualified applicants, in priority order, for each available low and moderate-income unit. The final application will require the applicants to supply documents to verify their identity and household composition as well as their income and assets.

- Completed final applications will be forwarded to the Administrative Agent, who will make a determination as to their eligibility for a low or moderate-income unit. Applicants will receive a letter from the Administrative Agent with respect to the status of their application each time a review is performed.

- When submitting final applications, applicants will also be asked to make an appointment to visit the leasing office.

- Rental applicants will be subject to the Tenant Selection Criteria set forth by the Landlord.

- Certified applicants will be given a pre-determined amount of time to sign a lease with the landlord or developer

- When a unit becomes available, the Administrative Agent will proceed with the income qualification process.

- For rental units, the Administrative Agent will provide certifications that must be signed and notarized by the applicant.

- The certified household moves into the affordable rental unit.

ROLES AND RESPONSIBILITIES

Responsibilities of the Municipal Housing Liaison or MHL

The Municipal Housing Liaison is responsible for coordinating all the activities of the municipal government as it relates to the creation and administration of affordable housing units, in conjunction with the Municipal Attorney, where appropriate (see **Responsibilities of the Municipal Attorney**). The primary purpose of the MHL to ensure that all affordable housing projects are established and administered according to the Regulations as outlined in an Operating Manual. The duties of the MHL include the following duties, and may include the responsibilities for providing administrative services as described in the next Section under, **Responsibilities of an Administrative Agent**.

Monitor the status of all restricted units in the municipality's Fair Share Plan. Regardless of any arrangements the municipality may have with one or more Administrative Agents, it is the Municipal Housing Liaison's responsibility to know the status of all restricted units in their community.

Serve as the municipality's primary point of contact for all inquiries from the State, Administrative Agents, developers, affordable housing sponsors, owners, property managers, and interested households. The MHL serves as the municipality's primary point of contact on affordable housing issues. Interested applicants should be provided with information on the types of affordable units within the municipality and, where applicable, the name of the Administrative Agent that manages the units and the contact information for the Administrative Agent.

Compile, verify and submit annual reporting. Administrative Agents are responsible for collecting much of the data that is ultimately included in an annual monitoring report. However, it is the Municipal Housing Liaison's responsibility to collect and verify this data and consolidate it into the annual report. Any requests For additional information or corrections will be directed to the MHL.

Coordinate meetings with Administrative Agents and Developers/Affordable Housing Sponsors/Owners. When a new affordable unit or series of units is in the planning process, the MHL should coordinate a meeting between the Administrative Agent and the developer, affordable housing sponsor or owner. The developer, affordable housing sponsor or owner may serve as their own Administrative Agent, if they meet the applicable requirements and are approved by the municipality. The purpose of this initial meeting is to develop a clear division of labor between the parties and to transmit any components of the Operating Manual – including copies of all COAH-related local ordinances -- that have already been adopted by the municipality.

It is the responsibility of the Municipal Housing Liaison, in conjunction with the Municipal Attorney, to have the affordable housing provisions of any Master Deed and Public Offering reviewed for consistency with the UHAC regulations, before they are recorded and submitted to DCA for approval.

Provide Administrative Services, unless those services are contracted out. The responsibilities for providing administrative services are described in the next Section under, **Responsibilities of an Administrative Agent**.

Responsibilities of an Administrative Agent

The primary responsibility of an Administrative Agent is to establish and enforce affordability controls and ensure that units in the Administrative Agent's portfolio are sold to eligible households. Administrative Agents will:

Secure written acknowledgement from all developers, affordable housing sponsors and owners that no restricted unit can be offered or in any other way committed to any person other than a household duly certified by the Administrative Agent.

Create and adhere to an Operating Manual. All Administrative Agents are required to follow the policies and procedures of an Operating Manual, as applicable to the scope of services they have been contracted to perform.

Implement the municipality's Affirmative Marketing Plan. The Administrative Agent, the developer, affordable housing sponsor or owner could be responsible for implementing the Affirmative Marketing Plan adopted by the municipality. At the first meeting with the Municipal Housing Liaison, Administrative Agent and the developer, affordable housing sponsor or owner, this responsibility should be discussed. Affirmative marketing includes conducting regional outreach and advertising for available affordable units. Advertising costs are the responsibility of the developer or current owner.

Accept applications from interested households. In response to marketing initiatives or by referral from the Municipal Housing Liaison, interested households will contact the Administrative Agent. The Administrative Agent will supply applicants with

applications, provide additional information on available units and accept completed applications.

Conduct random selection of applicants for rental of restricted units. The Administrative Agent is responsible for conducting the random selection in accordance with the Affirmative Marketing Plan and any related local ordinances, and as described in the Operating Manual.

Create and maintain a pool of applicant households. This includes reaching out to households in the applicant pool to determine continued interest and/or changes in household size and income.

Determine eligibility of households. The task of collecting application materials and documentation from applicant households and analyzing it for eligibility is the responsibility of an Administrative Agent. A written determination on a household's eligibility will be provided within twenty (20) days of the Administrative Agent's determination of eligibility or non-eligibility. Whether or not the household is determined to be eligible for a unit, it is an Administrative Agent's responsibility to secure all information provided by the household in individual files and to maintain strict confidentiality of all information regarding that household. An Administrative Agent is required to ensure that all certified applicants execute a Disclosure Statement acknowledging the rights and requirements of owning an affordable unit, in the form of Appendix K of UHAC.

Establish and maintain effective communication with property managers and landlords. Property managers and landlords of restricted units should be instructed and regularly reminded that the Administrative Agent is their primary point of contact. The Administrative Agent must immediately inform all property managers and landlords of any changes to the Administrative Agent's contact information or business hours.

Property managers and landlords should be instructed to immediately contact the Administrative Agent:

- Immediately upon learning that an affordable rental unit will be vacated.

- For review and approval of annual rental increases.

Provide annual notification of maximum rents. Each year when COAH releases its low- and moderate-income limits, rental households must be notified of the new maximum rent that may be charged for their unit. The Administrative Agent's contact information must be included on such notification in case the tenant is being overcharged.

Serve as the custodian of all legal documents. An Administrative Agent is responsible for maintaining originals of all legal instruments for the units in their portfolio. Throughout the duration of a control period, an Administrative Agent must maintain a file containing its affordability control documents. This includes, but is not limited to, the

recorded Declarations of Covenants, Conditions and Restrictions, Deed Restrictions, Deeds, Recapture Mortgages, Recapture Mortgage Notes and Appendix J and K.

Serve as point of contact on all matters relating to affordability controls. It is recommended that the Administrative Agent develop a system to be notified by lenders when a unit is at risk of foreclosure. In the event of a foreclosure, the Administrative Agent should work with the foreclosing institution to ensure that the affordability controls are maintained. The Administrative Agent should seek the counsel of the municipality's attorney on legal matters that threaten the durability of the affordability controls.

Provide annual activity reports to Municipal Housing Liaison for use in the annual COAH monitoring report. An Administrative Agent is responsible for collecting the reporting data on each unit in the Administrative Agent's portfolio.

Maintain and distribute information on HUD-approved Housing Counseling Programs.

Responsibilities of the Municipal Attorney

The Municipal Attorney assists the municipality with developing, administrating, and enforcing affordability controls, including but not limited to:

- Assisting the Municipal Housing Liaison with the review of the affordable housing provisions of any Master Deed and Public Offering for consistency with COAH and UHAC regulations, before they are recorded and submitted to DCA for approval.

- Providing all reasonable and necessary assistance in support of the Administrative Agent's efforts to ensure compliance with the housing affordability controls, including reviewing legal documents and legal actions required on foreclosures and violations.

Responsibilities of Developers

When a new affordable unit or series of units is in the planning process, the developer of affordable housing should contact the Municipal Housing Liaison, who shall coordinate a meeting with the Administrative Agent, where applicable, and the developer, affordable housing sponsor or owner.

The purpose of this initial meeting is to develop a clear division of labor between the parties and to transmit any components of the Operating Manual – including copies of all COAH-related local ordinances -- that have already been adopted by the municipality.

If provided for by ordinance and made a condition of the approval of the planning board or zoning board of adjustment, the developer may be responsible for the costs of advertising affordable units.

The Administrative Agent will secure from the developer written acknowledgement that no restricted unit can be offered or in any other way committed to any person other than a household duly certified by the Administrative Agent.

Responsibilities of Owners of Rental Developments

Open and direct communication between the Owners of rental developments, the Municipal Housing Liaison and the Administrative Agent is essential to ongoing administration of affordability controls. Although the Administrative Agent is required to serve as the primary point of contact with households, the Owner must provide the Municipal Housing Liaison and Administrative Agent with information on vacancies. Owners of rental developments are also responsible for working with the Administrative Agent to ensure that the Municipal Housing Liaison has all necessary information to complete the annual COAH reporting.

Responsibilities of Landlords and Property Managers

Landlords and property managers must place a notice in all rental properties annually informing residents of the rent increase for the year and the contact information for the Administrative Agent.

AFFIRMATIVE MARKETING

Overview of the Requirements of an Affirmative Marketing Plan

All affordable units are required to be affirmatively marketed using the Borough of Montvale's Affirmative Marketing Plan. An Affirmative Marketing Plan is a regional marketing strategy designed to attract households of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age, or number of children to housing units which are being marketed by an Administrative Agent or a developer, sponsor, owner or property manager of affordable housing. The primary objectives of an Affirmative Marketing Plan are to target households who are least likely to apply for affordable housing, and to target households throughout the entire housing region in which the units are located.

Every Affirmative Marketing Plan will include all of the following:

- Publication of at least one advertisement in a newspaper of general circulation within the housing region; and

- Broadcast of at least one advertisement by radio or television throughout the housing region.

- At least one additional regional marketing strategy such as a neighborhood newspaper, religious publication, organizational newsletter, advertisement(s) with major employer(s), or notification through community and regional organizations such as non-profit, religious and civic organizations.

For each affordable housing opportunity within the municipality, the Affirmative Marketing Plan will include the following information:

- The address of the project and development name, if any

- The number of units, including number of affordable rental units

- The rental rates of the rental units

- The name and contact information of the Municipal Housing Liaison, Administrative Agent or property manager

- A description of the Random Selection method that will be used to select applicants for affordable housing.

- Disclosure of required application fees, if any.

Advertisements will contain the following information for each affordable housing opportunity:

- The location of and directions to the units

- A range of rents for the housing units

- The bedroom size(s) of the units

- The maximum income permitted to qualify for the housing units

- The locations of applications for the housing units

- The business hours when interested households may obtain an application for a housing unit

- Application fees, if any

Implementation of the Affirmative Marketing Plan

The affirmative marketing process for new affordable units shall begin at least four months prior to expected occupancy. In implementing the marketing program, the Administrative Agent shall undertake all of the strategies outlined in the Borough of Montvale Affirmative Marketing Plan. Advertising and outreach shall take place during the first week of the marketing program and each month thereafter until all the units have been sold. Applications for affordable housing shall be available in several locations in accordance with the Affirmative Marketing Plan. The time period when applications will be accepted will be posted with the applications. Applications shall be mailed to prospective applicants upon request.

An applicant pool will be maintained by the Administrative Agent for re-rentals.

When a re-rental affordable unit becomes available, the applicants will be selected from the applicant pool and, if necessary, the unit will be affirmatively marketed as described, above

The selection of applicants from the applicant pool is described in more detail in this manual under Random Selection & Applicant Pool(s).

Developer, Affordable Housing Sponsor

If permitted by the municipality, the developer or affordable housing sponsor may be responsible for advertising the affordable housing in accordance with the municipality's adopted Affirmative Marketing Plan. Prior to publication or broadcast, draft copies of the marketing material will be submitted to the Administrative Agent for approval. Proof of publication will be submitted, including a copy of the final advertisements with a copy of the paid bill. Public Service Announcements shall be submitted by the Administrative Agent.

RANDOM SELECTION & APPLICANT POOL(S)

Applicants are selected at random before income-eligibility is determined, regardless of household size or desired number of bedrooms. The process is as follows:

After advertising is implemented, applications are accepted for 60 days. The applications are prescreened for eligibility. Applicants that are deemed, at this stage, to be ineligible are sent a notice and given an opportunity to clarify or correct any information. This will be done in writing.

Prescreened applications are entered into a data base and sorted by the unit size and affordability type that is appropriate. Applicants are sent letters as to their eligibility during this preliminary application stage.

Prior to the randomized selection, a list of applicants will be sent to the Municipal Housing Liaison (MHL) in the order to which the random numbers will be applied. This list should be maintained in the file so that the MHL can verify the establishment of the order of the list in advance of the random selection.

At the end of the 60-day period, the Administrative Agent arranges a time and date for the random selection process to take place. The MHL and a representative of the developer are invited and encouraged to attend. An announcement of the time and date is made by way of an email blast to those applicants who voluntarily sign up for this service through www.HousingQuest.com.

It is important to note that applicants need not be present at the random selection, and that there is no advantage given those applicants who do attend.

At the random selection, a website is used to generate a random list of numbers. The numbers are applied to the list in the order that was prearranged. A copy of the random numbers and the final list are sent to the MHL for verification and file.

All applicants are assigned a random number. A random number does not guarantee that the applicant will be deemed eligible. Applicants who submit more than one application and receive more than one priority number will forfeit the lower number with the highest priority.

When units become available, final applications are sent in the prioritized order as specified previously. The Administrative Agent can keep the applicant pool open after the initial lottery and add names to the existing list based on time and date of submission. On-going marketing is done primarily through www.HousingQuest.com.

If there are sufficient names remaining in the pool to fill future re-rental, the applicant pool shall be closed.

When the applicant pool is close to being depleted, the Administrative Agent will re-open the pool and conduct a new random selection process after fulfilling the affirmative marketing requirements. The new applicant pool will be added to the remaining list of applicants.

For future re-rentals only, the Administrative Agent can keep the applicant pool open after the initial lottery and add names to the existing list based on time and date of submission. On-going marketing is done primarily through www.HousingQuest.com.

MATCHING HOUSEHOLDS TO AVAILABLE UNITS

In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to implement the following policies:

- Provide an occupant for each unit bedroom;
- Prevent more than two persons from occupying a single bedroom; and
- Require that all the bedrooms be used as bedrooms.

A household is placed only on one unit list for eligibility. A household may chose to change the unit type for which they are eligible within the scope of the program.

APPLICATION FEES

The Administrative Agent does not charge a fee to applicants.

HOUSEHOLD CERTIFICATION

Before any household can purchase a restricted unit, the Administrative Agent will certify the household as eligible. Certification of a household involves the verification of two critical pieces of data: 1) Household size and composition, including gender; and 2) The total income and assets for all household members 18 years of age or older. The certification process begins with the applicant completing an application in its entirety and providing the required backup documentation. Once eligibility documents and data have been collected, the Administrative Agent can begin the process of calculating the household's income.

Household Composition and Circumstances

Generally, a Household is defined as everyone who intends to reside in the affordable unit. Temporarily absent members of a household will be counted in very limited circumstances, such as a member of the military in active duty. Unborn children and children in the process of being adopted shall be counted as members of the household.

The following are generally excluded from the household for the purposes of income qualifying, but may be considered by the Administrative Agent for the purposes of determining the size of the unit: live-in aid, foster children and children who live in the household with less than 50% joint physical custody.

The following are various records for documenting household information:

- Social Security records or cards. Either individual Social Security card or letter from Social Security Administration

- Adoption papers, or legal documents showing adoption in process

- Income Tax Return

- Driver's License

- Birth Certificate or Passport
- Alien Registration Card
- Divorce Decree and Settlement Agreement
- Adoption Agency / Legal Correspondence and/or Certification
- Correspondence / Certification from Foster Care Services
- Doctor's Authorization for Live-in Aid.
- The Administrative Agent always reserves the right to require any other such documentation that, in its sole discretion, it deems necessary to verify composition.

Procedure for Income-Eligibility Certification

To calculate income, the current gross income of the applicant is used to project that income over the next 12 months. Applicants may NOT change or modify their situation relative to their income once they have submitted a Final Application.

Through the submission of the Final Application, the Administrative Agent shall require each member of an applicant household who is 18 years of age or older to provide documentation to verify their income. The application and a schedule of required documentation can be found in the Appendix. Generally the documentation required is as follows:

- Four current consecutive pay stubs, including bonuses, overtime or tips, or a signed and dated letter from the employer stating the present annual income figure or if self-employed, a current Certified Profit & Loss Statement and Balance Sheet.
- Copies of Federal and State income tax returns for each of the preceding three tax years - A Form 1040 Tax Summary for the past three tax years can be requested from the local Internal Revenue Service Center or by calling 1-800-829-1040.
- A letter or appropriate reporting form verifying current monthly benefits such as
    - Social Security or SSI – Award letter or computer print out letter
    - Unemployment – verification of Unemployment Benefits
    - Welfare -TANF[5] current award letter

[5] TANF – Temporary Assistance for Needy Families

- Disability - Worker's compensation letter

- Pension income – a pension letter.

- A letter or appropriate reporting form verifying any other sources of income claimed by the applicant, such as alimony, child support and education stipends.

- Current reports of savings and checking accounts (bank statements and passbooks) and income reports from banks or other financial institutions holding or managing trust funds, money market accounts, certificates of deposit, stocks or bonds.

- Evidence or reports of income from directly held assets, such as real estate or businesses.

- Interest in a corporation or partnership – Federal tax returns for each of the preceding three tax years.

- Current reports of assets – Market Value Appraisal or a contract with a real estate broker which sets forth the price of the property and Bank/Mortgage Co. Statement indicating Current Mortgage Balance. For rental property, attach copies of all leases.

- The Administrative Agent always reserves the right to require any other such documentation that, in its sole discretion, it deems necessary to verify household income.

The following is a list of various types of wages, payments, rebates and credits. Those that are considered as part of the household's income are listed under Income. Those that are not considered as part of the household's income are listed under Not Income.

Income

1. Wages, salaries, tips, commissions

2. Alimony

3. Regularly scheduled overtime

4. Pensions and regular distributions from retirement accounts

5. Social security benefits

6. Unemployment compensation (annualized)

7. TANF

8. Verified regular child support

9. Disability benefits

10. Net income from business or real estate

11. Actual interest income from assets such as savings, certificates of deposit, money market accounts, mutual funds, stocks, bonds

12. Imputed interest (using a current average annual rate of two percent) from non-income producing assets, such as checking accounts, cash on hand, and equity in non-income producing real estate.

13. Non-tuition stipends for living expenses for students

14. Non-Governmental financial support

15. Any other forms of regular income reported to the Internal Revenue Service

16. Regular financial support from any source.

Not Income

1. Rebates or credits received under low-income energy assistance programs

2. Food stamps

3. Payments received for foster care

4. Relocation assistance benefits

5. Income of live-in attendants

6. Scholarships

7. Student loans

8. Personal property such as automobiles

9. Lump-sum additions to assets such as inheritances, lottery winnings, gifts, insurance settlements

10. Part-time income of persons enrolled as full-time students

Deduction from Income

Court ordered payments for alimony or child support paid to another household shall be deducted from gross annual income

Student Income

Only full-time income of full-time students is included in the income calculation. A full-time student is a member of the household who is enrolled in a qualifying education program for 12 credit hours or more per semester; and part-time income is income earned on less than a 35-hour workweek. Full time income (35 hours or more) for full-time students is always counted.

The Real Estate Asset Limit

Except for federal programs, if an applicant's primary residence, which is to be sold upon purchase of an affordable unit, has no mortgage debt and is valued at or above the regional asset limit as published annually by COAH or their successor as part of the Annual Regional Income Limits Chart, the household will be determined ineligible for certification.

However, if the applicant's existing monthly housing costs including taxes, homeowner insurance, and condominium or homeowner association fees exceed 38 percent of the household's eligible monthly income, the household will be exempt from the asset limit.

An applicant will provide a recent, Market Value Appraisal, on the home they own unless the applicant has mortgage debt on the home or can demonstrate that the existing monthly housing costs exceed 38 percent of the household's eligible monthly income, in which case the applicant is exempt from the asset limit.

Income from Real Estate

If real estate owned by an applicant for affordable housing is a rental property, the net revenue is considered income. Specifically, rent from real estate is considered income, after deduction of any mortgage payments, real estate taxes, property owner's insurance and reasonable property management expenses as reported to the Internal Revenue Service. Other expenses are not deductible. If actual rent is less than fair market rent, the administrative agent shall impute a fair market rent.

If an applicant owns real estate with mortgage debt, which is not to be used as rental housing, the Administrative Agent should determine the imputed interest from the value of the property. The Administrative Agent should deduct outstanding mortgage debt from the documented market value established by a market value appraisal. Based on current HUD Passbook Savings Rate, interest will be imputed on the determined value of the real estate.

Minimum Income

The annual rent and utility allowance as determined by the Administrative Agent shall not exceed 35% of the applicant's gross annual income unless the applicants' liquid assets exceed 100 times the monthly rent.

Housing Counseling

The Administrative Agent will provide referrals for counseling, as a part of its services. Although housing counseling is recommended, a household is only required to attend counseling if their monthly housing expense exceeds UHAC standards. A HUD-approved housing counseling agency, or a counseling agency approved by the NJ Department of Banking and Insurance, meets UHAC's requirements for an experienced Housing Counseling Agency. This counseling to low- and moderate-income housing applicants will focus on subjects such as budgeting, credit issues, and mortgage qualification, and is free of charge. A list of non-profit counselors approved by HUD and/or the New Jersey Department of Banking and Insurance is included on COAH's website and is available from the Administrative Agent.

In addition, the Administrative Agent will:

- Confirm and update all information provided on the application.

- Explain program requirements, procedures used to verify information, and penalties for providing false information. Ask the head of household, co-head, spouse and household members 18 years of age or older to sign the Authorization for Release of Information forms and other verification requests.

- Review the applicant's identification and financial information and documentation, ask any questions to clarify information on the application, and obtain any additional information needed to verify the household's income.

- Seek to ensure, to a reasonable degree, that the applicant has reported all sources for earned and benefit income and assets (including assets disposed of for less than fair market value in the past two years). Require the applicant to give a written certification as to whether any household member did or did not dispose of any assets for less than fair market value during the past two years.

Approving or Rejecting a Household

Administrative Agents will notify applicant households of their eligibility within twenty (20) days of the Administrative Agent's determination.

Households with a verified total household income that exceeds 80 percent of the regional income limit for the appropriate family size are ineligible for purchase or rental of restricted units. A letter rejecting the household's application shall be mailed to the household.

Similarly, households with a verified total household income that is within the income limits, but too low to afford any of the units administered by the Administrative Agent shall be sent a letter rejecting the household's application, and/or referring them to housing counseling.

Households with a verified total household income of less than 80 percent shall be issued a letter certifying eligibility. This certification is valid for 180 days. If the applicant does not sign a Lease Agreement within that time frame, an extension may be granted once the household's eligibility is updated and verified.

Once the applicant is certified and matched to an available unit, the Administrative Agent will secure from the applicant a signed and notarized acknowledgement of their requirements and responsibilities in purchasing a restricted unit. UHAC's Disclosure Statement shall be forwarded to the applicants.

In addition to non-eligibility based on income, the Administrative Agent may deny a certification because of the household's failure or inability to document household composition, income, assets, sufficient funds for down payment, or any other required facts and information. A household may also be denied certification if the Administrative Agent determines that there was a willful or material misstatement of fact made by the applicant.

Dismissal of Applications

Applications can be dismissed for the following reasons:

1. The application is not signed or submitted on time;
2. The applicant's sources of income or household composition changes after the submission of the final application, but before approval;
3. The applicant commits fraud, or the application is not truthful or complete;
4. The applicant cannot or does not provide documentation to verify their income or other required information when due;
5. The household income does not meet the minimum or maximum income requirements for a particular property;
6. The applicant owns an asset that exceeds the Asset Limits for COAH properties;
7. The applicant fails to respond to any inquiry in a timely manner;
8. The applicant had a greater chance than any other applicant submitted for a random selection;
9. The applicant is non-cooperative or abusive with the our staff, property managers or the sellers of affordable units;
10. The applicant changes address or other contact information without informing us in writing;
11. The applicant is unable to obtain suitable and legitimate financing for a sale unit or fails to verify attendance in a home buyer credit counseling program when required to do so by the program rules;
12. The applicant does not respond to a periodic update inquiry in a timely fashion;

13. The applicant fails to sign the Compliance Certification, Certificate for Applicant; Lease Documents, as may be required; or

14. The applicant, once approved, fails to sign a lease in a timely manner.

Applicants will also be withdrawn from all lists held by us in the Borough of Montvale once they have been approved for an affordable unit within that same municipality. However, these applicants may re-apply for other opportunities in that municipality once they have occupied their unit. Applicants withdrawn for fraud may be withdrawn from all programs administered by Piazza & Associates, Inc., and may be subject to prosecution under the law.

Applicants who are withdrawn and who wish to re-apply to that specific program may do so using a new Preliminary Application. The new Preliminary Application will NOT be given preferential treatment, but will be processed in the same way that all new Preliminary Applications for that specific program are processed. In the event that an application list is closed when the application is withdrawn, the applicant will be required to wait until the list is re-opened to apply again.

Applicants who are dismissed must re-apply. A minimum time period of six months applies in most situations where the applicant has been withdrawn for fraud, poor credit, uncooperative behavior or other serious matters.

Applications may be held in abeyance for a period not to exceed 90 days if there is an error on the credit report, so that the applicant can correct the error and re-apply. Units will not be held open for that applicant. However, once the credit report is corrected, the applicant will be given a priority for the next opportunity at that property.

Appeals

Appeals from all decisions of an Administrative Agent shall be made in writing to the Municipal Housing Liaison, Borough of Montvale; or the Executive Director of the New Jersey Housing and Mortgage Finance Agency.

DETERMINING AFFORDABLE RENTS

To determine the affordable rents the Administrative Agent uses the COAH calculators located at http://www.nj.gov/dca/divisions/lps/hss/calculators.html.

Development Considerations and Compliance Issues

There are several regulations that must be considered from the *development perspective* before the rents of individual units can be calculated. These requirements should be discussed at the first meeting between the Municipal Housing Liaison, Administrative Agent and developer or affordable housing sponsor. The following is a summary of the requirements for ownership projects.

Bedroom Distribution. The standards on the distribution of unit sizes for affordable developments require that:

- The combined number of efficiency and one-bedroom units may be no greater than 20 percent of the total low- and moderate-income units;

- At least 30 percent of all low- and moderate-income units must be two-bedroom units;

- At least 20 percent of all low- and moderate-income units are three-bedroom units; and

- The remainder, if any, may be allocated at the discretion of the developer.

Age-restricted Units. Affordable age-restricted units are not held to these bedroom distribution standards. For affordable age-restricted units, the number of age-restricted low- and moderate-income bedrooms must be equal to or greater than the number of age-restricted units within the development. In other words, the average bedroom size in an age-restricted development must be equal to or greater than one bedroom per unit. For example, if the overall age-restricted development is 25 percent efficiencies, and 50 percent one-bedroom units, and 25 percent two-bedroom units, that equals an overall development bedroom size of exactly one bedroom per unit. An age-restricted development can meet this standard by creating all one-bedroom units or by creating a two-bedroom unit for each efficiency unit, or any other combination that will equal a minimum of one bedroom per unit.

Pricing by Household Size. Initial rents are based on targeted "model" household sizes for each size home as determined by the number of bedrooms. Initial rents must adhere to the following rules. These maximum rents are based on COAH's Annual Regional Income Limits Chart at the time of occupancy:

- A studio shall be affordable to a one-person household;

- A one-bedroom unit shall be affordable to a one- and one-half person household;

- A two-bedroom unit shall be affordable to a three-person household;

- A three-bedroom unit shall be affordable to a four- and one-half person household; and

- A four-bedroom unit shall be affordable to a six-person household.

The above rules are only to be used for setting initial rents. They are not guidelines for matching household sizes with unit sizes. The pricing of age-restricted units may not exceed affordability based on a two-person household.

Additional Regulations for a Rental Development

In addition to the regulations covered earlier in the Section **Development Considerations and Compliance Issues,** rental projects must also comply with the following regulations:

Split Between Low- and Moderate-income Rental Units. At least 50 percent (of the affordable units within each bedroom distribution (unit size) must be low-income units and at least 10 percent of the affordable units within each bedroom distribution must be affordable to households earning no more than 35 percent of the regional median income. The remainder of the affordable units must be affordable to moderate-income households. For a new rental property, very low-income units shall be priced at and made available to households at or below 30% of the regional median income.

Affordability Average. The average rent for all affordable units cannot exceed 52 percent of the regional median income. At least one rent for each bedroom type must be offered for both low-income and moderate-income units. Calculation of the affordability average is available on COAH's website.

Maximum Rent. The maximum rent of restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of the regional median income.

Determining Rent Increases

Annual rent increases are permitted in affordable units. Rent increases are permitted at the anniversary of tenancy according to COAH's Annual Regional Income Limits Chart, available on COAH's website or an approved alternative. These increases must be filed with and approved by the Administrative Agent. Property managers or landlords who have charged less than the permissible increase may use the maximum allowable rent with the next tenant with permission of the Administrative Agent. The maximum allowable rent would be calculated by starting with the rent schedule approved as part of initial lease-up of the development, and calculating the annual increase from the initial lease-up year to the present. Rents may not be increased more than once a year, may not be increased by more than one approved increment at a time, and may not be increased at the time of new occupancy if this occurs less than one year from the last rental. No additional fees may be added to the approved rent without the express written approval of the Administrative Agent.

VIOLATIONS, DEFAULTS AND REMEDIES

In the event of a threatened breach of any of the regulations governing the affordable unit by an Owner, the Administrative Agent shall have all the remedies provided at law or equity, including the right to seek injunctive relief or specific performance, it being recognized by both parties that it will cause irreparable harm to the municipality, in light

of the public policies set forth in the Fair Housing Act and the obligation for the provision of low- and moderate-income housing.

Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.

MAINTENANCE OF RECORDS AND APPLICANT FILES

Pursuant to N.J.A.C. 5:80-26.14(a)8, N.J.A.C. 5:80-26.15(c) and N.J.A.C. 5:80-26.17 current records will be maintained by the Administrative Agent and outdated records will be given to the municipality for safe-keeping. A file will be created and maintained on each restricted unit for its control period.

The Administrative Agent will maintain detailed records on all marketing initiatives.

Files to Be Maintained on Every Applicant

The Administrative Agent will maintain files on every applicant. All files will contain a preliminary application. If an applicant's preliminary application is approved, and the applicant files a formal application, the file will contain at a minimum:

- Application Form.
- Income Verification
- Letter of Certification of Eligibility or Letter of Determination of Ineligibility.

Individual files will be maintained throughout the process..

Files to Be Maintained on Every Unit

The Administrative Agent will maintain files on every unit for the length of the affordability controls. The unit file will contain at a minimum:

- Base rent
- Identification as low- or moderate-income
- Description of number of bedrooms and physical layout
- Floor plan
- Application materials, verifications and certifications of all present owners, pertinent correspondence
- Copy of lease
- Disclosure Statement (Appendix K)

Files to Be Maintained on Every Project

The Administrative Agent will maintain files on every project for the length of the affordability controls. The project file will contain at a minimum:

- Condominium Master Deed
- Condominium Public Offering
- Crediting Information
- Original deed restriction
- Affordability control documents, including Declarations of Covenants, Conditions and Restrictions, Deed Restrictions, Deeds, Recapture Mortgages, Recapture Mortgage Notes, Disclosure Statement (Appendix J)

Files to Be Maintained on The Applicant Pool

- Any changes to the applicant pool
- Any action taken with regard to the applicant pool
- Any activity that occurs that affects a particular applicant
- Current applications for all applicants whose status is active in the applicant pool
- The application, the initial rejection notice, the applicant's reply to the notice, a copy of the Administrative Agent's final response to the applicant, and all documentation of the reason the applicant's name was removed from the applicant pool.

Monitoring

A sample Deed will be submitted for each project. Additionally, the current annual monitoring information required to be maintained and reported annually to the Municipal Housing Liaison can be found on COAH's website. The information required for each unit includes but is not limited to:

- A sample Deed for each project.
- Street Address
- Block/Lot/Qualifier/Unit Number
- Housing Type
- Income: Very Low/Low/Moderate
- Initial Rental Price
- % of affordability
- Bedroom Type
- Age-restricted
- Handicap accessible/adaptable
- Co #, date
- Effective date of affordability controls
- Length of affordability controls (yrs)
- Date Affordability controls removed



EQUAL HOUSING OPPORTUNITY

We Do Business in Accordance With the Federal Fair Housing Law

(The Fair Housing Amendments Act of 1988)

It is illegal to Discriminate Against Any Person Because of Race, Color, Religion, Sex, Handicap, Familial Status, or National Origin

- In the sale or rental of housing or residential lots
- In advertising the sale or rental of housing
- In the financing of housing
- In the provision of real estate brokerage services
- In the appraisal of housing
- Blockbusting is also illegal

Anyone who feels he or she has been discriminated against may file a complaint of housing discrimination:
1-800-669-9777 (Toll Free)
1-800-927-9275 (TTY)

U.S. Department of Housing and Urban Development
Assistant Secretary for Fair Housing and Equal Opportunity
Washington, D.C. 20410

New Jersey Law Prohibits

Discrimination

in

Housing

ON THE BASIS OF: Race, Creed, Color, National Origin, Ancestry, Nationality, Marital or Domestic Partnership or Civil Union Status, Familial Status, Sex, Gender Identity or Expression, Affectional or Sexual Orientation, Disability, Source of Lawful Income or Source of Lawful Rent Payment (including Section 8)

BY: All Persons including Real Estate Agents or Brokers, Financial Institutions, Property Owners, Landlords, or Building Superintendents, and Their Agents and Employees

WITH RESPECT TO:

- The Sale, Rental or Lease of Real Property
- Listing or Advertising of Real Property
- Receipt or Transmittal of Offers to Purchase or Rent Real Property
- Application and Terms of a Mortgage or Other Loan

REMEDY MAY INCLUDE: An Order Restraining Unlawful Discrimination, Reimbursement for Financial Loss, Damages for Pain and Humiliation Experienced as a Result of Unlawful Discrimination, Punitive Damages, and Attorney's Fees

It is also unlawful to publish real estate advertisements which express any discrimination against persons protected by the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

Violations Should Be Reported To the Nearest Office of the NJ Division on Civil Rights or Call Toll Free at 866-405-3050

Atlantic City
26 S. Pennsylvania Avenue, 3rd Floor
Atlantic City, NJ 08401
(609) 441-3100 (Phone)

Camden
One Port Center
2 Riverside Drive, 4th Floor
Camden, NJ 08103
(856) 614-2550 (Phone)

Newark
31 Clinton Street, 3rd Floor
Newark, NJ 07102
(973) 648-2700 (Phone)

Trenton
140 East Front Street, 6th Floor
Trenton, NJ 08625
(609) 292-4605 (Phone)

www.NJCivilRights.gov

The regulations of the New Jersey Division on Civil Rights require that all real estate brokers and persons who engage in the business of selling or renting real property who are covered by the New Jersey Law Against Discrimination shall display this official poster in places easily visible to all prospective tenants and purchasers. N.J.A.C. 13:8-1.3.

CIVIL RIGHTS

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING
2014 AFFORDABLE HOUSING REGIONAL INCOME LIMITS

		1 Person	*1.5 Person	2 Person	*3 Person	4 Person	*4.5 Person	5 Person	6 Person	7 Person	8 Person	Max. Increase**		Regional Asset Limit***
												Rents	*Sales*	
Region 1	*Median*	$59,095	$63,317	$67,538	$75,980	$84,422	$87,799	$91,176	$97,930	$104,683	$111,437	1.8%	0.00%	$163,245
Bergen, Hudson, Passaic and Sussex	*Moderate*	$47,276	$50,653	$54,030	$60,784	$67,538	$70,239	$72,941	$78,344	$83,747	$89,150			
	Low	$29,548	$31,658	$33,769	$37,990	$42,211	$43,899	$45,588	$48,965	$52,342	$55,719			
	Very Low	$17,729	$18,995	$20,261	$22,794	$25,327	$26,340	$27,353	$29,379	$31,405	$33,431			
Region 2	*Median*	$63,430	$67,961	$72,492	$81,553	$90,614	$94,239	$97,864	$105,113	$112,362	$119,611	1.8%	0.00%	$173,844
Essex, Morris, Union and Warren	*Moderate*	$50,744	$54,369	$57,993	$65,242	$72,492	$75,391	$78,291	$84,090	$89,890	$95,689			
	Low	$31,715	$33,980	$36,246	$40,777	$45,307	$47,120	$48,932	$52,556	$56,181	$59,806			
	Very Low	$19,029	$20,388	$21,747	$24,466	$27,184	$28,272	$29,359	$31,534	$33,709	$35,883			
Region 3	*Median*	$73,500	$78,750	$84,000	$94,500	$105,000	$109,200	$113,400	$121,800	$130,200	$138,600	1.8%	0.00%	$199,936
Hunterdon, Middlesex and Somerset	*Moderate*	$58,800	$63,000	$67,200	$75,600	$84,000	$87,360	$90,720	$97,440	$104,160	$110,880			
	Low	$36,750	$39,375	$42,000	$47,250	$52,500	$54,600	$56,700	$60,900	$65,100	$69,300			
	Very Low	$22,050	$23,625	$25,200	$28,350	$31,500	$32,760	$34,020	$36,540	$39,060	$41,580			
Region 4	*Median*	$64,830	$69,461	$74,091	$83,353	$92,614	$96,319	$100,023	$107,432	$114,841	$122,250	1.8%	0.00%	$174,209
Mercer, Monmouth and Ocean	*Moderate*	$51,864	$55,568	$59,273	$66,682	$74,091	$77,055	$80,018	$85,946	$91,873	$97,800			
	Low	$32,415	$34,730	$37,046	$41,676	$46,307	$48,159	$50,012	$53,716	$57,421	$61,125			
	Very Low	$19,449	$20,838	$22,227	$25,006	$27,784	$28,896	$30,007	$32,230	$34,452	$36,675			
Region 5	*Median*	$57,050	$61,125	$65,200	$73,350	$81,500	$84,760	$88,020	$94,540	$101,060	$107,580	1.8%	0.00%	$151,043
Burlington, Camden and Gloucester	*Moderate*	$45,640	$48,900	$52,160	$58,680	$65,200	$67,808	$70,416	$75,632	$80,848	$86,064			
	Low	$28,525	$30,563	$32,600	$36,675	$40,750	$42,380	$44,010	$47,270	$50,530	$53,790			
	Very Low	$17,115	$18,338	$19,560	$22,005	$24,450	$25,428	$26,406	$28,362	$30,318	$32,274			
Region 6	*Median*	$51,085	$54,734	$58,383	$65,681	$72,979	$75,898	$78,817	$84,656	$90,494	$96,332	1.8%	0.00%	$136,680
Atlantic, Cape May, Cumberland and Salem	*Moderate*	$40,868	$43,787	$46,707	$52,545	$58,383	$60,719	$63,054	$67,725	$72,395	$77,066			
	Low	$25,543	$27,367	$29,192	$32,841	$36,490	$37,949	$39,409	$42,328	$45,247	$48,166			
	Very Low	$15,326	$16,420	$17,515	$19,704	$21,894	$22,769	$23,645	$25,397	$27,148	$28,900			

Moderate income is between 80 and 50 percent of the median income. Low income is 50 percent or less of median income. Very low income is 30 percent or less of median income.

* These columns are for calculating the pricing for one, two and three bedroom sale and rental units as per N.J.A.C. 5:80-26.4(a).

** This column is used for calculating the pricing for resale and rent increases for units as per N.J.A.C. 5:97-9.3. However, low income tax credit developments may increase based on the low income tax credit regulations. Landlords who did not increase rent in 2012 may increase rent by the combined 2012 and 2013 increase, or 3 percent.

*** The Regional Asset Limit is used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3.

Since the COAH Regional Income Limits for 2013 were higher than 2014 figures, the 2013 income limits, shown above, will remain in force for 2014 and until Regional Income Limits surpass the 2013 Regional Income Limits.

PROPERTY / DEVELOPMENT NAME: _____

PROPERTY ADDRESS: _____ EXHIBIT C

NAME OF APPLICANT: _____

AFFORDABLE HOUSING APPLICATION

Read this application carefully and return it with the required documentation. We reserve the right to disqualify applicants who do not submit ALL of the documentation requested in this application packet. Please complete, sign and return this application AND the required documentation to: Piazza & Associates, Inc., 216 Rockingham Row, Princeton, NJ 08540.

Federal law prohibits discriminate against any person making application to buy or rent a home with regard to age, race, religion, national origin, sex, handicapped or familial status. State law prohibits discrimination on the basis of race, creed, color, national origin, ancestry, nationality, marital or domestic partnership or civil union status, familial status, sex, gender identity or expression, affectional or sexual orientation, disability, source of lawful income or source of lawful rent payment (including Section 8). The affordable housing must be the intended primary residence of the applicant. All household members who intend to reside at the affordable home must be listed in the application. If changes in household composition occur during the application process, the applicant is required to notify Piazza & Associates, Inc. immediately. Applications may be withdrawn if the household compostion or srouces of income changes after the submission of this application. Applications must be truthful, complete and accurate. Any false statement makes the application null and void, and subjects the applicant to penalties imposed by law. **Income Verification:** The affordable homes are provided as a service to low- and moderate- income households. Occupancy is regulated by certain municipal and state statutes that require us to verify the income of every applicant. Your cooperation is appreciated.

Identification. Please include a photocopy of identification for every person who will reside in the affordable home. Typically, a birth certificate, drivers license or passport will be sufficient. **Verification of Income**. Every applicant must submit a copy of each of the most recent three (3) years of signed state and federal tax returns (1040). Please include all accompanying documents such as W2 form(s), 1099's etc. If the applicant has not filed a return in any of the three (3) previous years, he / she must submit a notarized letter of explanation. Every applicant must submit the six (6) most recent statements from every Checking account and three (3) statements from every other bank and financial account (including, Savings, CD's, Money Market Accounts, etc.) to which the applicant is a depositor or signatory. **All sources of income must be verified.** Acceptable forms of verification include... **Salary**: Four (4) most recent pay statement (stubs). **Social Security:** A letter from the Social Security Administration. **Public Assistance:** A letter from the appropriate agency which details the amount and frequency of the benefit. **Alimony and Child Support:** The separation or divorce agreement which details the amount and frequency of child support or alimony received by the applicant. **Pension Plan, IRA, Annuity** and/or other retirement account, plan or service under which the applicant receives an income or financial distribution: The most recent statement for each which clearly indicates the amount and frequency of the distribution. In lieu of a statement, a letter of verification from the appropriate authority will be considered. **Savings Bonds:** A copy of all bonds held by the applicant(s). **Stocks, Bonds, Treasury Bills and Notes or other financial instruments** which are owned in whole or in part by the applicant: The most recent statement which verifies the value of the assets and current dividends (if any). If these are not available, a notarized letter from a Certified Public Accountant or attorney who has access to these records will be considered. **Real Estate:** If the real estate is the current residence of the applicant, and if the applicant intends to sell the real estate, submit one of the following: a certified appraisal, a contract with a real estate broker which sets forth the price of the property, or a signed contract for the sale of the property. If there is a mortgage, a statement from the mortgage company or bank which clearly indicates the principal balance of the mortgage(s) must be submitted. If other real estate is owned, in whole or in part by the applicant, and that parcel or parcels of real estate generate(s) income, verification of income must be supplied. In addition, verification of mortgage payments, property taxes and insurance should be submitted. **Business Income:** Equals the sum of gross revenue less expenses (prior to taxes). Important: Answer all questions. Please answer "none" in the sections which ask for information about income that you do not have. Enter "n/a" if a question does not apply to you. If you have any questions, or are in need of further information, please call us: (609) 786-1100, or contact us by e-mail at Info@ HousingQuest.com.

Application services provided by Piazza & Associates, Inc., an affordable housing services corporation. This is an Equal Housing Opportunity. All housing is subject to applicable affordable housing regulations and availability. The terms and conditions of this affordable housing opportunity are subject to change without notice. We can not guarantee that an affordable home will be available to you. All homes meet certain criteria for "affordable housing," but the sales prices and rental rates are ***not*** adjusted to meet any specific household income or financial situation. Therefore, we can not and do not represent that these homes will be affordable to any individual applicant.

DO NOT FAX. *WE CAN NOT ACCEPT A FACSIMILE OF YOUR FINAL APPLICATION!* ***DO NOT FAX.***

PLEASE CALL US IF YOU NEED CLARIFICATION OR FURTHER INSTRUCTIONS: (609) 786-1100.

A. Head of Household Information (Please verify the information below and make corrections if necessary.)

1. Last Name: _____
2. First Name: _____
3. Home Address: _____
4. City/State/ Zip: _____
5. Soc. Sec. No: _____
6. Home Phone: _____
7. Work Phone: _____
8. County: _____
9: Email:

B. Household Composition (Every person who will occupy the affordable home must be listed.)

Name (First and Last)	Relation To	Date of Birth	Sex	Social Security Number
#1				
#2				
#3				
#4				
#5				
#6				

C. Current Situation

1. Do you currently: ___ Rent ___ Own ___Other
2. How long at the address above? _____ Years
3. What was your previous address?

_____

City: _____

State: ____ Zip Code: _____

4. What is your monthly rent or mortgage payment?

$_____

5. If you currently own your home, what is the value of this home?

$_____

6. What is the Principal Balance of your mortgage?

$_____

D. References

If you rent, please check "Landlord" and list the name and address of your landlord below. **If you own** your home, please check "Mortgage Co." and list the name and address of the mortgage company and account number below.

1. Name of ___Landlord or ___Mortgage Co.: _____
2. Address: _____
3. City, State and Zip Code: _____
4. Telephone Number: _____ 5. Mortgage Account No.: _____

If you own your home, please attach documentation verifying the value of the home and mortgage principal amount.

E. Salary **(Please list GROSS salary for every person over 18 years of age who will reside at the affordable home. Attach the 4 most recent pay statements (stubs) to this application. Please include overtime in calculation.)**

Name (First and Last) Repeat Employee's Name if applicant has more than one employer. Use additional pages for additional jobs.	**Occupation**	**Gross Salary per Pay Period**	**Pay Period** (Bi-Weekly, Weekly, etc.)	**Annual Gross Salary**
Name of Employee: Name of Employer: Immediate Supervisor: Address: Telephone:		$		$
Name of Employee: Name of Employer: Immediate Supervisor: Address: Telephone:		$		$
Name of Employee: Name of Employer: Immediate Supervisor: Address: Telephone:		$		$

F. Benefits Income: **Social Security, Pension, Disability, Welfare, Public Assist., IRA's, Annuities, Child Support, Alimony, Retirement, etc. (Include all sources which currently provide direct income. Provide documentation.)**

Type of Income (From List Above)	**Source** (Specify name of Bank, Fund, Agency, etc.)	**Client / Account Number**	**Gross Monthly Benefit**	**Gross Annual Benefit**
			$	$
			$	$
			$	$
			$	$
			$	$
			$	$
			$	$

G. Assets: Financial Institutions (Checking Account, Savings Accounts, Certificates of Deposit, Money Market Funds, Mutual Funds or other assets held by financial institutions. Provide documentation. Refer to Instructions.)

Type of Asset or Account	Financial Institution	Account Number	Current Market Value of Asset	Interest Rate	Annual Income
			$	%	$
			$	%	$
			$	%	$
			$	%	$
			$	%	$
			$	%	$
			$	%	$

H. Assets: Directly Held (Stocks, Bonds, Income-Producing Real Estate, Business or other directly held assets. Provide documentation. To determine the Annual Income from Real Estate or Business, refer to the Instructions.)

Type of Asset	Name of Asset	Number of Shares	Current Market Value	Annual Income
			$	$
			$	$
			$	$
			$	$
			$	$
			$	$

I. Marital Status: ___Married; ___Single; ___Divorced; ___Widowed; ___Legally Separated

J. Additional Information (Please include any information which will assist us in serving you such as special needs, accessibility requirements, etc.) _____

Applicant's Certification and Authorization: The undersigned hereby states that all the information provided in connection with this Affordable Housing Application is true and complete. I/We am/are aware that, if any statements made by me/us are willingly false, the application is null and void, and I/we may be subject to penalties imposed by law. Piazza & Associates, Inc. or its agents are hereby authorized to contact references to verify the information provided in these applications, and to make other inquiries regarding income, assets, credit status, employment, and residency history for the purpose of determining my/our eligibility for this affordable housing program. Further, I/we understand that there is no obligation at this time on my/our part to enter into a sales or rental agreement if the application is approved. **Void if not signed by all Applicants 18 years of age and over.**

Signed: _____ Signed: _____

EXHIBIT D

APPLICANT QUESTIONNAIRE & DOCUMENT CHECKLIST

This questionnaire must be filled out and signed by all applicants over the age of 17.

Rev. 09/06/12

ATTENTION: DO NOT SUBMIT ORIGINALS! Documents cannot be returned.

IMPORTANT
If you answer yes, you must submit a COPY of all of the required documents!

Applicant/Tenant Name: _____

Applicant/Tenant: Please check "yes" or "no" for each line

Yes	No	*Check "Yes" if the answer applies to one or more applicants.*	(√) *Place check mark if enclosed!*
____	____	Mortgage prequalification letter **(REQUIRED)**	___ Letter
____	____	I am entitled to file a tax return……..	___ 3 most recent federal & st. tax returns
			___ … with all attachments (w-2 forms, etc.)
____	____	I am currently a student - (please circle below):…….. (a) Full Time (b) Part Time	___ Current transcript or letter from school
____	____	I am presently employed and receive wages/tips/commissions..	___ 4 most recent pay statements…
____	____	I am presently employed at more than one job (NOT self employed)	...for every job held by everyone over 17.
____	____	I am self employed…….	___ Schedule "C" and tax returns
____	____	I own a business…….	___ Current Profit and Loss statements
____	____	I currently am on leave of absence from work…….	___ Letter from employer to verify status
____	____	I currently receive unemployment benefits……..	___ 6 most recent statements from agency
____	____	I have a savings account……..	___ 3 most recent statements from each acct
____	____	I have a checking account…….	___ 6 most recent statements from each acct
____	____	I have a money market account……	___ 3 most recent statements from each acct
____	____	I own a certificate of deposit (CD)……..	___ 3 most recent statements from each acct
____	____	I own stocks/bonds. (NOT held in a retirement plan)…….	___ 3 most recent statements from each acct
____	____	I own real estate or I am in the process of selling real estate……	___ Market value and mortgage statements
____	____	I have sold or gifted property or other assets in the past 2 years	___ What was sold, the value and sale price
____	____	I have an IRA. (NOT yet receiving income)…….	___ 3 most recent statements from each acct
____	____	I have a pension plan at work (NOT yet receiving income)……..	___ 3 most recent statements from each acct
____	____	I receive Social Security Income…….	___ Most recent benefit letter from SS Admin
____	____	I receive income from a pension/annuity/retirement fund……..	___ 3 most recent statements from each acct
____	____	I receive money periodically from my family, church, friends, etc.	___ Letter detailing the amount & frequency
____	____	I am entitled to receive child support……..	___ 3 most recent statements from source
____	____	**I am currently paying child support……..**	___ Proof of last 6 payments
____	____	I am entitled to receive alimony……	___ 3 most recent statements from source
____	____	**I am currently paying alimony…….**	___ Proof of last 6 payments
____	____	I receive AFDC/TANF……..	___ Most recent benefits letter
____	____	I receive assistance from a Public Housing Authority……	___ Most recent benefits letter
____	____	I receive Supplemental Social Security (SSI)…….	___ Most recent benefits letter
____	____	I receive Workman's Compensation……	___ 3 most recent statements from source
____	____	I have a Trust Fund…….	___ 3 most recent statements from source
____	____	***Valid form of ID for every household member is required!***	___ birth cert., driver's license or passport

Signature	Date	Signature	Date
Signature	Date	Signature	Date

AFFIRMATIVE FAIR HOUSING MARKETING PLAN EXHIBIT E
For Borough of Montvale **(REGION 1)**

I. APPLICANT AND PROJECT INFORMATION
(Complete Section I individually for all developments or programs within the municipality.)

1a. Administrative Agent Name, Address, Phone Number Administrative Agent: Contact Name: Frank Piazza Piazza & Associates, Inc. 216 Rockingham Row Princeton, NJ 08540 609-786-1100, ext. 301		1b. Development or Program Name, Address N/A
1c. Number of Affordable Units: N/A Number of Rental Units: N/A Number of For-Sale Units: N/A	1d. Price or Rental Range From N/A To	1e. State and Federal Funding Sources (if any)
1f. ☐ Age Restricted ☐ Non-Age Restricted	1g. Approximate Starting Dates Advertising:	Occupancy:
1h. County **Bergen, Hudson, Passaic, Sussex**		1i. Census Tract(s): N/A
1j. Managing/Sales Agent's Name, Address, Phone Number N/A		
1k. Application Fees (if any):		

(Sections II through IV should be consistent for all affordable housing developments and programs within the municipality. Sections that differ must be described in the approved contract between the municipality and the administrative agent and in the approved Operating Manual.)

II. RANDOM SELECTION

Describe the random selection process that will be used once applications are received.

1. RENTAL PROCESS:

A. An initial deadline date, no less than 60 days after the start of the marketing process, will be established. All of the preliminary applications received by Piazza & Associates, on or before the initial deadline date, shall be deemed received on that date.

B. Households that apply for very low-income housing will be prescreened by Piazza & Associates for preliminary income eligibility by comparing their total income and household size to the very low-income limits pursuant to the New Jersey Fair Housing Act, N.J.S.A. 52:27-D-304 ("NJFHA"). Households that apply for low and moderate-income housing will be prescreened by Piazza & Associates for preliminary income eligibility by comparing their total income and household size to the low and moderate-income limits pursuant to the Uniform Housing Affordability Controls, 5:80-26.1 et seq. ("UHAC"). All households will be notified as to their preliminary status.

C. A drawing will be held under the direction of Piazza & Associates to determine the priority order

of the pre-qualified applications received on or before the initial deadline date. All preliminary applications received after the initial deadline, will be processed on a "first come, first served" basis.

D. In order to ensure an adequate supply of qualified applicants, the advertising phase will continue until there are at least ten (10) pre-qualified applicants for each low and moderate-income unit available, or until all of the low and moderate-income units within the development have been rented.

E. Final applications will be mailed by Piazza & Associates to an adequate number of pre-qualified applicants, in priority order, for each available very low, low and moderate-income unit. The final application will require the applicants to supply documents to verify their identity and household composition as well as their income and assets.

F. Completed final applications will be forwarded to Piazza & Associates. Piazza & Associates will make a determination as to their eligibility for a low or moderate-income unit. Applicants will receive a letter from Piazza & Associates with respect to the status of their application each time a review is performed.

G. At the same time, applicants will also be subject to any criteria set forth by the Owner, pursuant to the Tenant Selection Criteria, attached. The criteria shall comply with all fair housing standards and be set forth in a policy statement made available to all applicants in the leasing office. The Owner will be responsible for the assessment of all criteria beyond the income and household size criteria set forth in "C" above.

H. Subsequent to the initial rent-up period, a list of pre-qualified applicants will be maintained by Piazza & Associates for each type of very low, low and moderate-income unit.

2. SALE PROCESS:

A. An initial deadline date, no less than 60 days after the start of the marketing process, will be established. All of the preliminary applications received by Piazza & Associates, on or before the initial deadline date, shall be deemed received on that date.

B. Households that apply for low and moderate income housing will be prescreened by Piazza & Associates for preliminary income eligibility by comparing their total income and household size to the low and moderate income limits adopted by COAH or its successors and other program restrictions that may apply. All households will be notified as to their preliminary status.

C. A drawing will be held under the direction of Piazza & Associates to determine the priority order of the pre-qualified applications received on or before the initial deadline date. All preliminary applications received after the initial deadline, will be processed on a "first come, first served" basis after the applicants who were in the initial random selection.

D. In order to ensure an adequate supply of qualified applicants, the advertising phase will continue until there are at least ten (10) pre-qualified applicants for each low and moderate income unit available, or until all of the low and moderate income units within the development have been sold.

E. Final applications will be mailed by Piazza & Associates to an adequate number of pre-qualified applicants, in priority order, for each available low and moderate income unit. The final application will require the applicants to supply documents to verify their identity and household composition as well as their income and assets.

F. Completed final applications will be forwarded to Piazza & Associates. Piazza & Associates will make a determination as to their eligibility for a low or moderate income unit. Applicants will receive a letter from Piazza & Associates with respect to the status of their application each time a review is performed.

G. When submitting final applications, applicants will also be asked to provide a pre-qualification letter from a qualified lending institution.

H. Certified applicants will be given 15 days to sign a sales agreement with the developer. Mortgage contingencies may not be an acceptable term of the agreement.

I. The sales agreement may also limit closing to a reasonable time to be approved by Piazza & Associates in advance of the process.

3. RESALE PROCESS:

A. The Seller submits a Preliminary Notice with a copy of their recorded deed in order to determine the maximum resale price

B. We will respond to the Seller in writing, explaining some of the details of the process and informing the Seller of the Maximum Sales Price (based on the change in median income as set forth by the New Jersey Dept. of Community Affairs) as well as the Maximum Income allowed for potential purchasers, as adjusted for family size. A form, entitled, "Notice of Intent to Sell", is attached.

C. We will also send a "Notice of Availability" to households on our waiting list for an affordable home of the same size and income category. We will include about 20 copies of Preliminary Applications, specifically marked with the address of the affordable home at the top, to the Seller. The Notice will ask interested households to contact the Seller or their agent, directly, to make an appointment to see the affordable home within a two-week time frame. The Seller may want to prepare a flyer for us to distribute with our notice of availability. We reserve the right to limit the number of notices that are mailed, based on the chronological order in which the prequalified applications were received. If the notices are limited in this way, applicants receiving notices will have a priority over those who do not.

D. With permission of the Seller, we automatically place a notification of the availability on NJHRC.gov. The Seller or their agent may also want to advertise. Ads should include the "Equal Housing Opportunity" logo and should be sent to our office for review prior to distribution.

E. The Seller or their agent, upon showing the home, provides potential buyers with a copy of the Preliminary Application (which may be duplicated if necessary). All interested parties must receive a specially marked Preliminary Application, whether or not they have already submitted an application to our office or are on our waiting list. Also, the Seller or their agent must keep a record of the name, address and telephone number of everyone who viewed the home.

F. At the end of the two-week time period, our office collects all of the Preliminary Applications submitted for a particular home. They are prioritized on the basis of a blind selection process or lottery. Preference may be given to households that can utilize all of the bedrooms, as well as handicap accommodations, when applicable.

G. The first two applicants on the prioritized list are sent a letter which requires them to complete a final application within seven days.

H. When an applicant is approved, the Seller may begin to negotiate a contract with the potential Buyer at this time, but there must be a contingency clause in the contract which voids the contract, without penalty to the buyer, if the potential buyer is not able to obtain financing within 30 days.

I. The remaining applicants are maintained on the waiting list for this home or other homes in the same size and income categories. In the event that the potential buyer is not able and/or willing to purchase the affordable home, the next applicant on the prioritized list is notified pursuant to the process described above.

J. The Seller must sell the affordable home with the same or comparable appliances and amenities that were in the home when it was first sold as an affordable home.

K. The Seller may NOT charge more than the Maximum Selling Price for any reason, except the addition of a room, the installation of central air conditioning (where there was none before) or comparable upgrade, but ONLY with prior written approval from us. For the most part, condominiums in this program are NOT eligible for such upgrades and/or adjustments to the selling price. The cost of broker fees; municipal inspections and required repairs that may be necessary to receive a Certificate of Occupancy; new appliances, carpeting or other flooring upgrades; and decorating and remodeling projects are NOT eligible costs for an increase in the Maximum Sales Price.

L. A copy of the Sales Contract must be submitted to our office prior to closing.

M. During the final stages of the process, it will be necessary for the Buyer to make arrangement for the Affordable Housing Agreement and Mortgage Note to be satisfied with respect to the Seller and new documents filed with respect to the Buyer. Our office typically provides the Buyer's attorney with the name and phone number of the attorney who can address these issues.

N. A copy of the HUD Closing Statement or Closing Disclosure form required by the TILA-RESPA Integrated Disclosure Rule, as appropriate, must be submitted to our office after the sale of the home.

O. Note: We do not guarantee that the Buyer can sell an affordable home for the Maximum Sales Price. An affordable home is also susceptible to market conditions, and the Fair Market Value of an affordable home may be lower than the Maximum Selling Price. In this case, the Seller may not be able to sell the home for more than its Fair Market Value

P. This outline is meant to describe the process utilized prior to the expiration of the deed restrictions. It is not meant to be a legal representation of the rights or responsibilities of any party, nor is it meant to modify the Affordable Housing Agreement, Mortgage Note or other Deed Restrictions. Buyers and Sellers are encouraged to seek legal counsel for specific questions in this regard.

Q. Our office is available to both the Seller and the Buyer throughout the process to answer any questions that they may have.

III. MARKETING

3a.Direction of Marketing Activity: Based on demographic data from the 2010 census, this table provides a comparison of race and ethnic origin between the Housing region 1 and the Borough of Montvale. The most significant negative differences point to the greatest need for affirmative marketing. In this case, African Americans (-10.5%) and Hispanic (-25.5%) represent the clearest differences between the municipality and the region.

Subject	RACE								HISPANIC OR LATINO	
	Total population	Race alone or in combination with one or more other races: [4]							Total population	
		White	Black or African American	American Indian and Alaska Native	Asian	Native Hawaiian and Other Pacific Islander	Some Other Race		Hispanic or Latino (of any race)	Not Hispanic or Latino
Bergen	905,116	668,395	59,235	5,016	140,413	1,259	55,012		145,281	759,835
Sussex	501,226	328,081	70,517	6,124	29,024	977	86,234		185,677	315,549
Hudson	634,266	362,592	93,248	7,828	91,810	1,614	106,846		267,853	366,413
Passaic	501,226	328,081	70,517	6,124	29,024	977	86,234		185,677	315,549
Region 1	2,541,834	1,687,149	293,517	25,092	290,271	4,827	334,326		784,488	1,757,346
% Region 1	100%	66.4%	11.5%	1.0%	11.4%	0.2%	13.2%		30.9%	69.1%
Montvale	7,844	6,654	81	6	866	-	128		419	7,425
% Montvale	100%	84.8%	1.0%	0.1%	11.0%	0.0%	1.6%		5.3%	94.7%
Difference		**18.5%**	**-10.5%**	**-0.9%**	**-0.4%**	**-0.2%**	**-11.5%**		**-25.5%**	**25.5%**

[4] In combination with one or more of the other races listed. The six numbers may add to more than the total population, and the six percentages may add to more than 100 percent because individuals may report more than one race. Source: U.S. Census Bureau, 2010 Census of Population and Housing, Demographic Profile Summary File: Technical Documentation, 2011.

☐ White (non-Hispanic X Black (non-Hispanic) X Hispanic ☐ American Indian or Alaskan Native

☐ Asian or Pacific Islander ☐ Other group:

3b. Web Sites

HOUSING RESOURCE CENTER (www.NJHRC.gov) A free, online listing of affordable housing X

PIAZZA & ASSOCIATES, INC. (www.HousingQuest.com) The Administrative Agent's online listing X

BOROUGH OF MONTVALE (www.montvale.org) Referral to HousingQuest.com X

3c. Commercial Media (required) (Check all that applies)

	DURATION & FREQUENCY OF OUTREACH	**NAMES OF REGIONAL NEWSPAPER(S)**	**CIRCULATION AREA**
TARGETS ENTIRE HOUSING REGION 1			
Daily Newspaper			
X	Once at the start of the Affirmative Marketing Process	Star-Ledger	Northern and Central New Jersey

Daily Newspaper			
X	Once at start of Affirmative Marketing Process with additional monthly advertising if necessary.	Record, The	Bergen
X	Once at start of Affirmative Marketing Process with additional monthly advertising if necessary.	Jersey Journal	Hudson
X	Once at start of Affirmative Marketing Process with additional monthly advertising if necessary.	Herald News	Passaic
X	Once at start of Affirmative Marketing Process with additional monthly advertising if necessary.	New Jersey Herald	Sussex

TARGETS ENTIRE HOUSING REGION 1

	Duration & Frequency of Outreach	**Names of Regional TV Station(s)**	**Circulation Area and/or Racial/Ethnic Identification of Readers/Audience**
☐		2 WCBS-TV Cbs Broadcasting Inc.	NYC Metropolitan Area
☐		4 WNBC NBC Telemundo License Co. (General Electric)	NYC Metropolitan Area
☐		5 WNYW Fox Television Stations, Inc. (News Corp.)	NYC Metropolitan Area
☐		7 WABC-TV American Broadcasting Companies, Inc (Walt Disney)	NYC Metropolitan Area
☐		11 WPIX Wpix, Inc. (Tribune)	NYC Metropolitan Area
☐		13 Wpix, Inc. (Tribune) Educational Broadcasting Corporation	NYC Metropolitan Area
☐		25 WNYE-TV New York City Dept. Of Info Technology & Telecommunications	NYC Metropolitan Area
☐		31 WPXN-TV Paxson Communications License Company, Llc	NYC Metropolitan Area
☐		41 WXTV Wxtv License Partnership, G.p. (Univision Communications Inc.)	NYC Metropolitan Area, Spanish-language
☐		47 WNJU NBC Telemundo License Co. (General Electric)	NYC Metropolitan Area, Spanish-language
☐		50 WNJN New Jersey Public Broadcasting Authority	New Jersey
☐		62 WRNN-TV Wrnn License Company, Llc	Hudson Valley
☐		63 WMBC-TV Mountain Broadcating Corporation	Northern New Jersey, Various ethnic

☐		66 WFME-TV Family Stations Of New Jersey, Inc.	Northern New Jersey, Christian
☐		68 WFUT-TV Univision New York Llc	NYC Metropolitan Area, Spanish-language
TARGETS PARTIAL HOUSING REGION 1			
☐		8 WTNH Wtnh Broadcasting, Inc. (LIN TV Corp.)	Bergen
☐		49 WEDW Connecticut Public Broadcasting, Inc.	Bergen
☐		17 WEBR-CA K Licensee, Inc.	Bergen, Hudson (Christian)
☐		26 WNXY-LP Island Broadcasting Company	Bergen, Hudson
☐		32 WXNY-LP Island Broadcasting Company	Bergen, Hudson
☐		35 WNYX-LP Island Broadcasting Company	Bergen, Hudson
☐		39 WNYN-LP Island Broadcasting Company	Bergen, Hudson (Spanish)
☐		21 WLIW Educational Broadcasting Corporation	Bergen, Hudson, Passaic
☐		60 W60AI Ventana Television, Inc.	Bergen, Hudson, Passaic
☐		6 WNYZ-LP Island Broadcasting Co.	Bergen, Sussex
☐		22 WMBQ-CA Renard Communications Corp.	Hudson
☐		34 WPXO-LP Paxson Communications License Company, Llc	Hudson
☐		42 WKOB-LP Nave Communications, Llc	Hudson (Christian)
☐		3 WBQM-LP Renard Communications Corp.	Hudson, Sussex
☐		52 WNJT New Jersey Public Broadcasting Authority	Hudson, Sussex
☐		28 WBRE-TV Nexstar Broadcasting, Inc.	Passaic, Sussex
☐		36 W36AZ New Jersey Public Broadcasting Authority	Passaic, Sussex
☐		16 WNEP-TV New York Times Co.	Sussex
☐		22 WYOU Nexstar Broadcasting, Inc.	Sussex
☐		23 W23AZ Centenary College	Sussex
☐		38 WSWB Mystic Television of Scranton Llc	Sussex
☐		39 WLVT-TV Lehigh Valley Public Telecommunications Corp.	Sussex
☐		44 WVIA-TV Ne Pa Ed Tv Association	Sussex
☐		49 W49BE New Jersey Public Broadcasting	Sussex

		Authority	
☐		56 WOLF-TV Wolf License Corp	Sussex
☐		60 WBPH-TV Sonshine Family Television Corp	Sussex
☐		64 WQPX Paxson Communications License Company, Llc (Ion Media Networks)	Sussex
☐		69 WFMZ-TV Maranatha Broadcasting Company, Inc.	Sussex

	Duration & Frequency of Outreach	**Names of Cable Provider(s)**	**Broadcast Area**
TARGETS PARTIAL HOUSING REGION 1			
☐		Time Warner Cable of Bergen & Hudson Counties	Partial Bergen
☐		Comcast of the Meadowlands	Partial Bergen
☐		Cablevision of New Jersey, Oakland, Ramapo, and Rockland	Partial Bergen
☐		US Cable of Paramus-Hillsdale	Partial Bergen
☐		Cablevision of NJ (Bayonne System), Hudson	Partial Hudson
☐		Comcast of Jersey City, Meadowlands, NJ (Union System)	Partial Hudson
☐		Time Warner Cable of Bergen & Hudson Counties	Partial Hudson
☐		Cablevision of Oakland, Paterson	Partial Passaic
☐		Hometown Online	Partial Passaic
☐		Cable Vision of Morris, Warwick	Partial Sussex
☐		Hometown Online	Partial Sussex
☐		Service Electric Broadband Cable	Partial Sussex
☐		Time Warner Cable of Bergen & Hudson Counties	Partial Bergen
☐		Comcast of the Meadowlands	Partial Bergen
☐		Cablevision of New Jersey, Oakland, Ramapo, and Rockland	Partial Bergen
☐		US Cable of Paramus-Hillsdale	Partial Bergen
☐		Cablevision of NJ (Bayonne System), Hudson	Partial Hudson
☐		Comcast of Jersey City, Meadowlands, NJ (Union System)	Partial Hudson
☐		Time Warner Cable of Bergen & Hudson Counties	Partial Hudson

☐		Cablevision of Oakland, Paterson	Partial Passaic
☐		Hometown Online	Partial Passaic
☐		Cable Vision of Morris, Warwick	Partial Sussex
☐		Hometown Online	Partial Sussex
☐		Service Electric Broadband Cable	Partial Sussex
☐		Time Warner Cable of Bergen & Hudson Counties	Partial Bergen
☐		Comcast of the Meadowlands	Partial Bergen
☐		Cablevision of New Jersey, Oakland, Ramapo, and Rockland	Partial Bergen
☐		US Cable of Paramus-Hillsdale	Partial Bergen
☐		Cablevision of NJ (Bayonne System), Hudson	Partial Hudson
☐		Comcast of Jersey City, Meadowlands, NJ (Union System)	Partial Hudson
☐		Time Warner Cable of Bergen & Hudson Counties	Partial Hudson
☐		Cablevision of Oakland, Paterson	Partial Passaic
☐		Hometown Online	Partial Passaic
☐		Cable Vision of Morris, Warwick	Partial Sussex
☐		Hometown Online	Partial Sussex
☐		Service Electric Broadband Cable	Partial Sussex

	DURATION & FREQUENCY OF OUTREACH	**NAMES OF REGIONAL RADIO STATION(S)**	**BROADCAST AREA AND/OR RACIAL/ETHNIC IDENTIFICATION OF READERS/AUDIENCE**
TARGETS ENTIRE HOUSING REGION 1			
AM			
☐		WFAN 660	
☐		WOR 710	
☐		WABC 770	
☐		WCBS 880	
☐		WBBR 1130	
FM			
☐		WFNY-FM 92.3	

☐		WPAT-FM 93.1	Spanish
☐		WNYC-FM 93.9	
☐		WFME 94.7	Christian
☐		WPLJ 95.5	
☐		WQXR-FM 96.3	
☐		WQHT 97.1	
☐		WSKQ-FM 97.9	Spanish
☐		WAWZ 99.1	Christian
☐		WBAI 99.5	
☐		WHTZ 100.3	
☐		WHUD 100.7	
☐		WCBS-FM 101.1	
☐		WQCD 101.9	
☐		WNEW 102.7	
☐		WKTU 103.5	
☐		WAXQ 104.3	
☐		WWPR-FM 105.1	
☐		WLTW 106.7	
☐		WBLS 107.5	
TARGETS PARTIAL HOUSING REGION 1			
AM			
☐		WEEX 1230	Bergen
☐		WKDM 1380	Bergen, Hudson (Chinese/ Mandarin)
☐		WMCA 570	Bergen, Hudson, Passaic (Christian)
☐		WNYC 820	Bergen, Hudson, Passaic
☐		WRKL 910	Bergen, Hudson, Passaic (Polish)
☐		WPAT 930	Bergen, Hudson, Passaic (Caribbean, Mexican, Mandarin)
☐		WWDJ 970	Bergen, Hudson, Passaic (Christian)
☐		WINS 1010	Bergen, Hudson, Passaic
☐		WEPN 1050	Bergen, Hudson, Passaic
☐		WVNJ 1160	Bergen, Hudson, Passaic

☐		WLIB 1190	Bergen, Hudson, Passaic (Christian)
☐		WADO 1280	Bergen, Hudson, Passaic (Spanish)
☐		WWRV 1330	Bergen, Hudson, Passaic (Spanish)
☐		WNSW 1430	Bergen, Hudson, Passaic (Portuguese)
☐		WZRC 1480	Bergen, Hudson, Passaic (Chinese/Cantonese)
☐		WQEW 1560	Bergen, Hudson, Passaic
☐		WWRL 1600	Bergen, Hudson, Passaic
☐		WWRU 1660	Bergen, Hudson, Passaic (Korean)
☐		WMTR 1250	Passaic
☐		WGHT 1500	Passaic
☐		WNNJ 1360	Sussex
FM			
☐		WSOU 89.5	Bergen, Hudson
☐		WCAA 105.9	Bergen, Hudson (Latino)
X	Once at the start of the affirmative marketing.	WBGO 88.3	Bergen, Hudson, Passaic
☐		WFDU 89.1	Bergen, Hudson, Passaic
☐		WKCR-FM 89.9	Bergen, Hudson, Passaic
☐		WNYU-FM 89.1	Bergen, Hudson, Passaic
☐		WFUV 90.7	Bergen, Hudson, Passaic
☐		WFMU 91.1	Bergen, Hudson, Passaic
☐		WNYE 91.5	Bergen, Hudson, Passaic
☐		WRKS 98.7	Bergen, Hudson, Sussex
☐		WRTN 93.5	Bergen, Hudson, Sussex
☐		WHCR-FM 90.3	Bergen, Passaic
☐		WPSC-FM 88.7	Passaic
☐		WRHV 88.7	Passaic
X	Once at the start of the affirmative marketing.	WNJP 88.5	Sussex
☐		WNTI 91.9	Sussex
☐		WCTO 96.1	Sussex
☐		WSUS 102.3	Sussex
☐		WNNJ-FM 103.7	Sussex

☐		WDHA -FM 105.5	Sussex
☐		WHCY 106.3	Sussex
☐		WWYY 107.1	Sussex

3d. Other Publications (such as neighborhood newspapers, religious publications, and organizational newsletters) (Check all that applies)

		NAME OF PUBLICATIONS	**OUTREACH AREA**	**RACIAL/ETHNIC IDENTIFICATION OF READERS/AUDIENCE**
TARGETS ENTIRE HOUSING REGION 1				
Bi-weekly				
☐		Al Manassah		Arab-American
Monthly				
X	Once at the start of the affirmative marketing process.	Sino Monthly	North Jersey/NYC area	Chinese-American
TARGETS PARTIAL HOUSING REGION 1				
Daily				
☐		24 Horas	Bergen, Essex, Hudson, Middlesex, Passaic, Union Counties	Portuguese-Language
Weekly				
☐		Arab Voice Newspaper	North Jersey/NYC area	Arab-American
☐		La Voz	Hudson, Union, Middlesex Counties	Cuban community
☐		Italian Tribune	North Jersey/NYC area	Italian community
☐		Jewish Standard	Bergen, Passaic, Hudson Counties	Jewish community
X	Once at the start of marketing	El Especialito	Union City	Spanish-Language
☐		El Nuevo	Hudson County	Spanish-Language
X	Once at the start of marketing	Reporte Hispano	Regional	Spanish-Language
☐		Su Guia	Bergen and Passaic	Spanish-Language
☐		Banda Oriental Latinoamérica	North Jersey/NYC area	South American community
☐		Ukranian Weekly	New Jersey	Ukranian community

3e. Employer Outreach (names of employers throughout the housing region that can be contacted to post advertisements and distribute flyers regarding available affordable housing) (Check all that applies)

DURATION & FREQUENCY OF OUTREACH	**NAME OF EMPLOYER/COMPANY**	**LOCATION**
Hudson County		
X	A flyer and Preliminary Application will be mailed to	United Parcel Service Inc. NY Corp	492 County Ave, Secaucus

	all of the employers, below, once at the start of the affirmative marketing process.		
X		USPS	80 County Road, Jersey City
X		Liz Claiborne Inc	1 Claiborne Ave, North Bergen
X		Maxim Staffing Solutions	26 Journal Square, Jersey City
X		Ritter Sysco Food Service	20 Theodore Conrad Dr. Jersey City
X		Jersey City Medical Center Inc.	55 Meadowlands Pkwy. , Secaucus
X		Marsh USA Inc.	121 River St, Hoboken
X		National Retail Systems Inc.	2820 16th St North Bergen
X		Community Corrections Corp	Lincoln Hwy Kearny
X		Marine Personnel & Provisioning Inc.	1200 Harbor Blvd Weehawken
X		Port Authority of NY and NJ	241 Erie St. Jersey City and 120 Academy St. Jersey City
X		Christ Hospital Health Service	176 Palisade Ave, Jersey City
X		Bayonne Hospital	29th Street and Ave E, Bayonne
X		Salson Logistics Inc.	2100 88th St. North Bergen, NJ
X		National Financial Service	499 Washington Blvd. Fl 5, Jersey City
X		Fleet NJ Company Development Corp.	10 Exchange Place, Jersey City
X		Maidenform Inc	154 Ave E, Bayonne
X		Lord Abbett & Company	90 Hudson City, Jersey City
X		Liberty Health Plan Inc.	115 Christopher Columbus Dr. Jersey City
X		Port Imperial Ferry Corp.	4800 Ave. at Port Imperial Blvd. Weehawken, NJ
X		Hudson News	1305 Paterson Plank Rd, North Bergen
X		Palisades General Hospital	7600 River Rd North Bergen, NJ
X		Equiserve Inc.	525 Washington Blvd Jersey city
X		Meadowlands Hospital Medical Center	Meadowlands Pkwy Secaucus
X		Retailers & Manufacturers Dist Marking Serv.	50 Metro Way Secaucus
X		Dynamic Delivery Corp	20 Central Ave Kearny, NJ
X		Bowne Business Communications Inc.	215 County Ave Secaucus
X		North Hudson Community Action Corp.	5301 Broadway West New York 07093
X		Goya Foods Inc.	100 Seaview Dr. Secaucus

Bergen County			
X		Hackensack University Medical Center	30 Prospect Ave, Hackensack, NJ 07601
X		Professional Employer Group Service	2050 Center Ave Ste 336 Fort Lee
X		Cristi Cleaning Service	77 Trinity Pl. Hackensack, NJ
X		Society of the Valley Hospital	223 N Van Dien Ave Ridgewood
X		NJ Sports & Expo Authority	50 State Highway 120 East Rutherford
X		Merck-Medco Managed Care LLC	100 Parsons Pond Dr. Franklin Lakes 07417
X		Quest Diagnostics Incorporated	1 Malcolm Ave Teterboro ,NJ 07608
X		AT&T	15 E Midland Ave Paramus
X		Englewood Hospital and Medical Center	350 Engle St. Englewood
X		Aramark Svcs Management of NJ Inc	50 Route 120 East Rutherford
X		Holy Name Hospital	718 Teaneck Road Teaneck
X		Doherty Enterprises Inc	7 Pearl Ct Allendale
X		Bergen Regional Medical Center	230 East Ridgewood Ave Paramus
X		Inserra supermarkets, Inc.	20 Ridge Rd Mahwah
X		Howmedica Osteonics Corp	325 Corporate Dr. Mahwah, NJ &59 Rt 17 Allendale, NJ
X		Becton Dickinson & Company Corp	1 Becton Dr. Franklin Lakes
X		Pearson Education, Inc.	1 Lake St. Upper Saddle River

Passaic County			
X		D&E Pharmaceutical Co.	206 Macoprin Rd Bloomingdale, NJ 07403
X		Acme Markets	467 AllWood Rd Clifton, NJ 07012
X		St. Mary's Hospital	350 Boulevard Passaic, NJ 07055
X		Merry Maids	14 Riverside Square Mall, Bloomingdale, NJ 07403
X		Health Center at Bloomingdale	255 Union Ave Bloomingdale, NJ 07403
X		Sommers Plastic Product Co. Inc.	825 Bloomfield Ave. Clifton, NJ 07012
X		St. Joseph's Hospital	703 Main St. Paterson, NJ 07503
X		BAE Systems	150 Parish Dr. Wayne, NJ 07470
X		Drake Bakeries Inc	75 Demarest Dr, Wayne, NJ 07470
X		Toys R Us National Headquarters	1 Geoffrey Way, Wayne, NJ 07470
X		GAF Materials Corporation	1361 Alps Rd, Wayne, NJ 07470

X		Valley National Bank Headquarters	1455 Valley Road Wayne, New Jersey 07470

Sussex County			
X		Selective Insurance	40 Wantage Ave, Branchville, NJ
X		Andover Subacute and Rehab Center	99 Mulford Rd Bldg 2, Andover, NJ
X		Mountain Creek Resorts	200 State Rt 94, Vernon, NJ
X		Newton Memorial Hospital Inc.	175 High St, Newton, NJ
X		Vernon Township Board of Education	539 State Rt 515, Vernon, NJ
X		F.O. Phoenix (Econo-Pak)	1 Wiebel Plz, Sussex, NJ
X		Hopatcong Board of Education	2 Windsor Ave, Hopatcong, NJ
X		Saint Clare's Hospital	20 Walnut St, Sussex, NJ
X		Ames Rubber Corp	19 Ames Blvd, Hamburg, NJ

3f. Community Contacts (names of community groups/organizations throughout the housing region that can be contacted to post advertisements and distribute flyers regarding available affordable housing)

Name of Group/Organization	Outreach Area	Racial/Ethnic Identification of Readers/Audience	Duration & Frequency of Outreach
See attached	Region	All	A flyer and Preliminary Application will be mailed to everyone on the attached list, once at the start of the affirmative marketing process and as needed thereafter.

IV. APPLICATIONS

Applications for affordable housing for the above units will be available at the following locations:

4a. County Administration Buildings and/or Libraries for all counties in the housing region (list county building, address, contact person) (Check all that applies)

	BUILDING	**LOCATION**
X	Danforth Memorial Library	250 Broadway, Paterson, NJ 07501
X	Johnson Free Public Library	274 Main Street Hackensack, NJ 07601
X	Hudson County Library	25 Journal Sq. Jersey City, N J 07306
X	Sussex County Main Library	125 Morris Turnpike, Newton, NJ 07860
X	Montvale Free Public Library	12 Mercedes Dr., Montvale, NJ 07645

X	County of Sussex	One Spring Street, Newton, NJ 07860
X	Hudson County Administration Building	595 Newark Avenue, Jersey City, NJ 07306
X	Passaic County Administration Building	401 Grand Street, Paterson, NJ 07505 (973) 225-3632
X	Bergen County Administration Building	One Bergen County Plaza, Hackensack, NJ 07601 (201)336-6000

4b. Municipality in which the units are located (list municipal building and municipal library, address, contact person)

Lorraine Hutter
Land Use Administrator
Borough of Montvale
Business Administrator / CFO
12 Mercedes Drive
Montvale, NJ 07645
Phone (201) 391-5700 ext. 5700
Fax (201) 391-9317

4c. Sales/Rental Office for units (if applicable)

N/A

V. CERTIFICATIONS AND ENDORSEMENTS

I hereby certify that the above information is true and correct to the best of my knowledge. I understand that knowingly falsifying the information contained herein may affect the Municipality's substantive certification.

Frank Piazza, President, Piazza & Associates, Inc.

_____
Name (Type or Print)

Administrative Agent, Borough of Montvale

_____
Title/Municipality

_____
Signature Date

OPERATING MANUAL FOR THE

BOROUGH OF MONTVALE

SALES PROGRAMS

PREPARED BY

PIAZZA & ASSOCIATES, INC.

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INTRODUCTION

This Operating Manual has been prepared by Piazza & Associates, Inc., the Administrative Agent for the Borough of Montvale, to assist in the administration of for-sale units. General questions regarding its content can be addressed to Piazza & Associates, Inc. 216 Rockingham Row, Princeton, NJ 08540; by telephone to 609-786-1100; or by email at info@HousingQuest.com.

This manual describes the basic content and operation of the program, examines program purposes and provides the guidelines for implementing the program. It has been prepared with a flexible format allowing for periodic updates of its sections, when required, due to revisions in regulations and/or procedures.

This manual explains the steps in the initial sale process and in the resale process. It describes the eligibility requirements for participation in the program, record keeping and overall program administration.

Implementation of any procedure, even if it is not included in this Operating Manual, shall be in accordance with the Federal Fair Housing Act and Equal Opportunities laws[1], the Uniform Housing Affordability Controls (UHAC) N.J.A.C. 5:80-26.1 et seq.[2], the substantive rules of the Council on Affordable Housing N.J.A.C. 5:96[3] and 5:97[4]and the affordable housing regulations of the Borough of Montvale (hereafter referred to as the "Regulations").

FAIR HOUSING AND EQUAL HOUSING OPPORTUNITIES

EQUAL HOUSING OPPORTUNITY

In accordance with the Federal Fair Housing Act, it is unlawful to discriminate against any person making application to buy or rent a home with regard to age, race, religion, national origin, sex, handicapped or familial status. In addition, New Jersey Law prohibits discrimination in housing on the basis of race, creed, color, national origin, ancestry, nationality, marital or domestic partnership or civil union status, familial status, sex, gender identity or expression, affectional or sexual orientation, disability, source of lawful income or source of lawful rent payment (including Section 8) by all persons including real estate agents or brokers, financial institutions, property owners, landlords, or building superintendents, and their agents and employees with respect to the sale, rental or lease of real property, listing or advertising of real property, receipt or transmittal of offers to purchase or rent real property, application and terms of a mortgage or other loan. See Exhibit A.

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[1] https://www.hud.gov/program_offices/fair_housing_equal_opp/FHLaws

[2] http://www.nj.gov/dca/affiliates/coah/regulations/uhac.html

[3] http://www.state.nj.us/dca/divisions/lps/hss/statsandregs/596.pdf

[4] http://www.state.nj.us/dca/divisions/lps/hss/statsandregs/597.pdf

WHAT IS AFFORDABLE HOUSING?

Affordable housing, unlike market rate housing, has affordability controls limiting the price for at least 30 years. The Regulations considers housing "affordable" if the household pays approximately 28% or less of the household's gross income on housing costs. Affordable housing is priced to be affordable to households earning up to 80% of the area median income for the region in which the affordable housing is located.

WHO QUALIFIES FOR AFFORDABLE HOUSING?

In order to be eligible for affordable housing in New Jersey, a household's income will be below the income limit for the region in which the affordable housing is located, either for low or moderate levels. A moderate-income household is classified as earning between 50 percent and 80 percent of the area median income. A low-income household is classified as earning less than 50 percent of area median income. The New Jersey Fair Housing Act (NJFHA) has included a new category for very low-income households, which are classified as earning less than 30 percent of area median income. Municipalities are not required to provide affordable sale housing to very low-income households

The COAH Regional Income Limits Chart (Exhibit B) provides information about income limits for each of COAH's six housing regions. Each region has different calculated median incomes, which are adjusted periodically. The Borough of Montvale is located in Bergen County, which is part of Region 1, together with Hudson, Passaic and Sussex Counties.

LOCAL AFFORDABLE HOUSING PROGRAMS FOR PURCHASE

Piazza & Associates, Inc. currently administers the affordable housing resale program in the Borough of Montvale.

1. **The Reserve**: This community includes six, 2 and 3 bedroom homes for owner occupancy. All of the affordable homes at The Reserve have been sold and occupied.

2. **Valley View**: Included in this neighborhood are 26 owner-occupied affordable condominiums, including both 2 and 3 bedroom units.

3. **Summit Ridge:** This neighborhood includes 10 owner-occupied affordable condominiums.

A copy of the Borough of Montvale Housing Element and Fair Share Plan is available in the Borough Clerk's Office located at Borough Hall, 12 Mercedes Drive, Montvale, NJ 07645.

OTHER AFFORDABLE HOUSING PROGRAMS AND OPPORTUNITIES

Affordable housing throughout the State of New Jersey is administered by a wide variety of organizations and agencies. Further information can be found at: http://www.nj.gov/dca/affiliates/coah/resources/looking.html.

Individuals interested in applying for affordable housing should contact the Municipal Housing Liaison in the municipality in which they are interested in living. Each municipality has a Municipal Housing Liaison who is responsible for administering the municipality's affordable housing program. Some municipalities administer their own affordable housing and have their own application process. If not, the Municipal Housing Liaison can direct applicants to developers, nonprofit agencies, State agencies or consultants that may administer the affordable housing within the municipality. A list of Municipal Housing Liaisons can be found at: http://www.nj.gov/dca/divisions/lps/hss/admin_files/muniliaisons.pdf

The New Jersey Housing and Mortgage Finance Agency has established New Jersey's Housing Resource Center, an on-line, searchable database of affordable housing in the State. The Housing Resource Center provides a listing posted by developers, landlords, and municipalities of available affordable housing. Available units are listed with contact and application information. Look for the Housing Resource Center at www.njhrc.gov.

The New Jersey Guide to Affordable Housing, which can be found at http://www.state.nj.us/dca/divisions/codes/publications/guide.html, is a listing compiled by the New Jersey Department of Community Affairs Division of Codes and Standards. It lists all types of affordable housing by county. The housing units on the list have a variety of qualification requirements, including age-restricted housing and housing for the developmentally disabled.

Applicants who do not have access to the Internet should call 211 for assistance.

Piazza & Associates, Inc. also provides information on many affordable housing programs throughout the state of New Jersey. Detailed information about these affordable housing opportunities can be found at www.HousingQuest.com.

OVERVIEW OF THE AFFORDABLE HOUSING ADMINISTRATION PROCESS

- The Municipal Housing Liaison serves as an initial point of contact for unsolicited calls to the municipality about affordable housing and, where appropriate, directs applicants to an Administrative Agent, who may be developers, nonprofit agencies, State agencies or consultants that may administer the affordable housing within the municipality.

- The Administrative Agent implements the municipality's Affirmative Marketing Plan.

- The Administrative Agent serves as the initial point of contact for all inquiries generated by the affirmative marketing efforts and sends out pre-applications to interested callers.

- Households that apply for low and moderate income housing will be prescreened by the Administrative Agent for preliminary income eligibility by comparing their total income and household size to the low and moderate income limits adopted by COAH or its successors and other program restrictions that may apply. All households will be notified as to their preliminary status.

OVERVIEW OF THE NEW SALE PROCESS

- An initial deadline date, no less than 60 days after the start of the marketing process, will be established. All of the preliminary applications received by Piazza & Associates, on or before the initial deadline date, shall be deemed received on that date.
- Households that apply for low and moderate income housing will be prescreened by Piazza & Associates for preliminary income eligibility by comparing their total income and household size to the low and moderate income limits adopted by COAH or its successors and other program restrictions that may apply. All households will be notified as to their preliminary status.
- A drawing will be held under the direction of Piazza & Associates to determine the priority order of the pre-qualified applications received on or before the initial deadline date. All preliminary applications received after the initial deadline, will be processed on a "first come, first served" basis after the applicants who were in the initial random selection.
- In order to ensure an adequate supply of qualified applicants, the advertising phase will continue until there are at least ten (10) pre-qualified applicants for each low and moderate income unit available, or until all of the low and moderate income units within the development have been sold.
- Final applications will be mailed by Piazza & Associates to an adequate number of pre-qualified applicants, in priority order, for each available low and moderate income unit. The final application will require the applicants to supply documents to verify their identity and household composition as well as their income and assets.
- Completed final applications will be forwarded to Piazza & Associates. Piazza & Associates will make a determination as to their eligibility for a low or moderate income unit. Applicants will receive a letter from Piazza & Associates with respect to the status of their application each time a review is performed.
- When submitting final applications, applicants will also be asked to provide a pre-qualification letter from a qualified lending institution.
- Certified applicants will be given 15 days to sign a sales agreement with the developer. Mortgage contingencies may not be an acceptable term of the agreement.

- The sales agreement may also limit closing to a reasonable time to be approved by Piazza & Associates in advance of the process.

OVERVIEW OF THE RESALE PROCESS

When an Owner of a restricted unit wishes to sell, the sale will be processed through the Administrative Agent. Prior to the initial date of purchase, the Owner makes a certification regarding his or her understanding of this requirement.

The Administrative Agent coordinates certain aspects of the sales process for affordable homes on behalf of designated municipalities. The Administrative Agent is not a real estate agent, however, and recommends that the Seller use a qualified real estate professional. The process is outlined below.

- The Seller submits a Preliminary Notice and Request for Maximum Sale Price (MSP).

- The Administrative Agent will respond to the Seller in writing, explaining some of the details of the process and informing the Seller of the MSP. The MSP is calculated by using COAH's Annual Regional Income Limits Chart or approved alternative, and can be estimated on the Resale Calculator at HousingQuest.com or on COAH's website.

- The Seller then submits a Final Notice of Intention to Sell to the Administrative Agent.

- The Administrative Agent will respond by sending 20 copies of Preliminary Applications to the Seller, specially marked with the address of the affordable home at the top.

- The Administrative Agent will send a "Notice of Availability" to households on the Borough waiting list for an affordable home of the same bedroom size and income category. The Notice will ask interested households to contact the Seller or their agent, directly, to make an appointment to see the affordable home within a two-week time frame. The Seller may want to prepare a flyer for us to distribute with the notice of availability. The Administrative Agent reserves the right to limit the number of notices that are mailed, based on the chronological order in which the prequalified applications were received. If the notices are limited in this way, applicants receiving notices will have a priority over those who do not.

- The Administrative Agent will affirmatively market the unit if there is no current applicant pool.

- The Seller or their agent may also want to advertise. Ads should include the "Equal Housing Opportunity" logo and should be sent to our office for review prior to distribution.

- The Seller or their agent, upon showing the home, provides potential buyers with a copy of the Preliminary Application (which may be duplicated if necessary).

- Interested households complete the application together with a mortgage pre-approval letter from a qualified lending institution.

- At the end of the two-week time period, the Administrative Agent collects all of the Preliminary Applications submitted for a particular home. These forms are prioritized on the basis of a blind selection process or lottery. Preference may be given to households that can utilize all of the bedrooms, as well as handicap accommodations, when applicable.

- The first applicant or two on the prioritized list is sent a letter which requires them to complete a final application within fourteen days. When an applicant is approved as a buyer, a copy of the approval letter is sent to the Seller and their agent.

- The Seller and the certified interested household (now Buyer) execute a "Contract of Sale." The Administrative Agent ensures that the Deed, Recapture Mortgage, Recapture Mortgage Note and Disclosure Statement (Appendix J) form are submitted as part of the closing package to the attorney responsible for the closing or other closing agent.

- The remaining applicants are maintained on the waiting list for this home or other homes in the same size and income categories. In the event that the potential buyer is not able and/or willing to purchase the affordable home, the next applicant on the prioritized list is notified pursuant to the process described above.

- When an applicant is in second priority position to purchase an affordable home (the *original* home), and another home of the same size and type in the same municipality (the *next* home) becomes available within 90 days of the lottery date of the *original* home, the applicant will have the option to transfer priority from the *origina*l home to the *next* home. The following conditions will apply: This opportunity only applies to the *next* home of the same bedroom number and income category as the *original* home that becomes available within the 90-day period. This offer will be made only one time and only for the *next* home. It does not apply to other similar homes that become available. The applicant must have completed a final application and be pre-qualified for the *original* home in order to be considered. The applicant will be notified by phone that an alternate home is available. The applicant will then have 3 business days in which to *v*iew the *next* home and make the determination if he/she would like to pursue that purchase. If so, the applicant would relinquish the secondary priority position for the *original* home. Once the decision to transfer to the *next* home is made, the applicant cannot be reinstated to the secondary position for the *original* home if he/she is unable or unwilling to purchase the *next* home. Conversely, once the decision is made to remain in the secondary position for the *original* home, the applicant cannot then transfer to the *next* home if he/she is unable or unwilling to purchase the *original* home.

- A copy of the Sales Contract will be submitted to the Administrative Agent prior to closing. The terms of the contract (e.g., closing dates and mortgage contingencies) should be reasonable to both buyer and seller.

- During the final stages of the process, the Seller should provide a "Notice of Intent to Transfer Title" form. It will be necessary to make arrangements for the Mortgage and Note to be satisfied with respect to the Seller and new documents filed with respect to the Buyer.

- A copy of the TILA-RESPA or HUD Closing Statement (as applicable) will be submitted to the Administrative Agent. A certified copy of the recorded deed, the original recorded repayment mortgage and note, and the certificate of ownership should also be sent to the Administrative Agent after closing.

- The filing and recording of documents is the responsibility of the seller's or buyer's attorney, but the Administrative Agent may also elect to file the documents. Once all documents are filed and recorded, and returned to the Administrative Agent for inclusion in the file, the Administrative Agent will process a release of the original documents.

- Annually, the Administrative Agent shall send a mailing to the Owner of the affordable unit reminding them of the rights and requirements of owning an affordable unit.

This outline is meant to describe the process utilized prior to the expiration of the deed restrictions. It is not meant to be a legal representation of the rights or responsibilities of any party, nor is it meant to modify the Affordable Housing Agreement, Mortgage Note or other Deed Restrictions. Buyers and Sellers are encouraged to seek legal counsel for specific questions in this regard. The Administrative Agent is available to both the Seller and the Buyer throughout the process to answer any questions that they may have.

ROLES AND RESPONSIBILITIES

Responsibilities of the Municipal Housing Liaison or MHL

The Municipal Housing Liaison is responsible for coordinating all the activities of the municipal government as it relates to the creation and administration of affordable housing units, in conjunction with the Municipal Attorney, where appropriate (see **Responsibilities of the Municipal Attorney**). The primary purpose of the MHL to ensure that all affordable housing projects are established and administered according to the Regulations as outlined in an Operating Manual. The duties of the MHL include the following duties, and may include the responsibilities for providing administrative services as described in the next Section under, **Responsibilities of an Administrative Agent**.

Monitor the status of all restricted units in the municipality's Fair Share Plan. Regardless of any arrangements the municipality may have with one or more

Administrative Agents, it is the Municipal Housing Liaison's responsibility to know the status of all restricted units in their community.

Serve as the municipality's primary point of contact for all inquiries from the State, Administrative Agents, developers, affordable housing sponsors, owners, property managers, and interested households. The MHL serves as the municipality's primary point of contact on affordable housing issues. Interested applicants should be provided with information on the types of affordable units within the municipality and, where applicable, the name of the Administrative Agent that manages the units and the contact information for the Administrative Agent.

Compile, verify and submit annual reporting. Administrative Agents are responsible for collecting much of the data that is ultimately included in an annual monitoring report. However, it is the Municipal Housing Liaison's responsibility to collect and verify this data and consolidate it into the annual report. Any requests for additional information or corrections will be directed to the MHL.

Coordinate meetings with Administrative Agents and Developers/Affordable Housing Sponsors/Owners. When a new affordable unit or series of units is in the planning process, the MHL should coordinate a meeting between the Administrative Agent and the developer, affordable housing sponsor or owner. The developer, affordable housing sponsor or owner may serve as their own Administrative Agent, if they meet the applicable requirements and are approved by the municipality. The purpose of this initial meeting is to develop a clear division of labor between the parties and to transmit any components of the Operating Manual – including copies of all COAH-related local ordinances -- that have already been adopted by the municipality.

It is the responsibility of the Municipal Housing Liaison, in conjunction with the Municipal Attorney, to have the affordable housing provisions of any Master Deed and Public Offering reviewed for consistency with the UHAC regulations, before they are recorded and submitted to DCA for approval.

Provide Administrative Services, unless those services are contracted out. The responsibilities for providing administrative services are described in the next Section under, **Responsibilities of an Administrative Agent**.

Responsibilities of an Administrative Agent

The primary responsibility of an Administrative Agent is to establish and enforce affordability controls and ensure that units in the Administrative Agent's portfolio are sold to eligible households. Administrative Agents will:

Secure written acknowledgement from all developers, affordable housing sponsors and owners that no restricted unit can be offered or in any other way committed to any person other than a household duly certified by the Administrative Agent.

Create and adhere to an Operating Manual. All Administrative Agents are required to follow the policies and procedures of an Operating Manual, as applicable to the scope of services they have been contracted to perform.

Implement the municipality's Affirmative Marketing Plan. The Administrative Agent, the developer, affordable housing sponsor or owner could be responsible for implementing the Affirmative Marketing Plan adopted by the municipality. At the first meeting with the Municipal Housing Liaison, Administrative Agent and the developer, affordable housing sponsor or owner, this responsibility should be discussed. Affirmative marketing includes conducting regional outreach and advertising for available affordable units. Advertising costs are the responsibility of the developer or current owner.

Accept applications from interested households. In response to marketing initiatives or by referral from the Municipal Housing Liaison, interested households will contact the Administrative Agent. The Administrative Agent will supply applicants with applications, provide additional information on available units and accept completed applications.

Conduct random selection of applicants for rental, sale and resale of restricted units. The Administrative Agent is responsible for conducting the random selection in accordance with the Affirmative Marketing Plan and any related local ordinances, and as described in the Operating Manual.

Create and maintain a pool of applicant households. This includes reaching out to households in the applicant pool to determine continued interest and/or changes in household size and income.

Determine eligibility of households. The task of collecting application materials and documentation from applicant households and analyzing it for eligibility is the responsibility of an Administrative Agent. A written determination on a household's eligibility will be provided within twenty (20) days of the Administrative Agent's determination of eligibility or non-eligibility. Whether or not the household is determined to be eligible for a unit, it is an Administrative Agent's responsibility to secure all information provided by the household in individual files and to maintain strict confidentiality of all information regarding that household. An Administrative Agent is required to ensure that all certified applicants execute a Disclosure Statement acknowledging the rights and requirements of owning an affordable unit, in the form of Appendix J UHAC.

Establish and maintain effective communication with owners and property managers. Owners and property managers of restricted units should be instructed and regularly reminded that the Administrative Agent is their primary point of contact. The Administrative Agent will immediately inform all owners and property managers of any changes to the Administrative Agent's contact information or business hours. The Administrative Agent will create and distribute annual mailings to all Owners of

affordable units reminding them of the rights and requirements of owning an affordable unit.

Owners should be instructed to immediately contact the Administrative Agent in the following circumstances:

- If they are considering or have decided to sell their home.
- In the event they wish to refinance their mortgage or take out a home equity loan and, consequently, will be seeking a subordination of their mortgage.
- If they are seeking an increase in the sales price of their unit due to capital improvements.
- If they are seeking a Hardship Waiver to allow them to rent their unit.

Preserve affordability controls during the sale of restricted units. Immediately upon being notified of an Owner's intent to sell their property, an Administrative Agent should inform the Owner of the Owner's role in the marketing and sale of the home. An Administrative Agent is responsible for extinguishing the affordability controls with the Seller and re-establishing them with the Buyer. An Administrative Agent is responsible for providing closing attorneys/agents with the appropriate legal instruments.

Ensure cancellations of Recapture Mortgages are effectuated. It is the Administrative Agent's responsibility to ensure that Recapture Mortgages are cancelled at the conclusion of the control period when the Recapture Mortgage is satisfied. If the Recapture Mortgage is being cancelled due to a sale of the property during the control period, then the Administrative Agent may wish to cancel the original Recapture Mortgage only after the Recapture Mortgage with the new Owner has been recorded.

Send out annual mailings about restrictions. Administrative Agents will annually mail to all Owners of affordable housing units a reminder of their rights and responsibilities as Owners of an affordable unit.

Ensure unit has Continuing Certificate of Occupancy at final transfer. To help ensure a healthy and safe living environment for all families, an Administrative Agent is responsible for obtaining an inspection or a certified statement from the local Building Inspector at the first sale after the expiration of the minimum affordability control period.

Serve as the custodian of all legal documents. An Administrative Agent is responsible for maintaining originals of all legal instruments for the units in their portfolio. Throughout the duration of a control period, an Administrative Agent will maintain a file containing its affordability control documents. This includes, but is not limited to, the recorded Declarations of Covenants, Conditions and Restrictions, Deed Restrictions, Deeds, Recapture Mortgages, Recapture Mortgage Notes and Disclosure Statement.

Serve as point of contact on all matters relating to affordability controls. It is recommended that the Administrative Agent develop a system to be notified by lenders when a unit is at risk of foreclosure. In the event of a foreclosure, the Administrative Agent should work with the foreclosing institution to ensure that the affordability controls are maintained. The Administrative Agent should seek the counsel of the municipality's attorney on legal matters that threaten the durability of the affordability controls.

Provide annual activity reports to Municipal Housing Liaison for use in the annual monitoring report. An Administrative Agent is responsible for collecting the reporting data on each unit in the Administrative Agent's portfolio.

Maintain and distribute information on HUD-approved Housing Counseling Programs.

Responsibilities of the Municipal Attorney

The Municipal Attorney assists the municipality with developing, administrating, and enforcing affordability controls, including but not limited to:

- Assisting the Municipal Housing Liaison with the review of the affordable housing provisions of any Master Deed and Public Offering for consistency with COAH and UHAC regulations, before they are recorded and submitted to DCA for approval.

- Providing all reasonable and necessary assistance in support of the Administrative Agent's efforts to ensure compliance with the housing affordability controls, including reviewing legal documents and legal actions required on foreclosures and violations.

Responsibilities of Developers

When a new affordable unit or series of units is in the planning process, the developer of affordable housing should contact the Municipal Housing Liaison, who shall coordinate a meeting with the Administrative Agent, where applicable, and the developer, affordable housing sponsor or owner.

The purpose of this initial meeting is to develop a clear division of labor between the parties and to transmit any components of the Operating Manual – including copies of all COAH-related local ordinances -- that have already been adopted by the municipality.

If provided for by ordinance and made a condition of the approval of the planning board or zoning board of adjustment, the developer may be responsible for the costs of advertising affordable units.

The Administrative Agent will secure from the developer written acknowledgement that no restricted unit can be offered or in any other way committed to any person other than a household duly certified by the Administrative Agent.

Responsibilities of an Owner

Owners should read annual mailings from the Administrative Agent, and cooperate with any and all requests for information from either the Municipal Housing Liaison or the Administrative Agent.

The Owner may sell the unit only to a household that has been approved in advance and in writing by the Administrative Agent. No sale of the unit shall be lawful unless approved in advance and in writing by the Administrative Agent. No sale shall be for a consideration greater than the maximum resale price, as determined by the Administrative Agent.

When an Owner wishes to sell an affordable unit, it is the Owner's responsibility to notify the Administrative Agent and to execute a "Notice of Intent to Sell". If a potential, certified Buyer makes an offer of the maximum resale price of an affordable unit, then the Owner is obligated to enter into a sales contract with that Buyer for the sale of that unit or withdraw the "Notice of Intent to Sell".

An Owner may not rent out the Owner's unit to any other person, not even to members of the Owner's family.

The Owner shall at all times maintain the unit as his or her principal place of residence, defined as residing at the unit at least 260 days out of each calendar year.

An Owner shall make no improvements to the unit that would effect its bedroom configuration or to increase the maximum permitted resale price, except for improvements approved in advance and in writing by the Administrative Agent.

The Owner shall pay all taxes and public assessments and assessments by the condominium association levied upon or assessed against the unit, or any part thereof, when they become due and before penalties accrue.

The Owner shall pay all charges of any utility authority when they become due and before penalties accrue.

The Owner shall not permit any lien, except those approved by the Administrative Agent, to attach and remain on the property for more than 60 days.

The Owner will have approval of the Administrative Agent if they wish to refinance their mortgage or take out a home equity loan and, consequently, will be seeking a subordination of their mortgage.

In the event that any first mortgagee or other creditor of an Owner of a low- and moderate-income unit exercises its contractual or legal remedies available in the event of default or nonpayment by the Owner of a low- and moderate-income unit, the Owner shall notify the Administrative Agent in writing within 10 days of such exercise by the first mortgagee or creditor and no later than 10 days after service of any summons and complaint.

An Owner shall notify the Administrative Agent within 10 days, in writing, of any default in the performance by the Owner of any obligation under either the master deed of the condominium association, including the failure to pay any lawful and proper assessment by the condominium association, or any mortgage or other lien against the low- and moderate-income unit, which default is not cured within 60 days of the date upon which the default first occurs.

AFFIRMATIVE MARKETING

Overview of the Requirements of an Affirmative Marketing Plan

All affordable units are required to be affirmatively marketed using the Borough of Montvale's Affirmative Marketing Plan. An Affirmative Marketing Plan is a regional marketing strategy designed to attract households of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age, or number of children to housing units which are being marketed by an Administrative Agent or a developer, sponsor, owner or property manager of affordable housing. The primary objectives of an Affirmative Marketing Plan are to target households who are least likely to apply for affordable housing, and to target households throughout the entire housing region in which the units are located.

Every Affirmative Marketing Plan will include all of the following:

- Publication of at least one advertisement in a newspaper of general circulation within the housing region; and

- Broadcast of at least one advertisement by radio or television throughout the housing region.

- At least one additional regional marketing strategy such as a neighborhood newspaper, religious publication, organizational newsletter, advertisement(s) with major employer(s), or notification through community and regional organizations such as non-profit, religious and civic organizations.

For each affordable housing opportunity within the municipality, the Affirmative Marketing Plan will include the following information:

- The address of the project and development name, if any

- The number of units, including number of sale units
- The price ranges of the sale units
- The name and contact information of the Municipal Housing Liaison, Administrative Agent or property manager
- A description of the Random Selection method that will be used to select applicants for affordable housing.
- Disclosure of required application fees, if any.

Advertisements will contain the following information for each affordable housing opportunity:

- The location of and directions to the units
- A range of prices for the housing units
- The bedroom size(s) of the units
- The maximum income permitted to qualify for the housing units
- The locations of applications for the housing units
- The business hours when interested households may obtain an application for a housing unit
- Application fees, if any

Implementation of the Affirmative Marketing Plan

The affirmative marketing process for new affordable units shall begin at least four months prior to expected occupancy. In implementing the marketing program, the Administrative Agent shall undertake all of the strategies outlined in the Borough of Montvale Affirmative Marketing Plan. Advertising and outreach shall take place during the first week of the marketing program and each month thereafter until all the units have been sold. Applications for affordable housing shall be available in several locations in accordance with the Affirmative Marketing Plan. The time period when applications will be accepted will be posted with the applications. Applications shall be mailed to prospective applicants upon request.

An applicant pool will be maintained by the Administrative Agent for re-sales.

When a resale affordable unit becomes available, the applicants will be selected from the applicant pool and the unit will be affirmatively marketed as described in the Resale process, above

The selection of applicants from the applicant pool is described in more detail in this manual under Random Selection & Applicant Pool(s).

Developer, Affordable Housing Sponsor

If permitted by the municipality, the developer or affordable housing sponsor may be responsible for advertising the affordable housing in accordance with the municipality's adopted Affirmative Marketing Plan. Prior to publication or broadcast, draft copies of the marketing material will be submitted to the Administrative Agent for approval. Proof of publication will be submitted, including a copy of the final advertisements with a copy of the paid bill. Public Service Announcements shall be submitted by the Administrative Agent.

RANDOM SELECTION & APPLICANT POOL(S)

Applicants are selected at random before income-eligibility is determined, regardless of household size or desired number of bedrooms. The process is as follows:

After advertising is implemented, applications are accepted for 60 days. The applications are prescreened for eligibility. Applicants that are deemed, at this stage, to be ineligible are sent a notice and given an opportunity to clarify or correct any information. This will be done in writing.

Prescreened applications are entered into a data base and sorted by the unit size and affordability type that is appropriate. Applicants are sent letters as to their eligibility during this preliminary application stage.

Prior to the randomized selection, a list of applicants will be sent to the Municipal Housing Liaison (MHL) in the order to which the random numbers will be applied. This list should be maintained in the file so that the MHL can verify the establishment of the order of the list in advance of the random selection.

At the end of the 60-day period, the Administrative Agent arranges a time and date for the random selection process to take place. The MHL and a representative of the developer are invited and encouraged to attend. An announcement of the time and date is made by way of an email blast to those applicants who voluntarily sign up for this service through www.HousingQuest.com.

It is important to note that applicants need not be present at the random selection, and that there is no advantage given those applicants who do attend.

At the random selection, a website is used to generate a random list of numbers. The numbers are applied to the list in the order that was prearranged. A copy of the random numbers and the final list are sent to the MHL for verification and file.

All applicants are assigned a random number. A random number does not guarantee that the applicant will be deemed eligible. Applicants who submit more than one application and receive more than one priority number will forfeit the lower number with the highest priority.

When units become available, final applications are sent in the prioritized order as specified previously. The Administrative Agent can keep the applicant pool open after the initial lottery and add names to the existing list based on time and date of submission. On-going marketing is done primarily through www.HousingQuest.com.

For re-sales, applications received subsequent to the initial random selection may be subject to a random selection on a per-unit basis.

MATCHING HOUSEHOLDS TO AVAILABLE UNITS

In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to implement the following policies:

- Provide an occupant for each unit bedroom;
- Prevent more than two persons from occupying a single bedroom; and
- Require that all the bedrooms be used as bedrooms.

A household is placed only on one unit list for eligibility. A household may choose to change the unit type for which they are eligible within the scope of the program.

APPLICATION FEES

The Administrative Agent does not charge a fee to applicants.

HOUSEHOLD CERTIFICATION

Before any household can purchase a restricted unit, the Administrative Agent will certify the household as eligible. Certification of a household involves the verification of two critical pieces of data: 1) Household size and composition, including gender; and 2) The total income and assets for all household members18 years of age or older. The certification process begins with the applicant completing an application in its entirety and providing the required backup documentation. Once eligibility documents and data have been collected, the Administrative Agent can begin the process of calculating the household's income.

Household Composition and Circumstances

Generally, a Household is defined as everyone who intends to reside in the affordable unit. Temporarily absent members of a household will be counted in very limited circumstances, such as a member of the military in active duty. Unborn children and children in the process of being adopted shall be counted as members of the household.

The following are generally excluded from the household for the purposes of income qualifying, but may be considered by the Administrative Agent for the purposes of determining the size of the unit: live-in aid, foster children and children who live in the household with less than 50% joint physical custody.

The following are various records for documenting household information:

- Social Security records or cards. Either individual Social Security card or letter from Social Security Administration
- Adoption papers, or legal documents showing adoption in process
- Income Tax Return
- Driver's License
- Birth Certificate or Passport
- Alien Registration Card
- Divorce Decree and Settlement Agreement
- Adoption Agency / Legal Correspondence and/or Certification
- Correspondence / Certification from Foster Care Services
- Doctor's Authorization for Live-in Aid.
- The Administrative Agent always reserves the right to require any other such documentation that, in its sole discretion, it deems necessary to verify composition.

Procedure for Income-Eligibility Certification

To calculate income, the current gross income of the applicant is used to project that income over the next 12 months. Applicants may NOT change or modify their situation relative to their income once they have submitted a Final Application.

Through the submission of the Final Application, the Administrative Agent shall require each member of an applicant household who is 18 years of age or older to provide

documentation to verify their income. The application and a schedule of required documentation can be found in Exhibits C and D. Generally, the documentation required is as follows:

- Four current consecutive pay stubs, including bonuses, overtime or tips, or a signed and dated letter from the employer stating the present annual income figure or if self-employed, a current Certified Profit & Loss Statement and Balance Sheet.

- Copies of Federal and State income tax returns for each of the preceding three tax years - A Form 1040 Tax Summary for the past three tax years can be requested from the local Internal Revenue Service Center or by calling 1-800-829-1040.

- A letter or appropriate reporting form verifying current monthly benefits such as

    - Social Security or SSI – Award letter or computer print out letter

    - Unemployment – verification of Unemployment Benefits

    - Welfare -TANF[5] current award letter

    - Disability - Worker's compensation letter

    - Pension income – a pension letter.

- A letter or appropriate reporting form verifying any other sources of income claimed by the applicant, such as alimony, child support and education stipends.

- Current reports of savings and checking accounts (bank statements and passbooks) and income reports from banks or other financial institutions holding or managing trust funds, money market accounts, certificates of deposit, stocks or bonds.

- Evidence or reports of income from directly held assets, such as real estate or businesses.

- Interest in a corporation or partnership – Federal tax returns for each of the preceding three tax years.

- Current reports of assets – Market Value Appraisal or a contract with a real estate broker which sets forth the price of the property and Bank/Mortgage Co. Statement indicating Current Mortgage Balance. For rental property, attach copies of all leases.

[5] TANF – Temporary Assistance for Needy Families

- The Administrative Agent always reserves the right to require any other such documentation that, in its sole discretion, it deems necessary to verify household income.

The following is a list of various types of wages, payments, rebates and credits. Those that are considered as part of the household's income are listed under Income. Those that are not considered as part of the household's income are listed under Not Income.

Income

1. Wages, salaries, tips, commissions
2. Alimony
3. Regularly scheduled overtime
4. Pensions and regular distributions from retirement accounts
5. Social security benefits
6. Unemployment compensation (annualized)
7. TANF
8. Verified regular child support
9. Disability benefits
10. Net income from business or real estate
11. Actual interest income from assets such as savings, certificates of deposit, money market accounts, mutual funds, stocks, bonds
12. Imputed interest (using a current average annual rate of two percent) from non-income producing assets, such as checking accounts, cash on hand, and equity in non-income producing real estate.
13. Net rental income from real estate
14. Non-tuition stipends for living expenses for students
15. Non-Governmental financial support
16. Any other forms of regular income reported to the Internal Revenue Service
17. Regular financial support from any source.

Not Income

1. Rebates or credits received under low-income energy assistance programs

2. Food stamps
3. Payments received for foster care
4. Relocation assistance benefits
5. Income of live-in attendants
6. Scholarships
7. Student loans
8. Personal property such as automobiles
9. Lump-sum additions to assets such as inheritances, lottery winnings, gifts, insurance settlements
10. Part-time income of persons enrolled as full-time students

Deduction from Income

Court ordered payments for alimony or child support paid to another household shall be deducted from gross annual income

Student Income

Only full-time income of full-time students is included in the income calculation. A full-time student is a member of the household who is enrolled in a qualifying education program for 12 credit hours or more per semester; and part-time income is income earned on less than a 35-hour workweek. Full time income (35 hours or more) for full-time students is always counted.

The Real Estate Asset Limit

Except for federal programs, if an applicant's primary residence, which is to be sold upon purchase of an affordable unit, has no mortgage debt and is valued at or above the regional asset limit as published annually by COAH or their successor as part of the Annual Regional Income Limits Chart, the household will be determined ineligible for certification.

However, if the applicant's existing monthly housing costs including taxes, homeowner insurance, and condominium or homeowner association fees exceed 38 percent of the household's eligible monthly income, the household will be exempt from the asset limit.

An applicant will provide a recent, Market Value Appraisal, on the home they own unless the applicant has mortgage debt on the home or can demonstrate that the existing monthly housing costs exceed 38 percent of the household's eligible monthly income, in which case the applicant is exempt from the asset limit.

Income from Real Estate

If real estate owned by an applicant for affordable housing is a rental property, the net revenue is considered income. Specifically, rent from real estate is considered income, after deduction of any mortgage interest payments, real estate taxes, property owner's insurance and reasonable property management expenses as reported to the Internal Revenue Service. Other expenses are not deductible. If actual rent is less than fair market rent, the administrative agent shall impute a fair market rent.

If an applicant owns real estate with mortgage debt, which is not to be used as rental housing, the Administrative Agent should determine the imputed interest from the value of the property. The Administrative Agent should deduct outstanding mortgage debt from the documented market value established by a market value appraisal. Based on current HUD Passbook Savings Rate, interest will be imputed on the determined value of the real estate.

Maximum Monthly Payments

The percentage of funds that a household can contribute toward housing expenses is limited. However, an applicant may qualify for an exception based on the household's current housing cost (see below). The Administrative Agent will strive to place an applicant in a unit with a monthly housing cost equal to or less than the applicant's current housing cost.

A certified household is not permitted to purchase a unit that would require more than 33 percent of the verified household income to pay principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable. However, at the discretion of the Administrative Agent, this limit can be exceeded if the applicant:

- Obtains a firm mortgage loan commitment at the higher level from a licensed financial institution, under terms consistent with the requirements of the New Jersey Home Ownership Security Act of 2002, N.J.S.A. 46:10B-22 et seq.; and

- Submits a certification from a non-profit counselor approved by HUD or the New Jersey Department of Banking and Insurance that the household has received counseling on the advisability of the loan transaction.

Housing Counseling

The Administrative Agent will provide referrals for counseling, as a part of its services. Although housing counseling is recommended, a household is only required to attend counseling if their monthly housing expense exceeds UHAC standards. A HUD-approved housing counseling agency, or a counseling agency approved by the NJ Department of Banking and Insurance, meets UHAC's requirements for an experienced Housing Counseling Agency. This counseling to low- and moderate-income housing applicants will focus on subjects such as budgeting, credit issues, and mortgage

qualification, and is free of charge. A list of non-profit counselors approved by HUD and/or the New Jersey Department of Banking and Insurance is included on DCA's website and is available from the Administrative Agent.

In addition, the Administrative Agent will:

- Confirm and update all information provided on the application.

- Explain program requirements, procedures used to verify information, and penalties for providing false information. Ask the head of household, co-head, spouse and household members 18 years of age or older to sign the Authorization for Release of Information forms and other verification requests.

- Review the applicant's identification and financial information and documentation, ask any questions to clarify information on the application, and obtain any additional information needed to verify the household's income.

- Seek to ensure, to a reasonable degree, that the applicant has reported all sources for earned and benefit income and assets (including assets disposed of for less than fair market value in the past two years). Require the applicant to give a written certification as to whether any household member did or did not dispose of any assets for less than fair market value during the past two years.

Approving or Rejecting a Household

Administrative Agents will notify applicant households of their eligibility within twenty (20) days of the Administrative Agent's determination.

Households with a verified total household income that exceeds 80 percent of the regional income limit for the appropriate family size are ineligible for purchase or rental of restricted units. A letter rejecting the household's application shall be mailed to the household.

Similarly, households with a verified total household income that is within the income limits, but too low to afford any of the units administered by the Administrative Agent shall be sent a letter rejecting the household's application, and/or referring them to housing counseling.

Households with a verified total household income of less than 80 percent shall be issued a letter certifying eligibility. This certification is valid for 180 days. If the applicant does not sign a Sales Agreement within that time frame, an extension may be granted once the household's eligibility is updated and verified.

Once the applicant is certified and matched to an available unit, the Administrative Agent will secure from the applicant a signed and notarized acknowledgement of their requirements and responsibilities in purchasing a restricted unit. UHAC's Disclosure Statement (Appendix J) shall be forwarded to the applicants.

In addition to non-eligibility based on income, the Administrative Agent may deny a certification because of the household's failure or inability to document household composition, income, assets, sufficient funds for down payment, or any other required facts and information. A household may also be denied certification if the Administrative Agent determines that there was a willful or material misstatement of fact made by the applicant.

Dismissal of Applications

Applications can be dismissed for the following reasons:

1. The application is not signed or submitted on time;
2. The applicant's sources of income or household composition changes after the submission of the final application, but before approval;
3. The applicant commits fraud, or the application is not truthful or complete;
4. The applicant cannot or does not provide documentation to verify their income or other required information when due;
5. The household income does not meet the minimum or maximum income requirements for a particular property;
6. The applicant owns an asset that exceeds the Asset Limits for COAH properties;
7. The applicant fails to respond to any inquiry in a timely manner;
8. The applicant had a greater chance than any other applicant submitted for a random selection;
9. The applicant is non-cooperative or abusive with the our staff, property managers or the sellers of affordable units;
10. The applicant changes address or other contact information without informing us in writing;
11. The applicant is unable to obtain suitable and legitimate financing for a sale unit or fails to verify attendance in a home buyer credit counseling program when required to do so by the program rules;
12. The applicant does not respond to a periodic update inquiry in a timely fashion;
13. The applicant fails to sign the Compliance Certification, Certificate for Applicant; Lease Documents, Contract for Sale, Affordable Housing Agreement and/or Deed Restrictions as may be required; or
14. The applicant, once approved, fails to close on a sale in a timely manner.

Applicants will also be withdrawn from all lists held by us in the Borough of Montvale once they have been approved for an affordable unit within that same municipality. However, these applicants may re-apply for other opportunities in that municipality once they have occupied their unit. Applicants withdrawn for fraud may be withdrawn from all

programs administered by Piazza & Associates, Inc., and may be subject to prosecution under the law.

Applicants who are withdrawn and who wish to re-apply to that specific program may do so using a new Preliminary Application. The new Preliminary Application will NOT be given preferential treatment, but will be processed in the same way that all new Preliminary Applications for that specific program are processed. In the event that an application list is closed when the application is withdrawn, the applicant will be required to wait until the list is re-opened to apply again.

Applicants who are dismissed must re-apply. A minimum time period of six months applies in most situations where the applicant has been withdrawn for fraud, uncooperative behavior or other serious matters.

Appeals

Appeals from all decisions of an Administrative Agent shall be made in writing to the Municipal Housing Liaison, Borough of Montvale; or the Executive Director of the New Jersey Housing and Mortgage Finance Agency.

DETERMINING AFFORDABLE SALES PRICES

Sales prices are determined in accordance with the Uniform Housing Affordability Controls.

Bedroom Distribution. The standards on the distribution of unit sizes for affordable developments require that:

- The combined number of efficiency and one-bedroom units may be no greater than 20 percent of the total low- and moderate-income units;
- At least 30 percent of all low- and moderate-income units will be two-bedroom units;
- At least 20 percent of all low- and moderate-income units are three-bedroom units; and
- The remainder, if any, may be allocated at the discretion of the developer.

Age-restricted Units. Affordable age-restricted units are not held to these bedroom distribution standards. For affordable age-restricted units, the number of age-restricted low- and moderate-income bedrooms will be equal to or greater than the number of age-restricted units within the development. In other words, the average bedroom size in an age-restricted development will be equal to or greater than one bedroom per unit. For example, if the overall age-restricted development is 25 percent efficiencies, and 50 percent one-bedroom units, and 25 percent two-bedroom units, that equals an overall development bedroom size of exactly one bedroom per unit. An age-restricted

development can meet this standard by creating all one-bedroom units or by creating a two-bedroom unit for each efficiency unit, or any other combination that will equal a minimum of one bedroom per unit.

Condominium/Homeowner Association Fees. Low- and moderate-income units shall pay homeowner association fees and special assessments on the same basis as market purchasers.

Determining Resale Prices

Calculating the maximum resale price (MRP) for an ownership unit involves applying the annual percentage increase corresponding with each calendar year since the Seller bought the house. No increase is permitted during the balance of the calendar year immediately after the sale. A Resale Price Calculator has been created by the Administrative Agent to provide an estimate of the MRP to owners of affordable homes. It can be accessed at www.HousingQuest.com, by clicking on "Resale Calculator" on the menu bar and choosing the municipality in which your affordable home is located. In the alternative, homeowners can also call Piazza & Associates, Inc., at 609-786-1100, and request a verbal estimate by phone. The official MRP can only be given in writing in response to a written request, together with a copy of the recorded deed.

Requests for Increases in Maximum Sales Price

The Seller of an ownership unit may ask the Administrative Agent to increase the sales price of their home beyond the maximum sales price under limited circumstances. Only those improvements "that render the unit suitable for a larger household or that add an additional bathroom" can increase the calculated maximum sales price. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger households.

Determining the Recapture Mortgage Amount

The amount that the Mortgage Note recaptures is the difference between the fair market value and the restricted maximum sales price. Fair market value is based on either an appraisal of its unrestricted price or the unit's equalized assessed value of its unrestricted price, at the time of each purchase. For example, if the restricted sales price of the unit is $110,000 and the appraised unrestricted market value of the unit is $200,000, the Recapture Mortgage Note would be for $90,000. The Borough of Montvale has determined to use the appraised value to establish the amount of the Recapture Mortgage.

WAIVERS AND EXEMPTIONS[6]

Hardship and Income Waivers

An Owner may not rent out the Owner's unit to any other person, not even to members of the Owner's family. The Administrative Agent may grant a Hardship Waiver for the following extenuating circumstances:

- The Owner's employer is temporarily sending the Owner to a work place a great distance from the Owner's home, and the employer expects the Owner to resume work for the employer back at home within the next 12 months.

- The Owner is called up for military service

An Owner of a low-income unit may request that the unit be sold to a household whose income exceeds the established income eligibility criteria for a low-income household, but does not exceed the income criteria for a moderate-income household, by submitting a written request for an Income Waiver to the Administrative Agent. The Owner will demonstrate that this request is consistent with the following reasons for an Income Waiver:

- The unit is in marketable condition as determined by the Administrative Agent.
- The Owner has made a good faith effort to sell the unit to a certified household for no less than six (6) months, in accordance with procedures required by the Administrative Agent and no certified household has made a "reasonable" offer during the that six-month period.
- The Owner has demonstrated a willingness to consider price offers lower than the maximum allowable resale price, taking into account current market conditions and the marketability of the unit.
- The Owner has advertised the unit's availability in newspapers and other locations likely to be noticed by potential purchasers, or has engaged the services of a qualified real estate agent to sell the home.

The Administrative Agent may grant an Income Waiver upon demonstration that the Owner has made a good faith effort to sell the unit and subject to COAH determining that there is an insufficient number of low-income purchasers in the market to permit prompt occupancy of the unit.

Upon receipt of a request for an Income Waiver,[7] the municipality shall have first option to purchase the unit at the approved resale price and holding, renting or conveying it to a certified household. The municipality shall have 30 days in which to exercise this option.

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[6] Revised 4.24.08

[7] Rev 5.16.08

The Administrative Agent shall approve or deny a Hardship Waiver in writing within 30 days of receipt all requested verification.

The Administrative Agent shall approve or deny an Income Waiver in writing within 30 days of receipt of all requested verification from the Owner and a determination by COAH that there are an insufficient number of low-income purchasers in the market to permit prompt occupancy of the units. The Income Waiver shall be provided to the Owner with a copy to the Buyer at the time of closing. The original shall be filed with the Deed. The Income Waiver is only valid for the designated resale transaction. All future resales will be in accordance with the Deed restrictions and sold to income eligible households for no more than the approved indexed resale price.

The approval of an Income Waiver for a particular resale does not guarantee receipt of the maximum resale price to the Owner.

If the Administrative Agent denies a Hardship Waiver or Income Waiver, the Owner may appeal the decision of the Administrative Agent within 30 days from the date of notification of the decision of the Administrative Agent (see **Appeals**). If a written request has not been received within 30 days following the household's receipt of notification, the denial will be final. Owners shall be required to produce documentation to support their claim.

Exempt Transactions

The following title transactions shall be deemed exempt transactions and, when requested, the Administrative Agent shall provide the Owner receiving title with written confirmation of the exemption to those restrictions that determine occupancy of the unit.

- Transfer of ownership between former spouses ordered as a result of a judicial decrees of divorce or judicial decree of separation (but not including sales to third parties);

- Transfer of ownership between family members by will or intestate succession;

- Transfer of ownership through an Executor's Deed to a Class A beneficiary; and

- Transfer of ownership by Court Order.

An exempt transfer of ownership does not terminate the resale restrictions or existing liens on the property. All liens will be satisfied in full prior to subsequent resale and all subsequent resale prices will be calculated using the resale price index in compliance with the term of the affordable housing regulations.

The exempt transaction shall not be considered as a recorded transaction in calculating subsequent resale prices.

The Owner shall notify the Administrative Agent in writing of any proposed transaction that requires approval as an exempt transaction. The Owner shall supply the Administrative Agent with all necessary documentation to demonstrate that the transaction qualifies as an exemption as defined above. The Administrative Agent shall approve or deny in writing a request for a Certificate of Exemption within 15 days of the receipt of the request.

If the Administrative Agent denies the exemption, the Owner may appeal the decision of the Administrative Agent within 30 days from the date of notification of the decision of the Administrative Agent (see Appeals). If a written request has not been received within 30 days following the household's receipt of notification, the denial will be final. Owners shall be required to produce documentation to support their claim.

A Certificate of Exemption shall be filed with the Deed at the time of transfer of title.

VIOLATIONS, DEFAULTS AND REMEDIES

In the event of a threatened breach of any of the regulations governing the affordable unit by an Owner, the Administrative Agent shall have all the remedies provided at law or equity, including the right to seek injunctive relief or specific performance, it being recognized by both parties that it will cause irreparable harm to the municipality, in light of the public policies set forth in the Fair Housing Act and the obligation for the provision of low- and moderate-income housing.

Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.

MAINTENANCE OF RECORDS AND APPLICANT FILES

Pursuant to N.J.A.C. 5:80-26.14(a)8, N.J.A.C. 5:80-26.15(c) and N.J.A.C. 5:80-26.17 current records will be maintained by the Administrative Agent and outdated records will be given to the municipality for safe-keeping. A file will be created and maintained on each restricted unit for its control period.

The Administrative Agent will maintain detailed records on all marketing initiatives.

Files to Be Maintained on Every Applicant

The Administrative Agent will maintain files on every applicant. All files will contain a preliminary application. If an applicant's preliminary application is approved, and the applicant files a formal application, the file will contain at a minimum:

- Application Form.
- Income Verification
- Letter of Certification of Eligibility or Letter of Determination of Ineligibility.

Individual files will be maintained throughout the process.

Files To Be Maintained on Every Unit

The Administrative Agent will maintain files on every unit for the length of the affordability controls. The unit file will contain at a minimum:

- Base sales prices
- Identification as low- or moderate-income
- Description of number of bedrooms and physical layout
- Floor plan
- Original deed restriction
- Affordability control documents, including Declarations of Covenants, Conditions and Restrictions, Deed Restrictions, Deeds, Recapture Mortgages, Recapture Mortgage Notes, Disclosure Statement
- Application materials, verifications and certifications of all present owners, pertinent correspondence, any documentation of home improvement, hardship or income waivers or other approvals granted by an AA, certificate of exemption

Files to Be Maintained on Every Project

The Administrative Agent will maintain files on every project for the length of the affordability controls. The project file will contain at a minimum:

- Condominium Master Deed
- Condominium Public Offering

Files to Be Maintained on The Applicant Pool

- Any changes to the applicant pool
- Any action taken with regard to the applicant pool
- Any activity that occurs that affects a particular applicant
- Current applications for all applicants whose status is active in the applicant pool
- The application, the initial rejection notice, the applicant's reply to the notice, a copy of the Administrative Agent's final response to the applicant, and all documentation of the reason the applicant's name was removed from the applicant pool.

Monitoring

A sample Deed will be submitted for each project. Additionally, the current annual monitoring information required to be maintained and reported annually to the Municipal Housing Liaison can be found on COAH's website. The information required for each unit includes but is not limited to:

- Street Address
- Block/Lot/Qualifier/Unit Number
- Housing Type
- Income: Very Low/Low/Moderate
- Initial Sale Price
- % of affordability
- Bedroom Type
- Age-restricted
- Handicap accessible/adaptable
- Co #, date
- Effective date of affordability controls
- Length of affordability controls (yrs)
- Date Affordability controls removed
- 95/5



EQUAL HOUSING OPPORTUNITY

We Do Business in Accordance With the Federal Fair Housing Law

(The Fair Housing Amendments Act of 1988)

It is illegal to Discriminate Against Any Person Because of Race, Color, Religion, Sex, Handicap, Familial Status, or National Origin

- In the sale or rental of housing or residential lots
- In advertising the sale or rental of housing
- In the financing of housing
- In the provision of real estate brokerage services
- In the appraisal of housing
- Blockbusting is also illegal

Anyone who feels he or she has been discriminated against may file a complaint of housing discrimination:
1-800-669-9777 (Toll Free)
1-800-927-9275 (TTY)

U.S. Department of Housing and Urban Development
Assistant Secretary for Fair Housing and Equal Opportunity
Washington, D.C. 20410

New Jersey Law Prohibits

Discrimination

in

Housing

ON THE BASIS OF: Race, Creed, Color, National Origin, Ancestry, Nationality, Marital or Domestic Partnership or Civil Union Status, Familial Status, Sex, Gender Identity or Expression, Affectional or Sexual Orientation, Disability, Source of Lawful Income or Source of Lawful Rent Payment (including Section 8)

BY: All Persons including Real Estate Agents or Brokers, Financial Institutions, Property Owners, Landlords, or Building Superintendents, and Their Agents and Employees

WITH RESPECT TO:

- The Sale, Rental or Lease of Real Property
- Listing or Advertising of Real Property
- Receipt or Transmittal of Offers to Purchase or Rent Real Property
- Application and Terms of a Mortgage or Other Loan

REMEDY MAY INCLUDE: An Order Restraining Unlawful Discrimination, Reimbursement for Financial Loss, Damages for Pain and Humiliation Experienced as a Result of Unlawful Discrimination, Punitive Damages, and Attorney's Fees

It is also unlawful to publish real estate advertisements which express any discrimination against persons protected by the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

Violations Should Be Reported To the Nearest Office of the NJ Division on Civil Rights or Call Toll Free at 866-405-3050

Atlantic City
26 S. Pennsylvania Avenue, 3rd Floor
Atlantic City, NJ 08401
(609) 441-3100 (Phone)

Camden
One Port Center
2 Riverside Drive, 4th Floor
Camden, NJ 08103
(856) 614-2550 (Phone)

Newark
31 Clinton Street, 3rd Floor
Newark, NJ 07102
(973) 648-2700 (Phone)

Trenton
140 East Front Street, 6th Floor
Trenton, NJ 08625
(609) 292-4605 (Phone)

www.NJCivilRights.gov

The regulations of the New Jersey Division on Civil Rights require that all real estate brokers and persons who engage in the business of selling or renting real property who are covered by the New Jersey Law Against Discrimination shall display this official poster in places easily visible to all prospective tenants and purchasers. N.J.A.C. 13:8-1.3.

CIVIL RIGHTS

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING
2014 AFFORDABLE HOUSING REGIONAL INCOME LIMITS

		1 Person	*1.5 Person	2 Person	*3 Person	4 Person	*4.5 Person	5 Person	6 Person	7 Person	8 Person	Max. Increase**		Regional Asset Limit***
												Rents	*Sales*	
Region 1	*Median*	$59,095	$63,317	$67,538	$75,980	$84,422	$87,799	$91,176	$97,930	$104,683	$111,437	1.8%	0.00%	$163,245
Bergen, Hudson, Passaic and Sussex	*Moderate*	$47,276	$50,653	$54,030	$60,784	$67,538	$70,239	$72,941	$78,344	$83,747	$89,150			
	Low	$29,548	$31,658	$33,769	$37,990	$42,211	$43,899	$45,588	$48,965	$52,342	$55,719			
	Very Low	$17,729	$18,995	$20,261	$22,794	$25,327	$26,340	$27,353	$29,379	$31,405	$33,431			
Region 2	*Median*	$63,430	$67,961	$72,492	$81,553	$90,614	$94,239	$97,864	$105,113	$112,362	$119,611	1.8%	0.00%	$173,844
Essex, Morris, Union and Warren	*Moderate*	$50,744	$54,369	$57,993	$65,242	$72,492	$75,391	$78,291	$84,090	$89,890	$95,689			
	Low	$31,715	$33,980	$36,246	$40,777	$45,307	$47,120	$48,932	$52,556	$56,181	$59,806			
	Very Low	$19,029	$20,388	$21,747	$24,466	$27,184	$28,272	$29,359	$31,534	$33,709	$35,883			
Region 3	*Median*	$73,500	$78,750	$84,000	$94,500	$105,000	$109,200	$113,400	$121,800	$130,200	$138,600	1.8%	0.00%	$199,936
Hunterdon, Middlesex and Somerset	*Moderate*	$58,800	$63,000	$67,200	$75,600	$84,000	$87,360	$90,720	$97,440	$104,160	$110,880			
	Low	$36,750	$39,375	$42,000	$47,250	$52,500	$54,600	$56,700	$60,900	$65,100	$69,300			
	Very Low	$22,050	$23,625	$25,200	$28,350	$31,500	$32,760	$34,020	$36,540	$39,060	$41,580			
Region 4	*Median*	$64,830	$69,461	$74,091	$83,353	$92,614	$96,319	$100,023	$107,432	$114,841	$122,250	1.8%	0.00%	$174,209
Mercer, Monmouth and Ocean	*Moderate*	$51,864	$55,568	$59,273	$66,682	$74,091	$77,055	$80,018	$85,946	$91,873	$97,800			
	Low	$32,415	$34,730	$37,046	$41,676	$46,307	$48,159	$50,012	$53,716	$57,421	$61,125			
	Very Low	$19,449	$20,838	$22,227	$25,006	$27,784	$28,896	$30,007	$32,230	$34,452	$36,675			
Region 5	*Median*	$57,050	$61,125	$65,200	$73,350	$81,500	$84,760	$88,020	$94,540	$101,060	$107,580	1.8%	0.00%	$151,043
Burlington, Camden and Gloucester	*Moderate*	$45,640	$48,900	$52,160	$58,680	$65,200	$67,808	$70,416	$75,632	$80,848	$86,064			
	Low	$28,525	$30,563	$32,600	$36,675	$40,750	$42,380	$44,010	$47,270	$50,530	$53,790			
	Very Low	$17,115	$18,338	$19,560	$22,005	$24,450	$25,428	$26,406	$28,362	$30,318	$32,274			
Region 6	*Median*	$51,085	$54,734	$58,383	$65,681	$72,979	$75,898	$78,817	$84,656	$90,494	$96,332	1.8%	0.00%	$136,680
Atlantic, Cape May, Cumberland and Salem	*Moderate*	$40,868	$43,787	$46,707	$52,545	$58,383	$60,719	$63,054	$67,725	$72,395	$77,066			
	Low	$25,543	$27,367	$29,192	$32,841	$36,490	$37,949	$39,409	$42,328	$45,247	$48,166			
	Very Low	$15,326	$16,420	$17,515	$19,704	$21,894	$22,769	$23,645	$25,397	$27,148	$28,900			

Moderate income is between 80 and 50 percent of the median income. Low income is 50 percent or less of median income. Very low income is 30 percent or less of median income.

* These columns are for calculating the pricing for one, two and three bedroom sale and rental units as per N.J.A.C. 5:80-26.4(a).

** This column is used for calculating the pricing for resale and rent increases for units as per N.J.A.C. 5:97-9.3. However, low income tax credit developments may increase based on the low income tax credit regulations. Landlords who did not increase rent in 2012 may increase rent by the combined 2012 and 2013 increase, or 3 percent.

*** The Regional Asset Limit is used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3.

Since the COAH Regional Income Limits for 2013 were higher than 2014 figures, the 2013 income limits, shown above, will remain in force for 2014 and until Regional Income Limits surpass the 2013 Regional Income Limits.

PROPERTY / DEVELOPMENT NAME: _____

PROPERTY ADDRESS: _____ EXHIBIT C

NAME OF APPLICANT: _____

AFFORDABLE HOUSING APPLICATION

Read this application carefully and return it with the required documentation. We reserve the right to disqualify applicants who do not submit ALL of the documentation requested in this application packet. Please complete, sign and return this application AND the required documentation to: Piazza & Associates, Inc., 216 Rockingham Row, Princeton, NJ 08540.

Federal law prohibits discriminate against any person making application to buy or rent a home with regard to age, race, religion, national origin, sex, handicapped or familial status. State law prohibits discrimination on the basis of race, creed, color, national origin, ancestry, nationality, marital or domestic partnership or civil union status, familial status, sex, gender identity or expression, affectional or sexual orientation, disability, source of lawful income or source of lawful rent payment (including Section 8). The affordable housing must be the intended primary residence of the applicant. All household members who intend to reside at the affordable home must be listed in the application. If changes in household composition occur during the application process, the applicant is required to notify Piazza & Associates, Inc. immediately. Applications may be withdrawn if the household compostion or srouces of income changes after the submission of this application. Applications must be truthful, complete and accurate. Any false statement makes the application null and void, and subjects the applicant to penalties imposed by law. **Income Verification:** The affordable homes are provided as a service to low- and moderate- income households. Occupancy is regulated by certain municipal and state statutes that require us to verify the income of every applicant. Your cooperation is appreciated.

Identification. Please include a photocopy of identification for every person who will reside in the affordable home. Typically, a birth certificate, drivers license or passport will be sufficient. **Verification of Income**. Every applicant must submit a copy of each of the most recent three (3) years of signed state and federal tax returns (1040). Please include all accompanying documents such as W2 form(s), 1099's etc. If the applicant has not filed a return in any of the three (3) previous years, he / she must submit a notarized letter of explanation. Every applicant must submit the six (6) most recent statements from every Checking account and three (3) statements from every other bank and financial account (including, Savings, CD's, Money Market Accounts, etc.) to which the applicant is a depositor or signatory. **All sources of income must be verified.** Acceptable forms of verification include... **Salary**: Four (4) most recent pay statement (stubs). **Social Security:** A letter from the Social Security Administration. **Public Assistance:** A letter from the appropriate agency which details the amount and frequency of the benefit. **Alimony and Child Support:** The separation or divorce agreement which details the amount and frequency of child support or alimony received by the applicant. **Pension Plan, IRA, Annuity** and/or other retirement account, plan or service under which the applicant receives an income or financial distribution: The most recent statement for each which clearly indicates the amount and frequency of the distribution. In lieu of a statement, a letter of verification from the appropriate authority will be considered. **Savings Bonds:** A copy of all bonds held by the applicant(s). **Stocks, Bonds, Treasury Bills and Notes or other financial instruments** which are owned in whole or in part by the applicant: The most recent statement which verifies the value of the assets and current dividends (if any). If these are not available, a notarized letter from a Certified Public Accountant or attorney who has access to these records will be considered. **Real Estate:** If the real estate is the current residence of the applicant, and if the applicant intends to sell the real estate, submit one of the following: a certified appraisal, a contract with a real estate broker which sets forth the price of the property, or a signed contract for the sale of the property. If there is a mortgage, a statement from the mortgage company or bank which clearly indicates the principal balance of the mortgage(s) must be submitted. If other real estate is owned, in whole or in part by the applicant, and that parcel or parcels of real estate generate(s) income, verification of income must be supplied. In addition, verification of mortgage payments, property taxes and insurance should be submitted. **Business Income:** Equals the sum of gross revenue less expenses (prior to taxes). Important: Answer all questions. Please answer "none" in the sections which ask for information about income that you do not have. Enter "n/a" if a question does not apply to you. If you have any questions, or are in need of further information, please call us: (609) 786-1100, or contact us by e-mail at Info@ HousingQuest.com.

Application services provided by Piazza & Associates, Inc., an affordable housing services corporation. This is an Equal Housing Opportunity. All housing is subject to applicable affordable housing regulations and availability. The terms and conditions of this affordable housing opportunity are subject to change without notice. We can not guarantee that an affordable home will be available to you. All homes meet certain criteria for "affordable housing," but the sales prices and rental rates are ***not*** adjusted to meet any specific household income or financial situation. Therefore, we can not and do not represent that these homes will be affordable to any individual applicant.

DO NOT FAX. *WE CAN NOT ACCEPT A FACSIMILE OF YOUR FINAL APPLICATION!* ***DO NOT FAX.***

PLEASE CALL US IF YOU NEED CLARIFICATION OR FURTHER INSTRUCTIONS: (609) 786-1100.

A. Head of Household Information (Please verify the information below and make corrections if necessary.)

1. Last Name: _____
2. First Name: _____
3. Home Address: _____
4. City/State/ Zip: _____
5. Soc. Sec. No: _____
6. Home Phone: _____
7. Work Phone: _____
8. County: _____
9: Email:

B. Household Composition (Every person who will occupy the affordable home must be listed.)

Name (First and Last)	Relation To	Date of Birth	Sex	Social Security Number
#1				
#2				
#3				
#4				
#5				
#6				

C. Current Situation

1. Do you currently: ___ Rent ___ Own ___Other
2. How long at the address above? _____ Years
3. What was your previous address?

_____

City: _____

State: ____ Zip Code: _____

4. What is your monthly rent or mortgage payment?

$_____

5. If you currently own your home, what is the value of this home?

$_____

6. What is the Principal Balance of your mortgage?

$_____

D. References

If you rent, please check "Landlord" and list the name and address of your landlord below. **If you own** your home, please check "Mortgage Co." and list the name and address of the mortgage company and account number below.

1. Name of ___Landlord or ___Mortgage Co.: _____
2. Address: _____
3. City, State and Zip Code: _____
4. Telephone Number: _____ 5. Mortgage Account No.: _____

If you own your home, please attach documentation verifying the value of the home and mortgage principal amount.

E. Salary **(Please list GROSS salary for every person over 18 years of age who will reside at the affordable home. Attach the 4 most recent pay statements (stubs) to this application. Please include overtime in calculation.)**

Name (First and Last) Repeat Employee's Name if applicant has more than one employer. Use additional pages for additional jobs.	**Occupation**	**Gross Salary per Pay Period**	**Pay Period** (Bi-Weekly, Weekly, etc.)	**Annual Gross Salary**
Name of Employee: Name of Employer: Immediate Supervisor: Address: Telephone:		$		$
Name of Employee: Name of Employer: Immediate Supervisor: Address: Telephone:		$		$
Name of Employee: Name of Employer: Immediate Supervisor: Address: Telephone:		$		$

F. Benefits Income: **Social Security, Pension, Disability, Welfare, Public Assist., IRA's, Annuities, Child Support, Alimony, Retirement, etc. (Include all sources which currently provide direct income. Provide documentation.)**

Type of Income (From List Above)	**Source** (Specify name of Bank, Fund, Agency, etc.)	**Client / Account Number**	**Gross Monthly Benefit**	**Gross Annual Benefit**
			$	$
			$	$
			$	$
			$	$
			$	$
			$	$
			$	$

G. Assets: Financial Institutions (Checking Account, Savings Accounts, Certificates of Deposit, Money Market Funds, Mutual Funds or other assets held by financial institutions. Provide documentation. Refer to Instructions.)

Type of Asset or Account	Financial Institution	Account Number	Current Market Value of Asset	Interest Rate	Annual Income
			$	%	$
			$	%	$
			$	%	$
			$	%	$
			$	%	$
			$	%	$
			$	%	$

H. Assets: Directly Held (Stocks, Bonds, Income-Producing Real Estate, Business or other directly held assets. Provide documentation. To determine the Annual Income from Real Estate or Business, refer to the Instructions.)

Type of Asset	Name of Asset	Number of Shares	Current Market Value	Annual Income
			$	$
			$	$
			$	$
			$	$
			$	$
			$	$

I. Marital Status: ___Married; ___Single; ___Divorced; ___Widowed; ___Legally Separated

J. Additional Information (Please include any information which will assist us in serving you such as special needs, accessibility requirements, etc.) _____

Applicant's Certification and Authorization: The undersigned hereby states that all the information provided in connection with this Affordable Housing Application is true and complete. I/We am/are aware that, if any statements made by me/us are willingly false, the application is null and void, and I/we may be subject to penalties imposed by law. Piazza & Associates, Inc. or its agents are hereby authorized to contact references to verify the information provided in these applications, and to make other inquiries regarding income, assets, credit status, employment, and residency history for the purpose of determining my/our eligibility for this affordable housing program. Further, I/we understand that there is no obligation at this time on my/our part to enter into a sales or rental agreement if the application is approved. **Void if not signed by all Applicants 18 years of age and over.**

Signed: _____ Signed: _____

EXHIBIT D

APPLICANT QUESTIONNAIRE & DOCUMENT CHECKLIST

This questionnaire must be filled out and signed by all applicants over the age of 17.

Rev. 09/06/12

ATTENTION: DO NOT SUBMIT ORIGINALS! Documents cannot be returned.

IMPORTANT
If you answer yes, you must submit a COPY of all of the required documents!

Applicant/Tenant Name: _____

Applicant/Tenant: Please check "yes" or "no" for each line

Yes	No	*Check "Yes" if the answer applies to one or more applicants.*	(√) *Place check mark if enclosed!*
____	____	Mortgage prequalification letter **(REQUIRED)**	___ Letter
____	____	I am entitled to file a tax return……..	___ 3 most recent federal & st. tax returns
			___ … with all attachments (w-2 forms, etc.)
____	____	I am currently a student - (please circle below):…….. (a) Full Time (b) Part Time	___ Current transcript or letter from school
____	____	I am presently employed and receive wages/tips/commissions..	___ 4 most recent pay statements…
____	____	I am presently employed at more than one job (NOT self employed)	...for every job held by everyone over 17.
____	____	I am self employed…….	___ Schedule "C" and tax returns
____	____	I own a business…….	___ Current Profit and Loss statements
____	____	I currently am on leave of absence from work…….	___ Letter from employer to verify status
____	____	I currently receive unemployment benefits……..	___ 6 most recent statements from agency
____	____	I have a savings account……..	___ 3 most recent statements from each acct
____	____	I have a checking account…….	___ 6 most recent statements from each acct
____	____	I have a money market account……	___ 3 most recent statements from each acct
____	____	I own a certificate of deposit (CD)……..	___ 3 most recent statements from each acct
____	____	I own stocks/bonds. (NOT held in a retirement plan)…….	___ 3 most recent statements from each acct
____	____	I own real estate or I am in the process of selling real estate……	___ Market value and mortgage statements
____	____	I have sold or gifted property or other assets in the past 2 years	___ What was sold, the value and sale price
____	____	I have an IRA. (NOT yet receiving income)…….	___ 3 most recent statements from each acct
____	____	I have a pension plan at work (NOT yet receiving income)……..	___ 3 most recent statements from each acct
____	____	I receive Social Security Income…….	___ Most recent benefit letter from SS Admin
____	____	I receive income from a pension/annuity/retirement fund……..	___ 3 most recent statements from each acct
____	____	I receive money periodically from my family, church, friends, etc.	___ Letter detailing the amount & frequency
____	____	I am entitled to receive child support……..	___ 3 most recent statements from source
____	____	**I am currently paying child support……..**	___ Proof of last 6 payments
____	____	I am entitled to receive alimony……	___ 3 most recent statements from source
____	____	**I am currently paying alimony…….**	___ Proof of last 6 payments
____	____	I receive AFDC/TANF……..	___ Most recent benefits letter
____	____	I receive assistance from a Public Housing Authority……	___ Most recent benefits letter
____	____	I receive Supplemental Social Security (SSI)…….	___ Most recent benefits letter
____	____	I receive Workman's Compensation……	___ 3 most recent statements from source
____	____	I have a Trust Fund…….	___ 3 most recent statements from source
____	____	***Valid form of ID for every household member is required!***	___ birth cert., driver's license or passport

Signature Date Signature Date

Signature Date Signature Date

EXHIBIT E

Process for Selling an Affordable Home

Our organization coordinates certain aspects of the sales process for affordable homes on behalf of your municipality. We are not real estate agents, however, and recommend that Sellers use of a qualified real estate professional. Information regarding real estate agents who have expressed interest in providing such services can be found on our web site: www.HousingQuest.com, under "News and Information." The process is outlined below.

1. The Seller submits a Preliminary Notice with a copy of their recorded deed in order to determine the maximum resale price
2. We will respond to the Seller in writing, explaining some of the details of the process and informing the Seller of the Maximum Sales Price (based on the change in median income as set forth by the New Jersey Dept. of Community Affairs) as well as the Maximum Income allowed for potential purchasers, as adjusted for family size. A form, entitled, "Notice of Intent to Sell", is attached.
3. We will also send a "Notice of Availability" to households on our waiting list for an affordable home of the same size and income category. We will include about 20 copies of Preliminary Applications, specifically marked with the address of the affordable home at the top, to the Seller. The Notice will ask interested households to contact the Seller or their agent, directly, to make an appointment to see the affordable home within a two-week time frame. The Seller may want to prepare a flyer for us to distribute with our notice of availability. We reserve the right to limit the number of notices that are mailed, based on the chronological order in which the prequalified applications were received. If the notices are limited in this way, applicants receiving notices will have a priority over those who do not.
4. With permission of the Seller, we automatically place a notification of the availability on NJHRC.gov and on HousingQuest.com. The Seller or their agent may also want to advertise. Ads should include the "Equal Housing Opportunity" logo and should be sent to our office for review prior to distribution.
5. The Seller or their agent, upon showing the home, provides potential buyers with a copy of the Preliminary Application (which may be duplicated if necessary). All interested parties must receive a specially marked Preliminary Application, whether or not they have already submitted an application to our office or are on our waiting list. Also, the Seller or their agent must keep a record of the name, address and telephone number of everyone who viewed the home.
6. At the end of the two-week time period, our office collects all of the Preliminary Applications submitted for a particular home. They are prioritized on the basis of a blind selection process or lottery. Preference may be given to households that can utilize all of the bedrooms, as well as handicap accommodations, when applicable.
7. The first two applicants on the prioritized list are sent a letter which requires them to complete a final application within seven days.

8. When an applicant is approved, the Seller may begin to negotiate a contract with the potential Buyer at this time, but there must be a contingency clause in the contract which voids the contract, without penalty to the buyer, if the potential buyer is not able to obtain financing within 30 days.
9. The remaining applicants are maintained on the waiting list for this home or other homes in the same size and income categories. In the event that the potential buyer is not able and/or willing to purchase the affordable home, the next applicant on the prioritized list is notified pursuant to the process described above.
10. The Seller must sell the affordable home with the same or comparable appliances and amenities that were in the home when it was first sold as an affordable home.
11. The Seller may NOT charge more than the Maximum Selling Price for any reason, except the addition of a room, the installation of central air conditioning (where there was none before) or comparable upgrade, but ONLY with prior written approval from us. For the most part, condominiums in this program are NOT eligible for such upgrades and/or adjustments to the selling price. The cost of broker fees; municipal inspections and required repairs that may be necessary to receive a Certificate of Occupancy; new appliances, carpeting or other flooring upgrades; and decorating and remodeling projects are NOT eligible costs for an increase in the Maximum Sales Price.
12. A copy of the Sales Contract must be submitted to our office prior to closing.
13. During the final stages of the process, it will be necessary for the Buyer to make arrangement for the Affordable Housing Agreement and Mortgage Note to be satisfied with respect to the Seller and new documents filed with respect to the Buyer. Our office typically provides the Buyer's attorney with the name and phone number of the attorney who can address these issues.
14. A copy of the HUD Closing Statement must be submitted to our office after the sale of the home.
15. Note: We do not guarantee that the Buyer can sell an affordable home for the Maximum Sales Price. An affordable home is also susceptible to market conditions, and the Fair Market Value of an affordable home may be lower than the Maximum Selling Price. In this case, the Seller may not be able to sell the home for more than its Fair Market Value
16. This outline is meant to describe the process utilized prior to the expiration of the deed restrictions. It is not meant to be a legal representation of the rights or responsibilities of any party, nor is it meant to modify the Affordable Housing Agreement, Mortgage Note or other Deed Restrictions. Buyers and Sellers are encouraged to seek legal counsel for specific questions in this regard.
17. Our office is available to both the Seller and the Buyer throughout the process to answer any questions that they may have.

AFFIRMATIVE FAIR HOUSING MARKETING PLAN EXHIBIT F
For Borough of Montvale **(REGION 1)**

I. APPLICANT AND PROJECT INFORMATION
(Complete Section I individually for all developments or programs within the municipality.)

<table>
<tr><td colspan="2">1a. Administrative Agent Name, Address, Phone Number
Administrative Agent:

Contact Name: Frank Piazza
Piazza & Associates, Inc.
216 Rockingham Row
Princeton, NJ 08540
609-786-1100, ext. 301</td><td colspan="2">1b. Development or Program Name, Address

N/A</td></tr>
<tr><td>1c.
Number of Affordable Units: N/A
Number of Rental Units: N/A

Number of For-Sale Units: N/A</td><td colspan="2">1d. Price or Rental Range

From N/A

To</td><td>1e. State and Federal Funding Sources (if any)</td></tr>
<tr><td>1f.
☐ Age Restricted
☐ Non-Age Restricted</td><td colspan="3">1g. Approximate Starting Dates

Advertising: Occupancy:</td></tr>
<tr><td colspan="2">1h. County
Bergen, Hudson, Passaic, Sussex</td><td colspan="2">1i. Census Tract(s):
N/A</td></tr>
<tr><td colspan="4">1j. Managing/Sales Agent’s Name, Address, Phone Number

N/A</td></tr>
<tr><td colspan="4">1k. Application Fees (if any):</td></tr>
</table>

(Sections II through IV should be consistent for all affordable housing developments and programs within the municipality. Sections that differ must be described in the approved contract between the municipality and the administrative agent and in the approved Operating Manual.)

II. RANDOM SELECTION

Describe the random selection process that will be used once applications are received.

1. RENTAL PROCESS:

A. An initial deadline date, no less than 60 days after the start of the marketing process, will be established. All of the preliminary applications received by Piazza & Associates, on or before the initial deadline date, shall be deemed received on that date.

B. Households that apply for very low-income housing will be prescreened by Piazza & Associates for preliminary income eligibility by comparing their total income and household size to the very low-income limits pursuant to the New Jersey Fair Housing Act, N.J.S.A. 52:27-D-304 (“NJFHA”). Households that apply for low and moderate-income housing will be prescreened by Piazza & Associates for preliminary income eligibility by comparing their total income and household size to the low and moderate-income limits pursuant to the Uniform Housing Affordability Controls, 5:80-26.1 et seq. (“UHAC”). All households will be notified as to their preliminary status.

C. A drawing will be held under the direction of Piazza & Associates to determine the priority order

of the pre-qualified applications received on or before the initial deadline date. All preliminary applications received after the initial deadline, will be processed on a "first come, first served" basis.

D. In order to ensure an adequate supply of qualified applicants, the advertising phase will continue until there are at least ten (10) pre-qualified applicants for each low and moderate-income unit available, or until all of the low and moderate-income units within the development have been rented.

E. Final applications will be mailed by Piazza & Associates to an adequate number of pre-qualified applicants, in priority order, for each available very low, low and moderate-income unit. The final application will require the applicants to supply documents to verify their identity and household composition as well as their income and assets.

F. Completed final applications will be forwarded to Piazza & Associates. Piazza & Associates will make a determination as to their eligibility for a low or moderate-income unit. Applicants will receive a letter from Piazza & Associates with respect to the status of their application each time a review is performed.

G. At the same time, applicants will also be subject to any criteria set forth by the Owner, pursuant to the Tenant Selection Criteria, attached. The criteria shall comply with all fair housing standards and be set forth in a policy statement made available to all applicants in the leasing office. The Owner will be responsible for the assessment of all criteria beyond the income and household size criteria set forth in "C" above.

H. Subsequent to the initial rent-up period, a list of pre-qualified applicants will be maintained by Piazza & Associates for each type of very low, low and moderate-income unit.

2. SALE PROCESS:

A. An initial deadline date, no less than 60 days after the start of the marketing process, will be established. All of the preliminary applications received by Piazza & Associates, on or before the initial deadline date, shall be deemed received on that date.

B. Households that apply for low and moderate income housing will be prescreened by Piazza & Associates for preliminary income eligibility by comparing their total income and household size to the low and moderate income limits adopted by COAH or its successors and other program restrictions that may apply. All households will be notified as to their preliminary status.

C. A drawing will be held under the direction of Piazza & Associates to determine the priority order of the pre-qualified applications received on or before the initial deadline date. All preliminary applications received after the initial deadline, will be processed on a "first come, first served" basis after the applicants who were in the initial random selection.

D. In order to ensure an adequate supply of qualified applicants, the advertising phase will continue until there are at least ten (10) pre-qualified applicants for each low and moderate income unit available, or until all of the low and moderate income units within the development have been sold.

E. Final applications will be mailed by Piazza & Associates to an adequate number of pre-qualified applicants, in priority order, for each available low and moderate income unit. The final application will require the applicants to supply documents to verify their identity and household composition as well as their income and assets.

F. Completed final applications will be forwarded to Piazza & Associates. Piazza & Associates will make a determination as to their eligibility for a low or moderate income unit. Applicants will receive a letter from Piazza & Associates with respect to the status of their application each time a review is performed.

G. When submitting final applications, applicants will also be asked to provide a pre-qualification letter from a qualified lending institution.

H. Certified applicants will be given 15 days to sign a sales agreement with the developer. Mortgage contingencies may not be an acceptable term of the agreement.

I. The sales agreement may also limit closing to a reasonable time to be approved by Piazza & Associates in advance of the process.

3. RESALE PROCESS:

A. The Seller submits a Preliminary Notice with a copy of their recorded deed in order to determine the maximum resale price

B. We will respond to the Seller in writing, explaining some of the details of the process and informing the Seller of the Maximum Sales Price (based on the change in median income as set forth by the New Jersey Dept. of Community Affairs) as well as the Maximum Income allowed for potential purchasers, as adjusted for family size. A form, entitled, "Notice of Intent to Sell", is attached.

C. We will also send a "Notice of Availability" to households on our waiting list for an affordable home of the same size and income category. We will include about 20 copies of Preliminary Applications, specifically marked with the address of the affordable home at the top, to the Seller. The Notice will ask interested households to contact the Seller or their agent, directly, to make an appointment to see the affordable home within a two-week time frame. The Seller may want to prepare a flyer for us to distribute with our notice of availability. We reserve the right to limit the number of notices that are mailed, based on the chronological order in which the prequalified applications were received. If the notices are limited in this way, applicants receiving notices will have a priority over those who do not.

D. With permission of the Seller, we automatically place a notification of the availability on NJHRC.gov. The Seller or their agent may also want to advertise. Ads should include the "Equal Housing Opportunity" logo and should be sent to our office for review prior to distribution.

E. The Seller or their agent, upon showing the home, provides potential buyers with a copy of the Preliminary Application (which may be duplicated if necessary). All interested parties must receive a specially marked Preliminary Application, whether or not they have already submitted an application to our office or are on our waiting list. Also, the Seller or their agent must keep a record of the name, address and telephone number of everyone who viewed the home.

F. At the end of the two-week time period, our office collects all of the Preliminary Applications submitted for a particular home. They are prioritized on the basis of a blind selection process or lottery. Preference may be given to households that can utilize all of the bedrooms, as well as handicap accommodations, when applicable.

G. The first two applicants on the prioritized list are sent a letter which requires them to complete a final application within seven days.

H. When an applicant is approved, the Seller may begin to negotiate a contract with the potential Buyer at this time, but there must be a contingency clause in the contract which voids the contract, without penalty to the buyer, if the potential buyer is not able to obtain financing within 30 days.

I. The remaining applicants are maintained on the waiting list for this home or other homes in the same size and income categories. In the event that the potential buyer is not able and/or willing to purchase the affordable home, the next applicant on the prioritized list is notified pursuant to the process described above.

J. The Seller must sell the affordable home with the same or comparable appliances and amenities that were in the home when it was first sold as an affordable home.

K. The Seller may NOT charge more than the Maximum Selling Price for any reason, except the addition of a room, the installation of central air conditioning (where there was none before) or comparable upgrade, but ONLY with prior written approval from us. For the most part, condominiums in this program are NOT eligible for such upgrades and/or adjustments to the selling price. The cost of broker fees; municipal inspections and required repairs that may be necessary to receive a Certificate of Occupancy; new appliances, carpeting or other flooring upgrades; and decorating and remodeling projects are NOT eligible costs for an increase in the Maximum Sales Price.

L. A copy of the Sales Contract must be submitted to our office prior to closing.

M. During the final stages of the process, it will be necessary for the Buyer to make arrangement for the Affordable Housing Agreement and Mortgage Note to be satisfied with respect to the Seller and new documents filed with respect to the Buyer. Our office typically provides the Buyer's attorney with the name and phone number of the attorney who can address these issues.

N. A copy of the HUD Closing Statement or Closing Disclosure form required by the TILA-RESPA Integrated Disclosure Rule, as appropriate, must be submitted to our office after the sale of the home.

O. Note: We do not guarantee that the Buyer can sell an affordable home for the Maximum Sales Price. An affordable home is also susceptible to market conditions, and the Fair Market Value of an affordable home may be lower than the Maximum Selling Price. In this case, the Seller may not be able to sell the home for more than its Fair Market Value

P. This outline is meant to describe the process utilized prior to the expiration of the deed restrictions. It is not meant to be a legal representation of the rights or responsibilities of any party, nor is it meant to modify the Affordable Housing Agreement, Mortgage Note or other Deed Restrictions. Buyers and Sellers are encouraged to seek legal counsel for specific questions in this regard.

Q. Our office is available to both the Seller and the Buyer throughout the process to answer any questions that they may have.

III. MARKETING

3a.Direction of Marketing Activity: Based on demographic data from the 2010 census, this table provides a comparison of race and ethnic origin between the Housing region 1 and the Borough of Montvale. The most significant negative differences point to the greatest need for affirmative marketing. In this case, African Americans (-10.5%) and Hispanic (-25.5%) represent the clearest differences between the municipality and the region.

Subject	RACE							HISPANIC OR LATINO	
	Total population	Race alone or in combination with one or more other races: [4]						Total population	
		White	Black or African American	American Indian and Alaska Native	Asian	Native Hawaiian and Other Pacific Islander	Some Other Race	Hispanic or Latino (of any race)	Not Hispanic or Latino
Bergen	905,116	668,395	59,235	5,016	140,413	1,259	55,012	145,281	759,835
Sussex	501,226	328,081	70,517	6,124	29,024	977	86,234	185,677	315,549
Hudson	634,266	362,592	93,248	7,828	91,810	1,614	106,846	267,853	366,413
Passaic	501,226	328,081	70,517	6,124	29,024	977	86,234	185,677	315,549
Region 1	2,541,834	1,687,149	293,517	25,092	290,271	4,827	334,326	784,488	1,757,346
% Region 1	100%	66.4%	11.5%	1.0%	11.4%	0.2%	13.2%	30.9%	69.1%
Montvale	7,844	6,654	81	6	866	-	128	419	7,425
% Montvale	100%	84.8%	1.0%	0.1%	11.0%	0.0%	1.6%	5.3%	94.7%
Difference		**18.5%**	**-10.5%**	**-0.9%**	**-0.4%**	**-0.2%**	**-11.5%**	**-25.5%**	**25.5%**

[4] In combination with one or more of the other races listed. The six numbers may add to more than the total population, and the six percentages may add to more than 100 percent because individuals may report more than one race. Source: U.S. Census Bureau, 2010 Census of Population and Housing, Demographic Profile Summary File: Technical Documentation, 2011.

☐ White (non-Hispanic X Black (non-Hispanic) X Hispanic ☐ American Indian or Alaskan Native

☐ Asian or Pacific Islander ☐ Other group:

3b. Web Sites

HOUSING RESOURCE CENTER (www.NJHRC.gov) A free, online listing of affordable housing X

PIAZZA & ASSOCIATES, INC. (www.HousingQuest.com) The Administrative Agent's online listing X

BOROUGH OF MONTVALE (www.montvale.org) Referral to HousingQuest.com X

3c. Commercial Media (required) (Check all that applies)

	DURATION & FREQUENCY OF OUTREACH	**NAMES OF REGIONAL NEWSPAPER(S)**	**CIRCULATION AREA**
TARGETS ENTIRE HOUSING REGION 1			
Daily Newspaper			
X	Once at the start of the Affirmative Marketing Process	Star-Ledger	Northern and Central New Jersey

Daily Newspaper			
X	Once at start of Affirmative Marketing Process with additional monthly advertising if necessary.	Record, The	Bergen
X	Once at start of Affirmative Marketing Process with additional monthly advertising if necessary.	Jersey Journal	Hudson
X	Once at start of Affirmative Marketing Process with additional monthly advertising if necessary.	Herald News	Passaic
X	Once at start of Affirmative Marketing Process with additional monthly advertising if necessary.	New Jersey Herald	Sussex

TARGETS ENTIRE HOUSING REGION 1

	Duration & Frequency of Outreach	**Names of Regional TV Station(s)**	**Circulation Area and/or Racial/Ethnic Identification of Readers/Audience**
☐		2 WCBS-TV Cbs Broadcasting Inc.	NYC Metropolitan Area
☐		4 WNBC NBC Telemundo License Co. (General Electric)	NYC Metropolitan Area
☐		5 WNYW Fox Television Stations, Inc. (News Corp.)	NYC Metropolitan Area
☐		7 WABC-TV American Broadcasting Companies, Inc (Walt Disney)	NYC Metropolitan Area
☐		11 WPIX Wpix, Inc. (Tribune)	NYC Metropolitan Area
☐		13 Wpix, Inc. (Tribune) Educational Broadcasting Corporation	NYC Metropolitan Area
☐		25 WNYE-TV New York City Dept. Of Info Technology & Telecommunications	NYC Metropolitan Area
☐		31 WPXN-TV Paxson Communications License Company, Llc	NYC Metropolitan Area
☐		41 WXTV Wxtv License Partnership, G.p. (Univision Communications Inc.)	NYC Metropolitan Area, Spanish-language
☐		47 WNJU NBC Telemundo License Co. (General Electric)	NYC Metropolitan Area, Spanish-language
☐		50 WNJN New Jersey Public Broadcasting Authority	New Jersey
☐		62 WRNN-TV Wrnn License Company, Llc	Hudson Valley
☐		63 WMBC-TV Mountain Broadcating Corporation	Northern New Jersey, Various ethnic

☐		66 WFME-TV Family Stations Of New Jersey, Inc.	Northern New Jersey, Christian
☐		68 WFUT-TV Univision New York Llc	NYC Metropolitan Area, Spanish-language
TARGETS PARTIAL HOUSING REGION 1			
☐		8 WTNH Wtnh Broadcasting, Inc. (LIN TV Corp.)	Bergen
☐		49 WEDW Connecticut Public Broadcasting, Inc.	Bergen
☐		17 WEBR-CA K Licensee, Inc.	Bergen, Hudson (Christian)
☐		26 WNXY-LP Island Broadcasting Company	Bergen, Hudson
☐		32 WXNY-LP Island Broadcasting Company	Bergen, Hudson
☐		35 WNYX-LP Island Broadcasting Company	Bergen, Hudson
☐		39 WNYN-LP Island Broadcasting Company	Bergen, Hudson (Spanish)
☐		21 WLIW Educational Broadcasting Corporation	Bergen, Hudson, Passaic
☐		60 W60AI Ventana Television, Inc.	Bergen, Hudson, Passaic
☐		6 WNYZ-LP Island Broadcasting Co.	Bergen, Sussex
☐		22 WMBQ-CA Renard Communications Corp.	Hudson
☐		34 WPXO-LP Paxson Communications License Company, Llc	Hudson
☐		42 WKOB-LP Nave Communications, Llc	Hudson (Christian)
☐		3 WBQM-LP Renard Communications Corp.	Hudson, Sussex
☐		52 WNJT New Jersey Public Broadcasting Authority	Hudson, Sussex
☐		28 WBRE-TV Nexstar Broadcasting, Inc.	Passaic, Sussex
☐		36 W36AZ New Jersey Public Broadcasting Authority	Passaic, Sussex
☐		16 WNEP-TV New York Times Co.	Sussex
☐		22 WYOU Nexstar Broadcasting, Inc.	Sussex
☐		23 W23AZ Centenary College	Sussex
☐		38 WSWB Mystic Television of Scranton Llc	Sussex
☐		39 WLVT-TV Lehigh Valley Public Telecommunications Corp.	Sussex
☐		44 WVIA-TV Ne Pa Ed Tv Association	Sussex
☐		49 W49BE New Jersey Public Broadcasting	Sussex

		Authority	
☐		56 WOLF-TV Wolf License Corp	Sussex
☐		60 WBPH-TV Sonshine Family Television Corp	Sussex
☐		64 WQPX Paxson Communications License Company, Llc (Ion Media Networks)	Sussex
☐		69 WFMZ-TV Maranatha Broadcasting Company, Inc.	Sussex

	Duration & Frequency of Outreach	**Names of Cable Provider(s)**	**Broadcast Area**
TARGETS PARTIAL HOUSING REGION 1			
☐		Time Warner Cable of Bergen & Hudson Counties	Partial Bergen
☐		Comcast of the Meadowlands	Partial Bergen
☐		Cablevision of New Jersey, Oakland, Ramapo, and Rockland	Partial Bergen
☐		US Cable of Paramus-Hillsdale	Partial Bergen
☐		Cablevision of NJ (Bayonne System), Hudson	Partial Hudson
☐		Comcast of Jersey City, Meadowlands, NJ (Union System)	Partial Hudson
☐		Time Warner Cable of Bergen & Hudson Counties	Partial Hudson
☐		Cablevision of Oakland, Paterson	Partial Passaic
☐		Hometown Online	Partial Passaic
☐		Cable Vision of Morris, Warwick	Partial Sussex
☐		Hometown Online	Partial Sussex
☐		Service Electric Broadband Cable	Partial Sussex
☐		Time Warner Cable of Bergen & Hudson Counties	Partial Bergen
☐		Comcast of the Meadowlands	Partial Bergen
☐		Cablevision of New Jersey, Oakland, Ramapo, and Rockland	Partial Bergen
☐		US Cable of Paramus-Hillsdale	Partial Bergen
☐		Cablevision of NJ (Bayonne System), Hudson	Partial Hudson
☐		Comcast of Jersey City, Meadowlands, NJ (Union System)	Partial Hudson
☐		Time Warner Cable of Bergen & Hudson Counties	Partial Hudson

☐		Cablevision of Oakland, Paterson	Partial Passaic
☐		Hometown Online	Partial Passaic
☐		Cable Vision of Morris, Warwick	Partial Sussex
☐		Hometown Online	Partial Sussex
☐		Service Electric Broadband Cable	Partial Sussex
☐		Time Warner Cable of Bergen & Hudson Counties	Partial Bergen
☐		Comcast of the Meadowlands	Partial Bergen
☐		Cablevision of New Jersey, Oakland, Ramapo, and Rockland	Partial Bergen
☐		US Cable of Paramus-Hillsdale	Partial Bergen
☐		Cablevision of NJ (Bayonne System), Hudson	Partial Hudson
☐		Comcast of Jersey City, Meadowlands, NJ (Union System)	Partial Hudson
☐		Time Warner Cable of Bergen & Hudson Counties	Partial Hudson
☐		Cablevision of Oakland, Paterson	Partial Passaic
☐		Hometown Online	Partial Passaic
☐		Cable Vision of Morris, Warwick	Partial Sussex
☐		Hometown Online	Partial Sussex
☐		Service Electric Broadband Cable	Partial Sussex

	DURATION & FREQUENCY OF OUTREACH	**NAMES OF REGIONAL RADIO STATION(S)**	**BROADCAST AREA AND/OR RACIAL/ETHNIC IDENTIFICATION OF READERS/AUDIENCE**
TARGETS ENTIRE HOUSING REGION 1			
AM			
☐		WFAN 660	
☐		WOR 710	
☐		WABC 770	
☐		WCBS 880	
☐		WBBR 1130	
FM			
☐		WFNY-FM 92.3	

☐		WPAT-FM 93.1	Spanish
☐		WNYC-FM 93.9	
☐		WFME 94.7	Christian
☐		WPLJ 95.5	
☐		WQXR-FM 96.3	
☐		WQHT 97.1	
☐		WSKQ-FM 97.9	Spanish
☐		WAWZ 99.1	Christian
☐		WBAI 99.5	
☐		WHTZ 100.3	
☐		WHUD 100.7	
☐		WCBS-FM 101.1	
☐		WQCD 101.9	
☐		WNEW 102.7	
☐		WKTU 103.5	
☐		WAXQ 104.3	
☐		WWPR-FM 105.1	
☐		WLTW 106.7	
☐		WBLS 107.5	
TARGETS PARTIAL HOUSING REGION 1			
AM			
☐		WEEX 1230	Bergen
☐		WKDM 1380	Bergen, Hudson (Chinese/ Mandarin)
☐		WMCA 570	Bergen, Hudson, Passaic (Christian)
☐		WNYC 820	Bergen, Hudson, Passaic
☐		WRKL 910	Bergen, Hudson, Passaic (Polish)
☐		WPAT 930	Bergen, Hudson, Passaic (Caribbean, Mexican, Mandarin)
☐		WWDJ 970	Bergen, Hudson, Passaic (Christian)
☐		WINS 1010	Bergen, Hudson, Passaic
☐		WEPN 1050	Bergen, Hudson, Passaic
☐		WVNJ 1160	Bergen, Hudson, Passaic

☐		WLIB 1190	Bergen, Hudson, Passaic (Christian)
☐		WADO 1280	Bergen, Hudson, Passaic (Spanish)
☐		WWRV 1330	Bergen, Hudson, Passaic (Spanish)
☐		WNSW 1430	Bergen, Hudson, Passaic (Portuguese)
☐		WZRC 1480	Bergen, Hudson, Passaic (Chinese/Cantonese)
☐		WQEW 1560	Bergen, Hudson, Passaic
☐		WWRL 1600	Bergen, Hudson, Passaic
☐		WWRU 1660	Bergen, Hudson, Passaic (Korean)
☐		WMTR 1250	Passaic
☐		WGHT 1500	Passaic
☐		WNNJ 1360	Sussex
FM			
☐		WSOU 89.5	Bergen, Hudson
☐		WCAA 105.9	Bergen, Hudson (Latino)
X	Once at the start of the affirmative marketing.	WBGO 88.3	Bergen, Hudson, Passaic
☐		WFDU 89.1	Bergen, Hudson, Passaic
☐		WKCR-FM 89.9	Bergen, Hudson, Passaic
☐		WNYU-FM 89.1	Bergen, Hudson, Passaic
☐		WFUV 90.7	Bergen, Hudson, Passaic
☐		WFMU 91.1	Bergen, Hudson, Passaic
☐		WNYE 91.5	Bergen, Hudson, Passaic
☐		WRKS 98.7	Bergen, Hudson, Sussex
☐		WRTN 93.5	Bergen, Hudson, Sussex
☐		WHCR-FM 90.3	Bergen, Passaic
☐		WPSC-FM 88.7	Passaic
☐		WRHV 88.7	Passaic
X	Once at the start of the affirmative marketing.	WNJP 88.5	Sussex
☐		WNTI 91.9	Sussex
☐		WCTO 96.1	Sussex
☐		WSUS 102.3	Sussex
☐		WNNJ-FM 103.7	Sussex

☐		WDHA -FM 105.5	Sussex
☐		WHCY 106.3	Sussex
☐		WWYY 107.1	Sussex

3d. Other Publications (such as neighborhood newspapers, religious publications, and organizational newsletters) (Check all that applies)

		NAME OF PUBLICATIONS	**OUTREACH AREA**	**RACIAL/ETHNIC IDENTIFICATION OF READERS/AUDIENCE**
TARGETS ENTIRE HOUSING REGION 1				
Bi-weekly				
☐		Al Manassah		Arab-American
Monthly				
X	Once at the start of the affirmative marketing process.	Sino Monthly	North Jersey/NYC area	Chinese-American
TARGETS PARTIAL HOUSING REGION 1				
Daily				
☐		24 Horas	Bergen, Essex, Hudson, Middlesex, Passaic, Union Counties	Portuguese-Language
Weekly				
☐		Arab Voice Newspaper	North Jersey/NYC area	Arab-American
☐		La Voz	Hudson, Union, Middlesex Counties	Cuban community
☐		Italian Tribune	North Jersey/NYC area	Italian community
☐		Jewish Standard	Bergen, Passaic, Hudson Counties	Jewish community
X	Once at the start of marketing	El Especialito	Union City	Spanish-Language
☐		El Nuevo	Hudson County	Spanish-Language
X	Once at the start of marketing	Reporte Hispano	Regional	Spanish-Language
☐		Su Guia	Bergen and Passaic	Spanish-Language
☐		Banda Oriental Latinoamérica	North Jersey/NYC area	South American community
☐		Ukranian Weekly	New Jersey	Ukranian community

3e. Employer Outreach (names of employers throughout the housing region that can be contacted to post advertisements and distribute flyers regarding available affordable housing) (Check all that applies)

DURATION & FREQUENCY OF OUTREACH	**NAME OF EMPLOYER/COMPANY**	**LOCATION**
Hudson County		
X A flyer and Preliminary Application will be mailed to	United Parcel Service Inc. NY Corp	492 County Ave, Secaucus

	all of the employers, below, once at the start of the affirmative marketing process.		
X		USPS	80 County Road, Jersey City
X		Liz Claiborne Inc	1 Claiborne Ave, North Bergen
X		Maxim Staffing Solutions	26 Journal Square, Jersey City
X		Ritter Sysco Food Service	20 Theodore Conrad Dr. Jersey City
X		Jersey City Medical Center Inc.	55 Meadowlands Pkwy. , Secaucus
X		Marsh USA Inc.	121 River St, Hoboken
X		National Retail Systems Inc.	2820 16th St North Bergen
X		Community Corrections Corp	Lincoln Hwy Kearny
X		Marine Personnel & Provisioning Inc.	1200 Harbor Blvd Weehawken
X		Port Authority of NY and NJ	241 Erie St. Jersey City and 120 Academy St. Jersey City
X		Christ Hospital Health Service	176 Palisade Ave, Jersey City
X		Bayonne Hospital	29th Street and Ave E, Bayonne
X		Salson Logistics Inc.	2100 88th St. North Bergen, NJ
X		National Financial Service	499 Washington Blvd. Fl 5, Jersey City
X		Fleet NJ Company Development Corp.	10 Exchange Place, Jersey City
X		Maidenform Inc	154 Ave E, Bayonne
X		Lord Abbett & Company	90 Hudson City, Jersey City
X		Liberty Health Plan Inc.	115 Christopher Columbus Dr. Jersey City
X		Port Imperial Ferry Corp.	4800 Ave. at Port Imperial Blvd. Weehawken, NJ
X		Hudson News	1305 Paterson Plank Rd, North Bergen
X		Palisades General Hospital	7600 River Rd North Bergen, NJ
X		Equiserve Inc.	525 Washington Blvd Jersey city
X		Meadowlands Hospital Medical Center	Meadowlands Pkwy Secaucus
X		Retailers & Manufacturers Dist Marking Serv.	50 Metro Way Secaucus
X		Dynamic Delivery Corp	20 Central Ave Kearny, NJ
X		Bowne Business Communications Inc.	215 County Ave Secaucus
X		North Hudson Community Action Corp.	5301 Broadway West New York 07093
X		Goya Foods Inc.	100 Seaview Dr. Secaucus

Bergen County			
X		Hackensack University Medical Center	30 Prospect Ave, Hackensack, NJ 07601
X		Professional Employer Group Service	2050 Center Ave Ste 336 Fort Lee
X		Cristi Cleaning Service	77 Trinity Pl. Hackensack, NJ
X		Society of the Valley Hospital	223 N Van Dien Ave Ridgewood
X		NJ Sports & Expo Authority	50 State Highway 120 East Rutherford
X		Merck-Medco Managed Care LLC	100 Parsons Pond Dr. Franklin Lakes 07417
X		Quest Diagnostics Incorporated	1 Malcolm Ave Teterboro ,NJ 07608
X		AT&T	15 E Midland Ave Paramus
X		Englewood Hospital and Medical Center	350 Engle St. Englewood
X		Aramark Svcs Management of NJ Inc	50 Route 120 East Rutherford
X		Holy Name Hospital	718 Teaneck Road Teaneck
X		Doherty Enterprises Inc	7 Pearl Ct Allendale
X		Bergen Regional Medical Center	230 East Ridgewood Ave Paramus
X		Inserra supermarkets, Inc.	20 Ridge Rd Mahwah
X		Howmedica Osteonics Corp	325 Corporate Dr. Mahwah, NJ &59 Rt 17 Allendale, NJ
X		Becton Dickinson & Company Corp	1 Becton Dr. Franklin Lakes
X		Pearson Education, Inc.	1 Lake St. Upper Saddle River

Passaic County			
X		D&E Pharmaceutical Co.	206 Macoprin Rd Bloomingdale, NJ 07403
X		Acme Markets	467 AllWood Rd Clifton, NJ 07012
X		St. Mary's Hospital	350 Boulevard Passaic, NJ 07055
X		Merry Maids	14 Riverside Square Mall, Bloomingdale, NJ 07403
X		Health Center at Bloomingdale	255 Union Ave Bloomingdale, NJ 07403
X		Sommers Plastic Product Co. Inc.	825 Bloomfield Ave. Clifton, NJ 07012
X		St. Joseph's Hospital	703 Main St. Paterson, NJ 07503
X		BAE Systems	150 Parish Dr. Wayne, NJ 07470
X		Drake Bakeries Inc	75 Demarest Dr, Wayne, NJ 07470
X		Toys R Us National Headquarters	1 Geoffrey Way, Wayne, NJ 07470
X		GAF Materials Corporation	1361 Alps Rd, Wayne, NJ 07470

X		Valley National Bank Headquarters	1455 Valley Road Wayne, New Jersey 07470

Sussex County			
X		Selective Insurance	40 Wantage Ave, Branchville, NJ
X		Andover Subacute and Rehab Center	99 Mulford Rd Bldg 2, Andover, NJ
X		Mountain Creek Resorts	200 State Rt 94, Vernon, NJ
X		Newton Memorial Hospital Inc.	175 High St, Newton, NJ
X		Vernon Township Board of Education	539 State Rt 515, Vernon, NJ
X		F.O. Phoenix (Econo-Pak)	1 Wiebel Plz, Sussex, NJ
X		Hopatcong Board of Education	2 Windsor Ave, Hopatcong, NJ
X		Saint Clare's Hospital	20 Walnut St, Sussex, NJ
X		Ames Rubber Corp	19 Ames Blvd, Hamburg, NJ

3f. Community Contacts (names of community groups/organizations throughout the housing region that can be contacted to post advertisements and distribute flyers regarding available affordable housing)

Name of Group/Organization	Outreach Area	Racial/Ethnic Identification of Readers/Audience	Duration & Frequency of Outreach
See attached	Region	All	A flyer and Preliminary Application will be mailed to everyone on the attached list, once at the start of the affirmative marketing process and as needed thereafter.

IV. APPLICATIONS

Applications for affordable housing for the above units will be available at the following locations:

4a. County Administration Buildings and/or Libraries for all counties in the housing region (list county building, address, contact person) (Check all that applies)

	BUILDING	**LOCATION**
X	Danforth Memorial Library	250 Broadway, Paterson, NJ 07501
X	Johnson Free Public Library	274 Main Street Hackensack, NJ 07601
X	Hudson County Library	25 Journal Sq. Jersey City, N J 07306
X	Sussex County Main Library	125 Morris Turnpike, Newton, NJ 07860
X	Montvale Free Public Library	12 Mercedes Dr., Montvale, NJ 07645

X	County of Sussex	One Spring Street, Newton, NJ 07860
X	Hudson County Administration Building	595 Newark Avenue, Jersey City, NJ 07306
X	Passaic County Administration Building	401 Grand Street, Paterson, NJ 07505 (973) 225-3632
X	Bergen County Administration Building	One Bergen County Plaza, Hackensack, NJ 07601 (201)336-6000

4b. Municipality in which the units are located (list municipal building and municipal library, address, contact person)

Lorraine Hutter
Land Use Administrator
Borough of Montvale
Business Administrator / CFO
12 Mercedes Drive
Montvale, NJ 07645
Phone (201) 391-5700 ext. 5700
Fax (201) 391-9317

4c. Sales/Rental Office for units (if applicable)

N/A

V. CERTIFICATIONS AND ENDORSEMENTS

I hereby certify that the above information is true and correct to the best of my knowledge. I understand that knowingly falsifying the information contained herein may affect the Municipality's substantive certification.

Frank Piazza, President, Piazza & Associates, Inc.

_____

Name (Type or Print)

Administrative Agent, Borough of Montvale

_____

Title/Municipality

_____

Signature Date

BOROUGH OF MONTVALE
BERGEN COUNTY, NEW JERSEY
RESOLUTION NO. 132-2018

RE: Resolution Adopting The 'Sales Operating Manual', 'Rental Operating Manual' And 'Rehabilitation Operating Manual' For The Borough Of Montvale

WHEREAS, in accordance with the New Jersey Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26-1, *et seq.*, the Borough of Montvale is required to adopt all program operating manuals, which set forth the procedures for administering the program(s) and their associated affordability controls for affordable housing units created within the Borough of Montvale.

NOW, THEREFORE, BE IT RESOLVED, by the Governing Body of the Borough of Montvale, that the Borough does hereby adopt the following attached operating manuals, subject to final approval as to form by the Borough Planner and Borough Attorney:

1. Sales Operating Manual
2. Rental Operating Manual
3. Rehabilitation Operating Manual

Councilmember	Motion	Second	Yes	No	Absent	Abstain	No Vote
Arendacs			✓				
Curry			✓				
Gloeggler			✓				
Koelling		✓	✓				
Lane	✓		✓				
Weaver			✓				

Adopted: May 29, 2018

ATTEST:

Maureen Iarossi-Alwan
Municipal Clerk

APPROVED:

Michael Ghassali
Mayor

BOROUGH OF MONTVALE
BERGEN COUNTY, NEW JERSEY
RESOLUTION NO. 131-2018

RE: Resolution Of Intent To Bond In The Event That There Is A Shortfall In Funding To Effectuate Certain Affordable Housing Mechanisms In Its Housing Element And Fair Share Plan

WHEREAS, the Borough Council of the Borough of Montvale desires to create a realistic opportunity for the creation of affordable housing within the Borough; and

WHEREAS, the Borough voluntarily brought a timely declaratory judgment action pursuant to the procedures set forth by the Supreme Court in *In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (201) ("Mt. Laurel IV")* seeking approval of a Housing Element and Fair Share Plan that satisfied the Borough's obligation to provide for its fair share of the regional need of low- and moderate-income housing; and

WHEREAS, after a Fairness Hearing held on January 25, 2018, by Order dated February 12, 2018, Hon. Menelaos W. Toskos, J.S.C. approved a series of settlement agreements between the Borough of Montvale, Fair Share Housing Center, and three developer-intervenors intended to establish the Borough's affordable housing obligations; and

WHEREAS, in accordance with the February 12, 2018 Order, the Montvale Planning Board has adopted a Housing Element and Fair Share Plan dated May 1, 2018 pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq., which addresses the requirements of N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C.5:80-26.1, et seq. as amended and supplemented, and the New Jersey Fair Housing Act of 1985; and

WHEREAS, the Housing Element and Fair Share Plan provides for a municipally-sponsored Rehabilitation Program and a 100% affordable housing development on Summit Avenue (the DePeiro Site), in addition to other developer-funded mechanisms; and

WHEREAS, the Borough has adopted a Development Fee Ordinance in order to generate revenue for the Borough's Affordable Housing Trust Fund; and

WHEREAS, the Borough of Montvale anticipates that monies collected and deposited in the Affordable Housing Trust Fund, along with other permitted funding sources, will be sufficient to effectuate the above-referenced mechanisms; and

WHEREAS, the Borough of Montvale is committed to securing judicial approval of its Housing Element and Fair Share Plan; and

WHEREAS, the Borough of Montvale acknowledges the COAH rules and regulations that provide that, although utilization of a mandatory development fee ordinance is an appropriate mechanism to raise money for the purpose of off-setting the expenses incurred in connection with the Housing Element and Fair Share Plan, there must be an alternative funding source in the event that insufficient monies are derived from the mandatory development fee ordinance or other resources, or the funds are not received in a timely fashion, for the purpose of effectuating the municipally-sponsored Rehabilitation Program or constructing the 100% affordable housing development known as the DePiero Site on Summit Avenue; and

WHEREAS, the Borough of Montvale wishes to express its commitment to cover such funding shortfalls and to fully implement the mechanisms set forth in its Housing Element and Fair Share Plan through bonding or other lawful means.

NOW, THEREFORE BE IT RESOLVED, by the Governing Body of the Borough of Montvale, that it does hereby confirm its intent that in the event that the projected funding from the mandatory development fee ordinance the Borough has adopted is insufficient to complete the aforementioned affordable housing mechanisms, it is the intention of the Borough Council of the Borough of Montvale to adopt appropriate bond ordinances in order to provide the requisite funding in an appropriate time frame.

Councilmember	Motion	Second	Yes	No	Absent	Abstain	No Vote
Arendacs			✓				
Curry			✓				
Gloeggler		✓	✓				
Koelling		✓	✓				
Lane	✓		✓				
Weaver			✓				

Adopted: May 29, 2018

ATTEST:

Maureen Parossi-Alwan
Municipal Clerk

APPROVED:

Michael Ghassali
Mayor