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March 2, 2026

VIA ECOURTS

Honorable Lina P. Corrison, J.S.C.

Superior Court of New Jersey

Bergen County Justice Center

10 Main Street

Hackensack, NJ 07601

RE: In the Matter of the Application of the Borough of Montvale
Docket No. BER-L-750-25

Dear Judge Corrison:

As Your Honor is aware, this office represents the Borough of Montvale in the above-referenced matter. Please accept this correspondence in response to the letters of H&R Montvale, LLC, SHG Montvale MB, LLC, SHG Montvale VI, LLC, and the Hekemian Group (collectively, “developers”) and the Fair Share Housing Center (FSHC”) dated February 27, 2026.

Initially, when the Program recommends approval of a settlement and Plan, and the award of compliance certification, it should not be lightly disturbed. When, however, the Program attempts to modify a bargained-for-exchange and settlement and refuses to grant compliance certification based on the Plan presented, the Court really has no choice but to hear from the Parties relative to their agreements and the comprehensive Plan. In other words, the Program cannot unilaterally rewrite provisions of the agreements and presuppose that the changes are severable and acceptable to the settling parties.

In this regard, the amendments to the FHA clearly envision a path where a municipality can maintain immunity while these exact types of disputes are resolved:

The program may permit a municipality that still has a remaining dispute by interested parties to retain immunity from exclusionary zoning litigation into the year following the year in which a new round begins if the program, or county-level housing judge, determines that the municipality has been unable to resolve the issues disputed despite being determined to come into constitutional compliance. The Administrative Director of the Courts shall develop procedures to enable a county-level housing judge to resolve this dispute over the issuance of compliance certification through a summary proceeding in Superior Court following the year in which the new round begins. A judge shall be permitted to serve as a county-level housing judge for more than one county in the same vicinage. The pendency of such a dispute shall not stay the deadline for adoption of implementing ordinances and resolutions pursuant to this paragraph. The implementing ordinances and resolutions adopted prior to the resolution of the dispute may be subject to changes to reflect the results of the dispute. **As an alternative to adopting all necessary implementing ordinances and resolutions by the March 15 deadline, a municipality involved in a continuing dispute over the issuance of compliance certification may adopt a binding resolution by this date to commit to adopting the implementing ordinances and resolutions following resolution of the dispute, with necessary adjustments to reflect the resolution of the dispute.**

[N.J.S.A. 52:27D-304.1(f)(2)(D)(emphasis added)]

Here, the Program recommended continued immunity for exactly that purpose and the Borough is entitled to the same.

Relative to the broader assertions raised by FSHC, attached as **Exhibits A (as partially executed)** and **B** to this letter are the settlements, which the Borough, SHG and Over-the-Hill will ultimately seek to have approved by this Court -- and which serve as the foundation of the Borough's Round 4 Plan. All parties understand that the agreements cannot be effective until they are formally approved (obviously). Therefore, FSHC's position that implementing the agreements should result in a loss of immunity is factually and procedurally impossible. That said, SHG and the Borough do intend to request that this Court approve the agreements as written and not as unilaterally modified by the Program. To the extent the Court agrees with the Program, it would stand to reason that the parties are at liberty to return to status quo ante and not be forced to agree where there has been no comprehensive meeting of the minds.

The Court should ultimately approve the Plan because it meets any objective standard of review and indeed, the Program erred in applying a plainly subjective review including the

imposition of an adverse inference for simply not having FSHC's approval¹ (not dissimilar to its approach on the numbers dispute where it inflated the number, artificially, without any foundation – which was later corrected by this Court). In this regard, the Borough's Plan meets and exceeds the Borough's RDP. It also meets and exceeds FSHC's own interpretation of the 25% requirement. Relative to the 25% requirement, if the Borough's settlement is disrupted, it obviously reserves all rights on that argument, which it has not had a chance to brief or litigate.² It has no interest in doing that, at this point, rather it seeks approval of its agreements, but the procedural defect does illustrate the point. It is further illustrated by the Program's inappropriate reliance on objector's expert reports from objectors that ultimately settled with the Borough and to whom therefore, the Borough did not get an opportunity to respond to.

On top of meeting and exceeding its obligations, the Borough's settlements envision an option for an additional 50 affordable units in a manner plainly permissible under COAH regulations. The data center is an existing, permitted use at the KPMG site. See Exhibit C. The Borough and KPMG are agreeing that, in addition to the permitted data center use, there will be an option for 250 units, of which 50 would be affordable.

Continuation of an underlying use or even expansion, is permissible for unmet need mechanisms under COAH regulations: “After such an analysis, the Council [or Courts] **may** require at least any combination of the following in an effort to address the housing obligation: 1. Zoning amendments that permit apartments or accessory apartments; 2. Overlay zoning requiring inclusionary development or the imposition of a development fee consistent with N.J.A.C. 5:93-8; In approving an overlay zone, the Council may allow the existing **use to continue and expand as a conforming use**, but provide that where the prior use on the site is changed, the site **shall**

¹ “An important first step in the Program Statement of Reasons analysis is to examine the arguments advanced by FSHC. Montvale did not settle with FSHC (a public interest entity devoted solely to promoting housing for income-restricted households). The advocacy role of FSHC is paramount to ensure constitutional compliance with Mount Laurel principles and to advocate for the protected class. The lack of settlement with FSHC is significant in that it removes the recognized added level of validity for HEFSP plans that obtained an endorsement of approval from FSHC. Here, FSHC is firmly opposed to the plan and the proposed settlement with the developers.)” Program Recommendation, Pages 8-9. Such an adverse inference is also inappropriate pursuant to Montvale v. State of New Jersey, MER-L-1778-24, dated June 11, 2025, attached hereto as **Exhibit D**, where it was determined FSHC's sign off on a municipality's HEFSP is limited to instances where FSHC settles with a municipality.

² FSHC argues that “at least 25 percent of the prospective need that has been adjusted” means 25% of unmet need (which is the prospective need minus the RDP). There is no amount of mental gymnastics that can convert “prospective need that has been adjusted” into the concept of unmet need. Similarly, “has been adjusted” is written in present perfect tense and can only mean the post-adjusted number, or RDP, based on the plain language of the statute.

produce low and moderate income housing or a development fee...” N.J.A.C. 5:93-4.2(h)(1) and (2) (emphasis added).

The dispute, and where the parties seem to disagree, is as to whether a redevelopment plan can be the mechanism for effectuating that type of overlay zone, inclusive of incentives created by the redevelopment statute. The Borough’s and SHG’s position relative to this issue are completely legitimate and just because FSHC disagrees, does not convert the conduct into bad faith or warrant stripping immunity. FSHC’s continued unwarranted and misguided aggression in this case is not helpful or productive, and consistently convert the Borough’s presumption of good faith into FSHC’s self-serving presumption of the opposite. Courts must presume that a municipality “will act fairly and with proper motives and for valid reasons.” Kramer v. Bd. of Adjustment, Sea Girt, 45 N.J. 268, 296-97 (1965); see also Fanelli v. City of Trenton, 135 N.J. 582, 589 (1994). In matters involving local land use and zoning issues, “the ultimate interests of effective zoning will be advanced by permitting the action of the municipal officials to stand, in the absence of an affirmative showing that it was manifestly in abuse of their discretionary authority.” Ward v. Scott, 16 N.J. 16, 23 (1954). “Even when doubt is entertained as to the wisdom of the action, or as to some part of it, there can be no judicial declaration of invalidity in the absence of clear abuse of discretion by the public agencies involved.” Id. at 23; Reinauer Realty Corp. v. Paramus, 34 N.J. 406, 416 (1961). FSHC has no factual support whatsoever in the record that justifies overcoming this presumption.

The Borough would welcome a CMC to continue in its determined efforts to voluntarily comply with its objective Mount Laurel obligations.

Respectfully submitted,

Michael J. Edwards

Michael J. Edwards

MJE/ln

Enclosures

cc: All Counsel of Record (via eCourts)
Frank Bansich, P.P./A.I.C.P. (via email)

EXHIBIT A

PRELIMINARY AFFORDABLE HOUSING SETTLEMENT TERM SHEET

PRELIMINARY HOUSING SETTLEMENT TERM SHEET (“*Agreement*”) is made this _____ day of February 2026, by and between:

BOROUGH OF MONTVALE, a municipal corporation of the State of New Jersey, County of Bergen, having an address at _____, Montvale, New Jersey _____ (the “*Borough*” or “*Montvale*”); and

25 PHILIPS PARKWAY, LLC, a New Jersey limited liability company with a business address c/o Sebastian Capital, Inc. 417 Fifth Avenue, New York, New York 10016, (hereinafter “*25 PHILIPS*”) and **KPMG LLP** with a business address of 3 Chestnut Ridge Road, Montvale, New Jersey, (hereinafter “*KPMG*”); **H&R MONTVALE, LLC**, a New Jersey limited liability company with a business address at 10 Sterling Boulevard, Suite 401, Englewood, NJ 07631 (hereinafter, “*H&R*”), **SHG MONTVALE MB, LLC**, a New Jersey limited liability company with a business address at 10 Sterling Boulevard, Suite 401, Englewood, NJ 07631 (hereinafter “*MB*”), **SHG MONTVALE VI, LLC** a New Jersey limited liability company with a business address at 10 Sterling Boulevard, Suite 401, Englewood, NJ 07631 (hereinafter “*MB VI*”); **THE HEKEMIAN GROUP, LLC** a New Jersey limited liability company with a business address at 10 Sterling Boulevard, Suite 401, Englewood, NJ 07631, (hereinafter “*THG*”); and **RECKITT BENKISER, LLC** a Delaware limited liability company with a business address at 199 Interpace Parkway, Parsippany, NJ 07054, (hereinafter “*RB*”) (*25 PHILIPS, KPMG, H&R, MB, MB VI, THG and RB* collectively referred to as “*Developer*”).

Collectively, the Borough and the Developer shall be referred to as the “*Parties*.” All references to Developer shall include its successors and assigns, whether or not currently identified.

WHEREAS, Developer or its affiliate has a contractual interest or ownership interest in Block 3102, Lot 1.01 (the “*KPMG*” Site), Block 3201, Lot 1, (the “*Reckitt*” Site); a +/- 0.5 acre portion of Block 2702, Lot 1.01 Qualifier C6000 known as the “*Top of the Point*”, Block 3201, Lot 6 (the “*Glenview*” Site), and Block 3201, Lot 5 (the “*25 Philips Site*”). Collectively, all of the sites will be referred to as the “*Sites*”. The Glenview Site and the 25 Philips Site are adjacent sites and will be referred to jointly as “*Glenview/25 Philips*”.

WHEREAS, the Borough voluntarily entered the Affordable Housing Dispute Resolution Program (the “*Program*”), by filing a declaratory judgment action under docket number BER-L-000503-25, in New Jersey Superior Court, in accordance with N.J.S.A. 52:27D-304.1 and AOC Directive #14-24, for the purpose of obtaining a certification of the Borough’s affordable housing compliance for the Fourth Round; and,

WHEREAS, the Developer filed a challenge in the Program to the Borough's proposed Fourth Round Housing Element and Fair Share Plan ("*HEFSP*") in accordance with N.J.S.A. 52:27D-304.1 and AOC Directive #14-24; and

WHEREAS, in accordance with the Legislative intent for the Program to be an expedient and efficient mechanism to resolve affordable housing compliance challenges, the Program presided over mediated settlement negotiations and those good faith negotiations between the Parties culminated in an agreement to develop the subject Sites in a manner (a) that generated a substantial amount of affordable housing and (b) that addressed the legitimate planning concerns of the community; and

WHEREAS, more specifically, the Parties agreed to a total of, among other things, up to 650 units across the Sites, a total of which up to 109 units shall be affordable in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80- 26.1 et seq. ("*UHAC*") (the "*Projects*"); and

WHEREAS, the Borough has agreed to include the proposed *Projects* in its *HEFSP* in partial satisfaction of its Fourth Round affordable housing obligations and to adopt Redevelopment Plans and/or implementing ordinances to permit the construction of the total number of units on each Site as specified in this Agreement; and

WHEREAS, the Parties recognize and agree that this Agreement represents the outline of the general terms agreed upon and that the Parties will enter into a formal settlement agreement ("*FSA*") which will more specifically detail the terms of their settlement, including, without limitation, zoning standards; and

WHEREAS, the Parties agree that the *Projects* accord with sound land use planning on the one hand while generating a substantial amount of affordable housing on the other; and

NOW, THEREFORE, in consideration of the promises and the mutual obligations set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties hereto, each binding itself, its successors, affiliates and assigns, agree as follows:

ARTICLE I - PURPOSE

1.1 The purpose of this Agreement is for the Parties to set forth the general terms of their agreement to settle, subject to the entry of an *FSA*, the Developer's challenge in the Program and for the Borough to create the requisite opportunity for the construction of affordable housing in accordance with sound planning by creating zoning incentives for the Sites sufficient to generate up to one hundred and nine affordable units available to very-low-, low- and moderate-income households.

ARTICLE II - BASIC TERMS AND CONDITIONS

2.1 In the event of any legal challenges to the Required Approvals (as defined in Section 3.5), including a challenge by any third party, the Parties shall 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 Project, the Parties must negotiate in good faith with the intent to draft a mutually acceptable amended Agreement and if no amendment is promptly agreed upon, either Party may terminate this Agreement and be restored to their position and rights prior to settlement.

(a) The terms of this Agreement and the FSA are conditioned upon the Court’s approval of Montvale’s amended overall HEFSP.

2.2 The Project’s zoning entitlements shall permit the following residential densities and non-residential development and shall require the below described set asides on each project:

<u>PROPERTY</u>	<u>Total Number of Units</u>	<u>Affordable Units</u>
KPMG	250	50
Top Of The Point	35	0
Glenview/25 Philips	135	24
Reckitt	230	35
Total	650	109
Non-Residential/commercial	Up to 50,000 sf on any of the above properties and/or the Shoppes at Depiero Farms.	

2.3 Developer retains the option to continue to use/ expand any of the existing

commercial uses on the KPMG Site. In such an event, Developer agrees to comply with the Statewide Non-residential Development Fee Act and/or the Borough's Development Fee Ordinance, to the extent applicable.

2.4 The Reckitt Site is currently occupied. Developer shall not file a site-plan application for the Reckitt Site until at least January 1, 2028.

2.5 If a commercial use is developed on the KPMG Site, Developer is only required to pay any applicable non-residential development fee, with no further obligation to build or relocate the 50 affordable units that may have been constructed if the site developed for a residential use.

ARTICLE III - OBLIGATIONS OF THE BOROUGH

3.1 The Redevelopment Plans: The Borough agrees to adopt a redevelopment plan or otherwise rezone the Sites to permit the densities and uses described in Section 2.2 and 2.3 above.

3.2 Timing of Adoption: The Parties shall work collaboratively on all proposed redevelopment plans and all entitlements shall be in place by no later than May 31, 2026. Notwithstanding the foregoing, the Parties can mutually extend that deadline upon mutual agreement. The Parties shall agree upon any standards to be imposed on the Sites as part of the FSA. In the event that the standards cannot be agreed upon in the FSA, then this Agreement may be submitted to the SA to assist the parties in resolving the open issue(s) (which process shall conclude on January 31, 2026 unless mutually extended by the parties) or, either party may elect to terminate on three days' notice by either Party.

3.3 Obligation to Maintain Proposed Re-Zoning of Properties: The Borough agrees to not repeal, amend or change the Redevelopment Plans or Rezoning Ordinances through July 1, 2035, without Developer's prior written consent.

3.4 Obligation to Include the Proposed Projects in its a HEFSP. The Borough will endorse a HEFSP that includes the proposed Projects in its HEFSP no later than March 15, 2026, except as may be extended by the Program or the Court, reasonable consent for an extension shall not be withheld by the Developer.

3.5 Obligation To Cooperate: The Borough acknowledges that in order for Developer to construct the Projects on the Sites the Developer will be required to obtain any and all approvals and permits from (1) entities, boards or agencies which have jurisdiction over the Parties to this Agreement and the Projects contemplated hereby, and from (2) all relevant public entities and utilities; such as, by way of example only, the Borough, the Borough Planning Board, the County of Bergen, the Bergen County Planning Board, the Bergen County Soil Conservation District, 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, within the limits of its jurisdiction and authority, to assist the Developer in its undertakings to obtain the Required Approvals, including but not limited to any necessary amendments to the applicable Water Quality Management Plan, Wastewater Management Plan, and/or Sewer Service Area Map to incorporate the Sites. The Borough further agrees to take all necessary, reasonable steps to ensure that the Projects obtains adequate water and sewer, including expediting all municipal written endorsements and approvals and to ensure that the Developer’s sanitary sewer and potable water facilities receive all appropriate approvals from all relevant agencies and adjacent municipalities for construction and upgrading, as and if necessary, so as to be able to serve the Projects. This shall also include the Borough’s obligation to cooperate and/or agree to amend or relocate any easement on the Sites. Should the Projects necessitate any upgrade to the sanitary sewer collection system serving this Projects or water distribution system serving this Project, as determined by both the Borough and Developer, the Developer shall bear all costs for same.

3.6 Obligation to Refrain from Imposing Cost-Generative Requirements. The Borough agrees to refrain from imposing cost-generative features as set forth in N.J.A.C. 5:93-10.1 et seq.

3.7 PILOT: This settlement is conditioned upon a Payment in Lieu of taxes, which shall be calculated at 16.5% of Annual Gross Revenue (“AGR”) for 30 years, on the for-sale townhomes on the KPMG, Glenview/25 Phillips and Reckitt properties.¹ All other uses on all Sites (i.e. rentals, income producing uses and commercial uses, etc.), with the exception of the Top of the Point site, will be subject to a PILOT at 10% of AGV. A revised spreadsheet is attached to this Agreement as Exhibit A providing a projected summary and the calculation to be used in calculating the actual PILOT payments for each Site. See Exhibit A.

ARTICLE IV - DEVELOPER OBLIGATIONS

4.1 Obligation To File Development Applications in Accordance with this agreement and the Redevelopment Plan(s): After the rezoning, Developer shall file development applications consistent with the terms of this Agreement.

¹ “AGR” for each for sale unit or “home” shall mean the amount equal to the annual aggregate constant payments to principal and interest, which shall be calculated by assuming a loan at the Prevailing Interest Rate (as defined below) in an original amount equal to the initial sale price of the home, and if the home is sold and held by another owner thereof, the most recent true consideration paid for home in a bona fide arm’s length transaction, but not less than the initial assessed valuation of the home assessed at 100% of true value. The Prevailing Interest Rate shall mean the Freddie Mac Primary Mortgage Market Survey – 30 Year Fixed Rate – Annual Average – prior year sales and prior year annual average 30-year rate at the time of the home sale, but not lower than five and one-half (5.5%) percent. Notwithstanding anything herein to the contrary, the Borough shall not issue an assessment for any common elements with the Project.

4.2 Affordable Housing Requirements: Developer shall satisfy the affordable housing obligation required in connection with the Projects by setting aside up to one-hundred and nine (109) family units for low- and moderate-income households that shall comply with the UHAC bedroom distributions and with the FHA's very low-income requirement. The affordable units will be deed restricted for affordable housing in accordance with UHAC and shall comply with very-low, low-, and moderate-income requirements, bedroom distribution, and affirmative marketing of UHAC.

4.3 Obligation To Cooperate: Developer, if an FSA has been executed (and all successors in interest, affiliates, parties or other related entities) agrees to affirmatively support the revised HEFSP that is proposed accordance with and consistent with this Agreement, in any hearing required for approval of the revised HEFSP. In addition, Developer shall not to challenge any subsequent Housing Element and Fair Share Plan or future Mount Laurel litigation, as it relates to the Sites, so long as the Parties are in compliance with the terms of this Agreement.

4.4 Obligation to withdraw all pending litigation concerning the numbers appeal by the Developer or Borough.

4.5 This Agreement and the FSA shall remain binding and in full force and affect no matter the outcome of any other litigation that is currently pending by any of the Parties.

ARTICLE V

[Reserved]

ARTICLE VI - MUTUAL OBLIGATIONS

6.1 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 Projects, 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. Notwithstanding the above, the Developer may request from the Planning Board *de minimis* exceptions sought as part of the development applications to deviations from the New Jersey Residential Site Improvement Standards ("*RSIS*") or waivers from Borough Site Plan design standards.

6.2 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 introduction and adoption of the Rezoning Ordinance, Redevelopment Plans, the Required Approvals, the development of the Sites consistent with the terms hereof, and the defense of any challenge with regard to any of the foregoing.

6.3 Obligation to enter into a FSA: The Parties shall have until January 31, 2026 to enter into a FSA based upon the terms of this Agreement. Unless otherwise extended in writing by all Parties to this Agreement, if an FSA is not entered into by January 31, 2026 the terms of this Agreement may be rendered null and void by either Party and the Parties shall notify the Program and the court.

6.4 Notices: Any notice or transmittal of any document required, permitted or appropriate hereunder and/or any transmittal between the Parties relating to the Site ("*Notice[s]*") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or recognized overnight or personal carrier such as, for example, Federal Express, with certified proof of receipt, and in addition, where feasible (for example, any transmittal of less than fifty (50) pages), by facsimile or electronic mail. 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 effected 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 DEVELOPER:

[TBP by Developer in Execution Copy]

With a copy to:

Antimo A. Del Vecchio, Esq.
Beattie Padovano, LLC
200 Market Street, Suite 401
Montvale, New Jersey 07645

TO THE BOROUGH:

Borough Administrator/Municipal Clerk
Borough of Montvale
12 DePiero Drive
Montvale, New Jersey, 07645
Phone: 201-891-4000
Email: jvoytus@montvaleboro.org>

With Copies to:

Michael J. Edwards, Esq.
Surenian, Edwards, Buzak & Nolan LLC
311 Broadway, Suite A
Point Pleasant Beach, NJ 08742
Phone: (732) 612-3100
Email: MJE@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 Necessity of Required Approvals: The Parties recognize that the site plan and other approvals required to implement the Projects provided in this Agreement, and such other actions as may be required of the Borough Planning Board under this Agreement, cannot be approved except in accordance with their duties and the procedures established by law. Subject to the terms and limitations of this Agreement, including but not limited to section 3.6 hereof, nothing in this Agreement is intended to constrain that judgment or to authorize any action not taken in accordance with procedures established by law, it being understood that any such action shall be in accordance with procedures established by law. The Parties acknowledge and agree that any failure to act or unreasonable delays that contravene procedures established by law, the MLUL, and agreed by the Parties herein or by the Planning Board constitute a default of the Agreement.

7.2 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 in writing by all of the other Parties for whose benefit such obligation is intended, 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 thirty (30) days or such reasonable period of time as may be appropriate. In the event the defaulting Party fails to cure within thirty (30) days or such reasonable period of time as may be appropriate, the Party 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, and/or a return to status quo ante relative to immunity and pursuing builder's remedy lawsuits and/or divestment of the Planning Board over site plan review, and appointment of a Special Hearing Officer to conduct site plan review.

7.3 Severability: If any provision is held invalid, the remainder of the Agreement shall continue in full force unless the invalid provision materially frustrates the purpose of the

Agreement.

7.4 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, affiliates and assigns, including any person, corporation, partnership or other legal entity which at any particular time may have a fee title interest in the Sites which is the subject of this Agreement. This Agreement may be enforced by any of the Parties, and their successors, affiliates, and assigns.

7.5 Disclaimer of Liability: It is understood and agreed that this is a compromise and settlement of disputed claims, and that nothing in this Agreement shall be construed as an admission of liability on the part of the Parties, or any of the Parties' current or former elected and appointed officials, agents, representatives, employees, officers, directors, parents, subsidiaries, affiliates, attorneys and independent contractors, all of whom expressly deny any such liability.

7.6 Governing Law: This Agreement shall be governed by and construed by the laws of the State of New Jersey.

7.7 No Modification: This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.

7.8 Effect of Counterparts: This Agreement may be executed simultaneously in one or more facsimile or PDF counterparts, each of which shall be deemed an original. Any facsimile or PDF counterpart forthwith shall be supplemented by the delivery of an original counterpart pursuant to the terms for notice set forth in this Agreement.

7.9 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 possesses 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 in this Agreement.

7.10 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.

7.11 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.

7.12 Effective Date: 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; however, the Agreement remains subject to Program/Court approval in accordance with N.J.S.A. 52:27D-304.1 and AOC Directive #14-24. Should the Borough fail adopt the Rezoning Ordinance within the timeframe prescribed herein, subject to modification by the Program/Court, such failure shall be deemed a Default, and the Developer may petition the Program/Court for revocation of the Borough's compliance certification or institute an action for specific performance or any other relief available at law or equity.

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 Construction, Resolution of Disputes: 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 affected consistent with the terms hereof for the delivery of Notices. The Parties waive formal service of process. The Parties expressly waive trial by jury in any such litigation.

7.16 Recitals. The recitals of this Agreement are incorporated by reference.

[Signature Page to Follow.]

IN WITNESS WHEREOF, the Parties 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: **25 PHILIPS PARKWAY, LLC**

Name: By: _____
Title: Name:
Date _____, 2026

Attest: **KPMG LLP**

Name: By: _____
Title: Name:
Date _____, 2026

Attest: **H&R MONTVALE, LLC**

Name: By: _____
Title: Name:
Date _____, 2026

Attest: **SHG MONTVALE MB, LLC**

Name: By: _____
Title: Name:
Date _____, 2026

Attest:

SHG MONTVALE VI, LLC

Name:
Title:

By: _____
Name:
Title:
Date _____, 2026

Attest:

THE HEKEMIAN GROUP, LLC

Name:
Title:

By: _____
Name:
Title:
Date _____, 2026

Attest:

RECKITT BENKISER

Name:
Title:

By: _____
Name:
Title:
Date _____, 2026

Attest:

THE BOROUGH OF MONTVALE

Frances Acordo

Name:
Title: *municipal clerk*

By: *Mike*

Name: *MIKE GHASSALI*
Title: *MAYOR*
Date *2/26*, 2026

EXHIBIT A

Annual PILOT Revenue Projections, Prepared for the Borough of Montvale

Date Prepared: 02/24/2026

Site	Annual PILOT Revenue	
	No Data Center	Data Center
Reckitt, Apartments	\$1,246,906	\$1,246,906
Reckitt, Retail	\$225,000	\$225,000
1 Glenview / 25 Phillips, Townhouses	\$1,717,627	\$1,717,627
KPMG, Townhouses	\$3,149,580	\$0
KPMG, Data Center	\$0	\$931,749
Totals	\$6,339,113	\$4,121,282

20 Year PILOT Projection, Townhouses
 1 Glenview & 25 Phillips
 Montvale, NJ
 Prepared for: Montvale Settlement
 Last Revised: 02/06/2026

Development Program	Notes	Totals (2027-2056)					Cross Ref	Construction			Stabilization	
		Starts Year 1 2027	Completed Year 2 2028	Year 3 2029	Year 4 2030	Year 5 2031		Year 1 2027	Year 2 2028	Year 3 2029	Year 4 2030	Year 5 2031
Townhomes	Assumes stacked townhome units.	n/a	n/a	135	135	135	135	135	135	135	135	
Total Units												
Units Completed/Sold:	Assumes approvals granted by late 2026, horizontal improvements are completed in mid 2027, vertical construction starts in fall 2027, and vertical construction is completed in 2028.	n/a	n/a	13.5	47.25	94.5	135	135	135	135		
Townhomes Projected Average Unit Sale Price	Assumes base townhome average sale price is \$1,050,000 (88% weight) in 2028 dollars and \$200,000 for affordable units (17% weight) with 2% annual growth thereafter.	n/a	n/a	\$958,000	\$977,160	\$996,703	\$1,016,637	\$1,036,370				
Townhomes Aggregate Sales	This equals the average unit sale price multiplied by the aggregate units completed and occupied increased by 2% per year. Assumes 6.5% mortgage rate per the Financial Agreement which is the Freddie Mac Primary Mortgage Market Survey Rate as of 12/6/25	n/a	n/a	\$12,933,000	\$46,170,810	\$94,188,452	\$137,248,031	\$139,990,951				
Townhomes Aggregate Hypothetical Mortgage Payments/ASC	16.5% ASC Rate for 5 years then increasing 2% annually for the next 25 years.	n/a	n/a	\$980,944	\$3,501,971	\$7,144,021	\$10,409,859	\$10,618,056				
Townhomes-ASC Rate		n/a	n/a	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%		
Townhomes-ASC Total		\$62,526,802	\$0	\$161,356	\$577,825	\$1,178,763	\$1,717,627	\$1,751,979				

\$12,723.16

MKT	111	82.22%
ENR	24	17.78%
Total	135	100.00%

Year 6 2032	Year 7 2033	Year 8 2034	Year 9 2035	Year 10 2036	Year 11 2037	Year 12 2038	Year 13 2039	Year 14 2040	Year 15 2041	Year 16 2042	Year 17 2043	Year 18 2044
135	135	135	135	135	135	135	135	135	135	135	135	135
\$1,057,709	\$1,078,884	\$1,100,441	\$1,122,450	\$1,144,899	\$1,167,797	\$1,191,153	\$1,214,976	\$1,239,275	\$1,264,061	\$1,289,342	\$1,302,295	\$1,315,258
\$142,790,770	\$145,646,596	\$148,559,517	\$151,530,708	\$154,561,322	\$157,652,548	\$160,805,599	\$164,021,711	\$167,302,146	\$170,649,188	\$174,061,152	\$177,542,975	\$181,099,223
\$10,930,418	\$11,047,026	\$11,267,966	\$11,493,326	\$11,729,192	\$11,967,656	\$12,196,809	\$12,440,745	\$12,689,560	\$12,943,952	\$13,202,219	\$13,466,263	\$13,735,588
16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%
\$1,787,019	\$1,822,759	\$1,859,214	\$1,896,399	\$1,934,327	\$1,973,013	\$2,012,474	\$2,052,723	\$2,093,777	\$2,135,653	\$2,178,366	\$2,221,933	\$2,266,372

Year 19 2045	Year 20 2046	Year 21 2047	Year 22 2048	Year 23 2049	Year 24 2050	Year 25 2051	Year 26 2052	Year 27 2053	Year 28 2054	Year 29 2055	Year 30 2056
135	135	135	135	135	135	135	135	135	135	135	135
135	135	135	135	135	135	135	135	135	135	135	135
\$1,328,410	\$1,341,694	\$1,355,111	\$1,368,662	\$1,382,349	\$1,396,172	\$1,410,134	\$1,424,236	\$1,438,478	\$1,452,863	\$1,467,391	\$1,482,065
\$184,715,087	\$188,409,389	\$192,177,577	\$196,021,128	\$199,941,551	\$203,940,382	\$208,019,189	\$212,179,573	\$216,423,165	\$220,751,628	\$225,166,661	\$229,669,994
\$14,010,300	\$14,290,506	\$14,576,316	\$14,867,842	\$15,165,199	\$15,468,503	\$15,777,873	\$16,093,431	\$16,415,299	\$16,743,605	\$17,078,478	\$17,420,047
16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%
\$2,311,700	\$2,357,933	\$2,405,092	\$2,453,194	\$2,502,258	\$2,552,303	\$2,603,349	\$2,655,416	\$2,708,524	\$2,762,695	\$2,817,949	\$2,874,308

30 Year PILOT Projection Apartments

1 Paragon Drive
Montvale, NJ

Prepared for: Montvale Settlement
Last Revised: 02/06/2026

Rent Assumptions:

Unit Count	230
Rent PSF (yr 4)	\$ 4.11
Stabilized Gross Rent	\$ 12,469,060

% Build-Out	Year	Adjusted Pilot % Rate	Rent ESC	Gross Rev. Est.	PILOT Revenue ASC
0%	Year 1	10.00%	Construction/ Stabilization	\$ -	\$ -
50%	Year 2	10.00%		\$ -	\$ -
100%	Year 3	10.00%		\$ -	\$ -
100%	Year 4	10.00%		\$ 6,234,530	\$ 623,453
Stabilized	Year 5	10.00%	0.00%	\$ 12,469,060	\$ 1,246,906
	Year 6	10.00%	2.75%	\$ 12,811,960	\$ 1,281,196
	Year 7	10.00%	2.75%	\$ 13,164,288	\$ 1,316,429
	Year 8	10.00%	2.75%	\$ 13,526,306	\$ 1,352,631
	Year 9	10.00%	2.75%	\$ 13,898,280	\$ 1,389,828
	Year 10	10.00%	2.75%	\$ 14,280,482	\$ 1,428,048
	Year 11	10.00%	2.75%	\$ 14,673,196	\$ 1,467,320
	Year 12	10.00%	2.75%	\$ 15,076,709	\$ 1,507,671
	Year 13	10.00%	2.75%	\$ 15,491,318	\$ 1,549,132
	Year 14	10.00%	2.75%	\$ 15,917,329	\$ 1,591,733
	Year 15	10.00%	2.75%	\$ 16,355,056	\$ 1,635,506
	Year 16	10.00%	2.75%	\$ 16,804,820	\$ 1,680,482
	Year 17	10.00%	2.75%	\$ 17,266,952	\$ 1,726,695
	Year 18	10.00%	2.75%	\$ 17,741,794	\$ 1,774,179
	Year 19	10.00%	2.75%	\$ 18,229,693	\$ 1,822,969
	Year 20	10.00%	2.75%	\$ 18,731,010	\$ 1,873,101
	Year 21	10.00%	2.75%	\$ 19,246,112	\$ 1,924,611
	Year 22	10.00%	2.75%	\$ 19,775,380	\$ 1,977,538
	Year 23	10.00%	2.75%	\$ 20,319,203	\$ 2,031,920
	Year 24	10.00%	2.75%	\$ 20,877,981	\$ 2,087,798
	Year 25	10.00%	2.75%	\$ 21,452,126	\$ 2,145,213
	Year 26	10.00%	2.75%	\$ 22,042,059	\$ 2,204,206
	Year 27	10.00%	2.75%	\$ 22,648,216	\$ 2,264,822
	Year 28	10.00%	2.75%	\$ 23,271,042	\$ 2,327,104
	Year 29	10.00%	2.75%	\$ 23,910,996	\$ 2,391,100
	Year 30	10.00%	2.75%	\$ 24,568,548	\$ 2,458,855
30 yr Total				\$ 470,784,448	\$ 47,078,445
30 yr NPV				\$ 173,596,660	\$ 17,359,666

30-Year P.I.L.O.T. Projection

**KPMG Site
Montvale, NJ**

**Prepared for: Borough of Montvale
Last Revised: 12/22/2025**

Development Program

Notes

Totals
(2027-2056)

Cross Ref

Construction
Starts
Year 1
2027

Year 2
2028

Year 3
2029

Construction
Finishes
Year 4
2030

All Units
Sold
Year 5
2031

Townhomes	Assumes mix of stacked and conventional townhome units.	n/a	n/a	250	250	250	250	250
Total Units	Assumes KPMG purchase in early 2026, approvals granted by late 2026, horizontal improvements are completed in mid 2027, vertical construction starts in fall 2027, and vertical construction is completed in 2030.	n/a	n/a	25	88	175	238	250
Units Completed/Sold	Assumes average sale price between stacked and conventional market rate townhome units is \$1,100,000 in 2026 dollars and \$250,000 for affordable units with 2% annual growth thereafter.	n/a	n/a	\$ 930,000	\$ 948,600	\$ 967,572	\$ 986,923	\$ 1,006,662
Townhomes Projected Average Unit Sale Price	This equals the average unit sale price multiplied by the aggregate units completed and occupied increased by 2% per year.	n/a	n/a	\$ 23,250,000	\$ 83,002,500	\$ 169,325,100	\$ 234,394,317	\$ 251,665,477
Townhomes Aggregate Sales	Assumes 6.5% mortgage rate per the Financial Agreement which is the Freddie Mac Primary Mortgage Market Survey Rate as of 12/8/25	n/a	n/a	\$ 1,763,470	\$ 6,295,587	\$ 12,842,998	\$ 17,778,378	\$ 19,088,354
Townhomes Aggregate Hypothetical Mortgage Payments/ASC	16.5% ASC Rate	n/a	n/a	16.50%	16.50%	16.50%	16.50%	16.50%
Townhomes-ASC Rate								
Townhomes-ASC Total		\$ 112,431,485	\$ -	\$ 290,973	\$ 1,038,772	\$ 2,119,095	\$ 2,933,432	\$ 3,149,580
Pre-development Real Estate Taxes (land only)								
Block 3102 Lot 1.01	\$18.245m assessment, \$2.515 tax rate for 2024 grown 6% to 2027 dollars	\$ 19,732,048	\$ -	\$ 486,393	\$ 496,121	\$ 506,044	\$ 516,165	\$ 526,488
Total Pre-Redevelopment Taxes (land only)		\$ 19,732,048	\$ -	\$ 486,393	\$ 496,121	\$ 506,044	\$ 516,165	\$ 526,488
Pre-development Real Estate Taxes (land + improvements)								
Block 3102 Lot 1.01	\$35m assessment, \$2.515 tax rate for 2024 grown 6% to 2027 dollars	\$ 37,852,655	\$ -	\$ 933,065	\$ 951,726	\$ 970,761	\$ 990,176	\$ 1,009,980
Total Pre-Redevelopment Taxes (land + improv)		\$ 37,852,655	\$ -	\$ 933,065	\$ 951,726	\$ 970,761	\$ 990,176	\$ 1,009,980

Total Pre-Redevelopment Taxes									
County Share	\$ 4,319,567	\$ -	\$ 106,477	\$ 108,607	\$ 110,779	\$ 112,994	\$ 115,254		
Regional School Share	\$ 10,400,073	\$ -	\$ 256,361	\$ 261,488	\$ 266,718	\$ 272,052	\$ 277,493		
District School Share	\$ 13,365,073	\$ -	\$ 329,448	\$ 336,037	\$ 342,758	\$ 349,613	\$ 356,605		
Municipal Share	\$ 9,767,942	\$ -	\$ 240,779	\$ 245,595	\$ 250,506	\$ 255,517	\$ 260,627		
Total Pre-Redevelopment Taxes	\$ 37,852,655	\$ -	\$ 933,065	\$ 951,726	\$ 970,761	\$ 990,176	\$ 1,009,980		
95% of PILOT Revenue (Municipal Share)	\$ 106,533,487	\$ -	\$ -	\$ 986,833	\$ 2,013,140	\$ 2,786,761	\$ 2,992,101		
Net Revenue Over Existing Total District School/Municipal Taxes	\$ 83,670,700	\$ -	\$ -	\$ 405,202	\$ 1,419,876	\$ 2,181,631	\$ 2,374,869		
Net Revenue Over Existing Land District School/Municipal Taxes	\$ 102,226,267	\$ -	\$ -	\$ 1,442,438	\$ 1,884,593	\$ 2,655,643	\$ 2,858,361		

Item	Rate	Per \$100
County	\$	0.274
County/ Open Space	\$	0.013
District School Share	\$	0.888
Regional School Share	\$	0.691
Municipal	\$	0.599
Municipal Open Space	\$	0.010
Fire District	\$	-
Municipal-Library	\$	0.040
Total	\$	2.515

County/Share	11%	\$	72,598.32
Municipal Share	26%		
District School Share	35%		
Regional School Share	27%		
Total	100%		

Land Assessment Equalization Ratio	\$ 18,245,000	78.13%
FMV (land only)	\$ 23,352,105	
Land Assessment Equalization Ratio	\$ 35,000,000	78.13%
FMV (land + Improv)	\$ 44,797,133	

	Year 6 2032	Year 7 2033	Year 8 2034	Year 9 2035	Year 10 2036	Year 11 2037	Year 12 2038	Year 13 2039	Year 14 2040	Year 15 2041	Year 16 2042	Year 17 2043	Year 18 2044
	250	250	250	250	250	250	250	250	250	250	250	250	250
	250	250	250	250	250	250	250	250	250	250	250	250	250
\$ 1,026,795	\$ 1,047,331	\$ 1,068,278	\$ 1,089,643	\$ 1,111,436	\$ 1,133,665	\$ 1,156,338	\$ 1,179,465	\$ 1,203,054	\$ 1,227,115	\$ 1,251,658	\$ 1,276,616		
\$ 256,698,787	\$ 261,832,762	\$ 267,069,418	\$ 272,410,806	\$ 277,859,022	\$ 283,416,203	\$ 289,084,527	\$ 294,866,217	\$ 300,763,542	\$ 306,778,812	\$ 312,914,389	\$ 319,172,676	\$ 325,556,130	
\$ 19,470,131	\$ 19,859,534	\$ 20,256,725	\$ 20,661,859	\$ 21,075,096	\$ 21,496,598	\$ 21,926,590	\$ 22,365,061	\$ 22,812,362	\$ 23,269,609	\$ 23,739,981	\$ 24,209,661	\$ 24,692,834	
16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%
\$ 3,212,572	\$ 3,276,823	\$ 3,342,360	\$ 3,409,207	\$ 3,477,391	\$ 3,546,939	\$ 3,617,877	\$ 3,690,235	\$ 3,764,040	\$ 3,839,321	\$ 3,916,107	\$ 3,994,429	\$ 4,074,318	
\$ 537,018	\$ 547,758	\$ 558,713	\$ 569,887	\$ 581,285	\$ 592,911	\$ 604,769	\$ 616,865	\$ 629,202	\$ 641,786	\$ 654,622	\$ 667,714	\$ 681,068	
\$ 537,018	\$ 547,758	\$ 558,713	\$ 569,887	\$ 581,285	\$ 592,911	\$ 604,769	\$ 616,865	\$ 629,202	\$ 641,786	\$ 654,622	\$ 667,714	\$ 681,068	
\$ 1,030,179	\$ 1,050,783	\$ 1,071,798	\$ 1,093,234	\$ 1,115,089	\$ 1,137,401	\$ 1,160,149	\$ 1,183,352	\$ 1,207,019	\$ 1,231,159	\$ 1,255,783	\$ 1,280,898	\$ 1,306,516	
\$ 1,030,179	\$ 1,050,783	\$ 1,071,798	\$ 1,093,234	\$ 1,115,089	\$ 1,137,401	\$ 1,160,149	\$ 1,183,352	\$ 1,207,019	\$ 1,231,159	\$ 1,255,783	\$ 1,280,898	\$ 1,306,516	

\$ 117,559	\$ 119,910	\$ 122,309	\$ 124,755	\$ 127,250	\$ 129,795	\$ 132,391	\$ 135,039	\$ 137,739	\$ 140,494	\$ 143,304	\$ 146,170	\$ 149,094
\$ 289,043	\$ 288,704	\$ 294,478	\$ 300,368	\$ 306,375	\$ 312,503	\$ 318,753	\$ 325,128	\$ 331,630	\$ 338,263	\$ 345,028	\$ 351,929	\$ 358,967
\$ 369,737	\$ 371,012	\$ 378,432	\$ 386,001	\$ 393,721	\$ 401,595	\$ 409,627	\$ 417,820	\$ 426,176	\$ 434,700	\$ 443,394	\$ 452,262	\$ 461,307
\$ 265,839	\$ 271,156	\$ 276,579	\$ 282,111	\$ 287,753	\$ 293,508	\$ 299,378	\$ 305,366	\$ 311,473	\$ 317,703	\$ 324,057	\$ 330,538	\$ 337,149
\$ 1,030,179	\$ 1,050,783	\$ 1,071,798	\$ 1,093,234	\$ 1,115,099	\$ 1,137,401	\$ 1,160,149	\$ 1,183,352	\$ 1,207,019	\$ 1,231,159	\$ 1,255,783	\$ 1,280,898	\$ 1,306,516
\$ 3,051,943	\$ 3,112,982	\$ 3,175,242	\$ 3,238,746	\$ 3,303,521	\$ 3,369,592	\$ 3,436,984	\$ 3,505,723	\$ 3,575,838	\$ 3,647,355	\$ 3,720,302	\$ 3,794,708	\$ 3,870,602
\$ 2,422,366	\$ 2,470,814	\$ 2,520,230	\$ 2,570,635	\$ 2,622,047	\$ 2,674,488	\$ 2,727,978	\$ 2,782,538	\$ 2,838,188	\$ 2,894,952	\$ 2,952,851	\$ 3,011,908	\$ 3,072,146
\$ 2,915,528	\$ 2,973,838	\$ 3,033,315	\$ 3,093,982	\$ 3,155,861	\$ 3,218,978	\$ 3,283,358	\$ 3,349,025	\$ 3,416,006	\$ 3,484,326	\$ 3,554,012	\$ 3,625,092	\$ 3,697,594

	Year 19 2045	Year 20 2046	Year 21 2047	Year 22 2048	Year 23 2049	Year 24 2050	Year 25 2051	Year 26 2052	Year 27 2053	Year 28 2054	Year 29 2055	Year 30 2056
	250	250	250	250	250	250	250	250	250	250	250	250
	250	250	250	250	250	250	250	250	250	250	250	250
\$ 1,289,584	\$ 1,302,480	\$ 1,315,505	\$ 1,328,660	\$ 1,341,946	\$ 1,355,366	\$ 1,368,919	\$ 1,382,609	\$ 1,396,435	\$ 1,410,399	\$ 1,424,503	\$ 1,438,748	\$ 1,453,134
\$ 332,067,253	\$ 338,708,598	\$ 345,482,770	\$ 352,392,425	\$ 359,440,273	\$ 366,629,079	\$ 373,961,661	\$ 381,440,894	\$ 389,069,712	\$ 396,851,106	\$ 404,788,128	\$ 412,883,890	\$ 421,138,390
\$ 25,188,691	\$ 25,690,425	\$ 26,204,233	\$ 26,728,318	\$ 27,262,884	\$ 27,808,142	\$ 28,364,305	\$ 28,931,591	\$ 29,510,223	\$ 30,100,427	\$ 30,702,436	\$ 31,316,485	\$ 31,942,623
16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%	16.50%
\$ 4,155,804	\$ 4,238,920	\$ 4,323,699	\$ 4,410,172	\$ 4,498,376	\$ 4,588,343	\$ 4,680,110	\$ 4,773,713	\$ 4,869,187	\$ 4,966,571	\$ 5,065,902	\$ 5,167,220	\$ 5,270,575
\$ 694,690	\$ 708,583	\$ 722,755	\$ 737,210	\$ 751,954	\$ 766,993	\$ 782,333	\$ 797,980	\$ 813,940	\$ 830,218	\$ 846,823	\$ 863,759	\$ 881,036
\$ 694,690	\$ 708,583	\$ 722,755	\$ 737,210	\$ 751,954	\$ 766,993	\$ 782,333	\$ 797,980	\$ 813,940	\$ 830,218	\$ 846,823	\$ 863,759	\$ 881,036
\$ 1,332,647	\$ 1,359,300	\$ 1,386,488	\$ 1,414,215	\$ 1,442,500	\$ 1,471,350	\$ 1,500,777	\$ 1,530,792	\$ 1,561,408	\$ 1,592,636	\$ 1,624,489	\$ 1,656,979	\$ 1,690,134

\$	152,075	\$	155,117	\$	158,219	\$	161,384	\$	164,611	\$	167,904	\$	171,262	\$	174,687	\$	178,181	\$	181,744	\$	185,379	\$	189,087
\$	366,147	\$	373,470	\$	380,939	\$	388,558	\$	396,329	\$	404,255	\$	412,341	\$	420,587	\$	428,999	\$	437,579	\$	446,331	\$	455,257
\$	470,533	\$	479,944	\$	489,542	\$	499,333	\$	509,320	\$	519,508	\$	529,896	\$	540,494	\$	551,304	\$	562,330	\$	573,577	\$	585,048
\$	343,892	\$	350,770	\$	357,785	\$	364,941	\$	372,239	\$	379,684	\$	387,278	\$	395,023	\$	402,924	\$	410,982	\$	419,202	\$	427,586
\$	1,332,647	\$	1,359,300	\$	1,386,486	\$	1,414,215	\$	1,442,500	\$	1,471,350	\$	1,500,777	\$	1,530,792	\$	1,561,408	\$	1,592,636	\$	1,624,489	\$	1,656,979
\$	3,948,014	\$	4,026,974	\$	4,107,514	\$	4,189,664	\$	4,273,457	\$	4,358,926	\$	4,446,105	\$	4,535,027	\$	4,625,727	\$	4,718,242	\$	4,812,607	\$	4,908,839
\$	3,133,589	\$	3,196,261	\$	3,260,186	\$	3,325,390	\$	3,391,898	\$	3,459,736	\$	3,528,930	\$	3,599,509	\$	3,671,499	\$	3,744,929	\$	3,819,828	\$	3,896,224
\$	3,771,546	\$	3,846,977	\$	3,923,917	\$	4,002,395	\$	4,082,443	\$	4,164,092	\$	4,247,374	\$	4,332,321	\$	4,418,967	\$	4,507,347	\$	4,597,494	\$	4,689,444

30-Year PILOT Projection, Retail

1 Paragon Drive
 Montvale, NJ
 Prepared for: Montvale Settlement
 Last Revised: 02/06/2026

Rent Assumptions:

RSF	50,000
Rent PSF (yr 4)	\$ 45.00
Stabilized	
Gross Rent	\$ 2,250,000

% Build-Out	Year	Adjusted Pilot % Rate	Rent ESC	Gross Rev. Est.	PILOT Revenue ASC
0%	Year 1	10.00%	Construction / Stabilization	\$ -	\$ -
50%	Year 2	10.00%		\$ -	\$ -
100%	Year 3	10.00%		\$ -	\$ -
100%	Year 4	10.00%		\$ 1,125,000	\$ 112,500
Stabilized	Year 5	10.00%	0.00%	\$ 2,250,000	\$ 225,000
	Year 6	10.00%	2.75%	\$ 2,311,875	\$ 231,188
	Year 7	10.00%	2.75%	\$ 2,375,452	\$ 237,545
	Year 8	10.00%	2.75%	\$ 2,440,776	\$ 244,078
	Year 9	10.00%	2.75%	\$ 2,507,898	\$ 250,790
	Year 10	10.00%	2.75%	\$ 2,576,865	\$ 257,687
	Year 11	10.00%	2.75%	\$ 2,647,729	\$ 264,773
	Year 12	10.00%	2.75%	\$ 2,720,541	\$ 272,054
	Year 13	10.00%	2.75%	\$ 2,795,356	\$ 279,536
	Year 14	10.00%	2.75%	\$ 2,872,229	\$ 287,223
	Year 15	10.00%	2.75%	\$ 2,951,215	\$ 295,121
	Year 16	10.00%	2.75%	\$ 3,032,373	\$ 303,237
	Year 17	10.00%	2.75%	\$ 3,115,763	\$ 311,576
	Year 18	10.00%	2.75%	\$ 3,201,447	\$ 320,145
	Year 19	10.00%	2.75%	\$ 3,289,487	\$ 328,949
	Year 20	10.00%	2.75%	\$ 3,379,948	\$ 337,995
	Year 21	10.00%	2.75%	\$ 3,472,896	\$ 347,290
	Year 22	10.00%	2.75%	\$ 3,568,401	\$ 356,840
	Year 23	10.00%	2.75%	\$ 3,666,532	\$ 366,653
	Year 24	10.00%	2.75%	\$ 3,767,362	\$ 376,736
	Year 25	10.00%	2.75%	\$ 3,870,964	\$ 387,096
	Year 26	10.00%	2.75%	\$ 3,977,415	\$ 397,742
	Year 27	10.00%	2.75%	\$ 4,086,794	\$ 408,679
	Year 28	10.00%	2.75%	\$ 4,199,181	\$ 419,918
	Year 29	10.00%	2.75%	\$ 4,314,659	\$ 431,466
	Year 30	10.00%	2.75%	\$ 4,433,312	\$ 443,331
30 yr Total				\$ 84,951,470	\$ 8,495,147
30 yr NPV				\$ 31,324,933	\$ 3,132,493

\$ 4.50

Location: Montvale
Last Revised: 2/5/26

Urban Renewal Entity Rent Assumptions	
Building SF	296,000
Rent NNN (Yr 4)	\$ 30.79
Full Base Yr NNN	\$ 9,112,461
Rent	
Core/Shell Cost	\$136,943,047
Rent Constant	5.20%
Lease Term	30
Cost per SF	\$ 462.65

Current Model Estimate of 2024 Valuation	
2024 Estimated OAT	\$ 2,133,197.44
Equalization Ratio	0.7813
Tax Rate	0.02515
Effective Tax Rate	0.019649695
Assessed Value	\$ 108,561,351

% of Facility Built-Out	Year	Adjusted Pilot % Rate	Rent ESC	Gross Rev. Est.	PILOT Revenue ASC	OAT Estimate (applying Typ methodology to USE Cost)	Applicable % of OAT (Statutory Test)	ASC as % of OAT	ASC (i.e., PILOT %-based or as % of OAT (Statutory Test)*)	Final Per SF
50%	Year 1	10.00%		4,556,231	455,623	2,060,093.00	0%	-	455,623	1.54
60%	Year 2	10.00%		5,467,477	546,748	2,101,294.66	0%	-	546,748	1.85
70%	Year 3	10.00%		6,378,723	637,872	2,143,310.35	0%	-	637,872	2.15
100%	Year 4	10.00%	Ramp Up	9,112,461	911,246	2,186,176.56	0%	-	911,246	3.08
	Year 5	10.00%	2.75%	9,317,492	931,749	2,229,900.09	0%	-	931,749	3.15
	Year 6	10.00%	2.75%	9,527,135	952,714	2,274,498.09	0%	-	952,714	3.22
	Year 7	10.00%	2.75%	9,741,496	974,150	2,319,988.06	0%	-	974,150	3.29
	Year 8	10.00%	2.75%	9,960,680	996,068	2,366,387.82	0%	-	996,068	3.37
	Year 9	10.00%	2.75%	10,184,795	1,018,479	2,413,715.57	0%	-	1,018,479	3.44
	Year 10	10.00%	2.75%	10,413,953	1,041,395	2,461,989.88	0%	-	1,041,395	3.52
	Year 11	10.00%	2.75%	10,648,267	1,064,827	2,511,229.68	0%	-	1,064,827	3.60
	Year 12	10.00%	2.75%	10,887,853	1,088,785	2,561,454.28	0%	-	1,088,785	3.68
	Year 13	10.00%	2.75%	11,132,829	1,113,283	2,612,683.36	0%	-	1,113,283	3.76
	Year 14	10.00%	2.75%	11,383,318	1,138,332	2,664,937.03	0%	-	1,138,332	3.85
	Year 15	10.00%	2.75%	11,639,443	1,163,944	2,718,235.77	0%	-	1,163,944	3.93
	Year 16	10.00%	2.75%	11,901,330	1,190,133	2,772,600.48	20%	554,520.10	1,190,133	4.02
	Year 17	10.00%	2.75%	12,169,110	1,216,911	2,828,052.49	20%	565,610.50	1,216,911	4.11
	Year 18	10.00%	2.75%	12,442,915	1,244,292	2,884,613.54	20%	576,922.71	1,244,292	4.20
	Year 19	10.00%	2.75%	12,722,881	1,272,288	2,942,305.81	20%	588,461.16	1,272,288	4.30
	Year 20	10.00%	2.75%	13,009,145	1,300,915	3,001,151.93	20%	600,230.39	1,300,915	4.39
	Year 21	10.00%	2.75%	13,301,851	1,330,185	3,061,174.97	40%	1,224,469.99	1,330,185	4.49
	Year 22	10.00%	2.75%	13,601,143	1,360,114	3,122,398.47	40%	1,248,959.39	1,360,114	4.59
	Year 23	10.00%	2.75%	13,907,169	1,390,717	3,184,846.44	60%	1,910,907.86	1,910,908	6.46
	Year 24	10.00%	2.75%	14,220,080	1,422,008	3,248,543.37	60%	1,949,126.02	1,949,126	6.58
	Year 25	10.00%	2.75%	14,540,032	1,454,003	3,313,514.23	60%	1,988,108.54	1,988,109	6.72
	Year 26	10.00%	2.75%	14,867,182	1,486,718	3,379,794.52	60%	2,027,870.71	2,027,871	6.85
	Year 27	10.00%	2.75%	15,201,694	1,520,169	3,447,380.21	60%	2,068,428.13	2,068,428	6.99
	Year 28	10.00%	2.75%	15,543,732	1,554,373	3,516,327.81	60%	2,109,797.69	2,109,797	7.13
	Year 29	10.00%	2.75%	15,893,466	1,589,347	3,586,654.37	80%	2,151,992.62	2,151,993	7.27
	Year 30	10.00%	2.75%	16,251,069	1,625,107	3,658,387.46	80%	2,196,709.97	2,196,710	7.39
	30 yr Total			\$ 349,924,950	\$ 34,992,495			\$ 22,492,115	\$ 40,082,993	
	30 yr NPV			\$ 141,396,314	\$ 14,139,631				\$ 15,202,211	

* Reflects the 95% of ASC, plus the 2% administrative fee, payable to the Township, but does not reflect land tax.

EXHIBIT B

AFFORDABLE HOUSING SETTLEMENT AGREEMENT

HOUSING SETTLEMENT AGREEMENT (“*Agreement*”) is made this _____ day of December 2025, by and between:

BOROUGH OF MONTVALE, a municipal corporation of the State of New Jersey, County of Bergen, having an address at _____, Montvale, New Jersey _____ (the “*Borough*” or “*Montvale*”); and

Over The Hill Holdings, LLC, a New Jersey limited liability company with a business address 21 Ladik Place, Montvale, New Jersey 07645, (hereinafter “*OTH*” or “*Developer*”).

Collectively, the Borough and the Developer shall be referred to as the “*Parties*.” All references to Developer shall include its successors and assigns, whether or not currently identified.

WHEREAS, Developer has a contractual interest or ownership interest in Block 1902, Lot 10 (the “*OTH*” Site)

WHEREAS, the Borough voluntarily entered the Affordable Housing Dispute Resolution Program (the “*Program*”), by filing a declaratory judgment action under docket number BER-L-000750-25, in New Jersey Superior Court, in accordance with N.J.S.A. 52:27D-304.1 and AOC Directive #14-24, for the purpose of obtaining a certification of the Borough’s affordable housing compliance for the Fourth Round; and,

WHEREAS, the Developer, On August 29, 2025, timely filed a challenge in the Program to the Borough’s proposed Fourth Round Housing Element and Fair Share Plan (“*HEFSP*”) in accordance with N.J.S.A. 52:27D-304.1 and AOC Directive #14-24; and

WHEREAS, in accordance with the Legislative intent for the Program to be an expedient and efficient mechanism to resolve affordable housing compliance challenges, the Program presided over mediated settlement negotiations and those good faith negotiations between the Parties culminated in an agreement to develop the subject Site in a manner (a) that generated a substantial amount of affordable housing and (b) that addressed the legitimate planning concerns of the community; and

WHEREAS, more specifically, the Parties agreed to a total of 30 age-restricted units, of which 6 shall be affordable in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80- 26.1 et seq. (“*UHAC*”) (the “*Project*”); and

WHEREAS, the Borough has agreed to include the proposed Project in its HEFSP in partial satisfaction of its Fourth Round affordable housing obligations and to adopt a

Redevelopment Plan and/or implementing ordinance to permit the development generally consistent with the standards depicted in Exhibit A, attached hereto, comprised of 4 pages dated November 26, 2025, showing a conceptual site plan and architectural plans, prepared by Z+ Architects, LLC; and

WHEREAS, the Parties agree that the Project accords with sound land use planning on the one hand while generating affordable housing on the other; and

NOW, THEREFORE, in consideration of the promises and the mutual obligations set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties hereto, each binding itself, its successors, affiliates and assigns, agree as follows:

ARTICLE I - PURPOSE

1.1 The purpose of this Agreement is for the Parties to settle Developer's challenge in the Program and for the Borough to create the requisite opportunity for the construction of affordable housing in accordance with sound planning by creating zoning incentives for the Sites sufficient to generate six affordable units available to very-low-, low- and moderate-income households.

ARTICLE II - BASIC TERMS AND CONDITIONS

2.1 In the event of any legal challenges to the Required Approvals (as defined in Section 3.5), including a challenge by any third party, the Parties shall 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 Project, the Parties must negotiate in good faith with the intent to draft a mutually acceptable amended Agreement.

2.2 The Project's zoning ordinance (or redevelopment plan, if applicable) shall permit up to 30 total age-restricted units, of which a minimum of 20% (up to 6 units) shall be affordable to very low-, low- and moderate-income households.

ARTICLE III - OBLIGATIONS OF THE BOROUGH

3.1 The Zoning Ordinance (or Redevelopment Plan): The Borough agrees to adopt a zoning ordinance to permit the densities and uses described in Section 2.2 above.

3.2 Timing of Adoption: The Parties shall work collaboratively on all proposed rezoning or redevelopment plans and all entitlements shall pursued in an orderly and expeditious fashion while also allowing sufficient time for the preparation and adoption of plans, resolutions and ordinances, but in no event later than December 30, 2026. Notwithstanding the foregoing, the Parties can mutually extend that deadline upon

mutual agreement.

3.3 Obligation to Maintain Proposed Re-Zoning of the Property: The Borough agrees to not repeal, amend or change the Rezoning Ordinance through July 1, 2035, without Developer's written consent.

3.4 Obligation to Include the Proposed Project in its a HEFSP. The Borough will endorse a HEFSP that includes the proposed Project in its HEFSP no later than March 15, 2026, except as may be extended by the Program or the Court, and the reasonable consent for an extension shall not be withheld by the Developer.

3.5 Obligation To Cooperate: The Borough acknowledges that in order for Developer to construct the Project on the Site the Developer will be required to obtain any and all approvals and permits from (1) entities, boards or agencies which have jurisdiction over the Parties to this Agreement and the Project contemplated hereby, and from (2) all relevant public entities and utilities; such as, by way of example only, the Borough, the Borough Planning Board, the County of Bergen, the Bergen County Planning Board, the Bergen County Soil Conservation District, 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, within the limits of its jurisdiction and authority, to assist the Developer in its undertakings to obtain the Required Approvals, including but not limited to any necessary amendments to the applicable Water Quality Management Plan, Wastewater Management Plan, and/or Sewer Service Area Map to incorporate the Sites. The Borough further agrees to take all necessary, reasonable steps to ensure that the Project obtains adequate water and sewer, including expediting all municipal written endorsements and approvals and to ensure that the Developer's sanitary sewer and potable water facilities receive all appropriate approvals from all relevant agencies and adjacent municipalities for construction and upgrading, as and if necessary, so as to be able to serve the Project. Should the Project necessitate any upgrade to the sanitary sewer collection system serving this Project or water distribution system serving this Project, as determined by both the Borough and Developer, the Developer shall bear all costs for same.

3.6 Obligation to Refrain from Imposing Cost-Generative Requirements. The Borough agrees to refrain from imposing cost-generative features as set forth in N.J.A.C. 5:93-10.1 et seq.

ARTICLE IV - DEVELOPER OBLIGATIONS

4.1 Obligation To File Development Applications in Accordance with this agreement: After the rezoning, Developer shall file development applications consistent with the terms of this Agreement.

4.2 Affordable Housing Requirements: Developer shall satisfy the affordable

housing obligation required in connection with the Project by setting aside six units for low- and moderate-income households that shall comply with the UHAC bedroom distributions and with the Fair Housing Act's very low-income requirement. The affordable units will be deed restricted for affordable housing in accordance with UHAC and shall comply with very-low, low-, and moderate-income requirements, bedroom distribution, and affirmative marketing of UHAC.

4.3 Age Restriction: Developer recognizes that a critical and non-servable condition of this agreement is that the units proposed for the zone and Project are age-restricted/senior units, compliant with 42 U.S.C. 3601(b)(2)(c) and N.J.A.C. 12:15-1.5(c)). Developer shall not request to convert the units to family units.

4.4 Obligation To Cooperate: Developer (and all successors in interest, affiliates, parties or other related entities) agree to affirmatively support the revised HEFSP that is proposed in accordance with and consistent with this Agreement, in any hearing required for approval of the revised HEFSP. In addition, Developer shall not to challenge any subsequent Housing Element and Fair Share Plan or future Mount Laurel litigation, as it relates to the Sites, so long as the Parties are in compliance with the terms of this Agreement.

ARTICLE V

[Reserved]

ARTICLE VI - MUTUAL OBLIGATIONS

6.1 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 Project, 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. Notwithstanding the above, the Developer may request from the Planning Board *de minimis* exceptions sought as part of the development applications to deviations from the New Jersey Residential Site Improvement Standards ("*RSIS*") or waivers from Borough Site Plan design standards.

6.2 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 introduction and adoption of the Rezoning Ordinance, the Required Approvals, the development of the Site consistent with the terms hereof, and the defense of any challenge with regard to any of the foregoing.

6.4 Notices: Any notice or transmittal of any document required, permitted or appropriate hereunder and/or any transmittal between the Parties relating to the Site (“*Notice[s]*”) shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or recognized overnight or personal carrier such as, for example, Federal Express, with certified proof of receipt, and in addition, where feasible (for example, any transmittal of less than fifty (50) pages), by facsimile or electronic mail. 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 effected 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 DEVELOPER:

Over The Hill Holdings, LLC
21 Ladik Place
Montvale, New Jersey 07645

With a copy to:

Marc Leibman, Esq.
Chiesa Shahinian & Giantomasi, PC
105 Eisenhower Drive
Roseland, New Jersey 07068
MLeibman@CSGLaw.com

TO THE BOROUGH:

Borough Administrator
Borough of Montvale
12 DePiero Drive
Montvale, New Jersey 07645

Phone: 201-891-4000
Email: jvoytus@montvaleboro.org

With Copies to:

Michael J. Edwards, Esq.
Surenian, Edwards, Buzak & Nolan LLC
311 Broadway, Suite A
Point Pleasant Beach, NJ 08742 Phone: (732) 612-3100
Email: MJE@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 Necessity of Required Approvals: The Parties recognize that the site plans required to implement the Development provided in this Agreement, and such other actions as may be required of the Borough Planning Board under this Agreement, cannot be approved except in accordance with their duties and 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, it being understood that any such action shall be in accordance with procedures established by law. The Parties acknowledge and agree that any failure to act or unreasonable delays that contravene procedures established by law, the MLUL, and agreed by the Parties herein or by the Planning Board constitute a default of the Agreement.

7.2 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 in writing by all of the other Party for whose benefit such obligation is intended, 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 thirty (30) days or such reasonable period of time as may be appropriate. In the event the defaulting Party fails to cure within thirty (30) days or such reasonable period of time as may be appropriate, the Party 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, and/or a return to status quo ante relative to immunity and pursuing builder's remedy lawsuits and/or divestment of the Planning Board over site plan review, and appointment of a Special Hearing Officer to conduct site plan review.

7.3 Severability: If any provision is held invalid, the remainder of the Agreement shall continue in full force unless the invalid provision materially frustrates the purpose of the Agreement.

7.4 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, affiliates and assigns, including any person, corporation, partnership or other legal entity which at any particular time may have a fee title interest in the Sites which is the subject of this Agreement. This Agreement may be enforced by any of the Parties, and their successors, affiliates, and assigns.

7.5 Disclaimer of Liability: It is understood and agreed that this is a compromise and settlement of disputed claims, and that nothing in this Agreement shall be construed as an admission of liability on the part of the Parties, or any of the Parties' current or former elected and appointed officials, agents, representatives, employees, officers, directors, parents, subsidiaries, affiliates, attorneys and independent contractors, all of whom expressly deny any such liability.

7.6 Governing Law: This Agreement shall be governed by and construed by the laws of the State of New Jersey.

7.7 No Modification: This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.

7.8 Effect of Counterparts: This Agreement may be executed simultaneously in one or more facsimile or PDF counterparts, each of which shall be deemed an original. Any facsimile or PDF counterpart forthwith shall be supplemented by the delivery of an original counterpart pursuant to the terms for notice set forth in this Agreement.

7.9 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 possesses 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 in this Agreement.

7.10 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.

7.11 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.

7.12 Effective Date: 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; however, and the Agreement remains subject to Program/Court approval in accordance with N.J.S.A. 52:27D-304.1 and AOC Directive #14-24. Should the Borough fail to adopt the Rezoning Ordinance within the timeframe prescribed herein, subject to modification by the Program/Court, such failure shall be deemed a Default and

the Developer may petition the Program/Court for revocation of the Borough's compliance certification or institute an action for specific performance or any other relief available at law or equity.

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 Construction, Resolution of Disputes: 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. The Parties waive formal service of process. The Parties expressly waive trial by jury in any such litigation.

7.16 Recitals. The recitals of this Agreement are incorporated by reference.

[Signature Page to Follow.]

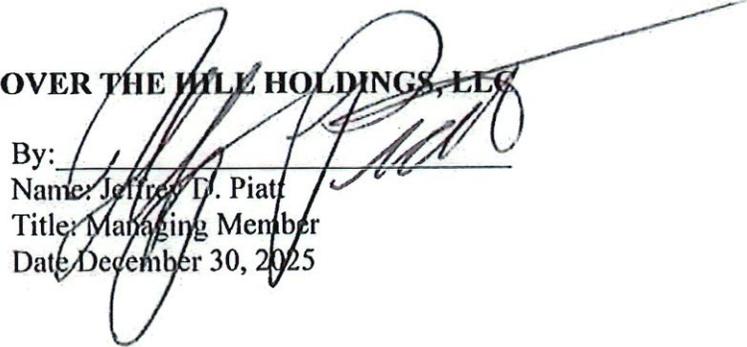
IN WITNESS WHEREOF, the Parties have caused this Agreement to be properly executed, their corporate seals affixed and attested and this Agreement to be effective as of the Effective Date.

Attest:



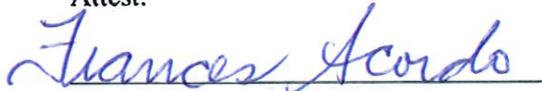
Name: Marc E. Leibman, Esq.
Title: Attorney at Law,
State of New Jersey

OVER THE HILL HOLDINGS, LLC



By: _____
Name: Jeffrey D. Piat
Title: Managing Member
Date December 30, 2025

Attest:



Name: _____
Title: municipal clerk

THE BOROUGH OF MONTVALE

By:  _____
Name: MIKE GHASSALI
Title: MAYOR
Date 2/26, 2026

EXHIBIT C

11/7/06

Introduced by: Mayor Zeller

Seconded by: Mr. Stefanelli

BOROUGH OF MONTVALE

PLANNING BOARD

RESOLUTION GRANTING SITE PLAN
APPROVAL, VARIANCE RELIEF,
APPROVAL OF AN ENVIRONMENTAL IMPACT
STATEMENT, AND A MAJOR SOIL MOVEMENT
PERMIT TO KPMG, LLP FOR PREMISES
DESIGNATED AS BLOCK 3102, LOT 1
AND BLOCK 3301, LOT 4

WHEREAS, application has been made to the Planning Board of the Borough of Montvale by KPMG, LLP (hereinafter "the applicant"), Three Chestnut Ridge Road, Montvale, New Jersey, for site plan approval, variance relief, approval of an Environmental Impact Statement, and a major soil movement permit relating to premises known as Block 3102, Lot 1 and Block 3301, Lot 4 as depicted on the tax assessment map of the Borough of Montvale; and

WHEREAS, said applicant has requested that the Planning Board exercise its ancillary powers pursuant to N.J.S.A. 40:55D-60 and grant variance relief pursuant to N.J.S.A. 40:55D-70(c) and waivers pursuant to N.J.S.A. 40:55D-51; and

WHEREAS, an application has also been submitted for a major soil movement permit; 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 premises are located on the easterly side of Chestnut Ridge Road, west of the Garden State Parkway and north of the Montvale-Woodcliff Lake boundary, and comprise some 27.99 acres. The property is utilized by the applicant as a corporate headquarters, a use that is permitted in the OR-2 zoning district pursuant to Section 128-5.4 of the Zoning Ordinance..

2. The property is presently developed as an office campus with four buildings comprising in the aggregate 240,000

square feet of office space. The within application seeks to construct a fifth building comprising two stories and 28,465 square feet, as well as an atrium attached to Building Nos. 3 and 4. In addition, new parking at various areas throughout the property would be constructed, together with landscaping and ancillary amenities.

3. Since 1983, the subject property has received various development approvals from the Planning Board. A summary of these approvals is as follows:

A. By resolution dated May 3, 1983, site plan approval was granted to Imperial Sterling Ltd. to construct four (4) building units in a campus-style setting. Thereafter, by resolution dated October 7, 1986 amended site plan approval was granted to the applicant's predecessor, Peat, Marwick, Mitchell & Co. to complete the construction of links to connect the four (4) buildings, as well as the construction of an enclosure for an emergency generator.

B. Amendatory site plan approval was granted to Peat, Marwick, Main & Co. on May 17, 1988 to permit a modification of the site plan to construct a patio terrace of approximately 1,700 square feet, together with lighting and landscaping at Building No. 3.

C. By resolution dated February 1, 2000 the applicant received approval to construct additional parking, together with pavement markings and "STOP" signs, pedestrian walkways and additional storm drainage facilities, lighting and landscaping in and around the parking areas.

D. By resolution dated May 20, 2003 amended site plan approval was granted to restripe the existing parking area, increasing the number of parking spaces by a total of 65 to 1,118. The restriping permitted parking spaces to have a width of 8 feet 6 inches, contrary to the 9 foot width requirement, and variance relief was granted from Section 128-3.1 in connection therewith.

E. On September 6, 2005 the applicant received a major soil movement permit to permit the removal of silt material from an existing pond on the premises.

4. As noted, the applicant proposes to add a new building to this campus-type property comprising two stories to be connected to Building No. 4 and interconnected to Building No. 3 by means of a proposed enclosed atrium. The total addition, inclusive of the atrium, would be 28,465 square feet. Under the proposal, the vast majority of space on the proposed basement (first) level of new Building No. 5 would be utilized as a mechanical area and a data center. On the second floor the

predominant use of the space will be for additional offices. The proposal also includes an expansion of parking, with the total number of spaces being increased to 1,241. Under the initial proposal, a net increase of 123 spaces is proposed, with additional parking located in the northernmost and southernmost parking areas and a small parking area of 59 spaces, which would be new, was initially proposed for the northwest center portion of the site. The construction of Building No. 5 and the reconstruction of parking areas will result in a loss of 58 existing spaces with a net addition, under the initial proposal, of 124 spaces. As will be discussed, the development proposal implicates a number of variances from the bulk standards applicable to the OR-2 Zone.

5. At the initial public hearing held on August 15, 2006, the applicant was represented by Antimo A. Del Vecchio, Esq., who indicated that site plan approval, variance relief and a major soil movement permit were the necessary approvals required under the proposal. The following exhibits were marked into evidence:

Exhibit A-1	Required notice documents
Exhibit A-2	Site plan and architectural plans prepared by SNS Architects & Engineers, PC comprising eight

sheets, with a revision date of
May 15, 2006

- Exhibit A-3 Correspondence from SNS dated May 15, 2006 pertaining to height calculations for Building No. 5
- Exhibit A-4 Correspondence from SNS dated May 15, 2006 pertaining to soil calculations
- Exhibit A-5 Stormwater Management Report prepared by SNS dated May 15, 2006
- Exhibit A-6 Environmental Impact Statement prepared by PK Environmental dated May 15, 2006
- Exhibit A-7 Temporary Traffic Signal Plan prepared by the County of Bergen
- Exhibit A-8 TRC Raymond Keyes Traffic Report dated August 8, 2006
- Exhibit A-9 Site Plan and architectural plans prepared by SNS comprising 18 sheets, with a revision date of July 21, 2006

6. The applicant called as its first witness John Peel of PK Environmental, the preparer of the Environmental Impact Statement ("EIS") (Exhibit A-6), who was qualified as an environmental scientist. He referred to the Letter of Interpretation ("LOI") issued by the Department of Environmental Protection ("DEP") dated November 16, 2004, which remains valid. He testified that he has been familiar with the site since the

1990's and worked closely with the applicant's engineering firm to analyze critical resources and the potential impacts thereon in connection with the proposed application.

7. It was Mr. Peel's opinion that wetlands constitute the most critical resource and that the proposal would have no impact on these areas, which are basically avoided by the development proposal. He noted the man-made pond on the property used for flood storage and the permit granted by the DEP in 2005 to dredge this area. In addition, recently there was received a minor stream encroachment permit for flood protection measures and a drainage swale. According to Mr. Peel, the greatest potential environmental impact of the development would relate to stormwater, and this would not be significant inasmuch as stormwater management is effectively controlled. There would be no impact on vegetation or wildlife, with the wildlife habitat on the property minor, and no endangered species would be affected. Furthermore, the woodlands area around the perimeter of the site, which he characterized as "not unique", would generally be avoided by the proposed development.

8. Addressing other criteria required for the approval of an EIS, the witness testified that there would be no impact on water supply, solid waste and recycling, nor on air quality or

noise. Any noise generated by construction would be temporary in nature. He referred to the summary on page 13 of his report that there would be no substantial environmental impact by the development, with critical resources avoided, and that the project can be constructed without substantial impact on the environment and existing site conditions.

9. Marked into evidence as Exhibit A-10 was a reduced size set of the engineering and architectural renderings prepared by SNS and dated August 15, 2006.

10. The applicant called as its next witness Robert Nocella of SNS, an architect who was qualified in this field. He testified as to his familiarity with the site and his participation in the preparation of the various drawings and renderings. Marked into evidence as Exhibit A-11 was a color version of Drawing L-1, with a revision date of July 21, 2006, which depicts the proposed two story addition or data center adjacent to Building Nos. 3 and 4 and near the Garden State Parkway. The building consists of a two-story structure, with one of the two stories being a basement, the latter of which will house mechanical equipment. Marked into evidence as Exhibit A-12 was a color version of Drawing D-4, also revised to July 21, 2006, which depicts renderings of the proposed new building depicting

colors, materials and granite, with a glass block on the northern side adding a high-tech look to the proposed improvements. The westerly elevation of this drawing on the Chestnut Ridge Road side depicts the atrium connecting Building Nos. 3 and 4. The easterly elevation on the Parkway side shows the data center addition and the mechanical area for the ventilation of equipment. The north elevation indicates that Building No. 2 is higher in elevation than the proposed data center, and the southerly view is from the pond area, which also shows the new atrium.

11. Marked into evidence as Exhibit A-13 was the basement floor plan, and as Exhibit A-14 the first or grade level floor area, which also depicts the data center, atrium and the main entrance. Exhibit A-15 is a reduced size version of Drawing D-3 which shows the roof plan, and the architect described the mechanical units, the placement of which on the roof has been limited, to the extent possible, with most of such equipment located in the basement area. According to the architect, the goal of the project is to match the new building with those that exist so as to blend in as much as possible.

12. At the continued public hearing held on September 25, 2006, the applicant's architect continued his testimony and summarized the proposed new construction, noting that the new

building and proposed atrium would be located on the north side of the property and between Building Nos. 3 and 4. The architectural elements are intended to continue the campus character of the site, with the new building being constructed of materials and having a style similar to the existing structures. He described the polished granite, thermal or flamed version, as the materials proposed to be used, noting the heavy granite bands, the bronzed aluminum, and the tinted windows. While the height of Building No. 5 exceeds the permitted height of 35 feet, the proposed new height is attributable to the placement of the HVAC unit on the roof rather than the ground. Absent such location, the height requirement would be satisfied and he reiterated that the applicant has sought to locate as much of the mechanical equipment in the basement as possible. He further indicated that the HVAC equipment on Building No. 5 would be lower than the equipment on Building Nos. 2 and 3 and that the height calculated for Building No. 5 was computed as a stand-alone building and that had it been averaged with the height of the other structures, the average would be below the maximum limitation of 35 feet.

13. The architect further described exhibits previously marked, including Exhibit A-13, the lower level or basement area and mechanical equipment proposed to be located therein, the data

center depicted on Exhibit A-14, and the roof area on Exhibit A-15. He noted that with respect to the roof area, the applicant could meet the height standard, but would be unable to screen the HVAC equipment. It was his opinion that the benefit of the screening allows the shielding of the equipment from other sections of the site and that the equipment would not be visible from Chestnut Ridge Road due to the location of other buildings, nor from the Garden State Parkway since trees and plantings would shield the building from this roadway.

14. The applicant presented as its next witness Steven Napolitano, a licensed professional engineer who was qualified in this field. He first indicated his familiarity with the site, having visited the property, and that he is also familiar with the zoning and planning Ordinances of the Borough. The plans were prepared by him and under his supervision and he noted the OR-2 Zoning designation for the site and described the surrounding uses and adjoining roadway network.

15. With regard to the development proposal, he first noted the expansion of on-grade parking to the north and south, the proposed data center and atrium, or linkage between Building Nos. 3 and 4, and stated that 41 spaces would be added to the south area, 97 spaces to the north parking area, and 59 spaces at

the new parking area to the west. The construction requires a displacement of certain parking, resulting in a total of 151 spaces within the total front yard area, in excess of the existing 61 which already is nonconforming with the 55 space limitation,. The parking spaces will have dimensions of 8½ feet by 18 feet or 8½ feet by 20 feet requiring variance relief, although he indicated that the size of the parking spaces will be similar to existing stall sizes previously approved by variance relief. It was his opinion that the hairpin striping design works well in conjunction with the site, as well as at other locations. It was his opinion that the hairpin space design minimizes impervious coverage. The new parking design results in 4.59 spaces per 1,000 square feet of floor area.

16. The engineer then addressed the issue of the front yard parking, referring to Drawing Y-2 of Exhibit A-9, noting the new parking in the required front yard as reflected in the new westerly lot and the northerly lot, with about 50% of the spaces in each being within this area. He discussed parking constraints and referring to Exhibit A-11 noted the five (5) wetlands locations on the property at the southeastern corner, an area adjacent to this section, along the Garden State Parkway at the center of the site, and at the far northeastern corner of the

property. The pond area described by him as a regional detention area adds to the difficulty in locating more parking on the site. It was his opinion that the western area, referred to as a knoll area, constitutes the only available land area that can be utilized for additional parking. It was his opinion that the existing and proposed grades will preclude the front yard parking areas from being visible from Chestnut Ridge Road, and he referenced existing and proposed grades throughout this area to substantiate his opinion in this regard. A variance is also required for disturbance of slopes greater than 15%, which will occur in the northern and western areas on the site. The engineer testified that a prior application permitted additional parking, and that the construction of these new parking areas required regrading to match the adjoining existing sloped areas.

17. Continuing his testimony, Mr. Napolitano referred to his May 15, 2006 letter (Exhibit A-4) pertaining to quantity of soil movement required to construct the improvements. A total of 15,778 cubic yards will be cut and 850 cubic yards will be fill, resulting in a net of 14,992 cubic yards to be exported from the site to a destination to be determined, subject to the approvals by the Police and Building Departments.

18. The next issue addressed related to drainage, with

a focus on the additional impervious coverage. Drawing Y-4 of Exhibit A-9 and the Stormwater Management Report (Exhibit A-5) were referenced by the engineer. He described the four areas of construction pertaining to the southern, northern and western parking areas and the new building and described the underground detention systems and their locations on the property, with the design intended to accommodate additional impervious coverage and to be consistent with water quality standards, as well as to meet the criteria for two, ten, twenty-five and one hundred year storms. The applicant will be responsible for the maintenance of these new drainage facilities.

19. Site lighting as depicted on Drawing SL-1 was described and Mr. Napolitano indicated that existing poles in the southern area would have an additional fixture added. Two additional poles are proposed within the westerly area, and the five existing poles within the area of the northerly parking will have a single fixture added to each pole, with the fixtures complying with the Montvale lighting standard, with the intensity being less than .5 fc at the property line. Mr. Napolitano stated that there would be no spillage onto adjoining properties and that the site will continue to operate in a safe and efficient manner.

20. The Board discussed the Boswell Mc Clave report of

August 30, 2006, which was marked into evidence as Board Exhibit 1, and the author thereof, Berge V. Tombalakian, was sworn. He discussed Comment 9 pertaining to utility relocations, with Mr. Napolitano indicating that various utilities will be required to be replaced and relocated, including electric, water, gas and cable. Similarly, the sanitary sewer line will also require relocation. The storm drainage calculations will be revised, with the new calculations provided to Mr. Tombalakian. Drawing Y-4 of Exhibit A-9 was discussed by Mr. Napolitano regarding the two retaining walls on the northerly side, which will be comprised of keystone construction and not reinforced concrete, with the details reflected on Drawing Y-5.

21. The applicant's engineer stated that the height calculation for Building No. 5 is based upon current topographic conditions and the grade of the land area where the improvements are proposed, and that post-soil movement calculations as to the grade will be similar to current conditions. It was requested that a precise calculation be developed, and the applicant's attorney indicated that the height was calculated at the pre-development grading to the maximum post-development height. The Board was advised by Mr. Napolitano that the post-development height may be approximately a half foot less than the current

calculation.

22. The next issue addressed was impervious coverage, with the Borough planner referring to language in the Master Plan relating to coverage and noted that the proposed six (6%) percent deviation beyond the forty (40%) percent maximum permitted impervious coverage would be significantly greater than the two (2%) percent or three (3%) percent deviation approved by the Board in connection with other proposals. It was noted that the addition of the new data center will result in the displacement of other space utilized for data collection purposes, which will become available for additional employee space. The data center does not require many employees and as a result, the number of employees will increase, as well as the number per square foot, with the result increase necessitating, according to Mr. Napolitano, more parking than other office complexes. It was noted that the old data center areas will be re-occupied by employees based upon the same occupancy as the remainder of the square footage in the complex.

23. During this discussion on impervious coverage, it was also noted that approximately 37,000 square feet was taken by the County for road improvement purposes and had this land not been taken, the coverage would be approximately two (2%) percent

less, or approximately 44%. It was the opinion of the Board's planner that the six (6%) percent deviation would be "most aggressive". In response, Mr. Napolitano indicated that the complex is unique, with multiple building units and a campus-type setting and as a consequence, the interconnection of parking, the multiple buildings, and interconnected walkways result in additional coverage and that the design of the improvement, as both exist and are proposed, are unique within the Borough.

24. The applicant presented as its next witness Kenneth A. Newman, a licensed professional engineer who was qualified in the field of traffic engineering and who had prepared Exhibit A-9, the TRC Raymond Keyes Traffic Impact Study. In his testimony, Mr. Newman indicated that the counts contained in his report included the proposed Four Seasons project to the south, as well as a projected four (4%) percent increase in traffic, double the two (2%) percent growth rate applicable to Bergen County. The trip generation rates outlined in the report are consistent with studies of the Institute of Transportation Engineers ("ITE") pertaining to building size and number of employees. The complex generates more inbound peak a.m. hour trips and more outbound peak p.m. hour trips than the ITE estimated as to size of building, although the employee number counts were virtually identical to

the ITE estimate. He referred to Table 2 in his report based on the proposed expansion which would involve 533 inbound peak a.m. hour trips and 449 peak p.m. hour outbound trips. Figure 3 of this report projects that 55% would approach the facility from the south and 45% from the north during arrivals, with Figure 4 addressing current departure distributions from the existing drives, and Figure 5 post-development future departure distributions. The construction of the northerly drive and temporary traffic signal would result in more than two-thirds of the departures being from this driveway. It was Mr. Newman's opinion that both driveway intersections with Chestnut Ridge Road would operate at a Level of Service B and he discussed the temporary light at the northern drive and the future permanent signal at the Benjamin Moore property. Lastly, the engineer noted that while the number of overall parking spaces increased, the ratio of spaces per employee, based on the estimated employee population, would decrease.

25. The applicant presented as its next witness Kathryn Gregory, a licensed professional planner who was qualified in this field. She testified as to her familiarity with the property, the surrounding neighborhood and applicable land use regulations, and that she had reviewed the application and plans and had visited

the site. She indicated her concurrence as to what variance relief was implicated.

26. Marked into evidence as Exhibit A-16 was a photo board of existing site conditions prepared by the planner, as well as Exhibit A-17 constituting aerial photographs of the subject property. She noted the property's size, in excess of twenty acres, and the applicable OR-2 zoning and it was her opinion that some of the variances could be justified under the c(1) standard, with other variances premised on c(2) relief. She proceeded to describe Exhibit A-16, noting that most of the variances relate to conditions proposed at the perimeter of the property. She described the various photos on the exhibit, noting that the northwest section of the property depicts an upward gradation and that various other photos depicted natural and existing vegetation and landscaping. It was her opinion that the office complex, with its campus-like setting, is dissimilar to other properties, being larger in size than most and developed differently with multiple buildings.

27. The planner then provided a summary of the applicable variance relief as follows:

A. She first addressed the height variance for proposed Building No. 5 which, at a height of 38.4 feet (in excess

of the 35 feet permitted, or 3.4 feet in excess of the maximum height) would constitute a "worst case scenario". She noted that the mechanical equipment and screening on the roof as proposed would necessitate this variance in view of the definition of building height in the Zoning Ordinance. However, if the average height of all buildings were computed, the applicable height for the property taken as a whole would not exceed the 35 foot limitation. Moreover, Building No. 5 would not be discernable from either the Garden State Parkway or Chestnut Ridge Road.

B. The slope variance was noted by Ms. Gregory to implicate existing manmade slopes, which are the only areas in excess of the 15 percent that would be disturbed. She stated that drainage and runoff would be properly handled.

C. The side yard parking setback variance of 18 feet on the northerly side of proposed Building No. 5, less than the 25 foot limitation, would be mitigated by the grade differential and landscaping.

D. The size of the proposed parking spaces would be similar to the size as presently exists, as well as in other office complexes. It was the planner's opinion that compliant and larger size parking stalls are only necessary in retail and similar establishments with a high turnover of vehicles, with the

attendant use of shopping carts and patrons carrying items and bundles.

E. A total of 151 parking spaces are proposed for the front yard under the original plan. Presently, 61 front yard parking spaces exist, in excess of the 55 permitted. The planner referred to Exhibit A-11, noting the location of several sections of wetlands as well as existing structures, which constraints severely limit the areas where parking may be constructed. Due to berming and grade conditions, this new front yard parking area would not be visible from Chestnut Ridge Road and she noted that other properties also have front yard parking closer to this roadway. The campus-like setting and the existing development of the site also limits the placement of parking areas.

F. The planner noted that the proposed increase in impervious coverage to 46.2% would be less if the applicant were credited for the land area dedicated to roadway improvement purposes, in which event the coverage would be approximately 44.6%. She also noted that the applicant is moving employees from an existing facility to the south at 530 Chestnut Ridge Road to Woodcliff Lake and as a result of the consolidation of space, traffic would be lessened on Chestnut Ridge Road, resulting in a more efficient use of space and the promotion of traffic safety.

It was her opinion that the increase in front yard parking and the additional aisle space results in increased coverage, as does the connector roadway and the linkage of the buildings, which she characterized as unique in design. The planner referred to page 6 of the report of Richard Preiss, the Board's planner, which notes the intent of the Master Plan Reexamination Report to strengthen the Borough's office parks, and it was her opinion that the linkage of the properties and the increased traffic safety will promote the goals of the Master Plan. The variance could be granted without substantial detriment to the public good in view of the promotion of safety and the fact that employees will no longer be required to walk or drive to or from the existing facility to the south of the subject property.

28. Continuing her testimony, the planner indicated the site can accommodate the variances based upon the topography and exterior conditions. The intrusion into the slopes relates to manmade areas and the height will not be perceptible from adjoining rights-of-way. It was her opinion under the c(2) standard that granting of relief will result in an appropriate use and development of land consistent with the State redevelopment plan and "smart growth" principles. The property will not be overdeveloped but will, according to Ms. Gregory, be made more

efficient. Furthermore, purpose i of the MLUL, the promotion of a desirable visual environment, will be advanced by the campus-like setting. Adequate light, air and open space will continue to be provided and there will be no substantial detriment to the zone plan. She emphasized that the property is unique and that existing impervious coverage is due to the present development of the property and both natural and manmade features. Ms. Gregory testified that there will be no negative impact on or damage to existing properties.

29. The Board was advised by the Chairman of the Environmental Commission that this Agency has approved the landscaping plan. There also occurred discussion pertaining to the impervious coverage issue and whether the proposed coverage could be modified. Also discussed was whether the proposed new western parking area could be reduced or eliminated. In this regard, the Board planner, Richard Preiss, suggested the elimination of parking area D (59 spaces) and a reduction in the number of spaces in the front yard. These spaces could be relocated elsewhere on site, while keeping the westerly section adjoining Chestnut Ridge Road a more pristine area, while at the same time reducing impervious coverage and the number of parking spaces within the front yard.

30. At the continued public hearing held on October 3, 2006, a revised plan was discussed which depicts the elimination of the 59 parking spaces within the knoll area adjoining Chestnut Ridge Road. Spaces have been added to the southerly parking area, which has been extended farther west and a new area for parking is provided on the northwest portion of the site. In addition, three new spaces are shown on the northeast section near the Garden State Parkway. The new spaces added provide for 52 of the 59 spaces lost by removing parking from the knoll area. The parking aisle at the north section adjoining Benjamin Moore would be one-way and 20 feet in width, consistent with Code requirements. This revised plan would lower coverage to 44.98%.

31. The applicant's engineer, Steven Napolitano, was recalled as a witness and he discussed Drawings Y-0 and Y-2 containing a revision date of September 27, 2006, which were marked into evidence as Exhibit A-18. He confirmed the changes described by the applicant's attorney and the new parking spaces added, as well as the new area at the northwest section. It was noted that the coverage calculation of 44.98% includes a credit for sidewalks. Mr. Napolitano also described the minor modifications to the drainage, lighting and landscaping improvements as a result of the revised plan.

32. The Board was advised by its engineer that the extension of the southerly parking area in a westerly direction provides a more appropriate connection to The Rink/Hovnanian site and a better alignment for the accessway. This opinion was shared by the Board's planner. Mr. Napolitano also indicated that the Soil Erosion and Sediment Control Plan has also been modified. The parking modification, according to Mr. Del Vecchio, does not contravene any County requirements.

33. The applicant called as its last witness Frank Erickson, a licensed architect and the National Director of Architecture for the applicant. He testified that KPMG undertook a national real estate search to evaluate potential locations for its data center, viewing sites in Dallas, Colorado and elsewhere in New Jersey. The construction of the data center on the subject property will free up other space within the buildings to meet company needs. The original data center dates back to the original construction of the campus buildings, and he noted the outdated electric and other facilities which presently exist and the new data center is needed to meet increased needs of the applicant. The existing data center has a 12,000 square foot footprint, which will be converted to general office space similar to the other office space on the premises. Employee population

will increase from the current 1,017 to 1,240. He described the ongoing renovations and the revised configuration of office space as creating a nicer office environment, with open areas, more communal space, and less individual offices. The current portion of the existing building used as a data center would be renovated and, upon completion, occupied by 82 employees.

34. Marked into evidence as Exhibit A-19 were plans revised to October 9, 2006 intended to address the conceptual revised plans submitted by the applicant, which eliminates the parking in the westerly knoll area with 52 of the 59 spaces relocated to other areas. The revised plans reflect a coverage of 44.98%, which calculation is based upon exclusion of certain areas from the computation permitted by Ordinance No. 99-1136. A total of 1,226 parking spaces are now included. Also marked into evidence was revised Stormwater Management Report designated as Exhibit A-20 and dated October 10, 2006.

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 for site plan approval which proposes the addition of a fifth building to an existing office campus complex currently

containing four buildings aggregating 240,000 square feet, with 1,118 parking spaces. The proposal seeks approval to add a two-story office building to the campus to be designated as Building No. 5, having an area of 28,465 square feet which will be connected to existing Building No. 4 and to Building No. 3 by means of a proposed atrium. The addition will add 28,465 square feet of floor space. The majority of space on the first level of the proposed new building will be utilized for mechanical equipment with a small receiving and work area, with additional offices on the second floor. This new data center will free up for general office use an existing data center, which has been described as outdated. The new building will be substantially compatible with the existing four buildings with respect to design and material used in construction and will have a similar architectural style.

2. The plan has undergone a number of revisions, with the most recent iteration eliminating a 59 space parking area on a portion of the property commonly referred to as a knoll area and proximate to Chestnut Ridge Road. The 59 spaces proposed for this area have, except for seven spaces, been relocated to other areas of the property, including a new parking area in the northwest section of the site. A total of 1,226 parking spaces would be

provided under this plan.

3. Other changes proposed for the site include additions to the stormwater management facility and landscaping. The latest plan revision would result in an increase of impervious coverage from the current 39.93% to 44.98%. Accordingly, a variance is required pertaining to the 40% coverage limitation applicable to the OR-2 Zone.

4. The other variances implicated relate to parking space size (9 feet by 20 feet required, 8½ feet by 18 feet proposed); building height (two stories and 35 feet permitted, two stories and 38 feet proposed); front yard parking (55 spaces permitted, 61 existing, 138 proposed); side yard parking setback (25 feet required on one side, 25 existing, and 18 proposed); side yard parking setback (164 feet required, 94 feet existing, 43.4 feet proposed); and disturbance of slope areas in excess of 15%.

5. The Board has carefully considered the requests of the applicant for variance relief. First, with respect to the variance for impervious coverage, it is recognized that the 44.98% coverage proposed is not an insignificant deviation from the 40% standard established by Ordinance. In its consideration of this variance, the Board has balanced the need for adherence to the impervious lot coverage standard and the goals and objectives of

the Master Plan pertaining to the Borough's office parks, which recognizes the need for a reexamination of the land use regulations in view of the changing office environment pertaining to the utilization of space, as well as the need to attract high-quality users of these office facilities. The Board is of the opinion that this variance may be justified under with the c(1) or c(2) standard.

6. First, with regard to the c(1) criteria, the site is presently substantially developed with four office buildings in a campus-like setting, a rather unique design in contrast to the usual single building large office complex. The property contains other constraints due to its considerable development, including a large retention/detention area, some wetlands and buffers, and various utility and other easements. These conditions, particularly the unique campus-like design, permits a determination that current site conditions create extraordinary and exceptional conditions which impact the property and its overall layout. For these reasons, the Board is of the opinion that a variance may be granted under the c(1) standard.

7. The relief from the impervious coverage requirement may be also justified on a c(2) basis since various purposes of the MLUL would be advanced by permitting this deviation relief.

More particularly, the construction of a new modern building to this campus-like facility and the additional landscaping and other improvements will promote various purposes of the MLUL, including the general welfare, the provision of adequate light, air and open space, and a desirable visual environment. The Board accepts the testimony of the applicant's planner that the unique campus-like design may justify this relief. In addition, employees will be moved from a southerly location at 530 Chestnut Ridge Road in Woodcliff Lake to the subject site, thereby eliminating vehicular and pedestrian access between the two facilities. This will promote traffic and pedestrian safety, another purpose of the MLUL, and the Board concurs with the planner's opinion that the benefits in this regard outweigh, by a considerable degree, any detriment.

8. The variance pertaining to parking stall size, with a configuration commonly referred to as a hairpin design, may be considered for this corporate headquarters-type use. The configuration of the spaces in dimensions of 8½ feet by 18 feet and 8½ feet by 20 feet is increasingly becoming characteristic of the size of parking stalls in office and corporate complexes within Montvale. As the Board has noted in other approving resolutions, the subject property is not a retail-type of

operation with patrons carrying bundles and the presence of shopping carts. In a corporate office setting, the majority of the vehicles are single occupancy, with low turnover rates. The Board takes note of the fact that the size of the proposed parking stalls has been appropriate at this site and at similar developments, and the Board believes that the smaller stall size will continue to be adequate. The Board finds that this variance may be justified pursuant to N.J.S.A. 40:55D-70c(1).

9. The request for a variance pertaining to building height would permit an increase of 3.4 feet beyond the 35 foot height limitation, which is attributable to the mechanical equipment and screening on the roof and the definition of height in the Zoning Ordinance. It is to be noted that if the height of all the buildings were to be averaged, the 35 foot standard would be adhered to. It is to be noted that this building will not be visible from Chestnut Ridge Road, due to topography and its location at the easterly portion of the site, and will also be imperceptible from the Garden State Parkway due to landscaping. This variance may be justified under the c(2) standard inasmuch as the placement of the mechanical equipment on the roof and its attendant screening will promote a more desirable visual environment than locating it elsewhere.

10. The variance pertaining to number of spaces within the front yard and the side yard parking setback may also be justified under the c(1) and c(2) standards. The Board's findings with respect to the uniqueness of the subject site and its current design and configuration are equally applicable to these proposed deviations. The Board takes note of the fact that the plan as revised represents a far better alternative than the original plan, which provided for parking in the knoll area, which the Board found would detract from the attractiveness of the campus-like setting. These variances may also be justified consistent with the findings in the Master Plan strengthening Montvale's office parks and will further promote goals and objectives of the MLUL, including the general welfare, the provision of adequate light, air and open space, and the promotion of a desirable visual environment through good civic design and arrangements.

11. The final variance relates to the intrusion into steep slopes. As was noted by the applicant's planner, the slopes which would be impacted by the intrusion are not natural conditions but man-made slopes constructed at times that other improvements to the property were made. The benefits of the overall upgrading and improvement of the property will outweigh this deviation, which the Board concludes may be granted.

12. The Board is of the opinion that the plan for the expansion of office space on the property and the increase in parking constitutes a realistic approach to the upgrading of this office campus and allows the creation of additional office space, a new data center to meet the needs of the applicant, and additional parking will promote the objectives of the Master Plan designed to encourage creative design and development techniques to accommodate changing needs of the corporate community. The foregoing conclusions warrant a determination that the aforementioned variances may be granted without impairing the intent and purpose of the zone plan and Zoning Ordinance. The property will continue to adhere to the majority of bulk requirements applicable to the district. While the site is unique in its campus-type configuration design, it is nevertheless consistent with the character of the neighboring corporate development. The proposed additional landscaping will provide aesthetic benefits to the property and will mitigate, to the extent practicable, any impact that the aforementioned deviation relief might have on adjoining properties and rights-of-way.

13. Approval of the applicant's Environmental Impact Statement may be granted. The Board accepts the testimony of John Peel, the applicant's expert who reviewed site conditions and

indicated that there would be no impact on wetlands, which he described as the most critical resource, nor on woodlands, drainage conditions, wildlife, or the other criteria referenced in the standards for an EIS. The Board accepts this testimony that the project can be constructed without substantial impact to the environment.

14. With regard to the application for a soil movement permit, the Board concludes that the movement of the soil is necessary for the construction of the proposed improvements, that the applicant has complied with the procedures enumerated in the soil moving ordinance, and that the proposed operations will be in conformity with the standards established therein and may be conducted without adversely impacting upon existing soil and drainage conditions for the public health and safety.

15. Finally, the Board is of the opinion that site plan approval may be granted in that the applicant has complied, to the extent practicable, with the applicable requirements and design standards established by Ordinance. The proposal will permit an upgrading and efficient use of space within the subject site, while at the same time promoting both objectives of the MLUL and Master Plan, and accordingly the relief requested by the applicant for site plan approval, variances, and a major soil movement

permit may be granted.

BE IT FURTHER RESOLVED by the Planning Board of the Borough of Montvale that site plan approval, together with the aforementioned variances, waivers, approval of an Environmental Impact Statement, and a major soil movement permit, be and are hereby granted to the applicant subject to the following conditions:

1. Review and approval by the Board engineer of the plans revised to October 9, 2006, as well as the revised Stormwater Management Report dated October 10, 2006.

2. Approval by the Environmental Commission as to the landscaping plan as required as a consequence of the modifications to the site plan and approval by the Commission as to all aspects of the landscaping plan. Should the Commission deem additional plantings necessary, same shall be required to be installed in accordance with the timetable established by the Commission.

3. 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 for further consideration by the Board.

4. 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.

5. Compliance with recommendations made by the Police and Fire Departments of the Borough of Montvale.

6. Compliance with all present letter requirements of the Borough Engineer, future letter requirements of the Borough Engineer made pursuant to the Developer's Agreement to be entered into in accordance herewith, future letter requirements of the Borough 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.

7. 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.

8. Compliance with any other recommendations made by the Borough Engineer, Planner, or any other Borough Official having jurisdiction.

9. The applicant shall be required to comply with the design and site details as shown on all plans submitted through their respective revision dates. Any deviation from any such development designs or details shall require further review and approval by the Board.

10. Posting of a bond in such amount as determined by the Borough Engineer so as to guarantee performance of the work herein required and approved, as well as the maintenance of said work after completion.

11. 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 thereof. 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.

12. The applicant shall be required to comply with all

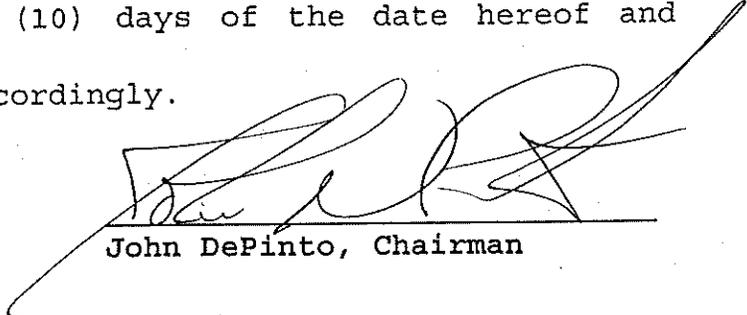
conditions of Chapter 104 of the Montvale Borough Code referable to soil movement operations, approval by the Police Department as to the route trucks will utilize to access the site and the route such vehicles will utilize to remove soil from the premises.

13. 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.

14. The hours of operation for soil movement operations shall be required to be reviewed by the Police Department.

15. Posting of a bond as required by Chapter 104-10 of the Borough Code in such amount as may be deemed to be necessary by the Board or Borough 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 DePinto, Chairman

Dated: November 7, 2006

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, November 7, 2006.

R. Lorraine Hutter
R. LORRAINE HUTTER, Secretary

Introduced by: Mr. Stefanelli

Seconded by: Mr. Vogt

BOROUGH OF MONTVALE

PLANNING BOARD

RESOLUTION GRANTING SITE PLAN
APPROVAL, VARIANCE RELIEF,
APPROVAL OF AN ENVIRONMENTAL IMPACT
STATEMENT, SUBDIVISION APPROVAL AND
A MAJOR SOIL MOVEMENT
PERMIT TO KPMG, LLP FOR PREMISES
DESIGNATED AS BLOCK 3102, LOT 1
BLOCK 3301, LOT 4, AND
BLOCK 2701, LOT 1

WHEREAS, application has been made to the Planning Board of the Borough of Montvale by KPMG, LLP (hereinafter "the applicant"), Three Chestnut Ridge Road, Montvale, New Jersey, for site plan approval, variance relief, approval of an Environmental Impact Statement (hereinafter "EIS"), subdivision approval, and a major soil movement permit relating to premises known as Block 3102, Lot 1, Block 3301, Lot 4, and Block 2701, Lot 1, all as depicted on the tax assessment map of the Borough of Montvale; and

WHEREAS, said applicant has requested that the Planning Board exercise its ancillary powers pursuant to N.J.S.A. 40:55D-60 and grant variance relief pursuant to N.J.S.A. 40:55D-70(c) and waivers pursuant to N.J.S.A. 40:55D-51; and

WHEREAS, an application has also been submitted for a

major soil movement permit; 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 properties are located on the easterly side of Chestnut Ridge Road, west of the Garden State Parkway and north of the Montvale-Woodcliff Lake boundary. Block 3102, Lot 1 comprises an area of 27.99 acres and is the corporate campus for the applicant. Block 3301, Lot 4 is owned by K. Hovnanian North Jersey Acquisitions, LLC and a portion of this land area is to be conveyed to the applicant pursuant to a previously approved minor

subdivision application. The applicant has acquired title to Block 2701, Lot 1 comprising 8.5 acres, formerly occupied by the Benjamin Moore headquarters, more commonly known as 51 Chestnut Ridge Road. The applicant seeks approval to construct in phases a two-story addition and additional parking and related site improvements to its main campus at 3 Chestnut Ridge Road. In addition, the applicant seeks to renovate the former Benjamin Moore building, which would be reduced in size from 57,000 square feet to 31,000 square feet and would be utilized as a data center. The parcels would be consolidated into a single lot for the applicant's corporate headquarters, a use that is permitted in the OR-2 District pursuant to §128-5.4 of the Zoning Ordinance.

2. The current use by the applicant of its facility at 3 Chestnut Ridge Road (Block 3102, Lot 1) is as an office campus with four buildings comprising, in the aggregate, 240,000 square feet of office space. Since 1983 this land area has received various development approvals from the Planning Board. A summary of these approvals is as follows:

A. By resolution dated May 3, 1983, site plan approval was granted to Imperial Sterling Ltd. to construct four (4) building units in a campus-style setting. Thereafter, by

resolution dated October 7, 1986 amended site plan approval was granted to the applicant's predecessor, Peat, Marwick, Mitchell & Co. to complete the construction of links to connect the four (4) buildings, as well as the construction of an enclosure for an emergency generator.

B. Amendatory site plan approval was granted to Peat, Marwick, Main & Co. on May 17, 1988 to permit a modification of the site plan to construct a patio terrace of approximately 1,700 square feet, together with lighting and landscaping at Building No. 3.

C. By resolution dated February 1, 2000 the applicant received approval to construct additional parking, together with pavement markings and "STOP" signs, pedestrian walkways and additional storm drainage facilities, lighting and landscaping in and around the parking areas.

D. By resolution dated May 20, 2003 amended site plan approval was granted to restripe the existing parking area, increasing the number of parking spaces by a total of 65 to 1,118. The restriping permitted parking spaces to have a width of 8 feet 6 inches, contrary to the 9 foot width requirement, and variance relief was granted from Section 128-3.1 in connection therewith.

E. On September 6, 2005 the applicant received a

major soil movement permit to permit the removal of silt material from an existing pond on the premises.

F. By resolution dated November 7, 2006 the applicant received approval to construct a fifth building comprising two stories having an area of 28,465 square feet to be connected to existing Building Nos. 4 and 3 by means of a proposed atrium. The majority of the space on the first level of this proposed new building would be used as a new data center. In addition, this approval permitted the increase of parking to 1,226 spaces. Variance relief was granted to permit coverage to increase to 44.98% from the existing 39.93%, for parking space size, building height, front yard parking, side yard parking setback, and disturbance of slope areas.

3. Under the new proposal of the applicant, Building No. 5 would be increased in size from the previously approved 28,465 square feet to 48,000 square feet and be joined to Building Nos. 3 and 4 by means of an atrium. The atrium connecting the various buildings would comprise 8,400 square feet. Another building, to be known as Building No. 6, would be added to the west of Building No. 5 and to the north of Building 2, which would also be connected to Building Nos. 3, 4, and 5 by means of an atrium. Proposed Building No. 6 would have an area of 21,600

square feet. Both Building Nos. 5 and 6 would be two stories and 38.4 feet in height.

4. The former Benjamin Moore building comprising 57,000 square feet will be replaced with a 31,000 square foot two-story building. The existing parking to the front of this property will be modified with re-striping and new curbing and a driveway located in the southwest corner of the current Benjamin Moore site will be eliminated. This parking area and driveway will be connected to the main KPMG campus by means of a new driveway to be connected just north of the wetlands area located between the two properties. Access to the easterly side of the proposed new building on the Benjamin Moore lot will be provided by means of an extension of the access drive, will wrap around the east side of the building between the building itself and the Garden State Parkway.

5. The applicant's proposal involves various phases of construction, with the new 31,000 square foot replacement of the Benjamin Moore building being in Phase 1, with Phase 2 comprising the addition of Building Nos. 5 and 6 to the main campus. The total building floor area upon completion of all construction will be 377,465 square feet, a floor area ratio ("FAR") of 23.77%, less than the maximum 25% permitted in the District, while the main

KPMG campus as approved under the November 7, 2006 resolution permitted an increase in coverage to 44.98% for that portion of the property. Presently, considering such approval and the Benjamin Moore existing condition, coverage is 43.49%. The proposed coverage would increase to 44.98%. The two new buildings on the main campus would require a variance for building height. A variance for parking space size is also necessary.

6. At the initial public hearing held on January 23, 2007, the applicant was represented by Antimo A. Del Vecchio, Esq. who provided the Board with an overview of the development proposal. The main campus of the applicant and the former Benjamin Moore property now owned by it would be consolidated and he described the proposed two new buildings on the main campus, the reconstruction of the Benjamin Moore facility, and the various approvals required, including the variances for coverage, height of two buildings, and parking stall size. According to Mr. Del Vecchio, the intent of the applicant is to maximize the utility of the site in light of existing improvements. The new building on the Benjamin Moore property would be utilized as a data center, which would be a stand-alone facility intended to withstand any crisis, such as a global disaster. The current former data center on the main campus would be converted to additional office space.

7. Marked into evidence were the following exhibits:

- Exhibit A-1 Notice documents
- Exhibit A-2 The application binder
- Exhibit A-3 Engineer drawings prepared by SNS Architects & Engineers, PC containing 24 sheets and dated December 7, 2006
- Exhibit A-4 Environmental Impact Statement prepared by PK Environmental and dated December 2, 2006
- Exhibit A-5 SNS correspondence to Beattie Padovano dated December 20, 2006 calculating building height
- Exhibit A-6 SNS Stormwater Management Report
- Exhibit A-7 SNS correspondence to Beattie Padovano dated December 18, 2006 pertaining to soil movement calculations
- Exhibit A-8 TRC traffic report

8. The applicant presented as its first witness John Peel, an environmental scientist who was qualified in this field. It was noted that Mr. Peel had previously provided testimony in connection with the prior KPMG application on August 15, 2006. He testified that in addition to visiting the main campus, he also toured the Benjamin Moore site and referenced the EIS marked into evidence as Exhibit A-4. Contained therein is a Letter of Interpretation (hereinafter "LOI") issued for the KPMG site in

2004. A verbal approval has been received for a LOI for the Benjamin Moore site and he testified that the Department of Environmental Protection (hereinafter "DEP") had agreed to the delineation. The Board was advised by Mr. Peel that in the preparation of the EIS he focused on the stormwater management issue and indicated that from an environmental and water quality standard, the proposal complies with DEP's best management practices. He stated that he was familiar with the EIS Ordinance and that based upon his review and analysis, the proposal will not have a negative impact and only incidental or minor impacts on the area and will not be contrary to the EIS Ordinance. Board engineer Berge V. Tombalakian stated that he had reviewed the EIS report and raised an issue as to existing and proposed underground storage tanks and that his questions will be addressed to the project engineer.

9. The applicant called as its next witness John Lignos and marked into evidence as Exhibit A-9 was an architectural presentation of the proposed project. He indicated his previous familiarity with the main campus at 3 Chestnut Ridge Road and that he has also become familiar with the additional site at 51 Chestnut Ridge Road. He referenced the prior approval for the data center between Building Nos. 3 and 4 and that the applicant

has recently purchased 51 Chestnut Ridge Road, which is proposed to be adaptively reused for the data center instead of on the main campus. The existing structure of 57,000 square feet comprises two floors and a basement. However, a data center needs 15 foot high ceilings, rendering the existing building being unable to be converted to this purpose. The existing basement level will remain and the building reconstructed to provide a 15 foot high floor area, with a total of 31,000 square feet. The lower floor areas will comprise mechanicals for the data center, with the office for the data center on the main floor.

10. The architect also focused in his testimony on the expansion at the main campus, referencing the two new proposed buildings or pods aggregating 79,600 square feet which would be connected via a proposed atrium of 8,400 square feet to the remaining buildings. He noted the difference in elevation of eight (8) feet between existing Building No. 4 and proposed Building No. 5 and that the atrium allows the connection of the buildings. Drawing Y-0 contains a zoning schedule which has been corrected to reflect total floor area, inclusive of both sites, of 349,000 square feet and a FAR of 21.99%. A total of 3.94 parking spaces would be provided per 1,000 square feet.

11. Marked into evidence as Exhibit A-10 was an exterior

view of the main entrance depicting the main campus and the proposed two new pods which would have the same or similar granite, metal, cladding, and glass as the existing buildings. An SNS material board was marked into evidence as Exhibit A-11 and a rendering of the proposed reconstructed building at 51 Chestnut Ridge Road was marked into evidence as Exhibit A-12. He noted that the existing facade of the former Benjamin Moore facility has a dated look to it and he described the proposed new construction and materials to be utilized, as well as the metal canopy and facade, green tinted glass and anodized louvre to match the proposed metal facade material.

12. Again referencing the expansion of 3 Chestnut Ridge Road, the architect indicated that the two new buildings would not be visible from adjoining roadways and to support his conclusion, he provided an exhibit, A-13, a depiction of the site from the Garden State Parkway looking in a westerly direction, with photos on this exhibit taken at the end of summer 2006.

13. Marked into evidence as Exhibit A-14 was an elevation of the proposed reconstructed building at 51 Chestnut Ridge Road depicting the colors of concrete block, the front area offices, back data center, the mechanicals and data center floor space. Equipment on the rooftop of the data center would be 4,400

square feet of area, or 15.9% of the total roof area, less than the 25% maximum. The height of the reconstructed building would not exceed 38.4 feet, with the need for the additional height pertaining to the rooftop mechanicals and screening, and he indicated that the rooftop mechanicals would not be visible from the ground or adjoining land areas. The parapet of the roof has been designed so as to adequately screen the rooftop mechanicals.

14. At the continued public hearing held on February 20, 2007, the applicant provided testimony from Kenneth A. Newman who was qualified as a traffic engineer and whose report had previously been marked into evidence as Exhibit A-8. He noted his prior work on the KPMG site in 2006 and that he revisited the site and had conversations with the applicant as to employee population. He also utilized background information in connection with the K. Hovnanian (The Rink) approval adjoining the KPMG site to the south and projected counts based upon build outs to the year 2009. His analysis was premised upon the issue as to how much traffic the expansion will generate.

15. In his testimony, Mr. Newman indicated that data is available as to the KPMG site and he consulted the Institute of Transportation Engineers ("ITE") handbook and undertook an analysis of ITE trip generations, as well as actual counts at the

'KPMG site. Presently, there are 1,017 employees and upon completion of the reconstruction of the Benjamin Moore site and the addition of the two new buildings, it is estimated that 1,575 persons will be employed on the entire site.

16. Table No. 1 of Exhibit A-8 contrasts the actual versus ITE estimated counts in the a.m. peak hour and p.m. peak hour. During the a.m. peak hour, the ITE handbook estimates 431 entering vehicles, with the actual count being 421, and ITE estimated 59 departures in contrast to the 28 counted during the same time frame. During the p.m. peak hour, departure data is also similar, with 362 under the ITE handbook and 357 counted. The respective entering counts were 74 (ITE) and 29 counted. Table No. 2 reflects the employee increase to 1,575, with 630 inbound vehicles during the a.m. peak and 534 departing vehicles during the p.m. peak. These Tables were marked into evidence as Exhibit A-15.

17. The witness next assigned vehicular traffic directions to the north and south on Chestnut Ridge Road. According to Mr. Newman, and as indicated on Figure 3 in his report, currently approximately 45% of the vehicles arrive from the north and 55% from the south, with most accessing the site at the northerly driveway where the bulk of the parking is located.

At departure times, 57% of the vehicles turn left onto Chestnut Ridge Road and 43% turn right to go north. The southerly drive gets the bulk of the activity, but he noted that the proposed signal at the northerly drive, which will soon be activated, was not operational at the time the counts were done. Figures 3 and 4 from the report were marked into evidence as Exhibits A-16 and A-17. The engineer noted that the site will soon have traffic signalization controls and that the temporary signal will ultimately be relocated to the new proposed northerly drive, which will be for two-way traffic, and the southerly drive at Benjamin Moore will be eliminated.

18. The witness discussed Figure 5 of Exhibit A-8, the future arrival distribution pattern, with an enlarged version of this sheet marked into evidence as Exhibit A-18. According to Mr. Newman's analysis, 55% of vehicles would arrive from the south and 45% from the north, with 85% of the arrivals from the north entering either from the center or southerly drive, with the balance of the distribution being 30% at the southerly drive and 15% at the northerly drive. An enlarged version of Figure 6, the future departure distribution, was marked into evidence as Exhibit A-19 which evidences that 43% of departing vehicles would proceed in a northerly direction and 57% to the south. Relatively few

vehicles would make a right turn at the northerly drive, with most right turns being at the center drive where enhanced parking areas would be located. The southerly drive would represent 41% of the departures, the center drive 24%, all of which would be right turns, and at the north 35%.

19. It was the opinion of Mr. Newman that the two signalized drives will operate well and in an efficient manner. He discussed the revised access drives to accommodate increased vehicular movements to and from the site, as well as two sites to the west on Chestnut Ridge Road. He also discussed the relocation of the traffic signal control to the northerly drive, at which time left turn departures will be permitted. The southerly access drive under traffic signal control will continue.

20. In his analysis, Mr. Newman considered three other approved developments nearby, including the BMW expansion and Advance Group to the south which will also generate traffic on Chestnut Ridge Road. He also considered the K. Hovnanian/Four Seasons approved development for The Rink property. Table 3 in the Keyes report evaluates trip generation, with slightly higher volumes in the morning and afternoon peak hours than those projected in the Four Seasons (The Rink) traffic report, although the differences are negligible. In drafting his report, Mr.

Newman stated that he reviewed the site plan, parking layouts, internal traffic circulation and related issues. The KPMG site will remain similar to what presently exists insofar as on-site traffic circulation, except for the addition of parking spaces. The Benjamin Moore portion of the property will have its southerly drive eliminated and the northerly drive converted to accommodate both in and outbound traffic. On the easterly portion of the site there will be a connecting roadway or drive between the two properties and curbing will be added to clearly delineate this driveway. Mr. Newman stated that the additional traffic to be generated from the expansion can be accommodated by the existing roadway network in a safe manner and his recommendations were accepted by the applicant's site engineer.

21. Board planner Richard Preiss expressed concern as to the increase in coverage, but a decline in the number of parking spaces, which number 1,431 as existing and currently approved, would be reduced to 1,374, a loss of 57 spaces under the applicant's proposal. There was also discussion as to whether the center drive should be vacated at such time as the northerly drive is signalized.

22. At the outset of the continued public hearing held on April 9, 2007, there was marked into evidence as Exhibit A-20

SNS revised drawings consisting of 26 sheets with a revision date of March 28, 2007, and as Exhibit A-21 a reduced and colorized version revised to various dates, the most recent of which was March 28, 2007. The applicant's architect was recalled and testified that the drawings do not alter the proposed expansion of the 3 Chestnut Ridge Road site with two new buildings, with the modifications pertaining to the renovations of the former Benjamin Moore building at 51 Chestnut Ridge road for a data center.

23. More particularly, Mr. Lignos testified that information technology personnel deemed the existing footprint to be difficult to work within and that a reinforced structure would be required, with new steel sufficient to carry weight requirements. He referred to Drawing D-2, which depicts the proposed data center, and that the plan is that half of the building will be new as a new set of columns are required, although the footprint of the old building will be maintained. Drawing D-4 depicts the eastern portion of the site facing the Garden State Parkway and the proposed building's easterly elevation. He described improvements to be made, including the addition of glass and cleaning and refinishing with precast on the existing facade. Glass and aluminum frames will be changed to meet energy code requirements, with the height to be maintained at

just under 38.4 feet, which is actually nine (9) inches less than under the prior plan.

24. According to Mr. Lignos, the driving force behind the changes pertaining to the former Benjamin Moore site is the new equipment required for the data center and the increased weight requirements. Although the footprint was satisfactory, the existing structural system would have an inability to handle the weight requirements. The new data center will have 41,200 square feet, an increase from the 31,000 square feet previously proposed. Aggregate parking will be 1,374 spaces, or 3.82 cars per 1,000 square feet, a reduction from the 3.94 cars per 1,000 square feet, which is attributable to the additional square footage.

25. At the outset of the continued public hearing held on May 22, 2007, there was marked into evidence as Board Exhibit 1 the planning report of Richard Preiss dated January 16, 2007, as Board Exhibits 2 and 3 the Boswell McClave reports of January 10, 2007 and April 25, 2007, and as Board Exhibit 4 the Environmental Commission report of February 27, 2007.

26. The applicant called as its next witness Peter Steck, a licensed professional planner who was qualified in this field. Mr. Steck testified as to his familiarity with the neighborhood, his review of the application, land use documents

including the Master Plan, as well as the plans revised to April 17, 2007. He discussed the development plan on the 28 acre parcel at 3 Chestnut Ridge Road which has been expanded to include the former Benjamin Moore property and its 8.31 acres. The parcels are to be integrated into one unified tract, with the plan requiring three dimensional variances.

27. More particularly, the proposed variances relate to hairpin striping of spaces having dimensions of 8½ feet by 20 feet, building heights of 38.4 feet consistent with the height of other buildings on the campus, and an increase in impervious coverage to 44.98%. Presently, this 44.98% is applicable to KPMG's main site, with the Benjamin Moore tract exhibiting a current coverage of 38.4%. The proposed coverage, once the two tracts are combined, will be 44.98 percent. The lot line dividing the two properties would be eliminated in connection with the "reverse" minor subdivision aspect of the application. The planner also noted that the floor area ratio standard applicable to the OR-2 Zone will be satisfied, and will be at 22.62% for the entire tract, less than the 25% maximum.

28. The planner indicated that he reviewed the 1997 Master Plan and the Reexamination Report dated February 15, 2005, with the latter report reflecting a concern that the existing

office supply was becoming dated, being characterized by inadequate floor to ceiling heights, HVAC problems, and a need to address the quality and upgrades. The Reexamination Report expresses a concern that replacement tenants will not be of the Class A type that have been historically found within the Borough. The applicant's proposal would represent an improvement of an existing office campus and promote the objectives of upgrading a corporate complex, which would continue to be maintained by a Class A tenant.

29. The planner next proceeded to address the variances for parking space size, building height, and impervious coverage. With respect to the parking space dimensions, it was his opinion that the hairpin design works very well, particularly in a non-retail setting where items are not being moved into and out of vehicles and shopping carts not being present. The slightly smaller hairpin design lessens impervious coverage and water runoff and provides a better opportunity for landscaping and improved drainage. It was his opinion that the benefits of this design would outweigh any detriments. He also justified the building height variance on c(2) grounds, noting that the proposed height of 38.4 feet exceeds the 35 foot maximum. The planner referred to footnote 1 of the Zoning Limiting Schedule, which

requires that the height be measured to the highest point of the building. It is to be noted that this footnote provides the Planning Board with guidance as to whether deviation relief should be granted in connection with rooftop appurtenances with such criteria, including appropriate screening consistent with the architect of the building and that no more than 25% of the area of the roof be devoted to such fixtures. The planner noted that the site will constitute a large integrated campus with various buildings, that 38.4 feet is a height that has been approved for other structures, that the increase will not be visible or obtrusive, and that the purpose is to hide the rooftop appurtenances and not to increase square footage. The height will match the height of existing buildings and these factors taken in the aggregate, he believes, requires a conclusion that the benefits will outweigh any detriment.

30. The planner next addressed the variance pertaining to impervious coverage, stating that this relief may be granted under both the c(1) and c(2) standards. Addressing the c(1) criteria, Mr. Steck stated that the development plan involves the retrofitting of an existing campus and integrating new and reconstructed structures with existing conditions. He noted that environmental features of the property, such as a pond and natural

wetlands, results in hardship and practical difficulties in the development of the site, which conditions cause buildings and paved areas to be spread out over a large area.

31. With regard to the c(2) criteria, Mr. Steck testified that the benefits of relief outweigh any detriments and that the upgrading of the property fits squarely within the goals of the Reexamination Report in the modernization and upgrading of corporate complexes designed to maintain first class tenants. He also referred to benefits pertaining to traffic circulation and the linking of the two sites together, as well as with the linkage of the residential development to the south on The Rink property. These improved traffic linkages and integration of the buildings permits the elimination of a curb cut onto Chestnut Ridge Road resulting in an overall improved traffic design. According to the planner, the variances will meet the negative criteria and that the site will continue to blend in with the surrounding area, that the development addresses stormwater management, will provide improved landscaping and result in an overall upgrading of the site. He also noted that the two new buildings designated as Building Nos. 5 and 6 at 3 Chestnut Ridge Road, plus the reconstruction of the former Benjamin Moore building, are located quite a distance from Chestnut Ridge Road, providing a further

basis for finding that the negative criteria has been met.

32. Board planner Preiss referred to his report of January 16, 2007 (Board Exhibit 1), noting that the main issues relate to the three variances. He also expressed a concern as to the decrease in the parking ratio. He indicated that Mr. Steck has addressed most of the issues raised in his report. Board engineer Tombalakian testified that the hairpin striping proposed for the design of the parking spaces provides better guidance to motorists and is appropriate for an office complex and other non-retail type uses, which opinion was concurred in by Mr. Preiss.

33. Architect John Lignos was recalled as a witness and marked into evidence as Exhibit A-22 was the subdivision plan prepared by The Reynolds Group, Inc. dated January 29, 2007 consisting of two sheets and which depicts the elimination of a lot line and the proposed new land area comprising 1,482,369 square feet, or 34.03 acres, representing the merger of the two properties, with the plan indicating the elimination of the lot line. Also marked into evidence were revised drawings prepared by SNS Architects & Engineers consisting of 26 sheets and revised to April 17, 2007 (Exhibit A-23), and as Exhibit A-24 renderings of the exterior view of the main entrance, the landscaping development plan, and the existing and proposed exterior rear

views pertaining to areas adjoining the Garden State Parkway.

34. In his testimony, Mr. Lignos described the design and facade of the data center and how it will appear from the Garden State Parkway. He noted that the front portion of the building will be maintained, with the rear section being demolished and reconstructed. He described the granite finish system and the proposed new tinted green glass, which he said will compliment the granite face of the new structures. Marked into evidence as Exhibit A-25 was a color version of Drawing B-4, and as Exhibit A-26 photo boards of the existing and proposed conditions, with the architect describing the landscaping, which will fill in the rear area of the building adjoining the Parkway. Board planner Preiss complimented Mr. Lignos on his design of adding glass and additional landscaping which will hide the part of the building least attractive and will represent an overall improvement.

35. The applicant called as its next witness Steven Napolitano, a licensed professional engineer who prepared the engineering drawings and had participated in the prior application pertaining to 3 Chestnut Ridge Road in 2006. He first described Drawing Y-1, the existing conditions, noting the interconnection of the four buildings comprising a floor area of 240,000 square

feet, with parking on-grade and to the north and south, an interior loop road and the current means of ingress and egress to Chestnut Ridge Road. This site comprises 28.13 acres. The Benjamin Moore site contains an existing building of 57,000 square feet, with parking to the west. The land area of the two sites totals 36.44 acres. Drawing Y-1A depicts the previously approved development for 3 Chestnut Ridge Road, with a new Building No. 5 and an atrium, as well as parking areas.

36. The engineer next focused on Drawing Y-2, the proposed changes to the site. With regard to the headquarters site at 3 Chestnut Ridge Road, two new two-story office buildings, together with an atrium, will be interconnected with the other structures, with the new buildings and atrium area aggregating 78,000 square feet, inclusive of 8,400 square feet of atrium area which will not be utilized for office purposes. He described the new parking areas and the interior driveway intended to connect the two sites, with the interconnection design premised in part by Board professionals and designed by the Keyes firm. He described the grass paver area to the east of the proposed new data center having a width of sixteen (16) feet leading to the northeast corner of the building, which area will allow a maintenance vehicle to maintain a generator and transformer. He indicated

that the grass paver would be sufficient to be utilized by the vehicle required to access these structures. A new 8 foot 4 inch loading door and dumpster will also be added to this site. He also described the ramp system, the total number of parking spaces (1,374), of which 24 will be the handicapped stalls required. The ramp is intended to bring the property into compliance to allow handicapped accessibility to the new data center.

37. Drawing Y-4 depicts the location of the 10,000 gallon fuel storage tank intended to serve the generator and which will meet all requirements of the DEP, being double wall with an appropriate alarm system.

38. The engineer again returned to Drawing Y-2 discussing the traffic field to the west of the data center and its re-striping with a hairpin design and the inclusion of landscaping improvements, including tree plantings within the parking area consistent with Ordinance requirements. The southerly curb cut to Chestnut Ridge Road will be eliminated and referring Drawing Y-1 he indicated that this southern entrance will be removed, with two-way traffic on the existing northerly access drive which will remain at a width of twenty-four (24) feet and will align with the drive at 50 Chestnut Ridge Road. The engineer described the lighting plan which involves the relocation of

existing poles and no wholesale addition of lighting. The landscaping plan provides for screening along Chestnut Ridge Road, which will eliminate the visibility of the parking lot from the right-of-way. The size of the stalls and design, he believes, may be utilized safely and has not been a problem at other similar office sites.

39. The engineer next described the proposed height for new Building Nos. 5 and 6 and referred to the average grade for the existing buildings. He noted that the height is required to screen the mechanicals which will occupy less than twenty-five (25%) percent of the roof area. The screening will compliment the buildings, with the height consistent with that of the existing structures, and he noted that the height of the two new buildings will actually be less than Building No. 2. The need for the height of the new data center is also attributable to rooftop screening.

40. Addressing the issue of soil movement, Mr. Napolitano referred to Exhibit A-7, with soil movement necessitated by the area of the new buildings, the underground detention system, and the construction of access drives. There will be approximately 3,630 cubic yards of cut and 6,293 cubic yards of fill, with a net import of 2,663 cubic yards of fill.

Soil operations will be conducted consistent with requirements of the Bergen County Soil Conservation District and Chapter 104 of the Borough Code.

41. The minor subdivision application relates to the removal of the lot line and the consolidation of the two parcels into a single tract. The engineer referenced Drawing Y-2A, the construction phasing plan, with Phase 1 being the construction of the new data center and handicapped parking and the interconnecting drive with the headquarters parcel. Phase 2 will involve the re-striping of the data center parking area and the removal of the existing access drive, as well as the re-striping of the parking area to the south of Building No. 1. The final phase will relate to the construction of the two new buildings, the atrium and related parking. It was also noted that the existing tank to the north of Building No. 4 is to be removed and replaced with an above-ground tank for the generator.

42. Discussion next ensued pertaining to the connection of the former Benjamin Moore site to property to the north to allow for joint access onto Chestnut Ridge Road at a signalized intersection. The plans will be revised to show an area of connection which will result in an upward adjustment in impervious coverage.

43. Board engineer Tombalakian discussed his report of April 25, 2007 (Board Exhibit 3), with the applicant's engineer not disputing any of the issues raised therein. Certain soil movement issues are required to be addressed, as well as information regarding the underground storage tank and routing calculations for the detention facility. The applicant's engineer agreed to address these issues.

44. In addition, the Environmental Commission report (Board Exhibit 4) will require the applicant to submit a revised landscaping plan, and it was noted that the location of the containers for garbage and recycling (Board Exhibit 6) have been provided on the revised plan. The refuse areas will, according to Mr. Napolitano, be serviced three times per week. The applicant's engineer will be required to provide a pro forma bond estimate for review and approval by the Board engineer.

45. The applicant presented as its next witness Frank J. Erickson, Jr., its National Director of Architecture and Construction. He advised the Board that the emergency generator will be served by diesel fuel which, according to the applicant's information technology consultant, provides a greater level of redundancy. He also indicated that the applicant currently has

1,240 employees in Building Nos. 1 to 4 and that the current 1,118 spaces on-site are adequate, and that the average number of available spaces per day is 150 based upon parking counts done at 10:00 a.m. and 2:00 p.m. The average occupancy level is seventy-five (75%) percent of the employee staff.

46. The applicant projects that the site, once redeveloped, will have approximately 1,550 employees. It anticipates that the 1,374 parking spaces will be adequate and that to have full occupancy of the spaces would require an eighty-nine (89%) percent attendance of personnel, which is more than what exists currently. He noted that the seventy-five (75%) percent occupancy, or attendance by personnel on an average day, is related to off-site assignments, business travel, vacations and illness. Mr. Erickson indicated that the applicant's plan is realistic in that it has been tracking parking characteristics and counts over the past year on a regular basis.

47. Marked into evidence as Exhibit A-27 were revised drawings prepared by SNS containing a revision date of May 30, 2007. These revised plans are intended to address issues raised in the Board's engineering report of April 25, 2007 (Board Exhibit 3) and other matters discussed at the May 22, 2007 hearing. It was noted by Mr. Napolitano that the minor subdivision plan has

been provided and that the landscaping plans have been submitted to the Environmental Commission. The applicant has also solicited comments from the Fire Department as to the ability to access certain interior portions of the property.

48. In addition, soil movement calculations and quantifications have been provided, as well as information pertaining to the 10,000 gallon underground storage tank and the fact that the existing 2,000 gallon underground tank is to be removed and replaced by the above-ground tank. In terms of stormwater management, routing calculations for the detention facility have been provided and a full size copy of the drainage area map has also been furnished.

49. Marked into evidence as Exhibit A-28 was revised Drawing No. Y-8 which depicts a proposed egress easement to be granted to the property to the north of Block 2701, Lot 1, being known as Lot 2, to allow access to Chestnut Ridge Road from such property at the location of a future traffic signal as depicted on the plan. This revision is intended to comport with the concept plan proposed for improvements at this location dated May 31, 2007 which was marked into evidence as Exhibit A-29. The overall design is intended to be consistent with the plan of the County of Bergen for improvements in this area. As a result, overall site

coverage would slightly increase to 45.48% from the 44.98% without a permanent access easement.

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 for site plan approval which proposes the consolidation of the KPMG headquarters site (Block 3102, Lot 1) with the former Benjamin Moore property to the north (Block 2701, Lot 1), which is now owned by KPMG. Under the plan, the lot line will be eliminated and the parcels consolidated into a single tract comprising a land area of approximately 36.44 acres. Two new buildings will be constructed at the KPMG site, together with an atrium, with the new buildings being interconnected with four other buildings on this headquarters property. The existing Benjamin Moore building will remain, although the building will, in large part, be removed with a new building being constructed which will be utilized by the applicant as a data center. Other improvements proposed involve the modification and re-striping of parking, construction of an access road between the two sites, the elimination of a driveway at the southwest corner of the Benjamin Moore site, together with additional landscaping throughout the

property.

2. The Board has noted that in 2006 KPMG received approval to construct a fifth building on its headquarters site, together with additional parking which required certain variances, including relief to permit coverage to increase to 44.98%.

3. Under the within application, three variances are required, including relief from the impervious coverage requirement. Under the plan, the entire site, inclusive of the former Benjamin Moore property, would have coverage of 44.98%¹, the same percentage previously approved for the KPMG site in 2006. Other variances pertain to the design and size of parking spaces, which would be 8½ feet by 20 feet in size and be characterized by what is commonly referred to as the "hairpin" design. The final variance relates to building height for the new structures, which would be two stories and 38.4 feet, in excess of the 35 foot requirement. It is to be noted that the 2006 approval also granted variances for parking space size and building height.

4. The Board has carefully considered the applicant's

¹This computation of coverage does not include the additional coverage implicated as a result of the access easement relating to the north of Block 2701, Lot 1, known as Lot 2. As a result, under this plan, coverage will increase to 45.48% (see ¶49, pp. 31-32).

request for variance relief, the testimony of the applicant's planner, as well as the guidance provided to the Board by its planner. First, with respect to the issue of impervious coverage, in its consideration of this variance the Board has, as it has done in the past, balanced the need for compliance with this requirement with the goals and objectives detailed in the Master Plan and Reexamination Report pertaining to the Borough's office parks which expresses a concern that certain complexes are becoming dated and as a consequence, single occupancy and high-quality users may be more difficult to attract in view of the changing office environment pertaining to utilization of space.

5. The applicant's planner noted that the proposed modification to this site, representing the consolidation of two complexes, will result in a significant upgrading of the property squarely within the goals and objectives of the Reexamination Report. The Board is of the opinion that the coverage variance may be justified under N.J.S.A. 40:55D-70c(2) since goals and objectives of the Master Plan will be advanced, as well as purposes of the MLUL, including the development of land consistent with the public safety and welfare, the providing of adequate light, air and open space, and the promotion of a desirable visual environment, all purposes of the MLUL as set forth in N.J.S.A.

40:55D-2. The variance pertaining to impervious lot coverage may also be justified under the c(1) standard. There are certain exceptional conditions and practical difficulties which limit, to some degree, the potential redevelopment of the property, including a pond or retention area and the presence of wetlands which, as Mr. Steck noted, requires that the buildings and paved areas be spread out more. These environmental features significantly impact the retrofitting of an existing campus and the construction of new buildings and ancillary improvements. For these reasons, the Board believes that the impervious coverage variance may be justified on c(1) grounds.

6. With respect to the variance for building height with 38.4 feet proposed for the new buildings, the Board notes that this height is consistent with the height of other buildings on this corporate campus. In large measure, the height is necessitated as a result of the location of equipment on the rooftops of the structures and the need for screening thereof. It is to be noted that footnote 1 of the Limiting Schedule details guidance to the Planning Board as to any deviation from height limitation. The criteria therein provides that no more than twenty-five (25%) percent of the roof area be devoted to particular appurtenances, that screening is provided so as to

preclude visibility from surrounding streets and properties and that it is not feasible to locate such appurtenances elsewhere. The Board is of the opinion that when the applicant's proposal is viewed in the light of this criteria, that a height variance may be granted. Furthermore, this relief may be granted under the c(2) standards inasmuch as the same principles relating to the impervious coverage are equally applicable to this relief. Furthermore, granting of the height variance will allow the screening of the rooftop appurtenances and will be visibly imperceptible from both Chestnut Ridge Road and the Garden State Parkway, as well as other properties. In addition, the building site topography is considerably lower than Chestnut Ridge Road, which serves as an additional basis for relief.

7. The variance relating to the size of the parking spaces may also be justified. The applicant's planner noted that the hairpin design works well and that the parking areas are not retail spaces and do not have a heavy turnover with patrons moving goods into and out of vehicles. The Board further accepts the testimony of Mr. Steck that allowing a width reduction of one-half ($\frac{1}{2}$) foot allows a better opportunity for improved landscaping and drainage. As the Board previously found in connection with the KPMG approval in 2006:

"The variance pertaining to parking stall size, with a configuration commonly referred to as a hairpin design, may be considered for this corporate headquarters-type use. The configuration of the spaces in dimensions of 8½ feet by 18 feet and 8½ feet by 20 feet is increasingly becoming characteristic of the size of parking stalls in office and corporate complexes within Montvale. As the Board has noted in other approving resolutions, the subject property is not a retail-type of operation with patrons carrying bundles and the presence of shopping carts. In a corporate office setting, the majority of the vehicles are single occupancy, with low turnover rates. The Board takes note of the fact that the size of the proposed parking stalls has been appropriate at this site and at similar developments, and the Board believes that the smaller stall size will continue to be adequate. The Board finds that this variance may be justified pursuant to N.J.S.A. 40:55D-70c(1)."

This finding is equally applicable to the within proposal.

8. The forgoing variances may be granted without substantially impairing the intent and purpose of the zone plan and Zoning Ordinance. More particularly, the relief will have no negative impact on the character of the property, but rather the proposal presents an opportunity for the upgrading and enhancement of a significant corporate site within Montvale. The two formerly distinct parcels will now be linked in a campus-like setting and traffic conditions will be enhanced as well, including the elimination of a curb cut on Chestnut Ridge Road. Improved

landscaping, particularly within parking areas and adherence to stormwater management standards, also permit a determination that there will be no detriment to the zone plan or Zoning Ordinance. The conditions implicated by the variances will barely be perceptible, and the fact that the property is significant in size with buildings situated a considerable distance from roadways and adjoining properties, necessarily requires a conclusion that such conditions provide a basis for determining that the negative criteria have been satisfied.

9. The Board is of the opinion that the plan for the consolidation of these properties and the expansion of office space, construction of a new data center, the modifications to traffic circulation and parking will promote the objectives of the Master Plan and Reexamination Report designed to encourage an upgrading of office parks within the Borough, as well as promoting the creative design and development techniques to meet the changing needs of a corporate community. These conclusions further warrant a determination that the variances sought may be granted without impairing the intent and purpose of the zone plan and Zoning Ordinance. The property will also continue to adhere to the majority of bulk standards applicable to the OR-2 Zone. The site will continue to be utilized consistent with the character of

corporate development within the Borough. The overall upgrading and improvement of the site, together with the additional landscaping, will provide aesthetic benefits to the property and will mitigate, to the extent practicable, any impact that the permitted deviation relief might have on adjoining properties and rights-of-way.

10. Approval of the applicant's Environmental Impact Statement may be granted. The Board accepts the testimony of John Peel, the applicant's expert who reviewed site conditions and indicated that there would be no impact on wetlands, which he described as the most critical resource, nor on woodlands, drainage conditions, wildlife, or the other criteria referenced in the standards for an EIS. The Board accepts this testimony that the project can be constructed without substantial impact to the environment.

11. With regard to the application for a soil movement permit, the Board concludes that the movement of the soil is necessary for the construction of the proposed improvements, that the applicant has complied with the procedures enumerated in the soil moving ordinance, and that the proposed operations will be in conformity with the standards established therein and may be conducted without adversely impacting upon existing soil and

drainage conditions for the public health and safety.

12. Finally, the Board is of the opinion that site plan approval may be granted and that the applicant has complied, in large measure, with the applicable requirements and design standards established by Ordinance. The proposal will permit the applicant to have a significant and substantial corporate complex on a property which will be upgraded and improved aesthetically. The application will foster goals and objectives of the Master Plan that encourage the upgrading of corporate office parks and the need to provide opportunity to add floor area, parking and other improvements so that such complexes continue to be economically feasible and attractive. The within application accomplishes these objectives and will, as noted by the Board's planner in his report, improve building design, landscaping, traffic and related conditions. For these, as well as the reasons above-stated, the relief requested by the applicant for site plan approval, minor subdivision approval, variances, approval of an Environmental Impact Statement, and a major soil movement permit may be granted.

BE IT FURTHER RESOLVED by the Planning Board of the Borough of Montvale that site plan approval, minor subdivision approval, together with the aforementioned variances, 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. The plans shall be revised so as to depict the County roadway improvement plan, a means of egress to the property to the north of Block 2701, Lot 1, and a revised impervious coverage calculation required as a result of such linkage or connection to the property to the north. The access easement shall be substantially as depicted on the June 5, 2007 SNS Drawing Y-8, and no further to the east as shown.

2. Approval by the Environmental Commission as to the landscaping plan as required as a consequence of the modifications to the site plan and approval by the Commission as to all aspects of the landscaping plan. Should the Commission deem additional plantings necessary, same shall be required to be installed in accordance with the timetable established by the Commission.

3. 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 for further consideration by the Board.

4. 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.

5. Compliance with recommendations made by the Police and Fire Departments of the Borough of Montvale.

6. Compliance with all present letter requirements of the Borough Engineer, future letter requirements of the Borough Engineer made pursuant to the Developer's Agreement to be entered into in accordance herewith, future letter requirements of the Borough 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.

7. 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.

8. Compliance with any other recommendations made by the Borough Engineer, Planner, or any other Borough Official having jurisdiction.

9. The applicant shall be required to comply with the design and site details as shown on all plans submitted through their respective revision dates. Any deviation from any such development designs or details shall require further review and approval by the Board.

10. Posting of a bond in such amount as determined by the Borough Engineer so as to guarantee performance of the work herein required and approved, as well as the maintenance of said work after completion.

11. 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 thereof. 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.

12. The applicant shall be required to comply with all

conditions of Chapter 104 of the Montvale Borough Code referable to soil movement operations, approval by the Police Department as to the route trucks will utilize to access the site and the route such vehicles will utilize to import soil to the premises.

13. 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.

14. The hours of operation for soil movement operations shall be required to be reviewed by the Police Department.

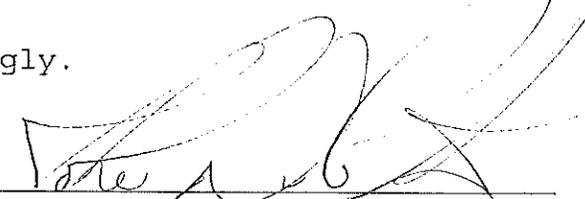
15. Posting of a bond as required by Chapter 104-10 of the Borough Code in such amount as may be deemed to be necessary by the Board or Borough Engineer.

16. The applicant shall be required to pay to the Borough a development fee of two (2%) percent of the equalized assessed value of the non-residential development applicable to both land and improvements, pursuant to N.J.A.C. 5:93-8.10 and applicable Ordinance of the Borough. One-half ($\frac{1}{2}$) of the required fee shall be paid prior to the issuance of a building permit, with the balance paid at the time of completion of the improvements and submission of as-built plan.

BE IT FURTHER RESOLVED that the Secretary of the Planning Board of the Borough of Montvale is hereby directed to mail a copy

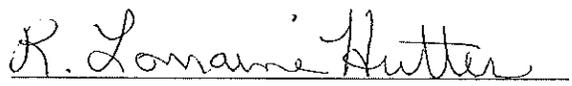
of this resolution to the applicant and to file a copy thereof with the Borough Clerk and to cause a notice of this determination of the Planning Board to be forwarded to an official newspaper of the Municipality within ten (10) days of the date hereof and thereafter to be published accordingly.

Dated: June 19, 2007



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, June 19, 2007.



R. LORRAINE HUTTER, Secretary

EXHIBIT D

PREPARED BY THE COURT

BOROUGH OF MONTVALE, et.
al.,

Plaintiffs,

v.

STATE OF NEW JERSEY,
AFFORDABLE HOUSING
DISPUTE RESOLUTION
PROGRAM, and GLENN A.
GRANT, in his official capacity as
ACTING ADMINISTRATIVE
DIRECTOR OF THE COURTS,

and

FAIR SHARE HOUSING
CENTER,

Defendants.

CONSOLIDATED ACTION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MERCER COUNTY
DOCKET NO. L-1778-24

CIVIL ACTION

BOROUGH OF MONTVALE, et.
al.,

Plaintiffs,

v.

MICHAEL J. BLEE, in his official
capacity as ACTING ADMINIS-
TRATIVE DIRECTOR OF THE
COURTS, and AFFORDABLE
HOUSING DISPUTE RESO-
LUTION PROGRAM

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MERCER COUNTY
DOCKET NO. L-266-25

CIVIL ACTION

**ORDER DENYING PLAINTIFFS’
APPLICATION FOR INJUNCTIVE
RELIEF**

THIS MATTER having come before the Court, the Hon. Robert Lougy, A.J.S.C., presiding, on the motion for interlocutory injunction filed by Plaintiffs Borough of Montvale et al., represented by Michael Collins, Esq., seeking reliefs as specified therein; and Defendants State of New Jersey, Affordable Housing Dispute Resolution Program, and Michael J. Blee, in his official capacity as Acting Administrative Director of the Courts (collectively, “the State Defendants”), represented by Deputy Attorney General Levi Klinger-Christiansen, having filed opposition; and Defendant Intervenor Fair Share Housing Center (“FSHC”), represented by Adam Gordon, Esq., and Joshua D. Bauers, Esq., additionally having filed opposition; and Plaintiffs having filed, with permission of the Court, an overlength reply; and for the reasons as stated below; and for good cause shown;

IT IS on this 11th day of June 2025 **ORDERED** that:

1. By agreement of the parties, Plaintiffs’ application for an order permitting Plaintiffs to file a First Amended Complaint under the matter docketed as L-266-25 is **GRANTED**.
2. Plaintiffs shall file same within ten days of this Order. Defendants’ response shall be due consistent with the Rules of Court.
3. Plaintiffs’ application for an order enjoining the provisions of Directive #14-24 (the “Directive”) as specified in Plaintiffs’ order to show cause is **DENIED**.
4. The Court clarifies the following:
 - a. For purposes of Addendum § A(4), a municipality shall submit their Housing Element and Fair Share Plan (“HEFSP”) to FSHC only in those matters where the municipality and FSHC entered a settlement agreement addressing the municipality’s Fourth Round present and prospective need.
 - b. For purposes of Addendum § B, a municipality shall satisfy the requirement of submitting “adopted ordinances and resolutions” by submitting those proposed drafts of

the ordinances and resolutions that the governing body has approved for submission to the Program for review. Nothing in the Directive modifies the requirements of N.J.S.A. 52:27D-304.1(f)(2)(c).

c. The Administrative Office of the Courts shall issue a Notice to the Bar clarifying same, in such manner as it deems appropriate.

5. If FSHC wishes to participate in the matter docketed as L-266-25 on a going forward basis, it shall make formal application for same. See, e.g., R. 1:13-9, 4:33-1, -2.¹

6. This Order shall be deemed filed and served upon uploading on eCourts.

/s/ Robert Lougy
ROBERT LOUGY, A.J.S.C.

 X **OPPOSED**
 UNOPPOSED

¹ The Court acknowledges Plaintiffs’ position regarding FSHC’s participation in this application. It argues that “FSHC improperly opposed the instant motion even though they are not a party to Montvale II.” Prb16 (citing In re TMI Litig., 193 F.3d 613, 724 (3d Cir. 1999), quoting Johnson v. Manhattan R. Co., 289 U.S. 479, 496-97 (1933)). While the argument is meritorious, FSHC had no opportunity to submit opposing argument. Had FSHC not participated in this round of motion practice, the Court would have reached the same conclusions. To avoid any questions of participation in the future, if FSHC seeks to participate in the matter docketed as L-266-25, and the parties are not otherwise able to resolve the question by consent, FSHC shall make formal application to do so.

PURSUANT TO RULE 1:6-2(f), THE COURT PROVIDES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This matter returns to the Court on Plaintiffs' application to stay various aspects of the administrative directive that establishes the Affordable Housing Dispute Resolution Program. They argue that the directive inflicts irreparable harm upon them in numerous ways and ask the Court to enjoin various requirements of the directive. The Court considered the papers of the parties and heard oral argument. As explained below, the Court denies Plaintiffs' application for injunctive relief. Notwithstanding that conclusion, however, for purposes of clarity and transparency for the benefit of municipalities that are participating in the Program, the Court directs the Administrative Office of the Courts to provide notice consistent with the positions taken in their briefing before this Court and the decretory paragraphs of this Order.

A. FACTUAL AND PROCEDURAL HISTORIES.

The Court incorporates by reference the factual and procedural histories provided in its orders of January 2, 2025, see Trans ID LCV20251143, January 27, 2025, see Trans ID LCV2025191128, and May 7, 2025, see Trans ID LCV20251353757.

1. Factual history

As discussed in previous orders, on December 13, 2024, the Acting Administrative Director of the Courts (ADC) issued Directive #14-24, which

“promulgate[d] procedures and guidelines implementing the Affordable Housing Alternate Dispute Resolution Program (“Program”) created by L. 2024, c. 2.” The directive established the rules for the Alternative Dispute Resolution Program, including the administrative details for submitting a Housing Element and Fair Share Plan (HEFSP) to the Program. The Directive’s Addendum outlined the required elements of a HEFSP, which a municipality is, unless granted an extension by the vicinage’s Mount Laurel judge, required to submit no later than June 30, 2025. Along with the HEFSPs, the Addendum provides that municipalities are to submit ordinances and resolutions necessary to effectuate the HEFSP.

Plaintiffs challenge here not the mechanics of the Program, its requirements, or its members. Rather, in this application, Plaintiffs seek to enjoin numerous provisions of the addendum or attachment to the Directive that listed required elements of each municipality’s Housing Element and Fair Share Plan (HEFSP). They seek relief from § B, which states:

B. The HEFSP must also include (in an Appendix) all of the adopted ordinances and resolutions needed to implement the HEFSP, including:

They seek to enjoin aspects of § A(1), which provides:

1. One of the requirements for a final HEFSP is the inclusion of detailed site suitability analyses, based on the best available data, for each of the un-built inclusionary or 100 percent affordable housing sites in the plan as well as an identification of each of the sites that were proposed for such development and rejected, along with the reasons for such rejection.

They seek to enjoin aspects of § A(2), which provides:

2. The concept plan for the development of each of the selected sites should be overlaid on the most up to date environmental constraints map for that site as part of its analysis. When the detailed analyses are completed, the municipality can see what changes will be needed (either to the selected sites or to their zoning) to ensure that all of the units required by the settlement agreement will actually be produced. If it becomes apparent that one (or more) of the sites in the plan does not have the capacity to accommodate all of the development proposed for it, the burden will be on the municipality either to adjust its zoning regulations (height, setbacks, etc.) so that the site will be able to yield the number of units and affordable units anticipated by the settlement agreement or to find other mechanisms or other sites as needed to address the likelihood of a shortfall.

Specifically, they oppose the requirement that they submit a concept plan.

They seek to enjoin aspects of § A(3), which provides:

3. The final HEFSP must fully document the creditworthiness of all of the existing affordable housing units in its HEFSP and to demonstrate that it has followed all of the applicable requirements for extending

expiring controls, including confirmation that all of the units on which the controls have been extended are code-compliant or have been rehabilitated to code-compliance, and that all extended controls cover a full 30-year period beginning with the end of the original control period. Documentation as to the start dates and lengths of affordability controls applicable to these units and applicable Affordable Housing Agreements and/or deed restrictions is also required. Additionally, the income and bedroom distributions and continued creditworthiness of all other existing affordable units in the HEFSP must be provided.

Specifically, they oppose the obligation to document extended controls.

They seek to enjoin requirement § A(4), which provides:

4. The HEFSP must include an analysis of how the HEFSP complies with or will comply with all of the terms of the executed settlement agreement.

Once the HEFSP has been prepared, it must be reviewed by Fair Share Housing Center and the Program's Special Adjudicator for compliance with the terms of the executed settlement agreement, the Fair Housing Act (FHA) and Uniform Housing Affordability Controls (UHAC) regulations. The HEFSP must be adopted by the Planning Board and the implementation components of the HEFSP must be adopted by the governing body.

While they seek relief from the section altogether, they specifically object to the requirement that the municipality submit the HEFSP to FSHC.

They seek to enjoin the requirement of § C(2) that they submit a construction schedule. That provision, which only applies to “any municipally sponsored 100 percent affordable housing development,” states:

2. Additionally, a construction schedule or timetable must be submitted setting forth each step in the development process, including preparation and approval of a site plan, applications for state and federal permits, selection of a contractor, and start of construction, such that construction can begin within two (2) years of the deadline set forth in the settlement agreement.

2. Procedural History

In the interests of brevity, the Court relays the procedural history as it relates to the Directive under both L-1778-24 (“Montvale I”) and L-266-25 (“Montvale II”). Under Montvale I, Plaintiffs filed a Fifth Amended Complaint on January 13, 2025, without obtaining leave of the court. This Fifth Amended Complaint added two new counts. Count Nine of this complaint asserts that the ADC’s promulgations of Directive #14-24 is inconsistent with the Act and impermissible. Count Eleven seeks relief based on the HMFA’s promulgations of rules, as Plaintiffs contend that the regulations were illegally promulgated in violation of the Administrative Procedures Act’s process and due process. The Fifth Amended Complaint additionally added two parties: Little Falls and Montvale Mayor Michael Ghassali.

Following the filing of the Fifth Amended Complaint, Plaintiffs filed a second order to show cause on January 13, 2025. Plaintiffs requested a stay of the

Act and the municipalities' Fourth Round obligations, arguing that the Directive was ultra vires as certain members of the Affordable Housing Dispute Resolution Program are not subject to the Canons of Judicial Conduct under Directive #14-24 and additionally taking issue with the potential for consolidation. The Court denied the second to order show cause on procedural grounds, but casted doubt on whether Plaintiffs were likely to succeed on the merits of their ultra vires claim as it related to the Directive.

Plaintiffs then instituted Montvale II, which directly sought to strike down Directive #14-24 as ultra vires on several grounds. The State ultimately filed a motion to dismiss, which this Court partially granted on May 7, 2025. As a result of the partial motion to dismiss, the Court dismissed, with prejudice, Count II of the Montvale II Complaint. The Court denied, without prejudice, the State's application to dismiss Count I. On its own motion, this Court then consolidated Montvale II with Montvale I.

Presently before the Court, Plaintiffs seek to amend Montvale II's Complaint to add a declaratory judgment action. It further seeks injunctive relief enjoining several provisions of the Directive during the pendency of this litigation as it relates to the requirements of submitting a HEFSP.

B. LEGAL ANALYSIS

This matter comes before the Court on Plaintiff's application seeking injunctive relief again from the specific provisions of Directive #14-24 enumerated above. To secure such extraordinary relief, Plaintiffs must demonstrate that "(1) relief is needed to prevent irreparable harm; (2) the applicant's claim rests on settled law and has a reasonable probability of succeeding on the merits; and (3) balancing the 'relative hardships to the parties reveals that greater harm would occur if a stay is not granted than if it were.'" Garden State Equality v. Dow, 216 N.J. 314, 320 (2013) (quoting McNeil v. Legis. Apportionment Comm'n, 176 N.J. 484, 486 (2003) (LaVecchia, J., dissenting)). "Each of these factors must be clearly and convincingly demonstrated," Waste Mgmt. of N.J., Inc. v. Union County Utils., 399 N.J. Super. 508, 520 (App. Div. 2008) (citations omitted). "Although it is generally understood that all the Crowe factors must weigh in favor of injunctive relief, a court may take a less rigid view than it would after a final hearing when the interlocutory injunction is merely designed to preserve the status quo." Ibid. (citing Gen. Elec. Co. v. Gem Vacuum Stores, Inc., 36 N.J. Super. 234, 236-37 (App. Div. 1955)). Further, a court must "exercise sound judicial discretion . . . which—when limited to preserving the status quo during the suit's pendency—may permit the court to place less emphasis on a particular Crowe

factor if another greatly requires the issuance of the remedy.” Ibid. (citations omitted).

“When a case presents an issue of ‘significant public importance,’ a court must consider the public interest in addition to the traditional Crowe factors.” Garden State Equality, 216 N.J. at 321 (quoting McNeil, 176 N.J. at 486 (LaVecchia, J., dissenting)).

1. Plaintiffs fail to establish irreparable harm.

Plaintiffs must first prove by clear and convincing evidence that they have no adequate remedy at law, that they will be irreparably harmed in the absence of an injunction, and that the harm is imminent, concrete, and non-speculative.

Subcarrier Commc’ns., Inc. v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997).

The likelihood that adequate compensatory or other corrective relief will remain available, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm. Delaware River & Bay Auth. v. York Hunter Constr., 344 N.J. Super. 361, 365 (Ch. Div. 2001) (citing Sampson v. Murray, 415 U.S. 61, 90 (1974)). “The availability of adequate monetary damages belies a claim of irreparable injury.” Id. at 364-65. “In other words, plaintiff must have no adequate remedy at law.” Subcarrier Commc’ns. Inc., 299 N.J. Super. at 638.

Plaintiffs argue that the Directive’s requirement for them to submit a compliant HEFSP by June 30, 2025, or risk loss of their legislatively delegated

zoning powers through exclusionary zoning litigation, causes irreparable harm for three reasons. Pb29. First, Plaintiffs assert harm by having to submit their HEFSP to their adversary, FSHC, inconsistent with the Legislature's process. Pb30. Second, Plaintiffs argue that the requirement to include adopted ordinances and resolutions as part of the HEFSP submission constitutes irreparable harm. Ibid. Third, Plaintiffs contend they are irreparably harmed by having to comply with substantive requirements that exceed what the Law requires. Pb31.

The State Defendants argue that Plaintiffs fail to establish irreparable harm. First, they waited too long and have created the emergency they now argue creates irreparable harm. State Br. at 11-12. It further maintains that Plaintiffs cannot show irreparable harm because the Program is voluntary, and Defendants chose to participate in and remain in the Program. Id. at 12.

Likewise, FSHC asserts that the voluntariness of the Program precludes Plaintiffs from claiming irreparable harm. FSHC Br. at 10. FSHC further refutes Plaintiffs' additional complaints of irreparable harm, arguing that Plaintiffs overstate the requirements of the Directive. Id. at 13. Regardless of whether the Directive required FSHC to review the HEFSPs, FSHC argues that it has the right, as every member of the public, to review every HEFSP prepared. Id. at 13-14. Because FSHC has the right to review the HEFSP anyway, they argue no irreparable harm exists. Id. at 14. With respect to Plaintiffs' arguments about the

adopted ordinances, FSHC argues that this section of the Directive does not abrogate the directions in the statute. Ibid. Lastly, FSHC argues that the Directive's substantive requirements are all things required by existing law. Id. at 14-15.

In reply, Plaintiffs argue that Defendants concede that the Directive is *ultra vires* by asserting that it must be "read sensibly" to conform to Defendants' interpretation. Pls.' Reply at 2-4. Plaintiffs maintain that they did not create an emergency by filing the order to show cause shortly before the June 30 deadline, but rather that they waited to receive the May 7, 2025, Order before taking further action. Id. at 7-11. Plaintiffs contend that their voluntary participation does not preclude their vulnerability to irreparable harm caused by the Program. Id. at 11-14.

Here, Plaintiffs again fail to establish irreparable harm. The Court puts little weight, at this stage, on Defendants' voluntariness arguments. Defendants have, at this point, prevailed on their arguments that the statute does not compel Plaintiffs to participate in the Program. The Program does, however, offer real benefits to participating municipalities, and, by participating, they do not, in this Court's view, forfeit their right to argue that the Directive exceeds the authorities granted to the ADC. It seems unfair to conclude that voluntary participants in a statutorily established program cannot, as a matter of law or principle, establish

irreparable harm just because they are voluntary participants. Rather, because all the participants are voluntary, Plaintiffs are just participants. Thus, at this stage, in this Court's view, the voluntariness argument has little bearing on Plaintiffs' ability to show irreparable harm. While Plaintiffs certainly cannot claim surprise, the Court is not here willing to find, as a matter of law, that they cannot establish irreparable harm simply because they chose to participate in the Program.

Rather, Plaintiffs' specific claims of irreparable harm pertaining to the Directive fail on their own terms. First, regarding the June 30 deadline, Plaintiffs waited to file their order to show cause just six weeks before the deadline, despite knowing about it since March 2024 and filing other motions challenging the Directive since December 2024. Plaintiffs have created the sense of urgency of which they now complain. They knew about that date from the moment the legislation was enacted, when this litigation began, and when they chose to participate in the Program. Additionally, taking the longer view, they have known about the date for years, as that is the date that any Third Round protections are set to expire. As such, the June 30 deadline to submit adopted HEFSPs does not pose irreparable harm.

Second, Plaintiffs fail to establish that the Directive's requirement that participating municipalities subject their HEFSP to review by FSHC. Plaintiffs do

not specify the harm they would endure beyond asserting that this requirement is inconsistent with the Law and that FSHC has opposed Plaintiffs' housing obligations in the past. And FSHC's argument about public accessibility rings true, as every municipality's HEFSP will be available on the Judiciary's website:

<https://www.njcourts.gov/courts/civil/affordable-housing>

Without any suggestion of the injury resulting from this requirement, the Court cannot find irreparable harm. Moreover, as the State Defendants point out, the requirement is reasonably read to relate to those municipalities that have entered into a settlement agreement with FSHC, rendering the requirement little more than a requirement to serve other interested parties in that municipality's participation in the Program.

And third, Plaintiffs fail to establish irreparable harm concerning the "adopted" ordinance and resolutions, given the common understanding of the parties as now clarified herein.²

Accordingly, Plaintiffs fail to establish that they will be irreparably harmed absent injunctive relief.

² The Court offers the clarifications for the purposes of transparency and uniformity. Plaintiffs and all other municipalities participating in the Program should be advised of Defendants' interpretive guidance to the provision and be additionally assured that their submissions are consistent with the Directive's requirements without having to scour legal briefs or inaccessible trial court decisions. Accordingly, the Court directs AOC to provide adequate notice of the clarifications established herein.

2. Plaintiffs' claims are not based upon a well settled legal right.

The Court finds that Plaintiffs fail to establish a reasonable likelihood of success on the merits of the claims advanced in their order to show cause. Preliminary injunctive relief such as a temporary restraint should only be granted when the issues raised present a legally settled right. Crowe, 90 N.J. at 133 (citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 304-05 (E. & A. 1878)). Despite this general rule, an exception exists “where the subject matter of the litigation would be destroyed or substantially impaired if a preliminary injunction did not issue.” Gen. Elec. Co., 36 N.J. Super. at 236. The Court does not review the claims for their ultimate merit but instead asks whether Plaintiffs have established a reasonable probability of success on the merit of the claims. Waste Mgmt., 399 N.J. Super. at 520-21.

Plaintiffs argue that the Directive, with its attached Addendum, exceeds the Acting Director's legislative grant of authority. Pb15. They assert that the provisions are *ultra vires* because the Law's section governing HEFSPs does not contain any authority for the ADC to promulgate regulations. Id. at 16. Therefore, they argue, the ADC cannot impose these heightened requirements. Id. at 17.

The State Defendants advance several arguments in opposition. First, they note that the Administrative Director is not constrained by the Act because he also operates pursuant to the Supreme Court's exclusive constitutional authority to

regulate the practice, procedure, and administration of the courts. Second, they note the legislative mandate that the Program review fair share plans for compliance with the Act and the Mount Laurel doctrine, citing N.J.S.A. 52:27D-304.1(f)(2)(b), and that the required submissions are necessary to fulfill that role. To the extent that the Legislature listed items for municipalities to submit, the State Defendants argue that the list does not constrain the Administrative Director to compel more submissions to facilitate the required plan review. Third, and significantly, Defendants offer a clarifying construction of the Directive. The Court includes it here, rather than paraphrase:

Similarly, Plaintiffs' assertion of irreparable harm from the Addendum's reference to "adopted ordinances," (Mb22-25), stems from Plaintiffs' continued misreading of the Addendum. As Defendants have previously explained, merely because the Addendum requires a municipality to "adopt" the ordinances it submits for plan review does not mean those ordinances are not drafts or are somehow final; read sensibly, and in harmony with the Act, the provision merely requires the governing body to approve the submission of the ordinances to the Program for review. The ADC and Program need not be enjoined to enforce the Addendum in a way they have already represented it will be enforced, which Plaintiffs agree is consistent with the Act. (Mb25).

[SDB at 15.]

(Although the State Defendants discuss that point in the irreparable harm portion of their argument, they rely upon that discussion in their discussion of the second

and third Crowe factors.) Thus, they argue that Plaintiffs are unlikely to succeed on the merits of their *ultra vires* argument because Defendants do not dispute their constructions of the relevant statutory provision. Fourth, and finally, the State Defendants limit the scope of the FSHC review provision, “this provision only applies if there is a settlement agreement with FSHC (and thus FSHC is already a party to the action within the Program), and thus is tantamount to a courtesy copy requirement.” Id. at 16; see also id. at 23 (“Moreover, read sensibly, the Addendum’s referenced review by FSHC refers only to circumstances where there is such a settlement agreement involving FSHC—not to all proceedings.”).

FSHC argues that the Directive does not exceed statutory authority as it merely requires those submissions necessary for the Program to meaningfully review affordable housing plans. FSHC Br. at 15.

In reply, Plaintiffs argue that the State has not provided a factual basis for this Court to presume that ADC was exercising its rulemaking power when issuing the Directive. Pls.’ Reply at 5-7.

Reflecting the wisdom of the rules governing motion practice before this Court, the parties’ briefing of their respective positions has substantially narrowed the issues in dispute. Plainly, the Administrative Director operates here with the authorities established by the Constitution as well as the Legislature. The State Defendants do not advance positions that require the Court to reach that issue, as

they construe the challenged components of the Addendum to compel little that is objectionable to Plaintiffs and that largely if not completely defuse Plaintiffs' *ultra vires* arguments.

a. Plaintiffs do not show a likelihood that they will succeed on the merits of invalidating the Directive.

As to the third element for injunctive relief, Plaintiffs first address the requirement to submit HEFSPS to FSHC. Plaintiffs first argue this provision is *ultra vires* as the Law does not authorize the judiciary to mandate that FSHC preemptively review a municipality's submission prior to filing with the Program. Pb18. Plaintiffs contend that the Law only enables entities like FSHC to challenge a HEFSP after a municipality submits it to the Program. Pb19. Plaintiffs point to past briefing where Defendants argued alternatively that the appropriate remedy would be to "sever the offending provision," which Plaintiffs now seeks. Pb20-21. Plaintiffs wish for the provision allowing FSHC to review HEFSPs prior to submission to be severed. Pb21.

As for the remaining provisions, Plaintiffs are not convinced that they fall under the ADC's constitutional authority because the Directive did not involve an exercise of the Supreme Court's rulemaking power. Ibid.

Next, Plaintiffs explain that the Addendum requires a municipality to submit all adopted ordinances and resolutions needed to implement a HEFSP is *ultra vires*. Pb23. They state that the provision requiring these adopted ordinances is

prejudicial as it could require Plaintiffs to adopt proposed zoning changes resulting in zoning that does not ultimately effectuate affordable housing obligations. Pb24. It further argues that the Directive is contradictory to the Law, as the Directive requires adopted resolutions whereas the Law only requires drafts. Pb25. As discussed above, this issue has largely been mooted by the positions advanced by the State Defendants here and as reflected in the decretory paragraphs above.

Lastly, as it relates to their likelihood of success on the merits, Plaintiffs assert that the substantive provisions of the Directive exceed the Law's authority. Pb29.

In opposition, the State relies on this Court's January 27, 2025, Order addressing the second Order to Show Cause. State Br. at 17. The State reiterates that the ADC's authority to issue directives, such as the one at issue, flows not only from the Law but also the Judiciary's constitutional authority to govern its internal operations. Ibid. As long as a rule or directive does not conflict with the substantive provisions of the act, and governs "practice, procedure, and administration," the Law need not directly authorize the action. Id. at 19. The ADC has reasonably implemented the Law through the Directive. Id. at 20.

FSHC concurs with the State, recognizing that Plaintiffs are unlikely to succeed on the merits because any additional substantive requirement within the Directive is otherwise required by the Law. FSHC Br. at 17-20.

In reply, Plaintiffs argue that the State did not oppose Plaintiffs' relief with respect to Addendum § A(1), Addendum § A(2), Addendum § A(3), and Addendum § C(2), and that Plaintiffs should be entitled to this relief on an unopposed basis. Id. at 15-16.

As to the adopted ordinances provision specifically, Defendants explain that the Addendum allows for drafts of ordinances and need not be final. State Br. at 21-22; FSHC Br. at 16.

Lastly, with respect to FSHC's involvement, the State reads the Addendum to say that FSHC is involved where Plaintiffs have voluntarily reached Fourth Round Settlements with the organization. State Br. at 22-23. FSHC likewise takes a similar stance to Plaintiffs' concerns about their involvement. They reiterate that the Directive does not require FSHC's involvement, it merely allows FSHC to review it as an option for municipalities. FSHC Br. at 16.

The Court first addresses Plaintiffs' claim relating to FSHC. Plaintiffs are unlikely to succeed on the merits as it relates to FSHC's involvement in the review of the HEFSPs submitted in matters where FSHC and the municipality resolved the municipality's present and prospective need by settlement. Under those circumstances, the Court does not find it likely that the municipalities will succeed on the merits. The Act reflects the Legislature's intent to establish a more effective, transparent, and enforceable system for determining and ensuring

compliance with municipal obligation under Mount Laurel, N.J.S.A. 52:27D-302(n), and established the Program in the Judiciary with the “purpose of efficiently resolving disputes involving the ‘Fair Housing Act.’” N.J.S.A. 52:27D-313.2; see also id. at -304.1(f)(1)(c) (explaining that AOC responsible for “establishing procedures for the program to consider a challenge and resolve a dispute” initiated by interested person.”). It is reasonable and within the scope of that legislative charge to efficiently resolve the disputes to require the municipality share their publicly available plan with FSHC as part of submitting the HEFSP.

Regarding the adopted ordinance provision, the parties have largely resolved the issue through their briefing. The Court need not discern whether Plaintiffs’ construction of the requirement vis-à-vis the Fair Housing Act comports with a construction that Defendants do not advance. Rather, the Court has before it sophisticated parties that agree on what the Act requires and how the Directive’s requirement should reasonably be read. For purposes of clarity and transparency for all Program participants, the Court’s decretory paragraphs make clear what the municipalities are obligated to submit with their HEFSP.

Finally, the substantive provisions of the Directive do not exceed the Law’s authorizations. As discussed above, the Legislature charged the AOC with establishing a program to effectively and efficiently determine municipal compliance, N.J.S.A. 52:27D-304(f)(1)(c), and to facilitate communication

between the municipality and interested parties to resolve disputes efficiently, id. at -304.1(f).

Here, the Legislature has left the Judiciary, and by extension the ADC, the responsibility to manage its case administration and processing. Accordingly, by promulgating Directive #14-24, and the attached Addendum, the ADC has properly fulfilled the Act's needs while implementing important administrative controls. Notably, additional documentation promulgated in the Directive is otherwise required by the Act. See N.J.S.A. 52:27D-310(f); Addendum § A(1). The ADC has not acted outside of his authority, or outside the perimeters of the Law.

Plaintiffs lastly raise concerns that the Directive requires additional documentation not authorized by the Act. The Act, in Plaintiffs view, requires only a HEFSP and draft ordinances and resolutions by June 30, 2025. In essence, Plaintiffs argue that the Law sets forth a ceiling for documentation to be required by June 30, 2025. But the Court does not read the Act so narrowly. The Act simply provides a floor of documentation to be provided. It does not prohibit the ADC from promulgating directives for further documentation where such documents are necessary for the Program to assess whether the HEFSP demonstrates municipal compliance with Mount Laurel. Requiring municipalities to provide additional information on identifiable sites for development or concept

plans is an effective means for the Judiciary to effectuate the Program. It fits neatly within the Legislature's intent to create a clear and efficient framework for the municipalities to comply with their constitutional obligations. Plaintiffs have not otherwise shown how the additional documentation put forth in the Directive does not reasonably implement the act and are unlikely to succeed on the merits of this argument.

In turning to Paragraph 4 of the Addendum specifically, Plaintiffs misinterpret the Directive. Neither the Directive nor the Addendum require settlement agreements. Rather, it just acknowledges and accurately predicted that many disputes involving present and prospective need were resolved by settlement agreements. Indeed, a dispute resolution program that does not resolve in settlements is somewhat a misnomer. The Program facilitated settlements between the municipalities and interested persons; as the State has noted, 117 municipalities reached Fourth Round settlements agreements. The inclusion of settlement agreements within the Directive reminds municipalities that enter into settlement agreements to provide relevant documentation to allow the Program to effectively review fair share plans. If municipalities do not provide their settlement agreements after they have come to fruition, then the Program cannot accurately assess HEFSPs for compliance with the agreements. Thus, the Court is not persuaded that this argument succeeds on the merits.

In conclusion, Plaintiffs are unlikely to succeed on the merits that the Directive exceeds the Act's authority. To the extent that their application has resulted in clarification of the Directive's requirements through the adversarial process, they and the other participating municipalities now have that guidance.

b. Public interest does not favor injunctive relief.

Crowe requires a balancing of the relative hardships to the parties in granting or denying relief. 90 N.J. at 134 (citing Isolantite Inc. v. United Elec. Radio & Mach. Workers of Am., 130 N.J. Eq. 506, 515 (Ch. 1941), modified on other grounds, 132 N.J. Eq. 613 (E. & A. 1942)). The party moving for a temporary restraint or preliminary injunction must demonstrate that “the public interest will not be harmed.” See Waste Mgmt., 399 N.J. Super. at 520. In some cases, such as when the public interest is greatly affected, a court may withhold relief despite a substantial showing of irreparable injury to the applicant. Ibid.

Plaintiff argues that the public interest favors their application because the Directive grants preferential treatment in a manner that jeopardizes judicial independence. Pb32. The public additionally has an interest in seeing the Fourth Round proceeding in accordance with the Law. Ibid.

The State provides that enjoining the challenged provisions would disrupt and frustrate other municipalities who are not a party to this suit. State Br. at 23-

24. Injunctive relief may also result in non-uniform fair share plan filings and lead to delays in the Programs. Id. at 24.

FSHC likewise argues that Plaintiffs cannot argue that they are being harmed by having to demonstrate they complied with their constitutional obligation. FSHC Br. at 20.

The Court concludes that public interest does not favor injunctive relief. The clarifying paragraphs of this Order do not enjoin the respective paragraphs; rather, it merely restates them consistent with the parties' common ground. Additionally, because the relevant paragraphs, as clarified here, only serve to minimize the burdens on the participating municipalities without harming the effectiveness and efficiency of the Program, the Court does not find that the provisions are contrary to the public interest. Regarding the other provisions to which Plaintiffs object, the public interest weighs against injunctive relief, as the public has an interest in seeing municipalities comply with their Mount Laurel obligations. As this Court previously noted, the Mount Laurel obligation flows from the general welfare of New Jerseyans, including underserved communities of which the Act seeks to serve. The Addendum compels municipalities to submit those components and documents required by other regulatory provisions and necessary to the Program's success in evaluating each HEFSP for compliance with the Act and the Mount Laurel obligation. The Court finds that a balancing of

equities favors the ADC performing administrative duties in furtherance of Mount Laurel during the pendency of this litigation.

A. CONCLUSION

The Court denies Plaintiffs' request for injunctive relief. The Court grants by consent Plaintiffs' application to amend its Montvale II Complaint.