

DELL'ITALIA & SANTOLA

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REPLY TO ORANGE, NJ

June 10, 2024

Via Hand Delivery

Via Email dchandler@westorange.org

Township of West Orange

66 Main Street

West Orange, New Jersey 07052

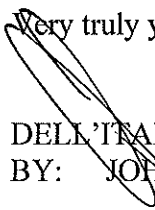
Attn: Diana Chandler

Planning and Development

**RE: VARIANCE
31 BRADFORD AVENUE, WEST ORANGE, NJ
HEARING DATE JUNE 20, 2024**

1. Owner: Jose DeOliveira
973-223-0690 cell
Realtormarcos1@gmail.com
2. Attorney: John P. Dell'Italia, Esq.
973-464-7053 cell
Johnpdell@aol.com
3. Engineer: Mizra Baig, PE
201-736-7546 cell
ksiengineering@gmail.com

Very truly yours,

DELL'ITALIA & SANTOLA
BY:  JOHN P. DELL'ITALIA, ESQ.

JPD/ap

RETAINING WALL EASEMENT

THIS AGREEMENT, made this _____ day of June, 2024; between Joel Thomas Newman and Ashley Newman, 29 Bradford Avenue, West Orange, New Jersey; Block 55/06 Lot 02/01; hereinafter referred to as "Grantor" and the Jose Marcos DeOliveira and Jennifer DeOliveira owners of 31 Bradford Avenue, West Orange, New Jersey; Block 55/06 Lot 01/01 hereinafter referred to as "Grantee"

WHEREAS, Grantor owns a fee simple interest in property located within the Township of West Orange and legally described as:

[Lot 02/01 Block 55/06 filed with the Essex County Recorder's Office] being 29 Bradford Avenue, West Orange, New Jersey ("Grantor Parcel") partially shown on the survey attached hereto as Exhibit "A" and by this reference made a part hereof, (hereinafter the "Survey"); and

WHEREAS, Grantee owns a fee simple interest in property located within the Township of West Orange described as:

[Lot 01/01, Block 5506 filed with the Essex County Recorder's Office] being 31 Bradford Avenue, West Orange, New Jersey 07052 more particularly described on Exhibit A ("Grantee Parcel"); and

WHEREAS, Grantee has constructed a retaining wall (the "Retaining Wall") which encroaches onto the Grantor Parcel approximately one and one half (1.5) feet as depicted in yellow highlight on Exhibit "A" and as set forth on the Easement Description attached hereto as Exhibit "B" and by this reference made a part hereof (hereinafter the "Easement Area") .

NOW, THEREFORE, the Parties hereby declare that the Grantor Parcel and the Grantee Parcel shall be held, subject to the following easement, covenants and conditions which shall run with the land and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof. Further, in consideration of the premises, the promises and covenants of the Parties hereto, the mutual benefits and advantages accruing to them, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. "Party" shall mean and refer to Grantor and/or Grantee and "Parties" shall mean and refer to all or any two of the foregoing as appropriate, or any successor person(s) acquiring any interest of a Party in or to any portion of such Party's Parcel.
2. Grantee is permitted to construct and maintain the Retaining Wall on the Grantor Parcel approximately one and one half (1.5) feet as depicted in yellow highlight on Exhibit "A" and as set forth on the Easement Description attached hereto as Exhibit "B". .

3. Grantee shall be solely responsible, at their sole cost and expense, for any and all maintenance, repair or upkeep of the Retaining Wall, including, but not limited to (i) the prior procurement of all necessary governmental approvals, (ii) the posting of all necessary bonds; (iii) all maintenance, upkeep and repairs; and (iv) the restoration of any disturbance of the Grantor's Parcel. In addition, Grantee shall defend, indemnify and hold Grantor harmless from and against all loss, cost, expense and other damages (including reasonable attorney fees) relating in any way to the Retaining Wall and /or such maintenance, repair and upkeep activities.
4. If Grantor sells the Grantor Parcel at any time in the future, Grantee at Grantor's sole option, shall either (i) remove the Retaining Wall from the Grantor Parcel at the Grantee's sole cost and expense, or; (ii) reaffirm this Retaining Wall Easement with any subsequent purchasers of the Grantor Parcel at the Grantee's sole cost and expense.
5. The Easement Area shall be limited solely to the portion of the Grantor's Parcel affected by the actual encroachment of the Retaining Wall.
6. The easement granted herein or all or any part or parts thereof, shall be terminated, if the Retaining Wall is either fully or partially demolished. In such event, the easement and this agreement shall thereupon be conclusively deemed abandoned and terminated and any person having or thereafter acquiring an interest in the Grantor Parcel and the Grantee Parcel shall hold and take such interest free of and unencumbered by such easement and this agreement.
7. The easement granted hereunder shall exist by virtue of this Declaration, without the necessity of confirmation by any other document. Likewise, upon the termination of the easement (in whole or in part) or its release in respect of all or any part of Grantor's Parcel, in accordance with the terms hereof, the same shall be deemed to have been terminated or released without the necessity of confirmation by any other document. However, upon the reasonable written request of a Party, the other Party shall sign and acknowledge a document memorializing the existence (including the location and any conditions), or the termination (in whole or in part), or the release (in whole or in part), as the case may be, of the easement, if the form and substance of the document is approved by the other Party.
8. The parties shall work with each other, in good faith, for the purpose of providing reasonable access to the Grantor Parcel to facilitate maintenance, repair and upkeep of the Retaining Wall. Except in the case of emergency, Grantee shall with not less than five (5) days prior written notice, notify Grantor of its need to gain access to the Grantor's Parcel for the purpose of maintenance, repair and upkeep of the Retaining Wall. The owner of the Grantor Parcel shall retain the right to propose a reasonable alternative date and time for such access and the parties shall negotiate in good faith to determine an alternative date and time suitable to both parties
9. Grantee shall provide proof that its insurance coverage (general liability insurance against claims for bodily injury, death or property damage occurring on, in or about Grantor's Parcel combined single limit coverage of not less than \$1,000,000.00 with respect to anyone person, in the amount of \$1,000,000.00 with respect to any one accident or disaster, and in the amount of not less than \$500,000.00 with respect to property damage) extends to the entire portion of Retaining Wall located within the Easement Area and shall maintain such coverage for so long as the Retaining Wall remains located within the

Easement Area. To the extent the loss, damage, liability, etc. experienced by Grantor is not covered by the Grantee's insurance policies described above (whether or not such policy is actually carried by the Grantee), Grantee (the "Indemnitor") will pay, and to the full extent of the law, indemnify, defend and save harmless the Grantor (the "Indemnitee") from and against all liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature arising from: (i) any use or condition of the Retaining Wall, and (ii) any negligence or tortious acts of the Indemnitor or any its contractors, agents or employees.

10. In the event any provision or portion of this Declaration is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions shall continue in full force and effect at the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

11. In the event of any litigation, arbitration or other dispute resolution proceeding in connection with, relating to or arising from this easement, the prevailing party, as determined by the court, arbitrator or other authority having direction over the proceeding, shall be entitled to recover from the other party the reasonable documented out of pocket expenses, including without limitation, reasonable attorneys' fees, incurred by the prevailing party, in such proceeding or in any subsequent proceeding to collect or enforce the judgment or other remedy entered in favor of the prevailing party.

12. This Declaration may be executed in multiple counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

13. This Declaration constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior and/or contemporaneous agreements and understandings of the parties with respect to said subject matter. This Declaration may not be amended unless each of the parties hereto, or the successors or assigns of such parties, as may be applicable from time to time, execute a written agreement amending this Declaration which specifically references the terms and conditions of this Declaration that said amendment is modifying. Said amendment shall not be effective until recorded in the real property records Clerk/Register of Essex County.

14. The laws of the State of New Jersey shall govern the validity, performance and enforcement of this Declaration without giving effect to its conflict of laws principles. The invalidity, illegality or unenforceability of any provision hereof shall not affect or impair any other provision.

15. Neither anything in this Agreement contained nor any acts of the Parties hereto shall be deemed or construed by the Parties hereto, or any of them, or by any third Person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the Parties to this Agreement.
16. This Agreement is binding upon the Parties, their successors, assigns, agents, heirs and shall run with the land.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the Owners have caused this Agreement to be executed as of the day and year first above written.

GRANTOR:

Joel t Newman
Joel Thomas Newman

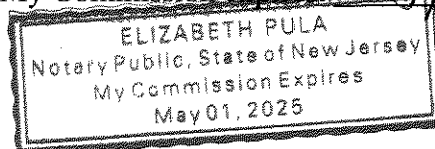
Ashley Newman
Ashley Newman

STATE OF NJ §
COUNTY OF ESSEX §

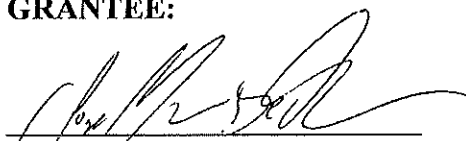
I CERTIFY that on June 7, 2024, Joel Thomas Newman and Ashley Newman personally came before me and stated to my satisfaction that this/these person(s):

1. was the maker of the attached instrument; and
2. executed this instrument as his or her own act.

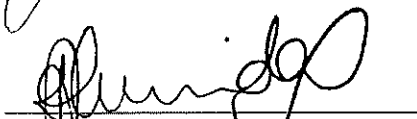
Elizabeth Pula
Notary Public
Name: ELIZABETH PULA
My Commission expires: 6/30/25



GRANTEE:



Jose Marcos DeOliveira



Jennifer DeOliveira

STATE OF NJ

§

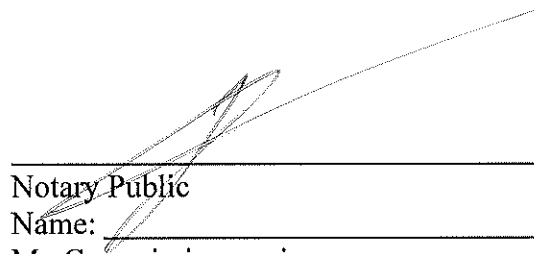
COUNTY OF Essex

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I CERTIFY that on JUNE 10, 2024, Jose Marcos DeOliveira and Jennifer DeOliveira personally came before me and stated to my satisfaction that this/these person(s):

1. was the maker of the attached instrument; and
2. executed this instrument as his or her own act.



Notary Public

Name: _____

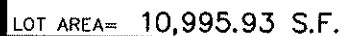
My Commission expires: _____

JOHN P. DELL'ITALIA
ATTORNEY AT LAW OF NEW JERSEY

RECORD AND RETURN TO:

Exhibit A

TOWNSHIP OF WEST ORANGE ESSEX COUNTY, NEW JERSEY
TAX MAP LOT 1.01 BLOCK 55.06



A WRITTEN WAIVER AND DIRECTION NOT TO SET CORNER MARKERS HAS BEEN OBTAINED FROM THE ULTIMATE USER PURSUANT TO N.J.A.C. 13:40-5.1(d)

THIS SURVEY IS CERTIFIED TO

PARKER

ENGINEERING & SURVEYING P.C.
370 EAST MAIN STREET, SOMERVILLE, N.J. 08876
(908) 725 - 4400 - FAX (908) 722 - 4401

DANIEL E. PARKER
NEW JERSEY LAND SURVEYOR NO.35866

DATE 4/19/23

SCALE
1"=20'

FILE	15594
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Exhibit B



ENGINEERING & SURVEYING P.C.

370 EAST MAIN STREET, SOMERVILLE, N.J. 08876
(908) 725 - 4400 - FAX (908) 722 - 4401

**1.50 FOOT EASEMENT ON TAX LOT 2.01 BLOCK 55.06 TO
BENEFIT TAX LOT 1.01 BLOCK 55.06**

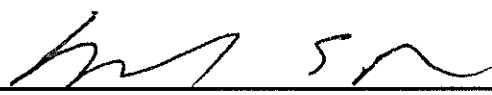
BEGINNING at a point on the northeasterly side line of Bradford Avenue, said point being on the dividing line between Tax Lots 1.01 & 2.01, Block 55.06,

Thence (1) along said dividing line, North 37 degrees 17 minutes East 125.00 feet to a point;

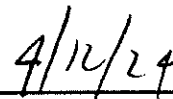
Thence (2) South 52 degrees 43 minutes East 1.50 feet to a point;

Thence (3) South 37 degrees 17 minutes West 125.00 feet to a point on the northeasterly side line of Bradford Avenue;

Thence (4) along said side line, North 52 degrees 43 minutes West 1.50 feet to the point and place of BEGINNING.



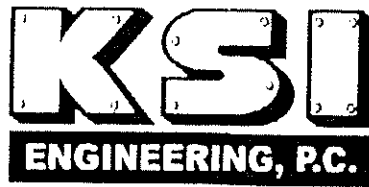
Daniel E Parker, Professional Land Surveyor #35866



Date







80 Broadman Pkwy, Jersey City, NJ 07305 |

Tel.: (201) 736-7546

| Email: kstengineering@gmail.com

Date: June 7th, 2024

Mr. Jose M DeOliveira,

Owner: 31 Bradford Avenue, West Orange, NJ 07052

Dear Sir,

As your retained engineering consultant, I have visited the property located at 31 Bradford Ave. in West Orange and have carried out the analysis of the geo-grid retaining walls located on the northeast and southeast sides of the property.

On visual inspection, the site drainage is proper, and the runoff flows away from the building, towards the boundary walls on the northeast and southeast sides.

There is carpet grass adjacent to the boundary on both sides, and stone pavers which cover the backyard, which in turn aid in the site drainage.

Also, there is no change in the grading of the site, the new boundary walls were installed in place of the existing wooden ones. The new walls are much more stable and architecturally pleasing.

In view of the above, and the fact that there has not been any incidence of flooding within the building premises, a grading plan is not needed. Please note that a grading Plan requires a detailed Topographic Survey of the property, which may cost up to \$5000.

A waiver for the grading plan may be requested from the Township, in view of the above explanation.

Thank you,

A handwritten signature in black ink, appearing to read 'Mirza K. Baig', with a stylized flourish at the end.

MIRZA K. BAIG, PE

NJPE #24GE04726600)