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MEMORANDUM

TO: Mayor and Council of the Borough of Beach Haven

FROM: M. James Maley, Jr.

SUBJECT: 420 Pelham Avenue - Emergency Operation Center

DATE: July 10, 2025

The Borough of Beach Haen (“Borough”) recently issued a Notice to Bidders for renovation of the Emergency Operation Center (“EOC”) building. The Beach Haven Taxpayers’ Association believes it would be more cost-effective to tear down and replace the building. This is not possible because of a restriction in the deed that conveyed the property to the Borough.

The EOC building and the land on which it sits (collectively, the “Property”) were transferred to the Borough by the federal government in 2005. The deed transferring the Property contains a condition that the Property “be used and maintained, in perpetuity, for an ‘emergency management response facility’” subject to periodic inspections by federal agencies. The inclusion of “and maintained” in the deed restriction, rather than simply requiring that the property be “used” as an emergency management response facility, indicates that the federal government intended the continued use of the building that existed at the time of the transfer. A renovation of the building is consistent with the requirement that the property be maintained as an emergency management response facility. Demolition and replacement is inconsistent with that requirement, as it would involve an extended period in which the Property is not being used at all.

Reading the language of the deed restriction as impermissive is consistent with the Borough’s history of interaction with the General Services Administration (“GSA”), which controls the federal government’s exercise of its rights under the deed restriction. The GSA in 2018 threatened to exercise the federal government’s right to reclaim the Property because, despite that it was then being used and maintained as an emergency management response facility, it was also being used for other purposes. The GSA’s interpretation of the deed was that the Property must not only be used and maintained as an emergency management response facility, but that it be used and maintained *exclusively* for that purpose.

There is no notice and cure period in the deed restriction, meaning that any violation, even if corrected, could allow the federal government to retake the Property. For that reason, the Borough must avoid taking any action that would allow a conclusion that any condition of the deed restriction had been breached.