

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BERGEN ROCKLAND ERUV
ASSOCIATION, YISROEL FRIEDMAN,
S. MOSHE PINKASOVITS, SARAH
BERGER, MOSES BERGER, CHAIM
BREUER, YOSEF ROSEN, and TZVI
SCHONFELD

Plaintiffs,

-against-

THE BOROUGH OF UPPER SADDLE
RIVER

Defendant.

Civ. No. 2:17-cv-05512-JMV-
CLW

MOTION DATE:
DECEMBER 4, 2017

ORAL ARGUMENT
REQUESTED

NOTICE OF MOTION FOR PRELIMINARY INJUNCTION

PLEASE TAKE NOTICE that on Monday, December 4, 2017 at 10:00 a.m., or as soon thereafter as counsel may be heard, Plaintiffs Bergen Rockland Eruv Association, Yisroel Friedman, S. Moshe Pinkasovits, Sarah Berger, Moses Berger, Chaim Breuer, Yosef Rosen, and Tzvi Schonfeld (“Plaintiffs”) shall appear before the Honorable John Michael Vazquez, U.S.D.J., at the Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07101, and shall move this Court for a Preliminary Injunction, and shall request oral argument on its motion.

PLEASE TAKE FURTHER NOTICE that in support of their Motion, Plaintiffs shall rely upon their Brief and its attached Declarations, submitted concurrently herewith; any Reply papers to be submitted; and oral argument, if any. A proposed form of Order is also submitted for the Court’s consideration.

Dated: October 10, 2017

Respectfully submitted,

/s/ Diane P. Sullivan

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PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR
MOTION FOR PRELIMINARY INJUNCTION

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Plaintiffs Bergen Rockland Eruv Association (“BREA”), Yisroel Friedman, S. Moshe Pinkasovits, Sarah Berger, Moses Berger, Chaim Breuer, Yosef Rosen, and Tzvi Schonfeld (collectively, “Plaintiffs”) respectfully submit this Memorandum of Law in Support of their Motion for a Preliminary Injunction (“PI”). Plaintiffs seek to enjoin the Borough of Upper Saddle River (“USR,” or “Defendant”) from taking any further actions that would prevent Plaintiffs from (i) maintaining and/or repairing an eruv within USR (the “Eruv”), and (ii) proceeding with a planned expansion of the existing Eruv into a small additional section of USR (the “Planned Expansion”).

PRELIMINARY STATEMENT

Plaintiffs will suffer irreparable harm absent an injunction preliminarily and permanently enjoining USR from violating Plaintiffs’ First Amendment rights and liberties to fully and freely practice their religion. Under Jewish law, an eruv is a largely invisible, unbroken demarcation of an area, within which certain observant Jews may carry and push objects (*e.g.*, pushing a stroller or wheelchair) from place to place on the Sabbath or Yom Kippur, activities that would otherwise be forbidden outside the home. Without an eruv, observant Jews with sincerely held religious beliefs cannot push their children’s strollers or wheelchair-bound relatives to synagogue (or anywhere else) on those days, or carry items such as books, food, water bottles, medications, house keys, personal identification, prayer

shawls, or reading glasses outside of their homes. Accordingly, there are hundreds of eruvin (the plural form of eruv) throughout the United States, and scores in the New York-New Jersey area alone—including in Bergen, Essex, Mercer, Middlesex, Monmouth, Morris, Ocean, and Union Counties in New Jersey.

Plaintiffs are residents of Rockland County, New York, who have sought to expand an eruv already in place in Rockland County into small parts of USR and neighboring towns in Bergen County, New Jersey, such that it would encompass their homes. In 2015, Plaintiffs' agent for this purpose – the Vaad HaEruv – entered into a License Agreement with Orange & Rockland Utilities, Inc.'s ("O&R") New Jersey utility subsidiary, Rockland Electric Company (together with O&R, the "Utility Company") to affix thin PVC plastic pipes known as "lechis" to utility poles in USR that are owned or used by the Utility Company, which are necessary for the expansion of the Eruv. In 2017, after obtaining specific valid licenses from the Utility Company, and under the supervision of the USR Police Department, the Vaad HaEruv completed a partial eruv expansion in USR. As a result, Plaintiffs Friedman and Pinkasovits, and other individuals that BREA represents, are now within the Eruv, and are able to more fully practice their religion on the Sabbath and Yom Kippur.

Regrettably, however, USR now opposes the Eruv, which encompasses only a *de minimis* portion of the Borough, having succumbed to a virulent campaign of

fear, xenophobia, and anti-Semitism from a vocal minority of residents of USR and neighboring municipalities. Without lawful basis, USR has demanded removal of the existing Eruv, and it has also refused to allow Plaintiffs to attach the six to eight lechis necessary to complete the Planned Expansion. After Plaintiffs filed their Complaint, USR agreed to give Plaintiffs one week's notice before taking any action to attempt to remove the existing Eruv, in order that Plaintiffs' motion for Temporary Restraining Order could be refiled. USR, however, continues to refuse to allow Plaintiffs to perform the work necessary to complete the Planned Expansion. Without the Planned Expansion, many other observant Jewish residents living along the New York/New Jersey border – including Plaintiffs Sarah and Moses Berger, Chaim Breuer, Yosef Rosen, and Tzvi Schonfeld – will continue to fall outside of the Eruv. Absent an injunction, those Plaintiffs continue to face practical difficulties and hardships as each week passes in which they are unable to benefit from an eruv.

Plaintiffs' likelihood of success is indisputable: *every* court to hear an eruv challenge – including the Third Circuit in *Tenaflly Eruv Ass'n v. Borough of Tenaflly*, 309 F.3d 144, 176 (3d Cir. 2002), *cert. denied* 539 U.S. 942 (2003), and the Second Circuit in *Jewish People for the Betterment of Westhampton Beach v. Vill. Of Westhampton Beach*, 778 F.3d 390, 395 (2d Cir. 2015) – has found eruv protected by the First Amendment, which guarantees Plaintiffs' fundamental right

to practice their sincerely held religious beliefs. Courts have also held that utility companies have the authority to license their poles for the attachment of lechis,¹ and that lechis are not “signs” for purposes of local signage ordinances.²

In the face of this settled caselaw, USR contends that the Eruv violates Borough Ordinance No. 16-15, which purports to prohibit the posting of “any sign . . . or other matter” to utility poles “except as may be authorized or required by law.” This attempt to restrict Plaintiffs’ religious freedom does not come close to passing constitutional muster. First and foremost, USR introduced and passed Ordinance No. 16-15 in October 2015 with a discriminatory and invidious intent to target the Eruv, and hence Orthodox Jews, specifically. Documents produced pursuant to the Open Public Records Act reveal that the Mayor and Town Council expressly discussed the Vaad HaEruv’s agreement with the Utility Company to install the Eruv in USR at a closed meeting held on August 18, 2015. Scrambling immediately to enact an ordinance to prohibit the Eruv, USR introduced Ordinance No. 16-15 at the next meeting of the Borough Council, held just two weeks later,

¹ See *Verizon New York, Inc., et al. v. The Village of Westhampton Beach, et al.*, 2014 WL 2711846, at *29 (E.D.N.Y. Jun. 16, 2014).

² See *East End Eruv Ass’n v. Town of Southampton, et al.*, 2015 WL 4160461, at *5 (Sup. Ct. Suffolk Cty. June 30, 2015). In *Southampton*, the court held that the lechis at issue did not fit the definition of “signs” in part because they are not discernable to the community and therefore do not “display a message or delineation.” *Id.* The lechis in this case, like the ones at issue in *Southampton*, cannot be considered signs. See *id.* at *6.

and approved and passed it at the meeting after that. Ordinance No. 16-15 is thus facially unconstitutional under *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993) and its progeny, and an impermissible basis from which to demand the removal of the lechis from the Utility Company’s poles or to prevent the Planned Expansion. *See infra* Argument § II.A.2.

Making matters worse, USR has not enforced the Ordinance with any consistency or regularity, as USR has not compelled the removal of a variety of signs and other material – including larger and more conspicuous objects than the lechis – that are posted on utility poles and other structures within USR. Such selective enforcement runs headlong into *Tenafly*, which held that the borough’s selective, discretionary application of a similar local ordinance violated the neutrality principle of the Free Exercise Clause, because it “‘devalue[d]’ . . . Jewish reasons for posting items on utility poles by ‘judging them to be of lesser import than nonreligious reasons,’ and thus single[d] out the plaintiffs’ religiously motivated conduct for discriminatory treatment.”³ *See infra* Argument § II.A.3.

Moreover, even if the Ordinance *were* constitutionally defensible – which it is not – and even if the lechis *did* fall within the language of the Ordinance – which, again, they do not – the lechis would still comply with the Ordinance because they are “authorized or required by law.” *See infra* Argument § II.A.6.

³ 309 F.3d at 168 (quoting, *inter alia*, *Lukumi*, 508 U.S. at 537).

All four of the factors this Court must consider in determining whether to grant a preliminary injunction weigh strongly in favor of Plaintiffs. For the reasons already mentioned and discussed more fully below, Plaintiffs are likely to succeed on the merits of their claims under the U.S. Constitution and 42 U.S.C. § 1983. *See infra* Argument § II. Plaintiffs will suffer irreparable harm in the absence of a PI enjoining Defendant from removing the existing Eruv or preventing Plaintiffs from completing the Planned Expansion, as Plaintiffs will continue to be deprived of their ability to fully and freely exercise their religion on each passing Sabbath. *See infra* Argument § III. Since allowing the Eruv to remain and the Planned Expansion to be completed will have no adverse impact on USR whatsoever as this case proceeds, the balance of equities tips heavily in the Plaintiffs' favor. *See infra* Argument § IV. In this case, there are no societal benefits justifying a burden on the Plaintiffs' religious freedom, and the public interest therefore strongly favors the protection of Plaintiffs' constitutional rights. *See infra* Argument § V. Indeed, in *Tenaflly*, the Third Circuit found for the plaintiff eruv proponents on every one of the above preliminary injunction factors.⁴

⁴ *See Tenaflly*, 309 F.3d at 178 (“Our review of the record leaves us convinced that, in addition to the reasonable probability that the plaintiffs will ultimately prevail on their free exercise claim, the remaining three factors for injunctive relief—irreparable injury, the balance of hardships, and the public interest—also favor a preliminary injunction.”)

This Court should follow governing Third Circuit case law directly on point, and the law of every other court to have considered the issue, and grant the injunction.

STATEMENT OF FACTS

The facts relevant to this motion are set forth in Plaintiffs' Amended Complaint, as well as the accompanying declarations.⁵ A brief summary of the most pertinent facts follows.

A. The Need For An Eruv

Plaintiffs in this case are observant Jews who maintain the sincerely held religious belief that their faith forbids them to push or carry objects outside of their homes on the Sabbath (a 25-hour period from sundown on Friday evening until sundown on Saturday evening) and Yom Kippur. *See* Friedman Decl. ¶ 4; Pinkasovits Decl. ¶ 4; Sarah Berger Decl. ¶ 4; Moses Berger Decl. ¶ 4; Breuer Decl. ¶ 4; Rosen Decl. ¶ 4; Schonfeld Decl. ¶ 4. Plaintiffs' beliefs are informed by thousands of years of Jewish tradition and writings, and include belief in *halakha*, the Jewish legal system, as a framework for life, and in *kehillah*, community, and the importance of joining together with community members to pray, study,

⁵ *See* Declaration of Rabbi Chaim Steinmetz ("Steinmetz Decl."); Declaration of Plaintiff Yisroel Friedman ("Friedman Decl."); Declaration of Plaintiff S. Moshe Pinkasovits ("Pinkasovits Decl."); Declaration of Plaintiff Sarah Berger ("Sarah Berger Decl."); Declaration of Plaintiff Moses Berger ("Moses Berger Decl."); Declaration of Plaintiff Chaim Breuer ("Breuer Decl."); Declaration of Plaintiff Yosef Rosen ("Rosen Decl."); and the Declaration of Plaintiff Tzvi Schonfeld ("Schonfeld Decl.").

worship, and celebrate. *See, e.g.*, Breuer Decl. ¶ 3; *see also* Steinmetz Decl. ¶¶ 2-7 (“The Need for an Eruv”).

Without an eruv, observant Jews are unable to carry ordinary objects, such as water, house keys or glasses, as well as more important items, such as medicine, canes, or crutches. *See* Steinmetz Decl. ¶ 6. The ability to carry these and other items creates a safer environment and permits observant Jews to mingle more freely with their neighbors, thereby facilitating the friendship, camaraderie, and community that is so central to the Jewish and American traditions. *Id.* On the Sabbath and other special occasions, many observant Jews recite prayers that can only be said with a *minyan* (a quorum of Jewish adults), such as the memorial prayer *Kaddish* that is recited by those mourning a loved one. *Id.* ¶ 5. Absent an eruv, those who use wheelchairs, or have young children or babies who must ride in strollers are confined to their homes and are unable to participate in these traditions or fulfill many of their other ritual obligations. *See, e.g.*, Breuer Decl. ¶ 9; Rosen Decl. ¶ 9.

For these reasons, hundreds of eruvim have been established throughout the United States,⁶ with scores in the New York-New Jersey area alone—including in

⁶ These include, among many others: West Orange, Cherry Hill, East Brunswick, Englewood, Fort Lee, Linden, Maplewood, Marlboro Township, Paramus, Passaic-Clifton, Rutherford, Teaneck, Bergenfield, New Milford, Edison, Highland Park, Parsippany, Elizabeth, Livingston, Long Branch, Tenafly, and Ventnor, New Jersey; Westhampton Beach, Southampton, Quogue, Huntington, Stony Brook,

Bergen, Essex, Mercer, Middlesex, Monmouth, Morris, Ocean, and Union Counties in New Jersey; in Nassau, Suffolk, Westchester, Rockland, and Albany Counties in New York; and in each of the five boroughs of New York City.⁷

USR's neighboring towns have recently recognized the near-invisibility, ubiquity, and constitutionality of eruv. In January 2015, then-mayor of Montvale, New Jersey, Roger Fyfe, issued a public statement recognizing that an eruv is constructed "so as to be unobtrusive and nearly invisible to the general

Patchogue, East Northport, Merrick, Mineola, North Bellmore, Plainview, Great Neck, Valley Stream, West Hempstead, Long Beach, Atlantic Beach, Lido Beach, Roslyn, Searingtown, Forest Hills, Kew Gardens, Belle Harbor, Holliswood, Jamaica Estates, New Rochelle, Scarsdale, White Plains, Albany, Manhattan, and Poughkeepsie, New York; Bridgeport, Hartford, Norwalk, Stamford, New Haven, and Waterbury, Connecticut; Boston, Cambridge, Springfield, and Worcester, Massachusetts; Providence, Rhode Island; Berkeley, La Jolla, Long Beach, Los Angeles, Palo Alto, San Diego, and San Francisco, California; Pittsburgh, Philadelphia, and Lower Merion, Pennsylvania; Chicago, Buffalo Grove, Glenview-Northbrook, and Skokie, Illinois; Ann Arbor, Southfield, Oak Park, and West Bloomfield Township, Michigan; Baltimore, Potomac, and Silver Spring, Maryland; Charleston, South Carolina; Birmingham, Alabama; Atlanta, Georgia; Las Vegas, Nevada; Miami, Ft. Lauderdale, Boca Raton, Boyton Beach, Deerfield Beach, Delray Beach, and Jacksonville, Florida; Denver, Colorado; Cleveland, Cincinnati, and Columbus, Ohio; Portland, Oregon; Memphis and Nashville, Tennessee; New Orleans, Louisiana; Dallas, Houston, and San Antonio, Texas; Richmond, Virginia; Seattle, Washington; Phoenix, Arizona; and Washington, D.C. Most recently, eruv have been established in Plano and Austin, Texas; Scottsdale, Arizona; and Omaha, Nebraska.

⁷ Eruvin have also been created throughout the United States on public and private university campuses – including Rutgers and Princeton – with university administrators and local utility companies providing substantial assistance to campus Jewish communities in their efforts to put up an eruv. *See* Amended Complaint, ECF No. 22, at ¶¶ 49-50.

public,” and that it “has been universally held that the construction of an eruv serves ‘the secular purpose of accommodation’ and does not violate the separation of Church and State.” As that statement correctly noted, “[a]bsent any compelling safety concerns, there is little role for Montvale to play in what amounts to a private negotiation between Orange and Rockland and the community that requested the eruv.” *See* Buchweitz Decl. Ex. A.⁸

B. Plaintiffs Seek to Establish and Expand the Eruv

In 2015, representatives of the Vaad haEruv – Plaintiffs’ agent for the planning, organization, and construction of an eruv – approached the Utility Company and requested permission to affix thin PVC plastic pipes, known as “lechis,” to utility poles in USR that are owned or used by the Utility Company. *See* Steinmetz Decl. ¶ 8. On or about June 1, 2015, the Vaad haEruv and the Utility Company entered into a License Agreement, through which the Utility Company granted an express license allowing the Vaad haEruv to affix lechis to

⁸ Moreover, the current Mayor of the nearby Township of Mahwah, New Jersey, also recently recognized the validity of eruvim before his Township, like USR, sharply reversed course. On July 19, 2017 Mayor Laforet issued a public statement on the Township’s website recognizing that the Board of Public Utilities (BPU) “has granted permission” for lechis to be placed on the Utility Company’s poles. *See* Buchweitz Decl. Ex. B. Mayor Laforet explained that “because of several Federal Law suits,” “[the Utility Company is] obligated to allow these ERUV markings, but they have NO OBLIGATION to notify the municipality.” *Id.* (emphasis in original). Mayor Laforet further noted that “[Mahwah] cannot do anything about the installation of these plastic pipes on these utility poles establishing a[n] ERUV.” *Id.*

certain of the poles owned or used by the Utility Company for the purpose of creating an eruv. *See* Steinmetz Decl. Ex. A.

Plaintiffs' community representative, Rabbi Chaim Steinmetz, then obtained specific, valid licenses from the Utility Company to attach lechis to utility poles in USR. *See* Steinmetz Decl. Ex. G. In mid-June 2017, shortly after obtaining the licenses, Rabbi Steinmetz called the USR Police Department to notify them that he would be attaching lechis to utility poles in USR. During that phone call, the police gave their consent, so long as Rabbi Steinmetz agreed to have a "flag man" and to place a sign on the road for traffic safety purposes. Rabbi Steinmetz agreed to these requests. *See* Steinmetz Decl. ¶ 9. The following day, after complying with a temporary stop-work order, Rabbi Steinmetz and Plaintiff Pinkasovits met with James Dougherty, USR's Director of Code Enforcement, and Steven Forbes, USR's Property Zoning Officer. During this meeting, Mr. Dougherty informed Plaintiff Pinkasovits and Rabbi Steinmetz that the Mayor's office had given its consent for the work on the eruv to continue. *Id.* at ¶¶ 12-13. Approximately one week later, Rabbi Steinmetz and Plaintiff Pinkasovits met with USR Police Chief Patrick Rotella to ensure that all concerns about the Eruv were addressed. After Rabbi Steinmetz explained the eruv's important purpose, Chief Rotella consented to continued construction, provided that Rabbi Steinmetz reconfirm that he would employ a "flag man," place road signs near the worksite, and complete a

“Contractor Road Construction” form. Rabbi Steinmetz again complied in all respects, as repeatedly confirmed by patrol officers. *Id.* at ¶¶ 14-16 and Ex. B. Indeed, Rabbi Steinmetz provided all necessary documents and information and complied with each and every one of USR’s permitting requirements. *Id.* at ¶¶ 9-16.

With consent in hand, Plaintiffs and Rabbi Steinmetz resumed their work, and completed the necessary work to expand the Eruv into a *de minimis* portion of USR in July, 2017. As a result of that initial expansion, hundreds of families living along the New York/New Jersey border, including Plaintiffs Friedman and Pinkasovits, have been able to more fully practice their religion for more than two months. *See id.* ¶ 17; Friedman Decl. ¶¶ 8-9; Pinkasovits Decl. ¶¶ 14-16. More specifically, these observant Jewish residents have been able to carry items such as prayer shawls and prayer books to their synagogue and have been able to bring food, games, gifts, and books to the homes of fellow community members. *See, e.g.,* Pinkasovits Decl. ¶ 16.

After the valid Eruv covering a portion of USR was completed, Plaintiffs and Rabbi Steinmetz started – but have not yet completed – the Planned Expansion that will cover other portions of USR (and elsewhere) so as to include additional community members – including Plaintiffs Sarah and Moses Berger, Breuer, Rosen, and Schonfeld – within the confines of the Eruv. *See* Sarah Berger Decl. ¶

8; Moses Berger Decl. ¶ 8; Breuer Decl. ¶ 8; Rosen Decl. ¶ 8; Schonfeld Decl. ¶ 8.

Six to eight more lechis are still required in USR to complete this expansion. *See* Steinmetz Decl. ¶ 18. These efforts, which came at the considerable expense of approximately \$18,000, were only undertaken once Plaintiffs and Rabbi Steinmetz had secured the necessary assurances from USR that the work would be allowed to be completed. *Id.*

C. USR Has Interfered and Continues to Interfere With Plaintiffs’ Rights Amid a Firestorm of Rank Community Hostility

USR’s consent to the Eruv was regrettably short-lived. Mere weeks after the USR Police Department worked collaboratively with Rabbi Steinmetz, USR’s counsel sent a series of letters and emails that demanded the removal of the Eruv. *See* Steinmetz Decl. Exs. C-F. USR’s about-face did not arise in a vacuum, but appears calculated to appease a vicious campaign from a vocal minority of residents in USR and adjacent municipalities—including the Facebook Group “Citizens for a Better Upper Saddle River,” and the “Petition to Protect the Quality of Our Community in Mahwah.” Borough Councilman Jonathan Ditzkoff correctly noted that the former “contains posts and comments that are anti-Semitic,” capturing the attention of the Anti-Defamation League. Illustrative examples of the public comments to the latter unfortunately speak for themselves:

- “Get those scum out of here.”

- “They are clearly trying to annex land like they’ve been doing in Occupied Palestine. Look up the satanic verses of the Talmud and tell me what you see.”
- “Our town is such a great place and if these things move in they will ruin it. They think that can do whatever the hell they want and we’ll be known as a dirty town if they move in. Please keep them out...”
- “I don’t want these rude, nasty, dirty people who think they can do what they want in our nice town.”
- “I don’t want my town to be gross and infested with these nasty people.”
- “I do not want these things coming into my town and ruining it.”

Amended Complaint, ECF No. 22, at ¶ 68.

On the heels of these and other incendiary and wildly anti-Semitic remarks, USR’s attorney sent a July 18, 2017 letter to the Utility Company, forwarded to Rabbi Steinmetz on July 20, 2017, alleging that the lechis that comprise the eruv violate Borough Ordinance 16-15 (the “July 18 Letter”).⁹ The July 18 Letter demanded “that the devices and materials placed on the utility poles [must] be immediately removed” and stated that “[f]ailure to comply with this directive will

⁹ Borough Ordinance 16-15 provides, in relevant part, that it is unlawful to “[p]ost or affix any sign, advertisement, notice, poster, paper, device or other matter to any public utility pole, shade, tree, lamp post, curbstone, sidewalk, or upon any public structure or building, *except as may be authorized or required by law.*” Borough of Upper Saddle River, NJ, Ordinances ch. 122, art. III, § 122-17 (emphasis added).

result in [USR] pursuing all available remedies to secure removal of these devices and fixtures.” Steinmetz Dec. at Exs. C and D.¹⁰

The campaign against the Eruv next escalated into a series of hate crimes and acts of vandalism. On July 26 and 27, 2017, the Eruv in USR was vandalized. *See* Pinkasovits Decl. ¶ 15. Specifically, the lechis were ripped off the utility poles, necessitating immediate repair work. *Id.*¹¹

On July 28, 2017, Plaintiffs filed suit under the First and Fourteenth Amendments and multiple federal statutes, and also sought a temporary restraining order. That same day, Plaintiffs resolved the TRO through an agreement with

¹⁰ By email dated July 21, 2017, the Borough followed-up on its previous letter, adding that Rabbi Steinmetz must remove the eruv by noon on July 26, 2017 or “the Borough will act to remove these devices, materials and items.” Steinmetz Dec. at Ex. E. The Borough reiterated this demand by letter dated July 24, 2017. Steinmetz Dec. at Ex. F (“failure to have the eruv removed by [noon on July 26, 2017] will result in the Borough acting to have eruv removed.”).

¹¹ The police arrested a resident of USR and charged him with bashing the lechis that are “part of the eruv that dips into his hometown of USR.” *See* Elise Young, *Jewish Boundary Markers Stir Tension Even in Diverse New Jersey Town*, Bloomberg, available at <https://www.bloomberg.com/news/articles/2017-08-28/jewish-boundary-markers-stir-tension-even-in-diverse-n-j-town>. Vandals have similarly targeted the Eruv in Mahwah, leading State Attorney General Christopher Porrino and Mahwah Mayor Laforet to offer \$25,000 and \$1,000 rewards, respectively, for information leading to the arrest and conviction of the criminals behind the vandalism. *See id.* Those on the “Citizens for a Better Upper Saddle River” Facebook page were undeterred, however, in their hatred. The founder of the group, Erik S. Friis, stated as follows regarding the Mahwah Mayor and the state and local rewards: “What a major-league loser! I will personally quadruple the \$1000 reward for anyone that protects the identity of the illegally installed PVC hitter. In fact I will offer a bounty of \$100 for every confirmed PVC pipe that’s cut!”

USR's counsel where USR agreed to take no action against the lechis without providing at least one week's notice so the TRO could be refiled, and that would permit Plaintiffs to immediately perform repairs on the damaged and/or vandalized lechis. *See* Buchweitz Decl. Ex. I. But USR residents continued to show unmasked animus at an August 3, 2017 town council meeting. Various USR residents spoke against the Eruv to raucous applause, making such statements as "It's not their community. It's our community." Others derided the USR police department presence "guard[ing] these guys when they put things up on our poles." Still others attempted to justify vandalism against the Eruv because it was "returning [] property" back to the Eruv supporters, and that the "police should stand down." *See* Amended Complaint, ECF No. 22, at ¶ 80.

In short, USR has unlawfully threatened Plaintiffs' constitutional, civil, and contractual rights by demanding the removal of the Eruv and refusing to allow Plaintiffs to complete the Planned Expansion, necessitating the present motion. If Plaintiffs are unable to resume their work in USR to complete the Planned Expansion, they and other community members will be deprived of the ability to fully and freely practice their religion on the Sabbath, constituting immediate irreparable injury.

ARGUMENT

I. LEGAL STANDARD

A party seeking a preliminary injunction must demonstrate (1) that the party is reasonably likely to succeed on the merits, (2) that the party is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in the party's favor, and (4) that an injunction is in the public interest. *Groupe SEB USA, Inc. v. Euro-Pro Operating LLC*, 774 F.3d 192, 197 (3d Cir. 2014); *see also Tenaflly*, 309 F.3d at 157. To meet the first factor, a movant must only show that its likelihood of success is "significantly better than negligible." *Reilly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017) (citing *Singer Mgmt. Consultants, Inc. v. Milgram*, 650 F.3d 223, 229 (3d Cir. 2011) (en banc)). To meet the second factor, a movant must demonstrate that it is more likely than not to suffer irreparable harm in the absence of injunctive relief. *Id.*

In First Amendment cases such as this one, "where 'the [g]overnment bears the burden of proof on the ultimate question of [a statute's] constitutionality, [plaintiffs] must be deemed likely to prevail [for the purpose of considering a preliminary injunction] unless the [g]overnment has shown that [plaintiffs'] proposed less restrictive alternatives are less effective than [the statute].'" *Reilly*, 858 F.3d at 180 (alterations in original) (quoting *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004)). The burdens at the preliminary injunction stage run parallel with the

burdens at trial, and for First Amendment purposes, those burdens rest with the government. *Id.* (citing *Gonzales v. O Centro Espirita Beneficiente Uniao do Vegetal, et al.*, 546 U.S. 418, 429 (2006)). Plaintiffs should thus be deemed likely to prevail on the merits.

II. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS

A. Plaintiffs Are Likely to Succeed on Their Claims Under the U.S. Constitution and 42 U.S.C. § 1983

The Free Exercise Clause, which binds USR pursuant to the Fourteenth Amendment, *see Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940), provides: “Congress shall make no law . . . prohibiting the free exercise [of religion].” U.S. Const. amend. I.¹² It is well-established that “the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons.” *Lukumi*, 508 U.S. at 534.

USR’s demand that Plaintiffs take down the lechis that make up the Eruv, and its continued obstruction of the Planned Expansion, violates Plaintiffs’ rights

¹² Federal law also recognizes a private cause of action against any person who, acting under color of state law, deprives another of “any rights, privileges or immunities secured by the Constitution and laws” of the United States. 42 U.S.C. § 1983 (2006). Such a claim is proper against individuals who exercise power “possessed by virtue of state law and . . . clothed with the authority of state law,” as well as against a municipality itself where its policies serve to deprive an individual of his or her federal rights. *West v. Atkins*, 487 U.S. 42, 49 (1988); *Monell v. N.Y.C. Dep’t of Social Servs.*, 436 U.S. 658, 690 (1978). Plaintiffs will address their claims under the Free Exercise Clause and § 1983 together.

under the Free Exercise Clause. This is no longer even a close question. The Third Circuit, as well as every court to have considered the issue, has squarely held that an eruv is a reasonable and permissive accommodation of religion under the First Amendment. *See Tenaflly*, 309 F.3d at 176; *Westhampton Beach*, 778 F.3d at 395; *ACLU v. City of Long Branch*, 670 F. Supp. 1293, 1295 (D.N.J. 1987); *Smith v. Cmty. Bd. No. 14*, 128 Misc. 2d 944 (Sup. Ct. Queens Cnty. 1985), *aff'd* 133 A.D.2d 79 (2d Dept. 1987).

To satisfy the commands of the First Amendment, “a law restrictive of religious practice must advance interests of the highest order and must be narrowly tailored in pursuit of those interests.” *Lukumi*, 508 U.S. at 546. With respect to eruvim, the Third Circuit has held that if a law “is not neutral (*i.e.*, if it discriminates against religiously motivated conduct) or is not generally applicable (*i.e.*, if it proscribes particular conduct only or primarily when religiously motivated), strict scrutiny applies and the burden on religious conduct violates the Free Exercise Clause unless it is narrowly tailored to advance a compelling government interest.” *Tenaflly*, 309 F.3d at 165 (citing *Lukumi*, 508 U.S. at 532, 542). As set out below, USR’s discriminatory reliance on Ordinance No. 16-15 to obstruct the Eruv and halt the Planned Expansion is neither neutral nor generally applicable. Accordingly, under *Lukumi* and *Tenaflly*, strict scrutiny applies.

Moreover, since Plaintiffs are challenging the constitutionality of Plaintiffs’

discriminatory ordinance under the First Amendment, the burden of proof is on USR to demonstrate that its ordinance will survive strict scrutiny, and Plaintiffs “must be deemed likely to prevail.” *See Reilly*, 858 F.3d at 180 & n.5. Even if this were not the case, Plaintiffs can easily demonstrate a likelihood of success on the merits.

1. Plaintiffs Have a Constitutional Right to Maintain and Expand the Eruv

Courts have uniformly upheld the right to establish and maintain an eruv as a valid accommodation to religious practice under the Free Exercise Clause. In *Tenaflly*, the Third Circuit granted a preliminary injunction to the plaintiff eruv proponents, finding that were “not asking for preferential treatment,” but “ask only that the Borough not invoke an ordinance from which others are effectively exempt to deny plaintiffs access to its utility poles simply because they want to use the poles for a religious purpose.” 309 F.3d at 169. The Second Circuit is in accord, holding that “absent evidence that the erection of an eruv is facilitated in a non-neutral manner, permitting an organization to attach lechis to utility poles serves the secular purpose of accommodation.” *Westhampton Beach*, 778 F.3d at 395; *see also Long Branch*, 670 F. Supp. at 1295; *Smith*, 128 Misc. 2d at 946-48. Another recent decision held that lechis are not signs for the purpose of town sign ordinances, and municipalities have affirmative duties to accommodate religious uses of utility poles, *with specific application to lechis*. *See Southampton*, 2015

WL 4160461 at **6-7 (reversing denial of zoning variance for lechis because municipality abused its discretion when it “ignored its affirmative duty to suggest measures to accommodate” creation of an eruv).

The constitutional rights of Plaintiffs to the existing Eruv and its Planned Expansion are no different from those with respect to the eruvin upheld in *Tenafly*, *Westhampton Beach*, *Southampton*, *Long Branch*, and *Smith*. Under this now robust, uniform body of law, Plaintiffs have a constitutional right under the Free Exercise Clause to maintain the Eruv and complete the Planned Expansion.

2. *USR’s Enactment of the Ordinance With Invidious, Discriminatory Intent Violates the First Amendment’s Free Exercise Clause*

USR relies on Ordinance No. 16-15 as the basis for its prior demand to take-down the Eruv and its continued obstruction of the Planned Expansion. *See* Buchweitz Decl. Ex. C (July 2017 Threat Letters). But the Ordinance is neither neutral nor generally applicable, and thus must withstand a strict scrutiny analysis. It cannot. The evidence shows that USR’s Borough Council passed the Ordinance with the **specific, discriminatory intent** of targeting the eruv. Specifically, in a closed executive meeting held on August 18, 2015, USR Mayor Minichetti reported that “an agreement between Vaad Haeruv and Rockland Electric Co. allows for the installation of a ERUV system on poles owned by Orange and Rockland Utilities.” *See* Buchweitz Decl. Ex. D. The Mayor noted that “the

attachments would be located on Weiss Road, Old Stone Church Road and Lake Street to Montvale, which the licensee would inspect on a weekly basis to ensure they are intact.” *Id.* A mere two weeks later – at the very next closed meeting session – USR’s attorney, Robert Regan, explained that an ordinance “that prohibits anything on utility poles . . . will be introduced at the Regular meeting.” *See* Buchweitz Decl. Ex. E. And indeed, Ordinance No. 16-15 was introduced that same night, and approved at the next meeting of the Borough Council, held on October 1, 2015. *See* Buchweitz Decl. Ex. F. This evidence thus establishes that USR had one, specific conduct in mind in enacting Ordinance No. 16-15: prohibiting the lechis that establish the Eruv, and singling out observant Orthodox Jews for discriminatory treatment.

Because USR passed the Ordinance with an intent and motivation to proscribe particular conduct, the Ordinance is facially unconstitutional. *See Hassan v. City of New York*, 804 F.3d 277, 301, 309 (3d Cir. 2015). In *Hassan*, the Third Circuit held that the plaintiffs adequately alleged that a police surveillance program, which allegedly discriminated against Muslims, violated the First Amendment and the equal protection clause of the Fourteenth Amendment, on the basis that the policy was facially discriminatory. *Id.* at 294–97. The court noted that the plaintiffs could also adequately plead their claims by alleging that the program was a “facially neutral policy that the City purposefully designed to

impose different burdens on Muslims and that (even if applied evenhandedly) does in fact have the intended adverse effect.” *Id.* at 294 (internal quotation marks omitted); *see also Lukumi*, 508 U.S. at 534, 540 (“Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality. The Free Exercise Clause protects against governmental hostility which is masked, as well as overt. . . . Here, as in equal protection cases, we may determine the city council’s object from both direct and circumstantial evidence.”) (citing *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977)); *Hunter v. Underwood*, 471 U.S. 222 (1985) (facially neutral state constitutional provision unconstitutional because it was discriminatorily enacted); *Gonzalez v. Douglas*, No. CV 10-623-TUC-AWT, 2017 WL 3611658, at *14–*20 (D. Ariz. Aug. 22, 2017) (law prohibiting certain ethnic studies courses was unconstitutional because its enactment and enforcement were motivated by racial animus, as evidenced by, *inter alia*, the bill’s legislative history, anonymous blog posts by legislators, and the use of “code words” during public discussion of the bill). Similarly here, Plaintiffs are likely to succeed on the merits based on the “direct and circumstantial evidence,” *see Lukumi*, 508 U.S. at 540, that USR “purposefully designed” the Ordinance immediately following official, municipal discussion of the planned eruv, in order “to impose different burdens on [Orthodox Jews].” *See Hassan*, 804 F.3d at 294.

In all events, in light of the evidence set forth above – including the fact that USR passed the Ordinance immediately after specifically discussing Vaad HaEruv’s agreement with the Utility Company to install the Eruv in USR – it cannot be reasonably disputed that, at a minimum, USR had a religious affiliation in mind in enacting the Ordinance, which similarly runs afoul of the Free Exercise Clause. *See Shrum v. City of Coweta*, 449 F.3d 1132, 1145 (10th Cir. 2006) (“Proof of hostility or discriminatory motivation may be sufficient to prove that a challenged governmental action is not neutral, but the Free Exercise Clause is not confined to actions based on animus.”).

3. USR’s Selective Enforcement of the Ordinance Violates the First Amendment’s Free Exercise Clause

Even if USR could show that the Ordinance is facially neutral and/or generally applicable – and it cannot – USR has selectively enforced the Ordinance. *See Fowler v. Rhode Island*, 345 U.S. 67, 69 (1953) (Free Exercise Clause violated where city selectively enforced its park ordinance against Jehovah’s Witnesses but no other religious groups); *Gonzalez*, 2017 WL 3611658, at *17–*19 (considering direct and circumstantial evidence in determining that discriminatory animus motivated the enforcement of the statute at issue against a Mexican-American Studies program).

As to selective enforcement, the Third Circuit’s decision in *Tenaflly* is not merely instructive, but dispositive. *Tenaflly* held that the borough’s selective,

discretionary application of a similar local ordinance violated the neutrality principle of the Free Exercise Clause, because it “devalue[d] . . . Jewish reasons for posting items on utility poles by judging them to be of lesser import than nonreligious reasons and thus single[d] out the plaintiffs’ religiously motivated conduct for discriminatory treatment.” 309 F.3d at 168 (*citing, inter alia, Lukumi*, 508 U.S. at 537). The borough of Tenaflly had “tacitly or expressly granted exemptions from the ordinance’s unyielding language for various secular and religious – though never Orthodox Jewish – purposes.” *Tenaflly*, 309 F.3d at 167. For example, the borough had permitted citizens to affix “drab house numbers and lost animal signs to more obtrusive holiday displays, church directional signs, and orange ribbons” to utility poles. *Id.* The court found that the lechis were in fact less problematic than these allowable uses. *Id.*

So too here. Since enacting Ordinance No. 16-15 in October 2015, USR does not appear to have used it to compel the removal of various other objects from the Utility Company’s poles. Pinkasovits Declaration at ¶¶ 19, 21. In fact, USR has not required the removal of a variety of signs and other materials – including larger and more conspicuous objects than the lechis – that are posted on utility poles and other structures within USR. For example, USR has failed to enforce the Ordinance against “lost animal” signs (such as a “lost dog” sign on a pole at Cherry Lane and West Saddle River Road); signs listing street numbers; mailboxes

affixed to utility poles; and flags attached to utility poles. *See* Pinkasovits Decl. Ex. A (photographs depicting illustrative examples of these materials, all taken in USR); Buchweitz Decl. Ex. J (photograph depicting a “lost dog” sign posted on a utility pole in USR that also includes a lechi).

The lechis comprising the Eruv – mere half-inch thick, PVC plastic pipes – are *far* less conspicuous than these allowed objects, as they are comparably smaller, “unobtrusive and typically unnoticeable to a casual observer.” *See* Steinmetz Dec. at ¶ 7. As the Second Circuit observed in *Westhampton Beach*, lechis are “nearly invisible.” *Westhampton Beach*, 778 F.3d at 395; *see also Southampton*, 2015 WL 4160461, at **5-6 (finding that “lechis are not discernable to the community,” as “[n]either drivers nor casual observers would be able to differentiate the poles which have lechis attached from the other poles”). Moreover, there are many examples of PVC and other piping, entirely indistinguishable from the lechis, which have been attached to utility poles in USR for years. *See* Buchweitz Decl. Ex. G.

There is only one plausible explanation for USR’s selective enforcement: appeasement of the virulent backlash that the Eruv has engendered among a vocal minority of USR’s residents. *See supra* Statement of Facts, § C. This orchestrated campaign of hatred coincides with USR’s decision to revoke its short-lived approval of the Eruv. *Id.* Just as in *Tenafly*, USR has enforced the Ordinance in a

manner that singles out observant Judaism. USR has thus violated the neutrality principle of the Free Exercise Clause. *See Tenaflly*, 309 F.3d at 168.

4. *USR Has No Interest – Let Alone A Compelling Interest – In Barring the Eruv*

USR’s discriminatorily enacted and selectively enforced Ordinance cannot withstand strict scrutiny review because it does not “advance interests of the highest order [nor is it] narrowly tailored in pursuit of those interests.” *Lukumi*, 508 U.S. at 546; *see also Tenaflly*, 309 F.3d at 172. Notably, USR’s letter demanding removal of the lechis offers only one such interest—*i.e.*, preserving the Borough’s right to give “municipal approval for the use by another party of utility poles within Borough rights-of way.” *See Steinmetz Decl. Exs. C-F*. Far from a compelling interest, this purported interest is purely pretextual, given that Plaintiffs’ representative, Rabbi Steinmetz, affixed the lechis to poles owned or used by the Utility Company pursuant to valid licenses and in close consultation with USR officials, after having obtained all necessary permits and documentation that were required of him by the USR Police Department. *See Steinmetz Decl. at* ¶¶ 8-16. Nor does USR require “municipal approval” for a host of other materials, such as “Lost Dog” signs, that are affixed to utility poles in USR. *See Pinkasovits Decl. Ex. A; Buchweitz Decl. Ex. J*.

USR’s wholesale failure to advance *any* other interest, let alone an “interest[] of the highest order,” *see Lukumi*, 508 U.S. at 546, is unsurprising, since

the Eruv presents no aesthetic, safety, traffic, fiscal, or other concern. *See Westhampton Beach*, 778 F.3d at 395 (noting that the eruv at issue was “nearly invisible”). Quite the contrary, “permitting an organization to attach lechis to utility poles serves the secular purpose of accommodation” of religious rights. *Id.*; *see also Long Branch*, 670 F.Supp. at 1295-96. At bottom, USR’s decision to seek to remove and/or prevent the lechis from being attached to utility poles – while allowing other, more conspicuous uses of the Utility Company’s poles without prior approval – is devoid of *any* purpose, compelling or otherwise. *See Tenaflly*, 309 F.3d at 172.

Like the plaintiffs in *Tenaflly*, Plaintiffs do not seek preferential treatment. They request only that USR not invoke a facially invalid ordinance to deny them the use of private utility poles for which Plaintiffs have a valid license. *See id.* at 169. Far from the neutrality demanded by the First Amendment, USR’s enactment and enforcement of the Ordinance has been motivated with the invidious intent of restricting Plaintiffs’ ability to fully and freely practice their religious beliefs. Because USR’s conduct cannot survive strict constitutional scrutiny, Plaintiffs are likely to succeed on their First Amendment and § 1983 claims.

5. Ordinance No. 16-15 is Unconstitutionally Vague

Even if Ordinance No. 16-15 could survive strict constitutional scrutiny despite its infirmities under the Free Exercise Clause, Plaintiffs would still be

likely to succeed on the merits because the Ordinance is impermissibly vague. For this additional reason, it violates Plaintiffs' due process and First Amendment rights.

A statute is impermissibly vague if it "fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits," or "if it authorizes or even encourages arbitrary and discriminatory enforcement." *Hill v. Colorado*, 530 U.S. 703, 732 (2000). If a statute does not satisfy both criteria, it fails under the void for vagueness doctrine. *See Kolender v. Lawson*, 461 U.S. 352, 361 (1983) (statute "failed to describe with specific particularity" what a person on the street must do to satisfy requirement of producing "credible and reliable information"). This doctrine includes the requirement that a legislature establish minimal guidelines to govern law enforcement. *Id.* at 358.

Absent such minimal guidelines, a statute is void for vagueness because it may permit "a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections." *Id.* at 357 (quoting *Smith v. Goguen*, 415 U.S. 566, 574 (1974)) (alteration in original). This is especially true where the uncertainty created by the statute threatens to inhibit the exercise of constitutionally protected rights. *Colautti v. Franklin*, 439 U.S. 379, 391 (1979); *see also New Jersey Freedom Organization v. City of New Brunswick*, 7 F. Supp. 2d 499, 514 (D.N.J. 1997) (city ordinance requiring permit for any event at which

50 or more people were expected to attend and at which admission was charged or contributions solicited was void for vagueness in part because of a lack of clear guidelines for law enforcement officers).

Here, Ordinance 16-15 makes it unlawful to “[p]ost or affix any sign, advertisement, notice, poster, paper, device, or other matter to any public utility pole, shade tree, lamp post, curbstone, sidewalk, or upon any public structure or building, except as may be authorized or required by law.”¹³ This Ordinance is impermissibly vague under both prongs of the void for vagueness doctrine.

First, the Ordinance fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Notably, the Ordinance does not define a single term that it contains.¹⁴ The Ordinance does not

¹³ As noted above, courts have held that lechis are not “signs” for purposes of local sign ordinances. *See Southampton*, 2015 WL 4160461, at *5 (“[T]he uncontroverted testimony . . . that lechis are not discernable to the community establishes that lechis do not display a message or delineation and, thus, do not come within the ambit of the Sign Ordinance.”). Here, as in *Southampton*, the Eruv’s “boundaries are invisible as the lechis are not discernable.” *Id.* at *6. It is clear, therefore, that a lechi does not constitute a “sign, advertisement, notice, poster, paper, [or] device.” The lack of defined terms makes it impossible to determine what the Ordinance means by “other matter.” Therefore, lechis do not fall within the definition of items the Ordinance prohibits from being posted.

¹⁴ In fact, the only definition to be found anywhere in Chapter 122 of the Borough’s ordinances is the term “street.” *See Borough of Upper Saddle River, NJ, Ordinances ch. 122, art. I, § 122-1.*

specify, for instance, what constitutes a “public utility pole”¹⁵ or “public structure,” “shade tree,” “other matter,” among other ambiguous and undefined terms. *See New Jersey Freedom Organization*, 7 F. Supp. 2d at 514–15 (noting that the impermissibly vague ordinance did not define terms such as “party, festival or other similar event,” or “purely religious and educational events”).¹⁶ Moreover, the Ordinance prohibits the posting of certain signs or other matters “except as may be authorized or required by law,” but gives no indication whatsoever as to what that means. *See, e.g., Int’l Soc. for Krishna Consciousness v. Rochford*, 585 F.2d 263, 268 (7th Cir. 1978) (regulation was impermissibly vague because it did not explain who is “authorized by law” to distribute literature or solicit contributions).

Second, the Ordinance fails to provide clear standards for law enforcement to apply, which has led to the exact type of arbitrary and selective enforcement detailed above. *See Cunney v. Bd. of Trustees of Vill. of Grand View, N.Y.*, 660 F.3d 612, 622 (2d Cir. 2011) (“[i]n addition to [an ordinance’s] plain meaning and

¹⁵ For example, since the utility poles to which the lechis are affixed are owned or used by the Utility Company, a private entity, those poles are not “public utility poles” within the meaning of the statute. Yet the Ordinance clouds even this basic point due to its lack of defined terms.

¹⁶ If USR contends that a lechi is an “other matter” within the meaning of the Ordinance, such a position would beg any number of questions. To pose only two: Would setting a backpack down on the sidewalk while waiting for a bus constitute “other matter”? Would a child’s chalk drawings on the sidewalk outside of her home qualify as “other matter”?

stated purpose, courts should determine whether [the ordinance] provides sufficiently clear enforcement standards by analyzing ‘perhaps to some degree . . . the interpretation of the [ordinance] given by those charged with enforcing it.’”) (alterations in original, citations omitted). Therefore, the Ordinance is unconstitutionally vague as applied to the Eruv and the Planned Expansion.

6. The Lechis are “Authorized or Required by Law”

Even assuming that the Ordinance *were* constitutionally defensible, and that the lechis *did* fall within the language of the Ordinance, the lechis would still comply with the Ordinance because they are “authorized or required by law,” as specified in the Ordinance. Plaintiffs have obtained valid licenses duly issued by the Utility Company, and nothing further is required for Plaintiffs to be authorized to affix lechis to poles in USR. This is precisely the arrangement in scores of communities throughout the United States. As detailed above, any legal question regarding *eruv* has been conclusively settled in favor of the eruv proponents as a neutral and reasonable accommodation; in other words, the lechis are “authorized or required by law.” *See Tenaflly Eruv Ass’n*, 309 F.3d at 176; *Westhampton Beach*, 778 F.3d at 395; *Long Branch*, 670 F. Supp. at 1295; *Smith*, 128 Misc. 2d at 946-48. In fact, USR has an “*affirmative duty* to suggest measures to

accommodate” the creation of the Eruv. *See Southampton*, 2015 WL 4160461 at *6 (emphasis added).¹⁷

III. PLAINTIFFS WILL SUFFER IRREPARABLE HARM IN THE ABSENCE OF A PRELIMINARY INJUNCTION

Plaintiffs will suffer irreparable harm if the Eruv is taken down or if they are prevented from completing the Planned Expansion. The Supreme Court has recognized that “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also Swartzwelder v. McNeilly*, 297 F.3d 228, 241 (3d Cir. 2001). Moreover, where, as here, a “plaintiff alleges injury from a rule or regulation that directly limits [First Amendment freedoms], the irreparable nature of the harm may be presumed.” *Bronx Household of Faith v. Bd. of Educ. of N.Y.*, 331 F.3d 342, 349 (2d Cir. 2003).

In the specific context of an eruv, the Third Circuit in *Tenaflly* has settled the question of irreparable injury in Plaintiffs’ favor, finding that plaintiffs “*easily*

¹⁷ Even prior to the enactment of RLUIPA, New Jersey’s courts have likewise “provided broad support for the constitutional guarantees of religious freedom, sometimes in a zoning context,” mandating reasonable accommodations where religious rights are implicated absent “an overriding government interest.” *See, e.g., Burlington Assembly of God v. Zoning Bd. of Adjustment Twp. of Florence*, 570 A.D. 495, 497 (Law Div. 1989) (granting summary judgment to church where township’s zoning board “impermissibly denied the right of the church to engage in a protected religious activity” without showing an “overriding governmental interest” justifying that frustration).

[satisfied] the irreparable injury requirement” where “plaintiffs have demonstrated that, if the eruv is removed, they will be unable to push and carry objects outside the home on the Sabbath, and those who are disabled or have small children consequently will be unable to attend synagogue.” *Tenaflly*, 309 F.3d at 178 (emphasis added).

Under the above case law, USR’s discriminatory enactment and enforcement of Ordinance 16-15 indisputably imposes a direct limitation on Plaintiffs’ First Amendment rights, such that irreparable harm may be presumed. In any event, Plaintiffs have established irreparable harm. As described in Plaintiffs’ accompanying declarations, with every Sabbath that passes, Plaintiffs will suffer **precisely the same harm** deemed irreparable in *Tenaflly*, absent an injunction prohibiting USR from removing the existing Eruv and preventing completion of the Planned Expansion. For instance, Plaintiff Chaim Breuer and his wife have an infant child who requires a stroller to attend Synagogue on the Sabbath. *See* Breuer Decl. ¶ 9. Furthermore, Plaintiff Breuer’s brother-in-law, who uses a wheelchair, cannot travel to or visit Plaintiff Breuer’s family on the Sabbath because there is no eruv surrounding Plaintiff Breuer’s home. *Id.* Without completion of the Planned Expansion, Plaintiff Breuer and his family are prevented from attending Synagogue together and traveling together to the houses of family and other community members. *Id.* Likewise, Plaintiffs Sarah Berger and Moses

Berger have a nine-month-old child. Sarah Berger Decl. at ¶ 9; Moses Berger decl. at ¶ 9. Since USR has refused to allow the Planned Expansion to be completed, they cannot travel together as a family on the Sabbath to houses of other community members for meals or to socialize. *Id.* Similarly, Plaintiff Rosen and his wife have a three-year-old child who is unable to walk to Synagogue without the use of a stroller. Rosen Decl. at ¶ 9. Plaintiff Rosen's wife's grandmother has visited his family on the Sabbath for years, but is unable to go outside Plaintiff Rosen's home on the Sabbath because she requires a wheelchair or walker. *Id.* Since USR has prevented the Planned Expansion from being completed, Plaintiff Rosen and his family cannot easily travel together to the houses of family and other community members on the Sabbath. *Id.*; *see also* Pinkasovits Decl. ¶ 17. Accordingly, Plaintiffs have met their burden of showing irreparable harm sufficient to warrant a Preliminary Injunction.

IV. THE BALANCE OF HARDSHIPS FAVORS PLAINTIFFS

Allowing the Eruv to remain and the Planned Expansion to be completed will have no adverse impact on USR as this case proceeds. As discussed in detail above, the Eruv is not physically obtrusive, has no effect on residential safety, and imposes no cost on USR whatsoever. Indeed, the Eruv is "typically unnoticeable to a casual observer." *See* Steinmetz Decl. ¶ 7; *see also Westhampton Beach*, 778 F.3d at 395. It has also been universally held that the Eruv does not pose any

concerns under the First Amendment’s Establishment Clause. *See Tenaflly*, 309 F.3d at 177–78; *Westhampton Beach*, 778 F.3d at 396 (allowing eruv association to privately contract with a utility company to “erect the eruv is not an unconstitutional establishment of religion”); *Long Branch*, 670 F. Supp. at 1297 (“permission to create an eruv does not violate the establishment clause of the First Amendment” of the U.S. and New Jersey Constitutions); *Smith*, 491 N.Y.S.2d at 586. Moreover, the existing Eruv has been in place in portions of USR without incident or any detriment to the Borough since July 2017. *See Steinmetz Dec.* at ¶ 16-17.

Conversely, as each and every week passes without the Planned Expansion, Plaintiffs Sarah and Moses Berger, Breuer, Rosen, and Schonfeld, and many other similarly situated community members, including as represented by BREA, are being deprived of the ability to fully and freely practice their religion on the Sabbath, constituting an immediate irreparable injury. Accordingly, just as in *Tenaflly*, the balance of the hardships plainly favors Plaintiffs. *See Tenaflly*, 309 F.3d at 178 (“With respect to the balance of hardships, a preliminary injunction would not harm the Borough more than denying relief would harm the plaintiffs. Enjoining removal of the *eruv* would cause neither the Borough nor its residents any serious injury. Without an injunction, on the other hand, the plaintiffs’ free

exercise of religion will be impaired. The balance easily tips in the plaintiffs’ favor.”).

V. THE PUBLIC INTEREST FAVORS GRANTING A PRELIMINARY INJUNCTION

“Where there are no societal benefits justifying a burden on religious freedom, the public interest clearly favors the protection of constitutional rights.” *Tenaflly*, 309 F.3d at 178. In the context of eruv challenges specifically, the Third Circuit has expressly concluded that “we do not see how removing the lechis could advance any interests sufficient to outweigh the infringement of the plaintiffs’ free exercise rights.” *Id.* Based on this governing precedent alone, the public interest favors the issuance of the preliminary injunction.

Moreover, the public’s interest lies in protecting, rather than targeting, eruv because they permit Jewish families to spend more time together on Sabbath, and therefore promote traditional family values. Without the ability to push strollers or wheelchairs, many Plaintiffs cannot easily travel together to the houses of family and other community members, which negatively impacts their sense of community and camaraderie. *See* Breuer Dec. at ¶¶ 8, 9; Sarah Berger Dec. ¶¶ 8, 9; Rosen Dec. ¶¶ 8, 9. The public interest should not abide that result. As President George H.W. Bush recognized on the occasion of the inauguration of the first eruv in Washington, D.C. – which encompasses the Capitol, the White House, the Supreme Court, and many other federal buildings – “by permitting

Jewish families to spend more time together on the Sabbath, it will enable them to enjoy the Sabbath more and promote traditional family values, and it will lead to a fuller and better life for the entire Jewish community in Washington. I look upon this work as a favorable endeavor. G-d bless you.” *See* Buchweitz Decl. Ex. H. Countless other public officials – who have welcomed and embraced erubin in their communities without controversy or rancor – are in accord. *See, e.g.,* Amended Complaint, ECF No. 22, at ¶¶ 42-52.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court (i) issue a Preliminary Injunction providing that (a) Defendant, and anyone acting for or in concert with Defendant, is restrained and enjoined from taking any action, or causing anyone to take any action, to remove, in whole or in part, the eruv in the Borough; (b) Defendant, and anyone acting for or in concert with Defendant, is restrained and enjoined from taking any action, or causing anyone to take any action, to interfere with the restoration or re-establishment, maintenance, repair or upkeep of the Eruv; and (c) Defendant, and anyone acting for or in concert with Defendant, is restrained and enjoined from taking any action, or causing anyone to take any action, to interfere with Plaintiffs’ completion of the Planned Expansion of the Eruv, and (ii) grant Plaintiffs such other and further relief deemed just and proper.

Dated: October 10, 2017

/s/ Diane P. Sullivan

Diane P. Sullivan

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BERGEN ROCKLAND ERUV ASSOCIATION,
YISROEL FRIEDMAN, S. MOSHE
PINKASOVITS, SARAH BERGER, MOSES
BERGER, CHAIM BREUER, YOSEF ROSEN,
and TZVI SCHONFELD

Plaintiffs,

-against-

THE BOROUGH OF UPPER SADDLE RIVER
Defendant.

Civ. No. 2:17-cv-05512-JMV-CLW

DECLARATION OF YEHUDAH L.
BUCHWEITZ IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION

I, Yehudah L. Buchweitz, declare under penalty of perjury as follows:

1. I am a member of the Bar of the State of New York (admitted *pro hac vice* in New Jersey) and a partner at the law firm of Weil, Gotshal & Manges LLP, attorneys for Plaintiffs Bergen Rockland Eruv Association, Yisroel Friedman, S. Moshe Pinkasovits, Sarah Berger, Moses Berger, Chaim Breuer, Yosef Rosen, and Tzvi Schonfeld (“Plaintiffs”) in this action.

2. I have personal firsthand knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

3. I submit this Declaration in Support of Plaintiffs’ Motion for a Preliminary Injunction (“Motion”) to enjoin Defendant the Borough of Upper Saddle River (“Defendant” or

“USR”), from engaging in the actions set forth in detail in Plaintiffs’ Amended Complaint. The relevant facts regarding the merits of the Motion are set forth in the accompanying Memorandum of Law in Support of Plaintiffs’ Motion for a Preliminary Injunction, as well as the supporting Declarations of Rabbi Chaim Steinmetz, S. Moshe Pinkasovits, Yisroel Friedman, Sarah Berger, Moses Berger, Chaim Breuer, Yosef Rosen, and Tzvi Schonfeld, and the exhibits attached thereto.

4. A true and correct copy of the January 2015 eruv statement of the then-Mayor of Montvale, New Jersey, is attached hereto as Exhibit A.

5. A true and correct copy of the July 19, 2017 statement of the Mayor of Mahwah, New Jersey is attached hereto as Exhibit B.

6. True and correct copies of correspondence from USR’s counsel, dated July 18, 2017, July 21, 2017, and July 24, 2017 (the “Threat Letters”) are attached hereto as Exhibit C.

7. A true and correct copy of the minutes of a closed meeting of Mayor Joanne Minichetti and the USR Borough Council on August 18, 2015 is attached hereto as Exhibit D.

8. A true and correct copy of the minutes of a closed meeting of Mayor Joanne Minichetti and the USR Borough Council on September 3, 2015 is attached hereto as Exhibit E.

9. A true and correct copy of Borough Ordinance 16-15, showing dates when it was introduced, adopted, and approved, is attached hereto as Exhibit F.

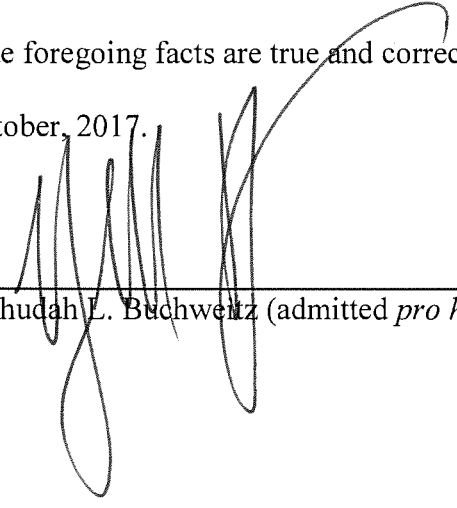
10. True and correct copies of photographs of PVC and other piping attached to utility poles in USR are attached hereto as Exhibit G.

11. A true and correct copy of a letter from President George H.W. Bush is attached hereto as Exhibit H.

12. A true and correct copy of the July 28, 2017 agreement between Counsel for Plaintiffs and Counsel for Upper Saddle River is attached hereto as Exhibit I.

13. A true and correct copy of a "lost dog" sign on a telephone pole in USR is attached hereto as Exhibit J.

I declare under penalty of perjury that the foregoing facts are true and correct. This declaration was executed on the 10th day of October, 2017.



Yehudah L. Buchweitz (admitted *pro hac vice*)

EXHIBIT A

Message From the Mayor

Several residents have recently brought to my attention the placement of what is known as an *eruv* on utility poles owned and operated by Orange and Rockland in the area of Lark Lane bordering on Chestnut Ridge, New York. In response to these inquiries, I contacted Orange and Rockland and consulted with our municipal attorney. I wanted to briefly address this issue to provide some background information concerning the *eruv* and the way that our courts have handled prior disputes on this issue.

For those who are unfamiliar with the term, an *eruv* is a ritual enclosure that allows members of certain Jewish communities to carry objects and move more freely in their neighborhood on the Sabbath. An *eruv* typically consists of a network of thin wires and posts that are attached to the top of utility poles. Ordinarily, an *eruv* is constructed in a way so as to be unobtrusive and nearly invisible to the general public. For example, they are located all throughout Manhattan, and I personally have never noticed one in all my time in the City.

Courts in both New York and New Jersey have addressed lawsuits filed to either block or permit the construction of an *eruv*. Most recently, in a decision issued on January 6, 2015, the United States Court of Appeals for the Second Circuit dismissed a lawsuit seeking to prohibit an *eruv* in the Long Island community of Westhampton. The Second Circuit relied upon a 2002 Federal decision concerning Tenafly, New Jersey, which affirmed the right to place an *eruv* on utility poles in the municipality with the permission of the utility. In these and other cases, it has been universally held that the construction of an *eruv* serves the “secular purpose of accommodation” and does not violate the separation of Church and State. Absent any

compelling safety concerns, there is little role for Montvale to play in what amounts to a private negotiation between Orange and Rockland and the community that requested the *eruv*.

I understand that members of the public may have additional questions, and I would be happy to discuss this matter further. If you would like to speak to me about this issue, or about any other issue concerning the Borough, please feel free to contact me at mayorfyfe@montvaleboro.org or to attend one of our council meetings which are held on the second and last Tuesday of every month.

EXHIBIT B



Currently:
July 25, 2017
12:32 PM

News & Announcements

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Township Council

Boards, Commissions
& Committees

Government
Representatives

GOVERNMENT

Bids, RFP's, RFQ's,
Notice of Intent

Community
Emergency Response
Team (CERT)

Contacts Directory

Departments

E-Mail Subscriptions

Emergency Services

Forms Center

Frequently Asked
Questions

Meeting Agendas &
Minutes

Municipal Code

Senior Center

Message from the Mayor - ERUV UPDATE

Release Date: July 19, 2017

If you follow Social Media, concerns from residents have spread from Upper Saddle River to Mahwah regarding the ERUV. An ERUV is a closed perimeter area of about 26 square miles. Please click on the following link for more information: <http://www.myjewishlearning.com/article/eruv>

Click on the following link for a list provided by O&R of every utility pole where the plastic pipes have been secured. (**Click here: [Listing of Poles](#)**) Advice by our attorney is that we cannot do anything about the installation of these plastic pipes on these utility poles establishing a ERUV. There are links below that may better help you understand some of the issues.

The Board of Public Utilities (BPU) <http://www.bpu.state.nj.us> is the State of New Jersey public utility authority who has granted permission to this group to place the ½ plastic pipes for the purpose of a ERUV on Orange and Rockland (O&R) utility poles. <https://www.oru.com/en/contact-us>

Normally, O&R does not allow anyone to place anything on their utility poles without permission but because of several Federal Law suits, both BPU and O&R are obligated to allow these ERUV markings, But they have NO OBLIGATION to notify the municipality. The most recent litigation was in Tenafly NJ. <http://www2.ca3.uscourts.gov/opinarch/013301.txt>

These markings connect Saddle River Road and East Mahwah road, by way of Airmount Road, Airmont Ave, Masonicus Road and Sparrowbush Road and a left hand turn onto Saddle River Road.

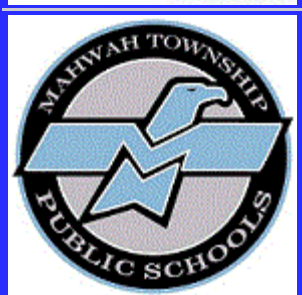
The ERUV is not complete until the perimeter is complete. The municipalities, both Mahwah and Upper Saddle River, did not receive any notice, nor could O&R deny the application.

I realize a lot of information is circulating around town and some of it may be concerning to residents. I hope we have provided you with information that provides an understanding of the situation at hand. I, along with the Council, continue to explore options regarding this issue. We will pass on any new information as we receive.

Regards,

Current News & Information

Title	(Posted)
NJ Clean Energy Programs Information	(7-21-17)
Message from the Mayor - ERUV UPDATE	(7-19-17)
TWP. AUCTIONS RETIRED POLICE VEHICLES VIA GOVDEALS	(7-15-17)
A Message From the Senior Center	(7-14-17)
Change in Recycling Center Saturday Hours	(7-13-17)
JULY 13 PADDLE DAY CANCELLED	(7-13-17)
July Upcoming Events - Senior Center	(7-13-17)
Delay of 2017-2018 Tax Bills	(7-12-17)
Senior Trip - August 25, 2017	(7-12-17)
2017 Mahwah Day Participant Forms Are Available	(7-10-17)
New Umbrellas and Chairs At the Mahwah Municipal Pool!	(6-30-17)
Wyckoff Avenue Detour - Sanitary Sewer Work	(6-28-17)
Township Summer Road Closures	(6-27-17)
July 2017 Calendar	(6-26-17)
June 26 Planning Board Meeting Cancelled	(6-23-17)
Recycling Barrel Glve Away - July 15	(6-23-17)
A Message From the Mahwah Municipal Pool	(6-21-17)
Movie Day At the Senior Activity Center	(6-21-17)
Senior Center - Medicare Fraud Prevention	(6-21-17)
Sr. Center - Bergen County Clerk's Office to Provide Services	(6-21-17)
Sr. Center - Visit From The	(6-21-17)



Mayor Bill Laforet

Vista

Crescent Avenue Closed on or about June 26.	(6-13-17)
Change in Council Meeting Schedule	(6-9-17)
Township of Mahwah 2016 Audit Report	(6-1-17)
2017 Water Department Consumer Confidence Report	(5-31-17)
June 2017 Senior Center Calendar	(5-24-17)
Water Report - Lead and Copper Samples	(5-8-17)
Notice of Council Meeting Time Change	(4-25-17)
2017 Municipal Budget	(4-24-17)
Joint Statement of Mayor and Council President	(4-24-17)
Adult Tennis Clinic Registration	(4-21-17)
2017 Budget Analysis	(4-20-17)
Co-Ed Township Softball Tournament	(4-18-17)
2017 Mahwah Pool Forms Available	(4-12-17)
Changes in Recycling Center Hours	(4-11-17)
Curbside Appliance Pick Up	(3-31-17)
Spring Clean Up Information - Grass Bags	(3-30-17)
2017 Budget Documents (Introduced)	(3-27-17)
NJ Transit Metro North Fare Changes	(3-9-17)
MMA Announces Substance Abuse Community Liaison	(3-6-17)
Correct Disposal of "Sharps"	(3-1-17)
Jazz Dance - Message from the Senior Center	(2-22-17)
Rockland Electric Co. - Vegetation Management	(2-16-17)
2016 Annual Debt Statement	(2-14-17)
2016 Unaudited Annual Financial Statement	(2-14-17)
New Dance Class	(1-5-17)
AARP Tax Program	(1-4-17)
Senior Fraud Awareness	(12-13-16)
2017 BCUA Collection Dates	(12-9-16)
Menorah Lighting	(11-22-16)
Environmental Commission Meeting - October 26, 2016	(10-21-16)
How To Prevent Electrical Fires	(10-14-16)

EXHIBIT C

ROBERT T. REGAN

A Professional Corporation
ATTORNEY AT LAW
STURBRIDGE COMMONS
345 KINDERKAMACK ROAD
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WESTWOOD, NEW JERSEY 07675

MEMBER NEW JERSEY &
NEW YORK BARS

TEL: (201) 664-3344
FAX: (201) 664-3836
rtregan@rtreganlaw.com

July 18, 2017

VIA EMAIL AND REGULAR MAIL

Thomas Brizzolara, Director of Public Affairs
Orange and Rockland Utilities, Inc.
1 Blue Hill Plaza
Pearl River, New York 10965

RE: Eruv On Orange & Rockland Facilities
Borough of Upper Saddle River, New Jersey

Dear Mr. Brizzolara:

As you are aware, the undersigned is the attorney for the Borough of Upper Saddle River. In furtherance of my telephone conversation with you yesterday, I am advising you that the Borough requires the removal of the devices and strips placed on poles owned and maintained by Orange & Rockland Utilities, Inc. ("O&R") on certain streets within the Borough of Upper Saddle River, which are intended to denote the boundaries of an eruv.

Enclosed herewith is a copy of Ordinance No. 16-15 which is part of the Streets and Sidewalks Ordinance. Your attention is directed to Section 1 of the Ordinance, §122-17G, which prohibits the placement of items on public utility poles, except as may be authorized or required by law. It is the Borough's position that this Ordinance prohibits the placement of devices and materials which have been located on O&R's poles which are intended to denote an eruv.

In addition, applicable statutes would require municipal approval for the use by another party of utility poles within Borough rights-of-way. More particularly, *N.J.S.A. 48:3-19* expressly requires the consent of a municipality when a party seeks to use utility poles owned by another. Furthermore, *N.J.S.A. 48:17-10* prohibits the placement of or construction of any pole, conduit, wire or fixture on or upon any public road without approval of the governing body of the municipality except as to lines maintained by telegraph or telephone companies.

From the foregoing, it is clear that O&R has failed to adhere to local Ordinance, nor has it sought the necessary approvals as required by State statute. For these reasons, the Borough hereby directs that the devices and materials placed on the utility poles be immediately removed. Failure to comply with this directive will result in the Borough pursuing all available remedies to secure the removal of these devices and fixtures.

I would suggest that O&R be guided accordingly.

Very truly yours,


ROBERT T. REGAN

RTR:pnc

cc: Timothy P. Cawley, CEO of Orange and Rockland
Utilities, Inc. (*Via email and regular mail*)
Michelle Damiani, Orange and Rockland Utilities,
Inc. (*Via email and regular mail*)
Mayor and Council, Borough of Upper Saddle River
Theodore Preusch, Borough Administrator

Adopted 10/11/15

BOROUGH OF UPPER SADDLE RIVER

ORDINANCE #16-15

AN ORDINANCE TO AMEND CHAPTER 122 OF THE CODE OF THE BOROUGH OF UPPER SADDLE RIVER ENTITLED, "STREETS AND SIDEWALKS".

BE IT ORDAINED by the Mayor and Council of the Borough of Upper Saddle River, in the County of Bergen, and State of New Jersey as follows:

Section 1.

Chapter 122 of the Code of the Borough of Upper Saddle River, Streets and Sidewalks, Article III, Borough Road Regulations, §122-17, Unlawful Acts, be and is hereby amended to add the following paragraph:

"G. Post or affix any sign, advertisement, notice, poster, paper, device, or other matter to any public utility pole, shade tree, lamp post, curbstone, sidewalk, or upon any public structure or building, except as may be authorized or required by law."

Section 2. Fines and Penalties.

For violation of any provision of this Ordinance, the fines and penalties shall be in accordance with §1-15 of the Borough Code.

Section 3. Severability.

If any section, sentence or any other part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not effect, impair or invalidate the remainder of this Ordinance but shall be confined in its effect to the section, sentence or other part of this Ordinance directly involved in the

controversy which such judgment shall be rendered.

Section 4. Inconsistent Ordinances Repealed.

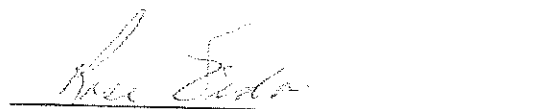
All ordinances or parts or ordinances which are inconsistent with the provisions of this ordinance are hereby repealed, but only to the extent of such inconsistencies.

Section 5. Effective Date.

This Ordinance shall take effect after publication thereof and final passage as required by law.



JOANNE L. MINICHETTI, Mayor



ROSE VIDO, RMC Borough Clerk

Introduced: 9/3/15
Adopted: 10/1/15
Approved: 10/1/15

From: Robert T. Regan [mailto:rtregan@rtreganlaw.com]
Sent: Friday, July 21, 2017 3:01 PM
To: Carley, John L. - Regulatory; eruvmonsey@gmail.com
Cc: Brizzolara, Tom
Subject: Borough of Upper Saddle River/ Eruv <External Sender>

EXTERNAL SENDER. Do not click on links if sender is unknown and never provide user

As you are aware, the undersigned is the attorney for the Borough of Upper Saddle River. My prior letter dated July 18, 2017 detailed that the placement of the devices and strips on utility poles intended to establish an Eruv violates Section 122-17G of the Borough Code. The Borough has consistently and uniformly enforced this Ordinance by removing items placed on utility poles contrary to this Section.

This established policy permits the Borough to remove the devices relating to the Eruv immediately. However, I have been directed by the Governing Body to advise that, as a courtesy, the Borough will withhold removing the devices until 12 noon on Wednesday July 26, 2017. If these items have not been removed by that time, the Borough will act to remove these devices, materials and items. Please be guided accordingly.

Robert T. Regan, Esq.

345 Kinderkamack Road

P.O. Box 214

Westwood, New Jersey 07675

Phone: [\(201\) 664-3344](tel:(201)664-3344)

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rtregan@rtreganlaw.com

July 24, 2017

VIA EMAIL AND REGULAR MAIL

John L. Carley, Esq.
Associate General Counsel
Rockland Electric Company
4 Irving Place
New York, New York 10003-0987
carleyj@coned.com

Vaad Haeruv
c/o Rabbi Yechiel Steinmetz
51 Ashel Lane
Monsey, New York 10952-2610
eruvmonsey@gmail.com

RE: Upper Saddle River Eruv

Gentlemen:

In furtherance of my email of Friday July 21, 2017, this is to confirm that the Borough of Upper Saddle River requires **removal of the eruv by 12:00 noon on Wednesday, July 26, 2017.**

The Borough would recommend that the company or firm that did the installation also do the removal. In any event, failure to have the eruv removed by that time will result in the Borough acting to have the eruv removed.

Please be guided accordingly.

Very truly yours,


ROBERT T. REGAN

RTR:pnc

cc: Mayor and Council, Borough of Upper Saddle River
Theodore Preusch, Borough Administrator

EXHIBIT D

Pursuant to the Open Sunshine Act P.L. 1975, c. 231, proper notice of this meeting has been provided by submitting appropriate notice to The Ridgewood News and The Record on July 23, 2015 by Fax and mail in which the time, place and purpose of the meeting was set forth.

Present: Mayor Minichetti, Council members DeBerardine, Durante, Florio.
Also Present: Borough Administrator Preusch, Borough Attorney Regan and Police Chief Rotella.

Absent: Council members DiMartino, Ditzkoff, Hafner.

Mayor Minichetti updated the Council on the status of the possible exchange of the Sparrowbush Road property for an East Crescent Avenue property. She said we are still waiting for a Letter of Interpretation from the DEP on the Sparrowbush Road property and at the present time, the Ramsey Mayor has not made a commitment regarding a sewer connection for the East Crescent Avenue site. Mayor Minichetti noted the owner of 62 Sparrowbush Road wants to sell us the right to the sewer connection to the Borough of Mahwah in the amount of \$20,000 plus reimbursement of all permit fees. She said she will update the Council as more information is received.

Mr. Preusch said he, Councilman DeBerardine and Durante had a constructive meeting with PBA representatives and all agreed on a five-year contract beginning January 1, 2016 to December 31, 2020. He outlined some of the terms of the Agreement; i.e. a 2% salary increase per year, no longevity for new hires and clothing allowance to be included in their salary. A formal resolution approving the contract will be offered at the Regular meeting.

Mr. Preusch noted decertification of the Union for DPW employees was certified by PERC.

In regard to outstanding litigation, Mr. Regan said an Appellate Brief has been filed on the Michalski case. He said at this time, there is nothing further to report on the Mack-Cali litigation, but he will reach out to attorney Ed Buzak to ascertain if he has recently communicated with Mack Cali.

Mayor Minichetti said an agreement between Vaad Haeruv and Rockland Electric Co. allows for the installation of a ERUV system on poles owned by Orange and Rockland Utilities. She noted the attachments would be located on Weiss Road, Old Stone Church Road and Lake Street to Montvale which the Licensee would inspect on a weekly basis to ensure they are intact. Mr. Preusch will contact Rockland Electric representative Michelle Damiani for further information.

Respectfully submitted,

Rose Vido, RMC
Borough Clerk

EXHIBIT E

Minutes of Closed Meeting of the Mayor and Council held on Thursday, September 3, 2015 at 6:56 PM at the Upper Saddle River Borough Hall.

Present: Mayor Minichetti, Council members DeBerardine, DiMartino, Ditkoff, Durante, Florio, Hafner.
Also Present: Borough Administrator Preusch, Borough Attorney Regan and Police Chief Rotella.

Absent: None.

Mayor and Council:

Mr. Regan said we are still waiting for a draft agreement from the attorney for the owner of the Sparrowbush Road property in regard to the land exchange of the East Crescent Avenue property. He pointed out that we have not yet received the Letter of Interpretation from the DEP, but that we are doing our due diligence in regard to a potential exchange of land. Mr. Regan questioned whether the 350 gallons of water allotted to the 2 lots on East Crescent Avenue by the 10c's agreement may be sufficient for a group home.

Mr. Preusch noted that the Borough Engineer will be asked to do a ground scan for environmental conditions and Construction Official Dougherty will check for possible underground storage tanks.

Mr. Regan explained the ordinance that prohibits posting anything on utility poles which will be introduced at the Regular meeting.

In regard to a question concerning the amount of water needed for the Apple Ridge development, Mr. Regan said United Water will be required to submit a "will serve" letter to the Planning Board.

Mr. Regan said the Declaratory Judgment Case Management Conference is being rescheduled. He explained the Judge will appoint a Master who will provide oversight of a town's Affordable Housing Plan and who will mediate between the town and the developer. Mayor Minichetti said she, Administrator Preusch, Engineer Kevin Boswell and Planner Joe Burgis will meet with Mack-Cali without attorneys present.

Council agreed that Mr. Regan should contact Ms. Holly Schepisi of the Bergen County Housing Authority to authorize her to start the process for the development of the Porcelanosa property.

Discussion took place on the comments and recommendations noted in the 2014 Financial Audit report. Concerns were raised as to a number of recommendations that were never implemented and which have been carried over for several years. The CFO will be informed that all conditions must be met by March, 2016.

Mr. Preusch reported that no bids were submitted for the 2015 road resurfacing project. He said Engineer Eileen Boland suggested doing 2 years' worth of repaving in next year's road improvement bid.

It was pointed out that Bergen County Shade Tree Commission no longer exists and that they may be considering amending their regulations to include responsibility only from curb to curb, thereby eliminating their obligation for anything located in what is now considered the County right of way.

Respectfully submitted,

Rose Vido, RMC
Borough Clerk

EXHIBIT F

BOROUGH OF UPPER SADDLE RIVER

ORDINANCE #16-15

AN ORDINANCE TO AMEND CHAPTER 122 OF THE CODE OF THE BOROUGH OF UPPER SADDLE RIVER ENTITLED, "STREETS AND SIDEWALKS".

BE IT ORDAINED by the Mayor and Council of the Borough of Upper Saddle River, in the County of Bergen, and State of New Jersey as follows:

Section 1.

Chapter 122 of the Code of the Borough of Upper Saddle River, Streets and Sidewalks, Article III, Borough Road Regulations, §122-17, Unlawful Acts, be and is hereby amended to add the following paragraph:

"G. Post or affix any sign, advertisement, notice, poster, paper, device, or other matter to any public utility pole, shade tree, lamp post, curbstone, sidewalk, or upon any public structure or building, except as may be authorized or required by law."

Section 2. Fines and Penalties.

For violation of any provision of this Ordinance, the fines and penalties shall be in accordance with §1-15 of the Borough Code.

Section 3. Severability.

If any section, sentence or any other part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not effect, impair or invalidate the remainder of this Ordinance but shall be confined in its effect to the section, sentence or other part of this Ordinance directly involved in the

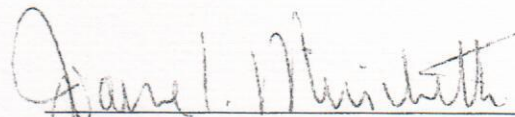
controversy which such judgment shall be rendered.

Section 4. Inconsistent Ordinances Repealed.


All ordinances or parts or ordinances which are inconsistent with the provisions of this ordinance are hereby repealed, but only to the extent of such inconsistencies.

Section 5. Effective Date.

This Ordinance shall take effect after publication thereof and final passage as required by law.



JOANNE L. MINICHETTI, Mayor

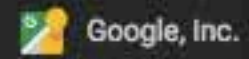


ROSE VIDO, RMC Borough Clerk

Introduced: 9/3/15
Adopted: 10/1/15
Approved: 10/1/15

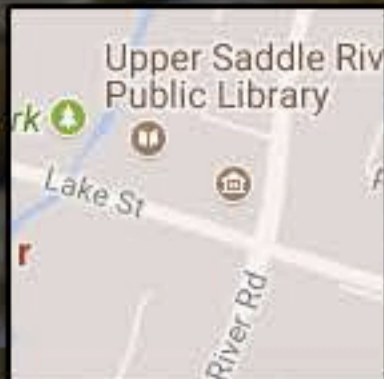
EXHIBIT G

230 Lake St
Upper Saddle River, New Jersey

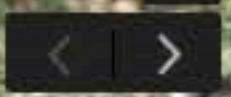


Street View - Oct 2012

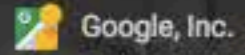
History



Google



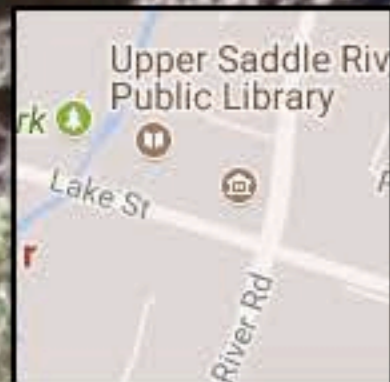
232 Lake St
Upper Saddle River, New Jersey



Google, Inc.



Street View - Sep 2016

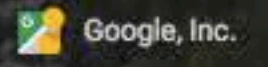


Google



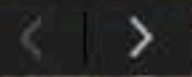
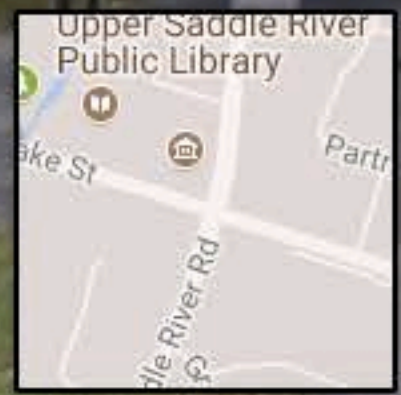


236 Lake St
Upper Saddle River, New Jersey



Google, Inc.

Street View - Oct 2012

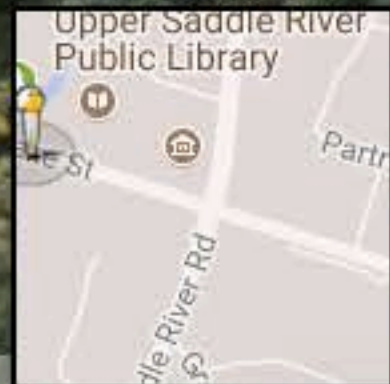


245 Lake St
Upper Saddle River, New Jersey



Google, Inc.

Street View - Oct 2012



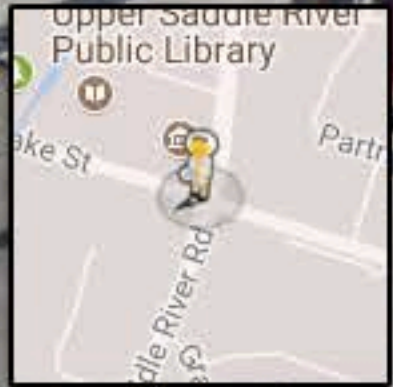
Google



317 Lake St
Upper Saddle River, New Jersey

Google, Inc.

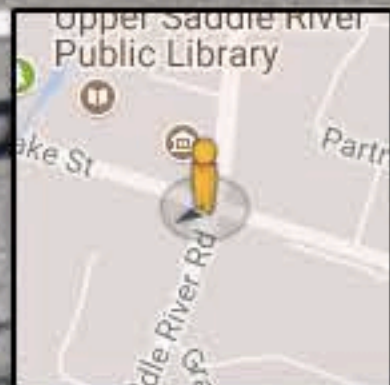
Street View - Oct 2012



317 Lake St
Upper Saddle River, New Jersey

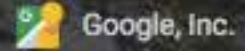
Google, Inc.

Street View - Sep 2016

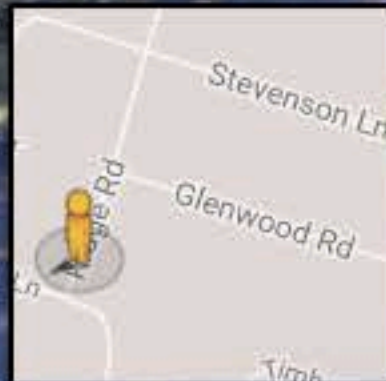


Google

31 Ridge Rd
Upper Saddle River, New Jersey



Street View - Oct 2012



Google

EXHIBIT H

A 41

THE WHITE HOUSE

WASHINGTON

Eruv Sabbath, 1990

I am pleased to send greetings to Congregation Keshar Israel and to the Orthodox Jewish community in Washington as you celebrate the inauguration of the first eruv in the District of Columbia.

The construction of this eruv is particularly significant not only because it marks the growth of the Orthodox Jewish community in Washington but also because this city is our Nation's Capital. Indeed, there is a long tradition linking the establishment of eruvin with the secular authorities in the great political centers where Jewish communities have lived. In the words of a responsa of Rabbi Moses Sofer: "Bless the Lord, God of Israel, who has inclined the hearts of kings, rulers, and officers -- under whose sovereign jurisdiction we, the Jewish people find protection -- to grant permission to us to keep our faith in general, and specifically to establish eruvin in their thoroughfares, even on streets where the most important members of the government themselves live . . . in this city, there are places where we need to install a number of objects in order to create an eruv and we have not hidden our work, rather, it is publicized and open to all without doubt and permission has been granted."

Now, you have built this eruv in Washington, and the territory it covers includes the Capitol, the White House, the Supreme Court, and many other Federal buildings. By permitting Jewish families to spend more time together on the Sabbath, it will enable them to enjoy the Sabbath more and promote traditional family values, and it will lead to a fuller and better life for the entire Jewish community in Washington. I look upon this work as a favorable endeavor. God bless you.

Cap Burt

EXHIBIT I

Begin forwarded message:

From: "Friedenberg, Matthew"
<Matthew.Friedenberg@weil.com>
Date: July 28, 2017 at 10:31:39 AM EDT
To: "Robert T. Regan" <rtregan@rtreganlaw.com>
Cc: "Buchweitz, Yehudah"
<Yehudah.Buchweitz@weil.com>, "Sugarman, Robert G." <robert.sugarman@weil.com>, "Mishkin, Jessie" <jessie.mishkin@weil.com>, "Yolkut, David" <David.Yolkut@weil.com>
Subject: Re: USR Eruv

Confirmed, thank you.

Sent by Email+ 2.0 managed by MobileIron

----- Original Message -----

From: "Robert T. Regan" <rtregan@rtreganlaw.com>
Date: Fri, Jul 28, 2017, 10:23 AM
To: "Friedenberg, Matthew"
<Matthew.Friedenberg@weil.com>
CC: "Buchweitz, Yehudah"
<Yehudah.Buchweitz@weil.com>, "Sugarman, Robert G." <robert.sugarman@weil.com>, "Mishkin, Jessie" <jessie.mishkin@weil.com>
Subject: Re: USR Eruv

That is agreed upon, provided that there are no new or additional lechis installed.

Sent from my iPhone

On Jul 28, 2017, at 10:17 AM, Friedenberg, Matthew
<Matthew.Friedenberg@weil.com> wrote:

Bob:

This confirms our conversation from this morning during which you represented the following on behalf of USR:

1- Our clients may immediately start

repairing any damaged or vandalized lechis that are or had been up in USR. The Buildings Department will supervise these repairs for the purpose of ensuring that our clients are not interfered with by anyone during the repair process. You've agreed to contact the Building Department to relay their obligation to ensure no interference.

2- USR will provide us with at least one weeks notice before taking any action to remove or otherwise interfere with the lechis that are either currently up in USR and/or being repaired today.

As you know, we have filed our complaint; however, as a result of your agreement to the above, we will hold off on pursuing our TRO unless and until we receive notice of any proposed adverse action by USR.

Best,
Matthew Friedenberg

The information contained in this email message is intended only for use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by email, postmaster@weil.com, and destroy the original message. Thank you.

The information contained in this email message is intended only for use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by email, postmaster@weil.com, and destroy the original message. Thank you.

EXHIBIT J



Erik S. Friis

8小时 · New Jersey · Upper Saddle River

More "quality" work by our friends at the corner of Cherry and WSRR.



赞

评论

分享

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BERGEN ROCKLAND ERUV ASSOCIATION,
YISROEL FRIEDMAN, S. MOSHE
PINKASOVITS, SARAH BERGER, MOSES
BERGER, CHAIM BREUER, YOSEF ROSEN, and
TZVI SCHONFELD

Plaintiffs,

-against-

THE BOROUGH OF UPPER SADDLE RIVER
Defendant.

**DECLARATION OF S. MOSHE PINKASOVITS PURSUANT TO 28 U.S.C. § 1746
IN SUPPORT OF PLAINTIFFS' APPLICATION FOR PRELIMINARY INJUNCTION**

I, S. Moshe Pinkasovits, hereby declare under penalty of perjury:

1. I am a plaintiff in the above-captioned proceeding. I was recently involved with the expansion of an existing eruv that now covers a portion of the Borough of Upper Saddle River, the purpose of which was to include members of the community, including myself and my family, that, prior to the expansion, lived outside of the area covered by the existing eruv. As such, I am familiar with the facts and circumstances set forth herein. I submit this Declaration in support of Plaintiffs' Application for Preliminary Injunction.

2. I maintain my personal residence in the Village of Airmont, New York, a village that is immediately adjacent to the Borough of Upper Saddle River, New Jersey.

3. As an observant Jew, my religious beliefs are informed by thousands of years of Jewish tradition. Part of my strongly-held religious beliefs is the primacy of *halakha*, or the Jewish legal system, which establishes a framework for my entire life. A second core element of my beliefs is *kehillah*, or community, and the importance of joining together with members of

my community to pray, study, and worship, to mourn at sad times and to celebrate in times of joy.

4. Part of my adherence to Jewish law is my observance of the Sabbath, the Jewish day of rest, which spans from Friday evening until Saturday night. On the Sabbath, many observant Jews refrain from certain activities, such as working, cooking, using electricity, or riding in cars. Many observant Jews, including myself, do not carry items in public places (*e.g.*, in the street, in communal areas, or from one private space to another). That prohibition includes the use of strollers and wheelchairs outside of one's own home.

5. Another element of my adherence to Jewish law is my sense of obligation to pray and worship with my community, especially on the Sabbath. On the Sabbath, many observant Jews recite prayers that can only be said with a *minyan* (a quorum of Jewish adults), including the reading of the weekly Torah portion. On special occasions, we celebrate life cycle events in the synagogue. On the memorial anniversary of loved ones, we recite the Mourner's *Kaddish*, which also may only be recited in the presence of a *minyan*. Without an eruv, many observant Jews who use wheelchairs or who have children who must ride in strollers are confined to their homes and are unable to participate in these traditions or fulfill many of their other ritual obligations.

6. The institution of the eruv has been practiced by Jewish people for over 2,000 years. It is based on principles derived from the Bible, as subsequently developed and interpreted by the sages of the Talmud, and as codified and further interpreted in subsequent codes of Jewish law. The eruv defines an area within which one may "carry" items from place to place, an activity that is forbidden outside the home on the Sabbath and on Yom Kippur. Included in this definition of carrying is the use of wheelchairs and strollers outside the home.

7. The eruv also enables observant Jews to carry other items outside their homes. The ability to carry house keys, medications, identification, food, water, games, toys, books, spare pairs of shoes, a raincoat, and other items create a safer environment and permit observant Jews to mingle more freely with their neighbors, thereby facilitating the friendship, camaraderie, and community that is so central to the Jewish and American traditions.

8. After obtaining valid licenses from Orange and Rockland Utilities, Inc. (“O&R”) – the organization that owns the utility poles in Upper Saddle River – and after agreeing to the requests of the Upper Saddle River Police Department that we have a flag man and place a sign on the road when working on the utility poles for traffic safety purposes, beginning in mid-June 2017, I, along with Rabbi Chaim Steinmetz and other members of the community, began the necessary work to expand an existing eruv to parts of Upper Saddle River so that observant Jewish community members could more freely and fully practice their religion.

9. A few hours after beginning our work, Upper Saddle River Director of Code Enforcement James Dougherty, along with Upper Saddle River police officers, informed us that, by order of Upper Saddle River Mayor Joanne Minichetti, we had to stop our work. We complied with the directive from Mr. Dougherty and the police.

10. The next day, Rabbi Steinmetz and I met with Mr. Dougherty along with his colleague Steven Forbes, the Property Maintenance Zoning Officer, to better understand why we had been ordered to stop our work and to see what had to be done so that our work could continue. Mr. Dougherty informed us that the Borough was still evaluating whether the lechis violated any local ordinances.

11. In the middle of our meeting with Mr. Dougherty and Mr. Forbes, Mr. Dougherty left to discuss the matter with the Mayor’s office. Upon his return to the meeting, Mr. Dougherty

informed me and Rabbi Steinmetz that the Mayor's office had given its consent for our work on the eruv to continue.

12. Approximately one week after meeting with Mr. Dougherty, at his suggestion, Rabbi Steinmetz and I met with the Chief of Police of Upper Saddle River Patrick Rotella in an effort to ensure that all concerns with the eruv expansion project were addressed. At that meeting, we explained the purpose of the eruv and provided some additional information on the proposed eruv. Police Chief Rotella provided his consent as well, so long as we agreed to notify the police each time we were attaching lechis to utility poles and committed to having a flag man and to place a sign on the road to alleviate any traffic safety concerns. We, of course, agreed to meet these requests.

13. With the consent of O&R, the Police Department, and the Mayor's office, the work to expand the eruv resumed. Approximately two months ago, the necessary work to expand the eruv into portions of Upper Saddle River was completed. So as to comply with the request of the Police Department, each time we set out to attach lechis to utility poles in Upper Saddle River, we first notified the police. In several instances, police officers came to check on us, to ensure that we were in fact complying with the directives of the Police Department. Each time police officers checked on us, they gave their approval – noting that we were complying with each and every one of their requests.

14. As a result of these and other recent efforts, my house now falls within an eruv. As a result, my family and I have been able to more fully practice our religion on the Sabbath for the past few months. More specifically, for the past few months, my family and I have been able to carry items on the Sabbath, including prayer shawls and prayer books to our synagogue, and we have been able to bring food, games, gifts, and books to the homes of fellow community

members. We have also been able to push strollers and wheelchairs within the confines of the newly expanded eruv. This has enabled us to more fully practice our religion, both at our synagogue and at communal activities in the homes of fellow community members on the Sabbath.

15. On the morning of July 27, 2017, I went to check to see if the lechis in Upper Saddle River were still attached to the utility poles. That inspection revealed that at least fifteen of the lechis in Upper Saddle River had been vandalized, as they had been ripped off of the utility poles. The lechis required immediate repair work for the eruv to be restored.

16. The ability to push a stroller is particularly important to me and my family, as my wife and I have one toddler who is not able to walk all the way to our synagogue on the Sabbath. As a result of now having an eruv, my entire family is able to fully observe the Sabbath, as we are now able to push our toddler to our synagogue and to the houses of other community members in the stroller. If the eruv were removed, either I or my wife would no longer be able to fully engage in and observe the Sabbath, because one of us would have to remain at home with our young child throughout the Sabbath.

17. It is not just my family that has benefited from the eruv over the past three months. Many other members of the community have benefited as well. Like my family, these community members are also now able to more fully practice their religion. For example, the father-in-law of one of my neighbors, who visits my neighbors often, is dependent on a wheelchair. As a result of now having an eruv, he is able to fully observe the Sabbath when visiting his family. If the eruv were removed, my neighbor's father-in-law would no longer be able to attend synagogue (or attend meals at the homes of other community members), as he would be confined to the house for the entirety of the Sabbath.

18. If any of the lechis making up the existing Eruv are removed, the eruv that currently encompasses my house will become invalid, and, as a direct result of the actions of Upper Saddle River, my family and I, along with many other members of the community, will no longer be able to freely and fully practice our religion.

19. It is also my understanding that Upper Saddle River has refused to allow us to complete our work on the planned expansion of the Eruv. Upper Saddle River's continued prevention of the Eruv's expansion deprives my fellow community members of their ability to fully and freely practice their religion on the Sabbath. Accordingly, I am unable to congregare with my fellow community members in the continuing practice and free exercise of our shared religious beliefs, ceremonies, and traditions.

20. In an effort to justify its ability to demand the removal of the currently existing lechis, as well as to prohibit the Eruv's expansion, I understand that Upper Saddle River has cited a local ordinance, which it claims prohibit the attachment of lechis to utility poles. Although the Borough of Upper Saddle River has a local ordinance which regulates the attachments of signs and other materials to poles and other structures, it has not compelled the removal of a variety of signs and other material posted on utility poles and other structures. For example, Upper Saddle River has failed to enforce the local ordinance against signs listing street numbers and flags attached to utility poles.

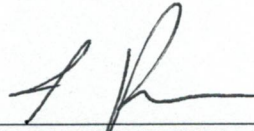
21. Photographs depicting these materials, taken in Upper Saddle River on July 27, 2017, are attached hereto as Exhibit A.

22. As these photographs make clear, Upper Saddle River does not uniformly enforce this ordinance against others, and throughout the Borough, numerous signs and other materials – larger and more conspicuous than the lechis – are on display.

23. I, therefore, respectfully request that this Court grant Plaintiffs' application for a preliminary injunction.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 10, 2017.

A handwritten signature in black ink, appearing to read 'S. Moshe Pinkasovits', written over a horizontal line.

S. MOSHE PINKASOVITS

EXHIBIT A









LOST DOG



Please **DO NOT** Chase

845-536-2883

DEVASTATED FAMILY... Please help us

Call if you have ANY information



UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BERGEN ROCKLAND ERUV ASSOCIATION,
YISROEL FRIEDMAN, S. MOSHE
PINKASOVITS, SARAH BERGER, MOSES
BERGER, CHAIM BREUER, YOSEF ROSEN,
and TZVI SCHONFELD

Plaintiffs,

-against-

THE BOROUGH OF UPPER SADDLE RIVER
Defendant.

**DECLARATION OF RABBI CHAIM STEINMETZ IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

I, Chaim Steinmetz, hereby declare under penalty of perjury:

1. I am a rabbi with over seventeen years of experience advising on the establishment and maintenance of eruvim (the plural of “eruv”). Over the past decade, I have worked, along with my father Rabbi Yechiel Steinmetz, for the Vaad HaEruv, an organization that focuses on the planning, organization, and construction of eruvim. Recently, I worked to expand an existing eruv to, amongst other areas, parts of the Borough of Upper Saddle River, New Jersey. I have also advised other communities in connection with the establishment and maintenance of eruvim. As a result, I have developed an expertise in the Jewish laws associated with the establishment and maintenance of eruvim.

I. The Need for An Eruv

2. The institution of the eruv has been practiced by Jewish people for over 2,000 years. It is based on principles derived from the Bible, as subsequently developed and

interpreted by the sages of the Talmud, and as codified and further interpreted in subsequent codes of Jewish law.

3. The eruv defines an area within which one may “carry” items from place to place, an activity which is forbidden outside the home on the Sabbath and on Yom Kippur. Included in this definition of carrying is the use of wheelchairs and strollers outside the home.

4. Without an eruv, those with young children (who cannot walk on their own), as well as disabled and elderly persons confined to wheelchairs, cannot attend synagogue services on the Sabbath and on Yom Kippur, and are therefore denied the opportunity fully to practice their religion.

5. More particularly, certain portions of the prayer service, including the Torah reading and the Mourner’s Kaddish, can only be done in a group and not alone in private prayer or even in small groups. As a result, those who cannot be in synagogue cannot participate in these important rituals. Further, various celebratory and commemorative events, such as *b’nai mitzvah*, *aufruf* (pre-wedding celebration), baby-namings, circumcisions, and *yizkor* (a communal mourning observance), may also fall on the Sabbath or Yom Kippur. Those confined to their homes are unable to participate in these public observances and are therefore deprived of meaningful and significant aspects of Jewish observance.

6. The eruv also enables observant Jews to carry other items outside their homes. The ability to carry house keys, medications, identification, food, water, games, toys, books, spare pairs of shoes, a raincoat, and other items create a safer environment and permit observant Jews to mingle more freely with their neighbors, thereby facilitating the friendship, camaraderie, and community that is so central to the Jewish and American traditions.

7. An eruv may be established in a number of ways. One of the most common forms – and that which has been used in Upper Saddle River – involves the attachment of half-inch thick PVC plastic pipes to telephone or utility poles. These pipes are unobtrusive and typically unnoticeable to a casual observer.

II. Expansion of an Eruv into Upper Saddle River

8. In June 2015, I obtained a valid license from Orange and Rockland Utilities, Inc. (“O&R”)—the organization that owns or uses certain utility poles in Upper Saddle River—to attach lechis to utility poles in Upper Saddle River. A true and correct copy of the license obtained from O&R is attached hereto as Exhibit A. I then obtained licenses from the Utility Company to attach lechis to specific poles in Upper Saddle River. A copy of these licenses is attached hereto as Exhibit G.

9. After obtaining the licenses, I called the Upper Saddle River Police Department and gave them advance notice that I would be attaching lechis to utility poles in Upper Saddle River pursuant to this license. On the call, I agreed to the requests of the Upper Saddle River Police Department that I would only affix lechis in the presence of a flag man, and that I would place a sign on the road when working on the utility poles for traffic safety purposes.

10. Beginning in mid-June 2017, in the presence of a flag man and with the required signage, I, along with other members of the community, began the necessary work to expand an existing eruv to parts of Upper Saddle River so that observant Jewish community members could more freely and fully practice their religion.

11. A few hours after beginning our work, Upper Saddle River Director of Code Enforcement James Dougherty, along with Upper Saddle River police officers, informed me that, by order of Upper Saddle River Mayor Joanne Minichetti, we had to stop our work. We

complied with the directive from Mr. Dougherty and the police. I understand that Mayor Minichetti has provided sworn testimony that she did not issue such an order.

12. The next day, Plaintiff S. Moshe Pinkasovits and I met with Mr. Dougherty along with his colleague Steven Forbes, the Property Maintenance Zoning Officer, to better understand why we had been ordered to stop our work and to see what had to be done so that our work could continue. Mr. Dougherty informed us that the Borough was still evaluating whether the lechis violated any local ordinances.

13. In the middle of our meeting with Mr. Dougherty and Mr. Forbes, Mr. Dougherty left to discuss the matter with the Mayor's office. Upon his return to the meeting, Mr. Dougherty informed me and Mr. Pinkasovits that the Mayor's office had given its consent for our work on the eruv to continue. I understand that Mayor Minichetti has provided sworn testimony that she was not apprised of the meeting between myself, Mr. Pinkasovits, Mr. Dougherty and his Building Department colleague Steven Forbes, nor was she consulted as to any decisions made.

14. Approximately one week after meeting with Mr. Dougherty, at his suggestion, Mr. Pinkasovits and I met with the Chief of Police of Upper Saddle River Patrick Rotella in an effort to ensure that all concerns with the eruv expansion project were addressed. At that meeting, we explained the purpose of the eruv and provided some additional information on the proposed eruv. Police Chief Rotella provided his consent as well, so long as we agreed to notify the police each time we were attaching lechis to utility poles and committed to having a flag man and to place a sign on the road to alleviate any traffic safety concerns. We of course agreed to meet these requests.

15. In addition to agreeing to have a flag man and post a sign at all times when working on the eruv in Upper Saddle River, I also agreed to complete a Contractor Road

Construction Information form, providing further detail of when and where the work on the eruv was to be done. A true and correct copy of the Contractor Road Construction Information form is attached hereto as Exhibit B. In short, we have agreed to each and every request made of us by the Upper Saddle River Police Department.

16. With the consent of O&R, the Police Department, and the Mayor's office, the work to expand the eruv resumed, and we were able to expand the eruv into portions of Upper Saddle River in July, 2017. To comply with the request of the Police Department, each time we set out to attach lechis to utility poles in Upper Saddle River, we first notified the police. In several instances, police officers came to check on us, to ensure that we were in fact complying with the directives of the Police Department. Each time police officers checked on us, they gave their approval – noting that we were complying with each and every one of their requests.

17. As a result of our work, observant community members that live within this newly enclosed area have been able to more fully practice their religion on the Sabbath for the past few months.

18. In addition, we have started, but not yet completed, a further expansion of the eruv that will cover other portions of Upper Saddle River so as to include additional members of our community within the confines of the eruv. These efforts, which came at the significant expense of approximately \$18,000, were only undertaken once we had secured the necessary assurances from Upper Saddle River that the work would be allowed to be completed. Six to eight more lechis are still required to complete this expansion of the eruv in Upper Saddle River.

19. Despite having received all of the above noted permissions to install lechis in Upper Saddle River, on July 20, 2017, I received a letter from the Associate General Counsel of ConEd, O&R's parent company, enclosing a letter dated July 18, 2017 from the Borough of Upper Saddle River. The letter directed that all lechis in Upper Saddle River be removed immediately. True and correct copies of these two letters are attached hereto as Exhibits C and D.

20. I received further correspondence from Upper Saddle River on July 21, 2017 and July 24, 2017 informing me that if the lechis were not removed by July 26, 2017 at noon, the Borough of Upper Saddle River would have them removed. True and correct copies of these two communications are attached hereto as Exhibits E and F.

21. As a result of Upper Saddle River's actions, I, along with fellow community members, have ceased erecting lechis in Upper Saddle River and we have been unable to complete the planned further expansion of the eruv. With each passing week that we are unable to resume our work in USR to complete the further expansion of the eruv, community members are deprived of the ability to fully and freely practice their religion on the Sabbath.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 4, 2017


RABBI CHAIM STEINMETZ

EXHIBIT A

Orange & Rockland
a consolidated company

Orange and Rockland Utilities, Inc.
390 West Route 59
Spring Valley NY 10977-5300
www.oru.com

RE: Installation/maintenance of an ERUV system on poles owned by Orange and Rockland Utilities

To whom it may concern,

VAAD HAERUV has executed an agreement with Orange and Rockland Utilities. The agreement allows the licensee to install and maintain attachments on poles owned by Orange and Rockland Utilities in Rockland and Bergen counties. The attachments are conduits which are solely for the purpose of the licensee's ERUV system. If you wish to verify the status of the agreement I may be contacted at 845-577-2214.

Ken Sullivan
845-577-2214
Sullivanke@oru.com
Orange and Rockland Utilities
Joint Use Facilities – Unit Manager

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, made as of the ~~13~~¹⁷ day of June, 2015 by and between **ROCKLAND ELECTRIC COMPANY** ("Licensor"), with an address of One Blue Hill Plaza, Pearl River, New York 10965, and **VAAD HAERUV, C/O RABBI YECHIEL STEINMETZ** ("Licensee"), with an address of 51 Ashel Lane, Monsey, New York 10952-2610. Licensor and Licensee are each sometimes referred to individually as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, Licensee desires to construct an Eruv by attaching conduit Lechi ("Attachments") on certain utility poles, located in Bergen County which are owned or jointly owned and/or used by Licensor and others, ("Poles") which Poles will be designated in Exhibit A attached hereto, as such may be amended from time-to-time.

WHEREAS, Licensor is willing to permit, to the extent it may lawfully do so, the attachment of Licensee's Attachments, provided the Attachments do not interfere with the operations of Licensor, or any other user of the Poles;

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions herein contained, the Parties do hereby covenant and agree as follows:

1. No use, however granted, of the Poles or payment of any fees or charges required under this Agreement shall create or vest in the Licensee any ownership or property right in the Poles, and nothing contained herein shall be construed in any way as indicating that Licensor has conveyed to Licensee any ownership or property right in the Poles.
2. Nothing contained herein shall be construed as affecting any rights previously conferred by Licensor by agreement to others to make attachment to the Poles, and Licensor shall continue to have all rights which it now possesses to grant such rights.
3. The Poles are and will continue to be used, operated, and maintained primarily for the

purposes of Licensor, and Licensee's use will be secondary.

4. Licensee will use the Attachments solely for the purpose of its Eruv. If Licensee attaches any unauthorized items to the Poles, Licensor may remove such items and Licensee shall reimburse Licensor for the costs of such removal.
5. Licensee shall, at its own cost and expense, maintain the Attachments in a safe condition and in good repair.
6. Licensee shall exercise special precautions to avoid damage to the facilities of Licensor and any other user of the Poles, and hereby assumes responsibility for any and all loss resulting from such damage caused by the acts, omissions or facilities of Licensee, its employees, contractors, or agents. Licensee shall make an immediate report to Licensor's Manager - Risk Management, c/o Orange and Rockland Utilities, Inc., One Blue Hill Plaza, Pearl River, NY 10965, of any such damage and shall reimburse Licensor and any other user of the Poles for all expenses incurred in repairing any such damage. The requirements of this paragraph are in addition to and not in limitation of the requirements set forth in Paragraph 12 below.
7. Licensee shall not, at any time, make any changes in the location of the Attachments the Poles without Licensor's prior written consent, except in cases of emergency in which case oral permission must first be obtained from Licensor's Service Operations Supervisor (Radio Dispatcher) at 845-352-6046, Spring Valley, NY. Such permission shall be confirmed in writing within five days of the time oral permission is given.
8. At Licensee's expense, Licensor shall perform periodic inspections of the Attachments, provided, however that Licensee shall not be responsible for the costs of more than one such inspection every five years. The fees associated with the periodic inspection shall be paid by Licensee, who will be billed at Licensor's prevailing billing rates, as the same may be adjusted from time-to-time. A copy of Licensor's current billing rates is attached hereto as Exhibit B. Licensor will provide the results of said inspections in writing within 30 days of each inspection, and Licensee may rely on the results of such inspections in connection with documenting compliance with the terms of this Agreement. Upon the discovery of an unauthorized attachment by Licensee, Licensee shall pay Licensor an amount equal to five times the annual rental fee for occupation of the pole up to the date of discovery.

9. Licensee shall pay Licensor a pole attachment fee of \$1.08 per month per Attachment for (i) sole-owned electric Poles and (ii) joint-owned Poles on which the Attachment is in Electric's custodial area. Where there are joint-owned poles and no custodial area, the pole attachment fee will be the sole-owned pole fee proportioned by the pole ownership ratio. The annual attachment fee shall be payable in advance and is due in January. The pole attachment fee shall be reviewed and re-determined annually and shall be adjusted and effective as of January 1st of the then current year.
10. Licensee shall indemnify, hold harmless and defend Licensor and its affiliates, and its and their officers, employees, directors, trustees, representatives, and agents from and against any and all claims, actions, liabilities, demands, damages, liens, losses, costs, expenses (including legal fees), judgments, and settlements of any nature whatsoever arising out of or incidental to this Agreement or work performed thereunder except to the extent due to the negligence or intentional acts of Licensor, its officers, employees, representatives or agents. In the event any suit, claim or proceeding, whether groundless or not, within the intentment of this provision is brought against Licensor, Licensee, upon notice from Licensor, shall defend the same at Licensee's own expense. This provision shall survive the termination of this Agreement.
11. Neither Licensor nor any other user of the Poles shall be liable to Licensee for any interruption of Licensee's Eruv or for any damage to Licensee's Attachments, arising in any manner. With respect to any such interruption or damage, Licensee specifically waives any claim against Licensor or any other user of the Poles, for consequential damages or loss of profits, irrespective of any fault, failure, negligence or alleged negligence on the part of Licensor or any other user of the Poles.
12. (a) Before commencing its attachment to the Poles, Licensee shall procure and maintain, at its own expense for the time period specified below, the following minimum insurance in forms and with insurance companies acceptable to the Licensor:
 - (1) Workers' Compensation Insurance for statutory obligations imposed by Workers' Compensation or Occupational Disease Laws, and Employer's Liability Insurance with a minimum limit of \$500,000.

- (2) General Liability Insurance including Personal Injury, Broad Form Property Damage, Products/Completed Operations, Contractual Liability Insurance covering all operations required to install and maintain Licensee's Attachments with minimum limits of liability of \$2,000,000 per occurrence.
- (3) Automobile Liability Insurance, including coverage for all owned, non-owned and hired automotive equipment used by Licensee so as to install or maintain Licensee's Attachments with minimum limits of liability of \$1,000,000 per occurrence.
- (b) If any of the work required to install or maintain Licensee's Attachments is subcontracted, Licensee shall require each subcontractor to carry all insurance required under this Section and to submit standard Accord Certificates of Insurance to the Licensor prior to subcontractor's commencement of its work.
- (c) For all insurance required hereunder, except Workers' Compensation and Employers Liability, the Licensor shall be named as an additional insured.
- (d) All of the insurance required hereunder shall be primary to any or all other insurance coverage and shall not contribute with similar insurance in effect for the Licensor.
- (e) All insurance required hereunder shall contain provisions wherein all rights of subrogation or recovery of any kind against the Licensor, its agents, employees, officers, successors and assigns are specifically waived by Licensee and the insuring entity.
- (f) All insurance where the Licensor is an additional insured must contain provisions which state that the policy will respond to claims or suits by the Licensor against Licensee or any other insured thereunder.
- (g) All insurance required hereunder shall provide insurance for occurrence during the effective dates of this Agreement and for a period of two years thereafter. In the event that any insurance as required herein is available only on a "claims-made" basis, such insurance

shall provide for a retroactive date not later than the effective date of this Agreement and such insurance shall be maintained by Licensee, with a retroactive date not later than the retroactive date required above, for a minimum period of five years after the termination of this Agreement.

- (h) All insurance required herein shall be issued by an insurer licensed to do business in the States of New York and New Jersey and shall have a Best's Rating of not less than "A minus" and a net surplus of not less than \$25,000,000.
- (i) Licensee's insurance carrier shall notify the Licensor of any material change in, or or cancellation of, the insurance required hereunder at least 30 days prior to the effective date of any such change or cancellation.
- (j) Prior to the attachment of any Attachments, Licensee shall provide, for the Licensor's review and approval, a Certificate of Insurance verifying the existence of insurance coverage in compliance with above requirements, from insurance companies acceptable to Licensor. Unless otherwise specified, the Certificate of Insurance should be mailed to:

Orange and Rockland Utilities, Inc.
Joint Use Facilities Department
390 West Route 59
Spring Valley, NY 10977

- 13. Unless previously terminated pursuant to its terms, this Agreement shall continue in effect for a term of five years and shall remain in effect thereafter until terminated by Licensor upon 90 days notice to Licensee, or until termination by Licensee effective upon Licensee's removal of the Attachments from the Poles and Licensor's inspection and approval thereof.
- 14. If Licensee: (i) fails to perform any of the covenants, conditions, terms or provisions of this Agreement and, except where a specified time is provided for the performance of the covenant or condition, when such default is not made good within 30 days after written notice, or (ii) is adjudicated as bankrupt or makes a general assignment for the benefit of creditors or takes the benefit of any insolvency act or if a permanent receiver or trustee is appointed for Licensee's property or if a temporary receiver is appointed for its property and such

appointment is not vacated within 90 days, then, and in any of such events, Licensor may, at its option, on five days notice in writing, terminate this Agreement and the terms hereof.

15. Termination of this Agreement under the provisions of Paragraph 13 or of Paragraph 14 above, shall not relieve Licensee from any liability or obligation hereunder.
16. If this Agreement is terminated under the provisions of Paragraph 13 or Paragraph 14 above, Licensee shall remove its attachments from the Poles within 30 days of the effective date of such termination. If Licensee fails to remove its attachments within 30 days of termination, Licensor may remove the attachments and charge Licensee with the cost of such removal.
17. Licensee shall not assign, transfer, sublet, or otherwise encumber this Agreement without Licensor's express prior written consent, such consent shall not be unreasonably withheld, and any such assignment without such consent shall be void.
18. To the extent that any Make-ready work (as defined therein) is required, it will be performed in accordance with Attachment 1.
19. This Agreement constitutes the entire agreement between the Parties and supersedes any prior or contemporaneous offers, proposals, agreements or discussions between the Parties relating to the subject matter hereof. The Agreement may not be modified or amended, nor may any obligation of either Party be changed or modified, except in writing signed by the duly authorized officers or agents of the Parties.
20. Licensee hereby waives any right to trial by jury in any litigation arising out of this Agreement or out of its use of space on the Poles.
21. Except as otherwise agreed in writing by the parties, any written notification to be given to Licensee under this Agreement shall be effective only if it is in writing and (1) delivered by hand (against signed receipt); (ii) sent postage prepaid, certified or registered mail, return receipt requested, (iii) sent by nationally recognized courier service providing for overnight

delivery, provided the sender shall obtain a written receipt; or (iv) sent by facsimile after with a confirming hard copy by regular mail, addressed as follows:

Orange and Rockland Utilities, Inc.
390 West Route 59
Spring Valley, NY 10977
Attention: Joint Use Facilities
Fax: (845) 577-3074

22. Except as otherwise agreed in writing by the Parties, any written notification to be given to Licensee under this Agreement shall be effective only if it is in writing and (1) delivered by hand (against signed receipt); (ii) sent postage prepaid, certified or registered mail, return receipt requested, (iii) sent by nationally recognized courier service providing for overnight delivery, provided the sender shall obtain a written receipt; or (iv) sent by facsimile after with a confirming hard copy by regular mail, addressed as follows:

Vaad Haeruv
Rabbi Vechiel
Szeibmetz [REDACTED]
[REDACTED]
Phone: [REDACTED]
Fax: [REDACTED]

23. This Agreement shall be governed by and interpreted according to the laws of the State of New York without giving effect to the conflict or law principles thereof. The Parties hereto consent to the exclusive jurisdiction of the state or federal courts situated in the County of Rockland, City of New York, or regulatory agencies of competent jurisdiction for purposes of any legal action arising out of this Agreement.

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

ORANGE AND ROCKLAND UTILITIES, INC.

By Francis W. Peverly
Title VP - Operations
Date 6/4/15

VAAD HAERUV

By Yechiel Szeinhorn
Title Rabbi
(type or print name of individual signing)
Date May 29/15

Permit # _____

EXHIBIT A

REQUEST

Rockland Electric Company
390 West Route 59
Spring Valley, NY 10977
Attention: Joint Use Facilities

In accordance with the terms of the Agreement between us, dated as of _____, 2015, request is hereby made for a Notice for the following Poles:

Also see attached drawing.

Cable or Equipment To Be Attached

Pole Numbers

See attached sheet(s)

(type or print name of applicant here)

By

(type or print name of individual signing)

Dated _____

NOTICE

Notice Number _____ is hereby provided for such of the above Poles as have not been stricken from the above list. Attached is our invoice which also describes what Make-ready work is necessary.

Rockland Electric Company

By

Dated _____

CONFIRMATION

The undersigned confirms Notice Number _____. Attached are the payment and insurance certificate, as required in our Agreement.

By _____

Dated _____

ENDORSEMENT

The Make-ready Work required for the above attachments is complete. This endorsement authorizes you to make the attachments described above. Attachment fees, as provided for in the Agreement, begin to accrue 30 days from the date of this Endorsement.

Rockland Electric Company

By _____

Dated _____

VAAD HAERUV OF ROCKLAND

EXHIBIT B

Fee Schedule (Effective January 1, 2015)

Pre- and Post Walk Inspection (1)

	<u>Straight Time Basis</u>	<u>Overtime Basis (2)</u>
Engineering	\$8.40 pre-walk	\$12.59 pre-walk
	\$6.30 post-walk	\$ 9.45 post-walk
	\$6.30 periodic inspection	

- (1) The inspection rates per pole attachment listed above are for combined utility field walks that are required to ensure satisfactory pole attachments. The inspection rates per pole attachment for post-walks are also applicable to the periodic Licensor inspections of Licensee's attachments.
- (2) Work shall not be performed on an overtime basis except with the prior approval of Licensee.
- (3) Licensor reserves the right to update the fee schedule annually.

ATTACHMENT 1

ARTICLE I

MAKEREADY WORK DEFINITIONS

SECTION I

- A. **Request:** The document appended to this agreement as EXHIBIT A, when it has been submitted by Licensee to Licensor.
- B. **Notice:** The Request when it has been returned by Licensor to Licensee.
- C. **Confirmation:** The Notice when it has been submitted by Licensee to Licensor.
- D. **Endorsement:** The Confirmation when it has been returned by Licensor to Licensee.
- E. **Active Endorsement:** An Endorsement which has not been canceled for any reason.
- F. **Any Other User:** Any person, who has a right, by agreement, as of the date of this Agreement, to attach facilities to poles or, who may in the future by agreement, obtain such right.
- G. **Make-ready Work:** Surveys by Licensor to determine the availability for the attachment of Licensee's equipment to Poles, the work required by Licensor to make such Poles physically available for the attachment of Licensee's equipment, including bonding and grounding Licensee's support strand and equipment to that of the Licensor, and Any Other User; the work required by Licensor to prepare and deliver the invoices contemplated under this agreement; and the work required by Licensor to inspect Licensee's attachments.

ARTICLE II

GENERAL AGREEMENTS

SECTION 2

- A. Licensee shall have no right to attach its equipment to any Poles owned and/or used by Licensor until an Endorsement is issued specifically covering such Poles and further agrees not to make any such attachments until it has received such Endorsement.
- B. Licensee will use any equipment attached to Poles pursuant to Endorsement provided hereunder solely to provide telecommunication services.
- C. Licensee shall pay promptly the Charges described in Section 6(C) and any costs incurred by

Licensor or charged to Licensor in connection with or arising out of this agreement, as hereinafter provided.

- D. Nothing herein contained shall be construed to compel Licensor to extend, place or maintain any of its facilities not needed for its own service requirements.

SECTION 3

The geographical area covered by this Agreement is Licensor's service territory within the County of Bergen.

ARTICLE III **REQUEST, SURVEY AND NOTICE**

SECTION 4

Whenever Licensee wishes Licensor to provide a Notice for any Poles covered hereby, it shall make Request to Licensor therefore, in duplicate, in the form as attached as EXHIBIT A hereto. Licensee shall specify in the Request the Pole numbers and locations for which it desires Notice and shall specify the cables or other equipment it wished to attach to each Pole.

SECTION 5

Licensor, upon receipt of the Request, shall make appropriate surveys of such Poles in consultation with representatives of Any Other User, and Licensee to determine, among other things, whether such Poles are available for Licensee's attachments; and, if available, the Make-ready Work that will be required. The fees associated with the surveys will be paid by the Licensee, who will be billed at Licensor's prevailing billing rates, as the same may be adjusted from time-to-time. A copy of Licensor's billing rates is attached to the Agreement as Exhibit B.

SECTION 6

- A. Licensor shall give Notice to Licensee, in the form as attached as EXHIBIT A hereto, that it:
- (i) Does not object to attachment of Licensee's equipment to the Poles described by the Request as are not crossed out by Licensor subject to the conditions in this agreement; and/or
 - (ii) Does object to attachment of Licensee's equipment to such Poles described by the Request as are crossed out by Licensor and the reason for the objection.
- B. Licensor shall assign the next consecutive number in a series designed to provide a written record of all Notices.
- C. Licensor shall, at the time that it gives Notice, provide to Licensee an invoice for the Charges associated with the Make-ready Work.
- D. Licensor shall make every reasonable effort to satisfy itself that it has determined the full

extent of the Make-ready Work. Nothing in the Agreement however, shall prevent Licensor from planning or making, at any time, whatever additional changes may be required to satisfy its service requirements, to remove hazardous conditions, or to provide for attachments of the equipment of Any Other User. Licensee agrees to reimburse Licensor for any costs of additional changes occasioned solely by the presence of Licensee attachments, except for those changes, which occur within two years after completion of the initial Make-ready Work.

- E. In the event that Licensee is required to obtain an easement or right-of-way for its Attachments to the Poles, it shall obtain such easement or right-of-way at no cost to Licensor.

SECTION 7

- A. Upon Licensee's request, Licensor shall permit Licensee to review the work prints, together with available supporting costing details, in order that Licensee may satisfy itself as to the contemplated Make-ready Work and associated costs and that the Make-ready Work will be performed in accordance with the current edition of the National Electric Safety Code, the American National Standards Institute, and Licensor's Construction Standards.

ARTICLE IV

CONFIRMATION, COMPLETION OF MAKEREADY WORK AND ENDORSEMENT

SECTION 8

- A. Licensee shall, within 30 days after Licensor gives Notice, confirm the Notice, in duplicate, in the form attached as EXHIBIT A hereto.
- B. The absence of Confirmation within 30 days shall automatically result in the cancellation of the Notice. In this event, Licensee shall immediately pay to Licensor such portion of the invoice that represents that part of the Make-ready Work that has been completed.
- C. At the time that Licensee confirms the Notice it shall:
 - (i) Pay to Licensor the full amount of Make-ready charges; and
 - (ii) Provide or update as may be necessary the insurance policies described in Paragraph 12 of the Agreement.

SECTION 9

- A. Work required to be performed prior to, and because of, attachment of Licensee equipment, including but not limited to the initial survey, re-arrangement of existing equipment, guying and anchoring, pole replacements, and construction inspections, shall be referred to as "Make-ready." Similar work required after initial attachment to a pole solely because of the existence of Licensee attachments shall be referred to as "additional Make-ready."

SECTION 10

- A. Licensor will endeavor to cooperate with Any Other User in performing the Make-ready Work, but does not undertake and expressly disclaims any right or obligation to require Any Other User to perform or cooperate in the performance of such Make-ready Work.

SECTION 11

- A. Licensor, shall upon completion of the Make-ready Work, endorse, date, and return copy of the Endorsement form as provided in EXHIBIT A hereto.
- B. The Endorsement shall be Licensee's authority to make attachments to the Poles designated in the endorsed Notice.
- C. Attachment fees described in Paragraph 9 shall begin to accrue 30 days following the date of Endorsement for sole owned electric and joint owned poles in the Licensor's custodial areas.

SECTION 12

Licensee shall in accordance with the provisions of Licensor's then current tariff, make application apart from this Agreement to Licensor for the purchase of electric energy for any appliance that may now or in the future require the use of electric energy.

ARTICLE V

ATTACHMENTS AND MAINTENANCE OF ATTACHMENTS

SECTION 13

- A. Licensee, at its own cost and expense, shall construct, maintain, and replace all of its attachments on the Poles in accordance with the requirements and specifications of the National Electrical Safety Code, latest edition, and any amendments or revisions of said specifications or code, and in compliance with any rules or orders now in effect or that hereafter may be issued by the New York Public Service Commission, or other authority having jurisdiction over the Poles.

SECTION 14

Licensee shall, at its own cost and expense, maintain all of its attachments on the Poles in safe condition and in good repair. All tree trimming required on account of Licensee's attachments shall be done by it at its sole expense and in a manner satisfactory to Licensor and Any Other User.

EXHIBIT B



Patrick A. Rotella
Chief of Police
E-Mail: protella@usrp.net

Department of Police
Borough of Upper Saddle River
County of Bergen, State of New Jersey
Incorporated 1894



368 West Saddle River Rd
Upper Saddle River, NJ 07458
(201) 327-2700, Fax: (201) 934-3992

Contractor Road Construction Information

The following are items required under the Upper Saddle River Borough Ordinance and the federal D.O.T. Manual on Uniform Traffic Control Devices (MUTCD):

- 1) If roadway is to open, cut or altered, per the Boro. Ord., a Pre-Construction meeting must be held with the Chief of Police's designee at least 24 hours prior to construction. Contractor will be asked to provide the following-
 - a. Type of work to be done
 - b. Approx. duration of days to be worked
 - c. Two emergency contact numbers
- 2) Open Road permit must be obtained from PD if local street or the County Road Department if a county roadway.
- 3) Hours of construction are restricted by Ordinance to 9:00 a.m. to 4:00 p.m., unless prior approval granted by Chief of Police.
- 4) Any lane closings or road detours must be approved by the U.S.R. Chief of Police. If applicable, contractor may be required to submit written Traffic Control Plan diagram with signage placement.
- 5) In areas where a Police Officer is not required, contractor may utilize properly trained Traffic Directors or "Flaggers". Stop paddles must be used in lieu of flags. (Public Utilities may be exempt for emergency construction or brief service work).
- 6) No vehicles may be parked on any road overnight without the prior approval of the Chief of Police.
- 7) **Contractor must supply acceptable MUTCD approved signage, cones, etc. including a required "Road Work ahead" sign.**

*Burgess
contracts*

Chaim Steinmetz - [REDACTED]
Moshe Pinkasovits - [REDACTED]

W Saddle River Rd. / Old Stone Church Rd. / Weiss Rd.
Exact location of construction and nearest cross street

[Signature]
Contractor Acknowledgement

5-7 Day (Fri JUNE 23rd)
Date(s) of Work

Chief Rotella
Issued by Officer

6/20/17
Date issued

Vaad Heiruv Inc.
Company Name

Chief Rotella
Chief of Police approval

USRPD Mission Statement

To provide for the safety, protection and welfare of all citizens through fair, professional and proactive enforcement of the federal, state and local laws in the Borough of Upper Saddle River.

EXHIBIT C


Rockland Electric Company

Rockland Electric Company
4 Irving Place
New York NY 10003-0987
www.oru.com

July 20, 2017

**VIA EMAIL &
REGULAR MAIL**

Vaad Haeruv, c/o Rabbi Yechiel Steinmetz


Re: eruv on Rockland Electric Company Utility Poles
Borough of Upper Saddle River, New Jersey

Dear Rabbi Steinmetz:

I enclose a letter we recently received from an attorney representing the Borough of Upper Saddle River, New Jersey ("Borough") regarding the eruv related facilities in the Borough that are attached to the utility poles of Rockland Electric Company. Please confer with the appropriate Borough officials and obtain any necessary municipal approvals for the eruv related facilities currently attached to Rockland Electric Company's utility poles. In addition, in light of the attached letter, you should refrain from attaching any additional eruv related facilities to Rockland Electric Company's utility poles until you have received all necessary municipal consents for such attachments.

Please contact me if you wish to discuss this matter further.

Sincerely,

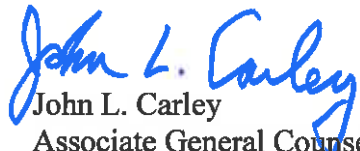

John L. Carley
Associate General Counsel
(212) 460-2097
carleyj@coned.com

EXHIBIT D

ROBERT T. REGAN

A Professional Corporation
ATTORNEY AT LAW
STURBRIDGE COMMONS
345 KINDERKAMACK ROAD
P.O. BOX 214
WESTWOOD, NEW JERSEY 07675

MEMBER NEW JERSEY &
NEW YORK BARS

TEL: (201) 664-3344
FAX: (201) 664-3836
rtregan@rtreganlaw.com

July 18, 2017

VIA EMAIL AND REGULAR MAIL

Thomas Brizzolara, Director of Public Affairs
Orange and Rockland Utilities, Inc.
1 Blue Hill Plaza
Pearl River, New York 10965

RE: Eruv On Orange & Rockland Facilities
Borough of Upper Saddle River, New Jersey

Dear Mr. Brizzolara:

As you are aware, the undersigned is the attorney for the Borough of Upper Saddle River. In furtherance of my telephone conversation with you yesterday, I am advising you that the Borough requires the removal of the devices and strips placed on poles owned and maintained by Orange & Rockland Utilities, Inc. ("O&R") on certain streets within the Borough of Upper Saddle River, which are intended to denote the boundaries of an eruv.

Enclosed herewith is a copy of Ordinance No. 16-15 which is part of the Streets and Sidewalks Ordinance. Your attention is directed to Section 1 of the Ordinance, §122-17G, which prohibits the placement of items on public utility poles, except as may be authorized or required by law. It is the Borough's position that this Ordinance prohibits the placement of devices and materials which have been located on O&R's poles which are intended to denote an eruv.

In addition, applicable statutes would require municipal approval for the use by another party of utility poles within Borough rights-of-way. More particularly, *N.J.S.A. 48:3-19* expressly requires the consent of a municipality when a party seeks to use utility poles owned by another. Furthermore, *N.J.S.A. 48:17-10* prohibits the placement of or construction of any pole, conduit, wire or fixture on or upon any public road without approval of the governing body of the municipality except as to lines maintained by telegraph or telephone companies.

From the foregoing, it is clear that O&R has failed to adhere to local Ordinance, nor has it sought the necessary approvals as required by State statute. For these reasons, the Borough hereby directs that the devices and materials placed on the utility poles be immediately removed. Failure to comply with this directive will result in the Borough pursuing all available remedies to secure the removal of these devices and fixtures.

I would suggest that O&R be guided accordingly.

Very truly yours,


ROBERT T. REGAN

RTR:pnc

cc: Timothy P. Cawley, CEO of Orange and Rockland
Utilities, Inc. (*Via email and regular mail*)
Michelle Damiani, Orange and Rockland Utilities,
Inc. (*Via email and regular mail*)
Mayor and Council, Borough of Upper Saddle River
Theodore Preusch, Borough Administrator

Adopted 10/11/15

BOROUGH OF UPPER SADDLE RIVER

ORDINANCE #16-15

AN ORDINANCE TO AMEND CHAPTER 122 OF THE CODE OF THE BOROUGH OF UPPER SADDLE RIVER ENTITLED, "STREETS AND SIDEWALKS".

BE IT ORDAINED by the Mayor and Council of the Borough of Upper Saddle River, in the County of Bergen, and State of New Jersey as follows:

Section 1.

Chapter 122 of the Code of the Borough of Upper Saddle River, Streets and Sidewalks, Article III, Borough Road Regulations, §122-17, Unlawful Acts, be and is hereby amended to add the following paragraph:

"G. Post or affix any sign, advertisement, notice, poster, paper, device, or other matter to any public utility pole, shade tree, lamp post, curbstone, sidewalk, or upon any public structure or building, except as may be authorized or required by law."

Section 2. Fines and Penalties.

For violation of any provision of this Ordinance, the fines and penalties shall be in accordance with §1-15 of the Borough Code.

Section 3. Severability.

If any section, sentence or any other part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not effect, impair or invalidate the remainder of this Ordinance but shall be confined in its effect to the section, sentence or other part of this Ordinance directly involved in the

controversy which such judgment shall be rendered.

Section 4. Inconsistent Ordinances Repealed.


All ordinances or parts or ordinances which are inconsistent with the provisions of this ordinance are hereby repealed, but only to the extent of such inconsistencies.

Section 5. Effective Date.

This Ordinance shall take effect after publication thereof and final passage as required by law.



JOANNE L. MINICHETTI, Mayor



ROSE VIDO, RMC Borough Clerk

Introduced: 9/3/15
Adopted: 10/11/15
Approved: 10/11/15

EXHIBIT E

From: Robert T. Regan [mailto:rtregan@rtreganlaw.com]
Sent: Friday, July 21, 2017 3:01 PM
To: Carley, John L. - Regulatory; [REDACTED]
Cc: Brizzolara, Tom
Subject: Borough of Upper Saddle River/ Eruv <External Sender>

EXTERNAL SENDER. Do not click on links if sender is unknown and never provide user

As you are aware, the undersigned is the attorney for the Borough of Upper Saddle River. My prior letter dated July 18, 2017 detailed that the placement of the devices and strips on utility poles intended to establish an Eruv violates Section 122-17G of the Borough Code. The Borough has consistently and uniformly enforced this Ordinance by removing items placed on utility poles contrary to this Section.

This established policy permits the Borough to remove the devices relating to the Eruv immediately. However, I have been directed by the Governing Body to advise that, as a courtesy, the Borough will withhold removing the devices until 12 noon on Wednesday July 26, 2017. If these items have not been removed by that time, the Borough will act to remove these devices, materials and items. Please be guided accordingly.

Robert T. Regan, Esq.

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P.O. Box 214

Westwood, New Jersey 07675

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EXHIBIT F

ROBERT T. REGAN

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July 24, 2017

VIA EMAIL AND REGULAR MAIL

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Vaad Haeruv
c/o Rabbi Yechiel Steinmetz
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eruvmonsey@gmail.com

RE: Upper Saddle River Eruv

Gentlemen:

In furtherance of my email of Friday July 21, 2017, this is to confirm that the Borough of Upper Saddle River requires **removal of the eruv by 12:00 noon on Wednesday, July 26, 2017.**

The Borough would recommend that the company or firm that did the installation also do the removal. In any event, failure to have the eruv removed by that time will result in the Borough acting to have the eruv removed.

Please be guided accordingly.

Very truly yours,


ROBERT T. REGAN

RTR:pnc

cc: Mayor and Council, Borough of Upper Saddle River
Theodore Preusch, Borough Administrator

EXHIBIT G

----- Forwarded message -----

From: <donotreply@njuns.com>

Date: Thu, Jul 13, 2017 at 2:14 PM

Subject: Ticket Header Update: PA 110441 | Status: Validated | Reason: Ready to Attach |

Licensee: VHERUV | Pole Owner: RENJPA

To: eruvmonsey@gmail.com

PA Ticket 110441

Ticket Number:	110441
Ticket Status:	Validated
Status Reason:	Ready to Attach
Date Created:	6/13/2017 9:01:31 AM
Created By:	VHERUV
Licensee:	VHERUV
Contact:	Chaim Steinmetz
Contact Phone:	[REDACTED]
Ext:	
Contact Address:	[REDACTED]
State:	New Jersey
County:	Bergen
Place:	Upper Saddle River
Pole Owner:	RENJPA
Alt Pole Owner:	
Copy To Member:	
Attachment Type:	Eruv
Attacher Permit Number:	
Number of Poles:	40
Application Fee:	0
Pre & Post Walk Fees:	588
Alt Pole Owner Permit Number:	
Alt Pole Owner Application Fee:	
Alt Pole Owner Pre & Post Walk Fees:	
Remarks:	Sent invoice on 6/19/2017

Walk Due Date: 8/5/2017 12:00:00 AM
 Walk Scheduled Date:
 Walk Completed Date:
 Design Due Date:
 Design Completed:
 Third Party Make Ready Required: False
 Cut in Card Received: False
 Inspection: Pending
 NAICS:
 Permit Issued Date:
 Billing Start Date: ~~7/13/2017 12:00:00 AM~~ 6/22/2017 12:00:00 AM
 ROP Required: False

Make Ready Cost:
 Make Ready Work Request Numbers:
 Make Ready Invoiced:
 Make Ready Due Date:
 Make Ready Payment Received: False
 Make Ready Completed:
 Alt Pole Owner Make Ready Cost:
 Alt Pole Owner Make Ready Work Request Numbers:
 Alt Pole Owner Make Ready Invoiced:
 Alt Pole Owner Make Ready Due Date:
 Alt Pole Owner Make Ready Payment Received: False
 Alt Pole Owner Make Ready Completed:

Steps (40)

Step Number: 1
 Status: Accepted
 Reason: Accepted
 Job Type: Attach
 Pole Number: 56429-39185
 Ownership: E
 Pole Set Year:
 Pole Height:
 Pole Class:
 Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.
 Street/Field:
 Make Ready Work:
 Energized Attachments: False

Amps:
Voltage:
Watts: 0
Watt Hours: 730
Total KWH: 0
Anchor Required: False
Address: 512 west sadddle river rd.
Cross Street:
PTTicket:
Remarks:

Step Number: 2
Status: Accepted
Reason: Accepted
Job Type: Attach
Pole Number: 56430-39172
Ownership: E
Pole Set Year:
Pole Height:
Pole Class:
Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.
Street/Field:
Make Ready Work:
Energized Attachments: False
Amps:
Voltage:
Watts: 0
Watt Hours: 730
Total KWH: 0
Anchor Required: False
Address: 508 west sadddle river rd.
Cross Street:
PTTicket:
Remarks:

Step Number: 3
Status: Accepted
Reason: Accepted
Job Type: Attach
Pole Number: 56432-39148-29043
Ownership: T

Pole Set Year:

Pole Height:

Pole Class:

Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.

Street/Field:

Make Ready Work:

Energized Attachments: False

Amps:

Voltage:

Watts: 0

Watt Hours: 730

Total KWH: 0

Anchor Required: False

Address: 508 west sadddle river rd.

Cross Street:

PTTicket:

Remarks:

Step Number: 4

Status: Accepted

Reason: Accepted

Job Type: Attach

Pole Number: 56438-39120

Ownership: E

Pole Set Year:

Pole Height:

Pole Class:

Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.

Street/Field:

Make Ready Work:

Energized Attachments: False

Amps:

Voltage:

Watts: 0

Watt Hours: 730

Total KWH: 0

Anchor Required: False

Address: 8 Old Stone Church Rd

Cross Street:

PTTicket:

Remarks:

Step Number: 5

Status: Accepted
Reason: Accepted
Job Type: Attach
Pole Number: 56450-39117
Ownership: T
Pole Set Year:
Pole Height:
Pole Class:
Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.
Street/Field:
Make Ready Work:
Energized Attachments: False
Amps:
Voltage:
Watts: 0
Watt Hours: 730
Total KWH: 0
Anchor Required: False
Address: 7 Old Stone Church Rd
Cross Street:
PTTicket:
Remarks:

Step Number: 6

Status: Accepted
Reason: Accepted
Job Type: Attach
Pole Number: 56564-39083
Ownership: E
Pole Set Year:
Pole Height:
Pole Class:
Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.
Street/Field:
Make Ready Work:
Energized Attachments: False
Amps:
Voltage:
Watts: 0
Watt Hours: 730

Total KWH: 0
Anchor Required: False
Address: 36 Old Stone Church Rd
Cross Street:
PTTicket:
Remarks:

Step Number: 7

Status: Accepted
Reason: Accepted
Job Type: Attach
Pole Number: 56576-39080
Ownership: E
Pole Set Year:
Pole Height:
Pole Class:
Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.
Street/Field:
Make Ready Work:
Energized Attachments: False
Amps:
Voltage:
Watts: 0
Watt Hours: 730
Total KWH: 0
Anchor Required: False
Address: 40 Old Stone Church Rd
Cross Street:
PTTicket:
Remarks:

Step Number: 8

Status: Accepted
Reason: Accepted
Job Type: Attach
Pole Number: 56589-39076
Ownership: E
Pole Set Year:
Pole Height:
Pole Class:
Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.

Street/Field:

Make Ready Work:

Energized Attachments: False

Amps:

Voltage:

Watts: 0

Watt Hours: 730

Total KWH: 0

Anchor Required: False

Address: 47 Old Stone Church Rd

Cross Street:

PTTicket:

Remarks:

Step Number: 9

Status: Accepted

Reason: Accepted

Job Type: Attach

Pole Number: 56615-39069

Ownership: E

Pole Set Year:

Pole Height:

Pole Class:

Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.

Street/Field:

Make Ready Work:

Energized Attachments: False

Amps:

Voltage:

Watts: 0

Watt Hours: 730

Total KWH: 0

Anchor Required: False

Address: 55 Old Stone Church Rd

Cross Street:

PTTicket:

Remarks:

Step Number: 10

Status: Accepted

Reason: Accepted

Job Type: Attach
Pole Number: 56624-39067
Ownership: E
Pole Set Year:
Pole Height:
Pole Class:
Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.
Street/Field:
Make Ready Work:
Energized Attachments: False
Amps:
Voltage:
Watts: 0
Watt Hours: 730
Total KWH: 0
Anchor Required: False
Address: 55 Old Stone Church Rd
Cross Street:
PTTicket:
Remarks:

Step Number: 11
Status: Accepted
Reason: Accepted
Job Type: Attach
Pole Number: 56628-39066
Ownership: E
Pole Set Year:
Pole Height:
Pole Class:
Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.
Street/Field:
Make Ready Work:
Energized Attachments: False
Amps:
Voltage:
Watts: 0
Watt Hours: 730
Total KWH: 0
Anchor Required: False
Address: 59 Old Stone Church Rd

Cross Street:

PTTicket:

Remarks:

Step Number: 12

Status: Accepted

Reason: Accepted

Job Type: Attach

Pole Number: 56691-39048

Ownership: E

Pole Set Year:

Pole Height:

Pole Class:

Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.

Street/Field:

Make Ready Work:

Energized Attachments: False

Amps:

Voltage:

Watts: 0

Watt Hours: 730

Total KWH: 0

Anchor Required: False

Address: 75 Old Stone Church Rd

Cross Street:

PTTicket:

Remarks:

Step Number: 13

Status: Accepted

Reason: Accepted

Job Type: Attach

Pole Number: 56696-39057

Ownership: T

Pole Set Year:

Pole Height:

Pole Class:

Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.

Street/Field:

Make Ready Work:

Energized Attachments: False

Amps:
Voltage:
Watts: 0
Watt Hours: 730
Total KWH: 0
Anchor Required: False
Address: 75 Old Stone Church Rd
Cross Street:
PTTicket:
Remarks:

Step Number: 14

Status: Accepted
Reason: Accepted
Job Type: Attach
Pole Number: 56774-39010
Ownership: E
Pole Set Year:
Pole Height:
Pole Class:
Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.
Street/Field:
Make Ready Work:
Energized Attachments: False

Amps:
Voltage:
Watts: 0
Watt Hours: 730
Total KWH: 0
Anchor Required: False
Address: 106 Old Stone Church Rd
Cross Street:
PTTicket:
Remarks:

Step Number: 15

Status: Accepted
Reason: Accepted
Job Type: Attach
Pole Number: 56787-38999
Ownership: E

Pole Set Year:

Pole Height:

Pole Class:

Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.

Street/Field:

Make Ready Work:

Energized Attachments: False

Amps:

Voltage:

Watts: 0

Watt Hours: 730

Total KWH: 0

Anchor Required: False

Address: 106 Old Stone Church Rd

Cross Street:

PTTicket:

Remarks:

Step Number: 16

Status: Accepted

Reason: Accepted

Job Type: Attach

Pole Number: 56796-38991

Ownership: E

Pole Set Year:

Pole Height:

Pole Class:

Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.

Street/Field:

Make Ready Work:

Energized Attachments: False

Amps:

Voltage:

Watts: 0

Watt Hours: 730

Total KWH: 0

Anchor Required: False

Address: 480 E Saddle River Rd

Cross Street:

PTTicket:

Remarks:

Step Number: 17

Status: Accepted
Reason: Accepted
Job Type: Attach
Pole Number: 56804-39002
Ownership: E
Pole Set Year:
Pole Height:
Pole Class:
Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.
Street/Field:
Make Ready Work:
Energized Attachments: False
Amps:
Voltage:
Watts: 0
Watt Hours: 730
Total KWH: 0
Anchor Required: False
Address: 484 E Saddle River Rd
Cross Street:
PTTicket:
Remarks:

Step Number: 18

Status: Accepted
Reason: Accepted
Job Type: Attach
Pole Number: 56811-39010
Ownership: E
Pole Set Year:
Pole Height:
Pole Class:
Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.
Street/Field:
Make Ready Work:
Energized Attachments: False
Amps:
Voltage:
Watts: 0
Watt Hours: 730

Total KWH: 0
Anchor Required: False
Address: 488 E Saddle River Rd
Cross Street:
PTTicket:
Remarks:

Step Number: 19

Status: Accepted
Reason: Accepted
Job Type: Attach
Pole Number: 56819-39018
Ownership: E
Pole Set Year:
Pole Height:
Pole Class:
Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.
Street/Field:
Make Ready Work:
Energized Attachments: False
Amps:
Voltage:
Watts: 0
Watt Hours: 730
Total KWH: 0
Anchor Required: False
Address: 488 E Saddle River Rd
Cross Street:
PTTicket:
Remarks:

Step Number: 20

Status: Accepted
Reason: Accepted
Job Type: Attach
Pole Number: 56827-39025
Ownership: E
Pole Set Year:
Pole Height:
Pole Class:
Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.

Street/Field:

Make Ready Work:

Energized Attachments: False

Amps:

Voltage:

Watts: 0

Watt Hours: 730

Total KWH: 0

Anchor Required: False

Address: 496 E Saddle River Rd

Cross Street:

PTTicket:

Remarks:

Step Number: 21

Status: Accepted

Reason: Accepted

Job Type: Attach

Pole Number: 56831-39028

Ownership: E

Pole Set Year:

Pole Height:

Pole Class:

Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.

Street/Field:

Make Ready Work:

Energized Attachments: False

Amps:

Voltage:

Watts: 0

Watt Hours: 730

Total KWH: 0

Anchor Required: False

Address: 500 E Saddle River Rd

Cross Street:

PTTicket:

Remarks:

Step Number: 22

Status: Accepted

Reason: Accepted

Job Type: Attach
Pole Number: 56844-39037
Ownership: T
Pole Set Year:
Pole Height:
Pole Class:
Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.
Street/Field:
Make Ready Work:
Energized Attachments: False
Amps:
Voltage:
Watts: 0
Watt Hours: 730
Total KWH: 0
Anchor Required: False
Address: 500 E Saddle River Rd
Cross Street:
PTTicket:
Remarks:

Step Number: 23
Status: Accepted
Reason: Accepted
Job Type: Attach
Pole Number: 56848-39032
Ownership: T
Pole Set Year:
Pole Height:
Pole Class:
Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.
Street/Field:
Make Ready Work:
Energized Attachments: False
Amps:
Voltage:
Watts: 0
Watt Hours: 730
Total KWH: 0
Anchor Required: False
Address: 4 Weiss Rd

Cross Street:

PTTicket:

Remarks:

Step Number: 24

Status: Accepted

Reason: Accepted

Job Type: Attach

Pole Number: 56890-39012

Ownership: T

Pole Set Year:

Pole Height:

Pole Class:

Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.

Street/Field:

Make Ready Work:

Energized Attachments: False

Amps:

Voltage:

Watts: 0

Watt Hours: 730

Total KWH: 0

Anchor Required: False

Address: 19 Weiss Rd

Cross Street:

PTTicket:

Remarks:

Step Number: 25

Status: Accepted

Reason: Accepted

Job Type: Attach

Pole Number: 56901-39007

Ownership: T

Pole Set Year:

Pole Height:

Pole Class:

Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.

Street/Field:

Make Ready Work:

Energized Attachments: False

Amps:
Voltage:
Watts: 0
Watt Hours: 730
Total KWH: 0
Anchor Required: False
Address: 23 Weiss Rd
Cross Street:
PTTicket:
Remarks:

Step Number: 26
Status: Accepted
Reason: Accepted
Job Type: Attach
Pole Number: 56911-39002
Ownership: E
Pole Set Year:
Pole Height:
Pole Class:
Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.
Street/Field:
Make Ready Work:
Energized Attachments: False
Amps:
Voltage:
Watts: 0
Watt Hours: 730
Total KWH: 0
Anchor Required: False
Address: 29 Weiss Rd
Cross Street:
PTTicket:
Remarks:

Step Number: 27
Status: Accepted
Reason: Accepted
Job Type: Attach
Pole Number: 56934-38987
Ownership: T

Pole Set Year:

Pole Height:

Pole Class:

Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.

Street/Field:

Make Ready Work:

Energized Attachments: False

Amps:

Voltage:

Watts: 0

Watt Hours: 730

Total KWH: 0

Anchor Required: False

Address: 33 Weiss Rd

Cross Street:

PTTicket:

Remarks:

Step Number: 28

Status: Accepted

Reason: Accepted

Job Type: Attach

Pole Number: 56970-38972

Ownership: T

Pole Set Year:

Pole Height:

Pole Class:

Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.

Street/Field:

Make Ready Work:

Energized Attachments: False

Amps:

Voltage:

Watts: 0

Watt Hours: 730

Total KWH: 0

Anchor Required: False

Address: 38 Weiss Rd

Cross Street:

PTTicket:

Remarks:

Step Number: 29

Status: Accepted
Reason: Accepted
Job Type: Attach
Pole Number: 56984-38966
Ownership: T
Pole Set Year:
Pole Height:
Pole Class:
Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.
Street/Field:
Make Ready Work:
Energized Attachments: False
Amps:
Voltage:
Watts: 0
Watt Hours: 730
Total KWH: 0
Anchor Required: False
Address: 43 Weiss Rd
Cross Street:
PTTicket:
Remarks:

Step Number: 30

Status: Accepted
Reason: Accepted
Job Type: Attach
Pole Number: 56998-38960
Ownership: T
Pole Set Year:
Pole Height:
Pole Class:
Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.
Street/Field:
Make Ready Work:
Energized Attachments: False
Amps:
Voltage:
Watts: 0
Watt Hours: 730

Total KWH: 0
Anchor Required: False
Address: 47 Weiss Rd
Cross Street:
PTTicket:
Remarks:

Step Number: 31

Status: Accepted
Reason: Accepted
Job Type: Attach
Pole Number: 57014-38957
Ownership: E
Pole Set Year:
Pole Height:
Pole Class:
Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.
Street/Field:
Make Ready Work:
Energized Attachments: False
Amps:
Voltage:
Watts: 0
Watt Hours: 730
Total KWH: 0
Anchor Required: False
Address: 51 Weiss Rd
Cross Street:
PTTicket:
Remarks:

Step Number: 32

Status: Accepted
Reason: Accepted
Job Type: Attach
Pole Number: 57025-38950
Ownership: T
Pole Set Year:
Pole Height:
Pole Class:
Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.

Street/Field:

Make Ready Work:

Energized Attachments: False

Amps:

Voltage:

Watts: 0

Watt Hours: 730

Total KWH: 0

Anchor Required: False

Address: 53 Weiss Rd

Cross Street:

PTTicket:

Remarks:

Step Number: 33

Status: Accepted

Reason: Accepted

Job Type: Attach

Pole Number: 57037-38943

Ownership: E

Pole Set Year:

Pole Height:

Pole Class:

Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.

Street/Field:

Make Ready Work:

Energized Attachments: False

Amps:

Voltage:

Watts: 0

Watt Hours: 730

Total KWH: 0

Anchor Required: False

Address: 54 Weiss Rd

Cross Street:

PTTicket:

Remarks:

Step Number: 34

Status: Accepted

Reason: Accepted

Job Type: Attach
Pole Number: 57047-38937
Ownership: E
Pole Set Year:
Pole Height:
Pole Class:
Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.
Street/Field:
Make Ready Work:
Energized Attachments: False
Amps:
Voltage:
Watts: 0
Watt Hours: 730
Total KWH: 0
Anchor Required: False
Address: 60 Weiss Rd
Cross Street:
PTTicket:
Remarks:

Step Number: 35
Status: Accepted
Reason: Accepted
Job Type: Attach
Pole Number: 57070-38920
Ownership: E
Pole Set Year:
Pole Height:
Pole Class:
Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.
Street/Field:
Make Ready Work:
Energized Attachments: False
Amps:
Voltage:
Watts: 0
Watt Hours: 730
Total KWH: 0
Anchor Required: False
Address: 64 Weiss Rd

Cross Street:

PTTicket:

Remarks:

Step Number: 36

Status: Accepted

Reason: Accepted

Job Type: Attach

Pole Number: 57081-38910

Ownership: E

Pole Set Year:

Pole Height:

Pole Class:

Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.

Street/Field:

Make Ready Work:

Energized Attachments: False

Amps:

Voltage:

Watts: 0

Watt Hours: 730

Total KWH: 0

Anchor Required: False

Address: 64

Cross Street:

PTTicket:

Remarks:

Step Number: 37

Status: Accepted

Reason: Accepted

Job Type: Attach

Pole Number: 57170-38903

Ownership: E

Pole Set Year:

Pole Height:

Pole Class:

Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.

Street/Field:

Make Ready Work:

Energized Attachments: False

Amps:
Voltage:
Watts: 0
Watt Hours: 730
Total KWH: 0
Anchor Required: False
Address: 194 Upper Saddle River Rd
Cross Street:
PTTicket:
Remarks:

Step Number: 38

Status: Accepted
Reason: Accepted
Job Type: Attach
Pole Number: 57284-38918
Ownership: T
Pole Set Year:
Pole Height:
Pole Class:
Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.
Street/Field:
Make Ready Work:
Energized Attachments: False

Amps:
Voltage:
Watts: 0
Watt Hours: 730
Total KWH: 0
Anchor Required: False
Address: 168 Upper Saddle River Rd
Cross Street:
PTTicket:
Remarks:

Step Number: 39

Status: Accepted
Reason: Accepted
Job Type: Attach
Pole Number: 57307-39025
Ownership: E

Pole Set Year:

Pole Height:

Pole Class:

Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.

Street/Field:

Make Ready Work:

Energized Attachments: False

Amps:

Voltage:

Watts: 0

Watt Hours: 730

Total KWH: 0

Anchor Required: False

Address: 1019 Chestnut Ridge Rd

Cross Street:

PTTicket:

Remarks:

Step Number: 40

Status: Accepted

Reason: Accepted

Job Type: Attach

Pole Number: 57308-39035

Ownership: E

Pole Set Year:

Pole Height:

Pole Class:

Attachment Location: ERUV 6" above Soil. And below the lowest Telcom Cable.

Street/Field:

Make Ready Work:

Energized Attachments: False

Amps:

Voltage:

Watts: 0

Watt Hours: 730

Total KWH: 0

Anchor Required: False

Address: 1019 Chestnut Ridge Rd

Cross Street:

PTTicket:

Remarks:

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BERGEN ROCKLAND ERUV ASSOCIATION,
YISROEL FRIEDMAN, S. MOSHE
PINKASOVITS, SARAH BERGER, MOSES
BERGER, CHAIM BREUER, YOSEF ROSEN, and
TZVI SCHONFELD

Plaintiffs,

-against-

THE BOROUGH OF UPPER SADDLE RIVER
Defendant.

**DECLARATION OF CHAIM BREUER PURSUANT TO 28 U.S.C. § 1746
IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

I, Chaim Breuer, hereby declare under penalty of perjury:

1. I am a plaintiff in the above-captioned proceeding and I reside in an area of New York that directly borders the Borough of Upper Saddle River. I am familiar with efforts that have been underway to expand an existing eruv into portions of Upper Saddle River, the purpose of which was to include members of the community, including myself and my family, within the confines of the expanded eruv. Although one portion of the expansion project was completed during the Summer of 2017, the further expansion of the eruv has ceased due to the actions of Upper Saddle River. As a result, my home is not currently covered by the eruv, as expanded. If the expansion proceeded, my home, along with the homes of many other observant Jews, would be within the Eruv's bounds. As such, I am familiar with the facts and circumstances set forth herein. I submit this Declaration in support of Plaintiffs' Application for Preliminary Injunction.

2. I maintain my personal residence in the Village of Airmont, New York, a village that is immediately adjacent to Upper Saddle River.

3. As an observant Jew, my religious beliefs are informed by thousands of years of Jewish tradition. Part of my strongly-held religious beliefs is the primacy of *halakha*, or the

Jewish legal system, which establishes a framework for my entire life. A second core element of my beliefs is *kehillah*, or community, and the importance of joining together with members of my community to pray, study, and worship, to mourn at sad times and to celebrate in times of joy.

4. Part of my adherence to Jewish law is my observance of the Sabbath, the Jewish day of rest, which spans from Friday evening until Saturday night. On the Sabbath, many observant Jews refrain from certain activities, such as working, cooking, using electricity, or riding in cars. Many observant Jews, including myself, do not carry items in public places (*e.g.*, in the street, in communal areas, or from one private space to another). That prohibition includes the use of strollers and wheelchairs outside of one's own home.

5. Another element of my adherence to Jewish law is my sense of obligation to pray and worship with my community, especially on the Sabbath. On the Sabbath, many observant Jews recite prayers that can only be said with a *minyan* (a quorum of Jewish adults), including the reading of the weekly Torah portion. On special occasions, we celebrate life cycle events in the synagogue. On the memorial anniversary of loved ones, we recite the Mourner's *Kaddish*, which also may only be recited in the presence of a *minyan*. Without an eruv, many observant Jews who use wheelchairs or who have children who must ride in strollers are confined to their homes and are unable to participate in these traditions or fulfill many of their other ritual obligations.

6. The institution of the eruv has been practiced by Jewish people for over 2,000 years. It is based on principles derived from the Bible, as subsequently developed and interpreted by the sages of the Talmud, and as codified and further interpreted in subsequent codes of Jewish law. The eruv defines an area within which one may "carry" items from place to place, an activity that is forbidden outside the home on the Sabbath and on Yom Kippur. Included in this definition of carrying is the use of wheelchairs and strollers outside the home.

7. The eruv also enables observant Jews to carry other items outside their homes. The ability to carry house keys, medications, identification, food, water, games, toys, books, spare pairs of shoes, a raincoat, and other items create a safer environment and permit observant Jews to mingle more freely with their neighbors, thereby facilitating the friendship, camaraderie, and community that is so central to the Jewish and American traditions.

8. Because the expansion efforts of the eruv have been stalled – an expansion that by necessity required affixing narrow plastic strips (“lechis”) to utility poles in Upper Saddle River – my family and I do not currently live within the Eruv. Without further expansion of the Eruv into a small additional section of Upper Saddle River, my family, along with a significant number of residents living along the New York/New Jersey border, will continue to be deprived of the ability to fully and freely practice our religion on the Sabbath.

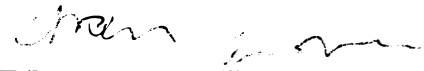
9. Due to Upper Saddle River’s obstruction of the planned Eruv, my wife and I cannot push or carry any objects outside the home on the Sabbath and Yom Kippur. The ability to push a stroller is particularly important to me and my family, as my wife and I have a baby who requires a stroller to attend Synagogue on the Sabbath. Additionally, my brother-in-law, who uses a wheelchair, cannot travel to or visit my family on the Sabbath because there is no eruv surrounding my home. My wife and I are therefore harmed by Upper Saddle River’s actions because we cannot push strollers or wheelchairs, or any other items, outside our house on the Sabbath. As a result of Upper Saddle River’s actions, my wife and I cannot attend Synagogue together or travel together to the houses of family and other community members.

10. I, therefore, respectfully request that this Court grant Plaintiffs’ application for a preliminary injunction.

11. I declare under penalty of perjury that the foregoing is true and correct.

Executed on

10/9/17



CHAIM BREUER

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BERGEN ROCKLAND ERUV ASSOCIATION,
YISROEL FRIEDMAN, S. MOSHE
PINKASOVITS, SARAH BERGER, MOSES
BERGER, CHAIM BREUER, YOSEF ROSEN, and
TZVI SCHONFELD

Plaintiffs,

-against-

THE BOROUGH OF UPPER SADDLE RIVER
Defendant.

**DECLARATION OF MOSES BERGER PURSUANT TO 28 U.S.C. § 1746
IN SUPPORT OF PLAINTIFFS' APPLICATION FOR PRELIMINARY INJUNCTION**

I, Moses Berger, hereby declare under penalty of perjury:

1. I am a plaintiff in the above-captioned proceeding and I reside in an area of New York that directly borders the Borough of Upper Saddle River. I am familiar with efforts that have been underway to expand an existing eruv into portions of Upper Saddle River, the purpose of which was to include members of the community, including myself and my family, within the confines of the expanded eruv. Although one portion of the expansion project was completed during the Summer of 2017, the further expansion of the eruv has ceased due to the actions of Upper Saddle River. As a result, my home is not currently covered by the eruv, as expanded. If the expansion proceeded, my home, along with the homes of many other observant Jews, would be within the Eruv's bounds. As such, I am familiar with the facts and circumstances set forth herein. I submit this Declaration in support of Plaintiffs' Application for Preliminary Injunction.

2. My address is 9 Jacqueline Road, Monsey, NY 10952. I reside in the Village of Chestnut Ridge, New York, which is immediately adjacent to the Borough of Upper Saddle River, New Jersey.

3. As an observant Jew, my religious beliefs are informed by thousands of years of Jewish tradition. Part of my strongly-held religious beliefs is the primacy of *halakha*, or the Jewish legal system, which establishes a framework for my entire life. A second core element of my beliefs is *kehillah*, or community, and the importance of joining together with members of my community to pray, study, and worship, to mourn at sad times and to celebrate in times of joy.

4. Part of my adherence to Jewish law is my observance of the Sabbath, the Jewish day of rest, which spans from Friday evening until Saturday night. On the Sabbath, many observant Jews refrain from certain activities, such as working, cooking, using electricity, or riding in cars. Many observant Jews, including myself, do not carry items in public places (*e.g.*, in the street, in communal areas, or from one private space to another). That prohibition includes the use of strollers and wheelchairs outside of one's own home.

5. Another element of my adherence to Jewish law is my sense of obligation to pray and worship with my community, especially on the Sabbath. On the Sabbath, many observant Jews recite prayers that can only be said with a *minyan* (a quorum of Jewish adults), including the reading of the weekly Torah portion. On special occasions, we celebrate life cycle events in the synagogue. On the memorial anniversary of loved ones, we recite the Mourner's *Kaddish*, which also may only be recited in the presence of a *minyan*. Without an eruv, many observant Jews who use wheelchairs or who have children who must ride in strollers are confined to their homes and are unable to participate in these traditions or fulfill many of their other ritual obligations.

6. The institution of the eruv has been practiced by Jewish people for over 2,000 years. It is based on principles derived from the Bible, as subsequently developed and

interpreted by the sages of the Talmud, and as codified and further interpreted in subsequent codes of Jewish law. The eruv defines an area within which one may “carry” items from place to place, an activity that is forbidden outside the home on the Sabbath and on Yom Kippur.

Included in this definition of carrying is the use of wheelchairs and strollers outside the home.

7. The eruv also enables observant Jews to carry other items outside their homes. The ability to carry house keys, medications, identification, food, water, games, toys, books, spare pairs of shoes, a raincoat, and other items create a safer environment and permit observant Jews to mingle more freely with their neighbors, thereby facilitating the friendship, camaraderie, and community that is so central to the Jewish and American traditions.

8. Because the expansion efforts of the eruv have been stalled – an expansion that by necessity required affixing narrow plastic strips (“lechis”) to utility poles in Upper Saddle River – my family and I do not currently live within the Eruv. Without further expansion of the Eruv into a small additional section of Upper Saddle River, my family, along with a significant number of residents living along the New York/New Jersey border, will continue to be deprived of the ability to fully and freely practice our religion on the Sabbath.

9. Due to Upper Saddle River’s obstruction of the planned Eruv, my wife and I cannot push or carry any objects outside the home on the Sabbath and Yom Kippur. The ability to push a stroller is particularly important to me and my family, as we have a nine-month-old child. My family and I cannot travel together on Sabbath to the houses of other community members for meals or to socialize, which negatively impacts our sense of community and camaraderie. Indeed, we cannot even borrow a simple item from a neighbor absent an eruv.

10. I, therefore, respectfully request that this Court grant Plaintiffs' application for a preliminary injunction.

11. I declare under penalty of perjury that the foregoing is true and correct.

Executed on 10/9/2017



MOSES BERGER

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BERGEN ROCKLAND ERUV ASSOCIATION,
YISROEL FRIEDMAN, S. MOSHE
PINKASOVITS, SARAH BERGER, MOSES
BERGER, CHAIM BREUER, YOSEF ROSEN, and
TZVI SCHONFELD

Plaintiffs,

-against-

THE BOROUGH OF UPPER SADDLE RIVER
Defendant.

**DECLARATION OF SARAH BERGER PURSUANT TO 28 U.S.C. § 1746
IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

I, Sarah Berger, hereby declare under penalty of perjury:

1. I am a plaintiff in the above-captioned proceeding and I reside in an area of New York that directly borders the Borough of Upper Saddle River. I am familiar with efforts that have been underway to expand an existing eruv into portions of Upper Saddle River, the purpose of which was to include members of the community, including myself and my family, within the confines of the expanded eruv. Although one portion of the expansion project was completed during the Summer of 2017, the further expansion of the eruv has ceased due to the actions of Upper Saddle River. As a result, my home is not currently covered by the eruv, as expanded. If the expansion proceeded, my home, along with the homes of many other observant Jews, would be within the Eruv's bounds. As such, I am familiar with the facts and circumstances set forth herein. I submit this Declaration in support of Plaintiffs' Application for Preliminary Injunction.

2. My address is 9 Jacqueline Road, Monsey, NY 10952. I reside in the Village of Chestnut Ridge, New York, which is immediately adjacent to the Borough of Upper Saddle River, New Jersey.

3. As an observant Jew, my religious beliefs are informed by thousands of years of Jewish tradition. Part of my strongly-held religious beliefs is the primacy of *halakha*, or the Jewish legal system, which establishes a framework for my entire life. A second core element of my beliefs is *kehillah*, or community, and the importance of joining together with members of my community to pray, study, and worship, to mourn at sad times and to celebrate in times of joy.

4. Part of my adherence to Jewish law is my observance of the Sabbath, the Jewish day of rest, which spans from Friday evening until Saturday night. On the Sabbath, many observant Jews refrain from certain activities, such as working, cooking, using electricity, or riding in cars. Many observant Jews, including myself, do not carry items in public places (*e.g.*, in the street, in communal areas, or from one private space to another). That prohibition includes the use of strollers and wheelchairs outside of one's own home.

5. On the Sabbath, many observant Jews recite prayers that can only be said with a *minyan* (a quorum of Jewish adults), including the reading of the weekly Torah portion. On special occasions, we celebrate life cycle events in the synagogue. On the memorial anniversary of loved ones, we recite the Mourner's *Kaddish*, which also may only be recited in the presence of a *minyan*. Without an eruv, many observant Jews who use wheelchairs or who have children who must ride in strollers are confined to their homes and are unable to participate in these traditions or fulfill many of their other ritual obligations.

6. The institution of the eruv has been practiced by Jewish people for over 2,000 years. It is based on principles derived from the Bible, as subsequently developed and interpreted by the sages of the Talmud, and as codified and further interpreted in subsequent codes of Jewish law. The eruv defines an area within which one may "carry" items from place to

place, an activity that is forbidden outside the home on the Sabbath and on Yom Kippur.

Included in this definition of carrying is the use of wheelchairs and strollers outside the home.

7. The eruv also enables observant Jews to carry other items outside their homes. The ability to carry house keys, medications, identification, food, water, games, toys, books, spare pairs of shoes, a raincoat, and other items create a safer environment and permit observant Jews to mingle more freely with their neighbors, thereby facilitating the friendship, camaraderie, and community that is so central to the Jewish and American traditions.

8. Because the expansion efforts of the eruv have been stalled – an expansion that by necessity required affixing narrow plastic strips (“lechis”) to utility poles in Upper Saddle River – my family and I do not currently live within the Eruv. Without further expansion of the Eruv into a small additional section of Upper Saddle River, my family, along with a significant number of residents living along the New York/New Jersey border, will continue to be deprived of the ability to fully and freely practice our religion on the Sabbath.

9. Due to Upper Saddle River’s obstruction of the planned Eruv, my husband and I cannot push or carry any objects outside the home on the Sabbath and Yom Kippur. The ability to push a stroller is particularly important to me and my family, as we have a nine-month-old child. My family and I cannot travel together on Sabbath to the houses of other community members for meals or to socialize, which negatively impacts our sense of community and camaraderie. Indeed, we cannot even borrow a simple item from a neighbor absent an eruv.

10. I, therefore, respectfully request that this Court grant Plaintiffs’ application for a preliminary injunction.

11. I declare under penalty of perjury that the foregoing is true and correct.

Executed on 10/9/2017



SARAH BERGER

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BERGEN ROCKLAND ERUV ASSOCIATION,
YISROEL FRIEDMAN, S. MOSHE
PINKASOVITS, SARAH BERGER, MOSES
BERGER, CHAIM BREUER, YOSEF ROSEN, and
TZVI SCHONFELD

Plaintiffs,

-against-

THE BOROUGH OF UPPER SADDLE RIVER
Defendant.

**DECLARATION OF TZVI SCHONFELD PURSUANT TO 28 U.S.C. § 1746
IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

I, Tzvi Schonfeld, hereby declare under penalty of perjury:

1. I am a plaintiff in the above-captioned proceeding and I reside in an area of New York that directly borders the Borough of Upper Saddle River. I am familiar with efforts that have been underway to expand an existing eruv into portions of Upper Saddle River, the purpose of which was to include members of the community, including myself and my family, within the confines of the expanded eruv. Although one portion of the expansion project was completed during the Summer of 2017, the further expansion of the eruv has ceased due to the actions of Upper Saddle River. As a result, my home is not currently covered by the eruv, as expanded. If the expansion proceeded, my home, along with the homes of many other observant Jews, would be within the Eruv's bounds. As such, I am familiar with the facts and circumstances set forth herein. I submit this Declaration in support of Plaintiffs' Application for Preliminary Injunction.

2. I maintain my personal residence in the hamlet of Monsey, New York, immediately adjacent to Upper Saddle River.

3. As an observant Jew, my religious beliefs are informed by thousands of years of Jewish tradition. Part of my strongly-held religious beliefs is the primacy of *halakha*, or the Jewish legal system, which establishes a framework for my entire life. A second core element of my beliefs is *kehillah*, or community, and the importance of joining together with members of my community to pray, study, and worship, to mourn at sad times and to celebrate in times of joy.

4. Part of my adherence to Jewish law is my observance of the Sabbath, the Jewish day of rest, which spans from Friday evening until Saturday night. On the Sabbath, many observant Jews refrain from certain activities, such as working, cooking, using electricity, or riding in cars. Many observant Jews, including myself, do not carry items in public places (*e.g.*, in the street, in communal areas, or from one private space to another). That prohibition includes the use of strollers and wheelchairs outside of one's own home.

5. Another element of my adherence to Jewish law is my sense of obligation to pray and worship with my community, especially on the Sabbath. On the Sabbath, many observant Jews recite prayers that can only be said with a *minyan* (a quorum of Jewish adults), including the reading of the weekly Torah portion. On special occasions, we celebrate life cycle events in the synagogue. On the memorial anniversary of loved ones, we recite the Mourner's *Kaddish*, which also may only be recited in the presence of a *minyan*. Without an eruv, many observant Jews who use wheelchairs or who have children who must ride in strollers are confined to their homes and are unable to participate in these traditions or fulfill many of their other ritual obligations.

6. The institution of the eruv has been practiced by Jewish people for over 2,000 years. It is based on principles derived from the Bible, as subsequently developed and interpreted by the sages of the Talmud, and as codified and further interpreted in subsequent codes of Jewish law. The eruv defines an area within which one may “carry” items from place to place, an activity that is forbidden outside the home on the Sabbath and on Yom Kippur. Included in this definition of carrying is the use of wheelchairs and strollers outside the home.

7. The eruv also enables observant Jews to carry other items outside their homes. The ability to carry house keys, medications, identification, food, water, games, toys, books, spare pairs of shoes, a raincoat, and other items create a safer environment and permit observant Jews to mingle more freely with their neighbors, thereby facilitating the friendship, camaraderie, and community that is so central to the Jewish and American traditions.

8. Because the expansion efforts of the eruv have been stalled – an expansion that by necessity required affixing narrow plastic strips (“lechis”) to utility poles in Upper Saddle River – my family and I do not currently live within the Eruv. Without further expansion of the Eruv into a small additional section of Upper Saddle River, my family, along with a significant number of residents living along the New York/New Jersey border, will continue to be deprived of the ability to fully and freely practice our religion on the Sabbath.

9. Due to Upper Saddle River’s obstruction of the planned Eruv, I cannot carry various items (such as raingear) outside my home on the Sabbath and Yom Kippur. Upper Saddle River’s actions have also directly impacted my sense of community and camaraderie, as families in my neighborhood, and particularly those with young children who cannot yet walk by themselves, are less likely to socialize outside the home on the Sabbath in the absence of an eruv.

10. I, therefore, respectfully request that this Court grant Plaintiffs' application for a preliminary injunction.

11. I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 9, 2017.


TZVI SCHONFELD

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BERGEN ROCKLAND ERUV ASSOCIATION,
YISROEL FRIEDMAN, S. MOSHE
PINKASOVITS, SARAH BERGER, MOSES
BERGER, CHAIM BREUER, YOSEF ROSEN, and
TZVI SCHONFELD

Plaintiffs,

-against-

THE BOROUGH OF UPPER SADDLE RIVER
Defendant.

**DECLARATION OF YISROEL FRIEDMAN PURSUANT TO 28 U.S.C. § 1746
IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

I, Yisroel Friedman, hereby declare under penalty of perjury:

1. I am a plaintiff in the above-captioned proceeding. I was recently involved with the expansion of an existing eruv that now covers a portion of the Borough of Upper Saddle River, the purpose of which was to include members of the community, including myself and my family, that, prior to the expansion, lived outside of the area covered by the existing eruv. As such, I am familiar with the facts and circumstances set forth herein. I submit this Declaration in support of Plaintiffs' Application for Preliminary Injunction.

2. I maintain my personal residence in the Village of Airmont, New York, a village that is immediately adjacent to the Borough of Upper Saddle River, New Jersey.

3. As an observant Jew, my religious beliefs are informed by thousands of years of Jewish tradition. Part of my strongly-held religious beliefs is the primacy of *halakha*, or the Jewish legal system, which establishes a framework for my entire life. A second core

element of my beliefs is *kehillah*, or community, and the importance of joining together with members of my community to pray, study, and worship, to mourn at sad times and to celebrate in times of joy.

4. Part of my adherence to Jewish law is my observance of the Sabbath, the Jewish day of rest, which spans from Friday evening until Saturday night. On the Sabbath, many observant Jews refrain from certain activities, such as working, cooking, using electricity, or riding in cars. Many observant Jews, including myself, do not carry items in public places (*e.g.*, in the street, in communal areas, or from one private space to another). That prohibition includes the use of strollers and wheelchairs outside of one's own home.

5. Another element of my adherence to Jewish law is my sense of obligation to pray and worship with my community, especially on the Sabbath. On the Sabbath, many observant Jews recite prayers that can only be said with a *minyan* (a quorum of Jewish adults), including the reading of the weekly Torah portion. On special occasions, we celebrate life cycle events in the synagogue. On the memorial anniversary of loved ones, we recite the Mourner's *Kaddish*, which also may only be recited in the presence of a *minyan*. Without an eruv, many observant Jews who use wheelchairs or who have children who must ride in strollers are confined to their homes and are unable to participate in these traditions or fulfill many of their other ritual obligations.

6. The institution of the eruv has been practiced by Jewish people for over 2,000 years. It is based on principles derived from the Bible, as subsequently developed and interpreted by the sages of the Talmud, and as codified and further interpreted in subsequent codes of Jewish law. The eruv defines an area within which one may "carry" items from place to

place, an activity that is forbidden outside the home on the Sabbath and on Yom Kippur.

Included in this definition of carrying is the use of wheelchairs and strollers outside the home.

7. The eruv also enables observant Jews to carry other items outside their homes. The ability to carry house keys, medications, identification, food, water, games, toys, books, spare pairs of shoes, a raincoat, and other items create a safer environment and permit observant Jews to mingle more freely with their neighbors, thereby facilitating the friendship, camaraderie, and community that is so central to the Jewish and American traditions.

8. As a result of our recent efforts to expand an existing eruv to now cover a portion of the Borough of Upper Saddle River, my house now falls within an eruv. As a result, my family and I have been able to more fully practice our religion on the Sabbath for the past few months. More specifically, for the past few months, my family and I have been able to carry items on the Sabbath, including prayer shawls and prayer books to our synagogue, and we have been able to bring food, games, gifts, and books to the homes of fellow community members. We have also been able to push strollers and wheelchairs within the confines of the newly expanded eruv. This has enabled us to more fully practice our religion, both at our synagogue and at communal activities in the homes of fellow community members on the Sabbath.

9. The ability to push a stroller is particularly important to me and my family, as my wife and I have two young children – one infant and one toddler – both of whom are not able to walk all the way to our synagogue on the Sabbath. As a result of now having an eruv, we are now able to push our two young children to our synagogue and to the houses of other community members in their strollers. None of this would be possible if the eruv were removed.

10. It is not just my family that has benefited from the eruv over the past three months. Many other members of the community have benefited as well. Like my family, these community members are also now able to more fully practice their religion. For example, the father-in-law of one of my neighbors, who visits my neighbors often, is dependent on a wheelchair. If the eruv were removed, my neighbor's father-in-law would no longer be able to attend synagogue (or attend meals at the homes of other community members), as he would be confined to the house for the entirety of the Sabbath.

11. In addition, and like myself, many other members of the community have young children that require a stroller to travel more than a very short distance. As a result of now being able to push a stroller, these families are now able to attend synagogue and spend time on the Sabbath with other community members outside of their homes. Without the eruv, someone would be forced to stay home for the entirety of the Sabbath to care for their young children.

12. If any of the lechis making up the existing Eruv are removed, the eruv that encompasses my house will become invalid, and, as a direct result of the actions of Upper Saddle River, my family and I, along with many other community members, will no longer be able to fully and freely practice our religion on the Sabbath.

13. It is also my understanding that Upper Saddle River has refused to allow us to complete our work on the planned expansion of the Eruv. Upper Saddle River's continued prevention of the Eruv's expansion deprives my fellow community members of their ability to fully and freely practice their religion on the Sabbath. Accordingly, I am unable to congregate with my fellow community members in the continuing practice and free exercise of our shared religious beliefs, ceremonies, and traditions.

14. I, therefore, respectfully request that this Court grant Plaintiffs' application for a preliminary injunction.

15. I declare under penalty of perjury that the foregoing is true and correct.

Executed on 10/10/2017



YISROEL FRIEDMAN

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BERGEN ROCKLAND ERUV ASSOCIATION,
YISROEL FRIEDMAN, S. MOSHE
PINKASOVITS, SARAH BERGER, MOSES
BERGER, CHAIM BREUER, YOSEF ROSEN, and
TZVI SCHONFELD

Plaintiffs,

-against-

THE BOROUGH OF UPPER SADDLE RIVER
Defendant.

**DECLARATION OF YOSEF ROSEN PURSUANT TO 28 U.S.C. § 1746
IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

I, Yosef Rosen, hereby declare under penalty of perjury:

1. I am a plaintiff in the above-captioned proceeding and I reside in an area of New York that directly borders the Borough of Upper Saddle River. I am familiar with efforts that have been underway to expand an existing eruv into portions of Upper Saddle River, the purpose of which was to include members of the community, including myself and my family, within the confines of the expanded eruv. Although one portion of the expansion project was completed during the Summer of 2017, the further expansion of the eruv has ceased due to the actions of Upper Saddle River. As a result, my home is not currently covered by the eruv, as expanded. If the expansion proceeded, my home, along with the homes of many other observant Jews, would be within the Eruv's bounds. As such, I am familiar with the facts and circumstances set forth herein. I submit this Declaration in support of Plaintiffs' Application for Preliminary Injunction.

2. I maintain my personal residence in the Village of Monsey, New York, a village that is immediately adjacent to Upper Saddle River.

3. As an observant Jew, my religious beliefs are informed by thousands of years of Jewish tradition. Part of my strongly-held religious beliefs is the primacy of *halakha*, or the Jewish legal system, which establishes a framework for my entire life. A second core element of my beliefs is *kehillah*, or community, and the importance of joining together with members of my community to pray, study, and worship, to mourn at sad times and to celebrate in times of joy.

4. Part of my adherence to Jewish law is my observance of the Sabbath, the Jewish day of rest, which spans from Friday evening until Saturday night. On the Sabbath, many observant Jews refrain from certain activities, such as working, cooking, using electricity, or riding in cars. Many observant Jews, including myself, do not carry items in public places (*e.g.*, in the street, in communal areas, or from one private space to another). That prohibition includes the use of strollers and wheelchairs outside of one's own home.

5. Another element of my adherence to Jewish law is my sense of obligation to pray and worship with my community, especially on the Sabbath. On the Sabbath, many observant Jews recite prayers that can only be said with a *minyan* (a quorum of Jewish adults), including the reading of the weekly Torah portion. On special occasions, we celebrate life cycle events in the synagogue. On the memorial anniversary of loved ones, we recite the Mourner's *Kaddish*, which also may only be recited in the presence of a *minyan*. Without an eruv, many observant Jews who use wheelchairs or who have children who must ride in strollers are confined to their homes and are unable to participate in these traditions or fulfill many of their other ritual obligations.

6. The institution of the eruv has been practiced by Jewish people for over 2,000 years. It is based on principles derived from the Bible, as subsequently developed and interpreted by the sages of the Talmud, and as codified and further interpreted in subsequent codes of Jewish law. The eruv defines an area within which one may “carry” items from place to place, an activity that is forbidden outside the home on the Sabbath and on Yom Kippur. Included in this definition of carrying is the use of wheelchairs and strollers outside the home.

7. The eruv also enables observant Jews to carry other items outside their homes. The ability to carry house keys, medications, identification, food, water, games, toys, books, spare pairs of shoes, a raincoat, and other items create a safer environment and permit observant Jews to mingle more freely with their neighbors, thereby facilitating the friendship, camaraderie, and community that is so central to the Jewish and American traditions.

8. Because the expansion efforts of the eruv have been stalled – an expansion that by necessity required affixing narrow plastic strips (“lechis”) to utility poles in Upper Saddle River – my family and I do not currently live within the Eruv. Without further expansion of the Eruv into a small additional section of Upper Saddle River, my family, along with a significant number of residents living along the New York/New Jersey border, will continue to be deprived of the ability to fully and freely practice our religion on the Sabbath.

9. Due to Upper Saddle River’s obstruction of the planned Eruv, my wife and I cannot push or carry any objects outside the home on the Sabbath and Yom Kippur. It is important that I be able to push a stroller on the Sabbath, as my three-year-old son is unable to make the walk to Synagogue without the use of a stroller. Moreover, my wife’s grandmother, who has visited my family on the Sabbath for years, is unable to go outside our home on the Sabbath because she requires a wheelchair or walker. Without an eruv, my family cannot easily

travel together to the houses of family and other community members, which has negatively impacted our sense of community and camaraderie. My brother-in-law lives nearby, in an area of New York that is within an eruv. Yet, due to the absence of an eruv, my brother-in-law avoids walking to my home on the Sabbath because he has to leave his child's stroller within the eruv and continue on without it. The last time he did so, the stroller was stolen.

10. I, therefore, respectfully request that this Court grant Plaintiffs' application for a preliminary injunction.

11. I declare under penalty of perjury that the foregoing is true and correct. Executed on October 10, 2017.



YOSEF ROSEN

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BERGEN ROCKLAND ERUV
ASSOCIATION, YISROEL FRIEDMAN,
S. MOSHE PINKASOVITS, SARAH
BERGER, MOSES BERGER, CHAIM
BREUER, YOSEF ROSEN, and TZVI
SCHONFELD

Plaintiffs,

-against-

THE BOROUGH OF UPPER SADDLE
RIVER

Defendant.

Civ. No. 2:17-cv-05512-JMV-
CLW

[PROPOSED] ORDER
GRANTING PLAINTIFFS'
MOTION FOR A
PRELIMINARY
INJUNCTION

THIS MATTER having been opened to the Court by Plaintiffs Bergen Rockland Eruv Association, Yisroel Friedman, S. Moshe Pinkasovits, Sarah Berger, Moses Berger, Chaim Breuer, Yosef Rosen, and Tzvi Schonfeld ("Plaintiffs"), for an Order granting Plaintiffs' Motion for a Preliminary Injunction, and the Court having considered said Motion; and the Court having considered the papers submitted by Plaintiffs in support of said Motion, and any papers submitted by the Borough of Upper Saddle River ("Defendant") in opposition thereto; and for the reasons set forth in the record of the proceedings, and for other and good cause having been shown,

IT IS on this _____ day of _____, 2017, hereby

ORDERED that Plaintiffs' Motion for a Preliminary Injunction is hereby granted; and the Court further orders as follows:

IT IS HEREBY ORDERED, that, until the adjudication of Plaintiffs' Complaint:

(1) Defendant, and anyone acting for or in concert with Defendant, is restrained and enjoined from taking any action, or causing anyone to take any action, to remove, in whole or in part, the Eruv that has been established in the Borough of Upper Saddle River;

(2) Defendant, and anyone acting for or in concert with Defendant, is restrained and enjoined from taking any action, or causing anyone to take any action, to interfere with the restoration or re-establishment, maintenance, repair or upkeep of the Eruv; and

(3) Defendant, and anyone acting for or in concert with Defendant, is restrained and enjoined from taking any action, or causing anyone to take any action, to interfere with Plaintiffs' completion of Plaintiffs' Planned Expansion of the Eruv in the Borough of Upper Saddle River.

This Court shall retain jurisdiction to enforce the terms of this Order.

SO ORDERED:

HON. JOHN MICHAEL VAZQUEZ
UNITED STATES DISTRICT JUDGE

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

BERGEN ROCKLAND ERUV ASSOCIATION,
YISROEL FRIEDMAN, S. MOSHE
PINKASOVITS, SARAH BERGER, MOSES
BERGER, CHAIM BREUER, YOSEF ROSEN,
and TZVI SCHONFELD

Plaintiffs,

-against-

THE BOROUGH OF UPPER SADDLE RIVER
Defendant.

Civ. No. 2:17-cv-05512-JMV-CLW

CERTIFICATE OF SERVICE

Document Filed Electronically

DIANE SULLIVAN hereby certifies as follows:

1. I am an attorney at the law firm of Weil, Gotshal & Manges LLP, counsel to Plaintiffs in the above-captioned action.
2. I am an attorney-at-law of the State of New Jersey and admitted to practice before the Courts of the State of New Jersey and the United States District Court for the District of New Jersey.
3. I hereby certify that on the day 10th of October 2017, I caused a copy of (1) Plaintiffs' Notice of Motion for a Preliminary Injunction; (2) Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for a Preliminary Injunction; (3) Declaration of Yisroel Friedman in Support of Plaintiffs' Motion for a Preliminary Injunction; (4) Declaration of S. Moshe Pinkasovits in

Support of Plaintiffs' Motion for a Preliminary Injunction (with Exhibit A); (5) Declaration of Sarah Berger in Support of Plaintiffs' Motion for a Preliminary Injunction; (6) Declaration of Moses Berger in Support of Plaintiffs' Motion for a Preliminary Injunction; (7) Declaration of Chaim Breuer in Support of Plaintiffs' Motion for a Preliminary Injunction; (8) Declaration of Yosef Rosen in Support of Plaintiffs' Motion for a Preliminary Injunction; (9) Declaration of Tzvi Schonfeld in Support of Plaintiffs' Motion for a Preliminary Injunction; (10) Declaration of Rabbi Chaim Steinmetz in Support of Plaintiffs' Motion for a Preliminary Injunction (with Exhibits A-G); (11) Declaration of Yehudah Buchweitz (with Exhibits A-J); and (12) Proposed Order Granting Plaintiffs' Motion for a Preliminary Injunction, to be served upon all counsel of record via CM/ECF.

Dated: October 10, 2017

/s/ Diane P. Sullivan

Diane P. Sullivan