



Peter J. O'Connor, Esq.
Kevin D. Walsh, Esq.
Adam M. Gordon, Esq.
Laura Smith-Denker, Esq.
David T. Rammler, Esq.
Joshua D. Bauers, Esq.

December 21, 2016

Dave Bole, Esq.
Winne Dooley & Bole
240 Frisch Court, Suite 102
Paramus, NJ 07652

Re: In the Matter of the Application of Ho-Ho-Kus Borough, County of Bergen, Docket No. BER-L-4253-15

Dear Mr. Bole:

This letter memorializes the terms of an agreement reached between the Borough of Ho-Ho-Kus (the "Borough" or "Ho-Ho-Kus Borough"), the declaratory judgment plaintiff in this matter, and Fair Share Housing Center ("FSHC"), a Supreme Court-designated interested party in this matter in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015) (Mount Laurel IV) and, through this settlement, an Intervenor/defendant in this proceeding, as well as with Intervenor/defendants Chamberlain Developers, Inc. ("Chamberlain") and Jonathan L. Mechanic DBA Ho-Ho-Kus Crossing ("Crossings").

Background

As background, the Borough of Ho-Ho-Kus was granted first round substantive certification by the Council on Affordable Housing ("COAH") on February 6, 1991, through which COAH approved a reduction of the Borough's fair share obligation to a zero-unit (0) realistic development potential ("RDP") by a vacant land adjustment. COAH reaffirmed the Borough's zero-unit (0) RDP again on October 7, 1998, with an 83-unit unmet need, when it granted the Borough second round substantive certification.

Ho-Ho-Kus Borough filed the above-captioned matter on July 1, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, supra. On August 26, 2015, the Honorable William C. Meehan, J.S.C. granted the Borough initial immunity from builder remedy lawsuits. The Court appointed Elizabeth C. McKenzie, AICP, PP, to serve as Special Master by way of an Order entered on September 24, 2015. FSHC, Master McKenzie and the Borough undertook the following actions and process:

1. Numerous telephone and in-person conferences were held between the Court, the Master and the Parties;
2. On October 29, 2015, the Court entered an Order of continued immunity and repose wherein the Borough was directed by the Court to diligently pursue preparation and submission of a preliminary summary of its housing element and fair share plan that demonstrates the satisfaction of the Borough's present need, Prior Round (1987-1999) and Third Round (1999-2025) fair share obligations in accordance with applicable law;

3. On November 23, 2015, the Borough of Ho-Ho-Kus submitted a Preliminary Plan Summary, dated November 19, 2015, to The Honorable William Meehan, J.S.C., in order to comply with the March 10, 2015 NJ Supreme Court decision and the subsequent Superior Court order of October 29, 2015, and was granted immunity from builder's remedy lawsuits until March 31, 2016. Immunity has subsequently been extended until February 6, 2017.
4. The November, 2015, Borough submission asserted that, based on an analysis of land-uses in Ho-Ho-Kus, the Borough lacks vacant, developable land and continues to be eligible for a vacant land adjustment. The analysis included the review of approximately 103 sites deemed by the Borough's tax assessor to be vacant or municipally owned.
5. As required by the Special Master, the Borough revised its RDP calculation to include potential redevelopment sites and other isolated vacant lots that COAH had previously eliminated from consideration in the calculation of the Borough's RDP. As described below, the Borough's RDP is now revised to 30 units, with a combined prior round and third round unmet need of 248 units.
6. Through numerous communications among the Parties, a framework for a settlement of this matter with FSHC has been achieved, as reflected in this agreement, which also reflects the settlement of the Chamberlain lawsuit ("Chamberlain Agreement"), embodied in a separate agreement.

Through the foregoing process, the Borough, Chamberlain, Crossings and FSHC have agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over this matter for review and a duly noticed Fairness Hearing, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households.

Settlement terms

The Borough, Chamberlain, Crossings and FSHC hereby agree to the following terms:

1. The Chamberlain Agreement is attached hereto as Exhibit A, incorporated herein and made a part hereof.
2. FSHC, Crossings and Chamberlain agree that the Borough, through the future adoption of a revised Housing Element and Fair Share Plan ("the Plan"), which will conform to the terms of this agreement, and through the implementation of that Plan and this agreement, satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025).
3. At this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when fair share obligations have yet to be definitively determined, it is appropriate for the parties to arrive at a settlement regarding a municipality's Third

Round present and prospective need instead of doing so through plenary adjudication of the present and prospective need.

4. FSHC, Chamberlain, Crossings and Ho-Ho-Kus Borough hereby agree that Ho-Ho-Kus Borough's affordable housing obligations are as follows:

Rehabilitation Share (per Kinsey Report ¹)	7
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	83
Third Round (1999-2025) Prospective Need (per Kinsey Report, as adjusted through this settlement agreement)	195

The Borough's cumulative prior round and third round prospective need, which totals 278, will be adjusted through a vacant land adjustment ("VLA") to a 30-unit realistic development potential ("RDP") and a 248-unit unmet need.

5. The Borough's efforts to meet its present need include the following: participation in Bergen County's Home Improvement Program and implementation of a third round municipal rental rehabilitation program. The Borough will adopt a Resolution of Intent to Bond as part of its revised third round housing plan. This is sufficient to satisfy the Borough's present need obligation of seven (7) units.
6. As noted above, the Borough's cumulative prior round and third round prospective need, which totals 278, will be reduced through a vacant land adjustment to a 30-unit RDP and a 248-unit unmet need. For settlement purposes only and as requested by the Master, the revised third round RDP of 30 units was generated from the approved Crossings at Ho-Ho-Kus redevelopment site ("Crossings") which includes eight (8) affordable family rental units and the theoretical development of the Hollows at Ho-Ho-Kus site ("Hollows") assuming, for settlement purposes, a density of 13 units per acre, yielding 8.6 affordable housing units, as well as the theoretical development of seven (7) isolated lots in single-family residential areas on the east side of the Borough. For settlement purposes only and as requested by the Master, the Borough refined its calculation of the RDP from the Crossings to equal the eight (8) approved affordable units. Although the settlement agreement between the Borough and Chamberlain will permit 12 single-family detached dwelling units to be constructed on the Hollows site (per the Chamberlain Agreement), the Borough is applying a theoretical RDP density of 13 dwelling units per acre to the Hollows site (3.34 unconstrained net acres) resulting in an RDP of 8.68. Lastly, the Borough is applying a theoretical RDP density of six (6) dwelling units per acre to the seven (7) isolated lots on the east side of the Borough for the purposes of calculating its revised RDP (10.95 unconstrained net acres) resulting in an RDP of 13.13. Based on COAH's regulations at N.J.A.C. 5:93-4.2, which eliminate constrained land and base the RDP on net acreage, the resulting total RDP for the Borough is 30 units (8 + 8.68 + 13.13 = 29.81). The Borough will address the 30-unit RDP through the following compliance mechanisms:

¹ David N. Kinsey, PhD, PP, FAICP, NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS FOR 1999-2025 CALCULATED USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY, April 16, 2015, revised July 2015.

Mechanisms to Address Ho-Ho-Kus Borough's 30-unit RDP	Units	Rental Bonuses	Total Credits
Inclusionary Rentals			
The Crossings at Ho-Ho-Kus – approved	8	8	16
Per Chamberlain Agreement - Bor. Train Station Parking Lot – @ 20% or 100%	13		13
Per Chamberlain Agreement - Frasco/Maple Ave - proposed	1		1
Total	22	8	30

For the purpose of addressing its 248-unit unmet need, the Borough proposes to implement overlay inclusionary zoning within the Borough's downtown area and to adopt a Borough-wide affordable housing set-aside requirement for any new multi-family construction over a certain density as described below in settlement term #8.

Regarding the Downtown Overlay Inclusionary Zoning, the Borough proposes overlay inclusionary zoning districts that would encompass approximately 18 acres of the Borough's Downtown as outlined on the overlay zoning map attached Exhibit B to this Agreement. The zoning would require that in the event that land uses change on any property within the district, affordable housing must be produced on that property by virtue of an affordable housing set aside.

7. The Borough intends to provide a realistic opportunity for the development of affordable housing through the adoption of inclusionary zoning on the following sites:
 - The Crossings – previously approved by use variance;
 - Per Chamberlain Agreement, redevelopment of Borough-owned Train Station Parking Lot with inclusionary zoning or 100% municipally sponsored affordable housing wherein the Borough would contract with an affordable housing developer, who would obtain outside subsidies. If the site is determined by the Borough to be developed through inclusionary zoning, the Borough shall adhere to the required redevelopment process and will prepare a schedule for adopting the redevelopment plan, selecting a redeveloper and executing a redevelopment agreement that will permit construction to begin within two years of the grant of a final judgment of compliance and repose. If the site is developed as a municipally-sponsored affordable housing project, the revised third round Plan shall include the information required by paragraph 8 of this Agreement for that project. The determination as to which option the Borough will chose will be made as part of its revised third round Plan.
 - Per Chamberlain Agreement, redevelopment of the Frasco/Maple Avenue site.

8. In accordance with N.J.A.C. 5:93-5.5, the Borough recognizes that it must provide evidence that the municipality has adequate and stable funding for any non-inclusionary affordable housing developments. The municipality is required to provide a pro forma of both total development costs and sources of funds and documentation of the funding available to the municipality and/or project sponsor, and any applications still pending.

In the case where an application for outside funding is still pending, the municipality shall provide a stable alternative source, such as municipal bonding, in the event that the funding request is not approved. The Borough meets this obligation as follows: Ho-Ho-Kus Borough will adopt a resolution of intent to bond as part of its revised third round Plan.

In accordance with N.J.A.C. 5:93-5.5, for non-inclusionary developments, a construction or implementation schedule, or timetable, shall be submitted for each step in the development process: including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. The schedule shall provide for construction to begin within two (2) years of court approval of this settlement for any 100% affordable housing project, including, but not limited to the site described in Paragraph 7 and referenced in the Chamberlain Agreement. The municipality shall indicate the entity responsible for undertaking and monitoring the construction and overall development activity. The Borough will meet these obligations as will be included in the Borough's revised third round Plan.

Additionally, the Borough agrees to establish a mandatory set-aside requirement of 20% if the affordable units will be for sale and 15% if the affordable units will be for rent, for any multi-family or single-family attached residential development providing a minimum of five (5) new units created through any municipal rezoning; Zoning Board use or density variance; redevelopment plan or rehabilitation plan providing for redevelopment with density at or above six (6) units per acre or other compensatory benefit, subject to further modification as may be agreed upon by FSHC and the Borough between now and the final compliance hearing to be scheduled in this matter. **This does not give any developer the right to any such rezoning, variance or other relief, or establish any obligation on the part of Ho-Ho-Kus Borough to grant such rezoning, variance or other relief.** No subdivision shall be permitted or approved for the purpose of avoiding compliance with this requirement.

9. The Borough agrees to require 13% of all units referenced in this plan, with the exception of units already approved or constructed as of July 1, 2008, and units subject to preliminary or final site plan approval, to be very low income units (affordable to households earning 30% or less of median income by household size), with half of the very low income units being available to families. Three (3) very-low income units are required (approximately 22 post-2008 units x 0.13 = 2.86). The municipality will comply with these requirements as follows:
 - The Crossings – 1 very-low income family rental;
 - Per Chamberlain Agreement, Borough-owned Train Station Parking Lot – up to 2 very-low income family rentals or 1 very-low income family rental and 1 very-low income special needs unit.
 - Requirement of 13% of units as very low income for any units created through the downtown overlay and/or the Borough-wide mandatory set-aside requirement.
10. The Borough shall meet its Third Round Prospective Need in accordance with the following standards as agreed to by the Parties and reflected in the table in paragraph 3 as adjusted through a vacant land adjustment to a 30-unit RDP and a 248-unit unmet need.

- a. Rental bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d) which shall solely govern application of bonus credits to both the Prior Round and Third Round obligation.
 - b. At least 50 percent of the units addressing the RDP shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.
 - c. At least twenty-five percent of the RDP shall be met through rental units, including at least half in rental units available to families.
 - d. At least half of the units addressing the RDP must be available to families.
 - e. The Borough agrees to comply with an age-restricted cap of 25% and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the municipality claim credit toward its fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet its cumulative prior round and third round fair share obligation minus previously approved RCAs.
11. The Borough shall add to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5), the following entities: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, Bergen County Branch of the NAACP, and Bergen County United Way. The Borough shall, as part of its regional affirmative marketing strategies during its implementation of this plan, provide notice to those organizations of all available affordable housing units. The Borough also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.
12. All units, including units funded with Low Income Housing Tax Credit financing, shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq. or any successor regulation, with the exception that in lieu of 10 percent of affordable units in rental projects being required to be at 35 percent of median income, 13 percent of affordable units in such projects shall be required to be at 30 percent of median income, and all other applicable law, provided that the Borough shall require projects receiving nine percent Low Income Housing Tax Credits to comply with a control period of not less than a 30 year compliance period plus a 15 year extended use period; all such units will receive one credit toward Prospective Need and may receive up to one bonus credit in accordance with the other terms of this Agreement. The Borough as part of its HEFSP shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied.
13. All new construction units shall be adaptable in conformance with P.L. 2005, c.350/ N.J.S.A. 52:27D-311a and -311b and all other applicable law.
14. As an essential term of this settlement, within one hundred twenty (120) days of the Court's approval of this Settlement Agreement and the Borough's Compliance Plan, the Borough shall have adopted an ordinance providing for the amendment of the Borough's

Affordable Housing Ordinance and Zoning Ordinance and a final Housing Element and Fair Share Plan to implement the terms of this settlement agreement and the zoning contemplated herein. This provision shall not lengthen the time agreed upon in the Chamberlain Agreement for adoption of Ordinances related to any properties covered by the terms of that Agreement.

15. The parties agree that if a decision of a court of competent jurisdiction in Bergen County, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an obligation for the Borough for the period 1999-2025 that would be lower by more than twenty (20%) percent than the total prospective Third Round need obligation established in settlement term #3 in this agreement (before the implementation of the Borough's vacant land adjustment), and if that calculation is memorialized in an unappealable final judgment, the Borough may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Borough shall be obligated to implement the fair share plan contemplated herein, including by leaving in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to this settlement agreement; taking all steps necessary to support the development of any 100% affordable developments referenced herein; maintaining all mechanisms to address unmet need and otherwise fulfilling fully the fair share obligations as adjusted through the vacant land adjustment as established herein. The reduction of the Borough's obligation below that established in this agreement does not provide a basis for seeking leave to amend this agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the Borough prevails in reducing its prospective need for the Third Round, the Borough may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.
16. The Borough will prepare a revised spending plan within 120 days to be attached to its adopted HE/FSP. FSHC may comment on or object to this spending plan. The Borough reserves the right to request the Court's approval that the expenditures of funds under the revised spending plan constitute "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period for expenditure designated pursuant to those provisions beginning to run with the entry of a final judgment approving this settlement in accordance with the provisions of In re Tp. Of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563). On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, the Borough agrees to provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and the Intervenor and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services. The reporting shall include an accounting of all housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended. The parties recognize that the expenditure of trust fund fees on administrative costs is capped at 20%.
17. On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, the Borough agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share

Housing Center and the Intervenors, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.

18. The Fair Housing Act includes two provisions regarding action to be taken by the Borough during the ten-year period of protection provided in this agreement. The Borough agrees to comply with those provisions as follows:
 - a. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center and the Intervenors, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity. Such posting shall invite any interested party to submit comments to the municipality, with a copy to Fair Share Housing Center and the Intervenors, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the Court regarding these issues. In the event the Court determines that a site or mechanism no longer presents a realistic opportunity and should be replaced or supplemented, then the municipality shall have the opportunity to supplement or revise its plan to correct any deficiency.
 - b. For the review of compliance with very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of this agreement, and every third year thereafter, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center and the Intervenors, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center and the Intervenors on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.
19. FSHC is hereby deemed to have party status in this matter and to have intervened in this matter as a defendant without the need to file a motion to intervene or an answer or other pleading. The parties to this agreement agree to request the Court to enter an order declaring FSHC is an intervenor, but the absence of such an order shall not impact FSHC's rights.
20. This settlement agreement must be approved by the Court following a fairness hearing as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). The Borough shall present its planner as a witness at this hearing. FSHC, Crossings and Chamberlain agree not to challenge the Borough's Compliance Plan at the fairness and/or compliance hearing. FSHC contends that the municipality should receive "the judicial equivalent of substantive certification and accompanying protection as provided under the FHA" in accordance with the Supreme Court's decision in In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 36 (2015) through July 2025. The Borough contends that it is entitled to a Judgment of Compliance and Repose through July 2025. Both parties agree

to let the trial judge make a final determination as to the form of judgment entered at the fairness hearing and not appeal any such determination. If the settlement agreement is rejected by the Court at a fairness hearing it shall be null and void.

21. If an appeal is filed of the Court's approval or rejection of the Settlement Agreement, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, and to continue to implement the terms of the Settlement Agreement if the Agreement is approved before the trial court unless and until an appeal of the trial court's approval is successful at which point, the Parties reserve their right to rescind any action taken in anticipation of the trial court's approval. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.
22. This settlement agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Bergen County.
23. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.
24. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
25. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
26. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.
27. The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possess the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.
28. Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.
29. Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both Parties.

30. This Agreement constitutes the entire Agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof except as otherwise provided herein.
31. No member, official or employee of the Borough shall have any direct or indirect interest in this Settlement Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.
32. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.
33. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein:

TO FSHC: Kevin D. Walsh, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: kevinwalsh@fairsharehousing.org

TO CHAMBERLAIN: Chamberlain Developers Inc.
479 State Route 17 North
Mahwah, NJ 07430
Phone: (201) 236-1517
Telecopier: (201) 236-5169
E-mail: frascorealty@verizon.net

TO CROSSINGS: Jonathan L. Mechanic DBA Ho-Ho-Kus Crossing
c/o Wendy Levine-Mechanic
808 Broadway – Apartment 2R
New York, NY 10003
Phone: 917-301-3012 cell
Telecopier:
E-mail: wendyslevine@gmail.com

WITH A COPY TO: Gail L. Price, Esq.
Price, Meese, Shulman & D'Arminio, PC
50 Tice Boulevard – Suite 380
Woodcliff Lake, NJ 07677
Phone: 201-391-3737
Telecopier: 201-391-9360
E-mail: gprice@pricemeese.com

TO THE BOROUGH:

Dave Bole, Esq.
240 Frisch Court, Suite 102
Paramus, NJ 07652
Telecopier: (201) 368-8883
Email: wdblaw@optimum.net

William Jones, Borough Administrator
Borough of Ho-Ho-Kus
333 Warren Avenue
Ho-Ho-Kus, NJ 07423
Telecopier: (201) 652-4400
Email: JonesW@ho-ho-kusboro.com

**WITH A COPY TO THE
MUNICIPAL CLERK:**

Borough Clerk
Borough of Ho-Ho-Kus
333 Warren Avenue
Ho-Ho-Kus, NJ 07423

Please sign below if these terms are acceptable.

Sincerely,



Adam M. Gordon, Esq.
Counsel for Intervenor/ Interested Party
Fair Share Housing Center

On behalf of the Borough of Ho-Ho-Kus, with the authorization
of the governing body:

Dated: _____

On behalf of Chamberlain:

Dated: _____

TO THE BOROUGH:

Dave Bole, Esq.
240 Frisch Court, Suite 102
Paramus, NJ 07652
Telecopier: (201) 368-8883
Email: wdblaw@optimum.net

William Jones, Borough Administrator
Borough of Ho-Ho-Kus
333 Warren Avenue
Ho-Ho-Kus, NJ 07423
Telecopier: (201) 652-4400
Email: JonesW@ho-ho-kusboro.com

**WITH A COPY TO THE
MUNICIPAL CLERK:**

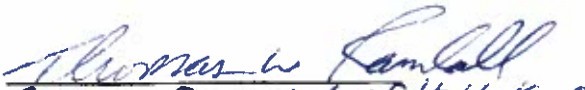
Borough Clerk
Borough of Ho-Ho-Kus
333 Warren Avenue
Ho-Ho-Kus, NJ 07423

Please sign below if these terms are acceptable.

Sincerely,

Adam M. Gordon, Esq.
Counsel for Intervenor/ Interested Party
Fair Share Housing Center

On behalf of the Borough of Ho-Ho-Kus, with the authorization
of the governing body:


THOMAS W. SAMBALL
MAYOR BOROUGH OF HO-HO-KUS
Dated: 11/5/17

On behalf of Chamberlain:

Dated: _____

TO THE BOROUGH: Dave Bole, Esq.
240 Frisch Court, Suite 102
Paramus, NJ 07652
Telecopier: (201) 368-8883
Email: wdblaw@optimum.net

William Jones, Borough Administrator
Borough of Ho-Ho-Kus
333 Warren Avenue
Ho-Ho-Kus, NJ 07423
Telecopier: (201) 652-4400
Email: JonesW@ho-ho-kusboro.com

**WITH A COPY TO THE
MUNICIPAL CLERK:** Borough Clerk
Borough of Ho-Ho-Kus
333 Warren Avenue
Ho-Ho-Kus, NJ 07423

Please sign below if these terms are acceptable.

Sincerely,

Adam M. Gordon, Esq.
Counsel for Intervenor/ Interested Party
Fair Share Housing Center

On behalf of the Borough of Ho-Ho-Kus, with the authorization
of the governing body:

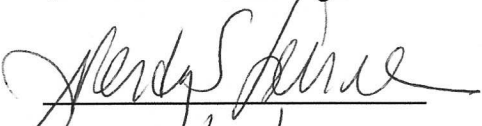
Dated: _____

On behalf of Chamberlain:



Dated: Dec 29th, 2016

On behalf of Crossings:

A handwritten signature in cursive script, appearing to read "Wendy Spence", written over a horizontal line.

Dated: 1/12/17

EXHIBIT A

SETTLEMENT OF LITIGATION AGREEMENT

This Settlement of Litigation Agreement (the "Agreement") is entered into this 29th day of December, 2016, by and between **CHAMBERLAIN DEVELOPERS, INC.**, a corporation of the State of New Jersey with a business address of 479 State Route 17, Mahwah, New Jersey ("**Chamberlain**"), the **BOROUGH OF HO-HO-KUS**, County of Bergen, State of New Jersey, a municipal corporation of the State of New Jersey with a business address of 333 Warren Avenue, Ho-Ho-Kus, New Jersey (the "**Borough**"), and the **PLANNING BOARD OF THE BOROUGH OF HO-HO-KUS**, a municipal body with a business address of 333 Warren Avenue, Ho-Ho-Kus, New Jersey (the "**Board**"). Chamberlain, the Borough and the Board are referred to herein collectively as the "**Parties.**".

WITNESSETH:

WHEREAS, Chamberlain is the contract purchaser of certain lands situated on Hollywood Avenue in the Borough, which comprise approximately three and 66/100 (3.66) contiguous acres of real property, which is identified as Block 802, Lots 1, 2, 3, 4 and 10 on the Borough's Tax Map (the "**Property**"); and

WHEREAS, Frasco Realty (an entity related to Chamberlain) is the owner of certain real property identified as Block 1015, Lot 9 on the Borough's Tax Map, having a street address of 612-614 North Maple Avenue, Ho-Ho-Kus, New Jersey (the "**Maple Avenue Property**"); and

WHEREAS, Chamberlain instituted certain litigation against the Borough and the Board now pending in the Superior Court of New Jersey, Bergen County, New Jersey (the "**Court**") captioned Chamberlain Developers, Inc. v. Borough of Ho-Ho-Kus and Planning Board of the Borough of Ho-Ho-Kus, Docket No. BER-L-4253-15 (the "**Chamberlain Litigation**"); and

WHEREAS, the Chamberlain Litigation includes claims concerning compliance by the Borough with its fair share obligation to provide a realistic opportunity for the provision of affordable housing for low and moderate income households (the “**Mt. Laurel Obligation**”), as set forth in the decision of the New Jersey Supreme Court in So. Burlington Cty. N.A.A.C.P. v. Twp. of Mt. Laurel, 92 N.J. 158 (1983) (“**Mt. Laurel II**”), the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq. (the “**Act**”), and the regulations of the New Jersey Council on Affordable Housing (“**COAH**”), N.J.A.C. 5:93-1, et seq.; and

WHEREAS, Chamberlain also instituted litigation against the Board, Borough and Municipal Clerk now pending in the Court captioned Chamberlain Developers, Inc. v. Planning Board of the Borough of Ho-Ho-Kus, Docket No. BER-L-5271-15 (the “**Automatic Approval Litigation**”); and

WHEREAS, the Automatic Approval Litigation seeks a default approval from the Board in connection with Chamberlain’s application for subdivision approval in connection with the Property, Board Application No. 001-14; and

WHEREAS, the Borough instituted certain litigation now pending in the Court captioned In the Matter of the Application of the Borough of Ho-Ho-Kus, Bergen County, Docket No. BER-L-6215-15 (the “**Declaratory Judgment Litigation**”); and

WHEREAS, the Declaratory Judgment Litigation seeks declaratory relief approving the Borough’s plan to satisfy its Mt. Laurel Obligation, and immunity from builders remedy lawsuits; and

WHEREAS, Chamberlain intervened as a defendant in the Declaratory Judgment Litigation, in which Chamberlain asserted or could assert objections to the Borough’s plan to satisfy its Mt. Laurel Obligation; and

WHEREAS, the Parties, subject to the terms hereof, have agreed that the Property may be permitted to be developed as a “Residential Development” by: (a) the construction of a subdivision of not less than twelve (12) single family detached market rate units on the Property; (b) the payment of residential development fees by Chamberlain to the Affordable Housing Trust Account of the Borough in lieu of the actual construction of affordable units on the property, which funds are to be used solely for the purposes of the creation of a realistic housing opportunity pursuant to the satisfaction of the Borough’s Mt. Laurel Obligation. The fee is negotiated pursuant to this agreement and shall be calculated at a rate of Seven Thousand Five Hundred and Zero Dollars (\$7,500.00) per single family unit constructed on the Property (the **“Affordable Housing Development Fee Payment”**). Notwithstanding any ordinance, COAH regulation or requirement to the contrary, the \$7,500.00 payment per single family unit shall be Chamberlain’s sole obligation regarding the payment of monies to the Borough’s Affordable Housing Trust Fund.

WHEREAS, in order to amicably resolve all issues in the Chamberlain Litigation, the Automatic Approval Litigation and the Declaratory Judgment Litigation on the basis of: (a) the Borough’s adoption of an ordinance rezoning the Property for the provision of not less than twelve (12) detached single family market rate units consistent with the permitted uses and bulk standards as set forth in a proposed amendment to the Zoning Ordinance of the Borough in the form attached hereto and made a part hereof as **EXHIBIT A** (the **“Zoning Amendment”**); (b) the Board’s processing and adjudication of Chamberlain’s application for subdivision approval on the Property in a manner consistent with this Agreement; (c) the Borough’s rezoning and/or inclusion in a Redevelopment Plan of real property owned by the Borough, identified as Block 1014, Lot 1-3-98 on the Borough’s Tax Map (the **“Downtown Commuter Parking Lot”**), for

the provision of an inclusionary multi-family development of at least fifty (50) total units, of which at least 20% shall be affordable housing units if for sale and 15% if rental units, or for inclusion in a Redevelopment Plan for a 100% Affordable Housing Development of at least 12 affordable housing units. An inclusionary multi-family development of at least fifty (50) total units would require a structured commuter parking garage; (d) the Borough's inclusion of the Maple Avenue Property in the Borough's downtown area Redevelopment Plan (to the extent the proposed redevelopment/rehabilitation area qualifies for an area in need of redevelopment/rehabilitation designation per the applicable statute) and/or rezoning of the Maple Avenue Property (regardless of whether the Borough's proposed redevelopment/rehabilitation area qualifies for an area in need of redevelopment/rehabilitation) for an inclusionary residential redevelopment comprised of a three-story building of one first floor commercial unit and four residential units, one of which will be an affordable housing unit; and (e) the Board's processing and adjudication of any site plan application for the Maple Avenue Property in a manner consistent with this Agreement;

WHEREAS, the Parties have reached an amicable settlement of the Chamberlain Litigation and the Automatic Approval Litigation and desire and intend to memorialize the settlement by the execution of this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES, TERMS AND CONDITIONS SET FORTH HEREIN, INTENDING TO BE LEGALLY BOUND HEREBY, THE PARTIES AGREE AS FOLLOWS:

1. **RECITALS.** The **WHEREAS** recital paragraphs hereinabove set forth are incorporated herein by reference.

1.1 **PURPOSE.** The Purpose of this agreement is to amicably resolve the Chamberlain Litigation and Automatic Approval Litigation consistent with the terms hereof which, in part, are intended to ensure that: (a) not less than twelve (12) market rate single-family detached residential units are constructed on the Property; and (b) delivery is made of the Affordable Housing Development Fee to help finance satisfaction of the Borough's Mt. Laurel Obligation as currently exists or as may exist in the future.

2. **OBLIGATIONS OF BOROUGH AND BOARD.**

2.1. **The Zoning Amendment for the Property.**

2.1.1. **Adoption of Zoning Amendment.** Within sixty days (60) days from Court Approval of this Agreement, the Borough shall move and vote on the adoption of an ordinance similar in all material respects to the Zoning Amendment after a duly noticed public hearing. Within the same time period, the Board shall make recommendation on the Zoning Amendment in accordance with the procedures of the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq.

2.1.2. **Failure to Adopt Zoning Amendment.** In the event the Borough elects not to adopt the Zoning Amendment within sixty (60) days of Court Approval of this Agreement at a Fairness Hearing duly noticed, this Agreement becomes null and void and of no effect, as if the Litigations were not settled, and the Property shall be rezoned at the direction of the Court-appointed Master and permitted to be redeveloped as an inclusionary multi-family residential development for purposes of meeting a portion of the Borough's fair share obligation, including its unmet need. Any inclusionary multi-family residential development site plan application for the Property shall be heard and acted on by the Special Master or by a Court-appointed Hearing Officer, who would serve in lieu of the Board.

2.2. The Redevelopment/Rezoning of the Downtown Commuter Parking Lot.

2.2.1. Adoption of Redevelopment Plan/Zoning Ordinance. The Downtown Commuter Parking Lot and other portions of the Borough's proposed downtown redevelopment area are to be included in a Redevelopment Plan and/or rezoning ordinance to be adopted within six (6) months of the entry of an Order by the Court approving the fairness of this settlement and granting preliminary approval of the Borough's compliance plan. The Redevelopment Plan and/or rezoning of the Downtown Commuter Parking Lot shall provide for the construction of a structured commuter parking garage and at least fifty (50) multi-family residential units, of which at least 20% shall be set aside as affordable housing units if for sale and 15% if rental units, or for a 100% Affordable Housing Development of at least 12 affordable housing units.

2.2.2. Failure to Adopt Redevelopment Plan/Zoning Ordinance. In the event the Borough elects not to adopt a Redevelopment Plan or Rezoning Ordinance pursuant to paragraph 2.2.1 above, this Agreement becomes null and void and of no effect, as if the Litigations were not settled (even if the 12-lot subdivision application is already approved), and the Property shall be rezoned at the direction of the Court-appointed Master and permitted to be redeveloped as an inclusionary multi-family residential development for purposes of meeting a portion of the Borough's fair share obligation, including its unmet need. Any inclusionary multi-family residential development site plan application for the Property shall be heard and acted on by the Special Master or by a Court-appointed Hearing Officer, who would serve in lieu of the Board.

2.3 The Redevelopment/Rezoning of the Maple Avenue Property.

2.3.1. Adoption of Redevelopment Plan/Zoning Ordinance. The Maple Avenue Property is to be included in a Redevelopment Plan and/or rezoning ordinance to be

adopted within six (6) months of the entry of an Order by the Court approving the fairness of this settlement and granting preliminary approval of the Borough's compliance plan. The Redevelopment Plan and/or rezoning of the Maple Avenue Property Lot shall permit a three-story mixed use building containing four residential units comprised of three market rate units and one affordable unit (a studio unit not less than 400 square feet in area) on the second and third floors of the building, with commercial retail use of the first floor, consistent with the Concept Plan attached hereto as Exhibit B. The affordable unit provided shall be a low income, family affordable rental housing unit and shall comply with the affordable housing requirements set forth in the Uniform Housing Affordability Controls ("UHAC") at N.J.A.C. 5:80-26.1 et seq. and COAH's Regulations at N.J.A.C. 5:93 including, but not limited to, a thirty (30) year affordable deed restriction, affirmative marketing, income eligibility and administration by an experienced Affordable Housing administrative agent.

2.3.2. Failure to Adopt Redevelopment Plan/Zoning Ordinance. In the event the Borough elects not to adopt a Redevelopment Plan or Rezoning Ordinance pursuant to paragraph 2.3.1 above, this Agreement becomes null and void and of no effect, as if the Litigations were not settled, and the Property shall be rezoned at the direction of the Court-appointed Master and permitted to be redeveloped as an inclusionary multi-family residential development for purposes of meeting a portion of the Borough's fair share obligation, including its unmet need. Any inclusionary multi-family residential development site plan application for the Property shall be heard and acted on by the Special Master or by a Court-appointed Hearing Officer, who would serve in lieu of the Board.

2.4. Obligation to Cooperate. The Borough and the Board acknowledge that in order to construct the proposed developments on the Property and Maple Avenue Property,

Chamberlain and Frasco Realty will be required to obtain all necessary agreements, approvals and permits from all relevant public entities and utilities; such as, by way of example only, the Borough, the Board, the County of Bergen, the Bergen County Planning Board, the New Jersey Department of Environmental Protection, the New Jersey Department of Transportation, the Soil Conservation District and the like -- including all ordinance requirements as to site plan and subdivision (the “**Required Approvals**”). The Borough and the Board agree to cooperate with Chamberlain and Frasco Realty in their undertakings to obtain the Required Approvals.

2.5. **Concept Plan.** The Parties have reviewed a conceptual plan for the Development of the Property, which plan is entitled “Concept Plan” dated December 13, 2016 and which plan is attached hereto and made a part hereof as Exhibit C (the “**Concept Plan**”). The Parties find the design of the development proposed for the Property as represented on the Concept Plan, as a general concept, to be feasible and acceptable as well as consistent with the Zoning Amendment (Exhibit A).

2.6. **The Board’s Obligation to Fast-Track Chamberlain’s Development Applications.** The parties agree that, in proceedings before the Board, Chamberlain shall be entitled to have the Board fast-track its application(s) as follows:

2.6.1. **Completeness.** Chamberlain will complete and submit a subdivision application for the Property which shall be reviewed by the Borough Planner and Borough Engineer for purposes of determining completeness, as defined by the Municipal Land Use Law, and compliance with the new zoning requirements and applicable design standards. A completeness determination by the Board must occur within thirty (30) days of submission.

2.6.2. **Decision By the Board.** After the Board determines that the subdivision application is complete, the Board shall schedule the public hearing on the application. Action

on the subdivision application shall be taken within 45 days of the determination of completeness. The Board will attempt, in good faith, to hear and decide the application at a single meeting, but if unable to do so the Board shall schedule a special meeting to complete the hearing and vote upon the application within the 45-day period. If necessary, the Board shall provide Chamberlain with a special meeting exclusively for the review of the development application.

2.6.3. No Payment of Application/Escrow Fees. The Board shall not require Chamberlain to pay any application fees and/or escrow fees in connection with any application filed by Chamberlain, notwithstanding any Borough ordinance to the contrary. The Board hereby agrees to bear the full cost for any and all of its own professionals, including but not limited to the Board Planner, Board Engineer and Board Attorney, in connection with the review and hearing of Chamberlain's application(s).

2.6.4. Applicability to the Maple Avenue Property. All of the fast-tracking provisions contained in this paragraph 2.6, except Paragraph 2.6.3, shall apply to any applications filed by Frasco Realty concerning the development of the Maple Avenue Property.

3. OBLIGATIONS OF CHAMBERLAIN.

3.1. Dismissal of the Chamberlain Litigation and Automatic Approval Litigation. Upon execution and entry by the Court of a Consent Order incorporating and approving this Settlement Agreement, that Consent Order shall operate as an Order dismissing without prejudice all of Chamberlain's claims that Chamberlain brought or could have raised against the Borough or the Board in the Chamberlain Litigation or the Automatic Approval Litigation, which dismissal shall become with prejudice effective upon the occurrence of the later of the following four (4) events: (a) the approval of this Agreement by the Superior Court; and (b) the

adoption of the Zoning Amendment (all appeal periods having expired with no appeals having been filed or any such appeal having been resolved in a final, unappealable decision or settlement in favor of the Zoning Amendment); (c) the Board's subdivision approval for the Property (all appeal periods having expired with no appeals having been filed or any such appeal having been resolved in a final, unappealable decision or settlement in favor of the said approval); and (d) the Borough's adoption of a Redevelopment Plan and/or rezoning ordinance for the Downtown Commuter Parking Lot (all appeal periods having expired with no appeals having been filed or any such appeal having been resolved in a final, unappealable decision or settlement in favor of the Zoning Amendment).

Effective upon dismissal with prejudice of the Chamberlain and Automatic Approval Litigation, Chamberlain shall release the Borough, its public officials, agents, attorneys and employees from any and all suits, claims, causes of action, liabilities, legal obligations, damages, costs and attorneys' fees arising out of the process of Chamberlain's prior pursuit of land development approvals in connection with the Property which Chamberlain has or may have against the Borough, its public officials, agents, attorneys and employees from the beginning of time through the effective date of such dismissal with prejudice. A final Consent Order and Release memorializing the foregoing shall be executed by the parties. Nothing contained herein is intended to release any future claims arising from development of the Property or the Maple Avenue property, including issuance of building permits and/or certificates of occupancy.

3.2. Exception in the Case of Certain Third Party Appeals.

(A) The foregoing notwithstanding, in the event a third party files an appeal with respect to the Zoning Amendment and/or Subdivision approval for the Property, which appeal results in anything other than an unqualified affirmance of the action taken below, Chamberlain has the

right to declare this settlement Agreement null and void at Chamberlain's sole option, and the Property shall be rezoned at the direction of the Court-appointed Master and shall be permitted to be developed with inclusionary multi-family residential development for purposes of meeting a portion of the Borough's fair share obligation, including its unmet need. Chamberlain is under no obligation to appeal any adverse ruling or wait out the appellate process if the Borough files an appeal in connection with any adverse ruling. In accordance with the foregoing, Chamberlain will allow the appellate process to proceed (to the Supreme Court, if necessary), provided that the decision at each appellate level is an unqualified affirmance of the action taken below.

(B) The foregoing Paragraph A notwithstanding, if a third party prevails on an appeal from Subdivision Approval for the property, which appeal is based upon a procedural defect (i.e., Notice), which defect is the responsibility of Chamberlain, Chamberlain shall not declare the Settlement Agreement to be null and void and Chamberlain shall cure any such defect and/or as appropriate, defend said appeal and allow the appellate process to continue at each appellate level until a final, unappealable decision is reached.

(C) The parties agree to cooperate with each other to review all procedural and substantive steps to be undertaken in connection with adoption of the Zoning Amendment, Subdivision Application before the Planning Board and court approval of this Agreement. Chamberlain agrees not to object to the Borough's proposals for the downtown commuter parking lot provided they are consistent with this Agreement.

(D) In the event that this Settlement Agreement becomes null and void, then the fast track provisions under Paragraph 2.6 from 2.6.1 to Paragraph 2.6.4 and the negotiated residential development fee of \$7,500.00 per single family unit shall no longer apply.

3.3. Development Application.

3.3.1. Obligation To Submit Development Applications Substantially Consistent With the Concept Plan. Chamberlain shall file and seek Board approval of a subdivision plan application substantially consistent with the design for the development of the Property as represented in the Concept Plan. In light of the Zoning Amendment, the parties do not contemplate that any substantial waivers and/or variances will be necessary to develop the Property in accordance with the Concept Plan. However, the parties acknowledge that Chamberlain has not yet engineered the project and that upon engineering the project and submission of land development application, it may become necessary to seek minor waivers, variances (except use variances) and/or other relief. In such event, the parties acknowledge that Chamberlain shall be entitled to such minor relief as may be necessary to develop the subject Property in accordance with the Concept Plan.

3.3.2. Obligation To Make Affordable Housing Payment. Upon receipt of each certificate of occupancy for the Property and as a condition of the release thereof, Chamberlain shall make a delivery to the Borough of Ho-Ho-Kus a check payable to the Affordable Housing Trust Fund in the amount of \$7,500.00. Notwithstanding any ordinance, COAH regulation or requirement to the contrary, the \$7,500.00 per single family unit shall be Chamberlain's sole obligation regarding the payment of monies to the Borough's Affordable Housing Trust Fund.

3.4 Maple Avenue Property Affordable Unit. Chamberlain and the Borough shall equally share the cost of hiring an experienced affordable housing administrative agent for the long term administration of the Maple Avenue Affordable low income unit, including the filing of a deed restriction, setting rent and rental increases, affirmative marketing, income eligibility determinations, monitoring, etc. pursuant to the UHAC regulations.

4. **MUTUAL OBLIGATIONS.**

4.1 **Mutual Good Faith, Cooperation and Assistance.** The Parties shall exercise good faith, cooperate and assist each other in fulfilling the intent and purpose of this Agreement, including, but not limited to, the approval of this Agreement by the Superior Court, the adoption of the Zoning Amendment and the subdivision approval for the Property, and the defense of any challenge with regard to any of the foregoing.

4.2. **Fairness Hearing.** The Parties acknowledge that the Superior Court will need to conduct a fairness hearing as to the fairness and reasonableness of this Agreement before approving same and the Court will presumably seek the input of the Special Master before making a decision. The Parties agree to share equally in the costs of the Master reviewing this Agreement and making a recommendation at a fairness hearing.

4.3 **Fees of Special Master.** Chamberlain and the Borough/Board agree to equally split the cost of all services invoiced by the Special Master Elizabeth McKenzie, PP. in the Declaratory Judgment Litigation, Chamberlain, Automatic Approval Litigation, including all services necessary and appropriate to conclude the matters set forth in this Agreement. The Borough/Board agree to credit Chamberlain the amount of \$10,831.50 against Chamberlain's 50% share of the Special Master's fee, which credit is equal to the fees paid by Chamberlain for the Board's engineering fees paid for out of Chamberlain's escrow account in connection with the Board's review of a prior subdivision application made by Chamberlain for the Property.

5.0 **Miscellaneous Provisions.**

5.1 **Effective Date of Agreement.** The terms set forth in this Agreement shall become effective upon approval thereof by the Court at a Fairness Hearing duly noticed in accordance with law.

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

5.3 **Successors Bound.** The provisions of this Agreement and the obligations and benefits hereunder shall be binding upon and inure to the benefit of the parties, their successors and assigns, including any person, corporation, partnership, or other legal entity which at any particular time may have an interest in any of the provisions which are the subject of this Agreement.

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

5.5 **No Modification.** This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the parties hereto.

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

5.7 **Voluntary Agreement.** The parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that

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

5.8 **Preparation.** Each of the parties hereto acknowledges that this Agreement was not drafted by anyone of the parties, but was drafted, negotiated and reviewed by all parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the parties expressly represents to the other that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.

5.9 **Exhibits.** Any and all exhibits annexed to this Agreement are hereby made a part of this Agreement.

5.10 **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties hereto and supersedes all prior oral and written agreements between the parties with respect to the subject matter hereof, except as otherwise provided herein.

5.11 **Notices.** All notices required under this Agreement (“Notice(s)”) shall be written and shall be served upon the respective parties by Certified Mail, Return Receipt Requested or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than 50 pages) Notices shall be served by email. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows:

To Chamberlain:
Chamberlain Developers, Inc.
479 State Route 17 North
Mahwah, New Jersey 07430

To the Borough:
Borough of Ho-Ho-Kus
Attention: Borough Administrator
c/o Borough of Ho-Ho-Kus
333 Warren Avenue
Ho-Ho-Kus, New Jersey 07423

To the Planning Board:
Planning Board of Ho-Ho-Kus
c/o Borough of Ho-Ho-Kus
Attention: Chairman
333 Warren Avenue
Ho-Ho-Kus, New Jersey 07423

IN WITNESS WHEREOF, Chamberlain, The Borough and The Board have caused this Agreement to be properly executed, witnessed and/or attested this 29th day of December, 2016.

CHAMBERLAIN DEVELOPERS, INC.

Witness: _____

By _____

Dated: 12-29-2016

THE BOROUGH OF HO-HO-KUS

Attest: _____
Laura Borchers, Municipal Clerk

By _____
THOMAS W. RANDALL, Mayor

Dated:

To the Borough:
Borough of Ho-Ho-Kus
Attention: Borough Administrator
c/o Borough of Ho-Ho-Kus
333 Warren Avenue
Ho-Ho-Kus, New Jersey 07423

To the Planning Board:
Planning Board of Ho-Ho-Kus
c/o Borough of Ho-Ho-Kus
Attention: Chairman
333 Warren Avenue
Ho-Ho-Kus, New Jersey 07423

IN WITNESS WHEREOF, Chamberlain, The Borough and The Board have caused this Agreement to be properly executed, witnessed and/or attested this ____ day of _____, 2016.

_____ CHAMBERLAIN DEVELOPERS, INC.

Witness: _____

By _____
Dated: _____

THE BOROUGH OF HO-HO-KUS

Attest: Laura Borchers
Laura Borchers, Municipal Clerk

By Thomas W. Randall
THOMAS W. RANDALL, Mayor

Dated: _____

PLANNING BOARD OF THE
BOROUGH OF HO-HO-KUS

Attest:
Board Secretary

John Carroll
John Carroll
12/21/16

By *John Hanlon*
JOHN HANLON, CHAIRMAN

Dated: *21 Dec 16*

EXHIBIT A

BOROUGH OF HO-HO-KUS
ORDINANCE NO.

AN ORDINANCE TO AMEND CHAPTER 85 OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF HO-HO-KUS, 1971 ENTITLED "ZONING" BEING AN ORDINANCE ESTABLISHING A UNIFORM SET OF ZONING REQUIREMENTS; TO ADD AN R-2A SINGLE-FAMILY RESIDENTIAL DISTRICT.

WHEREAS, pursuant to N.J.S.A. 40:55D-62b, the Mayor and Council of the Borough of Ho-Ho-Kus are authorized and empowered to adopt and amend the Zoning Ordinance of the Borough;

WHEREAS, it is the intent and purpose of the Municipal Land Use Law to encourage municipal action to guide the appropriate use or development of all lands in the State, in a manner which will promote the public health, safety, morals, and general welfare;

WHEREAS, pursuant to N.J.S.A. 40:55D-62b, amendments to the zoning ordinance must be either substantially consistent with the land use and housing elements of the Master Plan, as amended and supplemented or designed to effectuate such elements;

WHEREAS, the purpose of the R-2A Zone District is to establish a new zone in connection with a Settlement of Litigation Agreement between the Borough of Ho-ho-kus and Chamberlain Developers, Inc. as part of settlement terms of the Declaratory Judgement Mount Laurel Litigation, by the terms of which the affected properties shall generate the development set forth therein. The affected properties are identified in the Borough of Ho-ho-kus tax maps as Block 802, Lots 1, 2, 3, 4 & 10.

WHEREAS, the purpose of this Zoning Ordinance amendment is to establish specific zoning for the tract identified in the agreement and for the subdivision concept plan arrangement dated 12-13-16 and stipulated bulk criteria contained herein.

WHEREAS, this ordinance also provides that "The Settlement of Litigation Agreement" entered into between the Borough and Chamberlain Developers, Inc. dated December 29, 2016 shall be incorporated herein by reference

and shall be incorporated in any plan approval granted pursuant to this Ordinance.

WHEREAS, the Planning Board, by Resolution dated _____, approved the _____ amendment to the 2013 Master Plan, which includes reference to the continuing needs of the population of the Borough of Ho-Ho-Kus to provide alternate forms of housing; and

WHEREAS, the Mayor and Council have deemed it in the best interest of the Borough to amend the Zoning Ordinance to allow for a new single-family residential zone consistent with the current Master Plan; and

WHEREAS, the Governing Body has reviewed the report of its planner who has recommended the proposed new single-family zone and map to effectuate these changes; and

WHEREAS, upon passage of this Ordinance upon first reading, it shall be referred to the Planning Board for review and confirmation of the proposed amendments to the Zoning Code:

BE IT ORDAINED by the Borough Council, the Borough of Ho-Ho-Kus, County of Bergen, State of New Jersey, as follows:

Section I - Chapter 85 of the Revised General Ordinances of the Borough of Ho-Ho-Kus 1971, as amended, being an Ordinance entitled "Zoning" is hereby amended by adding thereto following section(s) and revising the numbered sections:

1. Article IV entitled "District Regulations", is amended by adding thereto the following new district "**R-2A Single-Family Residential District.**"
2. Article IV entitled "Zoning", Chapter § 85-5 'Zoning Map; Schedule of Requirements' is amended to reflect the designation of Block 802, Lots 1, 2, 3, 4 and 10 as an R-2A Single-Family Residential" Zone District.
3. There is added thereto a new Section entitled "**§ 85-10.1 R-2A Single-Family Residential.**" to read as follows:

§ 85-10.1 R-2A Single-Family Residential District.

The following regulations shall apply in all R-2A Districts:

A. Permitted uses.

- (1) Single-family dwellings and the accessory buildings and uses normally auxiliary thereto.
- (2) Private garages as an accessory building and as regulated by § 85-29 of this chapter.
- (3) Private swimming pools as an accessory structure and as regulated by Chapter 67,

Swimming Pools.

- (4) Municipally owned or operated facilities.
 - (5) Accessory structures including but not limited to detached sheds, cabanas, gazebos, built in barbecue's, carports and canopies.
 - (6) Home occupations as an accessory use and as regulated by § 85-32.1 of this chapter.
- B. Conditional uses requiring a special use permit as provided in Article VIII.
- (1) Public utility facilities or uses.
 - (2) County, state or federal facilities or uses.
- C. Prohibited uses. Any uses other than those uses permitted by Subsection A or B are prohibited.
- D. Minimum lot area and dimensions shall comply with the following standards.
- (1) The lot area shall not be less than 7,500 square feet.
 - (2) The lot frontage shall not be less than 60 feet, except a minimum lot frontage or width can be reduced to a minimum of 20 feet if all of the following is provided:
 - (a) Said lot is developed to be served by a public street for primary roadway access;
 - (b) The lot using this reduced frontage arrangement shall be a reduced frontage lot as configured in the settlement agreement identified herein, although the lots with reduced frontage may be further adjusted subject to the requirements of this zone. Such a reduced frontage configuration is to foster this specific settlement agreement noted in this amendment since the municipality has a long standing prohibition on flag lot arrangements.
 - (c) Served by a paved driveway with a minimum width of 11 feet where serving one lot or a minimum of 16 feet should the driveway serve more than one lot by a shared driveway easement.
 - (d) The depth of the portion of the lot permitted at the reduced lot frontage measured from the front lot line, wherein the width is less than the required lot width of 60 feet, shall be

no greater than 145 feet from the front lot line.

(e) No principal or accessory buildings or structures shall be permitted in this reduced portion (less than 60 feet in width), referenced herein.

(3) The lot width shall not be less than 48 feet.

(4) The lot depth shall not be less than 80 feet.

(5) The front door location on a principal residential structure on a lot in this zone shall not prescribe the identification of a front, rear or side yard.

(6) The area of an easement on a lot, shall not reduce the area of the lot for purposes of calculating the regulatory criteria of this zone.

E. Minimum yard requirements, interior lots.

(1) Front yard depth: 25 feet.

(2) Side yard width: 8 feet, except that side yards adjacent to an existing R-2 lot shall be 10 feet.

(3) Rear yard depth: 25 feet.

F. Minimum yard requirements, corner lots.

(1) Front street yard depth: 25 feet.

(2) Side street yard width: 25 feet.

(3) Interior side yard width: 8 feet, except that side yards adjacent to an existing R-2 lot shall be 10 feet.

(4) Rear yard depth: 25 feet.

G. Minimum open space requirements.

(1) Total lot coverage shall not exceed 30 percent of the total lot area. The total lot coverage can be increased an additional 5 percent only for conforming accessory

buildings.

- (2) Lot coverage by accessory buildings and structures shall not exceed 15% of lot area.
- (3) Total improved lot coverage shall not exceed 60 percent of the area of the lot, except an additional 10 percent is permitted but must use pervious pavement or composition of materials with a rate of permeability that will not result in an increase in runoff from the existing pervious surface conditions. subject to the approval of the designated municipal official. In the case of pavers, the applicant shall show that the pavement materials or a composition of materials are specifically designed for enhanced permeability through the use of wide gaps between pavers or open spaces created by the paving that are filled with gravel (not sand) or of sufficient composition to permit and maintain porosity. In the case of pervious asphalt or concrete, the mix design shall be specifically designed, prepared and installed for high permeability by a firm or firms with experience in the same. Additionally, the applicant must demonstrate there is sufficient soil infiltration below said pervious pavement for the system to function.
- (4) Livable floor area for one-story dwellings shall not be less than 1,000 square feet and 1,500 square feet for multistory dwellings, exclusive of garages, basements, open porches, livable attics and accessory buildings.
- (5) There shall be a minimum of 1,500 square feet of lot area for each bedroom provided in a dwelling.
- (6) First-floor gross floor area of accessory buildings shall not exceed 1,000 square feet per building.
- (7) Swimming pool improved lot coverage exception. A swimming pool is permitted to exceed the maximum improved lot coverage calculation up to a total of 700 square feet. The area of the pool that exceeds the total lot coverage calculation shall be subject to the installation of a seepage tank sized for draining the pool in accordance with the requirements of the Borough Engineer.

H. Maximum floor area ratio. The maximum floor area ratio (FAR) for a principal structure on a lot or lots that make a single tract for development, shall not be more than 40% for the first 10,000 square feet of lot area. The portions of a lot greater than 10,000 square feet the following additional floor area shall be permitted:

- (1) For the area of a lot greater than 10,000 square feet and up to 20,000 square feet, a maximum 20 percent FAR calculation is permitted for such area. This additional floor area shall be added to the total permitted floor area calculated by the FAR for the first 10,000 square feet of lot area.
- (2) For the area of a lot greater than 20,000 square feet, a maximum 10 percent FAR calculation is permitted for such area. This additional floor area shall be added to the total permitted floor area calculated by the FAR for the first 20,000 square feet of lot area as noted herein

The FAR calculations of this section shall exclude the area of a typical two car garage (limited to a maximum of 600 square feet), basements, open porches, attics and accessory buildings. If more than a two car garage is proposed, the area above the two car garage limit shall be added to the FAR calculation.

I. Maximum building height. No principal building shall exceed a height of 35 feet containing no more than 2 1/2 stories. No accessory building shall exceed a height of 25 feet containing no more than 2 stories. The accessory building second story interior floor area where the floor to ceiling height is 5 feet or greater shall not exceed more than 75 percent of the total floor area of the first story of the accessory structure.

J. Detached accessory building and structure setbacks. Minimum distances to the following:

- (1) Principal building and each other: 8 feet.
- (2) Front street: 25 feet.
- (3) Side street: 25 feet.
- (4) Interior lot side line: 5 feet, except that setback adjacent to an existing R-2 lot shall be 10

feet.

- (5) Interior lot rear line: 5 feet, except that setback adjacent to an existing R-2 lot shall be 10 feet.
- (6) Corner lot side line: 5 feet, except that side setback adjacent to an existing R-2 lot shall be 10 feet.
- (7) Corner lot rear line: 5 feet.

- K. Projections into front yard for interior and corner lots. Roofed and unroofed entry platforms and/or associated stoops and steps not exceeding 35 square feet in area shall be permitted in the front yard setback area, provided that, in any single-family zone, such projection shall not extend into the required front yard setback area by more than eight feet.
- L. Retaining walls requirements. The maximum height of a retaining wall is 6 feet. Shall a series of terraced retaining walls be proposed within 10 feet or less, then a landscaped terrace of a minimum width of 4 feet shall be provided. Where a retaining wall is adjacent to a lot line contiguous with the R-2 zone, retaining walls 4 feet or less in height shall have a one foot offset from a contiguous lot line. Should a retaining wall exceed 4 feet in height or if terraced where the adjacent wall is within 10 feet or less from the face of each wall, the closest wall to an adjacent lot line shall be setback a minimum of two feet plus one foot of setback for every one-foot vertical wall height of the closest wall and the setback shall be landscaped for screening.
- M. The right angle or radial lot line requirements contained in §32B-10 A.(5)(b) shall not be applicable to the subdivision of lots in the R-2A zone district.

Section II. VALIDITY-SEVERABILITY If the provisions of any section, subsection, paragraph, subdivision, or clause of this Ordinance shall be held invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of this

Ordinance but such judgment shall be confined in its operation to the section, paragraph, subdivision or clause directly involved in the controversy in which said judgment shall have been rendered.

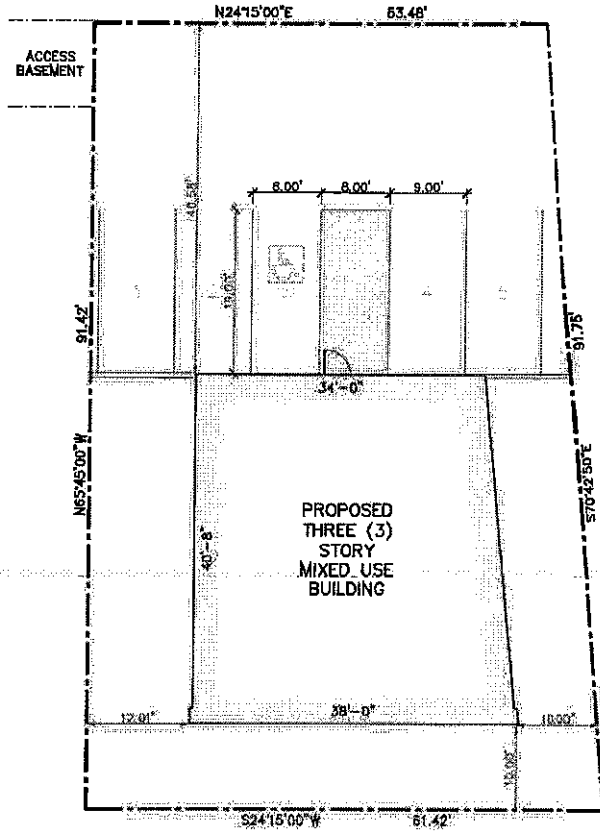
Section III All Ordinances or parts of Ordinances inconsistent with the provisions hereof are hereby repealed.

Section IV This Ordinance shall take effect upon passage as required by law.

Laura Borchers, Borough Clerk, RMC

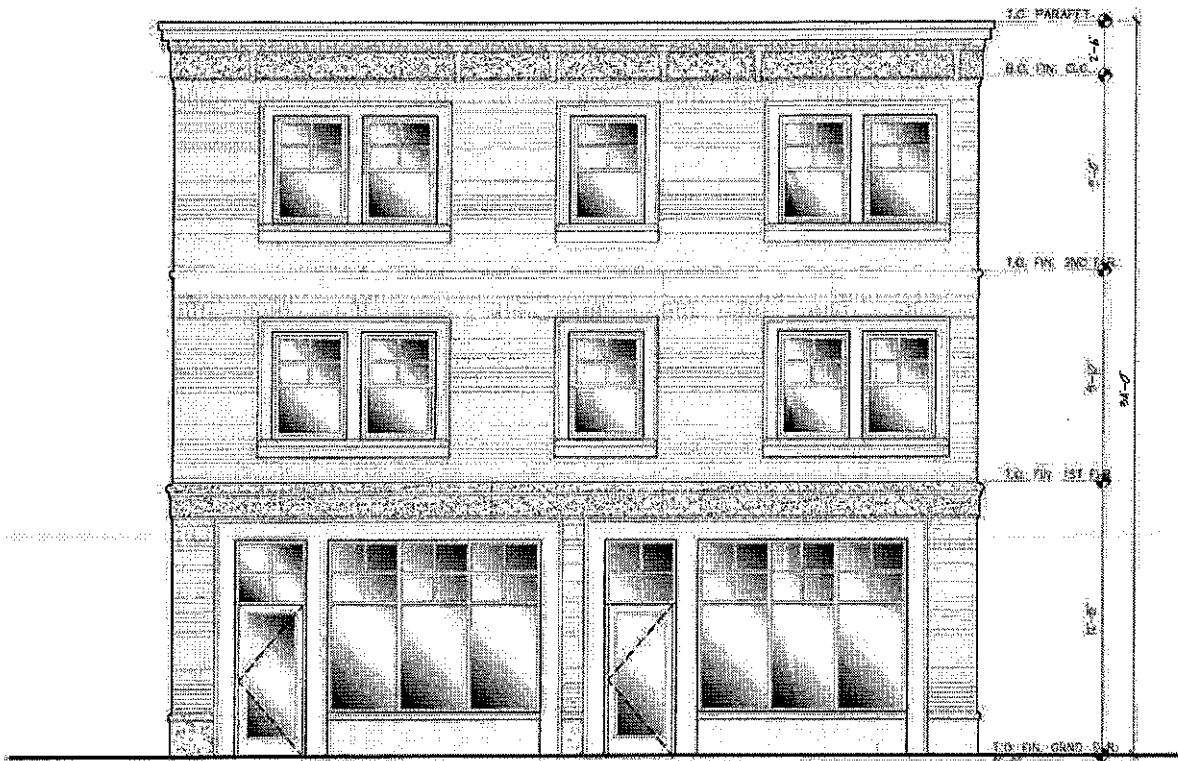
Thomas W. Randall, Mayor

EXHIBIT B



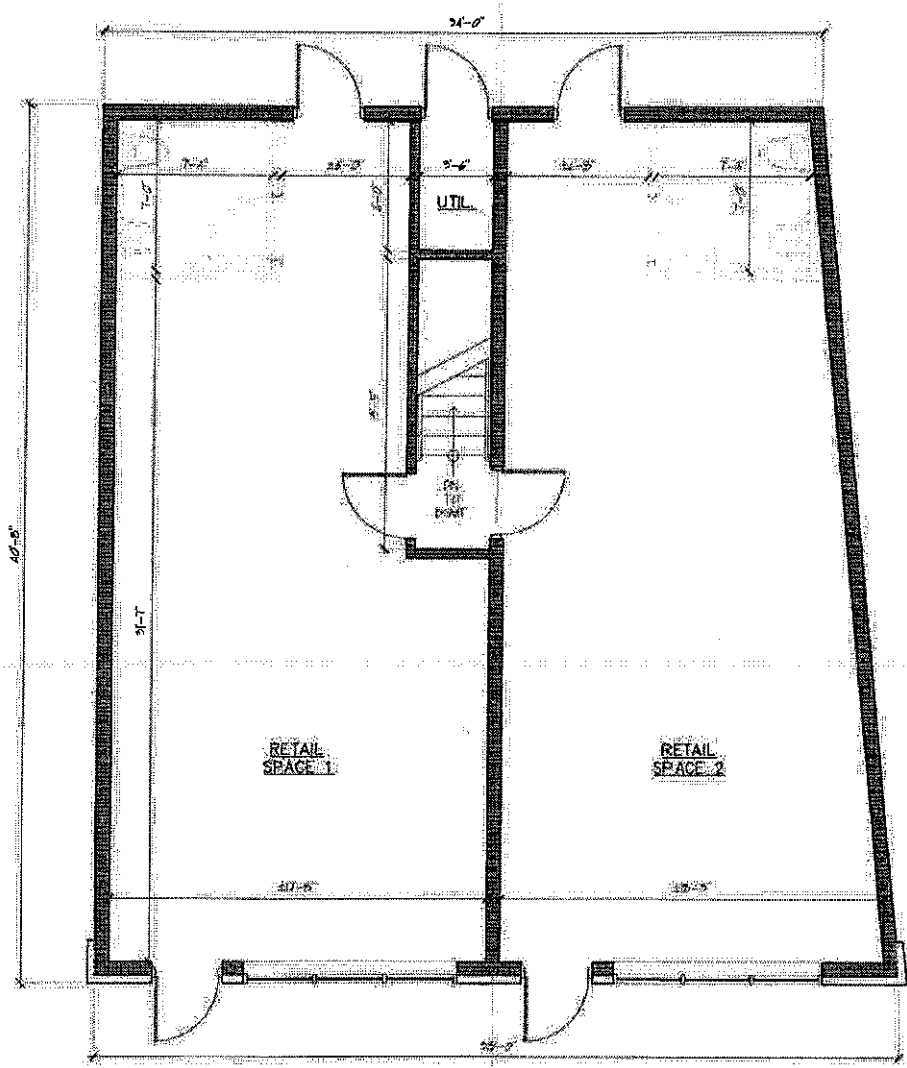
MAPLE AVENUE
(NORTH MAPLE AVEN.)





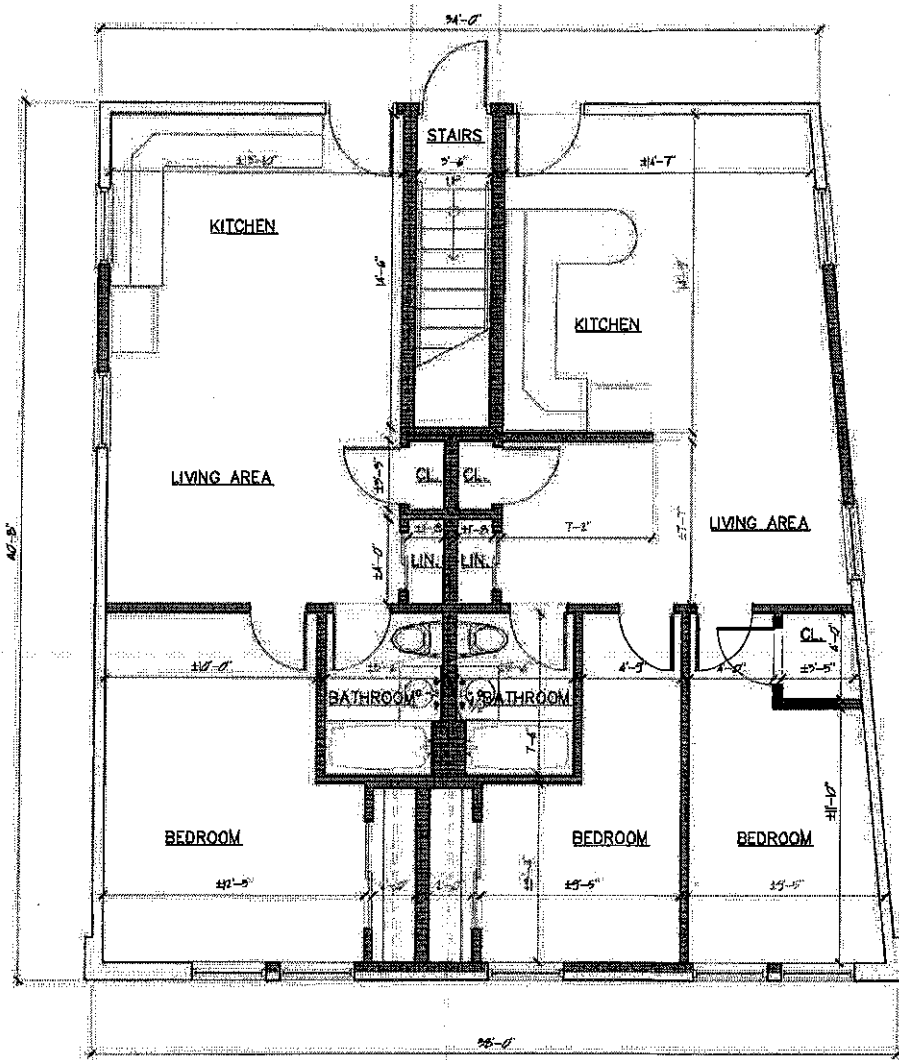
FRONT ELEVATION

SCALE: 1/4"=1'-0"



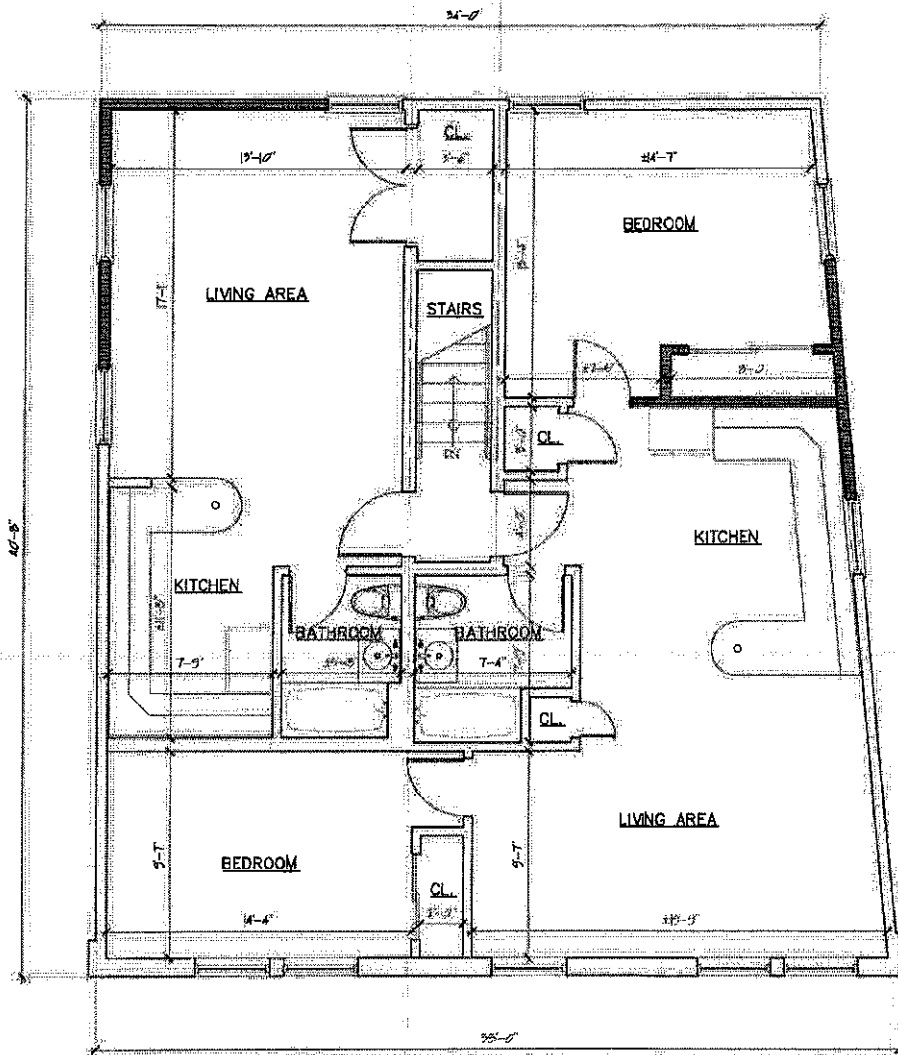
GROUND FLOOR PLAN

SCALE: 1/8" = 1'-0"



SECOND FLOOR PLAN

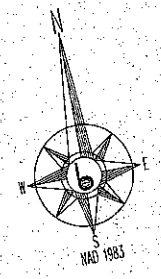
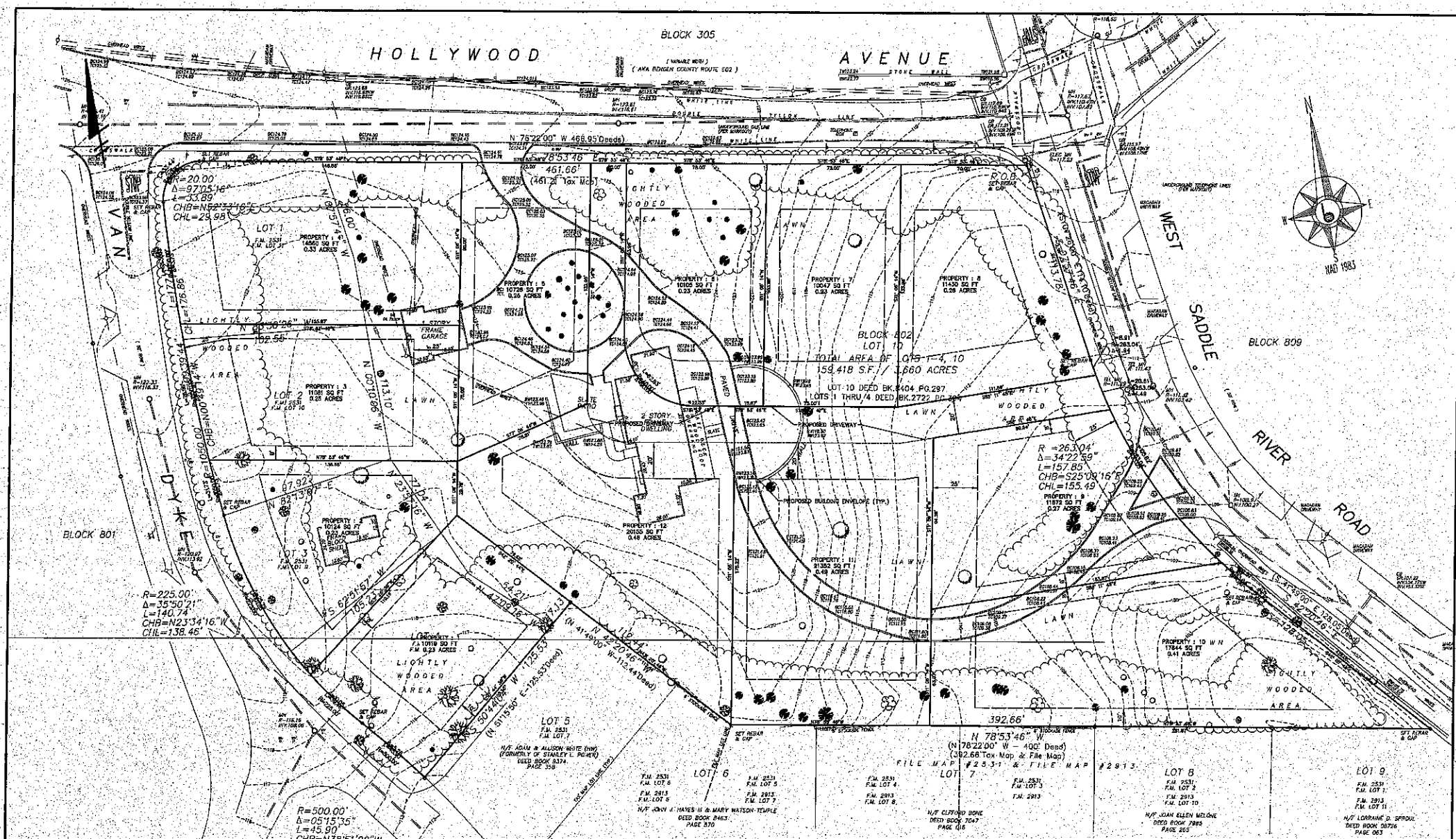
SCALE: 1/4"=1'-0"



THIRD FLOOR PLAN

SCALE: 1/4"=1'-0"

EXHIBIT C



SCHEDULE OF REQUIREMENTS

Zone	District	Minimum Lot Requirements			Minimum Open Space Requirements			Livable Floor Area		Interior Lots					Corner Lots			Detached Accessory Buildings							
		Lot Area (sq. feet)	Lot Frontage (feet)	Lot Width (feet)	Lot Depth (feet)	Lot Coverage (percent)	Improved Lot Coverage (percent)	Lot Coverage Accessory Buildings and Structures (percent)	One-Story (square feet)	Multi-Story (square feet)	Minimum Floor Area Ratio (percent)	Maximum Building Height (feet)	Front Depth (feet)	Side Width (feet)	Rear Depth (feet)	Front Street Depth (feet)	Side Street Width (feet)	Interior Side Width (feet)	Rear Depth (feet)	Principal Building (feet)	Front Side (feet)	Side Street (feet)	Interior Lot Lines (feet)	Lot Line Line (feet)	Corner Lot Line (feet)
R-2A	Single-Family Residential	7,500 square feet	60'	48'	80'	30%*	60%*	15%*	1,000	1,500	40*	35/24*	25	8*	25	25	25	8*	25*	8	25	25	5*	5*	5*

NOTES:
 * This Schedule of Requirements is only a summary of the basic zoning requirements for each zone district. It is not complete in that there are requirements applicable to each zone that do not appear here. The text of this chapter must be consulted for the detailed requirements, general provisions, exceptions and modifications.
 Under no circumstances should this schedule be relied upon exclusively in making a zoning analysis.
 † These percentage limitations are to be calculated based upon permitted improved lot coverage, not upon the land area of the lot.
 ‡ Established by Modification Agreement as noted in Ordinance No. (to be added).
 § See §85-10.1 D. (3) for exceptions.
 ¶ See §85-10.1 G. (1) for exceptions pertaining to accessory buildings.
 ** See §85-10.1 G. (2) for exceptions and requirements.
 †† See §85-10.1 H. for adjustments for lot areas over 10,000 square feet.
 ††† See §85-10.1 J. (2) and §85-10.1 J. (3) for exceptions for setbacks to lot lines contiguous with R-2 zone.
 †††† See §85-10.1 J. for exceptions for setbacks to lot lines contiguous with R-2 zone.



ZONING

85 Attachment 1

Borough of Ho-Ho-Kus, New Jersey

Schedule of Requirements¹

AMENDMENT TO ADD R-2A ONLY

Zone	District	Minimum Lot Requirements			Minimum Open Space Requirements			Livable Floor Area		Maximum Floor Area Ratio (percent)	Maximum Building Heights (feet/story)	Interior Lots			Corner Lots			Detached Accessory Buildings						
		Lot Area	Lot Frontage (feet)	Lot Width (feet)	Lot Depth (feet)	Lot Coverage (percent)	Improved Lot Coverage (percent)	Lot Coverage Accessory Buildings and Structures ² (percent)	One-Story (square feet)			Multi-story (square feet)	Front Depth (feet)	Side Width (feet)	Rear Depth (feet)	Front Street Depth (feet)	Side Street Width (feet)	Interior Side Width (feet)	Rear Depth (feet)	Principal Building (feet)	Front Side (feet)	Side Street (feet)	Interior Lot Side Lines (feet)	Interior Lot Rear Line (feet)
R-2A ³	Single-Family Residential	7,500 square feet	60 ⁴	48	80	30% ⁵	60% ⁶	15% ⁷	1,000	1,500	40 ⁸	35/2½	25	8 ⁹	25	25	25	25	8	25	25	5 ¹⁰	5 ¹⁰	5 ¹⁰

NOTES:

¹ This Schedule of Requirements is only a summary of the basic zoning requirements for each zone district. It is not complete in that there are requirements applicable to each zone that do not appear here. The text of this chapter must be consulted for detailed requirements, general provisions, exceptions and modifications. Under no circumstances should this schedule be relied upon exclusively in making a zoning analysis.

² These percentage limitations are to be calculated based upon permitted improved lot coverage, not upon the land area of the lot

³ Established by litigation agreement.

⁴ See §85-10.1 D. (2) for exceptions.

⁵ See §85-10.1 G. (1) for exceptions pertaining to accessory buildings.

⁶ See §85-10.1 G. (3) for exceptions and requirements.

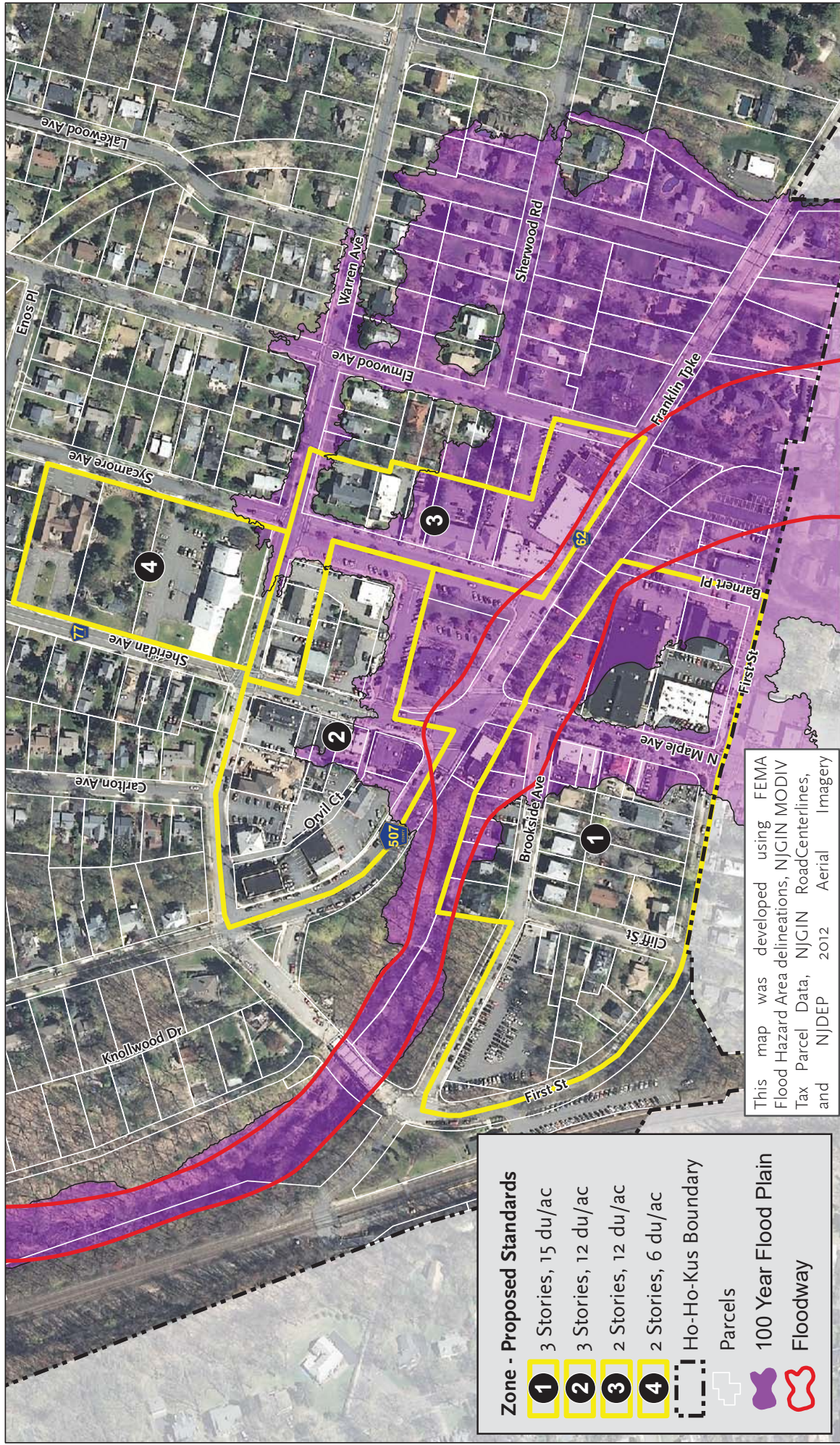
⁷ See §85-10.1 G. (2) for exceptions and requirements.

⁸ See §85-10.1 H. for adjustments for lot sizes over 10,000 square feet.

⁹ See §85-10.1 E. (2) and §85-10.1 F. (3) See exceptions for setbacks to lot lines contiguous with R-2 zone.

¹⁰ See §85-10.1 J. for exceptions for setbacks to lot lines contiguous with R-2 zone.

EXHIBIT B



Zone - Proposed Standards

- 1** 3 Stories, 15 du/ac
- 2** 3 Stories, 12 du/ac
- 3** 2 Stories, 12 du/ac
- 4** 2 Stories, 6 du/ac
- Ho-Ho-Kus Boundary
- Parcels
- 100 Year Flood Plain
- Floodway

This map was developed using FEMA Flood Hazard Area delineations, NJGIN MODIV Tax Parcel Data, NJGIN RoadCenterlines, and NJDEP 2012 Aerial Imagery

Proposed Downtown Overlay Inclusionary Zones Addressing Unmet Need

Ho-Ho-Kus Borough, Bergen County, New Jersey August 24, 2016

