

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.

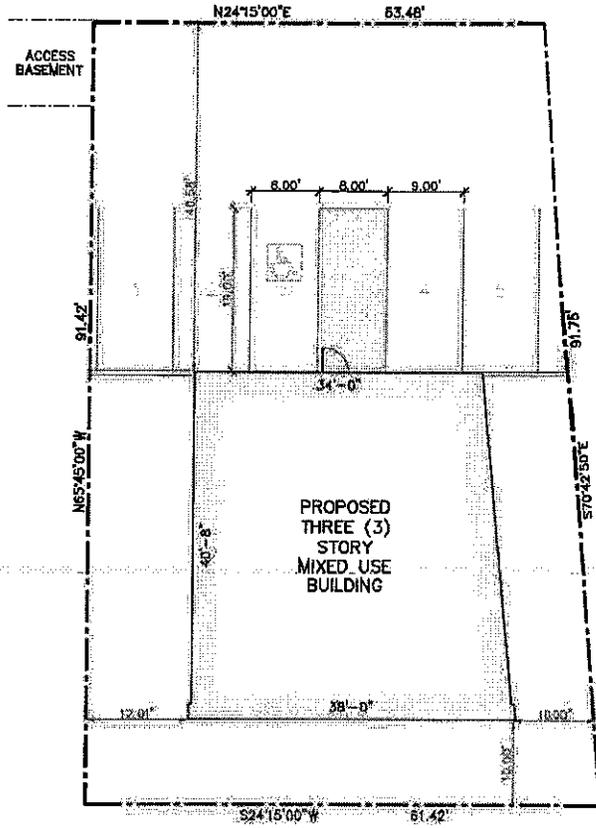
Section III All Ordinances or parts of Ordinances inconsistent with the provisions hereof are hereby repealed.

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

Laura Borchers, Borough Clerk, RMC

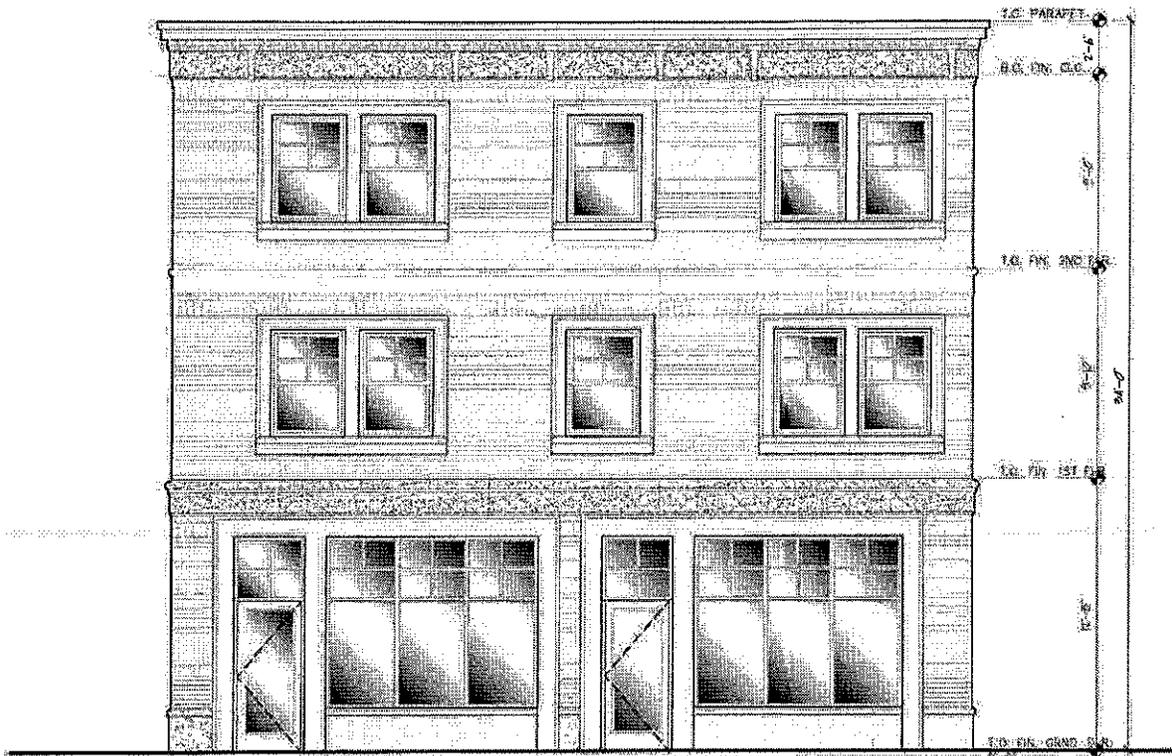
Thomas W. Randall, Mayor

EXHIBIT B



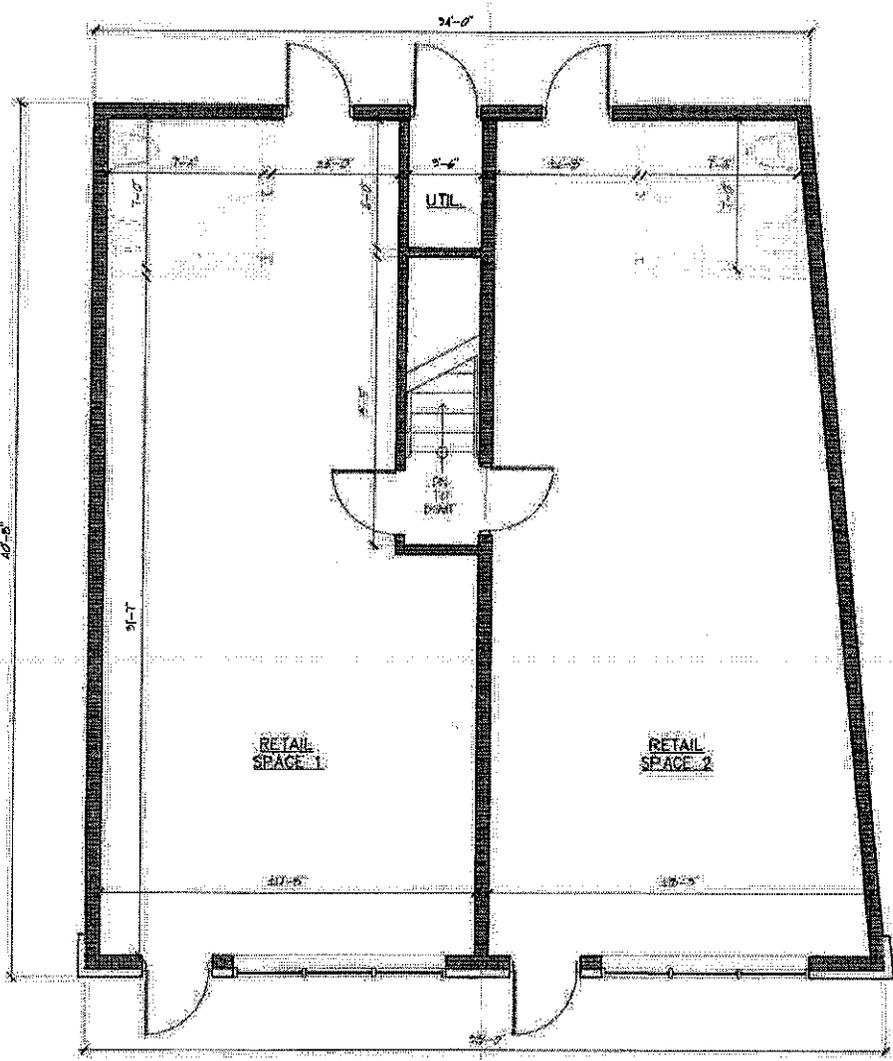
MAPLE AVENUE
(NORTH MAPLE AVEN.)





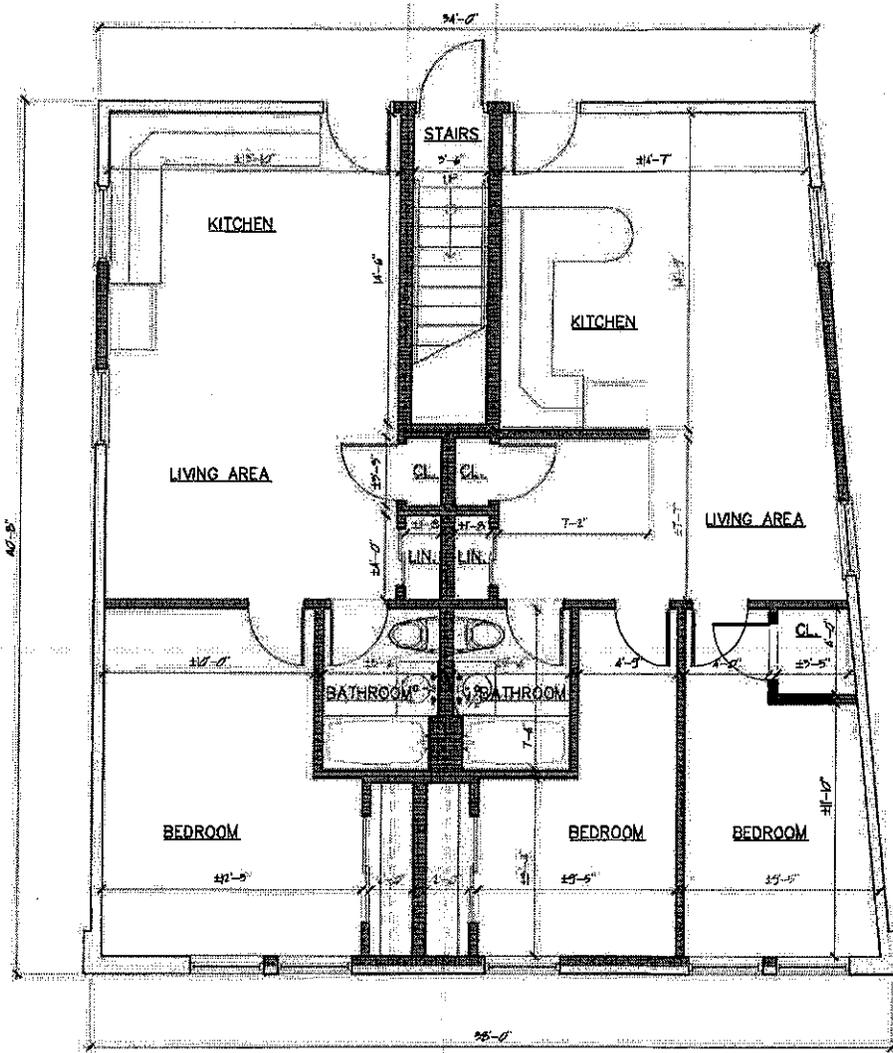
FRONT ELEVATION

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



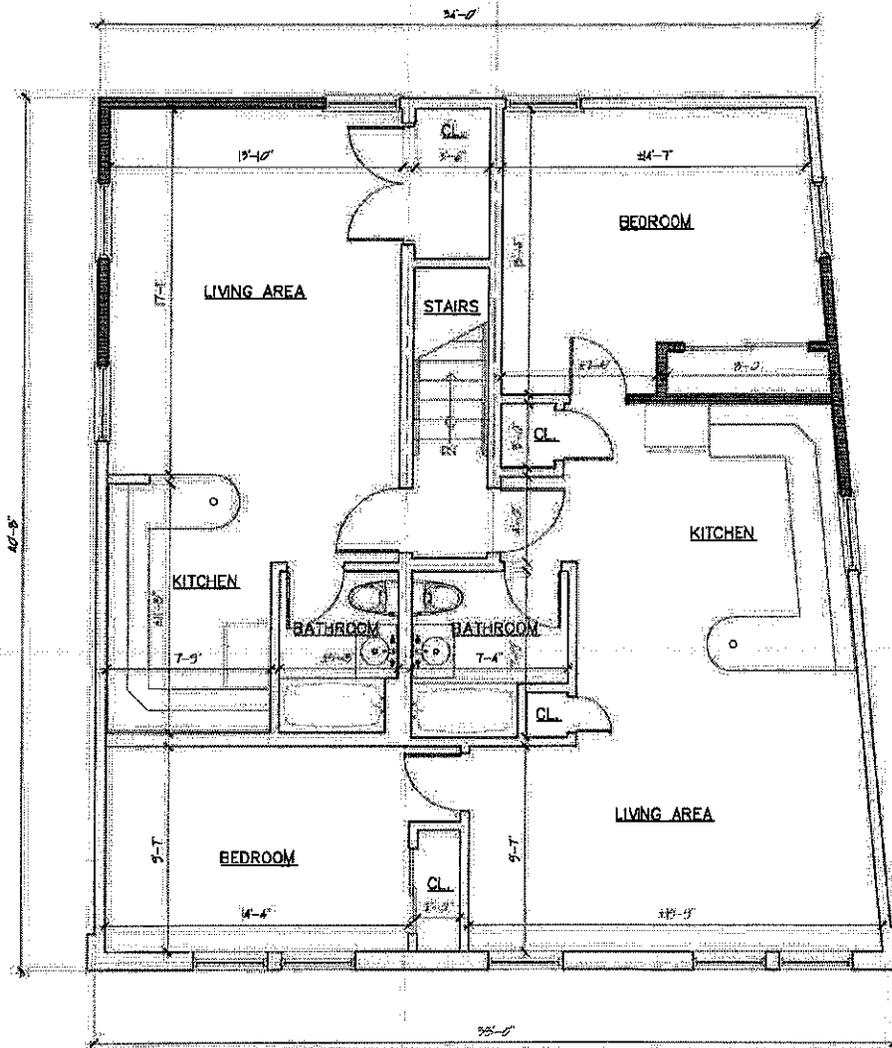
GROUND FLOOR PLAN

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



SECOND FLOOR PLAN

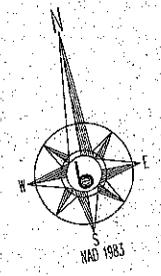
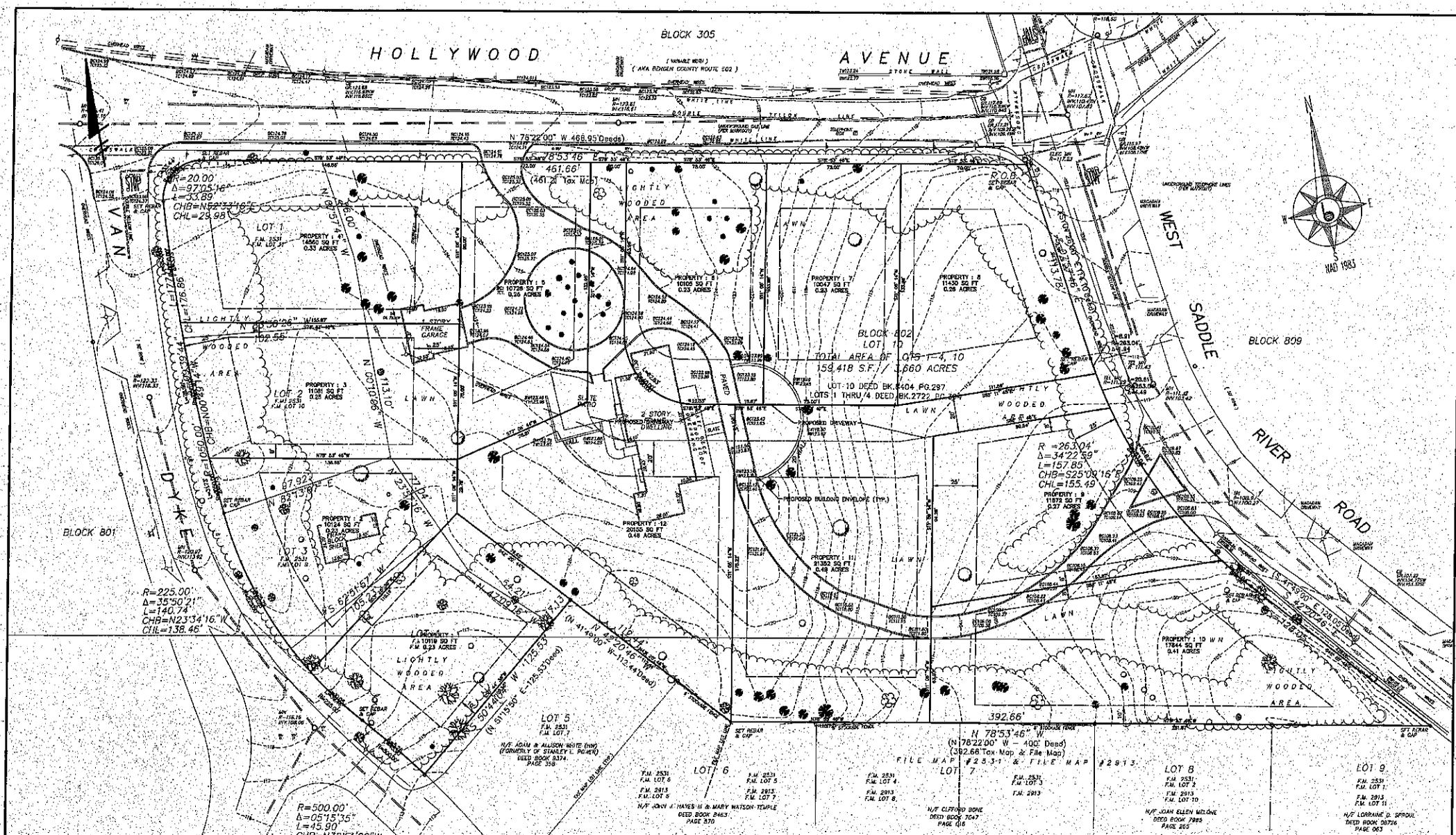
SCALE: 1/4" = 1'-0"



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 (sq. feet)	Multi-Story (sq. 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	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 F. (2) 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 Requirements 1

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.