

Housing Element and Fair Share Plan

Fourth Round Plan

Borough of Ho-Ho-Kus
Bergen County, New Jersey

April 25, 2025
Adopted May 8, 2025

Clarke Caton Hintz



**RESOLUTION OF THE PLANNING BOARD OF
THE BOROUGH OF HO-HO-KUS, COUNTY OF BERGEN,
ADOPTING A FOURTH ROUND
HOUSING ELEMENT AND FAIR SHARE PLAN**

WHEREAS, the Planning Board of the Borough of Ho-Ho-Kus, Bergen County, State of New Jersey ("Planning Board") adopted a Third Round Housing Element and Fair Share Plan ("HEFSP") on March 8, 2018 pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-28, the Fair Housing Act ("FHA") at N.J.S.A. 52:27D-310 and court-upheld Council on Affordable Housing ("COAH") regulations at N.J.A.C. 5:93 *et seq.*; and

WHEREAS, pursuant to the New Jersey Supreme Court's March 10, 2015 decision In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) ("Mount Laurel IV") and pursuant to N.J.S.A. 52:27D-313, the Borough filed a Third Round declaratory judgment ("DJ") action seeking to have its Third Round HEFSP found constitutionally compliant; and

WHEREAS, the Superior Court of New Jersey approved the Borough's 2018 Third Round HEFSP and issued a Third Round Judgment of Compliance and Repose ("JOR"), dated June 11, 2018, which provided the Borough Third Round immunity from builder remedy lawsuits through July 1, 2025;

WHEREAS, on March 20, 2024, P.L. 2024, c.2, was signed into law which amended the FHA at N.J.S.A. 52:27D-301 *et seq.*, ("Amended FHA"); and

WHEREAS, in addition to the Amended FHA, the Acting Administrative Director of the Administrative Office of the Courts issued Directive #14-24, dated December 13, 2024 ("Administrative Directive #14-24"); and

WHEREAS, in response to the Amended FHA and the Administrative Directive #14-24, the Borough of Ho-Ho-Kus adopted a binding resolution on January 28, 2025 committing to address the DCA Fourth Round Present Need or Rehabilitation Obligation of zero (0) and the Fourth Round Prospective Need Obligation of 218, to be adjusted by a Fourth Round vacant land adjustment to be set forth in its Fourth Round HEFSP; and

WHEREAS, pursuant to the requirements of the amended FHA and Administrative Directive #14-24, on January 29, 2025, the Borough of Ho-Ho-Kus filed a Fourth Round DJ action (which included its January 28, 2025 adopted binding resolution) with the Superior Court/Affordable Housing Dispute Resolution Program ("Program"), asking the Court to declare Ho-Ho-Kus Borough's Fourth Round HEFSP constitutionally compliant, and seeking protection and repose against exclusionary zoning litigation for a ten (10) year period (July 1, 2025 to June 30, 2035); and

WHEREAS, no objections were filed challenging the Borough's calculations provided for in the Borough's adopted January 28, 2025 binding resolution; and

WHEREAS, pursuant to Administrative Directive #14-24, "After the entry of an order determining present and prospective fair share obligations, the municipality must file with the Program its adopted housing element and fair share plan ... within 48 hours after adoption or by June 30, 2025, whichever is sooner."; and

WHEREAS, a Court Order, dated May 5, 2025, was issued which accepted and determined the Borough's Fourth Round Present Need or Rehabilitation Obligation of zero (0) and the Borough's Fourth Round Prospective Need Obligation of 218 (prior to a Fourth Round vacant land adjustment as described below); and

WHEREAS, the Amended FHA provides that "All parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by COAH unless those regulations are contradicted by statute, including P.L. 2024, c.2, or binding court decisions" (N.J.S.A. 52:27D-311(m)); and

WHEREAS, COAH regulations and the Amended FHA authorize vacant land adjustments ("VLA"); and

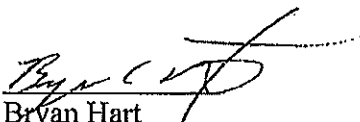
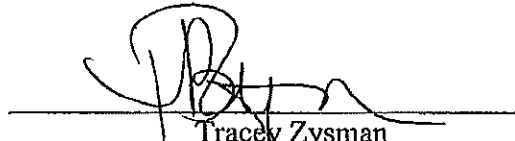
WHEREAS, the Borough's and Planning Board's affordable housing planning consultants Mary Beth Lonergan, PP, AICP, and Tristan Harrison, PP, AICP, of Clarke Caton Hintz, PC, have prepared a Fourth Round HEFSP, dated April 25, 2025, that addresses the Borough's Fourth Round affordable housing obligations and which includes an updated VLA; and

WHEREAS, upon notice duly provided pursuant to N.J.S.A. 40:55D-13, the Planning Board held a public hearing on the Fourth Round HEFSP on May 8, 2025; and

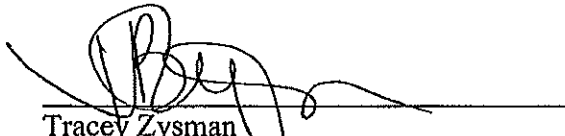
WHEREAS, the Planning Board has determined that the Fourth Round HEFSP is consistent with the goals and objectives of the Borough of Ho-Ho-Kus' Master Plan and Master Plan Re-examination Report, and that the adoption and implementation of the Fourth Round HEFSP is in the public interest, protects public health and safety and promotes the general welfare.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Ho-Ho-Kus, Bergen County, State of New Jersey, that the Planning Board hereby adopts the Fourth Round Housing Element and Fair Share Plan on this 8th day of May, 2025.

BE IT FURTHER RESOLVED the Planning Board of the Borough of Ho-Ho-Kus hereby directs its Planning Board Attorney and Planning Board Secretary to assist the Borough Attorney of the Borough of Ho-Ho-Kus to file this adopted resolution and this adopted Fourth Round HEFSP as part of the Borough's Fourth Round DJ, Docket #BER-L-694-25, in Superior Court of New Jersey, Law Division, Bergen County and with the Program within 48 hours after adoption of this Fourth Round HEFSP via ECourts per Directive #14-24.


Bryan Hart
Chair of the Planning Board
Tracey Zysman
Planning Board Secretary

I hereby certify that this is a true copy of the resolution adopting the Fourth Round Housing Element and Fair Share Plan of the Borough of Ho-Ho-Kus, Bergen County, on May 8, 2025.


Tracey Zysman
Planning Board Secretary

Fourth Round Housing Element and Fair Share Plan

Planning Board
Borough of Ho-Ho-Kus
Bergen County, New Jersey

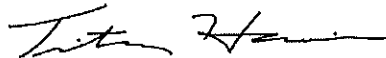
April 25, 2025
Adopted May 8, 2025

Prepared By:



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A signed and sealed original is on file with the Borough Clerk.

Mayor and Council

Thomas W. Randall, Mayor

Douglas Troast, Council

Steven Shell, Council

Edward Iannelli, Council

Kevin Crossley, Council

Dane Policastro, Council

Kathleen Moran, Council

William Jones, Borough Administrator

Joan Herve, Borough Clerk

Tim Wiss, Borough Attorney

Planning Board

Thomas Randall, Class I, Mayor

William Jones, Class II, Borough Administrator

Dane Policastro, Class III, Council

Bryan Hart, Class IV, Chair

David Thomas, Class IV

Cathleen Cavallo, Class IV

Ron Forcellati, Class IV

Gary Cucchiara, Esq., Board Attorney

Tracey Zysman, Board Secretary

Edward Snieckus, Jr. PP, LLA, ASLA, Board Planner

Table of Contents

Executive Summary	1
New Jersey Affordable Housing Judicial and Legislative Background	2
COAH's First and Second Rounds (1987-1999)	3
COAH's Third Round and Related Judicial and Legislative Activity, (1999-2025)	3
The Fourth Round (2025-2035)	6
Ho-Ho-Kus Borough Affordable Housing History	7
Ho-Ho-Kus Borough's Prior Round (1987-1999)	7
Ho-Ho-Kus Borough's Third Round (1999-2025)	7
Ho-Ho-Kus Borough's Fourth Round (2025-2035)	8
Affordability Requirements	9
Housing Element and Fair Share Plan Requirements	11
Housing Conditions	15
Population Characteristics	21
Household Characteristics.....	23
Income Characteristics.....	25
Employment Characteristics	27
Population and Employment Projections	30
Housing Unit Projections	30
Consideration of Land for Affordable Housing	31
Third Round Vacant Land Adjustment.....	31
Fourth Round Vacant Land Adjustment Update	32
Fair Share Plan	34
Ho-Ho-Kus Borough's Affordable Housing Obligation	34
Addressing Prior Round/Third Round RDP	35
Addressing Prior Round/Third Round Unmet Need	39
Addressing Fourth Round RDP	44
Addressing Fourth Round Unmet Need	47
Income and Bedroom Distribution	48
Very Low-Income Units	50

Development Fee Ordinance..... 51
Borough-Wide Mandatory Set-Aside Inclusionary Ordinance..... 51
Monitoring/Status Report.....52
Administration & Affirmative Marketing..... 53
Spending Plan.....54
Cost Generation..... 55
Multigenerational Family Housing Continuity..... 55
State Development and Redevelopment Plan.....56

Appendix

Appendix A – Third Round JOR, Fairness Order, FSHC Settlement
Appendix B – May 2025 Court Order, Fourth Round Declaratory Judgment Filing
Appendix C – Third Round Vacant Land Adjustment
Appendix D – Fourth Round Vacant Land Adjustment Update
Appendix E – Brookside/BCUW Deed Restriction
Appendix F – Crossings Deed Restriction
Appendix G – 614 N Maple Ave Deed Restriction
Appendix H – Downtown Inclusionary Overlay Ordinance
Appendix I – 111 First Street Deed Restriction
Appendix J – Life Opportunities DCA Supportive Housing Survey
Appendix K – Municipally-Sponsored Affordable Unit Documentation
Appendix L – Development Fee Ordinance
Appendix M – Affordable Housing Ordinance
Appendix N – Preliminary Fourth Round Affirmative Marketing Plan
Appendix O – Fourth Round Spending Plan
Appendix P – Administrative Documents

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

EXECUTIVE SUMMARY

This Fourth Round Housing Element and Fair Share Plan ("HEFSP") has been prepared for the Borough of Ho-Ho-Kus ("Borough"), of Bergen County, in accordance with the New Jersey Fair Housing Act ("FHA") at N.J.S.A. 52:27D-310 as amended by P.L. 2024 c.2, Administrative Directive #14-24, and the rules of the New Jersey Council on Affordable Housing ("COAH") contained at N.J.A.C. 5:93 *et seq.* This plan is an update to the Borough's Amended Third Round HEFSP adopted by the Planning Board on March 8, 2018, and endorsed by the Borough Council on February 27, 2018. This cumulative Fourth Round HEFSP will serve as the foundation for the Borough's submission to the Superior Court of New Jersey and the Affordable Housing Dispute Resolution Program ("Program").

A municipality's affordable housing obligation has four components: Fourth Round Present Need (Rehabilitation Share), Prior Round Prospective Need, Third Round "Gap"/Prospective Need, and Fourth Round Prospective Need.

Prior Round/Third Round

On May 16, 2017, the Superior Court approved the Borough's 2016 settlement agreement with the Fair Share Housing Center ("FSHC") which set the Borough's Prior Round Prospective Need as previously established by COAH and established the Borough's Third Round "Gap"/Prospective Need as follows:

- Prior Round Prospective Need: 83
- Third Round Prospective Need: 195

The 2016 settlement agreement reflected a vacant land adjustment ("VLA"), which reduced the cumulative Prior Round/Third Round obligation of 278 to a combined Prior Round/Third Round realistic development potential ("RDP") of 30 and an Unmet Need of 248. The Borough's Third Round HEFSP was approved by the Superior Court in a Final Judgment of Compliance and Repose ("JOR") issued on June 11, 2018.

The Borough has addressed its combined Prior Round/Third Round RDP through 100% affordable family rentals and supportive units at Brookside, inclusionary affordable family rentals at The Crossings, an affordable family rental at 614 N Maple Avenue, and family rental bonuses. The Borough has Court-approved Prior Round/Third Round Unmet Need mechanisms including an adopted Downtown Inclusionary Overlay Zoning Ordinance, an adopted Development Fee Ordinance for affordable housing purposes and a Borough-Wide Mandatory Affordable Housing Set-Aside Ordinance.

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

Fourth Round

On January 28, 2025, the Borough Council adopted Resolution #25-41 accepting the determination of the Borough's Fourth Round Present Need/Rehabilitation Obligation and Prospective Need by the New Jersey Department of Community Affairs ("DCA") as follows:

- Fourth Round Rehabilitation Share 0
- Fourth Round Prospective Need: 218

The Borough's Prior Round/Third Round VLA has been updated as part of this Fourth Round HEFSP. The Borough's Fourth Round Prospective Need of 218 has been reduced to a Fourth Round RDP of 12 and a Fourth Round Unmet Need of 206. The total cumulative Unmet Need, including the Prior Round/Third Round and Fourth Round Unmet Need, is 454 (248 + 206).

The Borough's Fourth Round RDP will be addressed with one (1) affordable family rental credit/bonus at Brookside (100% affordable), inclusionary family rentals at The Crossings and 111 First Street, affordable rental bedrooms for individuals with special needs within a group home provided by Life Opportunities Unlimited, and one proposed municipally-sponsored affordable unit.

The Borough's cumulative Unmet Need will continue to be addressed by its Downtown Inclusionary Overlay Zone and Borough-wide Mandatory Affordable Housing Set-aside Ordinance, which generally requires new multi-family developments to provide an inclusionary set-aside for affordable housing, as well by its Development Fee Ordinance.

NEW JERSEY AFFORDABLE HOUSING JUDICIAL AND LEGISLATIVE BACKGROUND

In the 1975 Mount Laurel¹ decision, the New Jersey Supreme Court ruled that developing municipalities have a constitutional obligation to provide diversity and choice in the housing types permitted in the municipality, including housing for low- and moderate-income households. In its 1983 Mount Laurel II decision,² the New Jersey Supreme Court extended to all municipalities with any "growth area" as designated in the State Development Guide Plan (now superseded by the State Development and Redevelopment Plan, or SDRP) the obligation to provide their "fair share" of a calculated regional need for affordable units. Mount Laurel II also introduced a "builder's remedy" if a municipality was not providing its fair share of

¹ Southern Burlington County NAACP v. Township of Mount Laurel, 67 N.J. 151 (1975)

² Southern Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983)

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

affordable housing. A builder's remedy may permit a developer that is successful in litigation the right to develop what is typically a higher density multi-family project on land not zoned to permit such use, so long as a "substantial" percentage of the proposed units would be reserved for low- and moderate-income households.

In 1985, in response to Mount Laurel II, the New Jersey Legislature enacted the Fair Housing Act ("FHA").³ The FHA created the Council on Affordable Housing ("COAH") as an administrative body responsible for oversight of municipalities' affordable housing efforts, rather than having oversight go through the courts. The Legislature charged COAH with promulgating regulations (i) to establish housing regions; (ii) to estimate low- and moderate-income housing needs; (iii) to set criteria and guidelines for municipalities to use in determining and addressing their fair share obligations, and (iv) to create a process for the review and approval of municipal housing elements and fair share plans.

COAH's First and Second Rounds (1987-1999)

COAH created the criteria and regulations for municipalities to address their affordable housing obligations. COAH originally established a methodology for determining municipal affordable housing obligations for the six-year period between 1987 and 1993,⁴ which period became known as the First Round. This methodology established an existing need to address substandard housing that was being occupied by low- and moderate-income households (variously known as "present need" or "rehabilitation share"), and calculated future demand, to be satisfied typically, but not exclusively, with new construction ("prospective need" or "fair share").

The First Round methodology was superseded in 1994 by COAH's Second Round regulations.⁵ The 1994 regulations recalculated a portion of the 1987-1993 affordable housing obligations for each municipality and computed the additional municipal affordable housing need from 1993 to 1999 using 1990 census data. These regulations identified a municipality's cumulative obligations for the First and Second Rounds. Under regulations adopted for the Third Round, a municipality's obligation to provide affordable housing for the First and Second Rounds is referred to cumulatively as the Prior Round obligation.

COAH's Third Round and Related Judicial and Legislative Activity, (1999-2025)

The FHA had originally required housing rounds to be for a six-year period for the First and Second Rounds. In 2001, the time period increased to a 10-year period consistent with the Municipal Land Use Law ("MLUL"). In order to utilize 2000

³ N.J.S.A. 52:27D-301 et seq.

⁴ N.J.A.C. 5:92-1 et seq.

⁵ N.J.A.C. 5:93-1.1 et seq.

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

census data, which hadn't yet been released, COAH delayed the start of the Third Round from 1999 to 2004, with the Third Round time period initially ending in 2014. In December 2004, COAH's first version of the Third Round rules⁶ became effective, and the 15-year Third Round *time period* (1999 – 2014) was condensed into an affordable housing *delivery period* from January 1, 2004, through January 1, 2014.

The 2004 Third Round rules marked a significant departure from the methods utilized in COAH's Prior Round. Previously, COAH assigned an affordable housing obligation as an absolute number to each municipality. These Third Round rules implemented a "growth share" approach that linked the production of affordable housing to residential and non-residential development in a municipality.

On January 25, 2007, a New Jersey Appellate Court decision⁷ invalidated key elements of the first version of the Third Round rules, including the growth share approach, and the Court ordered COAH to propose and adopt amendments to its rules. COAH issued revised rules effective on June 2, 2008 (as well as a further rule revision effective on October 20, 2008), which largely retained the growth share approach.

Just as various parties had challenged COAH's initial Third Round regulations, parties challenged COAH's 2008 revised Third Round rules. On October 8, 2010, the Appellate Division issued its decision on the challenges.⁸ The Appellate Division upheld the COAH Prior Round regulations that assigned rehabilitation and Prior Round numbers to each municipality, but invalidated the regulations by which the agency assigned housing obligations in the Third Round, again ruling that COAH could not allocate obligations through a growth share formula. Instead, the Appellate Division directed COAH to use methods similar to those used in the First and Second Rounds.

Third Round Judicial Activity

After various challenges were filed, on September 26, 2013, the New Jersey Supreme Court upheld the Appellate Court decision⁹ and ordered COAH to prepare the necessary rules. COAH failed to adopt new rules, and more challenges ensued.

On March 10, 2015, the New Jersey Supreme Court issued a ruling on Fair Share Housing Center's ("FSHC's") Motion in Aid of Litigant's Rights, which became known as Mount Laurel IV.¹⁰ In this decision, the Court transferred responsibility for

⁶ N.J.A.C. 5:94-1 and 5:95-1

⁷ In re Adoption of N.J.A.C. 5:94 and 5:95, 390 N.J. Super. 1 (2007)

⁸ In re Adoption of N.J.A.C. 5:96 and 5:97, 416 N.J. Super. 462 (2010)

⁹ In re Adoption of N.J.A.C. 5:96 and 5:97 by New Jersey Council On Affordable Housing, 215 N.J. 578 (2013)

¹⁰ In re Adoption of N.J.A.C. 5:96 & 5:97, 221 N.J. 1 (2015)

Borough of Ho-Ho-Kus**Fourth Round Housing Element and Fair Share Plan****Adopted May 8, 2025**

reviewing and approving housing elements and fair share plans from COAH to designated Mount Laurel trial judges, declaring COAH “moribund.” Municipalities were now to apply to the Courts, instead of COAH, if they wished to be protected from exclusionary zoning lawsuits. The Mount Laurel trial judges, with the assistance of a Court-appointed Special Adjudicator, were tasked with reviewing municipal plans much in the same manner as COAH had done previously. Those towns whose plans were approved by the Court received a Judgment of Compliance and Repose, the court equivalent of COAH’s substantive certification.

While the New Jersey Supreme Court’s decision set a process in motion for towns to address their Third Round obligation, the decision did not assign those obligations. Instead, that was to be done by the trial courts, although ultimately most towns entered into settlement agreements to set their fair share obligations. The Court stated that municipalities should rely on COAH’s Second Round rules (N.J.A.C. 5:93) and those components of COAH’s 2008 regulations that were specifically upheld, as well as the FHA, in their preparation of Third Round housing elements and fair share plans.

On January 17, 2017, the New Jersey Supreme Court rendered a decision¹¹ that found that the period between 1999 and 2015, now known as the “gap period,” when no valid affordable housing regulations were in force, generated an affordable housing obligation. This obligation required an expanded definition of the municipal Present Need obligation to include the unaddressed housing needs of low- and moderate-income households that had formed during the gap period. This meant that the Third Round municipal affordable housing obligation would now comprise the following components: Present Need (rehabilitation), Prior Round (1987-1999, new construction), Third Round Gap Need (1999-2015, new construction), and Third Round Prospective Need (2015 to 2025, new construction).

Third Round Legislative Activity

The New Jersey Legislature has amended the FHA several times in recent years.

On July 17, 2008, P.L. 2008 c. 46 (referred to as the “Roberts Bill” or “A500”) was enacted, which amended the FHA in a number of ways. Key provisions included the following:

- It established a statewide 2.5% nonresidential development fee instead of requiring nonresidential developers to provide affordable housing;
- It eliminated new regional contribution agreements (“RCAs”) as a compliance technique available to municipalities; previously a municipality could fund the transfer up to 50% of its fair share to so called “receiving” municipalities;

¹¹ In Re Declaratory Judgment Actions Filed by Various Municipalities, 227 N.J. 508 (2017)

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

- It added a requirement that 13% of all affordable housing units be restricted to very low-income households, which it defined as households earning 30% or less of median income; and
- It added a requirement that municipalities had to commit to spend development fees within four years of the date of collection. This was later addressed in a Superior Court decision which found the four-year period begins at the time the Court approves the municipal spending plan.¹²

In July 2020, the State amended the FHA again to require, beginning in November 2020, that all affordable units that are subject to affirmative marketing requirements also be listed on the state's Affordable Housing Resource Center website.¹³ All affordable housing affirmative marketing plans are now required to include listing on the State Affordable Housing Resource Center website.

The Fourth Round (2025-2035)

On March 20, 2024, the New Jersey Legislature passed P.L. 2024 c.2, which amended the FHA and other statutes to:

- Formally abolish COAH;
- Require the state Department of Community Affairs ("DCA") to promulgate municipal obligations using an adjusted methodology. These obligations are to be considered advisory, not binding;
- Establish a timeline within which municipalities need to adopt and submit binding resolutions stipulating to their Fourth Round fair share obligations, in order for them to retain their immunity from exclusionary-zoning lawsuits;
- Require the New Jersey Housing and Mortgage Finance Agency ("HMFA") and DCA to update rules and standards governing affordable housing production, trust funds, and affordable housing administration;
- Establish a Court-based Affordable Housing Dispute Resolution Program ("Program") that will be responsible for challenges to municipalities' affordable housing obligation determinations and compliance efforts;
- Establish a longer control period – 40 years, rather than 30 years – for new affordable rental units;

¹² In the Matter of the Adoption of the Monroe Township Housing Element and Fair Share Plan, and Implementing Ordinances (2015)

¹³ <https://www.nj.gov/njhrc/>

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

- Change the criteria for affordable housing bonuses, making various additional categories of affordable housing eligible for bonuses;
- Establish a timeline within which municipalities need to take various steps toward adoption of a Housing Element and Fair Share Plan, in order for them to retain their immunity from exclusionary-zoning lawsuits;
- Establish new reporting and monitoring procedures and deadlines for both affordable units and affordable housing trust funds and assign oversight for reporting and monitoring to DCA.

In December 2024, the Administrative Office of the Courts issued Administrative Directive #14-24, establishing procedures for implementation of the Program and for municipalities to file their Fourth Round Declaratory Judgment (“DJ”) filings, etc. As detailed under the section covering requirements of an HEFSP, the Administrative Directive also set requirements for what must be included in a compliant Fourth Round HEFSP.

This plan has been prepared to meet the requirements of the FHA as most recently amended, as well as the 2024 Administrative Directive and all applicable regulations.

HO-HO-KUS BOROUGH AFFORDABLE HOUSING HISTORY

Ho-Ho-Kus Borough’s Prior Round (1987-1999)

The Borough received COAH substantive certification for the First Round on February 6, 1991, and the Second Round on October 7, 1998. The Borough requested a vacant land adjustment (“VLA”), finding that its land use patterns may not yield new development or redevelopment. COAH approved a Second Round VLA and determined that the Borough’s Second Round RDP was zero (0) and Unmet Need was 83 based on the absence of developable land, lands likely to redevelop, and housing stock suitable for the creation of accessory apartments.

Ho-Ho-Kus Borough’s Third Round (1999-2025)

On December 12, 2005, the Borough adopted its first Third Round HEFSP and subsequently petitioned COAH for substantive certification. On December 16, 2008, the Borough adopted an amended Third Round plan to address a growth share obligation. However, COAH failed to certify both of the Borough’s Third Round plans prior to the Court’s invalidation of “growth share” in both 2007 and 2010.

On June 26, 2012, the Borough adopted a resolution to implement a market-to-affordable program in the Borough. The Borough submitted an updated spending plan

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

to COAH on July 3, 2012, that indicated a commitment to expend \$150,000 of trust funds on the market-to-affordable program. COAH did not approve the spending plan before the Appellate Division invalidated COAH's Third Round 'growth share' regulations at N.J.A.C. 5:97.

To comply with the March 10, 2015, NJ Supreme Court's Mt. Laurel IV decision, the Borough petitioned the Superior Court for a Third Round Declaratory Judgment ("DJ") and temporary immunity from builder's remedy suits on July 1, 2015. FSHC and Chamberlain Developers ("Chamberlain") became intervenors in the Borough's Third Round DJ action. In December of 2016, the Borough concluded settlement negotiations with Chamberlain, the Crossings, and FSHC. The negotiations resulted in two (2) separate Settlement Agreements: one with FSHC and one with Chamberlain.

The Borough's Third Round Settlement Agreement with FSHC (Appendix A) established a cumulative Prospective Need for the Prior Round and Third Round of 278 units. The cumulative need was adjusted by a VLA to a combined Prior Round/Third Round RDP of 30 and an Unmet Need of 248. To address its 30 RDP, the Borough agreed to implement eight (8) inclusionary family affordable rental units at the Crossings at Ho-Ho-Kus, 13 inclusionary or 100% affordable family rental units at the Borough train station parking lot, and one (1) inclusionary family affordable rental unit on Maple Avenue. To address its combined Prior Round/Third Round 248 Unmet Need, the Borough proposed to implement overlay inclusionary zoning within the downtown and to adopt a Borough-wide affordable housing set-aside requirement for any new multi-family construction over a specified density. The Borough had previously adopted a development fee ordinance.

Both agreements were approved by the Court after a Fairness Hearing, as reflected in a Fairness Order dated May 16, 2017 (Appendix A). On July 20, 2017, the Borough adopted a Third Round HEFSP which the Superior Court conditionally approved at a Compliance Hearing on December 18, 2017, subject to the conditions recommended in the Special Adjudicator's December 13, 2017 letter, and waived the Borough's rental component of its rehabilitation share. On March 8, 2018, the Borough adopted an Amended Third Round HEFSP to reflect the recommended and approved changes. The 2018 Amended Third Round HEFSP received a JOR on June 11, 2018.

Ho-Ho-Kus Borough's Fourth Round (2025-2035)

This Fourth Round HEFSP addresses Ho-Ho-Kus Borough's Fourth Round affordable housing obligations pursuant to the FHA as amended in March 2024 (P.L. 2024, c.2). This plan has been prepared in accordance with the new affordable housing law and Administrative Directive #14-24, issued by the Administrative Office of the Courts on December 13, 2024. On January 28, 2025, the Borough Council adopted Resolution #25-41 accepting DCA's determination of the Borough's Fourth Round Present Need

of zero (0) and Prospective Need of 218 pursuant to its October 2024 Fourth Round Methodology Report. On January 29, 2025, the Borough filed a Fourth Round DJ action (Appendix B) with the Program/Superior Court, pursuant to the requirements of the amended FHA and the Administrative Directive #14-24.

AFFORDABILITY REQUIREMENTS

Affordable housing is defined under the amended FHA as a dwelling, either for sale or rent that is within the financial means of households of very low-, low- or moderate-income as income is measured within each housing region. Ho-Ho-Kus is in Region 1, which includes the Counties of Bergen, Hudson, Passaic, and Sussex. Moderate-income households are those earning between 50% and 80% of the regional median income. Low-income households are those with annual incomes that are between 30% and 50% of the regional median income. Very low-income households have annual incomes of 30% or less of the regional median income.

Through the Uniform Housing Affordability Controls ("UHAC") found at N.J.A.C. 5:80-26.1 *et seq.*, the maximum rent for a qualified unit must be affordable to households that earn no more than 60% of the median income for the region. The average rent must be affordable for households earning no more than 52% of the median income. The maximum sale prices for affordable units must be affordable for households that earn no more than 70% of the median income. The average sale price must be affordable for a household that earns no more than 55% of the median income.

The regional median income is now defined in the amended FHA and continues to utilize HUD income limits on a regional basis. In the spring of each year HUD releases updated income limits which will be reallocated to the six (6) regions. It is from these income limits that the rents and sale prices for affordable units are derived. See Table 1 for 2024 income limits for Region 1 and Tables 2 and 3 for illustrative sale prices and gross rents from 2024 (the latest figures available). The sample rents and sale prices are illustrative and are gross figures which do not account for the specified utility allowance for rentals.

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

Table 1. 2024 Income Limits for Region 1

Household Income Level	1 Person Household	2 Person Household	3 Person Household	4 Person Household	5 Person Household
Median	\$84,288	\$96,329	\$108,371	\$120,412	\$130,045
Moderate	\$67,431	\$77,064	\$86,697	\$96,329	\$104,036
Low	\$42,144	\$48,165	\$54,185	\$60,206	\$65,022
Very Low	\$25,286	\$28,899	\$32,511	\$36,124	\$39,013

Source: AHPNJ, 2024 Affordable Housing Regional Income Limits by Household Size

Table 2. Illustrative 2024 Affordable Rents for Region 1

Household Income Level (% of Median Income)	1 Bedroom Unit Rent	2 Bedroom Unit Rent	3 Bedroom Unit Rent
Moderate (60% of Median)	\$1,355	\$1,626	\$1,878
Low (50% of Median)	\$1,129	\$1,355	\$1,565
Very Low (30% of Median)	\$677	\$813	\$939

Source: AHPNJ Affordable Housing Regional Income Limits and Rental Calculator

Table 3. Illustrative 2024 Affordable Sales Prices for Region 1

Household Income Levels (% of Median Income)	1 Bedroom Unit Price	2 Bedroom Unit Price	3 Bedroom Unit Price
Moderate (70% of Median)	\$132,832	\$167,663	\$200,172
Low (50% of Median)	\$83,073	\$107,953	\$131,173
Very Low (30% of Median)	\$33,314	\$48,242	\$62,175

Source: AHPNJ Affordable Housing Regional Income Limits and Sales Calculator

HOUSING ELEMENT AND FAIR SHARE PLAN REQUIREMENTS

In accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 *et seq.*), a municipal master plan must include a housing plan element as the foundation for the municipal zoning ordinance (see N.J.S.A. 40:55D-28b(3)). Pursuant to the FHA (N.J.S.A. 52:27D-301 *et seq.*), a municipality's housing element must be designed to provide access to affordable housing to meet present and prospective housing needs, with particular attention to low- and moderate-income housing. Specifically, N.J.S.A. 52:27D-310 requires that the housing element contain at least the following (*emphasis added*):

- a. An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low- and moderate-income households and substandard housing capable of being rehabilitated;
- b. A projection of the municipality's housing stock, including the probable future construction of low- and moderate-income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development, and probable residential development of lands;
- c. An analysis of the municipality's demographic characteristics, including, but not necessarily limited to, household size, income level, and age;
- d. An analysis of the existing and probable future employment characteristics of the municipality;
- e. A determination of the municipality's present and prospective fair share of low- and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its fair share of low- and moderate-income housing, as established pursuant to section 3 of P.L. 2024, c.2 (C.52:27D-304.1);
- f. A consideration of the lands most appropriate for construction of low- and moderate-income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low- and moderate-income housing, including a consideration of lands of developers who have expressed a commitment to provide low and moderate income housing;
- g. An analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission, adopted pursuant to paragraph (1) of subsection f. of 23 section 1 of P.L.2021, c.273 (C.52:27D-329.20); and

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

- h. *For a municipality located within the jurisdiction of the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), an analysis of compliance of the housing element with the Highlands Regional Master Plan of lands in the Highlands Preservation Area, and lands in the Highlands Planning Area for Highlands-conforming municipalities. This analysis shall include consideration of the municipality's most recent Highlands Municipal Build Out Report, consideration of opportunities for redevelopment of existing developed lands into inclusionary or 100 percent affordable housing, or both, and opportunities for 100 percent affordable housing in both the Highlands Planning Area and Highlands Preservation Area that are consistent with the Highlands regional master plan; and*
- i. *An analysis of consistency with the State Development and Redevelopment Plan, including water, wastewater, stormwater, and multi-modal transportation based on guidance and technical assistance from the State Planning Commission.*

In addition to FHA requirements, this Fourth Round HEFSP has been prepared in compliance with the following requirements set forth by Administrative Directive #14-24, issued by the Administrative Office of the Courts on December 13, 2024:

- 1. *One of the requirements for a final HEFSP is the inclusion of detailed site suitability analyses, based on the best available data, for each of the un-built inclusionary or 100 percent affordable housing sites in the plan as well as an identification of each of the sites that were proposed for such development and rejected, along with the reasons for such rejection.*
- 2. *The concept plan for the development of each of the selected sites should be overlaid on the most up to date environmental constraints map for that site as part of its analysis. When the detailed analyses are completed, the municipality can see what changes will be needed (either to the selected sites or to their zoning) to ensure that all of the units required by the settlement agreement will actually be produced. If it becomes apparent that one (or more) of the sites in the plan does not have the capacity to accommodate all of the development proposed for it, the burden will be on the municipality either to adjust its zoning regulations (height, setbacks, etc.) so that the site will be able to yield the number of units and affordable units anticipated by the settlement agreement or to find other mechanisms or other sites as needed to address the likelihood of a shortfall.*
- 3. *The final HEFSP must fully document the creditworthiness of all of the existing affordable housing units in its HEFSP and to demonstrate that it has followed all of the applicable requirements for extending expiring controls, including confirmation that all of the units on which the controls have been extended are*

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

code-compliant or have been rehabilitated to code-compliance, and that all extended controls cover a full 30-year period beginning with the end of the original control period. Documentation as to the start dates and lengths of affordability controls applicable to these units and applicable Affordable Housing Agreements and/or deed restrictions is also required. Additionally, the income and bedroom distributions and continued creditworthiness of all other existing affordable units in the HEFSP must be provided.

4. The HEFSP must include an analysis of how the HEFSP complies with or will comply with all of the terms of the executed settlement agreement. Once the HEFSP has been prepared, it must be reviewed by Fair Share Housing Center and the Program's Special Adjudicator for compliance with the terms of the executed settlement agreement, the FHA and UHAC regulations. The HEFSP must be adopted by the Planning Board and the implementation components of the HEFSP must be adopted by the governing body.

The HEFSP must also include (in an Appendix) all adopted ordinances and resolutions needed to implement the HEFSP, including:

1. All zoning amendments (or redevelopment plans, if applicable).
2. An Affordable Housing Ordinance that includes, among other required regulations, its applicability to 100 percent affordable and tax credit projects, the monitoring and any reporting requirements set forth in the settlement agreement, requirements regarding very low income housing and very low income affordability consistent with the FHA and the settlement agreement, provisions for calculating annual increases in income levels and sales prices and rent levels, and a clarification regarding the minimum length of the affordability controls (at least 30 years, until the municipality takes action to release the controls).
3. The adoption of the mandatory set aside ordinance, if any, and the repeal of the existing growth share provisions of the code.
4. An executed and updated Development Fee Ordinance that reflects the court's jurisdiction.
5. An Affirmative Marketing Plan adopted by resolution that contains specific directive to be followed by the Administrative Agent in affirmatively marketing affordable housing units, with an updated COAH form appended to the Affirmative Marketing Plan, and with both documents specifically reflecting the direct notification requirements set forth in the settlement agreement.
6. An updated and adopted Spending Plan indicating how the municipality intends to allocate development fees and other funds, and detailing (in mini

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

manuals) how the municipality proposes to expend funds for affordability assistance, especially those funds earmarked for very low income affordability assistance.

7. A resolution of intent to fund any shortfall in the costs of the municipality's municipally sponsored affordable housing developments as well as its rehabilitation program, including by bonding if necessary.
8. Copies of the resolution(s) and/or contract(s) appointing one or more Administrative Agent(s) and of the adopted ordinance creating the position of, and resolution appointing, the Municipal Affordable Housing Liaison.
9. A resolution from the Planning Board adopting the HEFSP, and, if a final Judgment is sought before all of the implementing ordinances and resolutions can be adopted, a resolution of the governing body endorsing the HEFSP.

Consistent with N.J.A.C. 5:93-5.5, any municipally sponsored 100 percent affordable housing development will be required to be shovel-ready within two (2) years of the deadlines set forth in the settlement agreement:

1. The municipality will be required to submit the identity of the project sponsor, a detailed pro forma of project costs, and documentation of available funding to the municipality and/or project sponsor, including any pending applications for funding, and a commitment to provide a stable alternative source, in the form of a resolution of intent to fund shortfall, including by bonding, if necessary, in the event that a pending application for outside funding has not yet been not approved
2. Additionally, a construction schedule or timetable must be submitted setting forth each step in the development process, including preparation and approval of a site plan, applications for state and federal permits, selection of a contractor, and start of construction, such that construction can begin within two (2) years of the deadline set forth in the settlement agreement.

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

HOUSING CONDITIONS

A summary of housing stock estimates by occupancy and number of units in Ho-Ho-Kus is shown in Table 4. The housing stock of Ho-Ho-Kus consists of an estimated 1,532 units, of which 84.7% are owner-occupied, 8.4% renter-occupied, and 7.0% are vacant. Housing types are primarily single-family detached housing units (88.8%) in addition to single-family attached (4.8%) and 2-unit structures (5.2%).

Table 4. Housing Units by Number of Units in Structure and Tenure, 2023

Number of Units in Structure	Owner-Occupied		Renter-Occupied		Vacant		Total	
	Units	Percent	Units	Percent	Units	Percent	Units	Percent
1, Detached	1,246	81.3%	80	5.2%	35	2.3%	1,361	88.8%
1, Attached	10	0.7%	0	0.0%	64	4.2%	74	4.8%
2	31	2.0%	40	2.6%	8	0.5%	79	5.2%
3 or 4	0	0.0%	8	0.5%	0	0.0%	8	0.5%
5 to 9	0	0.0%	0	0.0%	0	0.0%	0	0.0%
10 to 19	0	0.0%	0	0.0%	0	0.0%	0	0.0%
20 or more	10	0.7%	0	0.0%	0	0.0%	10	0.7%
Mobile Home	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Other	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Total	1,297	84.7%	128	8.4%	107	7.0%	1,532	100%

Source: Table B25032 and Table DP04, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates

The estimated age of the housing stock in Ho-Ho-Kus is shown in Table 5. Nearly 70% of the Borough's housing stock was built prior to 1970. While the median year of construction for all units is 1957, the median year of construction for rental units (1943) is significantly older than owner-occupied units (1959).

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

Table 5. Housing Units by Age, 2023

Year Built	Owner-Occupied		Renter-Occupied		Vacant		Total	
	Units	Percent	Units	Percent	Units	Percent	Units	Percent
2020 or later	13	0.8%	0	0.0%	0	0.0%	13	0.8%
2010 to 2019	71	4.6%	0	0.0%	0	0.0%	71	4.6%
2000 to 2009	47	3.1%	0	0.0%	0	0.0%	47	3.1%
1990 to 1999	27	1.8%	8	0.5%	34	2.2%	69	4.5%
1980 to 1989	58	3.8%	0	0.0%	0	0.0%	58	3.8%
1970 to 1979	196	12.8%	12	0.8%	0	0.0%	208	13.6%
1960 to 1969	201	13.1%	9	0.6%	30	2.0%	240	15.7%
1950 to 1959	241	15.7%	10	0.7%	19	1.2%	270	17.6%
1940 to 1949	200	13.1%	35	2.3%	0	0.0%	235	15.3%
1939 or earlier	243	15.9%	54	3.5%	24	1.6%	321	21.0%
Total	1,297	84.7%	128	8.4%	107	7.0%	1,532	100%
Median Year Built	1959		1943		(X)		1957	

Sources: Table B25036, Table B25037, and Table DP04, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates

Table 6 summarizes the estimated number of rooms per unit in Ho-Ho-Kus. The estimated median number of rooms is 8.3 rooms. Approximately one-third (34.4%) of all units have seven (7) or eight (8) rooms, while nearly half of all units (46.9%) are estimated to have nine (9) rooms or more.

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

Table 6. Number of Rooms per Housing Unit, 2023

Rooms per Unit	Units	Percent
1 Room	0	0.0%
2 Rooms	0	0.0%
3 Rooms	8	0.5%
4 Rooms	54	3.5%
5 Rooms	112	7.3%
6 Rooms	113	7.4%
7 Rooms	263	17.2%
8 Rooms	264	17.2%
9+ Rooms	718	46.9%
Total	1,532	100%
Median	8.3 rooms	

Source: Table DP04, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates

As shown in Table 7, approximately 90% of housing units in the Borough contain at least three (3) bedrooms, approximately 40% of units contain four (4) bedrooms. Efficiency (studio) and one-bedroom apartments comprise less than 0.5%, or 8 units, in the Borough.

Table 7. Number of Bedrooms per Housing Unit, 2023

Number of Bedrooms	Number of Units	Percent of Total Units
Efficiency (Studio)	0	0.0%
1 Bedroom	8	0.5%
2 Bedrooms	149	9.7%
3 Bedrooms	433	28.3%
4 Bedrooms	611	39.9%
5+ Bedrooms	331	21.6%
Total	1,532	100%

Source: Table DP04, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

Table 8 shows the estimated value of owner-occupied units in Ho-Ho-Kus in 2013 and 2023. Without adjusting for inflation, the estimated median home value in the Borough grew by 33.3% from \$775,000 to \$1,032,800 between 2013 and 2023. This increase is much steeper than the increase of 5.6% in New Jersey and slightly higher than the increase of 31.4% in Bergen County.

Based on AHPNJ's 2024 Illustrative Sales Prices (See Table 3), less than 2.8% (36 units) of for-sale housing units within the Borough would be considered affordable to low- and moderate-income households in 2023.

Table 8. Value of Owner-Occupied Housing Units, 2013 and 2023

Housing Unit Value	2013		2023	
	Units	Percent	Units	Percent
Less than \$50,000	19	1.6%	0	0.0%
\$50,000 to \$99,999	9	0.7%	0	0.0%
\$100,000 to \$149,999	0	0.0%	36	2.8%
\$150,000 to \$199,999	16	1.3%	0	0.0%
\$200,000 to \$299,999	0	0.0%	10	0.8%
\$300,000 to \$499,999	117	9.6%	25	1.9%
\$500,000 to \$999,999	721	59.3%	549	42.3%
\$1,000,000 or more	333	27.4%	677	52.2%
Total	1,215		1,297	
Median	\$775,000		\$1,032,800	

Sources: Table Dp04, U.S. Census Bureau, 2009-2013 American Community Survey Five-Year Estimates

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

Table 9 shows gross rent estimates in Ho-Ho-Kus Borough and Bergen County for 2023. In 2023, the estimated median rent in Ho-Ho-Kus was \$2,375 dollars, or \$500 more than the median rent in Bergen County (\$1,870). An estimated 31.6% of units rent for over \$3,000 per month. Based on AHPNJ's Illustrative Affordable Rents for 2024 (Table 2), up to 10 units, or 12.7%, may be affordable to very low-income renters, depending on the number of bedrooms being rented. Similarly, up to 22 units (27.8% of the total estimated rental units) may be affordable to low- or moderate-income renters, exclusive of those units affordable to very low-income households.

Table 9. Gross Rent by Housing Unit in Ho-Ho-Kus and Bergen County, 2023

Gross Rent	Ho-Ho-Kus Borough		Bergen County	
	Units	Percent	Units	Percent
Less than \$500	0	0.0%	3,595	3.0%
\$500 to \$999	10	12.7%	6,103	5.0%
\$1,000 to \$1,499	0	0.0%	21,914	18.0%
\$1,500 to \$1,999	22	27.8%	39,382	32.4%
\$2,000 to \$2,499	10	12.7%	20,033	16.5%
\$2,500 to \$2,999	12	15.2%	12,117	10.0%
\$3,000 or more	25	31.6%	18,316	15.1%
No cash rent	49	38.3%	3,915	3.1%
Total	128	100%	125,375	100%
Median Rent	\$2,375		\$1,870	

Sources: Table Dp04, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

Housing is generally considered to be affordable if the costs of rents, mortgages, and other essential housing costs consume 28% or less of an owner-household's income or 30% or less of a renter-household's income. In Ho-Ho-Kus, 26.5% of all households spend more than 30% of their incomes on housing costs. Specifically, more than one-fifth of tenants in the Borough are estimated to be cost-burdened.

Table 10. Housing Affordability by Tenure, 2023

Monthly Housing Costs as Percent of Income	Owner-Occupied		Renter-Occupied		All Occupied	
	Units	Percent	Units	Percent	Units	Percent
Less than 20 Percent	784	60.4%	61	77.2%	845	61.4%
20 to 29 Percent	166	12.8%	0	0.0%	166	12.0%
30 Percent or More	347	26.8%	18	22.8%	365	26.5%
Total*	1,297	100%	79	100%	1,376	100%
*Remainder of occupied units have zero or negative income and/or no cash rent.						

Source: Table DP04, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates

Indicators of deficient housing units are shown in Table 11. The FHA defines a *deficient housing unit* as "housing that (1) is over fifty years old and overcrowded, (2) lacks complete plumbing, or (3) lacks complete kitchen facilities." However, the estimates in Table 11 are consistent with DCA's Fourth Round Present Need/Rehab Share calculation of zero (0) for the Borough. Although an estimated 1,274 units, or 83% of the Borough's housing stock, will be more than 50 years old by 2029, zero (0) units in the Borough were estimated to have incomplete plumbing, incomplete kitchens, or crowded conditions as of 2023.

Table 11: Indicators of Housing Deficiency, 2023

Indicator	Units	Percent
50+ Years Old*	1,274	83.0%
Incomplete Plumbing	0	0.0%
Incomplete Kitchen	0	0.0%
Crowded or Overcrowded and Built pre-1950	0	0.0%
*Includes all units built prior to 1979.		

Source: Table B25050, Table B25051, and Table B25034, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

POPULATION CHARACTERISTICS

A comparison of population changes by census year in Ho-Ho-Kus Borough and Bergen County is shown in Table 12. Similar to most of the country, the most rapid population growth in the Borough occurred in the decades following World War II (1940-1970) before stabilizing around the time of the 2000 Decennial Census. As shown in Table 12, the population change in the Borough is similar to that of Bergen County, except that population of the County has experienced a consistently higher growth rate since the 1970 Census.

Table 12. Population Change, 1950 to 2023

Year	Ho-Ho-Kus Borough		Bergen County	
	Population	Percent Change	Population	Percent Change
1950	2,254	+38.6%	539,139	+31.6%
1960	3,988	+76.9%	780,255	+44.7%
1970	4,348	+9.0%	897,148	+15.0%
1980	4,129	-5.0%	845,385	-5.8%
1990	3,935	-4.7%	825,380	-2.4%
2000	4,060	+3.2%	884,118	+7.1%
2010	4,078	+0.4%	905,116	+2.4%
2020	4,258	+4.4%	955,732	+5.6%
2023*	4,230	+0.7%	954,717	-0.1%
*Estimate provided by American Community Survey (not Decennial Census)				

Sources: U.S. Census Bureau, Decennial Census 1950-2020; Table S001: U.S. Census Bureau 2019-2023
 American Community Survey Five-Year Estimates

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

Population estimates for each age cohort in the Borough in 2013 and 2023 are shown in Table 13. While the total population has increased by 2.9%, the distribution among age groups has shifted. Between 2013 and 2023, the Borough is estimated to have experienced growth of the age 10-24 cohort and the 55-64 cohort. The number of residents ages 60 to 64 doubled, while individuals of age 20 and 24 tripled. Due to these population shifts, the median age in Ho-Ho-Kus has increased slightly from 41.4 in 2013 to 42.8 in 2023.

Table 13. Age of Population, 2013 and 2023

Age in Years	2013		2023		Percent Change 2013-2023
	Population	Percent	Population	Percent	
Under 5	246	6.0%	207	4.9%	-15.9%
5 to 9	442	10.8%	354	8.4%	-19.9%
10 to 14	279	6.8%	362	8.6%	+29.7%
15 to 19	226	5.5%	329	7.8%	+45.6%
20 to 24	79	1.9%	338	8.0%	+327.8%
25 to 34	408	9.9%	195	4.6%	-52.2%
35 to 44	545	13.3%	511	12.1%	-6.2%
45 to 54	616	15.0%	596	14.1%	-3.2%
55 to 59	292	7.1%	363	8.6%	+24.3%
60 to 64	192	4.7%	376	8.9%	+95.8%
65 to 74	454	11.0%	302	7.1%	-33.5%
75 to 84	241	5.9%	231	5.5%	-4.1%
85+	89	2.2%	66	1.6%	-25.8%
Total	4,109	100%	4,230	100%	+2.9%
Median Age	41.4		42.8		(X)

Source: Table DP05, U.S. Census Bureau 2009-2013 American Community Survey Five-Year Estimates;
Table DP05, U.S. Census Bureau American Community Survey Five-Year Estimates

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

HOUSEHOLD CHARACTERISTICS

A household is defined by the U.S. Census Bureau as persons who occupy a single room or group of rooms constituting a housing unit; however, these persons may or may not be related. By comparison, a family is identified as a group of persons including a householder and one or more persons related by blood, marriage or adoption, all living in the same household.

Table 14 shows estimated household size in Ho-Ho-Kus in 2013 and 2023. During this period, household size decreased slightly from 3.01 persons per household to 2.96. The distribution of household sizes stayed relatively the same, except for a slight shift from one-person households to two- and three-person households

Table 14. Household Size of Occupied Units, Ho-Ho-Kus Borough, 2013-2023

Household Size (Persons per Household)	2013		2023	
	Units	Percent	Units	Percent
1 Person	284	20.8%	217	15.2%
2 Persons	328	24.1%	377	26.5%
3 Persons	215	15.8%	271	19.0%
4+ Persons	536	39.3%	560	39.3%
Total	1,363	100%	1,425	100%
Average Household Size	3.01		2.96	

Source: Table DP04 and Table S2501, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

Household and family composition estimates in Ho-Ho-Kus are shown in Table 15. Approximately 75% of households are married couples, of which approximately half are married couples with children under 18. An estimated 13.6% of households consist of a female householder with no spouse or children present, compared to 6.0% of male householders with no spouse or children. Approximately 9.3% of households consist of one householder living alone.

Table 15. Household Composition, 2023

Household Type	Households	Percent
<i>Family households</i>		
Married-couple household	1,059	74.3%
With Children Under 18	550	38.6%
With No Children Under 18	509	35.7%
Cohabiting couple household	30	2.1%
With Children Under 18	0	0.0%
With No Children Under 18	30	2.1%
Male householder, no spouse present	91	6.4%
With Children Under 18	6	0.4%
Without Children Under 18	85	6.0%
Female householder, no spouse present	245	17.2%
With Own Children Under 18	51	3.6%
Without Children Under 18	194	13.6%
<i>Nonfamily households</i>		
Householder living alone	132	9.3%
Total Households	1,425	100%

Source: Table DP02, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

INCOME CHARACTERISTICS

A summary of household income characteristics in Ho-Ho-Kus is shown in Table 16. In 2023, the estimated median household income was over \$250,000, or approximately double the median income throughout Bergen County (\$123,715). An estimated 4.2% of households earn less than \$50,000, while an estimated 24.9% of households earn between \$100,000 and \$200,000 and 61.6% earn over \$200,000.

Table 16. Household Income, 2023

Household Income	Number of Households	Percent
Less than \$10,000	0	0.0%
\$10,000-\$14,999	0	0.0%
\$15,000-\$24,999	10	0.7%
\$25,000-\$34,999	19	1.3%
\$35,000-\$49,999	32	2.2%
\$50,000-\$74,999	36	2.5%
\$75,000-\$99,999	96	6.7%
\$100,000-\$149,999	155	10.9%
\$150,000-\$199,999	199	14.0%
\$200,000+	878	61.6%
Total	1,425	100%
Median Income	250,000+	

"+" Indicates that the median value falls within the highest interval and could not be computed by the ACS.

Source: Table DP03, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

A comparison of estimated poverty rates in Ho-Ho-Kus and Bergen County is shown in Table 17. The estimated poverty rate among families and individuals in the Borough is very low (<0.1%), compared to 5.0% and 6.7% for families and individuals in Bergen County, respectively.

Table 17. Poverty Rates among Individuals and Families, 2023

Location	Poverty Rate, Family	Poverty Rate, Individuals
Ho-Ho-Kus Borough	<0.1%	<0.1%
Bergen County	5.0%	6.7%

Source: Table S1701 and Table S1702, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates.

**Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan**

Adopted May 8, 2025

EMPLOYMENT CHARACTERISTICS

Estimated employment among Ho-Ho-Kus residents by North American Industry Classification System (NAICS) category is shown in Table 18. In 2023, the “Educational Services, and Health Care and Social Assistance” industry employed the largest percentage (26.2%) of residents in the labor force. The next largest industry sectors were “Finance and Insurance, and Real Estate and Rental and Leasing” (18.7%) and “Professional, Scientific, and Management, and Administrative and Waste Management Services” (18.1%).

Table 18. Employed Residents by Industry Sector, 2023

NAICS Industry	Employed Residents	Percent
Agriculture, Forestry, Fishing and Hunting, And Mining	0	0.0%
Construction	40	1.8%
Manufacturing	118	5.4%
Wholesale Trade	143	6.6%
Retail Trade	181	8.3%
Transportation and Warehousing, And Utilities	64	2.9%
Information	61	2.8%
Finance and Insurance, and Real Estate and Rental and Leasing	407	18.7%
Professional, Scientific, and Management, and Administrative and Waste Management Services	396	18.1%
Educational Services, and Health Care And Social Assistance	571	26.2%
Arts, Entertainment, and Recreation, and Accommodation And Food Services	55	2.5%
Other Services, Except Public Administration	45	2.1%
Public Administration	101	4.6%
Civilian employed population 16 years and over	2,182	100%

Source: Table DP03, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

Employment by occupation category is shown in Table 19. While the Borough's workforce is employed by several industries, the most common occupation groups are "Management, Business, Science, and Art" (73.0%) and "Sales and Office" (19.5%).

Table 19. Employed Residents by Occupation, 2023

Occupation	Employed Residents	Percent
Management, Business, Science, Arts	1,592	73.0%
Service	103	4.7%
Sales and Office	426	19.5%
Natural Resources, Construction, Maintenance	37	1.7%
Production, Transportation, Material Moving	24	1.1%
Civilian employed population 16 years and over	2,182	100%

Source: Table DP03, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates

Estimated changes in employment among Ho-Ho-Kus residents between 2013 and 2023 are shown in Table 20. During this period, the estimated number of employed residents increased from 2,011 to 2,182, while the unemployment rate decreased from 3.4% to 1.9%. Slight employment growth is estimated to have occurred between 2020 and 2023.

Table 20. Change in Employment, 2013-2023

Year	Labor Force	Employed Residents	Unemployed Residents	Unemployment Rate
2013	2,082	2,011	71	3.4%
2014	2,048	1,971	77	3.8%
2015	2,047	1,977	70	3.4%
2016	2,003	1,923	80	4.0%
2017	2,057	1,947	110	5.3%
2018	1,981	1,888	93	4.7%
2019	2,052	1,972	80	3.9%
2020	2,066	1,960	106	5.1%
2021	2,142	2,057	85	4.0%
2022	2,147	1,103	44	2.0%
2023	2,225	2,182	43	1.9%

Source: Table DP03, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

Table 21 compares employment estimates within Ho-Ho-Kus Borough and Bergen County regardless of where workers live. In 2022, an estimated 1,218 workers were employed in the Borough, comprising 0.3% of the 454,177 total jobs in Bergen County.

Table 21. Estimated Employment, 2022

Year	Ho-Ho-Kus Borough	Bergen County
2022	1,218	454,177

Source: U.S. Census Bureau, OnTheMap Application and LEHD Origin-Destination Employment Statistics (Beginning of Quarter Employment, 2nd Quarter of 2002-2022).

Common commuter destinations among Ho-Ho-Kus residents are shown in Table 22. In 2022, the most common commuter destination was Manhattan (14.4%), while other municipalities in Bergen County, Essex County, and Passaic County were also among the most common commutes. Approximately 97 residents, or 5.0% of all working residents, are employed within the Borough.

Table 22. Top Ten Commuting Destinations for Ho-Ho-Kus Residents, 2022

Destination	Workers	Percent of Workers
Manhattan (New York, NY)	277	14.4%
Ho-Ho-Kus, NJ	97	5.0%
Paramus, NJ	85	4.4%
Ridgewood, NJ	72	3.7%
Jersey City, NJ	56	2.9%
Hackensack, NJ	49	2.6%
Ramsey, NJ	41	2.1%
Newark, NJ	33	1.7%
Wayne, NJ	32	1.7%
Woodcliff Lake, NJ	24	1.2%
All Other Locations	1,155	60.1%
Total	1,921	100%

Source: U.S. Census Bureau, OnTheMap Application and LEHD Origin-Destination Employment Statistics (Beginning of Quarter Employment, 2nd Quarter of 2002-2022).

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

POPULATION AND EMPLOYMENT PROJECTIONS

The North Jersey Transportation Planning Authority ("NJTPA") is the Metropolitan Planning Organization for the northern New Jersey region, which contains thirteen counties in northern New Jersey, including Bergen County. The NJTPA publishes population and employment forecasts for counties and municipalities in the region. Between 2015 and 2050, the NJTPA projects that the population and employment of Ho-Ho-Kus will increase by 13.5% and 23.6%, respectively. As shown in Table 23, population growth in the Borough is expected to increase at a slightly lower rate than in the County and region, while employment growth in the Borough is expected to increase at a higher rate than in the County and region.

Table 23. Population and Employment Projections, 2015-2050

Location	Population			Employment		
	Estimate 2015	Projected 2050	Percent Change	Estimate 2015	Projected 2050	Percent Change
Ho-Ho-Kus Borough	4,185	4,752	+13.5%	1,102	1,362	+23.6%
Bergen County	926,330	1,083,869	+17.0%	421,284	483,298	+14.7%
NJTPA Region	6,688,013	7,743,120	+15.8%	2,910,458	3,375,651	+16.0%

Source: North Jersey Transportation Planning Authority, Appendix E - 2050 Demographic Forecasts

HOUSING UNIT PROJECTIONS

The FHA requires that housing plans include a 10-year projection of new housing units based on the number of building permits, development applications approved, and probable developments, as well as other indicators deemed appropriate (N.J.S.A. 52:27D-310.b). Table 24 shows the balance of Certificates of Occupancy and Demolition Permits issued between 2013 and 2023. According to the permit data, there is an annual average net decrease of one (1) dwelling unit per year. If this rate were to remain relatively constant, Ho-Ho-Kus could see a net loss of approximately 13 units by 2035.

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

Table 24. Residential C.O.'s and Demolition Permits Issued, 2013-2023

Year	Demolitions	Certificates of Occupancy	Net New Dwellings
2013	8	1	-7
2014	7	5	-2
2015	4	1	-3
2016	3	5	2
2017	9	7	-2
2018	7	3	-4
2019	2	3	1
2020	3	1	-2
2021	3	1	-2
2022	2	1	-1
2023	11	21	10
Total	59	49	-10
Annual Average	5	4	-1

Source: NJDCA Construction Reporter, Building Permits, Yearly Summary Data

CONSIDERATION OF LAND FOR AFFORDABLE HOUSING

Pursuant to the FHA at N.J.S.A. 52:27D-310.f, a HEFSP shall contain “a consideration of lands of developers who have expressed a commitment to provide low- and moderate-income housing.” As part of this HEFSP, the Borough has considered land that is appropriate for the construction of low- and moderate-income housing. The Borough received a vacant land adjustment for the Prior Round/Third Round and has included an updated Fourth Round VLA as part of this HEFSP.

Third Round Vacant Land Adjustment

Pursuant to the 2016 FSHC Settlement Agreement, the Borough recalculated its combined Prior Round/Third Round RDP to reflect units that have been approved for redevelopment at the Crossings site, and the hypothetical inclusionary developability of the market-rate Hollows site and seven (7) vacant lots in the single-family neighborhoods east of Route 17 (including the Wearimus Road site at Block 1905, Lot 5), according to the rules provided in N.J.A.C. 5:93-4.2 and based on densities recommended by the Special Adjudicator. A summary of sites generating RDP for the

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

cumulative Prior Round/Third Round are shown in Table 25. The Third Round VLA is included in Appendix C.

Table 25. Sites Generating RDP, Cumulative Third Round

Site	Block/Lot	Address	Area (ac.)	Density (du/ac.)	Total Units	RDP @ 20%
Seven (7) eastern lots	Various	Various	12.22 gross (10.95 net)	6	65.68	13.13
Hollows	802/1-4, 10	806 W. Saddle River	3.5 gross (3.34 net)	13	43.42	8.68
Crossings @ Ho-Ho-Kus	1016/3,5,11	619 N. Maple Ave	2 gross (0.43 net)	N/A	N/A	8
Total						29.81 (30)

Fourth Round Vacant Land Adjustment Update

As part of this Fourth Round HEFSP, the Borough has completed an updated VLA to determine, pursuant to the 2002 NJ Supreme Court decision in the Cherry Hill Twp./Garden State Racetrack vacant land adjustment matter, whether there were any 'changed circumstances' from when the Borough performed its earlier Third Round VLA in December 2016. As set forth in the attached "Fourth Round Update to Court-Approved Vacant Land Analysis, April 17, 2025", the Borough has determined that its Fourth Round RDP is 12 and Unmet Need is 206 based on an analysis of the changed development circumstances in the Borough as of January 1, 2017. The Fourth Round VLA Update is included in Appendix D.

Sites generating an RDP to be addressed in the Fourth Round, as shown in Table 26, include: an increase in the total housing unit count at The Crossings, two (2) subdivisions of larger residential property during the Third Round, vacant property at E Saddle River Road and Fox Run, and an inclusionary development at 111 First Street.

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

Table 26. Sites Generating RDP, Fourth Round

Site	Block/Lot	Address	Area (ac.)	Density (du/ac.)	Total Units	RDP @ 20%
(#2) Crossings	1016/3,5,11	619 N Maple Ave	N/A	N/A	10 (built)	2.0
(#10) subdivision	810/1.02-1.03	11-12 Powderhorn Rd	2.42 (gross) 2.42 (net)	6	14.5	2.9
(#11) vacant property	811/5-6; 1206/1	801/813 E Saddle River Road; 1 Fox Run	6.91 (gross) 2.19 (net)	6	13.1	2.6
(#12) subdivision	903/11.02	235 Wearimus Rd	2.11 (gross) 2.02 (net)	6	12.14	2.4
(#13) 111 First St	1015/13.01	111 First St	0.48 (gross) 0.48 (net)	N/A	8 (built)	1.6
Total						12, round up

In preparing this updated 2025 Fourth Round VLA, the Borough will apply the same density of six (6) dwelling units per acre as approved by the Court in the Third Round VLA for the three (3) sites (#10 - #12) on the east side of the Borough (7.9-RDP), which is a typical RDP density to apply to sites in low density, single-family neighborhoods, and the minimum presumptive development density permitted by COAH's vacant land adjustment rules (as upheld by P.L. 2024, c.2 at N.J.S.A. 52:27D-311.m). Another 3.6-RDP is generated from built inclusionary sites, consistent with the actual number of additional total housing units (The Crossings) and new total housing units (111 First Street) that were approved for construction by the Borough. The resulting updated Fourth Round RDP for the Borough is 12, rounded up from 11.5.

Sites Considered for Inclusion in the HEFSP

As noted above and described in detail as part of this Fourth Round HEFSP, two (2) sites (The Crossings and 111 First Street) generate an RDP and provide affordable housing units to address the Borough's updated RDP. However, three (3) sites (#10 - #12) on the east side of the Borough that generated an RDP are ultimately not included in the Borough's current HEFSP as a means to address the RDP, as specifically permitted by COAH's rules at N.J.A.C. 5:93-4.2.g, which states "The municipality may address its RDP through any activity approved by [COAH] ... The municipality need not incorporate into its housing element and fair share plan all sites used to calculate the RDP if the municipality can devise an acceptable means of addressing the RDP." The Borough's updated Fourth Round compliance plan includes satisfactory compliance mechanisms to address its updated Fourth Round RDP.

FAIR SHARE PLAN

Ho-Ho-Kus Borough's Affordable Housing Obligation

A municipality's Fourth Round affordable housing obligation has four components: Fourth Round Present Need (Rehabilitation Share), Prior Round Prospective Need, Third Round "Gap"/Prospective Need, and Fourth Round Prospective Need. For Ho-Ho-Kus Borough, these four components were determined as follows.

In 2017, the Court approved the 2016 FSHC settlement agreement which included the Borough's cumulative Prior Round Prospective Need (previously established by COAH) and which set the Third Round Gap/Prospective Need (as negotiated with FSHC), which was then adjusted pursuant to an updated 2016 Prior Round/Third Round VLA. In January 2025, the Borough filed its Fourth Round DJ action, which included Borough Council Resolution #25-41 accepting the DCA calculation of its Fourth Round Present Need/Rehabilitation Share and Prospective Need, which will also be adjusted per the updated 2025 Fourth Round VLA. The entire four-component Fourth Round fair share obligation is as follows:

- Fourth Round Present Need/Rehab Share: 0
- Prior Round Prospective Need: 83
- Third Round "Gap"/ Prospective Need: 195
- Fourth Round Prospective Need: 218

Fourth Round Present Need/Rehab Share

The amended FHA defines *present need* as "the number of substandard existing deficient housing units currently occupied by low- and moderate-income (LMI) households" and *deficient housing unit* as "housing that (1) is over fifty years old and overcrowded, (2) lacks complete plumbing, or (3) lacks complete kitchen facilities." The Borough's Fourth Round Present Need of zero (0) was calculated by DCA according to its October 2024 methodology report. The Borough accepted DCA's determination of its Fourth Round Present Need obligation by resolution as submitted to the Program/Superior Court with its Fourth Round DJ filing. Because the Borough's rehab obligation is zero (0), there is no rehab obligation to satisfy in the Fourth Round.

Prior Round Prospective Need

The Prior Round Prospective Need obligation is the cumulative prospective need obligation for the First and Second Rounds (1987 to 1999). The Borough's 83-unit Prior Round Need was calculated by COAH as set forth in the Appendices to COAH's Substantive Rules at N.J.A.C. 5:93-1.

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

Third Round "Gap"/ Prospective Need

As established by the Borough's 2016 FSHC Settlement Agreement, Ho-Ho-Kus' Third Round obligation (1999-2025) was set at 195 units. The Borough's Third Round VLA resulted in a combined Prior Round and Third Round RDP of 30 and an Unmet Need of 248.

Fourth Round Prospective Need

The FHA, as amended by P.L. 2024, c.2, defines *prospective need* as "a projection of housing needs based on development and growth which is reasonably likely to occur in a region or municipality, as the case may be, as a result of actual determination of public and private entities." The Borough's Fourth Round Prospective Need of 218 was calculated by DCA according to the methodology described in the October 2024 report titled *Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background*. The Borough accepted DCA's determination of its Fourth Round Prospective Need of 218 by resolution, which was filed with the Program/Superior Court as part of its Fourth Round DJ action (Appendix B).

Addressing Prior Round/Third Round RDP

As established in the 2016 FSHC Settlement Agreement, the Borough's cumulative Prior Round/Third Round obligation includes an RDP of 30 and Unmet Need of 248. COAH's upheld rules at N.J.A.C. 5:93-1, require a minimum number of affordable rental units and permit a maximum number of age-restricted affordable units using the following formulas based on the Prior Round/Third Round RDP of 30:

Minimum Prior Round/Third Round RDP Rental Obligation = 8 units

$$= 0.25 (30) = 7.5, \text{ rounded up}$$

- A rental unit available to the general public receives one rental bonus;
- No rental bonus is granted in excess of the Prior Round rental obligation.

Maximum Prior Round/Third Round RDP Senior Units = 7 units

$$= 0.25 (30) = 7.5, \text{ rounded down}$$

In addition to COAH requirements, the 2016 Third Round FSHC settlement agreement required half of all rental units and half of all units addressing the RDP and Unmet Need to be available to family households:

Minimum Prior Round/Third Round RDP Family Obligation = 15 units

$$= 0.50 (30) = 15$$

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

As summarized in Table 27, the Borough has fully addressed its Prior/Third Round RDP of 30 through 100% affordable family/supportive rentals and bonuses from Brookside, inclusionary family affordable rentals at The Crossings, and one family affordable rental at 614 N Maple Avenue. [See the locations of all affordable units in the Borough on the following aerial map.]

Table 27. Prior Round/Third Round RDP Credit/Bonus Summary (1999-2025)

Ho-Ho-Kus Borough Prior Round/Third Round Compliance Mechanisms (30 RDP)	Credits	Bonuses	Total
Brookside – 100% afford. family/supportive rentals (13 of 14)	13	8, cap	21
The Crossings - inclusionary family afford. rentals (8 of 10)	8	-	8
614 N. Maple Ave – family affordable rental per litigation	1	-	1
Total	22	8	30

Municipally Sponsored, 100% Affordable Sites (Completed)

Brookside - Bergen County United Way / Madeline Corporation (Completed)

Brookside is a 100% affordable, 13-unit development producing 14 credits located on Brookside Avenue near the Ho-Ho-Kus rail station (Block 1014, Lot 2.01). The project was developed pursuant to the Third Round developer's agreement between the Borough and Bergen County United Way / Madeline Corporation Partnership ("BCUW / Madeline Partnership"). The project consists of ten (10) family rental units and three (3) units totaling four (4) bedrooms for individuals with special needs.

All units are administered by BCUW/Madeline Housing Partnership and have minimum 30-year affordability controls through at least December 28, 2051 (Appendix E). One (1) moderate-income, two-bedroom unit will have an occupancy preference for veterans. The project received a CO on May 1, 2023.

As shown in Table 28, income distribution of the family units consists of one (1) very low-income unit, five (5) low-income units, and four (4) moderate-income units. Bedroom distribution of the family units includes three (3) one-bedroom units, four (4) two-bedroom units, and three (3) three-bedroom units. FSHC agreed in a 2017 email that the Borough could exceed UHAC's 20% cap on one-bedroom units since there would be more three-bedroom units than required.

FOURTH ROUND HOUSING ELEMENT
AND FAIR SHARE PLAN

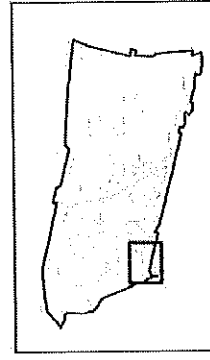
Affordable Housing
Sites

LOCATION
Borough of Ho-Ho-Kus
Bergen County, New Jersey

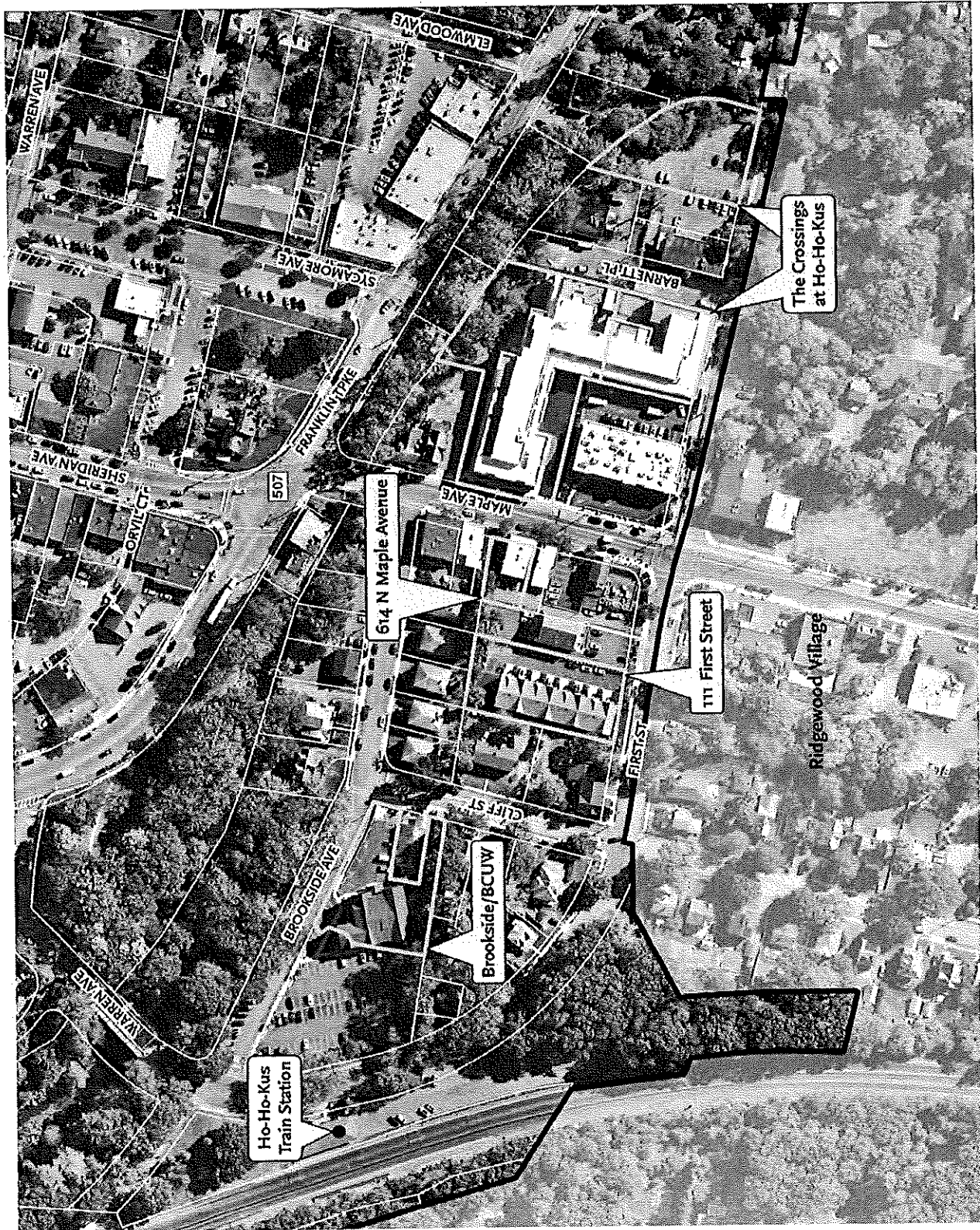
DATE
April 23, 2025

- Legend
- Affordable Housing Sites
 - Parcels
 - Borough Boundary

FOURTH
ROUND HOUSING ELEMENT
AND FAIR SHARE PLAN
APRIL 23, 2025
CLARKE CATON HINTZ ARCHITECTURE



Clarke Caton Hintz
Architecture
Planning
Landscape Architecture



Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

Table 28. Income/Bedroom Distribution, Brookside/BCUW Family Rental Units

Income Distribution	Bedroom Distribution			Total
	1BR / Efficiency	2BR	3BR	
Very Low-Income	-	-	1	1
Low-Income	2	2	1	5
Moderate-Income	1	2	1	4
Total	3	4	3	10

As shown in Table 29, distribution of the three (3) special needs units comprising four (4) special needs bedrooms consists of two (2) one-bedroom units and one (1) two-bedroom unit. Income distribution is one (1) very low-income bedroom and three (3) low-income bedrooms. The two-bedroom unit is occupied by unrelated individuals.

Table 29. Income/Bedroom Distribution, Brookside/BCUW Special Needs Bedrooms

Income Distribution	Bedroom Distribution			Total
	1BR / Efficiency	2BR	3BR	
Very Low-Income	1	-	-	1
Low-Income	1	2	-	3
Moderate-Income	-	-	-	0
Total	2	2	0	4

Inclusionary Developments (Completed)

The Crossings at Ho-Ho-Kus (Completed)

The Crossings was initially approved as a 53-unit inclusionary mixed-use development located at 619 N Maple Avenue (Block 1016, Lots 3, 5, and 11) consisting of ground floor retail and 53 units with a 15% affordable set-aside of eight (8) family rental units. Subsequently, the Borough approved 10 additional total units of which two (2) would be affordable from a 20% set-aside. The 10 total affordable family rental units are administered by Piazza & Associates ("Piazza") and have affordability controls of 'at least' 30 years through at least 2054 (Appendix F). The project was issued a temporary CO on August 5, 2024.

As shown in Table 30, income distribution consists of two (2) very low-income units, three (3) low-income units, and five (5) moderate-income units. Bedroom distribution includes two (2) one-bedroom units, six (6) two-bedroom units, and two (2) three-bedroom units.

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

The Borough has credited eight (8) of the ten (10) total family affordable rental units at the Crossings site to address its cumulative Prior Round/Third Round RDP as specified in the FSHC settlement agreement and Amended Third Round HEFSP. The balance of two (2) family affordable rental units will address the updated Fourth Round RDP as discussed below.

Table 30. Income/Bedroom Distribution, The Crossings Family Rental Units

Income Distribution	Bedroom Distribution			Total
	1BR / Efficiency	2BR	3BR	
Very Low-Income	1	1	-	2
Low-Income	-	2	1	3
Moderate-Income	1	3	1	5
Total	2	6	2	10

614 North Maple Avenue (Completed)

Pursuant to the Chamberlain Settlement Agreement, Frasco Realty constructed an inclusionary development at 612-614 Maple Avenue (Block 1015, Lot 9). The project consists of three (3) market rate units, one (1) affordable family rental unit, and retail space on the ground floor. The project was issued a CO on February 22, 2021. The affordable unit is a one-bedroom unit reserved for a low-income household with 30-year affordability controls through at least July 24, 2050 (Appendix G). The unit is administered by Piazza.

Prior Round/Third Round RDP Compliance Summary

As noted above, the Borough has fully addressed its Prior Round/Third Round RDP, in addition to all other obligations pursuant to the 2016 FSHC Agreement. The Borough has addressed the minimum RDP rental unit obligation of eight (8) units and the minimum RDP family rental unit obligation of four (4) units through family rental units at Brookside, The Crossings, and 614 N Maple Avenue. In addition, the Borough is also eligible for eight (8) rental bonuses, to which the Borough has met its cap of eight (8) bonuses from Brookside (municipally sponsored, 100% affordable).

Addressing Prior Round/Third Round Unmet Need

To address its 248-unit cumulative Prior Round and Third Round Unmet Need, the Borough has followed COAH's Second Round regulations. N.J.A.C. 5:93-4.2(h) states

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

that in addressing Unmet Need, COAH “may require at least any combination of the following in an effort to address the housing obligation:

- Zoning amendments that permit apartments or accessory apartments;
- Overlay zoning requiring inclusionary development or the imposition of a development fee consistent with N.J.A.C.5:93-8. In approving an overlay zone, the Council may allow the existing use to continue and expand as a conforming use, but provide that where the prior use on the site is changed, the site shall produce low- and moderate-income housing or a development fee; or
- Zoning amendments that impose a development fee consistent with N.J.A.C.5:93-8.”

Ho-Ho-Kus was initially approved by COAH in the Second Round to address its entire 83-unit Second Round Unmet Need through the adoption of a development fee ordinance. For the Third Round, as set forth in the FSHC Agreement, the Borough addressed Unmet Need through the adoption of overlay inclusionary zoning within the Borough’s Downtown area and a Borough-wide affordable housing set-aside requirement for any new multi-family construction.

Downtown Inclusionary Overlay Zone

To address its Unmet Need, the Borough adopted an inclusionary overlay zoning district (§85-13.1 of the Borough Code) on July 25, 2017, by Ord. No. 2017-10 (Appendix H). The overlay zone encompasses approximately 23.5 acres of the Borough’s Downtown as shown in the following aerial and topographic maps. The underlying R-2 Residential District, R-4 Residential District and GB General Business District explicitly prohibit multi-family and upper-story apartments. The Downtown Inclusionary Overlay Ordinance creates four (4) separate overlay districts with permitted residential densities between six (6) and 15 dwelling units per acre and building heights between two (2) and three (3) stories. The overlay zone standards distribute development intensities appropriately near the Downtown with consideration to nearby amenities such as the rail station and neighboring residential districts.

The overlay zone permits multi-family inclusionary housing within its boundaries, conditioned on the following:

- I. In the event that a non-residential land use changes to residential, or a building is enlarged for multi-family residential development, on a property for which the underlying zoning is the General Business GB District, the new residential use/building must have an inclusionary affordable housing set-aside of 20% on

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

the upper stories, and the ground story of such building must contain a non-residential use.

2. In the event that there is a change of use to a multi-family residential use or the enlargement of a building to accommodate a multi-family use, on any property for which the underlying zoning is either R-2 or R-4, the multi-family units must include an inclusionary affordable housing set-aside of 20%, and there may be no nonresidential use.

Where this Downtown Inclusionary Overlay is imposed, its requirements and provisions supersede those of the Borough-wide mandatory inclusionary ordinance. As with the remainder of the Borough, the proposed overlay zoning districts are located within Planning Area 1, where higher density redevelopment is encouraged. The downtown is almost entirely within the special flood hazard area (100-year flood plain) and is also partially within the Ho-Ho-Kus Brook floodway; as such, any new redevelopment in the area will be required to adhere to NJDEP and FEMA's regulations for development within flood-fringes and floodways. Additionally, the Borough anticipates that the downtown's proximity to the train station will facilitate reduced parking requirements.

Outside of The Crossings redevelopment, the downtown may not experience significant redevelopment in the near future. However, there is a reasonable likelihood of developer(s) acquiring and developing individual parcels, which would allow for the gradual creation of affordable housing units as a means to continue to address the Borough's Unmet Need.

On March 27, 2018, the overlay zone was amended by Ord. No. 2018-03 to establish procedures for fractional units resulting from the calculation of an inclusionary set-aside.

FOURTH ROUND HOUSING ELEMENT
AND FAIR SHARE PLAN

Downtown Inclusionary
Overlay Zones
Addressing Unmet Need

LOCATION:

Borough of Haddonfield
Bergen County, New Jersey

DATE:

April 25, 2023

Legend

Parcels

Borough Boundary

Downtown Inclusionary Overlay Zones

OL-1 3 Stories, 15 du/ac

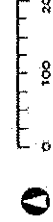
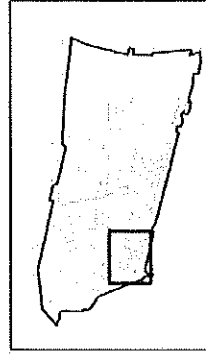
OL-2 3 Stories, 12 du/ac

OL-3 2 Stories, 12 du/ac

OL-4 2 Stories, 6 du/ac

SOURCES:

Aerial Imagery, Structure Database, 2021
Map of Bergen County, NJ
Map of Haddonfield, NJ



Clarke Caton Hintz
Architecture
Planning
Landscape Architecture



FOURTH-ROUND HOUSING ELEMENT
AND FAIR SHARE PLAN

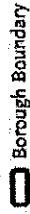
**Downtown Inclusionary
Overlay Zones
Addressing Unmet Need**

LOCATION:
Borough of Ho-Ho-Kus
Bergen County, New Jersey

DATE:
April 23, 2025

Legend

Parcels

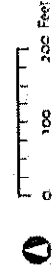
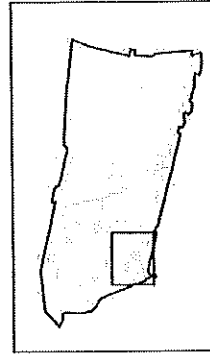


Downtown Inclusionary Overlay Zones

- OL-3 3 Stories, 15 du/ac
- OL-2 3 Stories, 12 du/ac
- OL-1 2 Stories, 12 du/ac
- OL-4 2 Stories, 6 du/ac

Underlying Zoning

- R-2 - Single Family Residential
- R-3 - Single Family Residential
- R-4 - Two Family Residential
- GB - General Business



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Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

Addressing Fourth Round RDP

Based on the updated 2025 Fourth Round VLA, the Borough has a Fourth Round RDP of 12. The amended FHA establishes minimum and maximum requirements for Fourth Round credits using the following formulas:

$$\begin{aligned} \text{Minimum Fourth Round Family Units} &= 5 \\ &= 0.50(\text{Fourth Round units}) = 0.50(9) = 4.5 \text{ rounded up} \end{aligned}$$

$$\begin{aligned} \text{Minimum Fourth Round Family Rental Units} &= 3 \\ &= 0.50(\text{Fourth Round Family Unit Obligation}) = 0.50(5) = 2.5 \text{ rounded up} \end{aligned}$$

$$\begin{aligned} \text{Maximum Fourth Round Senior Units} &= 2 \\ &= 0.30(\text{Fourth Round units}) = 0.30(9) = 2.7 \text{ rounded down} \end{aligned}$$

$$\begin{aligned} \text{Maximum Fourth Round Bonuses} &= 3 \\ &= 0.25(\text{Fourth Round RDP}) = 0.25(12) = 3 \end{aligned}$$

As summarized in Table 31, the Borough plans to fully address its Fourth Round RDP of 12 through the balance of one (1) affordable family rental at Brookside/BCUW, the balance of two (2) inclusionary family affordable rentals at The Crossings, one (1) inclusionary family rental at 111 First Street, four (4) new group home special needs bedrooms provided by Life Opportunities Unlimited, one (1) new municipally-sponsored affordable unit, and three (3) Fourth Round bonuses.

Table 31. Fourth Round RDP Credit/Bonus Summary (2025-2035)

Ho-Ho-Kus Borough Fourth Round Compliance Mechanisms (12 RDP)	Credits	Bonuses	Total
Brookside, BCUW – 100% afford. family rental (1 of 14, bal.)	1	1	2
The Crossings – inclusion. family afford. rentals (2 of 10, bal.)	2	-	2
111 First Street – inclusionary family affordable rental	1	-	1
Life Opportunities Group Home – afford. rental bedrooms	4	2, cap	6
New Municipally-Sponsored Unit – family afford. rental (1)	1		1
Total	9	3	12

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

Municipally Sponsored, 100% Affordable Sites (Completed)

Brookside/BCUW (Completed) (See Prior Round/Third Round Description)

The Borough applied 13 of 14 family/supportive affordable rental units at Brookside toward its Prior Round/Third Round RDP and plans to credit the remaining one (1) unit toward its Fourth Round RDP. The one (1) family affordable rental unit applied toward the Fourth Round RDP is eligible for one (1) Fourth Round bonus per the amended FHA at N.J.S.A. 52:27D-311.k(8) for municipal funding of a 100% affordable site, (see details below) and has controls that extend through the Fourth Round (to at least 2051).

Inclusionary Development Sites (Completed)

The Crossings at Ho-Ho-Kus (Completed) (See Prior Round/Third Round Description)

The Borough applied eight (8) of 10 family affordable rental units at The Crossings to address its Prior Round/Third Round RDP and plans to credit the remaining two (2) family affordable rental units to address its Fourth Round RDP. The units will have affordability controls that extend through the Fourth Round (to at least 2054).

111 First Street (Completed)

111 First Street contains an inclusionary affordable rental unit located within the OL-1 inclusionary overlay zone on Block 1015, Lots 13.01 (formerly Lots 13-14). The site contains a total of eight (8) units, of which one (1) unit is an affordable three-bedroom unit that is reserved for a low-income household (Appendix I). The developer created the affordable unit in addition to a development fee of \$108,168.20 collected on three (3) market-rate units in accordance with §85-13.1.C(4)(b) of the Borough's Downtown Inclusionary Overlay Ordinance, which addresses fractional units resulting from affordable set-aside calculations. A CO was issued on August 5, 2024. The affordable unit has minimum thirty-year affordability controls through at least 2054.

Group Home

Life Opportunities Unlimited Group Home (Under Renovation)

Life Opportunities Unlimited, an experienced group home provider throughout Bergen County, owns and will operate a group home for adults with special needs in the Borough on Ferris Court (Block 102, Lot 19). The group home will contain four (4) very low-income bedrooms for individuals with special needs. As of April 2025, the home is under renovation to convert the existing three-bedroom single-family dwelling into a four-bedroom group home. The Department of Human Services ("DHS") will

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

issue a group home license once the renovations are complete, according to Gail Tamirian-Mandeli, the Executive Director of Life Opportunities Unlimited. The group home will receive client referrals from the Division of Developmental Disabilities (“DDD”) waiting list.

As reflected in the cover letter and DCA Special Needs Housing Survey (Appendix J), Life Opportunities intends to operate the group home over the long term. No deed restriction is required by DHS. The group home is owned by Life Opportunities and operational funds will be provided by the individual clients from DDD/DHS subsidies and social security income. Per the amended FHA’s annual monitoring requirement, by February 15th of each year, the Borough will annually update Life Opportunities Unlimited group home operations.

New Municipally-Sponsored Unit (Proposed)

The Borough will produce one (1) municipally-sponsored family affordable rental dwelling unit. The Borough anticipates that the affordable unit will be provided on Borough-owned property and/or religious/non-profit owned property. The Borough will contract with an experienced affordable housing provider to provide one (1) family affordable rental unit which shall be a low-income, two- or three-bedroom unit and which shall have rental affordability controls of at least 40 years. As shown on the financial pro forma, the Borough anticipates that the affordable unit will have development/ construction costs of up to \$750,000. The Borough may fund the construction/development cost through the Borough’s affordable housing trust funds or may seek outside funding sources such as DCA’s Small Affordable Housing Production Program, etc. The Borough anticipates donating the property (if Borough-owned) or entering into an agreement with a religious/non-profit entity to donate such property. Per the Borough’s Fourth Round spending plan and the Borough’s Resolution of Intent to Fund, the Borough will commit to fully fund the creation of such family affordable rental unit. The affordable unit will be implemented as shown on the attached development schedule (Appendix K).

Creation of the affordable unit will adhere to the following overall parameters:

- The affordable unit shall be a low-income affordable unit.
- The affordable unit shall be either a two- or three-bedroom unit.
- Except for the above criteria, the affordable unit shall adhere to UHAC at N.J.A.C. 5:80-26.1 *et seq.*
- The affordable unit shall adhere to the Borough’s court-approved Affirmative Marketing Plan.

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

The Borough has sufficient public water and sewer service to serve the one (1) municipally-sponsored affordable unit. The affordable unit will be administered by Piazza, an experienced Affordable Housing Administrative Agent. Piazza has an Affordable Housing Rental Manual on file at the municipal building. The following documentation is included in Appendix K: a financial proforma, a development timetable, a draft Request for Proposals ("RFP"), and a letter from the Borough Administrator confirming sufficient public water and sewer capacity in the respective systems.

Fourth Round Bonuses

A new type of bonus is permitted in the Fourth Round as set forth in the amended FHA at N.J.S.A. 52:27D-311.k(8) for municipal funding of a 100% affordable site. The Borough funded the 100% affordable Brookside family/supportive housing site through the donation of land plus the expenditure of significant trust funds (with both the land donation and the trust fund expenditure through Dec. 31, 2024 of \$1.17 million far exceeding 3% of the development costs), the affordable family rental unit from the 100% affordable housing site addressing the Fourth Round is eligible for one (1) Fourth Round bonus. Also, the new Life Opportunities Fourth Round group home is eligible for two (2) additional Fourth Round bonuses (up to the three (3) maximum bonuses) per N.J.S.A. 52:27D-311.k(1) – special needs or permanent supportive housing, for two of the four Fourth Round group home credits.

Fourth Round RDP Requirement Compliance Summary

As noted above, the Borough has fully addressed its Fourth Round RDP, including the minimum RDP rental unit obligation of five (5) units and minimum RDP family rental unit obligation of three (3) units per the 2024 FHA amendment. The Borough has addressed these requirements through family rental units at Brookside and The Crossings. In addition, the Borough is eligible for three (3) bonuses, to which the Borough has met its cap of three (3) bonuses with one (1) family rental unit from Brookside (municipally sponsored, 100% affordable) and two (2) special needs affordable rental bonuses from the Life Opportunities Unlimited group home.

Addressing Fourth Round Unmet Need

As a result of the Borough's Fourth Round VLA update, the Borough has a Fourth Round Unmet Need of 206 units. Pursuant to the amended FHA at N.J.S.A. 52:27D-310.1, the Borough must identify land that is likely to redevelop during the Fourth Round to address at least 25% of the Fourth Round Unmet Need of 206 through realistic zoning, or demonstrate why it is unable to do so. This Fourth Round Unmet

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

Need calculation would require 52 potential affordable units that may redevelop over time in the Borough [206 Fourth Round Unmet Need x 25% overlay zoning requirement = 51.5, rounded up to 52].

As a means to address the 25% inclusionary zoning portion of Fourth Round Unmet Need, the Borough's Downtown Inclusionary Overlay Zones encompass a little less than 23.5 acres of the Borough's Downtown. The underlying R-2 Residential District, R-4 Residential District and GB General Business District explicitly prohibit multi-family residential development and upper-story apartments. The Downtown Inclusionary Overlay Ordinance creates four (4) separate overlay districts with permitted residential densities up to 15 dwelling units per acre and building heights up to three (3) stories. The overlay zone standards distribute residential development intensities appropriately in the Downtown to take advantage of nearby amenities such as the Borough's NJ Transit rail station, retail shops, restaurants, municipal services, and the Borough Library.

Using an average density of 12 dwelling units per acre across the 23.5 acres of the Downtown Inclusionary Overlay Zones, there may be a total of 56 affordable housing units that would potentially be provided through redevelopment at the required twenty percent (20%) affordable housing set-aside in the Downtown zones [23.5 total acres x 12 du/ac = 282 dwelling units x 20% = 56.4 affordable units.] Thus, the Borough has addressed the amended FHA's requirement for a 25% inclusionary zoning portion of Fourth Round Unmet Need with the potential of the Downtown Inclusionary Overlay Zones to generate 56 affordable units, exceeding the new law's requirement of 52 affordable units through overlay zoning.

INCOME AND BEDROOM DISTRIBUTION

The distribution of affordable family units in Ho-Ho-Kus by income level and number of bedrooms for each round (excluding senior and special needs units) is shown in Table 32 through Table 34. The distribution of affordable units in the Borough complies with N.J.A.C. 5:93-7.2 through -7.3. As not all family affordable units addressing the Prior Round/Third Round obligation triggered a very low-income requirement, the following tables must be reviewed in tandem with Table 35 (Very Low-Income Units) to ascertain the full means of the Borough addressing the 2016 settlement agreement term requiring some portion of the Third Round very low-income requirement be family affordable very low-income units.

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

Table 32. Unit Distribution of Family Units, Prior Round/Third Round

Income Distribution	Bedroom Distribution			Total
	1BR / Efficiency	2BR	3BR	
Very Low-Income	1	1	1	3 (16.67%)
Low-Income	3	2	2	7 (38.89%)
Moderate-Income	1	5	2	8 (44.44%)
Total	5 (27.78%)*	8 (44.44%)	5 (27.78%)	18 (100%)
* FSHC agreed in a 2017 email that the Borough could exceed UHAC's 20% cap on one-bedroom units since there would be more three-bedroom units than required.				

Table 33. Unit Distribution of Family Units, Fourth Round

Income Distribution	Bedroom Distribution			Total
	1BR / Efficiency	2BR	3BR	
Very Low-Income	0	1	0	1(20%)
Low-Income	0	2	1	3 (60%)
Moderate-Income	1	0	0	1 (20%)
Total	1 (20%)	3 (60%)	1 (20%)	5 (100%)

Table 34. Unit Distribution of Family Units, All Rounds

Income Distribution	Bedroom Distribution			Total
	1BR / Efficiency	2BR	3BR	
Very Low-Income	1	2	1	4 (17.39%)
Low-Income	3	4	3	10 (43.48%)
Moderate-Income	2	5	2	9 (39.13%)
Total	6 (26.09%)*	11 (47.83%)	6 (26.09%)	23 (100%)
* FSHC agreed in a 2017 email that the Borough could exceed UHAC's 20% cap on one-bedroom units since there would be more three-bedroom units than required.				

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

VERY LOW-INCOME UNITS

Pursuant to the amended FHA (P.L. 2008, c.46), municipalities must ensure that at least 13% of affordable housing units approved and constructed (or to be constructed) after July 17, 2008, are available to very low-income households. As seen in Table 35 below, a total of 31 affordable units that were approved, constructed or will be constructed, generate a very low-income requirement of 4 units. The Borough has addressed this current 4-unit very low-income requirement with eight (8) very low-income units constructed, under renovation, or proposed, representing 25.8% of the 31 total affordable units.

**Table 35. Very Low-Income Units Approved/Constructed/To Be Constructed
After July 17, 2008 (Cumulative)**

Compliance Mechanism	Total Units	VLI Units	
		Approved	Constructed
Brookside	14	-	1 family, 1 sp. need
The Crossings	10	-	2 family
614 N. Maple Avenue	1	-	
111 First Street	1		-
Life Opportunities group home	4	4 sp. needs	-
Prop. Muni. Spon. Unit	1		-
Total Affordable Units and Very-Low Income Credits Approved/Constructed/To Be Constructed	31	8 (25.8%)	
Very Low-Income Requirement	13% of 31 = 4 very low-income required		

Per the more recently amended FHA (P.L. 2024, c.2) at N.J.S.A. 52:27D-329.1, at least half of very low-income units addressing a Fourth Round RDP must be "available for families with children." As shown in the calculation below, for the Fourth Round, Ho-Ho-Kus is required to provide two (2) very low-income units, of which one (1) must be available to families.

To address the new requirement in the 2024 amended statute, at least one (1) unit of the nine (9) total affordable units in Ho-Ho-Kus addressing the Borough's Fourth Round RDP, are affordable to very low-income households and families with children, as follows:

With 9 affordable units addressing Ho-Ho-Kus Borough's Fourth Round RDP, the 13% very low-income requirement requires two (2) units to be very low-income affordable units ($9 \times 0.13 = 1.17$, rounded up to 2). Half of the two (2)

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

very low-income units required, or one (1) very low-income unit ($2 \times 0.5 = 1$) must be available to families with children. The Crossings inclusionary development has one (1) very low-income unit available to families with children in a two-bedroom unit. Thus, the Borough has addressed the new 2024 statutory requirement that at least half of very low-income units addressing a Fourth Round RDP must be “available for families with children” by providing at least one (1) very low-income unit at The Crossings that is available to families with children.

The Borough has satisfied both requirements. A total of eight (8) very low-income units have been or will be provided to address the minimum four (4) very low-income units required per the 2008 amended FHA. The eight (8) very low-income units include two (2) very low-income family units provided at The Crossings, two (2) very low-income units provided at Brookside/BCUW (1 family and 1 special needs) and four (4) very low-income special needs bedrooms will be provided in the group home. Also, to address the 2024 amended FHA, at least one (1) very low-income unit available to families with children is specifically provided at The Crossings to address the Fourth Round RDP.

DEVELOPMENT FEE ORDINANCE

A development fee ordinance may be used to address unmet need in municipalities receiving a vacant land adjustment. A development fee ordinance establishes a fee to be paid by developers of market-rate residential and/or non-residential construction. All fees collected are deposited into an Affordable Housing Trust Fund, the balance of which may only be spent on eligible affordable housing related costs.

The Borough’s development fee ordinance was adopted on November 26, 2010, by Ord. No. 872 and amended on March 27, 2018, by Ord. No. 2018-02 (Appendix L). The ordinance permits collection of residential development fees equal to 1.5% of the equalized assessed value of new residential construction and additions within the R-1 through R-5 residential zoning districts, and mandatory non-residential development fees equal to 2.5% of the equalized assessed value of new non-residential construction and additions in all zoning districts, unless exempted. An additional provision within the ordinance permits the Borough to impose a development fee of 6% on additional units that may result from a site where a “d(5)” density variance is granted by the Zoning Board of Adjustment.

BOROUGH-WIDE MANDATORY SET-ASIDE INCLUSIONARY ORDINANCE

The Borough’s Affordable Housing Ordinance (Chapter 2 of the Borough Code) establishes a Borough-wide mandatory set-aside that applies to any multi-family or single-family attached development created through any municipal rezoning, or

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

Zoning Board action, use or density variance, redevelopment plan, or rehabilitation plan that provide for densities at or above six (6) units per acre. The required set-aside of for-sale units is 20%, and the required set-aside for rental units is 15%. The Borough will amend the mandatory set-aside section of the Affordable Housing Ordinance to require a minimum set-aside of 20% for rental units. As specified by the ordinance, the mandatory set-aside 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 to grant such rezoning, variance or other relief. Further, the Borough-wide mandatory set-aside requirement does not supersede the requirements or provisions of the Downtown Inclusionary Overlay Zoning for any inclusionary multi-family residential development that occurs in the Downtown.

On March 27, 2018, the Borough's mandatory set-aside ordinance was amended to establish procedures for cases in which inclusionary set-aside calculations resulted in fractional affordable units. In such cases, the developer is permitted to either round up or round down if they provide a "fractional payment in-lieu" for the fractional affordable unit resulting from rounding down to the nearest whole unit.

MONITORING/STATUS REPORT

In accordance with the requirements of N.J.S.A. 52:27D-329.2 and -329.4 as amended by P.L. 2024 c.2, by February 15 of each year of the Fourth Round, the Borough will provide a detailed accounting through DCA's new Affordable Housing Monitoring System ("AHMS") of all affordable units constructed and construction starts during the prior calendar year, and of all residential and non-residential fees collected, interest earned, and other income collected and deposited into the Borough's affordable housing trust fund during the prior calendar year. The Borough will also provide a detailed accounting in AHMS of all expenditures of affordable housing trust funds during the prior calendar year, including purposes and amounts, and documentation of the balance remaining in the affordable housing trust fund as of December 31 of that year.

The Borough or any other interested party may file an action through the Program seeking a realistic opportunity review at the midpoint of the Fourth Round and shall provide for notice to the public, including a realistic opportunity review of any inclusionary development site in this HEFSP that has not received preliminary site plan approval prior to the midpoint of the 10-year round. If such an action is initiated by the Borough, the Borough may propose one or more alternative sites with an accompanying development plan or plans that provide a realistic opportunity for the same number of affordable units and are otherwise in compliance with the FHA and the Mount Laurel doctrine.

ADMINISTRATION & AFFIRMATIVE MARKETING

Ho-Ho-Kus Borough currently has a Court-approved Fair Share Ordinance (Appendix M). Once DCA and HMFA finalize their rule proposals (anticipated after June 30, 2025), the Borough will prepare an updated Fair Share Ordinance in accordance with court-upheld COAH's rules, DCA's proposed new regulations at N.J.A.C. 5:99, and UHAC's new 2025 regulations that are anticipated to be released shortly, as well as to address any terms of the court-approved Third Round FSHC agreement, if relevant. The Fair Share Ordinance will govern the establishment of affordable units in the Borough as well as regulating the occupancy of such units. The Borough's Fair Share Ordinance covers the phasing of affordable units, the low/moderate income split, including that 13% of all units approved and constructed since 2008 be affordable to very low-income households earning no more than 30% of median income, bedroom distribution, occupancy standards, affordability controls, establishing rents and sales prices, affirmative marketing, income qualification, etc.

The Borough Clerk will continue to hold the position of Municipal Housing Liaison. The Borough utilizes several existing experienced affordable housing administrative agents including Piazza and BCUW/Madeline Housing Partners. The licensed group home is administered by Life Opportunities Unlimited.

Ho-Ho-Kus Borough currently has a court-approved Affirmative Marketing Plan and has prepared a Preliminary Fourth Round Affirmative Marketing Plan (Appendix N). Once DCA and HMFA finalize their rule proposals (not anticipated before June 30, 2025), the Borough will prepare an updated Affirmative Marketing Plan in accordance with DCA's proposed new regulations at N.J.A.C. 5:99, UHAC's new 2025 regulations that are anticipated to be released shortly, any remaining relevant COAH rules not superseded by either the proposed 2025 DCA regulations or the upcoming 2025 revised UHAC rules, as well as to address any terms of the court-approved Third Round FSHC agreement. The Borough will adopt an Affirmative Marketing Plan for all affordable housing sites. The Borough's current Affirmative Marketing Plan is designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to the affordable units located in the Borough. Additionally, the Affirmative Marketing Plan is intended to target those potentially eligible persons who are least likely to apply for affordable units and who reside in the Borough's housing region, Region 1, consisting of Bergen, Hudson, Sussex, and Passaic counties.

The Affirmative Marketing Plan lays out the random-selection and income qualification procedure of the administrative agent, which is consistent with COAH's rules and N.J.A.C. 5:80-26.1. All newly created affordable units will comply with the minimum 30-year or 40-year (for rentals) affordability control required by UHAC, N.J.A.C. 5:80-26.1 *et seq.* This plan must be adhered to by all private, nonprofit or

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

municipal developers of affordable housing units and must cover the period of deed restriction or affordability controls on each affordable unit.

As required by the Court-approved Third Round FSHC agreement, the Affirmative Marketing Plan lists FSHC, the New Jersey State Conference of the NAACP, the Latino Action Network, Bergen County Branch of the NAACP, and BCUW among the list of community and regional organizations. The Borough has also included several local and regional veterans' groups. 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 individual or companies retained to do affirmative marketing, to comply with this paragraph. Finally, in accordance with the July 2020 amendment to the FHA, The Borough will include in its Affirmative Marketing Plan the requirement that all units subject to affirmative marketing requirements be listed on the state Housing Resource Center website.¹⁴

SPENDING PLAN

The Borough has prepared a Fourth Round Spending Plan (Appendix N), which discusses anticipated revenues, collection of revenues, and the use of revenues, in accordance with N.J.A.C. 5:93-5.1(c). All collected revenues are placed in the Borough's Affordable Housing Trust Fund and will be dispensed for the use of affordable housing activities as indicated in the Fourth Round Spending Plan. Once DCA and HMFA finalize their rule proposals (anticipated after June 30, 2025), the Borough will prepare an updated spending plan in accordance with DCA's proposed new regulations at N.J.A.C. 5:99, UHAC's new 2025 regulations that are anticipated to be released shortly, any remaining relevant COAH rules, not superseded by either the proposed 2025 DCA regulations or the upcoming 2025 revised UHAC rules as well as to address any terms of the court-approved Third Round FSHC agreement.

The Borough may, in the future, seek to amend its Spending Plan and obtain court approval to use its affordable housing trust funds for the following additional permitted affordable housing activities, including new, emergent affordable housing activities, subject to applicable limitations and minimum expenditures:

- New construction;
- Purchase of land for low- and moderate-income housing;
- Improvement of land to be used for low- and moderate-income housing;
- Extensions and/or improvements of roads and infrastructure to low- and moderate-income housing sites;
- Assistance designed to render units to be more affordable.

¹⁴ <https://njhrc.gov>

Borough of Ho-Ho-Kus
Fourth Round Housing Element and Fair Share Plan

Adopted May 8, 2025

At least 30% of development fees and interest collected must be used to provide affordability assistance to low- and moderate-income households in affordable units included in a municipal Fair Share Plan and for the creation of very low-income units. Additionally, no more than 20% of trust fund revenues collected each year may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a rehabilitation program, a new construction program, an HEFSP, and/or an affirmative marketing program.

The adoption of the Borough's Fourth Round Spending Plan will constitute a "commitment" for expenditure per the FHA at N.J.S.A. 52:27D-329.2, with a four-year time period for expenditure that will start with the entry of the Superior Court's Fourth Round Judgment of Compliance and Repose and/or Compliance Certification.

COST GENERATION

The Borough's Zoning Ordinance has been reviewed to eliminate unnecessary cost generating standards, and provides for expediting the review of development applications containing affordable housing. Such expediting may consist of, but is not limited to, scheduling of pre-application conferences and special monthly public hearings. All development applications containing affordable housing must be reviewed for consistency with the Land Development Ordinance, Residential Site Improvement Standards ("RSIS") (N.J.A.C. 5:21-1 *et seq.*) and the mandate of the FHA regarding unnecessary cost generating features. The Borough will comply with COAH's requirements for unnecessary cost generating requirements, N.J.A.C. 5:93-10.1, procedures for development applications containing affordable housing, N.J.A.C. 5:93-10.4, and requirements for special studies and escrow accounts where an application contains affordable housing, N.J.A.C. 5:93-10.3. Once DCA and HMFA finalize their rule proposals (not anticipated before June 30, 2025), the Borough will revise its Zoning Ordinance, if needed, in accordance with DCA's proposed new regulations at N.J.A.C. 5:99, and UHAC's new 2025 regulations, anticipated to be released shortly, in order to address new requirements to address cost generative issues.

MULTIGENERATIONAL FAMILY HOUSING CONTINUITY

The FHA requires an HEFSP to provide an analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission, adopted pursuant to paragraph (1) of subsection f. of 23 section 1 of P.L.2021, c.273 (C.52:27D-329.20). As of May 2025, no recommendations have been issued by the Commission.

STATE DEVELOPMENT AND REDEVELOPMENT PLAN

The entirety of Ho-Ho-Kus is located in the Metropolitan Planning Area (PA-1) as established by the State Development and Redevelopment Plan. The State Plan's intent for the Metropolitan Planning Area is to:

- Provide for much of the state's future growth in compact development and redevelopment;
- Revitalize cities, towns and neighborhoods, and in particular overburdened neighborhoods;
- Address existing legacy issues such as air pollution, urban heat islands, lead contamination, Brownfields, urban highways, and combined sewer systems;
- Prevent displacement and gentrification;
- Promote growth that occurs in Centers, other appropriate areas that are pedestrian friendly, and in compact transit-oriented forms;
- Rebalance urbanization with natural systems;
- Promote increased biodiversity and habitat restoration;
- Stabilize and enhance older inner ring suburbs;
- Redesign and revitalize auto oriented areas;
- Protect and enhance the character of existing stable communities

Ho-Ho-Kus is a developed community with a compact downtown and access to regional NJ Transit rail service from Ho-Ho-Kus Station. All affordable housing sites satisfying the Borough's obligations have public water, sewer, and stormwater management facilities, where required.

APPENDIX A – THIRD ROUND JOR, FAIRNESS ORDER, FSHC SETTLEMENT

BER L 006215-15 06/11/2018

Pg 1 of 3 Trans ID: LCV20181026575

FILED

JUN 11 2018

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IN THE MATTER OF THE
APPLICATION OF
BOROUGH OF HO-HO-KUS

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY**

DOCKET NO. BER-L-6215-15

**CIVIL ACTION
(MOUNT LAUREL)**

**FINAL JUDGMENT OF
COMPLIANCE AND
FINAL JUDGMENT OF REPOSE**

THIS MATTER having been opened to the Court by Winne, Dooley & Bole, P.C., David B. Bole, Esq. appearing, attorney for the Borough of Ho-Ho-Kus (hereinafter called "Borough"); Joshua Bauers, Esq. appearing on behalf of the Fair Share Housing Center; Gary J. Cucchiara, Esq. appearing on behalf of the Borough Planning Board; Robert J. Inghima, Jr., Esq. appearing on behalf of Sylvia Boné, Edward DeBruyn, Randi DeBruyn, John Hayes, Mary Hayes, Matthew Westfall and Alison Westfall; Bryan D. Plocker, Esq., Hutt & Shimanowitz, P.C., appearing on behalf of Defendant-Intervenor Chamberlain Developers, Inc.; Bruce E. Whitaker, Esq., McDonnell & Whitaker, LLC, appearing on behalf of Chamberlain Developers, Inc.; Gail L. Price, Esq., Price, Meese, Shulman & D'Arminio, P.C., appearing on behalf of Defendants-Intervenors Jonathan Mechanic, "Ho-Ho-Kus Crossing"; and

Bryan D. Plocker, Esq. (ID# 028172000)
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Attorneys for Intervenor-Defendant
Chamberlain Developers, Inc.

IN THE MATTER OF THE
APPLICATION OF THE BOROUGH OF
HO-HO-KUS,

Plaintiff/Petitioner.

CHAMBERLAIN DEVELOPERS, INC., a
New Jersey Corporation,

Plaintiff,

v.

BOROUGH OF HO-HO-KUS and
PLANNING BOARD OF THE
BOROUGH OF HO-HO-KUS,

Defendants.

CHAMBERLAIN DEVELOPERS, INC., a
New Jersey Corporation,

Plaintiff,

v.

PLANNING BOARD OF THE
BOROUGH OF HO-HO-KUS,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY

DOCKET NO. BER-L-6215-15
DOCKET NO. BER-L-4253-15
DOCKET NO. BER-L-5271-15

CIVIL ACTION
(Mount Laurel)

**ORDER APPROVING
SETTLEMENT AGREEMENTS
AFTER FAIRNESS HEARING**

FILED

MAY 16 2017

**WILLIAM C. MEEHAN
J.S.C.**

THIS MATTER having come before the Court on March 30, 2017 for a Mount Laurel fairness and preliminary compliance hearing on the joint request of Winne, Dooley and Bole, P.C. (David B. Bole, Esq., appearing), attorneys for the Borough of Ho-Ho-Kus; Gary J. Cucchiara, Esq., attorney for the Planning Board of the Borough of Ho-Ho-Kus; Hutt & Shimanowitz, P.C. (Bryan D. Plocker, Esq., appearing), attorneys for Chamberlain Developers, Inc. in Docket Nos. BER-L-6215-15 and BER-L-4253-15; and McDonnell & Whitaker, LLC (Bruce E. Whitaker, Esq., appearing), attorneys for Chamberlain Developers, Inc. in Docket No. BER-L-5271-15; and Price, Meese, Shulman & D'Aminio, P.C. (Gail L. Price, Esq., appearing), attorneys for Jonathan Mechanic d/b/a/ Ho-Ho-Kus Crossing; and Joshua D. Bauers, Esq., attorney for Fair Share Housing Center; and the Borough of Ho-Ho-Kus (the "Borough") having entered into a Settlement Agreement dated December 21, 2016 (the "Fair Share Settlement Agreement") with Fair Share Housing Center ("FSHC"), Chamberlain Developers, Inc. ("Chamberlain") and Jonathan Mechanic d/b/a Ho-Ho-Kus Crossing ("Crossing") in connection with the Mount Laurel declaratory judgment action filed by the Borough on July 1, 2015, Docket No. BER-L-6215-15, in response to the Supreme Court's decision in In re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015); and the Borough and the Planning Board of the Borough of Ho-Ho-Kus (the "Planning Board") having entered into a Settlement of Litigation Agreement dated December 29, 2016 with Chamberlain in connection with actions filed by Chamberlain pursuant to Section 317 of the New Jersey Fair Housing Act, Docket No. BER-L-4253-15, and the automatic approval provisions of the New Jersey Municipal Land Use Law, Docket No. BER-L-5271-15 (the "Chamberlain Settlement Agreement"); and notice of the fairness hearing having been published and served as set forth in the Certification of Public Notice of David B. Bole, Esq., which was submitted to the Court; and the Court having reviewed the settlement

agreements; and the Court having considered the Statement of Objections and Comments With Respect to Proposed Settlement filed by Robert J. Inglima, Jr., Esq., attorney for members of the public Clifford Bone, Silvia Bone, Edward De Bruyn, Randi De Bruyn, John J. Hayes, III, Mary W. Hayes, Matthew W. Westfall and Allison W. Westfall; and the Court having considered the testimony of Mary Beth Lonergan, PP, AICP, affordable housing planner for the Borough, which summarized the preliminary compliance determination established in the Fair Share Settlement Agreement of the Borough's 30-unit Realistic Development Potential ("RDP") and 248-unit unmet need and the Borough's proposed preliminary compliance efforts to address the RDP and unmet need and the recommendations of Special Master Elizabeth C. McKenzie, A.I.C.P., P.P. as set forth in a letter report dated March 27, 2017 and in oral testimony recommending that the Court approve the agreements and the Borough's preliminary compliance plan; and the Court having considered the testimony of the foregoing witnesses as set forth in the record; and the Court having considered comments by counsel for the settling parties; and good cause having been shown;

IT IS ON THIS 16th DAY OF May 2017 ORDERED THAT:

1. The Fair Share Settlement Agreement and Chamberlain Settlement Agreement are hereby determined to be fair to the interests of lower income persons who are the beneficiaries of Mount Laurel litigation consistent with standards articulated by the Appellate Division in East/West Venture v. Borough of Fort Lee, 286 N.J. Super 311 (App. Div. 1996), and in other decisions, subject to the following clarification:

a. Sections 2.1.2, 2.2.2, 2.3.2 and, 3.2(A) of the Chamberlain Settlement Agreement, which provides for the potential rezoning of property owned by Chamberlain at the

direction of the Court-appointed Special Master, shall be interpreted to mean that any such rezoning shall be done by the Court upon the recommendation of the Special Master;

b. Notwithstanding Paragraph 14 of the FSHC Agreement, the parties agree that the Borough shall have until September 30, 2017 to adopt the redevelopment plan and/or rezoning of the Downtown Commuter Parking Lot, as required by Section 2.2.1 of the Chamberlain Settlement Agreement;

2. In order for the Borough to obtain a final judgment of compliance and repose, the Borough shall comply with the Required Elements of Final Affordable Housing Compliance Plan attached hereto as Exhibit A, which was also attached by the Special Master to her letter report dated March 27, 2017;

3. After the Borough satisfies all of its obligations under the Fair Share Settlement Agreement and Chamberlain Settlement Agreement, the Borough must adopt and submit to the Court the Borough's final Housing Element and Fair Share Plan, after which the Court will schedule a hearing to determine whether the Borough is entitled to a final judgment of compliance and repose;

4. The Borough's immunity from builders remedy and other exclusionary zoning lawsuits is hereby extended through December 31, 2017, as per the parties' agreement;

5. Chamberlain's Section 317 litigation, Docket No. BER-L-4253-15, be and hereby is dismissed without prejudice; and

6. Chamberlain's automatic approval litigation, Docket No. BER-L-5271-15, be and hereby is dismissed without prejudice; and

7. Pursuant to the Fair Share Settlement Agreement, the Borough's present need of rehabilitation share is 7, the Borough's prior round obligation is 83 and the Borough's third round "Gap" and prospective need is 195.

8. Pursuant to the Fair Share Settlement Agreement, the Borough's Realistic Development Potential ("RDP") is 30 and unmet need is 248.

9. The Borough has proposed to adopt a satisfactory plan to address its 30-unit RDP and 248-unit unmet need.

10. A true copy of this Order shall be served on the Special Master and all counsel within 7 days of receipt.

A handwritten signature in cursive script, appearing to read "William C. Meehan", is written over a horizontal line.

HON. WILLIAM C. MEEHAN, J.S.C (Ret., On Recall)

EXHIBIT A

ELIZABETH C. MCKENZIE, P.P., P.A.

REQUIRED ELEMENTS OF FINAL AFFORDABLE HOUSING COMPLIANCE PLAN
Borough of Ho-Ho-Kus, Bergen County
March 27, 2017

1. The Borough will need to prepare a final Housing Element and Fair Share Plan that complies with all statutory requirements for the preparation of a Housing Element and Fair Share Plan.

The Plan will need to include, for example, consideration of any site that may have been proposed for inclusionary residential development but that was not included in the Plan (and the reasons therefor).

Moreover, a full analysis of the suitability of each proposed inclusionary and/or 100 percent affordable housing site that is included in the Plan, as well as the applicable density and set-aside in each case, must be provided as part of the final Plan.

For new inclusionary rental units proposed in the Plan, evidence of a firm commitment on the part of the developer to create affordable rental units must be submitted.

All of the applicable terms of the executed settlement agreement with FSHC should be referenced, and compliance with each of its terms demonstrated, as part of the Plan.

The final Housing Element and Fair Share Plan, once reviewed by the Special Master, must be adopted and submitted to the Court for approval as part of the final Judgment of Compliance and Repose.

2. The Fair Share Plan portion of the Plan must also be prepared, reviewed by the Special Master for compliance with the terms of the executed settlement agreement, the Fair Housing Act and the UHAC regulations, and then adopted and submitted to the Court prior to the entry of an Order granting a final Judgment of Compliance and Repose. The Fair Share Plan is a document that includes all of the proposed Ordinances and Resolutions needed to implement the Plan, including zoning amendments, an Affordable Housing Ordinance, a Development Fee Ordinance, an Affirmative Marketing Plan, a Rehabilitation Program description and Manual, a Spending Plan, a resolution of intent to fund any shortfall in

ELIZABETH C. MCKENZIE, P.P., P.A.

the costs of municipally sponsored affordable housing programs, resolutions appointing an Administrative Agent and a Municipal Affordable Housing Liaison, a resolution adopting the Housing Element and Fair Share Plan (Planning Board) and a resolution endorsing the Housing Element and Fair Share Plan (Governing Body).

3. In Ho-Ho-Kus' case, the Fair Share Plan must also include, with respect to the 100 percent affordable housing development, if applicable, all of the programmatic information required in paragraph 8 of the FSHC settlement agreement, to wit: the requirement for the submission, as an attachment to the Fair Share Plan, of a construction implementation schedule, or timetable, for each step in the development process, including the preparation of a site plan where applicable, granting of municipal approvals, applications for State and Federal permits, selection of a contractor, and start of construction, as well as the identity of the entity that will be undertaking and monitoring the construction and overall development activity.

Additionally, as required in paragraph 8. of the settlement agreement, the Fair Share Plan must provide evidence of an adequate and stable source of funding for the municipally sponsored 100 percent affordable housing development, if applicable, and the submission of a pro forma, documentation of available funding to the municipality and/or project sponsor, including any pending applications for funding, and a commitment to provide a stable alternative source, such as municipal bonding, in the event that a pending application for funding is not approved.

Should redevelopment or rezoning of the train station site with an inclusionary residential project be selected as the approach to providing the 13 affordable units attributable to the train station site instead, the adoption of the Redevelopment Plan or zoning amendment shall occur within 180 days of the Court's entry of the Order approving the Fairness of the Settlement and granting Preliminary Approval of the Borough's Compliance Plan (regardless of the timing of the final Compliance Hearing) and shall be submitted to the Special Master for review and to the Court for approval as a condition of the final Judgment.

If a Redevelopment Plan is to be adopted (rather than a zoning amendment), it shall be accompanied by a firm timetable for the selection of the redeveloper, the execution of a redevelopment

ELIZABETH C. MCKENZIE, P.P., P.A.

agreement and, if applicable, the execution of a financial agreement so as to enable the train station site to be shovel ready within ten (10) months of the entry of the final Judgment.

4. A Spending Plan must be prepared, submitted to the Special Master for review and comment, adopted by the Planning Board as part of the Fair Share Plan and by the Borough Council as a separate action, and submitted to the Court for approval before the Borough will be permitted to expend any funds from its Affordable Housing Trust Fund. The Spending Plan must include specific programs for affordability assistance and for very low income affordability assistance.

5. All proposed inclusionary and 100 percent affordable housing development zoning and redevelopment plan amendments must be prepared, reviewed by the Special Master, adopted in accordance with the timetables set forth in the FSHC settlement and the Chamberlain settlement, as applicable, and submitted to the Court prior to the entry of an Order granting a final Judgment of Compliance and Repose, except as specifically provided in paragraph 3. above with respect to the train station Redevelopment Plan, if applicable.

6. The Borough will need to prepare and adopt (after review by the Special Master and FSHC) a new Affordable Housing Ordinance that reflects all provisions of the settlement agreement as well as applicable UHAC and COAH Rules. In addition, an Affirmative Marketing Plan Resolution consistent with the terms of the settlement agreement must be prepared and adopted. These documents must be prepared, reviewed by the Special Master, and adopted and submitted to the Court prior to the entry of an Order granting a final Judgment of Compliance and Repose.

7. The Borough's existing Development Fee Ordinance should be included in the Appendices to the Fair Share Plan, if it is up to date. If it is not, then the Development Fee Ordinance must be revised, reviewed by the Special Master, and adopted and submitted to the Court prior to the entry of an Order granting a final Judgment of Compliance and Repose.

8. The Borough will need to contract with one or more outside Administrative Agents, responsible to the Borough but paid for by the owners of the affordable housing units created in the Borough, to administer the affordability controls on all of the low and moderate income units that have been or will be created

ELIZABETH C. MCKENZIE, P.P., P.A.

in the Borough. This must be accomplished and submitted to the Court prior to the entry of an Order granting a final Judgment of Compliance and Repose.

Upon its timely compliance with all of the foregoing and approval of the final submission by the Court, I believe that Ho-Ho-Kus will be entitled to a final Judgment of Compliance and Repose through July 1, 2025.



Peter J. O'Connor, Esq.
 Kevin D. Walsh, Esq.
 Adam M. Gordon, Esq.
 Laura Smith-Denker, Esq.
 David T. Rammner, 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 $22 \text{ post-2008 units} \times 0.13 = 2.86$). 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 Intervenor, 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 Intervenor, 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 Intervenor, 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 Intervenor, 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 Intervenor 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

December 21, 2016

Page 11

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: _____

December 21, 2016
Page 11

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:**

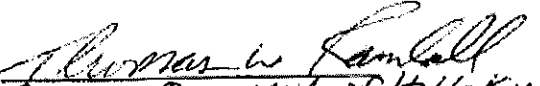
Borough Clerk
Borough of Ho-Ho-Kus
333 Warren Avenue
Ho-Ho-Kus, NJ 07423

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. LAMALL
MAYOR BOROUGH OF HO-HO-KUS
Dated: 11/5/17

On behalf of Chamberlain:

Dated: _____

December 21, 2016
Page 11

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

December 21, 2016
Page 12

On behalf of Crossings:

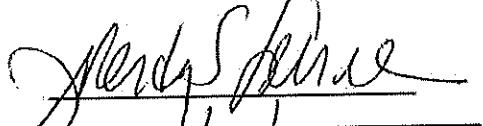

Dated: 1/12/17

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:

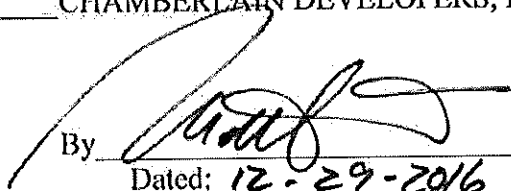
To Chamberlain:
Chamberlain Developers, Inc.
479 State Route 17 North
Mahwah, New Jersey 07430

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.

Witness: _____

CHAMBERLAIN DEVELOPERS, INC.
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.

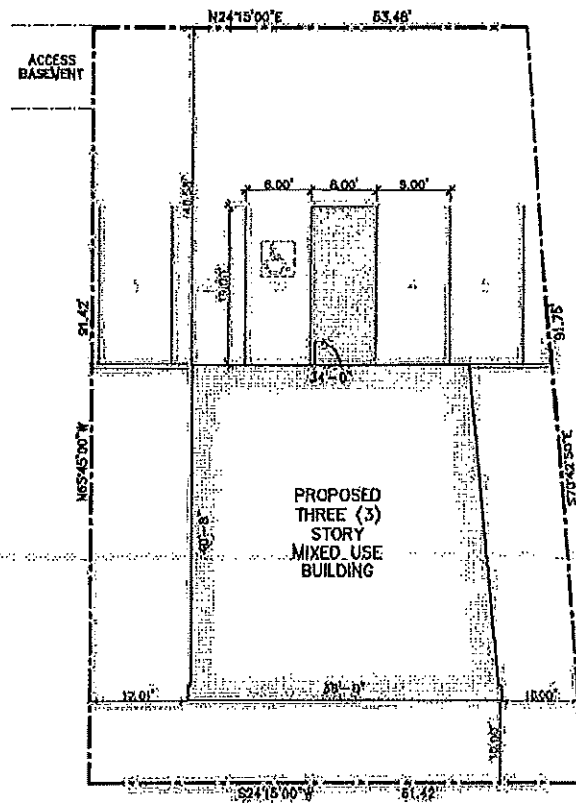
Section III All Ordinances or parts of Ordinances inconsistent with the provisions hereof are hereby repealed.

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

Laura Borchers, Borough Clerk, RMC

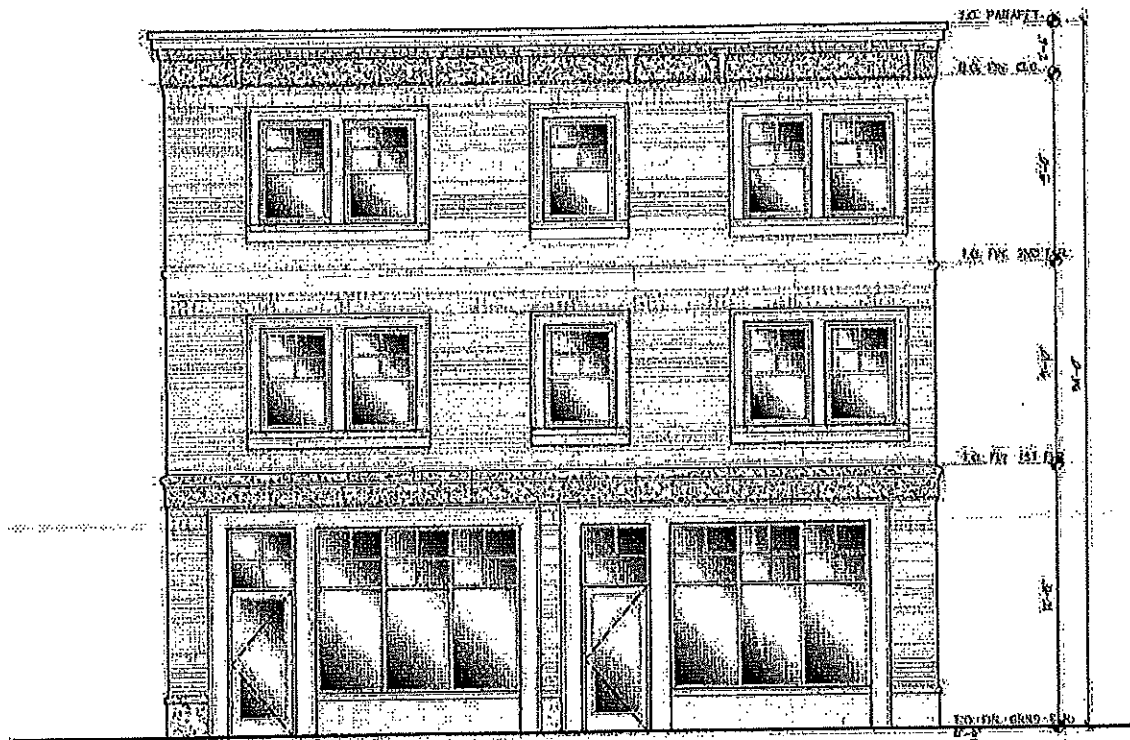
Thomas W. Randall, Mayor

EXHIBIT B



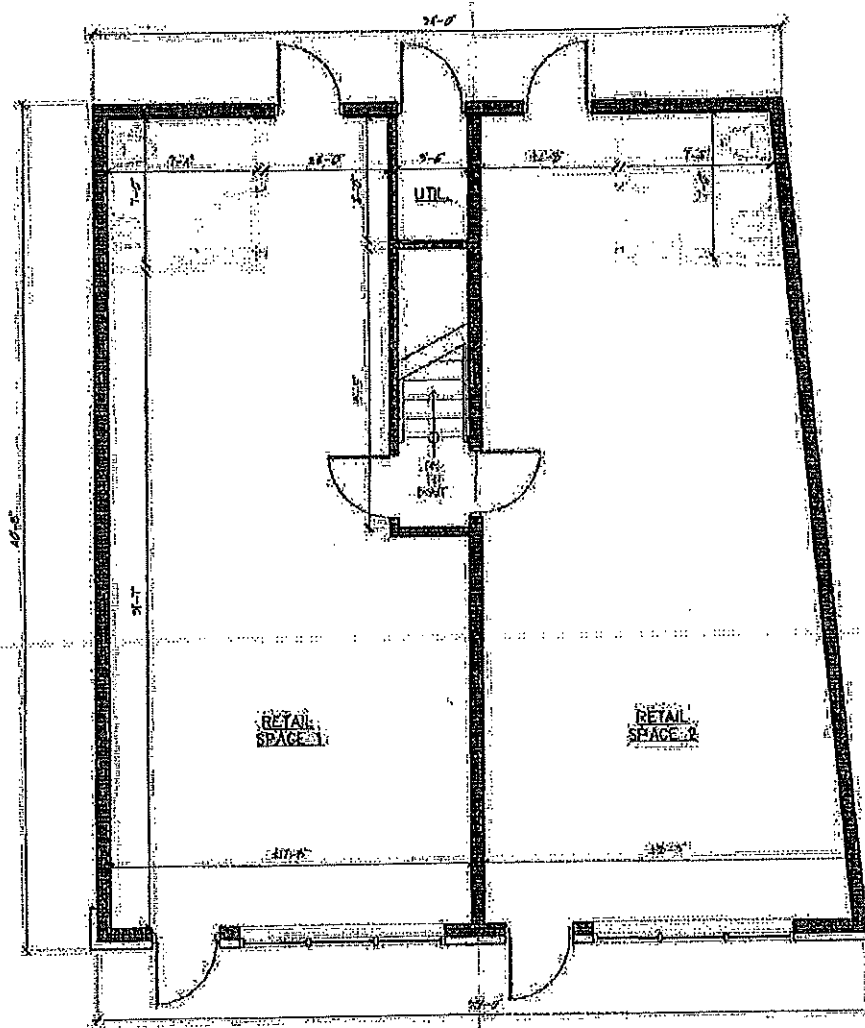
MAPLE AVENUE
(NORTH MAPLE AVEN.)





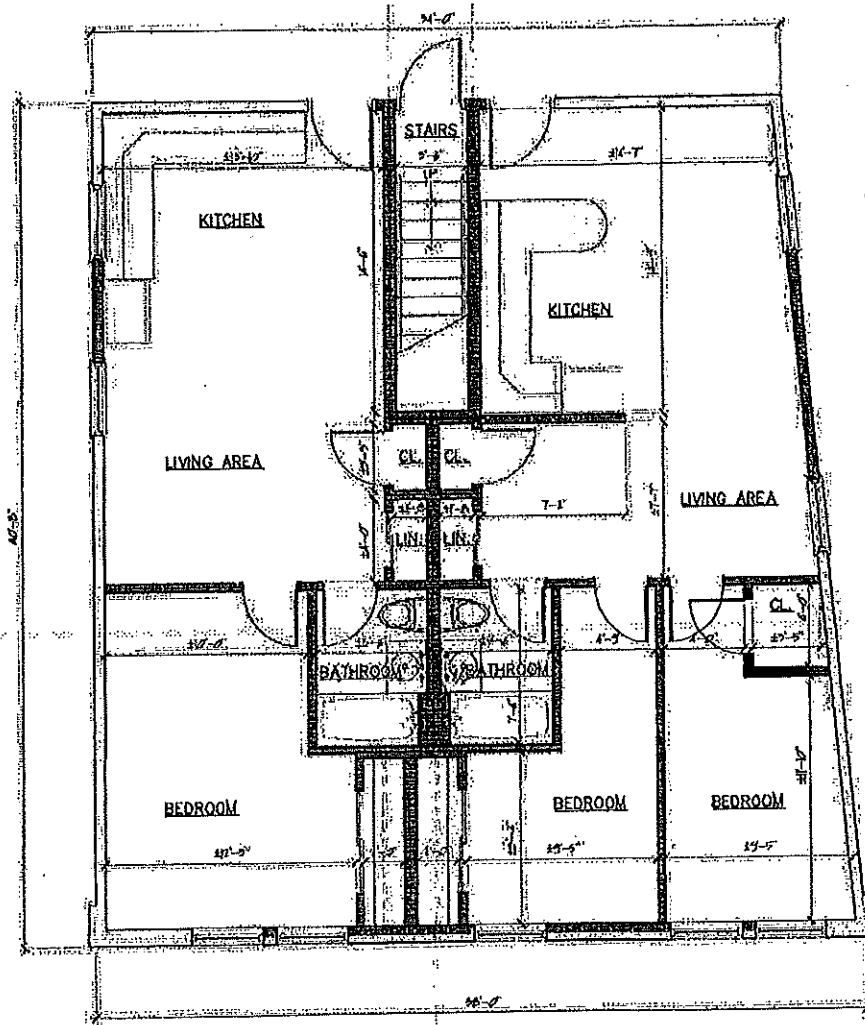
FRONT ELEVATION

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



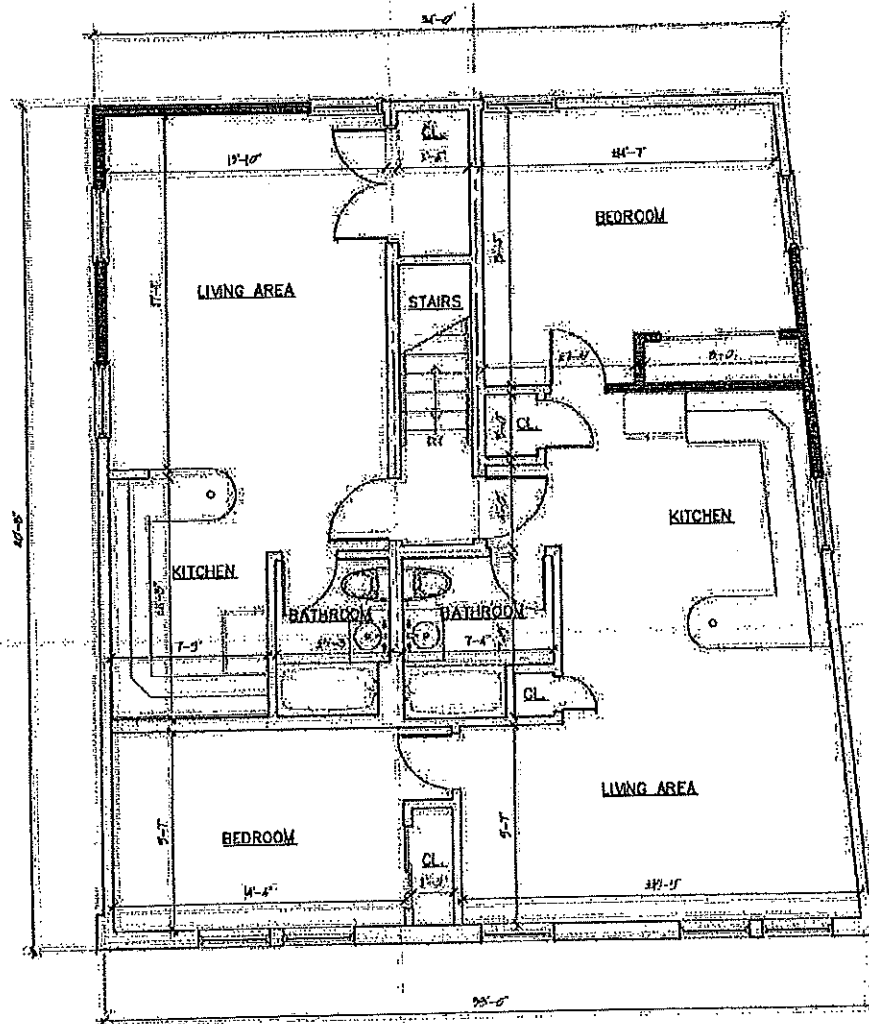
GROUND FLOOR PLAN

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



SECOND FLOOR PLAN

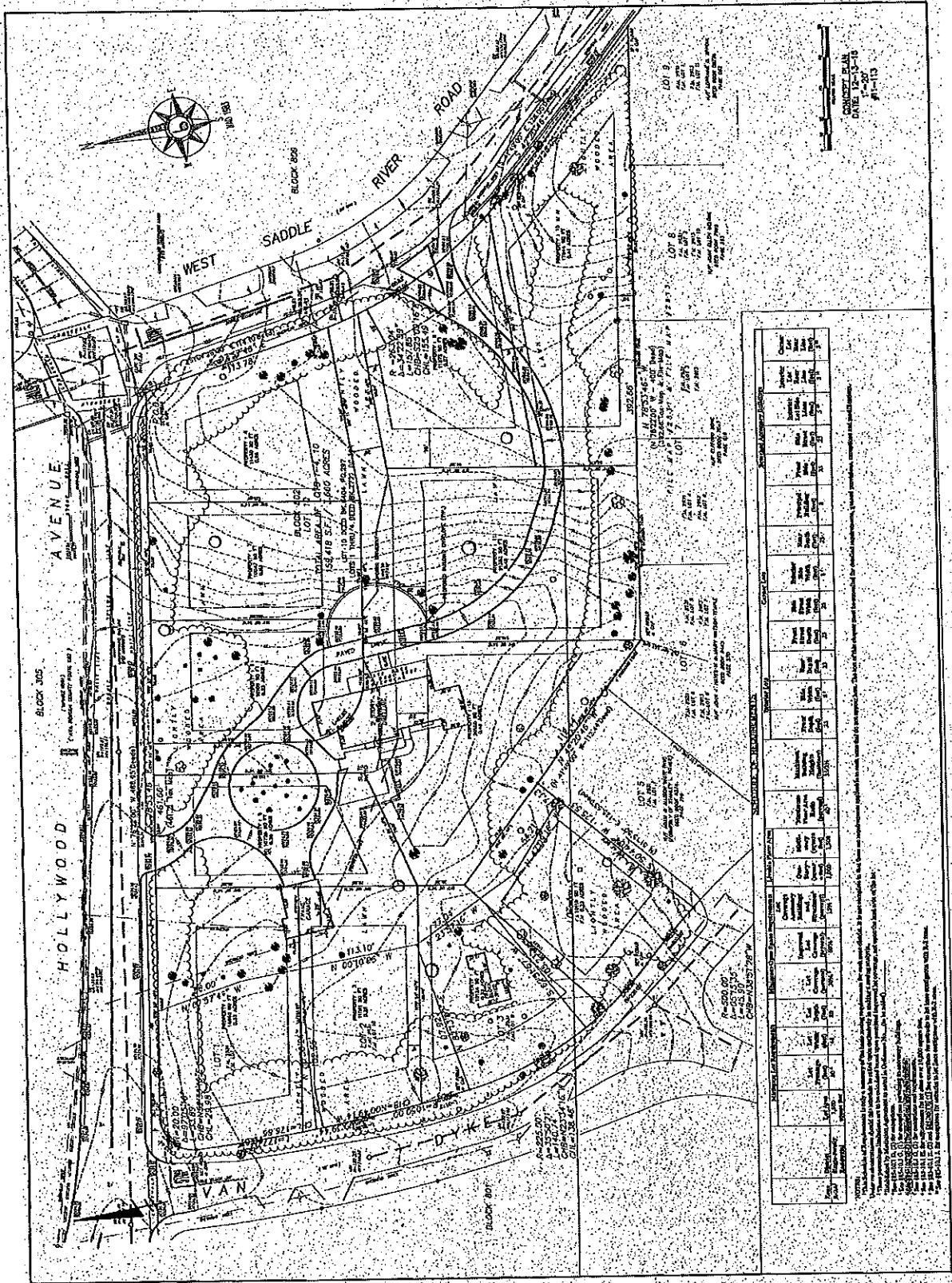
SCALE: 1/4"=1'-0"



THIRD FLOOR PLAN

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

EXHIBIT C



ZONING

85 Attachment 1

Borough of Ho-Ho-Kus, New Jersey

Schedule of Requirements

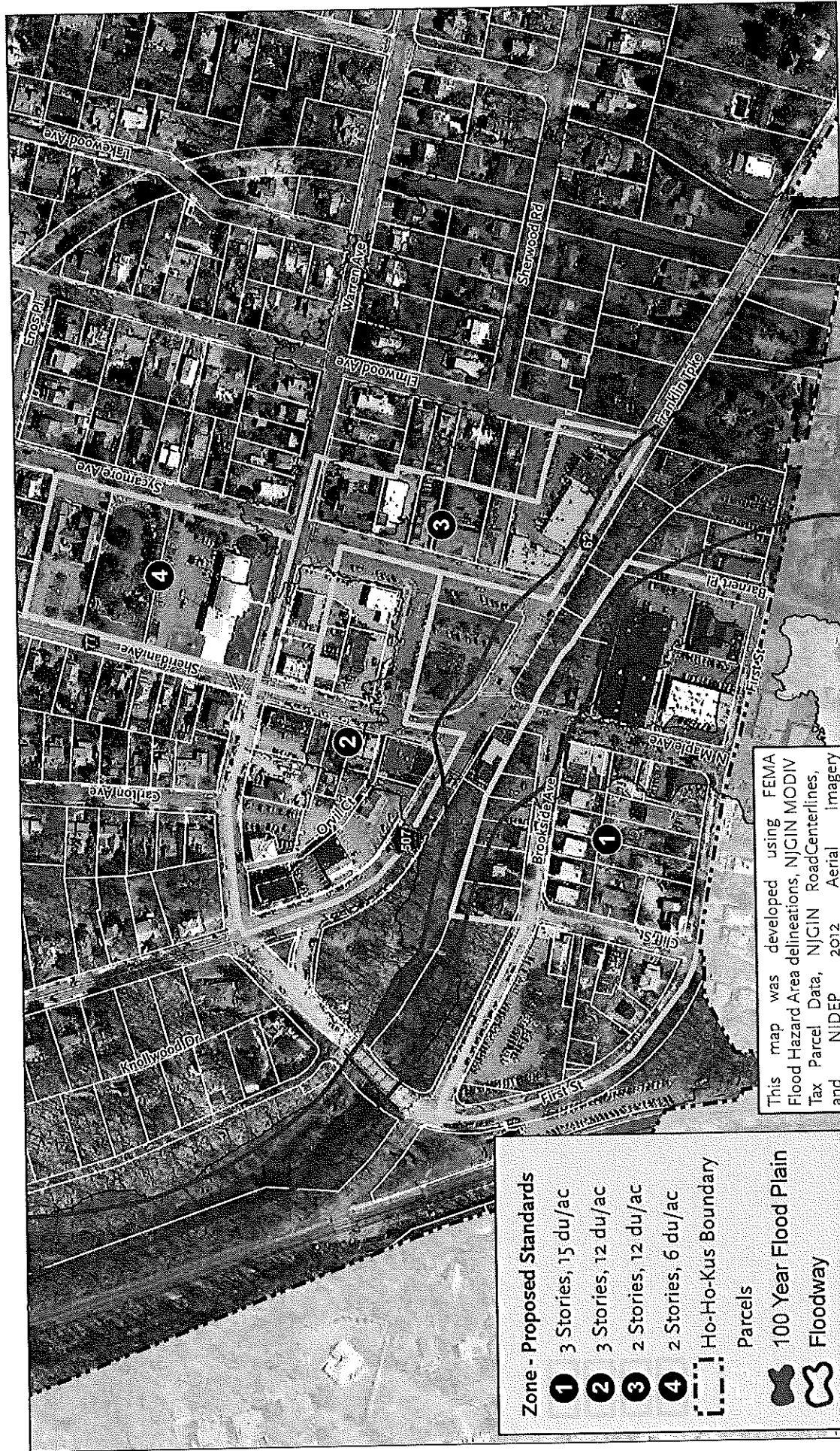
AMENDMENT TO ADD R-2A ONLY

Zone	District	Minimum Lot Requirements				Minimum Open Space Requirements				Lot	Corner Lots				Detached Accessory Buildings			
		Lot Area (sq. ft.)	Lot Width (feet)	Lot Depth (feet)	Lot Coverage (percent)	Improved Coverage (percent)	Let Coverage (percent)	Let Coverage (percent)	Let Coverage (percent)	Let Coverage (percent)	Front Depth (feet)	Side Width (feet)	Rear Width (feet)	Principal Building (feet)	Front Side (feet)	Side Street (feet)	Interior Lot Side (feet)	Interior Lot Rear (feet)
R-2A	Substantially Reallocated	7,200	48	60	31%	65%	31%	15%	15%	15%	25	25	25	25	25	25	25	25

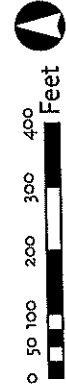
NOTES: 1. This Schedule of Requirements is only a summary of the basic zoning requirements for each zone district. It is not complete in that there are requirements applicable to each zone that do not appear here. The text of this chapter must be consulted for detailed requirements, general provisions, exceptions and modifications.

- 2. Under no circumstances shall this schedule be relied upon exclusively in making a zoning decision.
- 3. These percentages limitations are to be calculated based upon permitted improved lot coverage, not upon the total area of the lot.
- 4. "Front" is defined as the side of the lot nearest the street.
- 5. "Side" is defined as the side of the lot adjacent to the street.
- 6. "Rear" is defined as the side of the lot furthest from the street.
- 7. See §§ 85-10.1 (C) for exceptions pertaining to accessory buildings.
- 8. See §§ 85-10.1 (D) for exceptions and requirements.
- 9. See §§ 85-10.1 (E) for exceptions and requirements.
- 10. See §§ 85-10.1 (F) for exceptions for lot areas over 10,000 square feet.
- 11. See §§ 85-10.1 (G) and §§ 85-10.1 (H) for exceptions for setbacks in lot lines contiguous with R-2 zone.
- 12. See §§ 85-10.1 (I) for exceptions for setbacks in lot lines contiguous with R-2 zone.

EXHIBIT B



Clarke Caton Hintz
 Architecture
 Planning
 Landscape Architecture



Proposed Downtown Overlay Inclusionary Zones Addressing Unmet Need

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

**APPENDIX B – MAY 2025 COURT ORDER, FOURTH ROUND DECLARATORY
JUDGMENT FILING**

The Hon. Lina P. Corriston, J.S.C.
Superior Court of New Jersey
Bergen County Justice Center
10 Main Street
Hackensack, New Jersey 07601

PREPARED BY THE COURT:

IN THE MATTER OF THE DECLARATORY JUDGMENT ACTION OF THE BOROUGH OF HO-HO-KUS, BERGEN COUNTY PURSUANT TO P.L. 2024, CHAPTER 2	SUPERIOR COURT OF NEW JERSEY LAW DIVISION - CIVIL PART BERGEN COUNTY DOCKET NO. BER-L-694-25 <u>Civil Action</u> ORDER FIXING MUNICIPAL OBLIGATIONS FOR "PRESENT NEED" AND "PROSPECTIVE NEED" FOR THE FOURTH ROUND HOUSING CYCLE
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THIS MATTER, having come before the Court on its own motion, *sua sponte*, on the Complaint for Declaratory Judgment filed on January 25, 2025 ("DJ Complaint") by the Petitioner, Borough of Ho-Ho-Kus ("Petitioner" or "Municipality"), pursuant to N.J.S.A. 52:27D-304.2, -304.3, and -304.1(f)(l)(c) of the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, *et seq.* (collectively, the "FHA"), and in accordance with Section II.A of Administrative Directive #14-24 ("Directive #14-24") of the Affordable Housing Dispute Resolution Program (the "Program"), seeking a certification of compliance with the FHA;

AND IT APPEARING, that on October 18, 2024, pursuant to the FHA (as amended), the New Jersey Department of Community Affairs ("DCA") issued its report entitled *Affordable Housing Obligations for 2025-2035 (Fourth Round)*,¹ therein setting forth the present need and prospective need obligations of all New Jersey municipalities for the Fourth Round housing

cycle (the "DCA's Fourth Round Report");

AND IT APPEARING that, pursuant to the DCA's Fourth Round Report, the present need obligation of the Petitioner has been calculated and reported 0 affordable units, and its prospective need obligation of the Petitioner has been calculated and reported as 218 affordable units, and which calculations have been deemed presumptively valid for purposes of the FHA;

AND THE COURT, having determined that no interested party has filed a challenge to the Petitioner's DJ Complaint by way of an Answer thereto as provided for and in accordance with Section II.B of Directive #14-24 of the Program;

AND THE COURT, having found and determined, therefore, that the present need and prospective need affordable housing obligations of the Petitioner for the Fourth Round housing cycle as calculated and reported in the DCA's Fourth Round Report have been committed to by the Petitioner and are uncontested, and for good cause having otherwise been shown:*

IT IS, THEREFORE, on this 5th day of **MAY, 2025 ORDERED AND ADJUDGED** as follows:

1. That the present need obligation of the Municipality, be, and hereby is fixed as zero (0) affordable units for the Fourth Round housing cycle.
2. That the prospective need obligation of the Municipality, be, and hereby is fixed as two hundred eighteen (218) affordable units for the Fourth Round Housing cycle; and
3. That the Petitioner is hereby authorized to proceed with preparation and adoption of its proposed Housing Element and Fair Share Plan for the Fourth Round, incorporating therein the present need and prospective need allocations aforesaid (and which plan shall include the elements set forth in the "Addendum" attached to Directive #14-24), by or before June 30, 2025, as provided for and in accordance with Section III.A of Directive #14-24, and without further delay.

IT IS FURTHER ORDERED, that a copy of this Order shall be deemed served on the Petitioner and Petitioner's counsel.

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Lina P. Corrison', is written over a horizontal line.

Hon. Lina P. Corrison, J.S.C.

(X) Uncontested.

*Pursuant to N.J.S.A. 52:27D-304.1, "[i]f the municipality meets th[e] January 31 [, 2025] deadline [for adoption of a binding resolution setting forth a determination of present and prospective fair share obligation for the fourth round], then the municipality's determination of its obligation shall be established by default and shall bear a presumption of validity beginning on March 1, 2025, as the municipality's obligation for the fourth round, unless challenged by an interested party on or before February 28, 2025." The municipality's determination of its present and prospective fair share obligation for the fourth round was adopted prior to January 31, 2025 in accordance with N.J.S.A. 52:27D-304.1, and no challenge was filed in response thereto. A presumption of validity thus attaches to the determination made by the municipality that is set forth in the resolution adopted by the municipality and which is incorporated within this order.

Timothy J. Wiss, Esq. (Attorney ID: 027542007)

Wiss Law P.C.

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Westwood, New Jersey 07675

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Attorneys for Declaratory Plaintiff, Borough of Ho-Ho-Kus

**IN THE MATTER OF THE
APPLICATION OF THE BOROUGH OF
HO-HO-KUS, COUNTY OF BERGEN,
STATE OF NEW JERSEY**

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY**

DOCKET NO.: BER-L-_____

**CIVIL ACTION
AFFORDABLE HOUSING
PER DIRECTIVE # 14-24**

**COMPLAINT FOR FOURTH ROUND
DECLARATORY RELIEF PURSUANT
TO DIRECTIVE# 14-24**

Declaratory Plaintiff, the Borough of Ho-Ho-Kus, County of Bergen, State of New Jersey (hereinafter the "Borough"), a municipal corporation of the State of New Jersey, with principal offices located at 333 Warren Avenue, Ho-Ho-Kus NJ 07423, by way of this Declaratory Judgment Action as authorized under Directive # 14-24 of the Administrative Office of the Courts, alleges and says:

Background

1. The Borough of Ho-Ho-Kus is a municipal corporation of the State of New Jersey.
2. The Planning Board of the Borough of Ho-Ho-Kus (hereinafter, "Planning Board") is a municipal agency created and organized under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., ("MLUL"), and, among other duties and obligations, is responsible for adopting the Housing Element and Fair Share Plan ("HEFSP") of Ho-Ho-Kus's Master Plan.

3. Through this Declaratory Judgment Action, the Borough seeks the following relief in relation to its Fourth Round (2025-2035) affordable housing obligation: (a) to secure the jurisdiction of the Affordable Housing Alternative Dispute Resolution Program (the "Program") pursuant to P.L. 2024, c.2 (hereinafter, the "Act") and the Court, pursuant to Directive # 14-24; (b) to have the Program and the Court approve the Borough's Present and Prospective affordable housing obligations as set forth in the binding resolution adopted by the Borough, attached hereto as **Exhibit 1**; (c) to have the Program and the Court approve a continued vacant land adjustment as part of its Fourth Round HEFSP to be adopted by the Planning Board and endorsed by the Council and issue a conditional or unconditional "Compliance Certification" pursuant to the Act or other similar declaration; (d) to the extent it is not automatically granted pursuant to the Act, through the filing of this Declaratory Judgment Action and binding resolution, to have the Program and the Court confirm the Borough's immunity from all exclusionary zoning litigation, including builder's remedy lawsuits, during the pendency of the process outlined in the Act and for the duration of Fourth Round, i.e., through June 30, 2035; and (e) to have the Program and the Court take such other actions and grant such other relief as may be appropriate to ensure that the Borough receive and obtain all protections as afforded to it in complying with the requirements of the Act, including, without limitation, all immunities and presumptions of validity necessary to satisfy its affordable housing obligations voluntarily without having to endure the expense and burdens of unnecessary third party litigation.

COUNT I

ESTABLISHMENT OF JURISDICTION UNDER P.L.2024, C. 2

4. The Borough repeats and realleges each and every allegation as set forth in the previous paragraphs of this DJ Action as if set forth herein in full.

5. The Act represents a major revision of the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 *et seq.*
6. Among other things, the Act abolished the Council on Affordable Housing (hereinafter, "COAH"), and replaced it with seven retired, on recall judges designated as the Program. Among other things, the Act authorized the Director of the Administrative Office of the Courts, (hereinafter, respectively, "Director" and "AOC") to create a framework to process applications for a compliance certification.
7. On or about December 13, 2024, the Director issued Directive # 14-24, which among other things, required municipalities seeking compliance certification to file an action in the form of a declaratory judgment complaint and Civil Case Information Statement in the County in which the municipality is located within 48 hours after the municipality's adoption of a binding resolution as authorized under the Act and attach a copy of said binding resolution to the Declaratory Judgment Action.
8. On January 28, 2025, the Borough adopted a binding resolution establishing its present and prospective affordable housing obligations within the statutory window of time set forth in the Act and in accordance with the methodology and formula set forth in the Act, a certified copy of which resolution is attached to this Declaratory Judgment Action as **Exhibit 1**.
9. Based on the foregoing, the Borough has established the jurisdiction of the Program and the Court in regard to this Declaratory Judgment Action for a Fourth Round compliance certification as set forth hereinafter.

WHEREFORE, the Borough of Ho-Ho-Kus seeks a declaratory judgment for the following relief:

- a. Declaring that the Borough has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as **Exhibit 1** to this Declaratory Judgment Action or to adjust such determination consistent with the Act;
- b. Declaring the Fourth Round present and prospective affordable housing obligations of the Borough under the Act;
- c. Declaring the approval of the Borough's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Borough Council, including, as appropriate and applicable, (i) an adjustment to its Present Need, also referred to as the rehabilitation obligation; (ii) a continued Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (iii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); (iv) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (v) an adjustment based upon any ruling in litigation involving affordable housing obligations; and/or (vi) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;
- d. Declaring that the Borough continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- e. Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive # 14-

24 to the Borough for the period beginning July 1, 2025 and ending June 30, 2035; and

- f. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

COUNT II

DETERMINATION OF THE FOURTH ROUND PRESENT AND PROSPECTIVE NEED OF THE BOROUGH OF HO-HO-KUS

10. The Borough repeats and realleges each and every allegation set forth in the previous paragraphs of this Declaratory Judgment Action as if set forth herein in full.

11. The Act adopted the methodology to calculate every municipality's present and prospective need affordable housing obligation for the Fourth Round (2025-2035) and beyond.

12. The Act directed the Department of Community Affairs ("DCA") to apply the methodology and to render a non-binding calculation of each municipality's present and prospective affordable housing obligations to be contained in a report to be issued not later than October 20, 2024.

13. The DCA issued its report on October 18, 2024.

14. Pursuant to the October 18, 2024 report, the DCA calculated the Borough's present and prospective affordable housing obligations as follows:

PRESENT NEED OBLIGATION	FOURTH ROUND PROSPECTIVE NEED OBLIGATION (2025-2035)
0	218

15. Pursuant to the Act, a municipality desiring to participate in the Program is obligated to adopt a “binding resolution” determining its present and prospective affordable housing obligations to which it will commit based upon the methodology set forth in the Act.
16. On January 28, 2025, the Borough adopted a binding resolution, a copy of which resolution is attached hereto and made a part hereof as **Exhibit 1** to this Declaratory Judgment Action.
17. The binding resolution maintains that the Present (“Rehabilitation”) Need obligation of the Borough is zero (0) and its Prospection Need obligation is two hundred eighteen (218) units (prior to a Fourth Round vacant land adjustment).
18. The Borough seeks the approval of and confirmation by the Program and the Court of the Present and Prospective affordable housing obligations as set forth in the binding resolution attached hereto and made a part hereof as **Exhibit 1** or the adjustment of those obligations consistent with the Act and the applicable COAH regulations
19. Pursuant to the binding resolution, the Borough reserves all rights to amend its affordable housing obligations in the event of a successful legal challenge, or legislative change, to the Act.
20. Pursuant to the binding resolution, the Borough specifically reserves the right to seek and obtain 1) an adjustment to its Present Need, also referred to as the rehab obligation; 2) a continued Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; 2) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); 3) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; 4) an adjustment based upon any ruling in litigation involving affordable housing obligations; and/or 5) any other

applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations.

WHEREFORE, the Borough seeks a declaratory judgment for the following relief:

- a. Declaring that the Borough has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as **Exhibit 1** to this Declaratory Judgment Action or to adjust such determination consistent with the Act;
- b. Declaring the present and prospective affordable housing obligations of the Borough under the Act;
- c. Declaring the approval of the Borough's Fourth Round HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Council, including, as appropriate and applicable, (i) an adjustment to its Present Need, also referred to as the rehabilitation; (ii) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (iii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); (iv) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (v) an adjustment based upon any ruling in litigation involving affordable housing obligations; and/or (vi) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;
- d. Declaring that the Borough continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;

- e. Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive # 14-24 to the Borough for the period beginning July 1, 2025 and ending June 30, 2035; and
- f. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

COUNT III

HOUSING ELEMENT AND FAIR SHARE PLAN

21. The Borough repeats and realleges each and every allegation set forth in the previous paragraphs of this Declaratory Judgment Action as if set forth herein in full.
22. Pursuant to the Act, a Housing Element and Fair Share Plan (hereinafter, ("HEFSP")) must be prepared adopted by the Planning Board and endorsed, by June 30, 2025.
23. The Borough hereby commits for its professionals to prepare the appropriate HEFSP to address its affordable housing obligations, as determined by the Program and the Court which HEFSP shall apply as appropriate, any applicable adjustments, including, without limitation, 1) an adjustment to its Present Need, also referred to as the rehabilitation obligation; 2) a continued Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; 2) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); 3) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; 4) an adjustment based upon any ruling in litigation involving affordable housing obligations; and/or 5) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations.

WHEREFORE, the Borough seeks a declaratory judgment for the following relief:

- a. Declaring that the Borough has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as **Exhibit 1** to this Declaratory Judgment Action or to adjust such determination consistent with the Act;
- b. Declaring the present and prospective affordable housing obligations of the Borough under the Act;
- c. Declaring the approval of the Borough's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Council, including, as appropriate and applicable, (i) an adjustment to its Present Need, also referred to as the rehabilitation obligation; (ii) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (iii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); (iv) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (v) an adjustment based upon any ruling in litigation involving affordable housing obligations; and/or (vi) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;
- d. Declaring that the Borough continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- e. Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive # 14-

24 to the Borough for the period beginning July 1, 2025 and ending June 30, 2035; and

- f. Declaring such other relief that the program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

COUNT IV

CONFIRMATION OF IMMUNITY

24. The Borough repeats and realleges each and every allegation set forth in the previous paragraphs of this declaratory judgment complaint as if set forth herein in full.
25. Pursuant to the Act, a municipality that complies with the deadlines in the Act for both determining present and prospective affordable housing obligations affordable housing obligations and for adopting an appropriate HEFSP shall have immunity from exclusionary zoning litigation.
26. The Borough has met the deadline for the adoption and filing of its binding resolution (and the filing of this Declaratory Judgment Action in accordance with Directive # 14-24) not later than January 31, 2025 or within 48 hours of resolution adoption, whichever is earlier, by adopting the binding resolution attached to this Declaratory Judgment Action as **Exhibit 1**, and has committed to the adoption of its HEFSP by the June 30, 2025 deadline.
27. Without waiving any judicial immunity from exclusionary zoning litigation that the Borough possesses as a result of any applicable Judgment of Compliance and Repose entered in favor of the Borough in the Third Round, the Borough has qualified for continued immunity under the Act while pursuing its certification of compliance in the instant matter.

WHEREFORE, the Borough seeks a declaratory judgment for the following relief:

- a. Declaring that the Borough has established jurisdiction for the Program and the Court to confirm its Fourth Round present and prospective affordable housing needs as set forth in the binding resolution attached as **Exhibit 1** to this Declaratory Judgment Action or to adjust such determination consistent with the Act;
- b. Declaring the Fourth Round present and prospective affordable housing obligations of the Borough under the Act;
- c. Declaring the approval of the Borough's Fourth Round HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Council, including, as appropriate and applicable, (i) a continued Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (ii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or (iii) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (iv) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (v) an adjustment based upon any ruling in litigation involving affordable housing obligations; and (vi) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;
- d. Declaring that the Borough continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;

- e. Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive # 14-24 to the Borough for the period beginning July 1, 2025 and ending June 30, 2035; and
- f. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

Wiss Law P.C.
Attorneys for the Declaratory Plaintiff,
Borough of Ho-Ho-Kus

By:  Timothy J. Wiss, Esq.

Dated: January 29, 2025

CERTIFICATION PURSUANT TO R. 4:5-1

Timothy J. Wiss, Esq., of full age, hereby certifies as follows:

1. I am a member of the Firm of Wiss Law P.C., attorneys for declaratory plaintiff, Borough of Ho-Ho-Kus.
2. To the best of my knowledge, there is no other action pending in any court or any pending arbitration proceeding of which the matter in controversy herein is the subject and no such other action or arbitration proceeding is contemplated. To the best of my knowledge, there are no other parties who should be joined in this action.
3. The within Complaint was filed and served within the time prescribed by the Rules of Court.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Wiss Law P.C.
Attorneys for the Declaratory Plaintiff
Borough of Ho-Ho-Kus

By:  Timothy J. Wiss, Esq.

Dated: January 29, 2025

CERTIFICATION PURSUANT TO R. 1:38-7(b)

Timothy J. Wiss, Esq., of full age, hereby certifies as follows:

1. I am a member of the firm of Wiss & Bouregy, PC, attorneys for Declaratory Plaintiff, Borough of Ho-Ho-Kus
2. I certify that confidential personal identifiers have been redacted from documents now submitted to the Court and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Wiss Law P.C.
Attorneys for the Declaratory Plaintiff
Borough of Ho-Ho-Kus

By:  Timothy J. Wiss, Esq.

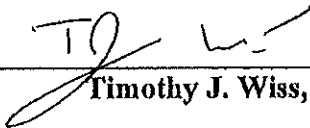
Dated: January 29, 2025

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, notice is hereby given that Timothy J. Wiss, Esq., attorney for the Declaratory Plaintiff, Borough of Ho-Ho-Kus is designated as trial counsel in the above captioned matter.

Wiss Law P.C.
Attorneys for the Declaratory Plaintiff
Borough of Ho-Ho-Kus

By: _____


Timothy J. Wiss, Esq.

Dated: January 29, 2025

EXHIBIT “A”

**MAYOR and COUNCIL of the
BOROUGH of HO-HO-KUS
BERGEN COUNTY, NEW JERSEY**

RESOLUTION # 25-41

**BOROUGH OF HO-HO-KUS, COUNTY OF BERGEN,
RESOLUTION COMMITTING TO DCA'S FOURTH ROUND
AFFORDABLE HOUSING PRESENT NEED AND PROSPECTIVE NEED
NUMBERS AND THE CONTINUING RELIANCE ON A COURT-
APPROVED VACANT LAND ADJUSTMENT**

WHEREAS, the Borough of Ho-Ho-Kus ("Borough"), County of Bergen, State of New Jersey, has a demonstrated history of voluntary compliance with its affordable housing obligations; and

WHEREAS, on March 20, 2024, P.L. 2024, c.2, was signed into law which amended the Fair Housing Act at N.J.S.A. 52:27D-301 *et seq.*, (hereinafter "Amended FHA"); and

WHEREAS, the Amended FHA requires the Department of Community Affairs ("DCA") to produce non-binding estimates of fair share obligations on or before October 20, 2024; and

WHEREAS, the DCA issued a report on October 18, 2024 ("DCA Report") wherein it reported its estimates of the obligations for all municipalities based upon its interpretation of the standards in the Amended FHA; and

WHEREAS, the DCA Report calculates Ho-Ho-Kus Borough's Fourth Round -(2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of zero (0) and a Prospective Need or New Construction Obligation of 218 (prior to a Fourth Round vacant land adjustment as described below); and

WHEREAS, the Amended FHA provides that "All parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by COAH unless those regulations are contradicted by statute, including P.L. 2024, c.2, or binding court decisions" (N.J.S.A. 52:27D-311(m)); and

WHEREAS, COAH regulations and the Amended FHA authorize vacant land adjustments as well as durational adjustments; and

WHEREAS, based on the foregoing, the Borough of Ho-Ho-Kus accepts the DCA calculations of the Borough's fair share obligations and commits to its fair share of zero (0) units present need and 218 units prospective need subject to any vacant land and/or durational adjustments it shall seek as part of the Fourth Round Housing Element and Fair Share Plan it subsequently submits in accordance with the Amended FHA; and

WHEREAS, the Borough of Ho-Ho-Kus reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

WHEREAS, in the event that the FHA is further amended or any rulings or legal precedents arise after the adoption of this Resolution, the Borough of Ho-Ho-Kus reserves the right to adjust its position in response to and in light of same, particularly in the event of any rulings in the *Montvale* case (MER-L-1778-24) or any other such action if such change alters the deadlines and/or requirements placed upon the Borough pursuant to the Amended FHA; and

WHEREAS, in the event that a third party challenges the calculations provided for in this Resolution, the Borough of Ho-Ho-Kus reserves the right to take such position as it deems appropriate in response thereto; and

WHEREAS, in light of the above, the Borough Council of the Borough of Ho-Ho-Kus finds that it is in the best interest of the Borough of Ho-Ho-Kus to declare its commitment to the obligations reported by the DCA on October 18, 2024 subject to the reservations set forth herein including a future Fourth Round vacant land adjustment; and

WHEREAS, in addition to the above, the Acting Administrative Director of the Administrative Office of the Courts issued Directive #14-24, dated December 13, 2024; and

WHEREAS, pursuant to Directive #14-24, “a municipality seeking a certification of compliance with the FHA shall file an action in the form of a declaratory judgment complaint ... in the county in which the municipality is located... within 48 hours after adoption of the municipal resolution of fair share obligations, or by February 3, 2025, whichever is sooner”; and

WHEREAS, the Borough of Ho-Ho-Kus seeks a certification of compliance with the Amended FHA and, therefore, directs its Borough Attorney to file a declaratory relief action within 48 hours of the adoption of this resolution in Bergen County.

NOW, THEREFORE, BE IT RESOLVED on this 28th day of January, 2025 by the Borough Council of the Borough of Ho-Ho-Kus as follows:

1. All of the above Whereas Clauses are incorporated into the operative clauses of this resolution.

2. The Borough of Ho-Ho-Kus hereby commits to the DCA Fourth Round Present Need Obligation of zero (0) units and the Fourth Round Prospective Need Obligation of two hundred eighteen (218) units to be adjusted by a Fourth Round vacant land adjustment described in this resolution, subject to all reservations of rights set forth above.

3. The Borough saves and holds all reservations included herein and permitted by law, including the following:

- a. The right to a vacant land adjustment, durational adjustments, and all other applicable adjustments permitted in accordance with COAH regulations and by law;

- b. The right to adjust its fair share housing obligations in the event of any future legislation or legal decision;
- c. The right to adjust its fair share obligations in the event of a third-party challenge to the fair share obligations and the Borough of Ho-Ho-Kus' response thereto.

4. The Borough of Ho-Ho-Kus hereby directs its Borough Attorney to file a declaratory judgment complaint in Bergen County within 48 hours after adoption of this resolution, attaching this resolution.

5. The Borough of Ho-Ho-Kus authorizes its Borough Attorney to attach this resolution as an exhibit to the declaratory judgment action that is filed with the Superior Court via ECourts per Directive #14-24 or any other such entity as may be determined to be appropriate.

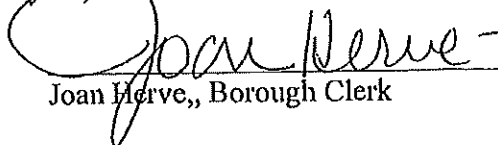
6. The Borough of Ho-Ho-Kus hereby directs its Borough Administrator and/or Borough Clerk to publish this resolution on the Borough's website within 48 hours after adoption of this resolution, attaching this resolution.

7. This resolution shall take effect immediately, according to law.

	Motion	Second	Aye	Nay	Abstain	Absent
Mayor Randall						
Councilmember Troast	X		X			
Councilmember Shell						X
Councilmember Iannelli			X			
Councilmember Crossley		X	X			
Councilmember Policastro						X
Councilmember Moran			X			

CERTIFICATION

I, Joan Herve, Clerk of the Borough of Ho-Ho-Kus, County of Bergen, State of New Jersey, do hereby certify that the foregoing is a true copy of a resolution adopted by the Borough Council at a meeting held on January 28, 2025.


Joan Herve,, Borough Clerk