

BARDENWERPER, TALBOTT & ROBERTS, PLLC

ATTORNEYS AT LAW

BUILDING INDUSTRY ASSOCIATION OF GREATER LOUISVILLE BLDG • 1000 N. HURSTBOURNE PARKWAY • SECOND FLOOR • LOUISVILLE, KENTUCKY 40223
(502) 426-6688 • WWW.BARDLAW.NET

William B. Bardenwerper
Direct dial: 426-0388, ext. 135
Email: WBB@BARDLAW.NET

March 6, 2017

Jon Crumby, Case Manager
Louisville Metro Planning & Design Services
444 S. Fifth Street
Louisville, Kentucky 40202

Re: Docket No. 16CUP1084; Modified Conditional Use Permit (CUP) Plan for senior living facility at 5217 Chamberlain Lane

Dear Jon:

We are herewith filing the Modified CUP Plan for the above referenced property.

Changes to the CUP plan approved on May 4, 2015 include the following:

- Add a deceleration lane for safe access into the proposed senior living facility. (Re-grade the slope for better visibility.)
- Increase footprint square footage for the 2nd and 3rd floors by 7,000 square feet for a new total square footage of 295,719.
- Eliminate the retaining wall in the right-of-way shown on the prior version of the Modified CUP Plan scheduled to be heard at the public hearing subsequently canceled on January 23, 2017. Also eliminated the proposed gate from that version of the Modified CUP plan, because Metro Public Works and Transportation Planning did not want it.

We have had several meetings with representatives from Norton Commons (NC) and the Wolf Pen Preservation Association (WPPA) about these revisions. NC appears to support this Modified CUP Plan. We have done everything possible to earn the support of WPPA. The renderings accompanying this letter help explain those efforts.

For your information, NC and WPPA signed a Settlement Agreement with this applicant following litigation regarding an earlier version of a plan for this site which contemplated an apartment community. That Settlement Agreement, also accompanying this letter, involved this senior living facility which is proposed for modification as explained hereinabove.

Many thanks for your kind consideration.

Sincerely,



William B. Bardenwerper

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Cc: Ian Guttman, Guttman Development Group, LLC
Kent Gootee, Mindel Scott & Associates

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16CUP1084

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SETTLEMENT AGREEMENT AND GENERAL RELEASE

This SETTLEMENT AGREEMENT AND GENERAL RELEASE ("Agreement") is entered into this 20th day of February 2015 by and between NORTON COMMONS, LLC AND TRADITIONAL TOWN, LLC (collectively herein, "Norton Commons"), CHAMBERLAIN, LLC ("Chamberlain"); HILLS LAND & DEVELOPMENT COMPANY ("Hills Company"), RODNEY J. HENDERSON ("Henderson"); CHAMBERLAIN SENIOR CARE, LLC ("Senior Care"); and WOLF PEN PRESERVATION ASSOCIATION, INC. ("Wolf Pen") (collectively, the "Parties").

RECITALS

WHEREAS Norton Commons is the owner of certain real property (the "Norton Property") that is located adjacent to certain real property that is presently owned by Chamberlain (the "Chamberlain Property");

WHEREAS, Hills Company and Chamberlain as owner and applicant filed an application ("1st Application") seeking certain land use approvals deemed necessary to construct residential apartments on the Chamberlain Property (the "Old Project");

WHEREAS, Hills Company and Chamberlain also sought approval from the Louisville and Jefferson County Metropolitan Sewer District to make use of that certain variable detention retention basin easement (recorded in the Office of the Clerk of Jefferson County, Kentucky in Deed Book 8542, Page 168) (the "Detention Basin") in connection with its development of the Old Project on the Chamberlain Property;

WHEREAS, a dispute arose between, in part, Norton Commons, Hills Company, Chamberlain and Henderson pertaining to the 1st Application and its proposed use of the Detention Basin in connection with the proposed development of the Old Project on the Chamberlain Property;

WHEREAS, Norton Commons and Wolf Pen brought an action in Jefferson Circuit Court, Civil Action No. 11-CI-07629, against Louisville Jefferson County Metropolitan Sewer District, Hills Company and Chamberlain, LLC, arising out of the aforementioned dispute (the "State Court Action");

WHEREAS, Chamberlain, LLC filed a lawsuit against Hills Company in Division 1 of the Jefferson Circuit Court, Civil Action No. 14-CI-02967 which was removed to U.S. District Court for the Western District of Kentucky, Case No. 3:14-cv-00448-CRS and Hills Company filed a Third Party Complaint in that action against Henderson, Norton Commons and Wolf Pen (the "Action"). This Action arose out of or was related to the aforementioned dispute;

WHEREAS, Chamberlain, Henderson, Hills Company and Senior Care now desire to construct a related assisted, memory, and independent care living facility (the "New Project") on the Chamberlain Property. The New Project is more particularly defined by the site development plan and renderings (the "New Project Plans") collectively attached hereto as Exhibit A;

WHEREAS, in order to construct the New Project on the Chamberlain Property, Chamberlain, Henderson, Hills Company and Senior Care will need to secure certain land use and other administrative approvals prior to commencing construction of the New Project;

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WHEREAS, Norton Commons is willing to withdraw any objection to the New Project and the New Project Plans in accord with the terms of this Agreement;

WHEREAS, in light of the foregoing, the Parties to this Agreement now desire to settle all of the claims alleged, or that could have been alleged in the Action as well as to set forth their agreement regarding the future development of the New Project as described below

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NOW, THEREFORE, the Parties agree as follows:

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AGREEMENT AND RELEASE

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1.1 All of the above paragraphs are a part of this Agreement and Release and are not merely recitals.

1.2 **CONTINGENCIES OF GENERAL RELEASE.** Norton Commons agrees to withdraw any objection to the New Project and New Project Plans to be submitted for review by Chamberlain, Hills Company and Senior Care subject to the following:

a. Approval of the New Project and the New Project Plans by all applicable agencies in substantially the same form as they exist on the date of this Agreement. It is expressly understood and agreed if the New Project or the New Project Plans are materially modified, or otherwise altered, at any time, that Norton Commons reserves the right to oppose at law or otherwise the modified project and any modifications or alterations to the New Project Plans. Further, Chamberlain, Hills Company and Senior Care agree to provide written notification to Norton Commons and Wolf Pen of any proposed modifications, or alterations to the New Project or the New Project Plans at least twenty-one (21) days in advance of applying for any approval by any agency of the modifications, or alterations.

b. Chamberlain, Hills Company and Senior Care agree that upon securing site disturbance permits for the construction of the New Project pursuant to the New Project Plans to record a restrictive covenant that runs with the land against the Chamberlain Property that prohibits in perpetuity: (1) the construction of multi-family residential apartments on the Chamberlain Property; and (2) the use of the Detention Basin easement in connection with any future development of the Chamberlain Property.

1.3 **GENERAL RELEASE.** Subject to fulfillment of the contingencies described in Section 1.2 and the limited reservation of rights described in Section 1.2a, the Parties to this Agreement hereby mutually agree to settle, waive, release, and discharge any and all legal and equitable claims, demands, actions, or causes of action, regardless of whether now known or unknown, asserted or unasserted, which any of the Parties has or may have as of the date of execution of this Agreement against each other that pertain to the Old Project and development of the New Project pursuant to the New Project Plans, including, but not limited to, claims asserted or that could have been asserted in the State Court Action and/or the Action. The Parties further agree that said releases shall forever release, acquit, hold harmless, and discharge each of the Parties from any and all claims, demands, actions, causes of action, obligations, damages, costs and expenses (including attorneys' fees and legal costs) whether specifically mentioned or not that any of the Parties could have claim existed at or prior to execution of this Agreement with respect to the foregoing matters. Notwithstanding the foregoing, nothing in this Agreement shall be construed to limit or abridge any of the rights of the Wolf Pen and/or its members, with respect to the development of the New Project, including the right to review, comment upon,

support or oppose the New Project and to take any actions authorized under local, state, or federal law to assure compliance with all applicable environmental, zoning, public safety and health requirements with respect to the New Project.

The Parties further agree that upon execution of this Agreement, they will execute an Agreed Order dismissing the Action with prejudice.

Nothing herein shall release any claims any of the Parties have or may have against parties to the State Court Action who are not Parties to this Agreement.

1.4 NON-ADMISSION. The Parties acknowledge and agree that this Agreement shall not be construed in any manner as an admission of any liability or obligation on the part of any Party.

1.5 LEGAL RIGHTS; SEVERABILITY. It is understood and agreed that the terms of this Agreement shall be binding on and inure to the benefit of the Parties' heirs, devisees, successors, and assigns. Chamberlain, Hills Company, Henderson and Senior Care further agree to ensure by recordation or otherwise that any subsequent owners of the Chamberlain Property, are provided with a copy of this Agreement and agree to bound by the terms of this Agreement. The Parties shall have all of the rights and remedies available at law and equity to enforce their respective rights under this Agreement, including the right to seek specific performance of a parties' respective obligations under this Agreement. No action or inaction by any Party shall be taken as a waiver of its right to insist that any other Party abide by the obligations under this Agreement, unless such waiver is in writing, expressly waives such rights, and is signed by legal counsel for the Party making such waiver. Should any provision of this Agreement be declared or determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the validity of the remaining parts, terms, or provisions shall not be affected thereby and any illegal, invalid, or unenforceable part, term, or provision shall be deemed not to be a part of this Agreement. In such event, the Parties agree that such court may impose any lesser restrictions it finds appropriate to protect the interests of the Parties, their heirs, devisees, successors and assigns.

1.6 CHOICE OF LAW. This Agreement is made and entered into in the Commonwealth of Kentucky, and shall in all respects be interpreted, enforced, and governed by the laws of the Commonwealth of Kentucky. The language of all parts of this Agreement shall in all cases be interpreted as a whole, according to its fair meaning, and not strictly for or against any of the Parties.

1.7 ENTIRE AGREEMENT. This Agreement constitutes and sets forth the entire agreement between the Parties regarding the matters set forth herein and supersedes any and all prior and contemporaneous oral or written agreements or understandings between them. The Parties acknowledge and agree that no representation, promise, inducement, or statement of intention has been made by any Party that is not expressly set forth in this Agreement. No Party hereto shall be bound by, or liable for, any alleged representation, promise, inducement, or statement of intention not expressly set forth in this Agreement. This Agreement cannot be amended, modified, or supplemented in any respect, except by a subsequent written agreement signed by all Parties, or their designated representative.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

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NORTON COMMONS, LLC:

By: _____

Title: _____

TRADITIONAL TOWN, LLC:

By: _____

Title: _____

CHAMBERLAIN, LLC:

By:  _____

Title: MSL Director/Member

HILLS LAND & DEVELOPMENT COMPANY:

By:  _____

Title: Vice President

CHAMBERLAIN SENIOR CARE, LLC:

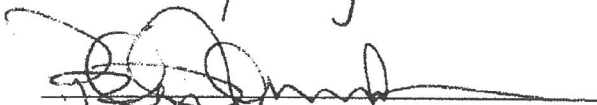
By:  _____

Title: Manager

WOLF PEN PRESERVATION ASSOCIATION, INC.:

By: Tom Fitchell by power of attorney

Title: Attorney / Agent


RODNEY J. HENDERSON

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

NORTON COMMONS, LLC:

By: *Paul A. Allen III*

Title: *MANAGING DIRECTOR*

TRADITIONAL TOWN, LLC:

By: *Paul A. Allen III*

Title: *MANAGING DIRECTOR*

CHAMBERLAIN, LLC:

By: _____

Title: _____

HILLS LAND & DEVELOPMENT COMPANY:

By: _____

Title: _____

CHAMBERLAIN SENIOR CARE, LLC:

By: _____

Title: _____

WOLF PEN PRESERVATION ASSOCIATION, INC.:

By: _____

Title: _____

RODNEY J. HENDERSON

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EXHIBIT A

CHAMBERLAIN SENIOR CARE - 1/22/15

Louisville, KY
#2966

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MSA Mindel, Scott & Associates, Inc.
 Planning & Design Services
 10000 Shelbyville Road, Suite 100
 Louisville, KY 40224
 Phone: (502) 261-1000
 Fax: (502) 261-1001
 Website: www.msa-ky.com

JANUARY, 2015