

SETTLEMENT AGREEMENT

THIS AGREEMENT made this 6th day of May 2016

By and Between: Kim Hogrefe and Janice Hogrefe, residing at 746 Pascack Road, Washington Township, NJ 07676 (hereinafter "Hogrefe")

And Caliber Builders, Inc., located at 29 Third Street, New City, NY 10956 (hereinafter "Caliber")

WITNESSETH:

WHEREAS, Golden Orchards Associates LLP is the owner of the property known and designated as Block 506, Lot 1 on the tax map of the Borough of Hillsdale, and Block 2101, Lots 3 and 7 on the tax map of the Township of Washington, with a street location at Ell Road and Pascack Road (the "Caliber Property"); and

WHEREAS, Caliber, as the developer, proposes to construct a 37 unit adult active community, with 31 units to be constructed in Hillsdale, and 6 units to be constructed in both Hillsdale and the Township of Washington, plus 1 single family home in the Township of Washington that will not be a part of the adult active community, to be subdivided on its own Lot (proposed Lot 38) with the home to be located facing Pascack Road (the "Project"); and

WHEREAS, Hogrefe is the owner of property located at 746 Pascack Road, which is adjacent to the Caliber Property; and

WHEREAS, Caliber received preliminary Site Plan Approval from the Hillsdale Planning Board by Resolution of Approval dated January 29, 2008, and has applied for Final Site Plan Approval with public hearings having occurred and which are continuing; and

WHEREAS, Hogrefe has interposed objections and raised issues and/or stated their intention to object and/or raise issues to Caliber's application for Final Site Plan Approval before the Hillsdale Planning Board alleging substantial amendments to the plans, drainage issues, among other areas of concern; and

WHEREAS, the parties have determined it is in their best interest to settle all disputes between them relating to land use approvals for the Project, without either party conceding the validity of their positions, and to memorialize the settlement in this Agreement.

WHEREAS, Caliber's engineer, Alex J. Zeponi, P.E., P.P. of ENTEC, has prepared revised plans which have been filed with the Planning Board of the Borough of Hillsdale and are identified as follows: Site Plan for Phase I of Golden Orchards an Active Adult Community Project revised through January 29, 2016 ("Phase 1 Plan"); and Minor Subdivision and Site Plan for Golden Orchards an Adult Active Community revised through January 29, 2016 ("Phase 1 and 2 Combined Plan") (sometimes also referred to herein collectively as the "Plan" or "Plans").

NOW, THEREFORE, in consideration of the foregoing recitals incorporated into and made a substantive part of this Agreement, FIFTY-FIVE THOUSAND (\$55,000.00) DOLLARS paid by the Owner to Hogrefe, and the mutual covenants contained herein, the parties hereto, intending to be legally bound, covenant and agree as follows:

1. All of the terms of the Preamble are incorporated herein by reference as if set forth at length herein.
2. In the event Caliber develops the Project as defined herein, Caliber agrees to do so in accordance with the Phase 1 Plan and/or the Phase 1 and Phase 2 Combined Plan as applicable, and the additional drainage improvements as set forth on attached Drawing as set forth hereinbelow. It is understood that the Phase 1 Plan contains improvements proposed to be

constructed in Hillsdale only (“Phase 1”) and the Phase 1-Phase 2 Combined Plan contains improvements proposed to be constructed in both Hillsdale and Washington Township (“Phase 2”). Nothing contained herein shall obligate Caliber to develop the Property, to build the Project, or to construct either Phase 1 or Phase 2 of the Project, but only that should Caliber so elect to build the Project, or either Phase 1 or Phase 2, Caliber will in good faith diligently seek approvals, and do so in accordance with this Agreement, and as set forth in the Plans for the Project referred to herein and identified in the Recitals.

3. Hogrefe agrees to immediately withdraw their pending objections, opposition and/or appeals to the Plans and the Project, before the Hillsdale Planning Board and, if applicable, before any and all regulatory agencies, and shall advise the Hillsdale Planning Board and said agencies that they have no objections to the proposed development of the Caliber Property consistent with the Plans, or the issuance of any approvals/permits consistent therewith. Subject to Hogrefe’s Reservations of Rights contained herein, Hogrefe shall not file any objections, opposition or appeal or oppose in any manner the Plans and the Project, or Caliber’s application for approvals and permits necessary to construct the Project, including any objections or opposition to the applicable Land Use Board of Washington Township, provided the development of the Property is consistent with the approved Plans.

4. Hogrefe agrees not to appeal any approvals granted for the Project that are substantially the same and substantially consistent with this Settlement Agreement and the Plans. In addition, in the event that Caliber (i) is required to reduce the size of the Project or eliminate or change any of the features on the Plan in connection with its approval process, or (ii) chooses to construct the Project with minor deviations to the Plan including but not limited to minor grading changes and relocation of the retaining wall behind Unit 19, Hogrefe agrees that their

obligations under this Agreement shall remain in full force and effect. However any substantial or material change, including material or substantial changes relating to drainage and stormwater management facilities or the attached drawing shall be subject to approval of Hogrefe in their sole and absolute discretion, and if made and not approved by Hogrefe, Hogrefe shall have the right to interpose such objections and/or raise such issues it could have raised on the Project before the revisions.

5. Upon request of Caliber, Hogrefe shall promptly execute and deliver such further instruments as may be reasonably necessary to effect the provisions of this Agreement.

6. Provided Caliber obtains all necessary approvals to construct the Phase 1 project as shown on the Phase 1 Plan, from all applicable boards and agencies having jurisdiction sufficient to support the issuance of building permits, Caliber agrees to comply with the following:

a. Caliber agrees to make certain improvements to the Caliber Property to address Hogrefe's concerns as shown on the attached Drawing dated 4/13/16 (prepared by Alex Zeponi, P.E. following discussions with Hogrefe's engineer, Paul Lapatka, P.E.). These improvements include installation of a 2 ft. high retaining wall (with waterproofing material as a liner to prevent water penetration) along a portion of the property line between Hogrefe Property and Proposed Lot 38 (single family home to be constructed in Township of Washington), installation of a berm along that same property line that directs all surface water from Lot 38 and from the home to be constructed thereon away from the Hogrefe property and toward a swale which will be constructed to direct all such water towards Drainage Area "B" as contained on the Plan. Caliber agrees to minimize infiltration and the impact of groundwater to the maximum extent practicable in the rear yard area of Lot 38 by compacting the soils and not using well-drained soils and to

relocate the infiltrator beds further to the west if soil investigation performed during the course of construction allows.

b. Caliber shall make prompt application for soil movement or any other approvals needed to perform the agreed-upon work as set forth in Paragraph 5a above, to the Township of Washington. Such application shall be made following receipt of Final Site Plan approval from Borough of Hillsdale, but prior to obtaining building permits for work in the Borough of Hillsdale (other than tree removal and general site work) and Caliber shall diligently prosecute the application to conclusion. Caliber also agrees to complete the work within a reasonable period of time following receipt of unappealable approvals for such work. Hogrefe agrees to cooperate and advise the Township of Washington that they support the application and to execute all necessary documents in furtherance of the same. The completion of these improvements is not contingent upon Caliber obtaining Minor Subdivision approval from the Township of Washington, but only soil movement or other such approval for construction of these specific improvements, as set forth in Paragraph 5 a above. Once application is made to the Township of Washington as provided herein, nothing contained herein shall preclude Caliber from proceeding with construction of the Project while it pursues approval of the said application to the Township of Washington.

c. Owner and/or Caliber agree to properly maintain all such improvements as shown on the attached Drawing so they work as designed, and shall place a Deed Restriction in the Subdivision Deed for Lot 38 to require the owner of said Lot, and all future owners, to properly maintain the improvements so as to direct water from the Caliber Property away from the Hogrefe Property and toward Drainage Area "B". Upon Owner's conveyance of Lot 38, Owner and/or Caliber shall have no further obligation to maintain any such improvements.

d. Caliber agrees to construct certain improvements along Pascack Road, in accordance with the Plan approved and developed by the Bergen County Department of Planning, at the time of constructing the Phase 1 improvements. Such improvements include the widening of Pascack Road, installation of a sidewalk along Pascack Road, and paving the top portion of the Hogrefe's driveway. Such improvements shall be performed in a reasonable and workmanlike manner, and Caliber agrees to consider in good faith all reasonable suggestions from Hogrefe regarding such Pascack Road improvements at that time, recognizing that any changes are subject to County approval, and provided that such change will not delay or hinder the completion of such work.

e. Caliber agrees to relocate the driveway and the house on Proposed Lot 38 as shown on the attached Drawing, and to not place the air conditioning units on the most southern face of the home shown as Unit 38D.

f. Caliber agrees to promptly and properly repair any damage caused to Hogrefe property (such as fencing, etc.) if damaged during construction of any of the aforesaid improvements.

7. Caliber agrees to pay Hogrefe the sum of \$55,000 in a lump sum payment for Hogrefe to make certain improvements to their Property to address the alleged water and drainage issues due to the Project. Said payment shall be made by bank check to Hogrefe upon Caliber's receipt of unappealable approval of the Phase 1 Plan and issuance of an initial building permit from the Borough of Hillsdale. Caliber shall notify Hogrefe upon its application for the building permit and upon receipt of such permit.

8. Hogrefe does not agree or consent to (i) any rate of water runoff onto its property from the Caliber Property, (ii) any volume of water discharge on, over or across Hogrefe's

property from the Caliber Property, or (iii) the discharge of any garbage, debris or silt onto Hogrefe's property. Nothing contained herein shall constitute a waiver of any claim for damages by Hogrefe from any stormwater or runoff or drainage onto Hogrefe's property by the withdrawal of Hogrefe's objections.

9. Reservation of Rights.

Hogrefe. Hogrefe specifically reserves the right to file suit against Caliber or its successors and assigns (or others) for breach of the Agreement and seek equitable relief and/or legal relief, including damages for injury to Hogrefe's Property caused by the construction of the Project. Hogrefe also reserves the right to intervene, make comments or object to the Project, but only in the event of a breach or non-compliance by Caliber with (i) any NJDEP requirements, (ii) any condition of any approvals of any governmental agency that would result in a material change under this Agreement, (iii) any change or revisions to the Plans, not permitted under this Agreement, or (iv) any material breach of this Settlement Agreement that Caliber has not cured within a reasonable period of time. Nothing contained herein shall be construed to permit Hogrefe to object, oppose, or appeal any approvals required to construct the Project, unless one of the events listed as (i) – (iv) in the preceding sentence. Nothing contained herein shall be deemed to create any additional claims or new causes of action for injury to Hogrefe's property that does not otherwise exist absent this Agreement.

Caliber. Caliber specifically reserves the right to file suit against Hogrefe, their successors and/or assigns for breach of this Agreement and to pursue any and all claims for damages, including return of the FIFTY-FIVE THOUSAND (\$55,000.00) DOLLARS paid to Hogrefe hereunder, and compensatory damages arising from such breach; and for injunctive relief enjoining Hogrefe from objecting to or opposing the Plans and Project before any agency

or Board with jurisdiction over the Project.

10. Entire Agreement. This Agreement contains the entire agreement between the Parties. There are no promises, agreements, conditions, undertakings, warranties, or representations, oral or written, express or implied, between the Parties relating to the subject matters of this Agreement, other than as set forth herein. This Agreement may not be modified orally or in any other manner other than by an agreement in writing signed by Caliber and Hogrefe, their respective heirs, successors and assigns. This Agreement shall not be introduced or entered into evidence before the Hillsdale Planning Board, as none of the improvements set forth in Paragraph ^{6a}~~5a~~ herein are being performed within the Borough of Hillsdale, but this Agreement may be introduced and/or entered into evidence before the Washington Township Land Use Board (for Phase 2) as a condition of approval, subject to consent and approval of such Board.

11. Authority. Both Caliber and Hogrefe represent that they are fully and completely authorized to enter into this Agreement.

12. Binding. This Agreement shall be binding upon and inure to the benefit of Hogrefe, Caliber and their respective heirs, successors and assigns, and it is intended to run with the land of both the Caliber Property and Hogrefe Property.

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey. In the event that any provision of this Agreement shall be deemed unenforceable, same shall not affect the enforceability of the remaining provisions of this Agreement.

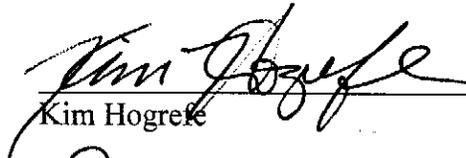
14. Submissions. Caliber shall provide to Hogrefe copies of all correspondence, submissions, documents and applications to all governmental agencies at the time of such

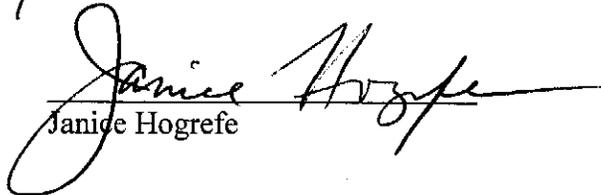
submission to said agency, including the Hillsdale Planning Board, the Washington Township Land Use Board, Washington Township Building Department, Bergen County Department of Planning, and the NJ DEP, until all obligations of the parties hereunder are satisfied.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 6th day of May, 2016.

Witness:

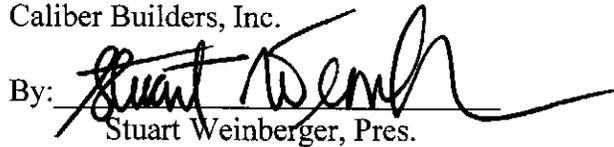



Kim Hogrefe


Janice Hogrefe

Attest:

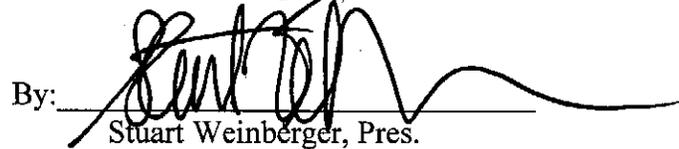
Caliber Builders, Inc.

By: 
Stuart Weinberger, Pres.

By executing below, Golden Orchards Associates LP consents to the terms and conditions of this Settlement Agreement. This consent is binding upon the Successors and Assigns of Golden Orchards Associates LP, including any new association formed to administer the Property.

Witness/Attest:

Golden Orchards Associates, LP By
General Orchard Corp., Gen'l Partner

By: 
Stuart Weinberger, Pres.

