2010-R256

RESOLUTION

WHEREAS, IC/LA Washington Road, L.L.C. (hereinafter referred to as "Intercap") is the owner of a 24.4 acre property, within the 350 acre site surrounding the Princeton Junction train station (the "Redevelopment Area"); and

WHEREAS, in December of 2005, the Redevelopment Area was formally designated as such by the West Windsor Township Council, pursuant to the Local Redevelopment and Housing Act, *N.J.S.A.* 40A:12A-1 *et seq.*; and

WHEREAS, in March 2009, the Township Council approved a Redevelopment Plan for the Redevelopment Area, which created certain districts, including District 1 comprising the Intercap property; and

WHEREAS, in May 2009, Intercap instituted litigation against the Township and the Township Planning Board, challenging both the area designation and the Redevelopment Plan; and

WHEREAS, West Windsor Township Administration has engaged in negotiations with Intercap for the past several months culminating in a proposed Settlement Agreement and Redeveloper's Agreement, which is attached hereto; and

WHEREAS, the Township Council has considered the terms of the proposed Settlement Agreement and finds that it is acceptable, contingent upon approval by the Superior Court, Law Division, Mercer County, at a fairness hearing.

NOW, THEREFORE, BE IT RESOLVED, by the Township Council of the Township of West Windsor hereby authorizes the Mayor and Clerk to execute the aforesaid Settlement Agreement and Redeveloper's Agreement and made a part of this resolution.

Adopted: November 22, 2010

I hereby certify that the above resolution was adopted by the West Windsor Township Council at their meeting on the 22nd day of November 2010.

Sharon L. Young
Township Clerk
West Windsor Township

SETTLEMENT AND REDEVELOPER'S AGREEMENT

IC/L-A Washington Road, L.L.C. (hereinafter referred to as "Washington"), a limited liability corporation of the State of Delaware, with offices at c/o InterCap Holdings, L.L.C. 100 Overlook Center, 2nd Floor, Princeton, NJ 08540 and the Township of West Windsor (hereinafter referred to as "the Township"), a municipal corporation of the State of New Jersey with offices at 271 Clarksville Road, Princeton Junction, New Jersey, agree to enter into this Settlement and Redeveloper's Agreement (the "Agreement") to settle a certain lawsuit entitled *IC/L-A Washington Road, L.L.C. v. Township of West Windsor and the Planning Board of the Township of West Windsor*, docket number MER-L-1191-09 P.W. (the "Litigation") and set forth the terms and conditions for development of the Tract (hereinafter defined) with Washington being recognized as the sole developer and redeveloper for the Tract, as follows:

Settlement of Litigation

1. Upon execution of this Agreement, the Parties shall immediately apply to the Superior Court of New Jersey, Law Division, Mercer County for a stay of all proceedings in the above-referenced matter and for an order setting forth a date of a fairness hearing, as more fully described in Paragraph 15 of this Agreement, and addressing any other matter pertaining to the settlement of the Litigation. This Agreement shall be contingent upon entry of such order and of an order after the fairness hearing approving this Agreement, including the affordable housing provisions, and any other orders as are necessary approving the Agreement. The Agreement shall be treated as void and of no effect if such orders are not entered. Upon entry of an order by the Superior Court of New Jersey, Law Division, Mercer County approving the affordable housing provisions herein after the fairness hearing discussed in Paragraph 15 of this Agreement, Washington shall prepare a stipulation dismissing the above-referred action with prejudice, and the parties shall prepare mutual releases releasing all claims they may have against the other as of the date of the execution of such releases. The stipulation of dismissal and releases shall be held in escrow until the Ordinance (hereinafter defined) is adopted pursuant to Paragraph 6a of this Agreement and the West Windsor Township Planning Board (the "Planning Board") approves a development application by Washington in accordance with Paragraph 4 of this

Agreement or Washington does not terminate this Agreement pursuant to Paragraphs 4 and 6a, after which such stipulation and releases shall be filed and exchanged respectively. The court shall retain jurisdiction over the cause until the stipulation of dismissal has been filed, and the parties shall jointly request that the court place the case on the inactive list until the filing of the stipulation of dismissal. If Washington terminates this Agreement pursuant to paragraphs 4 or 6a, it may apply to the court to have the Litigation reinstated to the active docket.

Nature and Scope of Development on the Washington Tract

2. Number of dwelling units and mix between market and affordable units. The Township agrees that Washington may construct up to 800 units on property it owns commonly known as Block 6, Lots 8, 54, 55.01 and 76 and designated in the March 23, 2009 Redevelopment Plan for Princeton Junction (hereinafter the "Redevelopment Plan") as District 1 and in the codifying ordinance as the RP-1 zoning district (hereinafter, "the Tract"). The Township finds that the additional 450 dwelling units permitted beyond the base density of 350 dwelling units set forth in Section 200-260B(2) of the Township Land Use Code are appropriate in light of the economic feasibility of the project given the amenities (particularly the scale and quality of design of the Promenade and the uses and structures therein that will be provided by Washington); the enhanced architectural treatment within the development as set forth more fully in Paragraph 5 of this Agreement, particularly as it applies to the Promenade and the structures within in and the buildings enclosing it; affordable housing; the redevelopment fee described in paragraph 11; and Washington's agreement to construct and/or contribute to the construction of traffic improvements. Of such 800 dwelling units, up to 760 may be market units with an average of no more than two bedrooms per unit, and a least 40 shall be moderate-income units meeting all standards of the Council on Affordable Housing ("COAH") or as may be otherwise provided by applicable law. The bedroom distribution of the moderate-income units shall be as is required by COAH or as is otherwise required by law. The Township recognizes that an amendment to the Redevelopment Plan and codifying ordinance is necessary with respect to the percentage of affordable units being provided, and this Agreement is contingent upon such amendments, as well as other amendments discussed more fully in Paragraph 6a of this Agreement, being adopted. The Parties agree that Washington shall not be responsible for the

provision of more affordable units than the 40 moderate-income units specified herein, irrespective of any changes in law with respect to the Township's municipal-wide affordable housing obligations.

3. Amount of retail space. Washington shall construct 70,000 square feet of retail space, to be staged with the development of the residential units in the manner described herein. Such retail space shall be located in accordance with the depictions with the Concept Plan (the "Concept Plan") included at page 3 and 14 of the Pattern Book , Princeton Junction, West Windsor Township NJ dated November 15, 2010 (the "Pattern Book"), which is attached hereto as **Exhibit "A."** A certificate of occupancy for the residential units in any building that includes retail space will not be issued until the retail space in such building has been constructed. In no event, however, shall the initial 70,000 square feet of retail space be delivered at less than the following rate: at the certificate of occupancy for the 251st residential unit there will be at least 25,000 square feet of retail space constructed; at the certificate of occupancy for the 501st residential unit there shall be at least 50,000 square feet of retail space constructed; and at the certification of occupancy for the 800th dwelling unit, there shall be at least 70,000 square feet of retail space constructed. The above phasing shall not be tied to occupancy of the retail portion of the Development as the parties recognize that occupancy of the retail portion of the Development will be determined by economic conditions outside of the Parties' control. In agreeing to the foregoing implementation schedule, Washington is ensuring that the retail space within the Development shall exist and be ready for tenant-specific, final fit-outs by the points of time during construction indicated above.

In addition, Washington shall construct at least 30,000 additional square feet of retail space if, for a previous, unbroken eighteen (18) month period, there exists within the existing 70,000 square feet of retail within the Development a 95% occupancy rate for such existing retail space at an average base rent of $30 per square foot, which base rent excludes taxes, utilities, and any common area maintenance charges (the "Retail Construction Contingency"). If there is any month during the aforementioned 18 month period where the existing retail space has occupancy at less than 95% or a base rent less than $30 per square foot, then the Retail Construction Contingency shall not be satisfied and Washington's obligation to construct the additional 30,000 square feet shall not be triggered. If, however, the Retail Construction Contingency is

met no additional certificates of occupancy may be issued for any residential unit, other than the residential units in buildings containing the first 70,000 square feet of retail space. If there are no additional residential units to be constructed, then Washington shall take all steps necessary to ensure that the additional 30,000 square feet of retail space is constructed no later than 36 months after the Retail Construction Contingency is met.

4. Concept Plan. The application for development for the Tract shall include the entirety of the Tract and development shall be consistent with the Pattern Book, including the design, uses, and structures within the Promenade. The development proposed pursuant thereto, including the Promenade, retail space, residential units, ancillary uses, and infrastructure improvements, shall hereinafter be designated "the Development." The Township endorses in principle the Concept Plan included within the Pattern Book, but all parties acknowledge that it is not binding upon the Planning Board and that the development application(s) submitted for the Tract is subject to future hearings pursuant to the Municipal Land Use Law, *N.J.S.A.* 40:55D-1 *et seq*. (the "MLUL"). If the development application(s) is consistent with the Pattern Book and meets all standards and provisions set forth in this Agreement and in the Township Land Use Code, including all standards of general applicability not inconsistent with the amendatory Ordinance attached hereto as Exhibit "B-1," provided that such Ordinance is adopted, and such application is denied by the Planning Board, then Washington may terminate this Agreement, provided that within twenty (20) days of such denial it provides notice to the Township Attorney that it is so terminating the Agreement, in which case the Agreement shall be treated as void and the litigation may be reinstated at Washington's request. In proceeding with an application for the Development, the Parties recognize and agree that given the scope and complexity associated with the Development that Washington may seek extended vesting periods in connection with any application for the Development. In processing any application for the Development, the Planning Board shall strictly adhere to all applicable time frames set forth in the MLUL for review and action on any applications submitted for the Development.

5. Architectural and other design standards. It is the goal of the Parties that the design for the Development be of high architectural quality, with the Promenade and the buildings fronting it be of high quality and be given particular attention. The Parties recognize at

the same time that setting forth an architectural design scheme for the Development at this point could unduly constrain Washington's flexibility in marketing the Development and that a number of different designs could represent the quality architecture that both parties are seeking. In light of this, Washington has prepared, and the Township endorses, the Pattern Book, incorporating quality characteristics that are to be incorporated into the architectural designs Washington eventually submits for its Development. The architectural schemes and styles set forth in that Pattern Book, or, schemes and styles similar in quality and architectural elements and detailing, are acceptable to the Township, and Washington agrees to submit and implement architectural plans consistent therewith.

6. Compliance with Ordinance and Consistent, Existing Provisions of Redevelopment Plan.

a. Attached as **"Exhibit B-1"** is a draft ordinance that shall be applicable to the Tract and supersede Standards Applicable to all Districts and the current RP-1 standards and modify specific goals and policies set forth in the Redevelopment Plan and codified into the Township Land Use Code. Attached as **Exhibit "B-2"** is a draft ordinance that is identical in substance to Exhibit "B-1" and this Agreement and is intended to govern the development of the Tract should Exhibit "B-1" be invalidated by virtue of an Order entered by a court in any litigation that may be filed by a third party challenging the Redevelopment Area designation or the Redevelopment Plan (Exhibit "B-1" and "B-2" shall be collectively referred to as the "Ordinances"). The Parties agree that standards and regulations within the Redevelopment Plan and Township Land Use Code that are generally applicable to all developments inside and outside of the Redevelopment Area that are not inconsistent with the Ordinance and the Pattern Book shall be applicable to the Development. The Township endorses the Ordinances in principle, but both parties recognize that they cannot be binding unless they are approved by Township Council at a public hearing on notice to the public and signed by the Mayor in accordance with the requisites of the New Jersey statutes. Township Council agrees to introduce the Ordinances within 45 days of the approval of this Agreement and refer them to the Planning Board in accordance with the provisions of the MLUL. Within forty-five (45) days of referral of the Ordinances to the Planning Board, the Township shall conduct a second reading and public

hearing on the Ordinances and take action on said Ordinances. However, any approval of the Ordinances that may be granted by the Township following the aforementioned second reading and public hearing shall be contingent upon the Superior Court's approval of this Agreement consistent with Section 1 of this Agreement and may be repealed by the Township if such approval is not forthcoming. If the Ordinances are not adopted within the time frames set forth within this section, then Washington may at its option terminate this Agreement by providing to the Township Attorney a notice that is terminating this Agreement, in which case this Agreement shall be treated as void, and the litigation may be reinstated at Washington's request.

b. If the Ordinances are adopted, Washington shall at such time as it deems appropriate, after the Superior Court's approval of this Agreement consistent with Section 1 of this Agreement, file a Development application consistent with the Ordinance and with all other Land Use Code provisions of general applicability, and with other applicable law, as well as with the Pattern Book.

c. The Ordinances, along with other non-conflicting standards set forth in Sections 200-257 of the Township Land Use Code, shall be treated as ordinance provisions both incorporating and independent of the Redevelopment Plan, and, should the Redevelopment Plan be invalidated by a court of law in an action independent of the litigation described above, such sections, along with the Ordinance, once adopted, shall be treated as remaining in full force and effect.

7. The Promenade.

a. The parties recognize the special importance of the Promenade in the development, as it will serve as the central gathering space for Township residents. It is for this reason that the Pattern Book (**Exhibit "A"**) provides such detail for this space and that the quality of its design is particularly important. While the Township would prefer that the Promenade be fully constructed at the beginning of construction of the Development, as does Washington, it recognizes financial limitations with respect thereto and therefore agrees that sections of the Promenade may be built in phases. Toward that end, the applicable sections of the Promenade

on which a building fronts must be completed and available for public use at the time of issuance of the final certificate of occupancy for that building. At Washington's discretion, Washington may accelerate the construction of the Promenade.

b. The Promenade shall be constructed in a manner substantially consistent with the Concept Plan in the attached Pattern Book (**Exhibit "A"** at pp. 3 and 14). In addition, Washington is amenable to the installation of art work either on a temporary or permanent basis, provided said art work is purchased or provided at the expense of others, is suitably located, and is of a quality and taste acceptable to Washington and to the Township or its designee. The Parties agree that private restrooms within the commercial building depicted for the Promenade should be made available for use by the general public subject to reasonable restrictions on such public use, which restrictions shall be subject to the review and approval of the Township Council, which approval shall not be unreasonably withheld.

c. The Promenade will continue to be owned and will be maintained by Washington. Washington understands and agrees that the Promenade will be maintained in a matter appropriate for its central and special role in the Development. It will be open to the public subject to reasonable rules and regulations established by Washington, which rules and regulations shall be reviewed and approved by the Township Council. Township Council's approval of the same shall not be unreasonably withheld.

8. Residential Site Improvement Standards. The parties recognize that the Development as proposed will not comply with all aspects of the Residential Set Improvement Standards (the "RSIS"). The Township and Planning Board will cooperate with Washington so that it may secure all waivers or exceptions from the RSIS as are necessary.

9. Shared parking in New Jersey Transit and West Windsor Parking Authority facilities. The parties contemplate that retail customers, users of the Promenade, and other visitors will need weekday after-hours and weekend access to New Jersey Transit and West Windsor Parking Authority parking facilities. The Township agrees to support Washington in

achieving this goal provided that such parking facilities will be made available to the general public, as well as the owners and/or users within the Development.

Washington Contributions Toward Necessary Improvements and Costs

10. Redevelopment Fee. Washington agrees to pay the Township a redevelopment fee of $683,000.00. Such fees shall be payable as follows: 50% at the issuance of the building permit for the 1st residential unit within the Development; 25% at the issuance of the certificate of occupancy for the 251st residential unit within the Development; and 25% at the issuance of the certificate of occupancy for the 501st residential unit within the Development.

11. Off-tract roadway assessment.

a. Washington agrees to contribute to the Township, through cash and in-kind contribution, an amount equal to $2,678,090.00 dollars, which contribution represents Washington's pro rata share of off-tract roadway improvements both inside and outside the Redevelopment Area (the "Off Tract Roadway Fee"), which Fee shall be paid in accordance with section 11(c) below. No additional roadway assessment will be charged for the additional 30,000 square feet of retail, should it be built.

b. (1) Subject to the offset for the Roadway Improvements (hereinafter defined) set forth in section 11(c) below, the balance of the Off-Tract Roadway Fee shall, on the date the first payment is due and on an annual basis thereafter, be adjusted by multiplying it by a fraction, the numerator of which is the Index as of the date each payment is made and the denominator of which is the Index as of the date of execution of this Agreement. As used herein, "the Index" means the highway bid price index for the State of New Jersey as published by McGraw Hill Publishing Co. in the "Dodge Building Cost Indexes for United States and Canadian Cities" and shall be the average of the Philadelphia area and the New York Metropolitan area. If, as of any relevant date, the Index is no longer published or issued, the Federal Highway Administration's bid price index or other such index as accurately reflects the

cost of constructing road improvements in New Jersey shall be used and employed in the place and stead thereof.

(2) In the event that Washington fails to pay amounts due and owing, the Township may, in its sole discretion, refuse to issue further construction permits and certificates of occupancies until payment is made.

(3) The payments shall be maintained in a separate escrow account credited to the Township. The escrowed funds shall be returned to Washington if they have not been expended or obligated for use within ten years of the date of receipt of payment.

(4) The return to Washington of any off-tract traffic improvement assessment under this Agreement shall include a pro rata share of actual interest earned less reasonable administrative fees.

(5) The Township shall provide Washington with an annual statement as to the balance held in escrow.

(6) The Township shall use the amounts in Washington's escrow account for the construction of other improvements within the Redevelopment Area.

(7) Subject to the provisions of Section 11(b)(6), the Township may use the amounts in Washington's escrow account without further permission of or notice to Washington. In its discretion, funds may be used by the Township for payment to contractors or others for actual construction, reimbursement to third parties for work performed, the Township's share of multi-jurisdictional improvements, planning, engineering feasibility studies and inspections, and other soft costs and for any other purposes relating to construction.

c. Payment of Off-Tract Roadway Fee; Credit Against such Fee for Roadway Improvements and Timing of Construction Thereof. Washington shall be required to construct off-tract improvements that are necessitated by the Development. Those improvements are set

forth in the September 22, 2010 Memorandum from Gary Davies to Michael Herbert and Gerald Muller and are designated as improvements 9, M, 11, N and 3 (collectively referred to as the "Roadway Improvements"). The Roadway Improvements shall be completed in accordance with a phasing schedule for development and street infrastructure approved by the Planning Board at the time of development application approval. It is contemplated by the by the Parties that the estimated costs of the Roadway Improvements, as certified by the Township Engineer prior to commencement of construction of those Improvements, shall not exceed the Off-Tract Roadway Fee. If, however, the estimated costs of the Roadway Improvements are in excess of the Off-Tract Roadway Fee, the Parties agree to reduce the scope of the Roadway Improvements such that the total costs for said Improvements shall not exceed the total of the Off-Tract Roadway Fee.

Upon the assumption that the total, estimated costs of the Washington Roadway Improvements are less than the Off-Tract Roadway Fee, as currently contemplated by the Parties, Washington shall construct the Roadway Improvements in connection with Washington's construction of the Project, the costs of which Improvements as certified by the Township Engineer shall be a credit against the Off-Tract Roadway Fee. The difference between the actual costs of the Roadway Improvements and the Off-Tract Roadway Fee shall be hereinafter referred to as the "Balance of Roadway Costs." The Balance of the Roadway Costs shall be payable in accordance with the following schedule: (i) 10% of the Balance of Roadway Costs shall be due at the issuance of the building permit for the 401st residential market rate unit with the Development; and (ii) the remaining 90% of the Balance of the Roadway Costs shall be paid on an equal per market rate unit basis for 359 market rate residential units commencing with the issuance of the certificate of occupancy for the 402nd residential market rate unit within the Development and continuing through the issuance of the certificate of occupancy for the 760th market rate unit within the Development. In the event that the actual costs of the Roadway Improvements cannot be calculated at the time of the issuance of the certification of occupancy for the 401st residential, market rate unit within the Development, the total costs of the Roadway Improvements shall be reasonably estimated by the Township Engineer for purposes of establishing the per market rate unit fees owned by Washington from the 401st market rate unit forward. Upon actual certification of costs for the Roadway Improvements, the Parties agree to revised the per market rate unit fee owed by Washington from the 401st market rate unit forward

to ensure that Washington has received full credit for the actual costs of the Roadway Improvements and the Township has received the total value of the Off-Tract Roadway Fee.

12. Other payments. Washington will be responsible for the usual payments during the application and development process, such as application fees and escrow deposits, inspection fees, cash bonds for improvements, sewer connection fees, whatever fees are normally charged by the Construction Code Official. Washington shall not be responsible to pay any fees and/or costs that are not codified or otherwise imposed or collected by the Township as of the date of this Agreement, although Washington shall remain obligated to pay any increase in any fees or costs to which Washington and other Developers and Landowners within the Township would be otherwise subject. Further, as the Development shall provide for both affordable units and public spaces, Washington shall not be responsible for the payment of any affordable housing development fee or open space and/or recreation fee that may otherwise be imposed upon residential or non-residential developments within the Township.

On-Tract and Off-Tract Infrastructure.

13. On-tract infrastructure. Washington shall be responsible for all on-tract infrastructure. It shall offer for dedication all internal streets and the portion of Vaughn Drive, being an on-tract improvement, located within the Tract. If such on-tract infrastructure is constructed at a magnitude in excess of what would otherwise be required to serve the need of the Tract, Washington shall be entitled to pro rata contributions from such future third party developers that have benefited from the construction of such improvements. The improvements in the Concept Plan, including street infrastructure, will not be considered oversized improvements necessitating *pro rata* payments to third party developers.

14. Off-tract infrastructure other than roadway infrastructure. Washington shall be responsible for all off-tract infrastructure necessary to service the tract other than roadway infrastructure. This shall include infrastructure for utilities and upgrading, if necessary, of sewer lines to serve the tract. Washington shall discharge flow from its stormwater management system into a regional detention basin and shall pay its fair share of the costs thereof if such a

regional basin is: (i) to be constructed by the Township or a third party; (ii) to be constructed within 1, 000 feet of Washington's proposed on-site basin; and (iii) engineered by the Township and the Township has entered into a contract for construction of the basin with an estimated completion date within six (6) months of the date that Washington submits an application for preliminary approval. Fair share shall be measured by its flow as a fraction of the total flow projected to flow into the basin. If the three foregoing conditions have not been satisfied prior to the time Washington submits an application for preliminary approval, Washington shall be responsible for on-site stormwater management associated with the Development.

Process

15. Fairness Hearing and Third Party Objections to this Agreement. The parties recognize that a fairness hearing is required, the litigation being settled hereby having been styled by plaintiffs a *Mount Laurel* action, and that this Agreement may go into effect only if the Superior Court of New Jersey, Mercer County, Law Division rules favorably on the application to be made by the parties for an order determining that the affordable housing provisions in this Agreement are satisfactory and approving this Agreement. The Parties will cooperate on testimony if necessary to address the affordable housing issue and any challenged element of this Agreement. The Parties further agree to cooperate in dealing with any objections or objectors to this Agreement.

16. Cooperation with respect to outside agency approvals. Washington recognizes that it must process and pay the cost of all outside agency approvals necessary for the Development. The Township agrees to provide any and all cooperation necessary to obtain these approvals, including attendance at any meetings that may be necessary.

17. Enforcement of Agreement. Subsequent to the dismissal with prejudice of the litigation, and in the event that any Party shall fail to perform any obligation on its part to be performed pursuant to the terms and conditions of this Agreement, then unless such obligation is waived by the Party or Parties for whose benefit such obligation is intended, such failure shall constitute a default, and such Party for whose benefit such obligation is intended, shall have

available any and all rights and remedies that may be provided in equity or under the laws of the State of New Jersey. Prior to bringing any action in connection with enforcement of this Agreement, there shall be an opportunity for cure of the alleged default, as follows: (a) the benefitting Party shall notify the allegedly defaulting Party of such alleged default, with specificity as to the nature of the claimed default; (b) the allegedly defaulting Party shall have ten (10) business days to effect a cure, or to provide alternative means of curing the default; (c) the benefitting Party shall promptly notify the allegedly defaulting Party of its acceptance of the proposed cure, or its alternative election to seek judicial remedies as provided herein. Jurisdiction with respect to any litigation related to this Agreement by way of enforcement or post-judgment relief shall exclusively be in the Superior Court of New Jersey, venued in Mercer County. Service of any complaint, motion or judgment enforcement proceedings may be affected consistent with the terms hereof for the delivery of notices. The Parties hereby consent to service of process in such manner and waive any other service of process. Process may be affected by written notice pursuant to the terms hereof for notices. The Parties expressly waive a trial by jury in any such litigation or proceedings.

Other provisions

18. Liquor licenses. The parties recognize that liquor licenses are important to the success of the retail space. The Township agrees to cooperate with Washington so that it may secure the maximum number of liquor licenses permitted by law.

19. Necessary Township Actions Beyond this Agreement. The Parties recognize that to accomplish the objectives of this Agreement and their Redevelopment objectives, the Township has certain powers pursuant to the Local Redevelopment and Housing Law, *N.J.S.A.* 40A:12A-1 *et seq.*, that could be utilized by the Township to implement the purposes of this Agreement and the Redevelopment Plan. In an effort to implement this Agreement, the Township agrees to consider the utilization of such additional, statutory powers and in the event that the Township exercises such authority(ies) for the benefit of the Parties pursuant to this Agreement, Washington shall be required to reimburse the Township for all such fees and costs.

20. Caption.: Captions and titles to this Agreement and the several sections are inserted for convenience of reference only, and are in no way are to be construed as defining, limiting, or modifying the scope and intent of the various provisions of this Agreement.

21. Validity. In the event any one or more of the provisions of this Agreement shall be held to be invalid, void or unenforceable, the Parties shall, within thirty (30) days of such determination attempt to restructure this Agreement in accordance with its intent.

22. Cooperation. The Parties agree to fully cooperate with each other in order to carry out the provisions of this Agreement.

23. Waiver. Failure to enforce any of the provisions of this Agreement by any other Party shall not be construed as a waiver of those provisions.

24. Entire Agreement. This Agreement (which shall be deemed to incorporate and include the introductory paragraphs, recitals and attached Exhibits) contains the entire agreement between the Parties. No representative, agent or employee of any Party has been authorized to make any representations and/or promises with reference to this Agreement, or to vary, alter, or modify the terms hereof except as stated herein. No additions, changes or modifications, renewals or extension hereof, shall be binding unless reduced to writing and signed by the Parties.

25. Parties Bound. This Agreement shall inure to the benefit of and be binding upon the Parties, their successors and assigns. In this regard, a formal memorandum of agreement shall be prepared for purposes of recording, which memorandum of agreement shall specifically refer to and contain the provisions binding upon any of the properties that were the subject of either litigation involved in this Agreement, for the purposes of making certain that the provisions contained herein continue to run with the land and bind successors and assigns.

26. Assignment. Following execution of this Agreement by all of the Parties, the benefits and obligations of this Agreement may be assigned in whole or in part, subject to the assignee becoming bound to the provisions.

27. Preparation. The Parties acknowledge that this Agreement has been prepared by attorneys for each of the Parties, and therefore, this Agreement shall be construed on a parity among the Parties and any presumption for resolving ambiguities against the drafter shall not apply.

28. Construction. This Agreement has been entered into and shall be construed, governed and enforced in accordance with the laws of the State of New Jersey and the rules and regulations of COAH, or any successor entity. The terms and conditions set forth in this Agreement shall be subject to and construed consistent with COAH regulations or the regulations of any successor entity then in effect, and to the extent inconsistent, the said regulations shall be deemed to preempt the terms and conditions of this Agreement and the Parties shall implement this Agreement consistent with said regulations. Notwithstanding the foregoing, with regard to the affordable units to be located within the Development, the said regulations in effect at the time of preliminary site plan approval shall be deemed to govern the construction of and the controls relating to said units.

29. Notice and Time of Performance. All notices required or given under this Agreement shall be in writing and shall be given by facsimile or by certified mail, return receipt requested, or by Fedex, UPS or a similarly recognized receipted overnight delivery service, as follows:

To Washington:
Steven Goldin
c/o InterCap Holdings
100 Overlook Center, 2nd Floor, Princeton, NJ 08540
e-mail: sgoldin@intercapholdings.com
With copies to:
Carl Bisgaier, Esquire
Richard J. Hoff, Jr., Esquire

2 Eastwick Drive, Suite 101

Gibbsboro, NJ 08026

Fax: (856) 784-7407

e-mail: rhoff@bisgaierhoff.com

To The Township:

Clerk

271 Clarksville Road

Princeton Junction, NJ, 08550

With copies to:

Michael J. Herbert, Esquire

Herbert, Van Ness, Cayci & Goodell, P.C.

22 Chambers Street

Princeton, NJ 08542

Any Party, on notice provided, may change the names and addresses of those persons or entities entitled to notice on behalf of that Party. Notices shall be deemed received upon the date set forth in the return receipt. Should any date on or before which the performance of any act is required under the terms of the Agreement fall on a Saturday, Sunday, legal holiday and/or generally recognized religious holiday in the State of New Jersey (such as Christmas, Good Friday, etc.), the date for performance shall be extended to and shall occur on the next succeeding business day. All references to "days" shall be deemed to refer to calendar days unless the context clearly and unequivocally requires otherwise. Except as otherwise set forth herein, any act to be performed on or before a certain day shall be deemed to be required to be performed on or before 5:00 p.m. on the day set forth and, if performed after 5:00 p.m., shall be deemed not to have been performed on said date, but on the succeeding date.

30. Date of Agreement and Counterpart Signature. This Agreement shall be dated on the face page, the date last signed by any of the Parties. This Agreement may be executed simultaneously or in one or more counterparts, each of which, when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes. Facsimile counterparts

shall be accepted and enforceable. Immediately following the delivery of a facsimile counterpart, the sending Party shall deliver a counterpart with the original execution page.

IN WITNESS WHEREOF, the Parties and/or their authorized representatives have signed this Agreement.

Witness: IC/L-A Washington Road, L.L.C.

By:

Name: Steven E. Goldin, President

STATE OF New Jersey

SS. :

COUNTY OF Mercer :

I CERTIFY that on November 22, 2010, Steven E. Goldin personally came before me and acknowledged under oath, to my satisfaction, that he is named in and personally signed this Settlement Agreement of Litigation ("Agreement") as the President of IC/L-A Washington Road, L.L.C., with full authorization of behalf of the Plaintiff in this Litigation and that the Plaintiff entities into this Agreement in consideration of and for the terms and conditions it contains.

(Notary)

RITA MCLACHLAN
Notary Public - New Jersey
My Commission Expires July 21, 2014

Attested by:

THE TOWNSHIP OF WEST WINDSOR, a New Jersey municipal corporation

By: _____, [Title]

STATE OF NEW JERSEY:

SS.:

COUNTY OF MERCER:

I CERTIFY that on November 24, 2010, Shing-Fu Hsueh Mayor [TITLE] of the TOWNSHIP OF WEST WINDSOR, a New Jersey municipal corporation, personally came before me and acknowledged under oath, to my satisfaction, that he/she signed this Settlement Agreement of Litigation ("Agreement") on behalf of the Township of West Windsor, and that the Township of West Windsor has entered into this Agreement in consideration of and for the terms and conditions it contains as authorized by West Windsor Township Council Resolution No. 2010-R256, dated November 22, 2010.

Gay Marjorie Huber

(Notary)

GAY MARJORIE HUBER
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 2/6/2011

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