

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 and Redeveloper's Agreement, which was approved by the Township Council as Resolution 2010-R256, on November 22, 2010; and

WHEREAS, objections were raised to the aforesaid settlement by the Fair Share Housing Center ("FSHC") at a hearing scheduled before the Honorable Linda Feinberg on April 5 and June 3, 2011 regarding the amount of affordable housing provided in the settlement; and

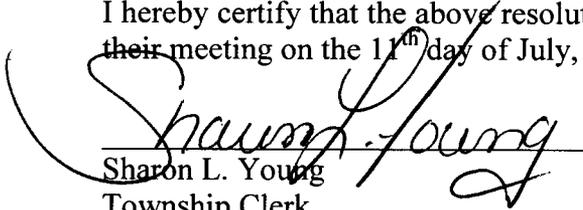
WHEREAS, Intercap and the Township Administration have negotiated an amendment to the settlement that was previously approved by the Township Council; and

WHEREAS, the Township Council has considered the terms of the proposed Amendment to Settlement and Redeveloper's Agreement and finds that it is acceptable.

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 Amendment to Settlement and Redeveloper's Agreement and made a part of this resolution.

Adopted: July 11, 2011

I hereby certify that the above resolution was adopted by the West Windsor Township Council at their meeting on the 11th day of July, 2011.


Sharon L. Young
Township Clerk
West Windsor Township

AMENDMENT TO 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 amend a certain Settlement and Redeveloper's Agreement dated November 22, 2010 and settling 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. as follows:

1. Paragraph 2 of such Settlement and Redeveloper's Agreement is amended to read as follows:

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 dwelling units, 12.2% shall be affordable units, of which 50% shall be moderate-income, 40% shall be low-income, and 10% shall be very low-income as defined by statute. The overall affordability average may be 52%, but no more than such percentage except as may be permitted by COAH or HMFA rules or applicable law. Such units

shall meet all standards of the Council on Affordable Housing (“COAH”) or as may be otherwise provided by applicable law. The bedroom distribution of the affordable 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 ordinances 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 2 of this Amendment, being adopted. The Parties agree that Washington shall not be responsible for the provision of more affordable units than the affordable units specified herein, irrespective of any changes in law with respect to the Township’s municipal-wide affordable housing obligations.

2. Attached as “**Exhibit A-1**” is a draft ordinance that amends Ordinance 2011-05, and attached is “**Exhibit A-2**” is a draft ordinance that amends Ordinance 2011-04. 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 on July 18, 2011 and refer them to the Planning Board in accordance with the provisions of the Local Housing and Redevelopment Law and 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. 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.

3. Prior to the issuance of a certificate of occupancy for the 301st market unit, certificates of occupancy for at least 10% of the affordable units shall be issued. The delivery schedule for affordable units as required by COAH or its successor agency shall thereafter apply. The Township expects that the affordable units will be creditable for fair share purposes and will seek approval from COAH or its successor agency or a court of competent jurisdiction for a determination that such units are creditable for fair share purposes.

4. The Township agrees that the affordability controls shall apply for a 35 year period, after which the affordable units will be free from affordability controls. The Township expects that these units will be creditable for fair share purposes and will seek approval from COAH or its successor agency or a court of competent jurisdiction for a determination that the affordable units are creditable for fair share purposes.

5. Eighty of the affordable units shall be rental units and 18 shall be moderate-income for sale units. They shall be dispersed throughout the project, and the architectural features and exteriors of the buildings housing the affordable units shall be indistinguishable from other buildings not housing such units. There shall be no separate building for the affordable units. Clusters of affordable units within buildings are acceptable provided that no more than 35% of the units in a building are affordable.

6. Paragraph 25 of the Settlement and Redeveloper's Agreement shall be modified so as to require that the memorandum referred to therein includes a covenant running with the land requiring that the owner shall construct only uses established in the current Redevelopment Plan.

7. The Settlement and Redeveloper's Agreement may be terminated by the Plaintiff if the Order described in Paragraph 1 and 15 of such Settlement and Redeveloper's Agreement is not entered or if an appeal is filed with respect to the Court Order or the adoption of the zoning ordinance and redevelopment plan amendments provided for herein. Such termination shall be made by notice within 30 days of the foregoing events. If the Settlement and Redeveloper's Agreement is terminated, this litigation shall be reinstated *nun pro tunc*.

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

Witness:

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

By: _____

STATE OF NEW JERSEY :
SS.:
COUNTY OF MERCER :

I CERTIFY that on _____, 2011, _____ [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. _____, dated _____.

(Notary)