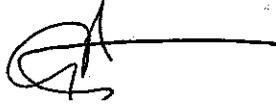


MASON, GRIFFIN & PIERSON

A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

MEMORANDUM

To: Mayor and Council of Princeton
via e-mail & hand-delivery

From: Edwin W. Schmierer, Esq. 
Princeton Attorney

Date: April 15, 2013

Re: **Princeton - Princeton University: Developer's Agreement Regarding Affordable Housing Growth Share Obligation for Redevelopment of Merwick/Stanzworth Sites**

Princeton University has received approval from the Planning Board to construct three hundred twenty-six (326) rental units of housing on the Merwick/Stanzworth sites (see File No. PB120866P). This approval was granted on September 20, 2012 and memorialized by Resolution dated December 10, 2012.

A condition of approval involves the construction of sixty-five (65) units of affordable housing which will qualify for COAH credit for Princeton.

In order to memorialize the commitment for the construction of this additional affordable housing in the Princeton community, a Developer's Agreement needs to be executed. I attach hereto a copy of the proposed Developer's Agreement. The sixty-five (65) units will be addressed as follows:

1. Forty (40) units on the Stanzworth site.
2. Sixteen (16) units on the Merwick site.
3. Five (5) units on Leigh Avenue.
4. Four (4) units at 135 Bayard Lane.

I have also prepared and attach hereto a proposed Resolution authorizing the execution of the Affordable Housing Developer's Agreement by Princeton.

We would appreciate your considering this request as a part of your Agenda on April 22, 2013.

EWS:jv
attachs.

cc: Robert W. Bruschi, Administrator (w/attachs.)
Kathy Monzo, Assistant Administrator (w/attachs.)
Linda S. McDermott, Clerk (w/attachs.)
Robert V. Kiser, P.E., Princeton Engineer (w/attachs.)
Lee O. Solow, Planning Director (w/attachs.)
Richard S. Goldman, Esq., Princeton University Attorney (w/attachs.)
Hannah S. Ross, Esq., Princeton University Attorney (w/attachs.)
Kristen S. Appelget, Director of Community and Regional Affairs, Princeton University (w/attachs.)

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COUNTY OF MERCER

PRINCETON

STATE OF NEW JERSEY

RESOLUTION

WHEREAS, Princeton University received approval from the Princeton Regional Planning Board on September 20, 2012 to permit the construction of three hundred twenty-six (326) rental units to be constructed on the Merwick and Stanworth sites; and

WHEREAS, a component of said approval requires the construction of sixty-five (65) affordable housing units which will qualify for credit for Princeton with the New Jersey Council on Affordable Housing ("COAH") or its successor agency; and

WHEREAS, Princeton University wishes to satisfy this condition of approval by entering into a Developer's Agreement regarding affordable housing growth share obligation; and

WHEREAS, Princeton wishes to memorialize the requirement by Princeton University to construct sixty-five (65) additional units of affordable rental housing for the Princeton community.

NOW, THEREFORE, BE IT RESOLVED by the Council of Princeton as follows:

1. The Mayor and Clerk of Princeton are hereby authorized and directed to execute a Developer's Agreement regarding affordable housing growth share obligation for redevelopment of Merwick/Stanworth sites, Municipality Princeton, New Jersey. The Developer's Agreement authorized by this Resolution is on file in the Office of the Municipal Clerk and may be inspected during regular office hours.
2. A certified true copy of this Resolution upon its adoption shall be furnished to Princeton University, c/o Kristin S. Appelget, Director of Community and Regional Affairs, 22 Chambers Street, Princeton, New Jersey 08542.

CERTIFICATION

I, Linda S. McDermott, Clerk of Princeton, do hereby certify that the above Resolution was adopted by the Princeton Council at its regular meeting held on the 22nd day of April, 2013.

Linda S. McDermott, Clerk
Princeton

DEVELOPER'S AGREEMENT REGARDING AFFORDABLE HOUSING
GROWTH SHARE OBLIGATION FOR REDEVELOPMENT OF
MERWICK/STANWORTH SITES, MUNICIPALITY PRINCETON, NJ

Field Code Changed

THIS AGREEMENT dated this ___ day of _____, 2013 between Princeton, a municipal corporation of the State of New Jersey with offices at One Monument Drive, Princeton, New Jersey 08542 (hereafter referred to as "the Municipality"), and the Trustees of Princeton University, Princeton, NJ 08544 (hereafter referred to as "the Developer").

WHEREAS, the Developer has received site plan and variance approval from the Regional Planning Board of Princeton for redevelopment of improvements on a tract of land situate in the Municipality of Princeton, Mercer County, New Jersey, designated on the tax map as Block ____, Lots ____, which is (hereinafter the "Project") and more commonly known as "Merwick" and the "Stanworth Apartments" (hereinafter, "Merwick-Stanworth" or the "Site") and

WHEREAS, the New Jersey Department of Community Affairs (DCA) had adopted regulations ("Third Round Rules") that would have required that the Merwick-Stanworth project, as a residential project, will generate an affordable housing growth share obligation; and

WHEREAS, the regulations of the Council on Affordable Housing (COAH) were invalidated in significant part by the Appellate Division in October 2010, in *In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council of Affordable Housing*, and the case is on appeal to the Supreme Court; and

WHEREAS, at the request of the Municipality, the Developer has provided an affordable housing plan for the Project that describes the manner in which the Developer intends to provide for affordable housing consistent with the state constitutional obligation currently outlined in Municipality ordinance as twenty percent of the units set aside for residential projects with five or more dwelling units, or a payment in lieu; and

WHEREAS, the Developer is entitled to credit for causing five housing units located at 100-104 Leigh Avenue to be demolished and reconstructed, pursuant to the Developer's Agreement between the Developer and the Borough of Princeton dated August 12, 2007, approved by the Borough in Resolution 2007-R180, on July 24, 2007; and

WHEREAS, the Developer is the owner of a property known as 135 Bayard Lane, Block ____, Lot ____, which property is both adjacent to the Site and also included in the Municipality's Affordable Housing Plan approved by COAH on _____ as a site for four affordable housing units; and

WHEREAS, as part of the proposal, the Developer proposes to use the property at 135 Bayard Lane to produce four housing units; and

WHEREAS, appeals concerning COAH's third round regulations are currently pending before the New Jersey Supreme Court and the affordable housing obligations of the Municipality and the Developer cannot be determined with any certainty at this time; and;

WHEREAS, the Developer's proposal and the Municipality's acceptance of same are subject to a formal agreement and site design which are reasonably acceptable to the Municipality and the University; and

WHEREAS, the approval received by the Developer from the Regional Planning Board of Princeton was memorialized by Resolution adopted on November __, 2012.

NOW, THEREFORE, in consideration of such approval and of the mutual undertakings set forth below, the Municipality and the Developer agree to the following terms and conditions:

Satisfaction of Affordable Housing Obligation

1. The Developer's credit for the five Leigh Ave. units will be applied to the obligation for the Merwick-Stanworth Project.
2. The Developer shall cause, at its expense, 135 Bayard Lane to be renovated and reconstructed to provide four affordable rental units which are credited to the Merwick Stanworth project obligation. These four units will be restricted for use consistent with applicable affordable housing regulations for a period of time not longer than 30 years from first occupancy and compliance with applicable regulations.
3. The Developer shall be responsible for applying for any waivers necessary from DCA, COAH or any other State agency designated to oversee compliance with fair share housing obligations to ensure that the Merwick-Stanworth project and/or the Municipality receives appropriate affordable housing credits for the five off-site units at Leigh Ave. and the four off-site units at 135 Bayard Lane.
4. The Developer shall, through its relationship with ACC OP (Princeton) LLC cause, at its expense, additional units of affordable rental housing up to a maximum of 20% (hereinafter the "Units") to be developed on the Site, in the following phases:
 - a. 16 units will be provided by the conclusion of Phase 1 redevelopment of the Merwick site.

- b. 40 units will be provided by the conclusion of Phase 2 redevelopment of the Stanworth site.
- c. The bedroom breakdown of the affordable rental units shall be consistent with the rules of the Department of Consumer Affairs and the Uniform Housing Affordability Controls of N.J.A.C. 5:26.5 that are in effect at the time of final site plan approval, dated December 10, 2012.

4. In the event the current Affordable Housing Obligation is reduced from its current level by the time Developer obtains a final Certificate of Occupancy for the Phase 2 construction, then the Developer will be entitled to reduce the number of units within the Site allocated for affordable housing for any surplus above the then-current obligation, or to receive credit for the Units in excess of the then-current Obligation, which may be applied to other projects within the Municipality. The Units shall not themselves generate any affordable housing obligation for the Developer.

5. In the event referenced in 4. above, if there is any fractional amount of Affordable Housing Obligation in either Phase 1 or Phase 2, the University shall make a cash payment to the Municipality for such fractional share during that Phase, consistent with Municipality Ordinance 17A-2.25(B), based on the regional pro forma per unit cost of \$152,227 or the pro forma in effect at the time.

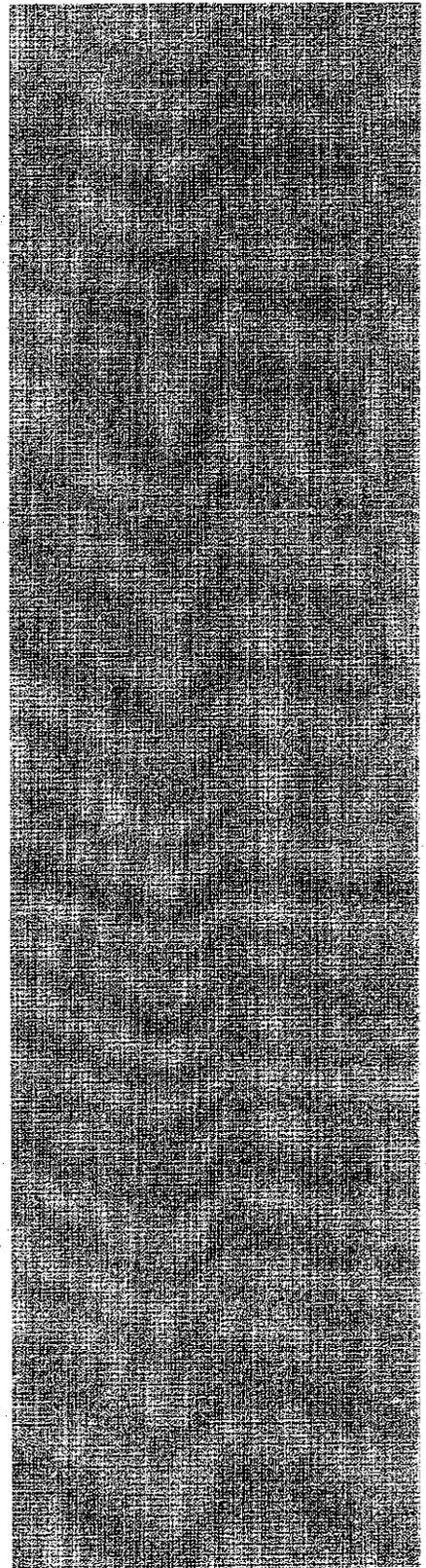
6. The units constructed in Phase 1 and Phase 2 shall be restricted for use consistent with applicable affordable housing regulations for a period of time not longer than 30 years from first occupancy, in compliance with applicable regulations.

Site Design and Approvals

6. The site design shall be reviewed and approved by the Regional Planning Board of Princeton and shall comply with all applicable State and Federal requirements including but not limited to adaptability requirement and design standards of N.J.S.A. 52:27B-123.15. The Developer shall be obligated to obtain all necessary approvals for construction of the Units. The Municipality shall cooperate with the Developer in connection with the obtaining of approvals for the project. Delays relating to approvals for the Units shall not prevent the granting of certificates of occupancy for the Developer's market-rate units on the Site.

Responsibility for Site

7. The Developer shall make arrangements for parking for its employees and agents during the course of the Project.



Waiver of Building Permit and Inspection Fees

8. The Municipality will waive building permit and inspection fees for the Units.

Traffic

9. The Municipality shall direct and redirect traffic as necessary so as to enable the Developer to proceed with reconstruction of the Units at a reasonable pace. The Developer shall reimburse the Municipality for police overtime and such other costs required for such traffic direction, which expense shall be considered a part of project costs.

Whole Agreement, Notice

10. This Agreement sets forth all of the promises, agreements, conditions and understandings between the parties hereto relative to the subject matter set forth herein. Except as herein otherwise specifically provided, no subsequent alterations, amendments or changes to this Agreement shall be binding upon either party unless reduced to writing and signed by each party.

11. All notices hereunder shall be in writing and shall be given by personal delivery or by certified mail, return receipt requested, postage prepaid, addressed to the parties at the addresses as designated by the parties, in writing.

IN WITNESS WHEREOF, the parties hereto have caused this document to be signed as of the date appearing on Page 1.

ATTEST:

Princeton Municipality

Robert Bruschi, Acting Clerk

By: _____
Elizabeth Lempert, Mayor

Trustees of Princeton University

Hannah S. Ross
Assistant Secretary

By: _____
Michael E. McKay
Vice President, Facilities

