

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Land Court Department
Permit Session No. 20 PS 000348 (HPS)

3377 Washington Street, LLC,
Plaintiff,
v.
City of Boston Zoning Board of Appeals
and The Community Builders, Inc.,
Defendants.

TCB’S MOTION TO RECONSIDER EXTENSION
OF NISI ORDER AND ENFORCE SETTLEMENT

The defendant The Community Builders, Inc. (“TCB”) moves for reconsideration of the Court’s 30-day extension of its nisi order and for enforcement of the parties’ settlement reached as mediation. The grounds of this motion are as follows:

The Parties’ Settlement and the Nisi Order

On May 15, 2020, the plaintiff 3377 Washington, LLC, whose sole manager is Monty Gold (together, “Gold”), brought this appeal in Superior Court of variances granted by the Zoning Board for a 202-unit affordable housing project at 3368 Washington, Street, Boston, MA (the “Project”). On August 21, the case was transferred to this Court’s Permit Session.

On March 3 and 10, 2021, the parties and their counsel engaged in mediation on Zoom with former Land Court Justice Leon Lombardi. They reached a settlement, and the undersigned drafted an email stating its terms and emailed it to everyone. Exhibit A. Gold’s counsel accepted that agreement (“Accepted subject to final Agreement”), and TCB accepted it unequivocally. Id.1 When asked by the undersigned whether, by his reference to a final agreement, he meant that the parties’ agreement is not binding, Gold’s counsel agreed that it is binding and stated “I’m just being a lawyer.” Exhibit B (last page of the undersigned’s notes of the mediation).

That agreement resolves the entire dispute. First, it addresses Gold’s objections to the Project – traffic, parking and construction impacts – in a variety of ways. TCB promised to add six more parking spaces in the Project garage when it is built, lease 30 spaces off-site for construction vehicles, and lease 15 spaces off-site permanently as long as a periodic parking

1 Neither the confidentiality provisions of G.L. c. 223, § 23C nor the parties’ agreement to mediate this case prohibit the filing of the parties’ agreement and subsequent negotiations for the purpose of enforcing that agreement. See, e.g., Targus Group Int’l, Inc. v. Sherman, 76 Mass. App. Ct. 421 (2010).

study shows they are reasonably needed. Exhibit A, ¶s 1-3. TCB's obligation to lease 15 spaces off-site included a detailed process for studying the parking situation every five years, including a process for selecting and paying for the consultant, and renewing or not renewing the lease based on that study. *Id.*, ¶ 3.b. All those obligations will continue until Gold transfers the LLC or its property outside his family or that property is redeveloped. *Id.*, ¶ 5. Regarding the additional spaces in the parking garage, the agreement further provides (*id.*, ¶ 4):

TCB will make 6 spaces in the Project garage available for Mr. Gold or his tenants on evenings and weekends at no cost. Anyone using the garage will be subject to TCB's security system, regulations, and policies.

The agreement also addresses Gold's broader concerns with traffic and parking along the Washington Street corridor. TCB agreed to contribute to a transportation study of that corridor. *Id.*, ¶ 7. It also agreed to contribute to a construction mitigation fund. *Id.*, ¶ 6.

Second, the agreement addresses the parties' future relationship. It states that (1) Gold will not oppose or appeal any of permit for the Project or encourage anyone else to do so, (2) he does not know of any intent by its tenant, Turtle Swamp Brewery, to oppose or appeal the Project. *Id.*, ¶s 9 and 10. The agreement even covers an appeal of a potential future project at Gold's property. TCB promised not to oppose or appeal any redevelopment of 3377 Washington Street unless that redevelopment would materially affect the Project. *Id.*, ¶ 11.

Finally, the agreement also states as follows:

This Agreement is binding, but the parties will sign a full Settlement Agreement within 14 days. The litigation will be dismissed with prejudice within 7 days of the full execution of that agreement.

Id., ¶ 8.

On March 12, Gold's counsel reported the case settled to this Court. Exhibit C. On March 12, the Court issued a 30-day *nisi* Order that required the parties to work diligently and in good faith to execute all settlement documents by April 12, or the case would be dismissed unless the Court ordered otherwise. Exhibit D.

On March 17, the undersigned sent Gold's counsel a draft Settlement Agreement. Exhibit E. That Agreement fleshes out TCB's agreement to provide six parking spaces in the Project garage by adding the evening and weekend hours that Gold wanted for himself or Turtle Swamp, and by referring to an future agreement regarding the use of those spaces (*id.*, ¶ 3):

TCB will make six spaces in the Project garage available for 3377 Washington or its tenants during the hours of 6:00 p.m. - 11:00 p.m. on weekdays and noon-midnight on weekends at no cost, under an agreement to be negotiated in good faith when the construction of the garage is completed. Anyone using the garage pursuant to this paragraph will be subject to TCB's security system, regulations, and policies.

However, the last sentence, regarding future TCB's regulations for the garage, was unchanged from the agreement at the mediation (except for the phrase "under this paragraph"). Nevertheless, that reference to regulations has become the reason that Gold refuses to sign the Settlement Agreement. The parties had the following further discussions on that issue:

- On March 22, two days before the agreed-upon 14-day deadline for signature of the Settlement Agreement, Gold's counsel requested: "Please provide a copy of the regulations and policies that Gold is agreeing to be subject to". Exhibit F.
- On March 26, after a phone conversation, the undersigned sent Gold's counsel a revised Agreement adding that TCB's security system, regulations, and policies "shall be commercially reasonable." Exhibit G, ¶ 3.
- On March 29, Gold's counsel stated (*id.*):

He [Gold] says that your client built a similar project with parking at the corner of Quincy Street and Blue Hill Ave. within the last couple of years, so it should already have a set of parking regulations prepared, and he would like to see them.

- On March 30, the undersigned responded as follows, attaching different sample regulations that are more relevant to the Project (*id.*):

The project at Quincy Street and Blue Hill Avenue has a surface parking lot, not an underground garage. Any regulations there would be largely inapplicable. Attached are TCB's regulations for the underground garage at 95 Hyde Park Avenue. Some of these regulations are for residents and would not apply to Mr. Gold or his tenants, but I'm sending them in response to his request. These regulations are not up for negotiation, and TCB reserves the right to modify them as appropriate, but any such regulations for the Project must be commercially reasonable under the Settlement Agreement.

- Later on March 30, the undersigned followed up with a revised Settlement Agreement, in which Paragraph 3 was unchanged. *Id.*
- On April 1, the undersigned reminded Gold's counsel of the April 12 deadline and asked if the settlement was completed. Exhibit H.
- On April 5, Gold's counsel replied as follows: "my client is still looking for a lease with the church. And rules and regs for the parking." *Id.*
- The undersigned responded the same day that "Neither of these documents was a condition of this settlement. Moreover, neither one exists yet, and there was never any chance of having either one for some time." He asked Gold's counsel to call him, and reiterated that request the next day. *Id.*

- On April 8, counsel finally discussed this issue by phone. They agreed to simplify the Paragraph 3 by deleting the reference to a future agreement since all the important terms about the parking spaces in the garage were spelled out. Exhibit I.
- Later that day, Gold’s counsel requested yet another change to the garage parking provision, requiring advance notice of the garage regulations. Exhibit J. TCB agreed to make that change, as well, and attached a final Settlement Agreement. Exhibit K.
- By the morning of April 12, the day the *nisi* order was to expire, the undersigned still had not heard back regarding execution of the Settlement Agreement. After the undersigned called, Gold’s counsel emailed that “our client is not comfortable signing the settlement agreement until and unless he can see rules and regulations for the parking garage. This is directly per his specific instruction.” Exhibit L.

Thus, from March 26 to April 8, TCB revised the provision on the garage parking regulations three times at Gold’s request, requiring them to be commercially reasonable, applied in good faith, and given to Gold when they are drafted. Otherwise, however, that provision remains *verbatim* what the parties agreed to at the mediation (except for the phrase “under this paragraph”). Nevertheless, Gold still refuses to sign the Settlement Agreement because he cannot see the non-existent regulations themselves.

The *nisi* period expired on April 12 without a stipulation of dismissal or any other filing by either party. On April 13, Gold’s counsel emailed a letter advising the Court that this case “has not been fully settled and should not be dismissed”, and requesting a 30-day extension of the *nisi* order. He did not request that extension for both parties, and had not consulted the undersigned about it. A little over an hour later, before the undersigned had had a chance to respond to that request, the Court granted it.

Argument

I. Gold’s Request was Unsupported and Misleading, and the Case Should be Dismissed.

Gold’s request came after the *nisi* deadline had expired. Such a request had to be made by motion, and the failure to act – the failure to file a stipulation of dismissal by April 12 – had to be “the result of excusable neglect.” Mass. R. Civ. P. Rule 6(b)(2). Gold failed to file a motion, and he made no attempt to show excusable neglect. The Court’s extension of the *nisi* order should be reconsidered and his request denied.

Even if the *nisi* period had not expired, an extension could be granted only for “cause shown.” Rule 6(b). Gold’s request, while literally true, was misleading. It suggested that the parties were still making progress toward a settlement agreement and simply needed more time. As the above chronology and exhibits show, that was not the case. The parties had not filed a stipulation of dismissal because Gold refused to sign the Settlement Agreement until TCB met his post-mediation demand to see garage regulations that have not been drafted yet.

Facing dismissal of his case for failure to comply with the *nisi* order, Gold's counsel requested the extension unilaterally, and the Court's grant of that request without giving TCB a chance to oppose it was unfair. The result is that Gold has succeeded in delaying this homeless supportive housing project for another month, with no indication that he will sign the Settlement Agreement even then. That delay, besides rewarding his attempt to re-negotiate the parties' agreement after the mediation, is inimical to both the public policy in favor of affordable housing and the purpose of the Permit Session to which this case was transferred.

This case should have been dismissed when the *nisi* order expired. The extension of that order should be rescinded and the case dismissed now.

II. The Parties' Settlement is Enforceable and Should be Enforced.

In *Targus Group Int'l, Inc. v. Sherman*, 76 Mass. App. Ct. 421 (2010), the Appeals Court affirmed summary judgment that an "Agreement in Principle" at the conclusion of mediation was enforceable. An enforceable agreement requires "(1) terms sufficiently complete and definite, and (2) a present intent of the parties at the time of formation to be bound by those terms." *Id.* at 428, quoted in *Duff v. McKay*, 89 Mass. App. Ct. 538, 543 (2016) (enforcing a pre-litigation settlement agreement). The determinative question is whether the absence of a particular term means that "significant, material terms were still to be negotiated." *Situation Mgmt. Sys., Inc. v. Malouf, Inc.*, 430 Mass. 875, 878 (2000).

In *Targus Group*, the court held that neither an ambiguous payment date nor an uncertain scope of noncompetition covenants rendered the agreement too indefinite. It then concluded that the parties intended to be bound even though the document was entitled "Agreement in Principle." It focused on the fact that the Agreement used the term "agree" – in the "present tense and the unqualified indicative mood" – rather than stating that the parties "will agree" in the future. 76 Mass. App. Ct. at 433 (quotations in original). The Agreement did not refer to any unfinished business or future mediation sessions. *Id.* The court viewed the parties' subsequent negotiations as merely "afterthought proposals" that were "failed embellishments of the durable core agreement." *Id.* at 434.

The court also noted that the Agreement did not employ any "'invalidating clause' or reservation of agreement until execution of later final documents of implementation, an option extended by the case law to parties unprepared for a firm commitment." *Id.* at 433, citing *Goren v. Royal Invs. Inc.*, 25 Mass App. Ct. 137, 142-143 (1987). In *Goren*, the court enforced a purchase and sale agreement even though the agreement stated that a mutually acceptable Purchase and Sale Agreement shall be executed by a specific date in the future. Judge Kass acknowledged that parties to what would otherwise be a contract may "agree that their legal relations are not to be affected." However:

A proviso of that sort should speak plainly, e.g., "The purpose of this document is to memorialize certain business points. The parties mutually acknowledge that their agreement is qualified and that they, therefore, contemplate the drafting and execution of a more detailed agreement. They

intend to be bound only by the execution of such an agreement and not by this preliminary document.”

25 Mass. App. Ct. at 142-143.

In this case, both requirements for enforceability are met, as well. First, the agreement reached after the two-day mediation is definite and complete. It reflects the parties’ agreement on all the material terms of the settlement, leaving nothing significant to subsequent negotiations or the Settlement Agreement. TCB’s future regulations for use of the parking garage were not a significant, material term that was still to be negotiated. They are a subsidiary matter that did not alter the essential nature of the bargain, particularly after TCB agreed that they would be commercially reasonable, applied in good faith, and given to Gold when they were drafted. Indeed, in the six weeks since the mediation, Gold has never asserted that the parties’ agreement is ambiguous or unclear, only that he is “not comfortable” signing the Settlement Agreement unless he could read the garage regulations.

The fact that the mediation agreement was complete and definite is confirmed by a comparison of that agreement with the Settlement Agreement. The only new substantive issue addressed in the Settlement Agreement is TCB’s agreement, at Gold’s request, to reserve \$75,000 for the lease of the off-site parking. Exhibit K, ¶ 4. Otherwise, besides TCB’s concessions regarding the garage regulations described above (¶ 3) and boilerplate provisions (¶s 12-22), the Settlement Agreement merely adds details about TCB’s lease of off-site parking spaces (¶ 3), contribution to the construction impact mitigation fund (¶ 6), and contribution to the transportation study (¶ 7) – all details that Gold requested. TCB has not added or changed a single substantive term from the parties’ agreement at the mediation. Execution of the Settlement Agreement is “hardly more than a formality.” Goren, 25 Mass. App. Ct. at 141.

Gold’s insistence on seeing the regulations for the future Project garage goes beyond anything discussed at the mediation or reflected in the parties’ agreement. The parties never suggested that TCB would draft those regulations as part of the settlement. To the contrary, they agreed on an unusually short deadline – 14 days – for signature of the Settlement Agreement. Exhibit A, ¶ 8. Any regulations must be carefully drafted because of the nature of this supportive housing development and the access and security systems that it will require, and the garage will be owned and operated by a different (though related) entity, and there was no suggestion that TCB would bind the future owner and operator to particular regulations in this settlement. Gold’s position is the quintessential “afterthought proposal”, a “failed embellishment[] of the durable core agreement.” *Targus Group*, 76 Mass. App. Ct. at 434. Finally, even if TCB drafted regulations now, there is no reason to think that Gold would accept them without further haggling. The chronology of his demands described above demonstrates otherwise.

Second, the parties intended to be bound by the agreement they reached in the mediation with Judge Lombardi. The email summary of their agreement states that the parties “agreed as follows” – in the past tense and the unqualified indicative mood – rather than that they “will agree” in the future. *See Targus Group*, 76 Mass. App. Ct. at 433. All the circumstances – this litigation holding up an important project, the parties’ engagement of a mediator, their two days of mediation, the short deadline to sign the Settlement Agreement, the requirement to dismiss this

case with prejudice within seven days of the signing of that Agreement – confirm that the parties intended to marry, not merely to hug. *See Goren*, 25 Mass. App. Ct. at 142.

Gold may argue that, because his counsel signed the mediation agreement with the clause “Accepted subject to final Agreement”, there is no enforceable settlement until the parties sign the Settlement Agreement. That argument should be rejected for several reasons.

Most important, the agreement explicitly states that it was binding even though the parties intended to sign a Settlement Agreement. Exhibit A, ¶ 8. That is the antithesis of the kind of invalidating clause recognized as valid in *Goren* (“They intend to be bound only by the execution of such an agreement and not by this preliminary document.”). Gold’s counsel’s qualification cannot supersede that provision. And when directly asked about that qualification, *he explicitly confirmed that the agreement is binding*. Whatever his comment “I’m just being a lawyer” meant, it should not mean that he can repudiate his express confirmation that the mediation agreement is binding.

Finally, even if the parties had intended that the execution of the Settlement Agreement were required for an enforceable agreement – which they did not, as addressed above – the only reason they have not executed it is that Gold is “not comfortable” doing so. He is not entitled to argue that a condition for enforceability has not been met where he has prevented the satisfaction of that condition by his own conduct.

Conclusion

The Court should reconsider its extension of the *nisi* order and dismiss this case pursuant to that order. If it does not, it should enforce the parties’ mediation agreement or deem Gold to have signed the Settlement Agreement, and dismiss the case as settled.

By its attorneys,



Arthur P. Kreiger (BBO #279870)
akreiger@andersonkreiger.com
Dana E. Wooten (BBO #706003)
dwooten@andersonkreiger.com
ANDERSON & KREIGER LLP
50 Milk, 21st Floor
Boston, MA 02109
617-621-6500

Dated: April 21, 2021

CERTIFICATE OF SERVICE

I served this Motion on the other parties by emailing it to their counsel of record on this 21st day of April 2021.



Arthur P. Kreiger

EXHIBIT A

Anne M. Croft

From: Anne M. Croft
Sent: Wednesday, April 21, 2021 9:28 AM
To: Anne M. Croft
Subject: FW: Washington Street - Mediation Agreement

From: Waxman, Andrew <andrew.waxman@TCBINC.ORG>
Sent: Wednesday, March 10, 2021 5:33 PM
To: Stephen A. Greenbaum <sagreenbaum@greenbaumnagel.com>; Arthur Kreiger <AKreiger@AndersonKreiger.com>; Rhonda Fogel <rfogel@greenbaumnagel.com>
Cc: 'Leon J Lombardi' <justljl@comcast.net>; Aiken, David <david.aiken@TCBINC.ORG>; Tennant, Carrie <carrie.tennant@TCBINC.ORG>; Dana E. Wooten <dwooten@andersonkreiger.com>
Subject: RE: Washington Street - Mediation Agreement

Accepted!

Andrew Waxman, Authorized Agent

Andy Waxman

Regional Vice President of Development, New England
The Community Builders, Inc.
185 Dartmouth Street
Boston, MA 02116
Main: 857.221.8600 direct: 857.221.8643
andy.waxman@tcbinc.org www.tcbinc.org



From: Stephen A. Greenbaum <sagreenbaum@greenbaumnagel.com>
Sent: Wednesday, March 10, 2021 5:30 PM
To: Arthur Kreiger <AKreiger@AndersonKreiger.com>; Rhonda Fogel <rfogel@greenbaumnagel.com>
Cc: 'Leon J Lombardi' <justljl@comcast.net>; Waxman, Andrew <andrew.waxman@TCBINC.ORG>; Aiken, David <david.aiken@TCBINC.ORG>; Tennant, Carrie <carrie.tennant@TCBINC.ORG>; Dana E. Wooten <dwooten@andersonkreiger.com>
Subject: RE: Washington Street - Mediation Agreement

Accepted subject to final Agreement

Stephen A. Greenbaum, Esq.
GREENBAUM, NAGEL, FISHER & PALIOTTI, LLP
200 High Street
Boston, Massachusetts 02110
Tel: 617-423-4300
Fax: 617-482-5067
Email: sagreenbaum@greenbaumnagel.com

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From: Arthur Kreiger <AKreiger@AndersonKreiger.com>

Sent: Wednesday, March 10, 2021 5:24 PM

To: Stephen A. Greenbaum <sagreenbaum@greenbaumnagel.com>; Rhonda Fogel <rfogel@greenbaumnagel.com>

Cc: 'Leon J Lombardi' <justlj@comcast.net>; 'Waxman, Andrew' <andrew.waxman@TCBINC.ORG>; 'Aiken, David' <david.aiken@TCBINC.ORG>; 'Tennant, Carrie' <carrie.tennant@TCBINC.ORG>; Dana E. Wooten <dwooten@andersonkreiger.com>

Subject: RE: Washington Street - Mediation Agreement

Stephen and Rhonda –

This afternoon, the parties agreed as follows:

1. TCB will add 6 parking spaces in the garage as shown on the plans that it emailed you this this afternoon.
2. TCB will lease 30 spaces at Hope Central Church for 2 years for construction workers, pursuant to the executed LOI that it emailed you this afternoon.
3. TCB will lease 15 spaces at the Church pursuant to that LOI or other off-site location (in either case, the “Off-site Parking”), and prohibit 15 TCB and PSI staff from parking at the Project. This obligation will be perpetual in 5-year increments, as follows. At the end of each 5-year period, TCB will either:
 - a. renew or replace the lease at the same or a different location, or
 - b. notify Mr. Gold of its intention to study the then-current need for continued Off-site Parking. If the parties agree on a consultant to conduct the study, TCB will pay for it. If the parties are unable to agree, each party will select (and pay for) a consultant to select a third one to conduct the study at TCB’s expense. The study will analyze the parking utilization in the Project garage and the location of the Off-site Parking and determine how many of the 15 spaces, if any, are still reasonably needed. TCB will lease the number of spaces so determined for the next 5-year period.
4. TCB will make 6 spaces in the Project garage available for Mr. Gold or his tenants on evenings and weekends at no cost. Anyone using the garage will be subject to TCB’s security system, regulations, and policies.
5. Notwithstanding anything else in this Agreement, TCB’s obligations regarding Off-site Parking and spaces in the Project garage shall terminate if:
 - a. a controlling interest in 3377 Washington Street, LLC or that property is transferred to anyone outside of Mr. Gold’s descendants, or Mr. Gold or his descendants fail, at the time of the selection of consultants, to demonstrate to TCB’s reasonable satisfaction that no such transfer has taken place, or
 - b. the building at that property is demolished or redeveloped by anyone.
6. TCB will contribute to the construction mitigation fund, as previously agreed.
7. TCB will contribute to the City’s traffic study, as reflected in the TAPA with the City.
8. This Agreement is binding, but the parties will sign a full Settlement Agreement within 14 days. The litigation will be dismissed with prejudice within 7 days of the full execution of that agreement.
9. Mr. Gold will not directly or indirectly oppose or appeal any other permit or approval for the project or support or encourage anyone else to do so.
10. Mr. Gold represents that he does not know of any intent by Turtle Swamp Brewery or its principals to oppose or appeal the Project.

11. TCB will not directly or indirectly oppose or appeal any redevelopment of 3377 Washington Street, or support or encourage anyone else to do so, unless the redevelopment would materially affect the Project.

12. Confirmation of these terms by email or electronic signatures are sufficient.

Art



Arthur P. Kreiger

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EXHIBIT B

④

Alene

TSB won't appeal, either?

Gold reps. that he D/K any intent.

D/Need confid'lity.

< 30 days for Settlement Agmt.

Fogel

#4 Evenings def.

#3.b.

LTL
language

14 days OK.

is unaware of?

She thinks Gold will represent that D/K of any TSB intent to appeal or oppose.

SG accepts "subject to SA" but still binding.

"I'm just being a lawyer"

EXHIBIT C

Anne M. Croft

From: Arthur Kreiger
Sent: Wednesday, April 21, 2021 8:37 AM
To: Anne M. Croft
Cc: Dana E. Wooten
Subject: FW: 20 PS 000348 3377 Washington Street LLC v. City of Boston Zoning Board of Appeals - Exhibit C

From: Rhonda Fogel <rfogel@greenbaumnagel.com>
Sent: Friday, March 12, 2021 9:13 AM
To: Emily M Rosa <emily.rosa@jud.state.ma.us>; George.Bahnan@boston.gov; Arthur Kreiger <AKreiger@AndersonKreiger.com>
Cc: Stephen A. Greenbaum <sagreenbaum@greenbaumnagel.com>; Dana E. Wooten <dwooten@andersonkreiger.com>
Subject: RE: 20 PS 000348 3377 Washington Street LLC v. City of Boston Zoning Board of Appeals SPEICHER ZOOM INVITATION

Emily,

The parties have gone to mediation and reached an agreement
Subject to a final Settlement Agreement being executed.

We would like to report the case settled and request a 30 day Nisi order
To report back to the Court.

Thank you.

Rhonda B. Fogel, Esq.
GREENBAUM, NAGEL, FISHER & PALIOTTI, LLP
200 High Street, 5th Floor
Boston, Massachusetts 02110
Tel: 617-423-4300
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From: Emily M Rosa [<mailto:emily.rosa@jud.state.ma.us>]
Sent: Thursday, March 11, 2021 2:25 PM
To: Rhonda Fogel; George.Bahnan@boston.gov; AKreiger@AndersonKreiger.com
Cc: Stephen A. Greenbaum; dwooten@andersonkreiger.com
Subject: RE: 20 PS 000348 3377 Washington Street LLC v. City of Boston Zoning Board of Appeals SPEICHER ZOOM INVITATION

Emily Rosa Sessions Clerk is inviting you to a scheduled ZoomGov meeting.

Topic: Judge Speicher Motion Session

Time: Mar 17, 2021 2:45 PM Eastern Time (US and Canada)

Join ZoomGov Meeting

<https://www.zoomgov.com/j/1612448820?pwd=UVYvc0RXeIFJQ0JacTRVOTN0M1Frdz09>

Meeting ID: 161 244 8820

Passcode: 617788

One tap mobile

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+16468287666,,1612448820#,,,,*617788# US (New York)

Dial by your location

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+1 646 828 7666 US (New York)

+1 551 285 1373 US

+1 669 216 1590 US (San Jose)

Meeting ID: 161 244 8820

Passcode: 617788

Find your local number: <https://www.zoomgov.com/u/acvzDZfztE>

Join by SIP

1612448820@sip.zoomgov.com

Join by H.323

161.199.138.10 (US West)

161.199.136.10 (US East)

Meeting ID: 161 244 8820

Passcode: 617788

Emily M. Rosa

Sessions Clerk to the Honorable Howard P. Speicher

Land Court Department of the Trial Court | Suffolk County Courthouse

Three Pemberton Square Room 507 | Boston MA 02108

617-788-7419

emily.rosa@jud.state.ma.us

EXHIBIT D

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT

SUFFOLK, ss.

PERMIT SESSION CASE
No. 20 PS 000348 (HPS)

3377 WASHINGTON STREET LLC,

Plaintiff,

v.

CITY OF BOSTON BOARD OF APPEAL and
COMMUNITY BUILDERS, INC.,

Defendants.

NISI ORDER

This case commenced in the Land Court August 28, 2020. By electronic mail message to the Recorder's Office on March 11, 2021, the parties reported the case settled, and requested that the court issue a nisi order to allow the parties time to implement their settlement agreement.

Accordingly, it is

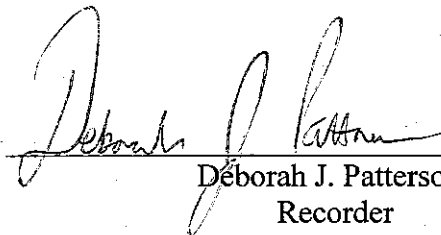
ORDERED that all proceedings in this action be stayed for a period of thirty (30) days from the date of the parties' reported settlement, during which time they shall proceed in good faith and with all possible diligence to execute, deliver, and, if necessary, acknowledge and record papers implementing their reported settlement. Within the same time, the parties shall file a stipulation of dismissal pursuant to Mass. R. Civ. P. 41 (a)(1)(ii). If a stipulation of dismissal is not filed on or before April 12, 2021, then, absent further order of the court, judgment will enter on or after April 13, 2021 in this case, dismissing it as to all parties and claims.

So Ordered.

By the Court. (Speicher, J.)

Attest:

HPS

 (KW)
Deborah J. Patterson
Recorder

Dated: March 12, 2021.

EXHIBIT E

Anne M. Croft

From: Anne M. Croft
Sent: Wednesday, April 21, 2021 9:47 AM
To: Anne M. Croft
Subject: FW: Washington Street - proposed Settlement Agreement
Attachments: SETTLEMENT AGREEMENT(1259137.3).docx

From: Arthur Kreiger
Sent: Wednesday, March 17, 2021 3:06 PM
To: Stephen A. Greenbaum <sagreenbaum@greenbaumnagel.com>; 'Rhonda Fogel' <rfogel@greenbaumnagel.com>
Cc: Waxman, Andrew <andrew.waxman@TCBINC.ORG>; 'Aiken, David' <david.aiken@TCBINC.ORG>; Tennant, Carrie <carrie.tennant@TCBINC.ORG>; Dana E. Wooten <dwooten@andersonkreiger.com>
Subject: Washington Street - proposed Settlement Agreement

Stephen and Rhonda –

Attached is a proposed Settlement Agreement, without the exhibits. You have the first 2 exhibits (the garage plan and LOI), and the third one is a standard Stipulation of Dismissal with Prejudice.

We look forward to your comments.

Art



Arthur P. Kreiger
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SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by 3377 Washington Street, LLC (“3377 Washington”), the sole manager of which is Monty Gold, and The Community Builders, Inc. (“TCB”) (together, the “Parties”) as of this ___ day of March, 2021.

WHEREAS, the Board granted variances for a 202-unit affordable housing project proposed by TCB at 3368 Washington, Street, Boston, MA (the “Project”);

WHEREAS, 3377 Washington appealed those variances in *3377 Washington Street, LLC v. City of Boston Zoning Board of Appeal and The Community Builders, Inc.*, Land Court Permit Session No. 20 PS 000348 (HPS) (the “Litigation”);

WHEREAS, the Parties and their counsel engaged in mediation on March 3 and 10, 2021, approved a Mediation Agreement, and reported the Litigation settled to the court; and

WHEREAS, the Parties want to implement the Mediation Agreement and fully resolve the Litigation and their dispute regarding the Project without further time, expense, and uncertainty;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. In constructing the Project, TCB will add six more parking spaces in the garage, as shown on the plan attached as **Exhibit A**.
2. Before starting construction, TCB will lease 30 spaces for construction workers for two years at Hope Central Church, 85 Seaverns Avenue, Jamaica Plain pursuant to the Letter of Intent (the “LOI”) attached as **Exhibit B**, or other off-site location of its choosing,.
3. Before obtaining a certificate of occupancy for the Project, TCB will lease 15 spaces at the Church pursuant to the LOI or other off-site location of its choosing (in either case, the “Off-Site Parking”), and prohibit 15 staff from parking at the Project. This obligation will be perpetual in 5-year increments starting at the end of the two-year period described in Paragraph 2, as follows. At the end of each 5-year period, TCB will either:
 - a. renew or replace the lease at the same or a different location, or
 - b. notify 3377 Washington Street of its intention to study the then-current need for continued Off-Site Parking. If the parties agree on a consultant to conduct the study, TCB will pay that consultant’s fees. If the parties are unable to agree, each party will select (and pay for) a consultant to select a third one to conduct the study at TCB’s expense. The study will analyze the parking utilization in the Project garage and the location of the Off-Site Parking and determine how many of the 15 spaces, if any, are still reasonably needed. TCB will lease the number of spaces so determined for the next 5-year period.

TCB will make six spaces in the Project garage available for 3377 Washington or its tenants during the hours of 6:00 p.m. - 11:00 p.m. on weekdays and noon-midnight on weekends at no cost, under an agreement to be negotiated in good faith when the construction of the garage is completed. Anyone using the garage pursuant to this paragraph will be subject to TCB's security system, regulations, and policies.

4. Notwithstanding anything else in this Agreement, TCB's obligations regarding Off-Site Parking and spaces in the Project garage shall immediately terminate if:

- a. (i) a controlling interest in 3377 Washington or the property at 3377 Washington Street is transferred to anyone besides the descendants of Mr. Gold or (ii) he or his descendants fail, at the time of the selection of consultants, to demonstrate to TCB's reasonable satisfaction that no such transfer has taken place, OR
- b. the building at 3377 Washington Street is demolished or redeveloped by anyone.

5. TCB will contribute \$40,000 to a fund for the mitigation of construction impacts from the Project, as determined by TCB and the City of Boston.

6. TCB will contribute \$17,500 to the City for transportation studies and/or implementation projects on Washington Street, pursuant to the TAPA between TCB and the City.

7. Within seven days of the full execution of this Agreement, the Parties will file a Stipulation of Dismissal with Prejudice in the form attached as **Exhibit C**.

8. Neither 3377 Washington nor Mr. Gold will directly or indirectly oppose or appeal any other permit or approval for the Project or support or encourage anyone else to do so.

9. Mr. Gold represents that he does not know of any intent by 3377 Washington's current tenant Turtle Swamp Brewery or its principals to oppose or appeal the Project.

10. TCB will not directly or indirectly oppose or appeal any redevelopment of the property at 3377 Washington Street, or support or encourage anyone else to do so, unless the redevelopment would materially affect the Project.

11. This Agreement is binding on and inures to the benefit of the Parties and their managers, members, heirs, executors, affiliates, successors and assigns.

12. The Parties, for themselves and their managers, members, heirs, executors, administrators, beneficiaries, affiliates, successors and assigns, hereby release each other and their managers, members, heirs, executors, administrators, beneficiaries, stockholders, officers, directors, employees, representatives, agents, affiliates, successors and assigns from all claims, demands, actions, and causes of action of any kind, at law or in equity, known and unknown, that

they have or may ever have had regarding the Project or the Litigation, through the date stated in the first paragraph of this Agreement.

13. The Parties acknowledge that they have read and understand this Agreement. Both Parties have had an opportunity to participate in the drafting of this Agreement, and it shall not be construed against any Party as drafter.

14. The Parties shall timely execute and deliver all documents that are reasonably necessary to implement this Agreement and shall otherwise cooperate in its implementation.

15. This Agreement constitutes the entire agreement between the Parties regarding the Project and the Litigation, and it supersedes all prior representations and agreements of any kind, oral or written, by any person or entity.

16. This Agreement may be amended only in writing. No waiver of any provision of this Agreement shall waive any other provision (whether or not similar), and no waiver shall constitute a continuing waiver unless otherwise expressly stated in writing.

17. This Agreement is a compromise of disputed claims, and neither the execution nor the implementation of this Agreement shall constitute any admission of fact, law, or liability.

18. All notices and other communications under this Agreement shall be sent by hand delivery, overnight mail, or certified mail (postage prepaid, return receipt requested), or by email if an email address is given below, as follows:

To 3377 Washington

With copies to:

Stephen A. Greenbaum, Esq.
sagreenbaum@greenbaumnagel.com
Rhonda B. Fogel, Esq.
rfogel@greenbaumnagel.com
GREENBAUM, NAGEL, FISHER &
PALIOTTI, LLP
200 High Street, 5th Floor
Boston, MA 02110

To TCB

Carrie Tennant, Esq.
Associate General Counsel
The Community Builders, Inc.
185 Dartmouth Street
Boston, MA 02116
carrie.tennant@tcbinc.org

With copies to:

Lyndia Downie, President and Exec. Director
Pine Street Inn
44 Harrison Avenue
Boston, MA 02118

and

Elizabeth Ross, Esq.
Krokidas & Bluestein LLP
600 Atlantic Avenue
Boston, MA 02210
eross@kb-law.com

or to such other address as the recipient has previously given as set forth above.

19. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, the remaining provisions shall remain in full force to the extent necessary to effectuate the Parties' intent.

Executed by their duly authorized representatives.

3377 WASHINGTON STREET, LLC

THE COMMUNITY BUILDERS, INC.

By: Monty Gold

Its: Manager

Date:

By: Andrew Waxman

Its: Regional Vice President of
Development, New England

Date:

EXHIBIT F

Anne M. Croft

From: Anne M. Croft
Sent: Wednesday, April 21, 2021 9:08 AM
To: Anne M. Croft
Subject: FW: Washington Street - proposed Settlement Agreement
Attachments: SETTLEMENT AGREEMENT(1259137.3) - redline.docx

From: Rhonda Fogel <rfogel@greenbaumnagel.com>
Sent: Monday, March 22, 2021 3:27 PM
To: Arthur Kreiger <AKreiger@AndersonKreiger.com>; Stephen A. Greenbaum <sagreenbaum@greenbaumnagel.com>
Cc: Dana E. Wooten <dwooten@andersonkreiger.com>
Subject: RE: Washington Street - proposed Settlement Agreement

Arthur and Dana,

Attached please find the draft Settlement Agreement with our red-line proposed changes and additions as well as a few questions our client had which I put as comments.

Mr. Gold wants to feel comfortable that there are assurances that the parking spaces, which he feels should have been a part of the Project without his need for litigation, are provided per the terms of the Settlement Agreement.

Please get back to us. Thank you.

Rhonda B. Fogel, Esq.
GREENBAUM, NAGEL, FISHER & PALIOTTI, LLP
200 High Street, 5th Floor
Boston, Massachusetts 02110
Tel: 617-423-4300
Fax: 617-482-5067
Email: rfogel@greenbaumnagel.com

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From: Arthur Kreiger [<mailto:AKreiger@AndersonKreiger.com>]
Sent: Wednesday, March 17, 2021 3:06 PM
To: Stephen A. Greenbaum; Rhonda Fogel
Cc: Waxman, Andrew; 'Aiken, David'; Tennant, Carrie; Dana E. Wooten
Subject: Washington Street - proposed Settlement Agreement

Stephen and Rhonda –

Attached is a proposed Settlement Agreement, without the exhibits. You have the first 2 exhibits (the garage plan and LOI), and the third one is a standard Stipulation of Dismissal with Prejudice.

We look forward to your comments.

Art



Arthur P. Kreiger

T. 617.621.6540 | F. 617.621.6640 | C. 617.510.3508

[Anderson & Kreiger LLP](#) | 50 Milk Street, 21st Floor, Boston, MA 02109

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SETTLEMENT AGREEMENT

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WHEREAS, the Board granted variances for a 202-unit affordable housing project proposed by TCB at 3368 Washington, Street, Boston, MA (the “Project”);

WHEREAS, 3377 Washington appealed those variances in *3377 Washington Street, LLC v. City of Boston Zoning Board of Appeal and The Community Builders, Inc.*, Land Court Permit Session No. 20 PS 000348 (HPS) (the “Litigation”);

WHEREAS, the Parties and their counsel engaged in mediation on March 3 and 10, 2021, approved a Mediation Agreement in principle subject to a final Settlement Agreement, and reported the Litigation settled to the court; and

WHEREAS, the Parties want to ~~implement the Mediation Agreement and~~ fully resolve the Litigation and their dispute regarding the Project without further time, expense, and uncertainty;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. In constructing the Project, TCB will add six more parking spaces in the garage, as shown on the plan attached as Exhibit A.

2. Before starting construction, TCB will lease 30 spaces for construction workers for two years at Hope Central Church, 85 Seaverns Avenue, Jamaica Plain pursuant to the Letter of Intent (the “LOI”) attached as Exhibit B, or other off-site location of its choosing..

3. Before obtaining a certificate of occupancy for the Project, TCB will lease 15 spaces at the Church pursuant to the LOI or other off-site location of its choosing (in either case, the “Off-Site Parking”), and prohibit 15 staff from parking at the Project. This obligation will be perpetual in 5-year increments starting at the end of the two-year period described in Paragraph 2, as follows. At the end of each 5-year period, TCB will either:

- a. renew or replace the lease at the same or a different location, or
- b. notify 3377 Washington Street of its intention to study the then-current need for continued Off-Site Parking. If the parties agree on a consultant to conduct the study, TCB will pay that consultant’s fees. If the parties are unable to agree, each party will select (and pay for) a consultant to select a third one to conduct the study at TCB’s expense. The study will analyze the parking utilization in the Project garage and the location of the Off-Site Parking and determine how many of the 15 spaces, if any, are still reasonably

needed. TCB will lease the number of spaces so determined for the next 5-year period.

TCB will make six spaces in the Project garage available for 3377 Washington or its tenants during the hours of 6:00 p.m. - 11:00 p.m. on weekdays and noon-midnight on weekends at no cost, under an agreement to be negotiated in good faith when the construction of the garage is completed. Anyone using the garage pursuant to this paragraph will be subject to TCB's security system, regulations, and policies.

4. Gold is entitled to assurance that TCB will comply with its obligations to provide and maintain both the six (6) additional parking spaces, the six (6) spaces available to 3377 Washington or its tenant and the Off-Site Parking as required in paragraphs 2 and 3. In the event TCB fails to provide and maintain the required six (6) additional parking spaces, the six spaces available to 3377 Washington or its tenant and Off-Site Parking, Gold will provide notice of the failure to TCB and TCB will have ten (10) days to correct the non-compliance. TCB agrees to post funds in escrow in the amount of \$75,000.00 to be available to cover the cost of Off-Site Parking. In the event Gold is forced to file litigation to enforce any breach of this Agreement, and TCB is determined to be in breach, TCB shall pay Gold all costs and attorney's fees associated with that action.

4.5. Notwithstanding anything else in this Agreement, TCB's obligations regarding Off-Site Parking and spaces in the Project garage shall immediately terminate if:

- a. (i) a controlling interest in 3377 Washington or the property at 3377 Washington Street is transferred to anyone besides the descendants of Mr. Gold or (ii) he or his descendants fail, at the time of the selection of consultants, to demonstrate to TCB's reasonable satisfaction that no such transfer has taken place, OR
- b. the building at 3377 Washington Street is demolished or redeveloped by anyone.

5.6. TCB will contribute \$40,000 to a fund for the mitigation of construction impacts from the Project, as determined by TCB and the City of Boston.

6.7. TCB will contribute \$17,500 to the City for transportation studies and/or implementation projects on Washington Street, pursuant to the TAPA between TCB and the City.

7.8. Within seven days of the full execution of this Agreement, the Parties will file a Stipulation of Dismissal with Prejudice in the form attached as Exhibit C.

8.9. Neither 3377 Washington nor Mr. Gold will directly or indirectly oppose or appeal any other permit or approval for the Project or support or encourage anyone else to do so.

Commented [RF1]: Please provide a copy of the regulations and policies that Gold is agreeing to be subject to

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Indent at: 1"

Commented [RF2]: Please provide basis that this amount was determined to be sufficient, what the funds are to be used for and how they will be administered

~~9.10.~~ Mr. Gold represents that he does not know of any intent by 3377 Washington's current tenant Turtle Swamp Brewery or its principals to oppose or appeal the Project.

~~10.11.~~ TCB will not directly or indirectly oppose or appeal any redevelopment of the property at 3377 Washington Street, or support or encourage anyone else to do so, unless the redevelopment would materially affect the Project.

~~11.12.~~ This Agreement is binding on and inures to the benefit of the Parties and their managers, members, heirs, executors, affiliates, successors and assigns.

~~12.13.~~ The Parties, for themselves and their managers, members, heirs, executors, administrators, beneficiaries, affiliates, successors and assigns, hereby release each other and their managers, members, heirs, executors, administrators, beneficiaries, stockholders, officers, directors, employees, representatives, agents, affiliates, successors and assigns from all claims, demands, actions, and causes of action of any kind, at law or in equity, known and unknown, that they have or may ever have had regarding the Project or the Litigation, through the date stated in the first paragraph of this Agreement.

~~13.14.~~ The Parties acknowledge that they have read and understand this Agreement. Both Parties have had an opportunity to participate in the drafting of this Agreement, and it shall not be construed against any Party as drafter.

~~14.15.~~ The Parties shall timely execute and deliver all documents that are reasonably necessary to implement this Agreement and shall otherwise cooperate in its implementation.

~~15.16.~~ This Agreement constitutes the entire agreement between the Parties regarding the Project and the Litigation, and it supersedes all prior representations and agreements of any kind, oral or written, by any person or entity.

~~16.17.~~ This Agreement may be amended only in writing. No waiver of any provision of this Agreement shall waive any other provision (whether or not similar), and no waiver shall constitute a continuing waiver unless otherwise expressly stated in writing.

~~17.18.~~ This Agreement is a compromise of disputed claims, and neither the execution nor the implementation of this Agreement shall constitute any admission of fact, law, or liability.

~~18.19.~~ All notices and other communications under this Agreement shall be sent by hand delivery, overnight mail, or certified mail (postage prepaid, return receipt requested), or by email if an email address is given below, as follows:

To 3377 Washington

To TCB
Carrie Tennant, Esq.
Associate General Counsel
The Community Builders, Inc.
185 Dartmouth Street

Boston, MA 02116
carrie.tennant@tcbinc.org

With copies to:

Stephen A. Greenbaum, Esq.
sagreenbaum@greenbaumnagel.com
Rhonda B. Fogel, Esq.
rfogel@greenbaumnagel.com
GREENBAUM, NAGEL, FISHER &
PALIOTTI, LLP
200 High Street, 5th Floor
Boston, MA 02110

With copies to:

Lyndia Downie, President and Exec. Director
Pine Street Inn
44 Harrison Avenue
Boston, MA 02118

and

Elizabeth Ross, Esq.
Krokidas & Bluestein LLP
600 Atlantic Avenue
Boston, MA 02210
cross@kb-law.com

or to such other address as the recipient has previously given as set forth above.

20. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, the remaining provisions shall remain in full force to the extent necessary to effectuate the Parties' intent.

~~19.21.~~ This Agreement may be executed in counterparts and facsimile or scanned signatures shall have the same force and effect as original signatures.

Formatted: Indent: Left: 0.5", No bullets or numbering

Executed by their duly authorized representatives.

3377 WASHINGTON STREET, LLC

THE COMMUNITY BUILDERS, INC.

By: Monty Gold
Its: Manager
Date:

By: Andrew Waxman
Its: Regional Vice President of
Development, New England
Date:

EXHIBIT G

Anne M. Croft

From: Anne M. Croft
Sent: Wednesday, April 21, 2021 9:10 AM
To: Anne M. Croft
Subject: FW: Washington Street - revised Settlement Agreement
Attachments: SETTLEMENT AGREEMENT(1259137.4).docx

From: Arthur Kreiger
Sent: Friday, March 26, 2021 11:13 AM
To: Stephen A. Greenbaum <sagreenbaum@greenbaumnagel.com>; 'Rhonda Fogel' <rfogel@greenbaumnagel.com>
Cc: Dana E. Wooten <dwooten@andersonkreiger.com>
Subject: Washington Street - revised Settlement Agreement

Stephen and Rhonda –

Attached is a red-lined revised Agreement, reflecting your edits and our conversation yesterday. I moved the enforcement provision to the end because it applies to all the parties' obligations under the Agreement.

We look forward to hearing back from you and closing this settlement shortly. Thanks.

Art



Arthur P. Kreiger
T. 617.621.6540 | F. 617.621.6640 | C. 617.510.3508
[Anderson & Kreiger LLP](#) | 50 Milk Street, 21st Floor, Boston, MA 02109

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SETTLEMENT AGREEMENT

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WHEREAS, the Board granted variances for a 202-unit affordable housing project proposed by TCB at 3368 Washington, Street, Boston, MA (the “Project”);

WHEREAS, 3377 Washington appealed those variances in *3377 Washington Street, LLC v. City of Boston Zoning Board of Appeal and The Community Builders, Inc.*, Land Court Permit Session No. 20 PS 000348 (HPS) (the “Litigation”);

WHEREAS, the Parties and their counsel engaged in mediation on March 3 and 10, 2021, approved a Mediation Agreement in principle subject to a final Settlement Agreement, and reported the Litigation settled to the court; and

WHEREAS, the Parties want to fully resolve the Litigation and their dispute regarding the Project without further time, expense, and uncertainty;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. In constructing the Project, TCB will add six more parking spaces in the garage, as shown on the plan attached as **Exhibit A**.
2. Before starting construction, TCB will lease 30 spaces for construction workers for two years at Hope Central Church, 85 Seaverns Avenue, Jamaica Plain pursuant to the Letter of Intent (the “LOI”) attached as **Exhibit B**, or other off-site location of its choosing,.
3. Before obtaining a certificate of occupancy for the Project, TCB will lease 15 spaces at the Church pursuant to the LOI or other off-site location of its choosing (in either case, the “Off-Site Parking”), and prohibit 15 staff from parking at the Project. This obligation will be perpetual in 5-year increments starting at the end of the two-year period described in Paragraph 2, as follows. At the end of each 5-year period, TCB will either:
 - a. renew or replace the lease at the same or a different location, or
 - b. notify 3377 Washington Street of its intention to study the then-current need for continued Off-Site Parking. If the parties agree on a consultant to conduct the study, TCB will pay that consultant’s fees. If the parties are unable to agree, each party will select (and pay for) a consultant to select a third one to conduct the study at TCB’s expense. The study will analyze the parking utilization in the Project garage and the location of the Off-Site Parking and determine how many of the 15 spaces, if any, are still reasonably needed. TCB will lease the number of spaces so determined for the next 5-year period.

TCB will make six spaces in the Project garage available for 3377 Washington or its tenants during the hours of 6:00 p.m. - 11:00 p.m. on weekdays and noon-midnight on weekends at no cost, under an agreement to be negotiated in good faith when the construction of the garage is completed. Anyone using the garage pursuant to this paragraph will be subject to TCB's security system, regulations, and policies, which shall be commercially reasonable.

4. TCB shall include in the Project budget a line item of at least \$75,000 for the cost of the Off-Site Parking. The amount of that line item shall not limit TCB's obligations under this Agreement.

5. Notwithstanding anything else in this Agreement, TCB's obligations regarding Off-Site Parking and spaces in the Project garage shall immediately terminate if:

- a. (i) a controlling interest in 3377 Washington or the property at 3377 Washington Street is transferred to anyone besides the descendants of Mr. Gold or (ii) he or his descendants fail, at the time of the selection of consultants, to demonstrate to TCB's reasonable satisfaction that no such transfer has taken place, OR
- b. the building at 3377 Washington Street is demolished or redeveloped by anyone.

6. TCB will contribute \$40,000 to a fund for the mitigation of construction impacts from the Project, to be used as determined in the Cooperative Agreement between TCB and the BPDA pursuant to Article 80.

7. TCB will contribute \$17,500 to the City for transportation studies and/or implementation projects on Washington Street, pursuant to the TAPA between TCB and the City.

8. Within seven days of the full execution of this Agreement, the Parties will file a Stipulation of Dismissal with Prejudice in the form attached as **Exhibit C**.

9. Neither 3377 Washington nor Mr. Gold will directly or indirectly oppose or appeal any other permit or approval for the Project or support or encourage anyone else to do so.

10. Mr. Gold represents that he does not know of any intent by 3377 Washington's current tenant Turtle Swamp Brewery or its principals to oppose or appeal the Project.

11. TCB will not directly or indirectly oppose or appeal any redevelopment of the property at 3377 Washington Street, or support or encourage anyone else to do so, unless the redevelopment would materially affect the Project.

12. This Agreement is binding on and inures to the benefit of the Parties and their managers, members, heirs, executors, affiliates, successors and assigns.

13. The Parties, for themselves and their managers, members, heirs, executors, administrators, beneficiaries, affiliates, successors and assigns, hereby release each other and their managers, members, heirs, executors, administrators, beneficiaries, stockholders, officers, directors, employees, representatives, agents, affiliates, successors and assigns from all claims, demands, actions, and causes of action of any kind, at law or in equity, known and unknown, that they have or may ever have had regarding the Project or the Litigation, through the date stated in the first paragraph of this Agreement.

14. The Parties acknowledge that they have read and understand this Agreement. Both Parties have had an opportunity to participate in the drafting of this Agreement, and it shall not be construed against any Party as drafter.

15. The Parties shall timely execute and deliver all documents that are reasonably necessary to implement this Agreement and shall otherwise cooperate in its implementation.

16. This Agreement constitutes the entire agreement between the Parties regarding the Project and the Litigation, and it supersedes all prior representations and agreements of any kind, oral or written, by any person or entity.

17. This Agreement may be amended only in writing. No waiver of any provision of this Agreement shall waive any other provision (whether or not similar), and no waiver shall constitute a continuing waiver unless otherwise expressly stated in writing.

18. This Agreement is a compromise of disputed claims, and neither the execution nor the implementation of this Agreement shall constitute any admission of fact, law, or liability.

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To 3377 Washington

With copies to:

Stephen A. Greenbaum, Esq.
sagreenbaum@greenbaumnagel.com
Rhonda B. Fogel, Esq.
rfogel@greenbaumnagel.com
GREENBAUM, NAGEL, FISHER &
PALIOTTI, LLP

To TCB

Carrie Tennant, Esq.
Associate General Counsel
The Community Builders, Inc.
185 Dartmouth Street
Boston, MA 02116
carrie.tennant@tcbinc.org

With copies to:

Lyndia Downie, President and Exec. Director
Pine Street Inn
44 Harrison Avenue
Boston, MA 02118

and

200 High Street, 5th Floor
Boston, MA 02110

Elizabeth Ross, Esq.
Krokidas & Bluestein LLP
600 Atlantic Avenue
Boston, MA 02210
eross@kb-law.com

or to such other address as the recipient has previously given as set forth above.

20. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, the remaining provisions shall remain in full force to the extent necessary to effectuate the Parties' intent.

21. This Agreement may be executed in counterparts and facsimile or scanned signatures shall have the same force and effect as original signatures.

22. The Parties acknowledge that this Agreement is a binding, enforceable agreement. If either Party files litigation to enforce the terms of this Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs for that litigation.

Executed by their duly authorized representatives.

3377 WASHINGTON STREET, LLC

THE COMMUNITY BUILDERS, INC.

By: Monty Gold
Its: Manager
Date:

By: Andrew Waxman
Its: Regional Vice President of
Development, New England
Date:

EXHIBIT H

Anne M. Croft

From: Anne M. Croft
Sent: Wednesday, April 21, 2021 9:11 AM
To: Anne M. Croft
Subject: FW: Washington Street - revised Settlement Agreement
Attachments: SETTLEMENT AGREEMENT(1259137.5).docx

From: Arthur Kreiger
Sent: Tuesday, March 30, 2021 5:11 PM
To: 'Stephen A. Greenbaum' <sagreenbaum@greenbaumnagel.com>; 'Rhonda Fogel' <rfogel@greenbaumnagel.com>
Cc: Dana E. Wooten <dwooten@andersonkreiger.com>
Subject: RE: Washington Street - revised Settlement Agreement

Stephen and Rhonda –

As promised. I accepted the previous edits, inserted the sentence stated below in the middle of Paragraph 4, and added “or deposit” to the next sentence for Mr. Gold’s benefit.

Art

From: Arthur Kreiger
Sent: Tuesday, March 30, 2021 11:14 AM
To: 'Stephen A. Greenbaum' <sagreenbaum@greenbaumnagel.com>; Rhonda Fogel <rfogel@greenbaumnagel.com>
Cc: Dana E. Wooten <dwooten@andersonkreiger.com>
Subject: RE: Washington Street - revised Settlement Agreement

Stephen and Rhonda –

1. TCB is willing to add the following provision to the Agreement: “Upon completion of construction of the Project, TCB will deposit \$75,000.00 into a reserve account for the sole purpose of covering the cost of the Off-Site Parking and will provide confirmation of that deposit to Mr. Gold.”
2. The project at Quincy Street and Blue Hill Avenue has a surface parking lot, not an underground garage. Any regulations there would be largely inapplicable. Attached are TCB’s regulations for the underground garage at 95 Hyde Park Avenue. Some of these regulations are for residents and would not apply to Mr. Gold or his tenants, but I’m sending them in response to his request. These regulations are not up for negotiation, and TCB reserves the right to modify them as appropriate, but any such regulations for the Project must be commercially reasonable under the Settlement Agreement.

I’ll send you the Agreement with the provision in # 1 above for the parties’ signature. Thank you.

Art



Arthur P. Kreiger
T. 617.621.6540 | F. 617.621.6640 | C. 617.510.3508
[Anderson & Kreiger LLP](#) | 50 Milk Street, 21st Floor, Boston, MA 02109

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From: Stephen A. Greenbaum <sagreenbaum@greenbaumnagel.com>
Sent: Monday, March 29, 2021 3:40 PM
To: Arthur Kreiger <AKreiger@AndersonKreiger.com>; Rhonda Fogel <rfogel@greenbaumnagel.com>
Cc: Dana E. Wooten <dwooten@andersonkreiger.com>
Subject: RE: Washington Street - revised Settlement Agreement

Art--received and forwarded to our client.

He has a couple of issues.

1. He would like to see the \$75K in a fund to be claimed against, not simply a line item.
2. He says that your client built a similar project with parking at the corner of Quincy Street and Blue Hill Ave. within the last couple of years, so it should already have a set of parking regulations prepared, and he would like to see them.

Thank you
Stephen

Stephen A. Greenbaum, Esq.
GREENBAUM, NAGEL, FISHER & PALIOTTI, LLP
200 High Street
Boston, Massachusetts 02110
Tel: 617-423-4300
Fax: 617-482-5067
Email: sagreenbaum@greenbaumnagel.com

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From: Arthur Kreiger <AKreiger@AndersonKreiger.com>
Sent: Monday, March 29, 2021 9:59 AM
To: Stephen A. Greenbaum <sagreenbaum@greenbaumnagel.com>; Rhonda Fogel <rfogel@greenbaumnagel.com>
Cc: Dana E. Wooten <dwooten@andersonkreiger.com>
Subject: Washington Street - revised Settlement Agreement

Stephen and Rhonda –

Good morning. I just want to confirm that you received the red-lined draft from my secretary on Friday afternoon, showing the edits. Thanks.

Art

ANDERSON
KREIGER

Arthur P. Kreiger
T. 617.621.6540 | F. 617.621.6640 | C. 617.510.3508
[Anderson & Kreiger LLP](#) | 50 Milk Street, 21st Floor, Boston, MA 02109

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SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by 3377 Washington Street, LLC (“3377 Washington”), the sole manager of which is Monty Gold, and The Community Builders, Inc. (“TCB”) (together, the “Parties”) as of this ___ day of March, 2021.

WHEREAS, the Board granted variances for a 202-unit affordable housing project proposed by TCB at 3368 Washington, Street, Boston, MA (the “Project”);

WHEREAS, 3377 Washington appealed those variances in *3377 Washington Street, LLC v. City of Boston Zoning Board of Appeal and The Community Builders, Inc.*, Land Court Permit Session No. 20 PS 000348 (HPS) (the “Litigation”);

WHEREAS, the Parties and their counsel engaged in mediation on March 3 and 10, 2021, approved a Mediation Agreement in principle subject to a final Settlement Agreement, and reported the Litigation settled to the court; and

WHEREAS, the Parties want to fully resolve the Litigation and their dispute regarding the Project without further time, expense, and uncertainty;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. In constructing the Project, TCB will add six more parking spaces in the garage, as shown on the plan attached as **Exhibit A**.
2. Before starting construction, TCB will lease 30 spaces for construction workers for two years at Hope Central Church, 85 Seaverns Avenue, Jamaica Plain pursuant to the Letter of Intent (the “LOI”) attached as **Exhibit B**, or other off-site location of its choosing,.
3. Before obtaining a certificate of occupancy for the Project, TCB will lease 15 spaces at the Church pursuant to the LOI or other off-site location of its choosing (in either case, the “Off-Site Parking”), and prohibit 15 staff from parking at the Project. This obligation will be perpetual in 5-year increments starting at the end of the two-year period described in Paragraph 2, as follows. At the end of each 5-year period, TCB will either:
 - a. renew or replace the lease at the same or a different location, or
 - b. notify 3377 Washington Street of its intention to study the then-current need for continued Off-Site Parking. If the parties agree on a consultant to conduct the study, TCB will pay that consultant’s fees. If the parties are unable to agree, each party will select (and pay for) a consultant to select a third one to conduct the study at TCB’s expense. The study will analyze the parking utilization in the Project garage and the location of the Off-Site Parking and determine how many of the 15 spaces, if any, are still reasonably needed. TCB will lease the number of spaces so determined for the next 5-year period.

TCB will make six spaces in the Project garage available for 3377 Washington or its tenants during the hours of 6:00 p.m. - 11:00 p.m. on weekdays and noon-midnight on weekends at no cost, under an agreement to be negotiated in good faith when the construction of the garage is completed. Anyone using the garage pursuant to this paragraph will be subject to TCB's security system, regulations, and policies, which shall be commercially reasonable.

4. TCB shall include in the Project budget a line item of at least \$75,000 for the cost of the Off-Site Parking. Upon completion of construction of the Project, TCB will deposit \$75,000.00 into a reserve account for the sole purpose of covering the cost of the Off-Site Parking and will provide confirmation of that deposit to Mr. Gold. The amount of that line item and deposit shall not limit TCB's obligations under this Agreement.

5. Notwithstanding anything else in this Agreement, TCB's obligations regarding Off-Site Parking and spaces in the Project garage shall immediately terminate if:

- a. (i) a controlling interest in 3377 Washington or the property at 3377 Washington Street is transferred to anyone besides the descendants of Mr. Gold or (ii) he or his descendants fail, at the time of the selection of consultants, to demonstrate to TCB's reasonable satisfaction that no such transfer has taken place, OR
- b. the building at 3377 Washington Street is demolished or redeveloped by anyone.

6. TCB will contribute \$40,000 to a fund for the mitigation of construction impacts from the Project, to be used as determined in the Cooperative Agreement between TCB and the BPDA pursuant to Article 80.

7. TCB will contribute \$17,500 to the City for transportation studies and/or implementation projects on Washington Street, pursuant to the TAPA between TCB and the City.

8. Within seven days of the full execution of this Agreement, the Parties will file a Stipulation of Dismissal with Prejudice in the form attached as **Exhibit C**.

9. Neither 3377 Washington nor Mr. Gold will directly or indirectly oppose or appeal any other permit or approval for the Project or support or encourage anyone else to do so.

10. Mr. Gold represents that he does not know of any intent by 3377 Washington's current tenant Turtle Swamp Brewery or its principals to oppose or appeal the Project.

11. TCB will not directly or indirectly oppose or appeal any redevelopment of the property at 3377 Washington Street, or support or encourage anyone else to do so, unless the redevelopment would materially affect the Project.

12. This Agreement is binding on and inures to the benefit of the Parties and their managers, members, heirs, executors, affiliates, successors and assigns.

13. The Parties, for themselves and their managers, members, heirs, executors, administrators, beneficiaries, affiliates, successors and assigns, hereby release each other and their managers, members, heirs, executors, administrators, beneficiaries, stockholders, officers, directors, employees, representatives, agents, affiliates, successors and assigns from all claims, demands, actions, and causes of action of any kind, at law or in equity, known and unknown, that they have or may ever have had regarding the Project or the Litigation, through the date stated in the first paragraph of this Agreement.

14. The Parties acknowledge that they have read and understand this Agreement. Both Parties have had an opportunity to participate in the drafting of this Agreement, and it shall not be construed against any Party as drafter.

15. The Parties shall timely execute and deliver all documents that are reasonably necessary to implement this Agreement and shall otherwise cooperate in its implementation.

16. This Agreement constitutes the entire agreement between the Parties regarding the Project and the Litigation, and it supersedes all prior representations and agreements of any kind, oral or written, by any person or entity.

17. This Agreement may be amended only in writing. No waiver of any provision of this Agreement shall waive any other provision (whether or not similar), and no waiver shall constitute a continuing waiver unless otherwise expressly stated in writing.

18. This Agreement is a compromise of disputed claims, and neither the execution nor the implementation of this Agreement shall constitute any admission of fact, law, or liability.

19. All notices and other communications under this Agreement shall be sent by hand delivery, overnight mail, or certified mail (postage prepaid, return receipt requested), or by email if an email address is given below, as follows:

To 3377 Washington

With copies to:

Stephen A. Greenbaum, Esq.
sagreenbaum@greenbaumnagel.com
Rhonda B. Fogel, Esq.
rfogel@greenbaumnagel.com

To TCB

Carrie Tennant, Esq.
Associate General Counsel
The Community Builders, Inc.
185 Dartmouth Street
Boston, MA 02116
carrie.tennant@tcbinc.org

With copies to:

Lyndia Downie, President and Exec. Director
Pine Street Inn
44 Harrison Avenue
Boston, MA 02118

GREENBAUM, NAGEL, FISHER &
PALIOTTI, LLP
200 High Street, 5th Floor
Boston, MA 02110

and

Elizabeth Ross, Esq.
Krokidas & Bluestein LLP
600 Atlantic Avenue
Boston, MA 02210
eross@kb-law.com

or to such other address as the recipient has previously given as set forth above.

20. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, the remaining provisions shall remain in full force to the extent necessary to effectuate the Parties' intent.

21. This Agreement may be executed in counterparts and facsimile or scanned signatures shall have the same force and effect as original signatures.

22. The Parties acknowledge that this Agreement is a binding, enforceable agreement. If either Party files litigation to enforce the terms of this Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs for that litigation.

Executed by their duly authorized representatives.

3377 WASHINGTON STREET, LLC

THE COMMUNITY BUILDERS, INC.

By: Monty Gold
Its: Manager
Date:

By: Andrew Waxman
Its: Authorized Agent
Date:

EXHIBIT I

Anne M. Croft

From: Anne M. Croft
Sent: Wednesday, April 21, 2021 9:12 AM
To: Anne M. Croft
Subject: FW: Washington Street - revised Settlement Agreement

From: Arthur Kreiger
Sent: Monday, April 5, 2021 1:08 PM
To: 'Stephen A. Greenbaum' <sagreenbaum@greenbaumnagel.com>; Rhonda Fogel <rfogel@greenbaumnagel.com>
Cc: Dana E. Wooten <dwooten@andersonkreiger.com>
Subject: RE: Washington Street - revised Settlement Agreement

Stephen and Rhonda –

Neither of these documents was a condition of this settlement. Moreover, neither one exists yet, and there was never any chance of having either one for some time.

Please give me a call so we can discuss this outside of emails. Thanks.

Art

ANDERSON
KREIGER

Arthur P. Kreiger
T. 617.621.6540 | F. 617.621.6640 | C. 617.510.3508
[Anderson & Kreiger LLP](#) | 50 Milk Street, 21st Floor, Boston, MA 02109

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From: Stephen A. Greenbaum <sagreenbaum@greenbaumnagel.com>
Sent: Monday, April 5, 2021 10:02 AM
To: Arthur Kreiger <AKreiger@AndersonKreiger.com>; Rhonda Fogel <rfogel@greenbaumnagel.com>
Cc: Dana E. Wooten <dwooten@andersonkreiger.com>
Subject: RE: Washington Street - revised Settlement Agreement

Art--my client is still looking for a lease with the church. And rules and regs for the parking

Stephen A. Greenbaum, Esq.
GREENBAUM, NAGEL, FISHER & PALIOTTI, LLP
200 High Street
Boston, Massachusetts 02110
Tel: 617-423-4300
Fax: 617-482-5067
Email: sagreenbaum@greenbaumnagel.com

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From: Arthur Kreiger <AKreiger@AndersonKreiger.com>
Sent: Thursday, April 01, 2021 1:09 PM
To: Stephen A. Greenbaum <sagreenbaum@greenbaumnagel.com>; Rhonda Fogel <rfogel@greenbaumnagel.com>
Cc: Dana E. Wooten <dwooten@andersonkreiger.com>
Subject: RE: Washington Street - revised Settlement Agreement

Stephen and Rhonda –

The *nisi* order deadline isn't until April 12, but we've all said that we want to get this settlement done. Are we there?

Thanks.

Art

From: Arthur Kreiger
Sent: Tuesday, March 30, 2021 5:11 PM
To: 'Stephen A. Greenbaum' <sagreenbaum@greenbaumnagel.com>; 'Rhonda Fogel' <rfogel@greenbaumnagel.com>
Cc: Dana E. Wooten <dwooten@andersonkreiger.com>
Subject: RE: Washington Street - revised Settlement Agreement

Stephen and Rhonda –

As promised. I accepted the previous edits, inserted the sentence stated below in the middle of Paragraph 4, and added "or deposit" to the next sentence for Mr. Gold's benefit.

Art

From: Arthur Kreiger
Sent: Tuesday, March 30, 2021 11:14 AM
To: 'Stephen A. Greenbaum' <sagreenbaum@greenbaumnagel.com>; Rhonda Fogel <rfogel@greenbaumnagel.com>
Cc: Dana E. Wooten <dwooten@andersonkreiger.com>
Subject: RE: Washington Street - revised Settlement Agreement

Stephen and Rhonda –

1. TCB is willing to add the following provision to the Agreement: "Upon completion of construction of the Project, TCB will deposit \$75,000.00 into a reserve account for the sole purpose of covering the cost of the Off-Site Parking and will provide confirmation of that deposit to Mr. Gold."
2. The project at Quincy Street and Blue Hill Avenue has a surface parking lot, not an underground garage. Any regulations there would be largely inapplicable. Attached are TCB's regulations for the underground garage at 95 Hyde Park Avenue. Some of these regulations are for residents and would not apply to Mr. Gold or his tenants, but I'm sending them in response to his request. These regulations are not up for negotiation, and TCB reserves the right to modify them as appropriate, but any such regulations for the Project must be commercially reasonable under the Settlement Agreement.

I'll send you the Agreement with the provision in # 1 above for the parties' signature. Thank you.

Art



Arthur P. Kreiger
T. 617.621.6540 | F. 617.621.6640 | C. 617.510.3508
Anderson & Kreiger LLP | 50 Milk Street, 21st Floor, Boston, MA 02109

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From: Stephen A. Greenbaum <sagreenbaum@greenbaumnagel.com>
Sent: Monday, March 29, 2021 3:40 PM
To: Arthur Kreiger <AKreiger@AndersonKreiger.com>; Rhonda Fogel <rfogel@greenbaumnagel.com>
Cc: Dana E. Wooten <dwooten@andersonkreiger.com>
Subject: RE: Washington Street - revised Settlement Agreement

Art--received and forwarded to our client.
He has a couple of issues.

1. He would like to see the \$75K in a fund to be claimed against, not simply a line item.
2. He says that your client built a similar project with parking at the corner of Quincy Street and Blue Hill Ave. within the last couple of years, so it should already have a set of parking regulations prepared, and he would like to see them.

Thank you
Stephen

Stephen A. Greenbaum, Esq.
GREENBAUM, NAGEL, FISHER & PALIOTTI, LLP
200 High Street
Boston, Massachusetts 02110
Tel: 617-423-4300
Fax: 617-482-5067
Email: sagreenbaum@greenbaumnagel.com

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From: Arthur Kreiger <AKreiger@AndersonKreiger.com>
Sent: Monday, March 29, 2021 9:59 AM
To: Stephen A. Greenbaum <sagreenbaum@greenbaumnagel.com>; Rhonda Fogel <rfogel@greenbaumnagel.com>
Cc: Dana E. Wooten <dwooten@andersonkreiger.com>
Subject: Washington Street - revised Settlement Agreement

Stephen and Rhonda –

Good morning. I just want to confirm that you received the red-lined draft from my secretary on Friday afternoon, showing the edits. Thanks.

Art



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EXHIBIT J

Anne M. Croft

From: Anne M. Croft
Sent: Wednesday, April 21, 2021 9:13 AM
To: Anne M. Croft
Subject: FW: Washington Street - remaining issues

From: Rhonda Fogel <rfogel@greenbaumnagel.com>
Sent: Thursday, April 8, 2021 1:47 PM
To: Arthur Kreiger <AKreiger@AndersonKreiger.com>; Stephen A. Greenbaum <sagreenbaum@greenbaumnagel.com>
Subject: RE: Washington Street - remaining issues

Art,

We would request that the words "when drafted" be added to the end of the following sentence as indicated. TCB shall send 3377 Washington Street a copy of the applicable regulations and policies "when drafted".

Once we have the revised settlement agreement we will submit it to our client for approval.
Thanks.

Rhonda B. Fogel, Esq.
GREENBAUM, NAGEL, FISHER & PALIOTTI, LLP
200 High Street, 5th Floor
Boston, Massachusetts 02110
Tel: 617-423-4300
Fax: 617-482-5067
Email: rfogel@greenbaumnagel.com

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From: Arthur Kreiger [<mailto:AKreiger@AndersonKreiger.com>]
Sent: Thursday, April 08, 2021 1:25 PM
To: Stephen A. Greenbaum; Rhonda Fogel
Subject: FW: Washington Street - remaining issues

Stephen and Rhonda -

Here is the last paragraph of section 4, amended as we discussed this afternoon:

TCB will make six spaces in the Project garage available for 3377 Washington or its tenants during the hours of 6:00 p.m. - 11:00 p.m. on weekdays and noon-midnight on weekends at no cost when the garage is open for occupancy, under an agreement to be negotiated in good faith when the construction of the garage is completed. Anyone using the garage pursuant to this paragraph will be subject to TCB's security system, regulations, and policies, which shall be commercially reasonable. **TCB shall send 3377 Washington a copy of**

the applicable regulations and policies. The application of any such regulations and policies to 3377 Washington or its tenants shall be in good faith.

I look forward to receiving any proposed language regarding the off-site parking. When you send it, please confirm that that is the last issue holding up execution of the Agreement.

Art



Arthur P. Kreiger

T. 617.621.6540 | F. 617.621.6640 | C. 617.510.3508

[Anderson & Kreiger LLP](#) | 50 Milk Street, 21st Floor, Boston, MA 02109

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EXHIBIT K

Anne M. Croft

From: Anne M. Croft
Sent: Wednesday, April 21, 2021 9:16 AM
To: Anne M. Croft
Subject: FW: Washington Street - revised Settlement Agreement
Attachments: SETTLEMENT AGREEMENT(1259137.5).docx

From: Arthur Kreiger
Sent: Thursday, April 8, 2021 3:52 PM
To: 'Stephen A. Greenbaum' <sagreenbaum@greenbaumnagel.com>; Rhonda Fogel <rfogel@greenbaumnagel.com>
Cc: Dana E. Wooten <dwooten@andersonkreiger.com>
Subject: Washington Street - revised Settlement Agreement

Stephen and Rhonda –

See attached. I added “when drafted” as Rhonda requested, and I added your 3 additional terms. I tweaked #3 to clarify that it does not override the non-renewal and termination parts of the Agreement, *i.e.*, to avoid dueling “notwithstanding” clauses, and changed “comportance” to “compliance”.

Art



Arthur P. Kreiger
T. 617.621.6540 | F. 617.621.6640 | C. 617.510.3508
[Anderson & Kreiger LLP](#) | 50 Milk Street, 21st Floor, Boston, MA 02109

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SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by 3377 Washington Street, LLC (“3377 Washington”), the sole manager of which is Monty Gold, and The Community Builders, Inc. (“TCB”) (together, the “Parties”) as of this ___ day of March, 2021.

WHEREAS, the Board granted variances for a 202-unit affordable housing project proposed by TCB at 3368 Washington, Street, Boston, MA (the “Project”);

WHEREAS, 3377 Washington appealed those variances in *3377 Washington Street, LLC v. City of Boston Zoning Board of Appeal and The Community Builders, Inc.*, Land Court Permit Session No. 20 PS 000348 (HPS) (the “Litigation”);

WHEREAS, the Parties and their counsel engaged in mediation on March 3 and 10, 2021, approved a Mediation Agreement in principle subject to a final Settlement Agreement, and reported the Litigation settled to the court; and

WHEREAS, the Parties want to fully resolve the Litigation and their dispute regarding the Project without further time, expense, and uncertainty;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. In constructing the Project, TCB will add six more parking spaces in the garage, as shown on the plan attached as **Exhibit A**.
2. Before starting construction, TCB will lease 30 spaces for construction workers for two years at Hope Central Church, 85 Seaverns Avenue, Jamaica Plain pursuant to the Letter of Intent (the “LOI”) attached as **Exhibit B**, or other off-site location of its choosing. Any assignment of the lease to any general or sub-contractor shall only be for the duration of construction, after which the lease shall revert to Washington Pine, LLC or its designee. TCB shall provide a copy of the lease 3377 Washington when it is executed.
3. Before obtaining a certificate of occupancy for the Project, TCB will lease 15 spaces at the Church pursuant to the LOI or other off-site location of its choosing (in either case, the “Off-Site Parking”), and prohibit 15 staff from parking at the Project. Regardless of the availability of parking spaces at the Church or any other off-site location, TCB and Washington Pine LLC shall always be obligated to make the Off-Site Parking spaces available in compliance with, and subject to, the terms of this Agreement. This obligation will be perpetual in 5-year increments starting at the end of the two-year period described in Paragraph 2, as follows. At the end of each 5-year period, TCB will either:
 - a. renew or replace the lease at the same or a different location, or
 - b. notify 3377 Washington Street of its intention to study the then-current need for continued Off-Site Parking. If the parties agree on a consultant to conduct

the study, TCB will pay that consultant's fees. If the parties are unable to agree, each party will select (and pay for) a consultant to select a third one to conduct the study at TCB's expense. The study will analyze the parking utilization in the Project garage and the location of the Off-Site Parking and determine how many of the 15 spaces, if any, are still reasonably needed. TCB will lease the number of spaces so determined for the next 5-year period.

TCB will make six spaces in the Project garage available for 3377 Washington or its tenants during the hours of 6:00 p.m. - 11:00 p.m. on weekdays and noon-midnight on weekends at no cost when the garage is open for occupancy. Anyone using the garage pursuant to this paragraph will be subject to TCB's security system, regulations, and policies, which shall be commercially reasonable. TCB shall send 3377 Washington a copy of the applicable regulations and policies when drafted. The application of any such regulations and policies to 3377 Washington or its tenants shall be in good faith.

4. TCB shall include in the Project budget a line item of at least \$75,000 for the cost of the Off-Site Parking. Upon completion of construction of the Project, TCB will deposit \$75,000.00 into a reserve account for the sole purpose of covering the cost of the Off-Site Parking and will provide confirmation of that deposit to Mr. Gold. The amount of that line item and deposit shall not limit TCB's obligations under this Agreement.

5. Notwithstanding anything else in this Agreement, TCB's obligations regarding Off-Site Parking and spaces in the Project garage shall immediately terminate if:

- a. (i) a controlling interest in 3377 Washington or the property at 3377 Washington Street is transferred to anyone besides the descendants of Mr. Gold or (ii) he or his descendants fail, at the time of the selection of consultants, to demonstrate to TCB's reasonable satisfaction that no such transfer has taken place, OR
- b. the building at 3377 Washington Street is demolished or redeveloped by anyone.

6. TCB will contribute \$40,000 to a fund for the mitigation of construction impacts from the Project, to be used as determined in the Cooperative Agreement between TCB and the BPDA pursuant to Article 80.

7. TCB will contribute \$17,500 to the City for transportation studies and/or implementation projects on Washington Street, pursuant to the TAPA between TCB and the City.

8. Within seven days of the full execution of this Agreement, the Parties will file a Stipulation of Dismissal with Prejudice in the form attached as **Exhibit C**.

9. Neither 3377 Washington nor Mr. Gold will directly or indirectly oppose or appeal any other permit or approval for the Project or support or encourage anyone else to do so.

10. Mr. Gold represents that he does not know of any intent by 3377 Washington's current tenant Turtle Swamp Brewery or its principals to oppose or appeal the Project.

11. TCB will not directly or indirectly oppose or appeal any redevelopment of the property at 3377 Washington Street, or support or encourage anyone else to do so, unless the redevelopment would materially affect the Project.

12. This Agreement is binding on and inures to the benefit of the Parties and their managers, members, heirs, executors, affiliates, successors and assigns.

13. The Parties, for themselves and their managers, members, heirs, executors, administrators, beneficiaries, affiliates, successors and assigns, hereby release each other and their managers, members, heirs, executors, administrators, beneficiaries, stockholders, officers, directors, employees, representatives, agents, affiliates, successors and assigns from all claims, demands, actions, and causes of action of any kind, at law or in equity, known and unknown, that they have or may ever have had regarding the Project or the Litigation, through the date stated in the first paragraph of this Agreement.

14. The Parties acknowledge that they have read and understand this Agreement. Both Parties have had an opportunity to participate in the drafting of this Agreement, and it shall not be construed against any Party as drafter.

15. The Parties shall timely execute and deliver all documents that are reasonably necessary to implement this Agreement and shall otherwise cooperate in its implementation.

16. This Agreement constitutes the entire agreement between the Parties regarding the Project and the Litigation, and it supersedes all prior representations and agreements of any kind, oral or written, by any person or entity.

17. This Agreement may be amended only in writing. No waiver of any provision of this Agreement shall waive any other provision (whether or not similar), and no waiver shall constitute a continuing waiver unless otherwise expressly stated in writing.

18. This Agreement is a compromise of disputed claims, and neither the execution nor the implementation of this Agreement shall constitute any admission of fact, law, or liability.

19. All notices and other communications under this Agreement shall be sent by hand delivery, overnight mail, or certified mail (postage prepaid, return receipt requested), or by email if an email address is given below, as follows:

To 3377 Washington

To TCB

Carrie Tennant, Esq.
Associate General Counsel
The Community Builders, Inc.
185 Dartmouth Street

Boston, MA 02116
carrie.tennant@tcbinc.org

With copies to:

Stephen A. Greenbaum, Esq.
sagreenbaum@greenbaumnagel.com
Rhonda B. Fogel, Esq.
rfogel@greenbaumnagel.com
GREENBAUM, NAGEL, FISHER &
PALIOTTI, LLP
200 High Street, 5th Floor
Boston, MA 02110

With copies to:

Lyndia Downie, President and Exec. Director
Pine Street Inn
44 Harrison Avenue
Boston, MA 02118

and

Elizabeth Ross, Esq.
Krokidas & Bluestein LLP
600 Atlantic Avenue
Boston, MA 02210
eross@kb-law.com

or to such other address as the recipient has previously given as set forth above.

20. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, the remaining provisions shall remain in full force to the extent necessary to effectuate the Parties' intent.

21. This Agreement may be executed in counterparts and facsimile or scanned signatures shall have the same force and effect as original signatures.

22. The Parties acknowledge that this Agreement is a binding, enforceable agreement. If either Party files litigation to enforce the terms of this Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs for that litigation.

Executed by their duly authorized representatives.

3377 WASHINGTON STREET, LLC

THE COMMUNITY BUILDERS, INC.

By: Monty Gold
Its: Manager
Date:

By: Andrew Waxman
Its: Authorized Agent
Date:

EXHIBIT L

Anne M. Croft

From: Anne M. Croft
Sent: Wednesday, April 21, 2021 9:19 AM
To: Anne M. Croft
Subject: FW: Washington Street - revised Settlement Agreement

From: Stephen A. Greenbaum <sagreenbaum@greenbaumnagel.com>
Sent: Monday, April 12, 2021 10:02 AM
To: Arthur Kreiger <AKreiger@AndersonKreiger.com>; Rhonda Fogel <rfogel@greenbaumnagel.com>
Cc: Dana E. Wooten <dwooten@andersonkreiger.com>
Subject: RE: Washington Street - revised Settlement Agreement

Art:
Confirming your earlier conversation with Rhonda, our client is not comfortable signing the settlement agreement until and unless he can see rules and regulations for the parking garage. This is directly per his specific instruction.
Stephen

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From: Arthur Kreiger <AKreiger@AndersonKreiger.com>
Sent: Thursday, April 08, 2021 3:52 PM
To: Stephen A. Greenbaum <sagreenbaum@greenbaumnagel.com>; Rhonda Fogel <rfogel@greenbaumnagel.com>
Cc: Dana E. Wooten <dwooten@andersonkreiger.com>
Subject: Washington Street - revised Settlement Agreement

Stephen and Rhonda –

See attached. I added “when drafted” as Rhonda requested, and I added your 3 additional terms. I tweaked #3 to clarify that it does not override the non-renewal and termination parts of the Agreement, *i.e.*, to avoid dueling “notwithstanding” clauses, and changed “comportance” to “compliance”.

Art



Arthur P. Kreiger
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