

**MASON, GRIFFIN & PIERSON**  
A PROFESSIONAL CORPORATION  
COUNSELLORS AT LAW

**MEMORANDUM**

To: Mayor and Council of Princeton

From: Edwin W. Schmierer, Esq.  
Assistant Municipal Attorney



Date: July 23, 2014

**Re: Princeton - Fountain Ridge, LLC Occupancy and Use Agreement: Storm Sewer Crossing**

---

In 2011, the then-Regional Planning Board of Princeton approved the construction of "Copperwood at Princeton", a 153 unit age-restricted apartment-style development on property located on Bunn Drive.

The storm water management plan presented to the Planning Board involved piping some of the storm water runoff from the apartment complex in a pipe underneath Bunn Drive to the existing Princeton Community Village detention basin. In order to facilitate the installation of this storm water line, an Occupancy and Use Agreement is required between Princeton and the developer. Essentially, this Agreement requires the developer to satisfy all of the terms and conditions of the Planning Board resolution, construct the storm water piping under Bunn Drive in accordance with the developer's approvals; maintain this pipe and indemnify and hold Princeton harmless from any and all claims associated with said pipe.

To this end, I have prepared and attach hereto a proposed resolution and the proposed Occupancy and Use Agreement.

We would appreciate very much if you would consider authorizing the execution of the Agreement at your meeting on July 28, 2014.

EWS:kaj

cc: Robert W. Bruschi, Administrator  
Kathryn Monzo, Assistant Administrator  
Linda McDermott, Clerk  
Robert V. Kiser, P.E., Princeton Engineer  
Mark A. Solomon, Esq.

COUNTY OF MERCER

PRINCETON

STATE OF NEW JERSEY

**RESOLUTION NO. 2014-214**

**WHEREAS**, J. Robert Hillier d/b/a Fountain Ridge, LLC received approval from the then-Princeton Regional Planning Board on June 9, 2011 for the construction of a development known as “Copperwood at Princeton” (see file #PT109692P); and

**WHEREAS**, said approval was memorialized by the then-Regional Planning Board of Princeton on August 25, 2011; and

**WHEREAS**, a condition of approval by said Regional Planing Board of Princeton involved the piping of storm water from the development through underground piping under Bunn Drive to the Princeton Community Village detention basin; and

**WHEREAS**, to facilitate said storm water piping and to provide that the responsibility for said storm water piping shall remain the responsibility of Copperwood at Princeton, an Occupancy and Use Agreement is required.

**NOW THEREFORE BE IT RESOLVED** by the Mayor and Council of Princeton as follows:

1. The Mayor and Clerk of Princeton are hereby authorized and directed to enter into an Occupancy and Use Agreement between Princeton and Fountain Ridge, LLC for the private storm sewer crossing under Bunn Drive. The 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 shall be furnished upon its adoption to J. Robert Hillier, c/o Mark A. Solomon, Esq., Pepper Hamilton, LLP, Suite 400, 301 Carnegie Center, Princeton, New Jersey 08543-5276. A copy shall also be furnished to Lee O. Solow,

PP/AICP, Princeton Planning Director for inclusion in the Planning Board file for the Copperwood at Princeton project.

**CERTIFICATION**

I, Linda S. McDermott, Clerk of Princeton, do hereby certify that the foregoing Resolution was adopted by the Mayor and Council of Princeton at its meeting held on the 28<sup>th</sup> day of July, 2014.

---

Linda S. McDermott, Clerk  
Princeton

Prepared by:

\_\_\_\_\_  
Mark A. Solomon, Esq.

**OCCUPANCY AND USE AGREEMENT BETWEEN THE MUNICIPALITY OF  
PRINCETON AND FOUNTAIN RIDGE LLC FOR PRIVATE STORM SEWER  
CROSSING**

THIS AGREEMENT, dated this \_\_\_\_ day of \_\_\_\_\_ 2014, between the Municipality of Princeton (“Princeton”), a municipal corporation in the County of Mercer, State of New Jersey, with its address at 400 Witherspoon Street, Princeton, NJ 08540, and Fountain Ridge, L.L.C. (“Fountain Ridge”), with offices at 190 Witherspoon Street, Princeton, NJ 08540.

WHEREAS, Fountain Ridge is the owner of property identified as Block 4301, Lots 3 and 4, and Block 4401, Lot 1 in Princeton (the “Property”), and

WHEREAS, on June 9, 2011, as memorialized in a Resolution adopted on August 25, 2011 (the “Resolution”), the then-Regional Planning Board of Princeton (the “Planning Board”) granted Preliminary and Final Site Plan Approval for 153 age-restricted apartment style units on the Property (the “Project”), and

WHEREAS, stormwater from the Project will travel through an underground pipe across Bunn Drive to an off-site detention basin (“Storm Sewer Crossing”); and

WHEREAS, the Resolution requires the recording of an occupancy and use agreement relating to the crossing of Bunn Drive with a private storm sewer and requiring the owner of the Project to be responsible for maintenance of the Storm Sewer Crossing; and

WHEREAS, Fountain Ridge desires to comply with this condition.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants, promises and obligations contained herein, the parties hereto acknowledge and agree as follows:

1. Fountain Ridge shall comply with all requirements of the Resolution;

2. Fountain Ridge shall construct the Storm Sewer Crossing in accordance with the plans and details which were approved by the Planning Board in connection with the approval of the Project;

3. Fountain Ridge shall maintain the Storm Sewer Crossing;

4. Fountain Ridge shall indemnify and hold harmless Princeton and its respective officers, agents, contractors, servants and employees from and against any and all claims, demands, suits, proceedings, liabilities, judgments, awards, losses, damages, costs and expenses, including reasonable attorney's fees, resulting from bodily injury, sickness, disease or death sustained by any person or persons or injury or damages to, or destruction of, any property arising out of or relating to the construction or maintenance of the Storm Sewer Crossing;

5. Based on the above, Princeton hereby grants to Fountain Ridge permission to install the Storm Sewer Crossing as shown on Exhibit A.

*Signatures on following page.*



STATE OF NEW JERSEY, COUNTY OF MERCER      SS:

I CERTIFY that on \_\_\_\_\_, 2014, J. Robert Hillier personally came before me and acknowledged under oath, to my satisfaction, that he:

(a) made the attached instrument;

(b) was authorized to and did execute this instrument on behalf of and as the Manager of Fountain Ridge, LLC, a New Jersey limited liability company, the entity named in this easement;

(c) signed this instrument as the act of the entity named in this instrument; and

(d) made this instrument for \$1.00 as the full and actual consideration paid or to be paid for same. (Such consideration is defined in N.J.S.A. 46:15-5.)

\_\_\_\_\_  
Notary Public

Record and Return to:  
Mark A. Solomon, Esq.  
Pepper Hamilton, LLP  
301 Carnegie Center  
Princeton, NJ 08543-5276

