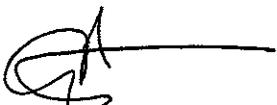


MASON, GRIFFIN & PIERSON

A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

MEMORANDUM

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

From: Edwin W. Schmierer, Esq. 
Princeton Attorney

Date: April 18, 2013

Re: **Princeton - Trustees of Princeton University: Merwick/Stanworth
Supplemental Developer's Agreement**

On November 29, 2012, the then Regional Planning Board of Princeton memorialized its approval of the above-referenced project. The approval contained specific requirements with regard to sanitary sewer connection fees, inspection fees, etc. I have been working with Princeton Engineer Jack West, P.E. and representatives of the University in preparing a Developer's Agreement setting forth the legal requirement to satisfy these conditions of approval.

The Supplemental Developer's Agreement for the Merwick/Stanworth Project is now complete and attached. I have prepared a Resolution authorizing its execution by Princeton.

This Agreement is deemed "supplemental" to the Affordable Housing Agreement for this project which is being submitted to you separately for your review and approval.

We would appreciate your considering this request at your meeting on April 22, 2013.

EWS:jv
attachs.

cc: Robert W. Bruschi, Administrator (w/attachs.)
Kathy Monzo, Assistant Administrator (w/attachs.)
Linda S. McDermott, Clerk (w/attachs.)
Robert V. Kiser, P.E., Princeton Engineer (w/attachs.)
Jack M. West, P.E., Princeton Land Use Engineer (w/attachs.)
Richard S. Goldman, Esq., Princeton University Attorney (w/attachs.)
Kristin S. Appelget, Director of Community and Regional Affairs, Princeton University (w/attachs.)

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COUNTY OF MERCER

PRINCETON

STATE OF NEW JERSEY

RESOLUTION NO. 13-

WHEREAS, the Trustees of Princeton University received approval from the Regional Planning Board of Princeton on September 20, 2012 with regard to the Merwick/Stanzworth properties (see File No. PT120866P); and

WHEREAS, the Planning Board Resolution of Memorialization adopted November 27, 2012 requires that The Trustees of Princeton University enter into a Developer's Agreement with the Municipality in order to satisfy all conditions of approval; and

WHEREAS, the Princeton Engineering Department has reviewed the attached Developer's Agreement and recommends its adoption.

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 execute a Supplemental Developer's Agreement for the Merwick/Stanzworth properties (Block 14.01, Lot 1; Block 16.01, Lot 1; Block 15.04, Lot 7 and Block 17.04, Lot 102, Princeton Township Tax Map). The Supplemental 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 and the Agreement shall be furnished by the Municipal Clerk upon its adoption to the attorney for Princeton University, Richard S. Goldman, Esq., Drinker Biddle & Reath, LLP, P.O. Box 627, Princeton, New

4/22

13-126

Jersey 08540-0627 and to Kristin S. Appelget, Director of Community and Regional Affairs, Princeton University, 22 Chambers Street, Princeton, New Jersey 08542.

CERTIFICATION

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

Linda S. McDermott, Clerk
Princeton

**SUPPLEMENTAL DEVELOPER'S AGREEMENT
TRUSTEES OF PRINCETON UNIVERSITY
MERWICK/STANWORTH
BLOCK 14.01, Lot 1; BLOCK 16.01, LOT 1; BLOCK 15.04, LOT 7;
AND BLOCK 17.04, LOT 102
PRINCETON TAX MAP
(FILE NO. PB120866P)**

This Agreement entered into on this ____ day of April, 2013, by and between:

PRINCETON, a municipal corporation of the State of New Jersey, with offices located at 400 Witherspoon Street, Princeton, New Jersey 08540 (hereinafter referred to as the "Princeton"), and

THE TRUSTEES OF PRINCETON UNIVERSITY, One Nassau Hall, Princeton, New Jersey 08540 (hereinafter referred to as the "Developer")

WITNESSETH:

WHEREAS, the Developer received preliminary and final major site plan approval with variances from the Regional Planning Board of Princeton for the construction of a development on the Merwick/Stanzworth properties situate in Princeton, County of Mercer, State of New Jersey, and designated on the Princeton Tax Map as Block 14.01, Lot 1; Block 16.01, Lot 1; Block 15.04, Lot 7 and Block 17.04, Lot 102 (hereinafter referred to as the "Development") (see File No. PT120866P); and

WHEREAS, said approvals were granted for the Development on September 20, 2012 with said approvals having been memorialized by Resolution adopted November 29, 2012; and

WHEREAS, said approval require that the Developer enter into a Developer's Agreement with Princeton in order to satisfy conditions of approval; and

WHEREAS, the Developer has entered into a Developer's Agreement dated April 22, 2013 to address the Development's affordable housing obligation pursuant to Section 17A:202.1 of the "Code of the Borough of Princeton, New Jersey, 1975"; and

WHEREAS, Princeton and Developer wish to enter into a Supplemental Developer's Agreement to address other conditions of approval.

NOW, THEREFORE, in consideration of such approval and the mutual undertakings as set forth hereinbelow, Princeton and Developer agree as follows:

1. **Cross Walk Enhancement:**

The Developer will work with the Municipal Engineer and NJDOT on plans to enhance the Route 206 crosswalk at Cleveland Lane and will submit an application to NJDOT on behalf of the municipality. The Developer shall make a contribution up to a maximum of \$40,000.00 toward the construction of the enhanced crosswalk or such other designs approved by NJDOT. The implementation of any plan approved by NJDOT is not a condition of approval and it shall not be required prior to receiving any building permits or certificates of occupancy.

2. **LEED Certification Application:**

Developer shall track the requirements for LEED for Homes Silver and will submit an application for LEED certification, but securing such certification is not a condition of approval or required under this Agreement.

3. **Emergency Access:**

Prior to the issuance of a building permit, a suitable gravel access road must be maintained to provide emergency access to any building under construction and any utilities deemed necessary by the Municipal Engineer must be installed.

4. **Sanitary Sewers**

The Developer shall obtain all permits required from the Princeton Sewer Operating Committee ("PSOC"), Stony Brook Regional Sewerage Authority ("SBRSA") and a Treatment Works Approval ("TWA") from NJDEP to provide sanitary sewers for the Property. The Developer shall also make a payment to the sewer trust fund as follows: (i) Phase I (Merwick site) - \$255,095.00 and (ii) Phase II (Stanworth site) - \$199,537.50, totaling \$454,632.50 as set forth on Exhibit A attached hereto and made a part hereof. The Developer shall furnish to PSOC a utility plan showing the location of the sanitary sewers which will privately be owned and maintained by the Developer or its successor on the Property. The sewer trust fund payments shall be made as follows: Phase I payment to be paid when a building permit is issued for Phase I buildings; Phase II payment to be paid when a building permit is issued for Phase II buildings. For purposes of this Agreement, early start work and the issuance of footing and foundation permits for the buildings will not trigger the requirement for the above-referenced sewer trust fund payments.

5. **Retaining Walls/Leigh Avenue:**

Developer shall rebuild the existing retaining walls along the rear of the Leigh Avenue properties, including both those onsite retaining walls as well as those on neighboring properties, if the neighboring property owner grants an easement for this purpose. There is a special condition regarding drainage and the existing retaining wall at the rear of the property at 60 Leigh Avenue owned by Peter Nielsen. The applicant and Municipal Engineer shall meet with Mr. Nielsen, and the Developer shall design a reasonable workable solution, approved by the Municipal Engineer.

6. **Landscape Subcommittee Approval:**

The Developer shall develop the design regarding plantings along the base of buildings and for the building entrances and private spaces associated with each unit. This design and the applicant's overall landscape plan shall be subject to the review and approval of the Board's Landscape Subcommittee.

7. **Other Approvals:**

The Developer shall obtain approvals from the Mercer County Planning Board, NJDEP and the Delaware and Raritan Canal Commission, if required, prior to the start of construction. Proof of obtaining approvals from these outside agencies shall be filed by the Developer with the Municipal Engineer.

8. **Performance Bonds:**

The Developer shall post with Princeton performance guarantees in the amount determined by the Municipal Engineer as set forth in the letter from John M. West, P.E., P.P. to Mr. Thomas O'Shea, P.E., dated March 8, 2013, attached as Exhibit B.

9. **Inspection Fees:**

The Developer shall post reasonable inspection fees in an amount determined by the Municipal Engineer for required inspections of the Property. Twenty-five (25%) percent of the fees shall be paid prior to the construction plans being approved with the remaining fees escrowed by Princeton pursuant to *N.J.S.A. 40:55D-53h*.

10. **Miscellaneous:**

The Developer shall satisfy all of the remaining conditions of approval as set forth in the Regional Planning Board of Princeton Resolution of Memorialization dated September 20, 2012.

The Developer shall continue to satisfy the requirements of the April 22, 2013 Developer's Agreement concerning affordable housing.

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

All the terms, covenants and conditions herein contained shall be for and shall inure to the benefit of and shall be binding upon the respective parties hereto and their successors and assigns.

All notices hereunder shall be in writing and shall be given by personal delivery or by certified mail, return receipt requested, postage prepaid, addressed to the parties at the addresses set forth hereinbelow:

TO PRINCETON:

Princeton
400 Witherspoon Street
Princeton, New Jersey 08540
Attention: Municipal Clerk

With a copy to:

Mason, Griffin & Pierson, P.C.
101 Poor Farm Road
Princeton, New Jersey 08540
Attention: Edwin W. Schmierer, Esq.

- and -

TO THE DEVELOPER:

Trustees of Princeton University
One Nassau Hall
Princeton, New Jersey 08540
Attention:

With a copy to:

Drinker Biddle & Reath LLP
105 College Road East, Suite 300
Princeton, New Jersey 08542-0627
Attention: Richard S. Goldman, Esq.

[signatures on following page]

IN WITNESS WHEREOF, the parties have hereunto set their hand and seals the day
and date first written above.

ATTEST:

PRINCETON

Linda S. McDermott, Clerk

By:

Liz Lempert, Mayor

WITNESS:

**THE TRUSTEES OF PRINCETON
UNIVERSITY**

Mary E. Banfield
Executive Assistant

By:

Michael E. McKay
Vice President for Facilities

Acknowledgments

State of New Jersey :
County of Mercer :ss.

I certify that on the ___ day of April, 2013, Linda S. McDermott personally appeared before me, the subscriber, and acknowledged under oath, to my satisfaction, that: (a) this person is the Clerk of Princeton, the municipal corporation and body politic, named in this document; (b) this person is the attesting witness to the signing of this document by the proper officer who Liz Lempert, the Mayor of Princeton; (c) this document was signed and delivered by Princeton as its voluntary act duly authorized by a proper resolution of the Princeton Council; (d) this person knows the proper seal of Princeton which was affixed to this document; and (e) this person signed this proof to attest to the truth of these facts.

Linda S. McDermott

Signed and sworn to before me
this day of _____, 2013.

Edwin W. Schmierer, Esq.
Attorney-at-Law of the State
of New Jersey

State of New Jersey :
County of Mercer :ss.

I certify that on the ____ day of April, 2013, Michael E. McKay, Vice President for Facilities of Princeton University, personally appeared before me, the subscriber, and acknowledged under oath, to my satisfaction, that this person (or if more than one person, each person): (a) is named in and personally signed this document as authorized by Princeton University as its Vice-President for Facilities; and (b) this person signed and delivered this document as his/her voluntary act and deed for the uses and purposes expressed therein on behalf of Princeton University.

Notary Public

EXHIBIT A

PSOC SEWER TRUST FUND PAYMENTS

- * PHASE I (Merwick Site) -- \$255,095.00
- * PHASE II (Stanworth Site) -- \$199,537.50
- * Construction Permit Fees as Required

EXHIBIT B

PERFORMANCE GUARANTEES

[Attached]



Municipality of Princeton

Municipal Building
400 Witherspoon Street
Princeton, NJ 08540-3496

Department of Community Development
Office of Land Use Engineer
Telephone (609) 921-7077
Fax: (609) 688-2026

John M. West, P.E., P.P.
Land Use Engineer
jwest@princetonnj.gov

March 8, 2013

Mr. Thomas O'Shea, P.E.
Van-Note Harvey Associates PC
777 Alexander Road, Suite 102
Princeton, NJ 08540

Re: Bond Estimate
Merwick Stanworth
Bayard Lane, Princeton
Preliminary and Final Major Site Plan

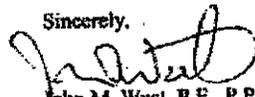
Dear Mr. O'Shea:

In accordance with the Resolution of Approval granted by the Regional Planning Board of Princeton for the above referenced project, you are required to post performance guarantees and inspection fees to the Princeton Engineer's Office, along with a W9 Form.

Construction Estimate	Bond Estimate 120%	Bonded Amount 90%	Cash Amount 10%	Inspection Fees 5%
\$5,021,608.58	\$6,025,930.30	\$5,423,337.27	\$602,593.03	\$301,296.51

Should you have any questions, please contact me at the number above.

Sincerely,


John M. West, P.E., P.P.
Land Use Engineer

cc: Derek Bridger, Zoning Officer
Linda McDermott Clerk
Sandra Webb, Chief Financial Officer
Irene Cutroneo, Planning Board of Princeton