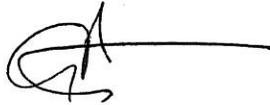


MASON, GRIFFIN & PIERSON
A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

MEMORANDUM

To: Mayor and Council of Princeton

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



Date: May 20, 2014

**Re: Princeton: Moshe and Nira S. Lavid: Acquisition of Block 5701, Lot 16
(59 Meadowbrook Drive)**

Dr. & Mrs. Moshe Lavid have agreed to sell the above-referenced property to Princeton for a sum in the amount of \$625,000.00.

Princeton intends to acquire this property utilizing a FEMA grant. This property is flood prone. It is the intention of Princeton following acquisition of title in July 2014 to demolish all improvements and structures on the property and return the property to its natural state.

I have prepared and attach hereto a proposed ordinance authorizing the acquisition. The proposed sales agreement is also attached.

We would appreciate your considering this matter as a part of your agenda on May 27, 2014.

EWS:kaj

cc: Robert W. Bruschi, Administrator
Kathryn Monzo, Assistant Administrator
Linda S. McDermott, Municipal Clerk
Robert V. Kiser, P.E., Municipal Engineer

**AN ORDINANCE AUTHORIZING
PRINCETON TO ACQUIRE BLOCK 5701,
LOT 16, PRINCETON TAX MAP FOR THE
SUM OF \$625,000.00 UTILIZING FUNDS
FROM THE NEW JERSEY OFFICE OF
EMERGENCY MANAGEMENT, FEMA
GRANT PROGRAM, PROJECT NO. RFC-
PJ-02-NJ-2011-01 AND FROM THE
MUNICIPAL OPEN SPACE TRUST FUND**

WHEREAS, Princeton has applied for and obtained the above-referenced FEMA grant to purchase real property located at Block 5701, Lot 16, Princeton Tax Map and commonly known at 59 Meadowbrook Drive; and

WHEREAS, Princeton wishes to acquire said property since it is flood prone; and

WHEREAS, with the above-referenced FEMA grant, it is the intention of Princeton to demolish all improvements and structures on the property following the acquisition of title and to return the property to a natural state; and

WHEREAS, the provisions of the New Jersey Local Land and Buildings Law, *N.J.S.A. 40A:12-1 et seq.* requires that an ordinance be adopted by Princeton to authorize the acquisition of said property.

NOW THEREFORE, BE IT ORDAINED by the Mayor and Council of Princeton as follows:

1. Princeton is hereby authorized to acquire title to Block 5701, Lot 16 (59 Meadowbrook Drive) for the sum of \$625,000.00, to be paid for utilizing funds from the New Jersey Office Of Emergency Management, FEMA grant program, Project No. RFC-PJ-02-NJ-2011-01 and from Princeton's open space trust fund.

2. The Mayor and Clerk are hereby authorized and directed to execute a sales agreement and all other closing documents in order to effectuate the purchase.

3. This ordinance shall take effect upon its passage and publication as provided for by law.

Linda S. McDermott, Clerk

Liz Lempert, Mayor

Ordinance Introduced: May 27, 2014

Ordinance Adopted:

The purpose of this ordinance is to authorize Princeton to purchase flood-prone real property designated on the Princeton Tax Map as Block 5701, Lot 16 (59 Meadowbrook Drive) for the sum of \$625,000.00. The purchase price shall be funded in part by a FEMA grant in the amount of \$595,000.00, with the balance of \$30,000.00 to be paid for out of Princeton's open space trust fund. Upon acquisition, all improvements and structures on the property will be demolished and the property will be returned to its natural state.

SALES AGREEMENT

1. **REFERENCE DATA.**

SELLER: Moshe & Nira S. Lavid, husband and wife
110 Linwood Circle
Princeton, NJ 08540

BUYER: Princeton, a municipal corporation of the state of New Jersey
400 Witherspoon Street
Princeton, NJ 08540

Property Address: Municipality: Princeton
59 Meadowbrook Drive
Tax Lot: 16
Block: 5701

Purchase Price: \$625,000.00

Estimated closing date: July 7, 2014

Location of Closing: Mason, Griffin & Pierson, P.C.
101 Poor Farm Road
Princeton, NJ 08540

Covenants, easements and restrictions: (see Paragraph 3 C)

Leases, licenses or tenancies: (see Paragraph 3 G) None. Seller to deliver property with no tenants.

Contingency provisions: (see Paragraph 18) All days are calendar days measured from the Effective Date of Agreement.

Seller's Attorney:
Address:

Buyer's Attorney: Mason, Griffin & Pierson, P.C.
101 Poor Farm Road
Princeton, NJ 08540

Broker(s): None **Commission amounts:** None

Effective Date of Agreement: For reference purposes only, each party has dated this Agreement on the date upon which it was executed. For purposes of measuring any time periods from the "date of this Agreement," the effective date shall be the date on which a fully executed copy of this Agreement is delivered to the attorney for first party to have signed it. The attorney receiving the Agreement shall notify the other attorney and the brokers as to the date of such delivery.

2. **PROPERTY.** Seller agrees to sell to Buyer and Buyer agrees to purchase the property described in Paragraph 1.
3. **LIMITATIONS.** The sale shall include all structures, if any, and a good and marketable fee simple title to the property, free from all liens and encumbrances, except as follows:

- A. Survey. Any fact which an accurate survey would show, provided it does not make the title unmarketable.
 - B. Government Regulations. Zoning regulations and municipal building restrictions, all other laws, ordinances, regulations or restrictions, or other lawful action of any public authority effective before the date of this Agreement. Seller represents that to the best of Seller's knowledge, the foregoing regulations, laws and ordinances do not prohibit the use of the property as it is presently used. If any ordinance, regulation or law is adopted after the date of this Agreement, any obligation arising therefrom shall be the obligation of Buyer, except for the treatment of added assessments which shall be treated as set forth in subparagraph 3.E. below. The representations in this subparagraph shall not survive delivery of the deed.
 - C. Known Restrictions. Those covenants, easements and restrictions listed in Paragraph 1.
 - D. Other Restrictions. Other covenants, easements and restrictions of record, provided they do not make the title unmarketable or prevent the lawful use of the property as it is presently used.
 - E. Assessments. The Seller represents that Seller knows of no existing or partly constructed municipal improvements affecting the property which have been assessed and not fully paid for, which representation shall not survive delivery of the deed. Accordingly, (a) if there is a confirmed municipal assessment against the property, the Seller shall pay the balance of that assessment at or before the closing; or (b) if a municipal improvement has been started, which has not yet been confirmed, but for which there will be a future assessment against the property, the Seller shall pay the full amount of that assessment at closing, if the amount is not known at that time, the parties authorize the holding of an escrow reasonably calculated to pay the assessment in full when it becomes known; or © if there is an unconfirmed assessment for a municipal improvement which has not been started before the date of this Agreement, then the Buyer will be responsible for the payment of that assessment when it is confirmed by the municipality.
 - F. Added Assessments. If the property contains new construction, there may be an added assessment levied after the closing. Seller agrees to pay the pro rata portion of any such added assessment attributable to any days prior to the closing. This representation shall survive delivery of the deed.
 - G. Leases, licenses and tenancies. The sale shall be free of all leases, licenses and tenancies.
4. **DEED AND AFFIDAVIT**. The deed to be delivered shall be a bargain and sale deed with a covenant against grantor's acts, which shall be in recordable form. It shall contain a statement reciting the deed or other instrument by which Seller obtained title and shall convey the property by the description to be provided. In addition to the deed, Seller shall execute and deliver an affidavit of title in form acceptable to any licensed New Jersey title insurance company, which affidavit shall include appropriate statements concerning all judgments to which specific reference has been made.
5. **PURCHASE PRICE**.
- A. The purchase price, as stated in Paragraph 1, shall be paid by Buyer to Seller as follows: Upon delivery of the deed, Buyer shall pay the purchase price in cash or by certified, bank cashier's or New Jersey attorney trust account check, unless some other form of payment has been agreed upon in writing by the parties.

6. **CLOSING ADJUSTMENTS.**

7. **PRECLOSING DOCUMENTS.**

- A. At least five (5) days before the scheduled closing date, Seller's attorney shall provide Buyer's attorney copies of the proposed deed and title affidavit. If any Seller has been divorced, Seller's attorney shall, at the same time, deliver to Buyer's attorney, a true copy of Seller's judgment of divorce or other documents sufficient to satisfy Buyer's title insurer in this respect. Failure to provide any of these documents before closing shall not be a default.

8. **SEARCHES.**

- A. Photocopies of all deeds, surveys, policies of title insurance and other title papers in the possession of Seller covering the property shall be sent to Buyer's attorney within fourteen (14) days of the date of this Agreement. At the closing, the originals of those papers relating solely to the property, other than Seller's original policy of title insurance, shall become the property of Buyer. Failure to provide any of these documents shall not be a default.
- B. Title examination and any survey shall be obtained and paid for by Buyer. If Buyer chooses not to have corner stakes installed at the time of the survey, Buyer must execute Schedule 8B and have that form delivered to Buyer's surveyor.

9. **FARMLAND ASSESSMENT.** Seller represents that no part of the property is assessed for municipal tax purposes under the Farmland Assessment Act of 1964, nor is any part of the property subject to roll-back taxes pursuant to such Act by reason of a change from agricultural or horticultural use, including failure to file timely application for farmland assessment by Seller. This representation shall survive delivery of the deed.

10. **CANCELLATION OF LIENS.**

- A. At the time of delivery of the deed, Seller shall take steps adequate to permit Buyer to cancel any existing mortgage. As to mortgages held by educational or licensed commercial lending institutions, Seller shall have the right to direct that a portion of the proceeds of the purchase price shall be promptly applied to the discharge of such outstanding mortgages in accordance with satisfactory written evidence of the amount due, as furnished by such mortgage holder, and to have such mortgage cancelled promptly after closing. In the case of all other mortgages, Seller shall deliver to Buyer any existing mortgage, properly endorsed for cancellation, or a separate discharge of mortgage, properly executed and acknowledged. The cost of cancellation and satisfaction of all mortgages or other liens shall be paid by Seller. The proceeds of sale of the property shall constitute trust funds in the hands of the parties or their attorneys, for the benefit of Buyer and Seller, for the carrying out of the payment, cancellation and discharge of any mortgage or other liens in accordance with the Closing Statement. Upon the discharge or cancellation of any mortgage, or other satisfaction or payment of any lien in accordance with this paragraph, the party transmitting or making such payment or arranging for such cancellation shall give written notice to the attorney for the other party. The responsibility to cancel any lien outstanding against the property, as shown on the Closing Statement, shall survive delivery of the deed, and shall remain upon Seller.
- B. If the property is encumbered by a "home equity" mortgage (or other credit line mortgage which permits Seller to take cash advances), Seller agrees to comply with the terms and conditions of Schedule 10B. The purpose of that Schedule is to establish a process for the cancellation of such mortgage.

11. **TITLE DEFECTS.**

- A. If Seller cannot convey title in accordance with this Agreement, Seller shall have thirty (30) days from the date of receipt of a written notification to remove any such

title defects. If the defects have not been removed within the thirty (30) days, or by the closing date, whichever is later, then, unless the parties agree in writing to some other period of time, Seller's sole obligation shall be to reimburse Buyer for actual cancellation costs of title examination and survey, and counsel fees. These costs shall be a lien against the property in favor of Buyer until paid. Upon making the refund and reimbursement, this Agreement shall terminate and neither Buyer nor Seller shall have any further claim against the other.

- B. Before the later of the day fixed for closing or the expiration of the thirty (30) day period, Buyer may elect to accept such title as Seller is able to convey, without reduction of the purchase price and without any other liability on the part of Seller with respect to the defect or defects. Notice of Buyer's election shall be given to Seller or Seller's attorney in writing. Without cost to Seller, Seller agrees to cooperate reasonably with Buyer in the removal of the defect or defects and this obligation shall survive delivery of the deed.

12. **INSPECTION AND POSSESSION.** Buyer shall be entitled to make a walk-through inspection of the property on reasonable notice and no sooner than forty-eight (48) hours before the closing. Buyer shall be entitled to possession of the property from the time of delivery of the deed.

13. **FIRE AND CASUALTY.**

- A. Until delivery and acceptance of the deed, the risk of loss or damage to any part of the property by fire or other casualty shall be borne by Seller. Seller shall keep in effect homeowners liability insurance on the property until closing.

14. **CONDITION OF PROPERTY.**

- A. The Seller agrees to maintain the grounds, buildings and improvements, in good condition, subject to ordinary wear and tear.
- B. Buyer acknowledges that Seller makes no warranty of habitability, express or implied. Buyer, having conducted any inspections provided for in this Agreement or having waived those inspections, accepts the condition of the premises as being satisfactory.

15. **CERTIFICATES OF OCCUPANCY.** *Intentionally omitted.*

16. **CLOSING.** The deed, title affidavit and any other documents required by this Agreement, shall be delivered on or about the date stated in Paragraph 1, at a time to be agreed upon between the parties and at the office of Buyer's attorney, or at such other place as the parties may agree.

17. **BROKER AND INDEMNITY.**

- A. Buyer represents that no broker has shown Buyer the property or called the property to Buyer's attention. Seller represents that no broker has a listing for the property which would entitle such broker to a commission. Buyer and Seller will indemnify and hold each other harmless against any claim or liability which either is legally obligated to discharge to any other broker and which is imposed wholly or partly because of the indemnifying party's relations or contact with such other broker or its representative, together with all reasonable legal expenses and costs incurred in connection with such claim or liability. This paragraph shall survive delivery of the deed.

18. **CONTINGENCIES.** The sale shall be subject to the following contingencies:

- A. Flood zone. *Intentionally omitted.*

- B. Termite inspection. *Intentionally omitted.*
 - C. Building inspection. *Intentionally omitted.*
 - D. Radon inspection. *Intentionally omitted.*
 - E. Mortgage contingency. *Intentionally omitted.*
19. **FIXTURES AND APPLIANCES.** The Seller may remove prior to closing all fixtures and appliances they choose to remove.
 20. **ASSIGNABILITY.** With the written consent of Seller, which shall not be unreasonably withheld or delayed, Buyer may assign this Agreement, provided however, that Buyer shall remain liable to perform this Agreement notwithstanding such assignment.
 21. **NOTICES.** All notices provided for in this Agreement shall be deemed given when mailed, certified mail, return receipt requested, overnight couriered, or when personally delivered. Notices shall be given either to the other party at the address in Paragraph 1 or to that party's attorney. Unless otherwise specifically indicated, the failure to give any notice provided for herein shall not represent a default.
 22. **REPRESENTATIONS.** This Agreement is the entire contract between Seller and Buyer. Seller is not obligated by any other written or oral statements made by Seller, Seller's representatives or by any real estate salesperson or broker.
 23. **CAPTIONS.** Marginal captions are for convenience and are not part of this Agreement.
 24. **PARTIES BOUND.** This Agreement is binding upon Seller and Buyer and their heirs, executors, administrators, successors and assigns.
 25. **ESCROW AGENT.** *Intentionally omitted.*
 26. **REMEDIES.** If either party defaults in the performance of any obligation under this Agreement, the other party shall be entitled to pursue any rights and remedies available at law or in equity, including, without limitation, the right to seek the specific performance of this Agreement.
 27. **NEW JERSEY OFFICE OF EMERGENCY MANAGEMENT: FEMA GRANT PROGRAM.** The parties acknowledge that the Buyer is acquiring the property as a part of a grant from the New Jersey Office of Emergency Management, FEMA Grant Program (Project No. RFC-PJ-02-NJ-2011-01). The property is prone to flooding and said FEMA Grant Program will allow the Buyer to demolish all improvements on the property and restore the property to its natural state. Following the execution of this agreement, the Sellers agree upon reasonable notice to them to permit representatives of the Buyer and FEMA to have access to the property so that the Buyer can prepare a request for proposal for the demolition of all improvements on the property. Access to the property shall be coordinated through the office of the Princeton Engineer (Robert V. Kiser, P.E.: 609-921-7077). While obtaining access to the property for this purpose prior to the closing of title, the Buyer agrees to indemnify and hold the Seller harmless for any loss, claim or injury which may occur as a direct result of the Buyer's access to the property.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Seller and Buyer have set their hands and seals to this Agreement.

Signed, Sealed and Delivered
in the presence of:

Moshe Lavid, Seller L.S.

Dated: _____

Nira S. Lavid, Seller L.S.

Dated: _____

PRINCETON

Linda S. McDermott, Clerk By: _____ L.S.
Liz Lempert, Mayor

Dated: _____

The following Schedules, if attached to this Agreement, are intended to be an integral part of this Agreement. The above signatures are intended to bind the party with respect to each of the attached Schedules:

Mark with "✓" if Attached:

- Schedule 5A - Form W-9 (One of these forms must be signed by Seller and one by Buyer.)
- Schedule 6 - Certificate of Non Foreign Status (Applies to Seller only.)
- Schedule 8B - Waiver and Direction Not to Set Corner Markers (This form must be signed by Buyer if corner markers are **NOT** desired. Applies to Buyer only.)
- Schedule 10B - Home Equity Mortgage Treatment (Applies to Seller only.)
- Schedule 19 - Fixtures and Appliances

SCHEDULE 6

CERTIFICATE OF NON-FOREIGN STATUS

Section 1445 of the Internal Revenue Code of 1986 requires that income tax withholding occur in certain transactions if the **SELLER** is a "foreign person". To inform the Buyer that withholding of tax is not required upon the sale of the property referred to in this Agreement, by signing the Sales Agreement, the Seller certifies to the following:

- 1) I am not a nonresident alien for purposes of U.S. income taxation;
- 2) My U.S. taxpayer identifying number (Social Security number) is _____;
and
- 3) My home address is: 110 Linwood Circle, Princeton, NJ 08540

The Seller understands that this certificate and Sales Agreement may be disclosed to the Internal Revenue Service and that any false statement made here could be punished by fine, imprisonment, or both. Under penalties of perjury by signing the Sales Agreement of which this Certificate is an integral part, the Seller has declared that such Seller has examined this certification and to the best of Seller's knowledge and belief it is true, correct, and complete.

Moshe Lavid, Seller

Date

Nira S. Lavid, Seller

Date

SCHEDULE 8B

**WAIVER AND DIRECTION NOT TO
SET CORNER MARKERS**

To: Saladin & Associates
Belle Mead, NJ

From: Princeton
Name of Buyer
400 Witherspoon Street, Princeton, NJ 08540
Address
609-924-5176
Telephone Number

Re: 59 Meadowbrook Drive
Street Address
Princeton Mercer
Municipality County
Lot 16 Block 5701

This is to advise that the Buyer has been made aware of the right to have corner markers set as part of a survey to be performed on property which is being purchased. That right is hereby waived and the surveyor is directed to perform the land survey without the setting of corner markers as provided by the regulation of the New Jersey Board of Professional Engineers and Land Surveyors.

PRINCETON, Buyer

By: _____
Liz Lempert, Mayor Date

ATTEST

Linda S. McDermott, Clerk Date

SCHEDULE 10B

HOME EQUITY MORTGAGE TREATMENT

Because the Seller has a home equity mortgage or other credit line mortgage which permits Seller to take cash advances, Seller agrees to the following:

A. Seller shall notify Seller's counsel and Buyer immediately of the date and amount of cash advances which Seller takes, or checks which Seller writes, under the home equity mortgage after the date of this Agreement;

B. Notwithstanding the preceding subparagraph, Seller shall not take any cash advances, or write additional checks, under the home equity mortgage within fifteen (15) days prior to the estimated closing date set forth in Paragraph 1 of this Agreement;

C. At least two (2) days prior to the estimated closing date, Seller shall arrange for the delivery to Seller's and Buyer's counsel of (i) a copy of a payoff statement from the lender which shall be dated no more than seven (7) days prior to the estimated closing date and (ii) a copy of a letter from the lender confirming that Seller's right to make additional cash advances under the home equity mortgage has been terminated.

D. Seller shall confirm that the payoff statement takes account of all checks written by Seller, and the delivery of the home equity mortgage payoff statement to Buyer and Seller's counsel shall be deemed a certification by Seller to Buyer and Buyer's title company of the accuracy of the statement in this respect.

E. At closing, Seller shall deliver any other documentation, such as an indemnification agreement, reasonably requested by Buyer's title company in order for such title company to issue an owner's title policy in favor of Buyer, without an exception for the home equity mortgage.

F. Seller acknowledges that Seller's inability to deliver all of the items required under subparagraphs C and E may result in Seller having to post a cash escrow at the time of closing in excess of the face amount of the home equity mortgage to enable the closing to transpire.

Notwithstanding anything to the contrary, the responsibility to cancel the home equity mortgage shall survive delivery of the deed and shall remain upon Seller.

Seller has executed the Sales Agreement, of which this Schedule 10B is a part, as an indication of Seller's willingness to comply with its terms.

Dated: _____

Moshe Lavid, Seller

Dated: _____

Nira S. Lavid, Seller

SCHEDULE 19

FIXTURES AND APPLIANCES

Fixtures and Appliances (see Paragraph 19) The following items are included in this sale*

Cooking stoves	Built-in garbage disposal unit
Built-in oven and broiler	Built-in dishwasher
Window and door screens	Swimming pool equipment
Storm windows and doors	Trash compactor
Shades	Refrigerator
Window treatments	Freezer
Wall-to-Wall carpeting	Clothes washer
Built-in cabinets and bookcases	Clothes dryer
Water conditioning equipment	Window air conditioner
Electrical garage door opener equipment	Satellite dish
Lighting fixtures	Security alarm systems
TV Antennas	
All heating and hot water equipment	

***Note**

Buyer intends to acquire the property and demolish all improvements thereon. Prior to closing, Seller may remove any of the above listed fixtures and appliances from the property.

