

MASON, GRIFFIN & PIERSON

A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

MEMORANDUM

To: Mayor & Council of Princeton

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



Date: September 2, 2014

**Re: Princeton, NJDEP, Mercer County and Friends of Princeton Open Space -
Frances M. D'Ambrisi: Purchase of 480 Stockton Street/Release and
Indemnification Agreement**

On November 12, 2013 the Mayor and Council adopted Ordinance 2013-29. This ordinance authorized Princeton to participate with NJDEP, the County of Mercer and the Friends of Princeton Open Space in the acquisition of the D'Ambrisi property which is located immediately adjacent to the Princeton Battlefield Park. Princeton's participation involves the demolition and removal of the structures on the property and dam repair.

The parties are about to enter into the contract of sale concerning the acquisition of the property. One of the conditions of having the seller execute the contract of sale is to have Princeton enter into a release and indemnification agreement concerning the property. The agreement is attached.

The release and indemnification agreement is appropriate in the context of the manner in which the acquisition of the property is being structured. On execution of the contract of sale and once the New Jersey Office of Dam Safety issues a permit, Princeton will repair the dam on the property. Thereafter, the house and other structures on the property will be demolished. Mayor and Council authorized this work by Ordinance 2013-29 dated November 12, 2013 (see attached). All of this will occur before title is conveyed by Frances D'Ambrisi to NJDEP, Mercer County and the Friends of Princeton Open Space. Consequently, since Princeton and its contractors will be working on the property which is still owned by the D'Ambrisi family, it is appropriate to have an agreement requiring Princeton to restore the property should title not close and also protect the D'Ambrisi family against any losses or claims while representatives of Princeton or its contractors are on the property. Princeton of course when it hires the demolition company to remove the structures and another company to repair the dam will make sure that the contractors have adequate insurance coverage to cover any loss associated with their work.

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I would therefore appreciate your considering authorizing the execution of the indemnification and hold harmless agreement at your meeting on September 8, 2014. To facilitate this I have prepared and also enclosed a proposed resolution.

EWS:kaj

cc: Robert W. Bruschi, Administrator
Kathryn Monzo, Assistant Administrator
Linda McDermott, Clerk
Robert V. Kiser, P.E., Princeton Engineer
Renee R. Jones, New Jersey Department of Environmental Protection
Lisa Fritzingler, Mercer County Planning Division
Wendy L. Mager, Esq., President, Friends of Princeton Open Space
Lisa M. Butler, Esq., Attorney for Frances M. D'Ambrisi

2013-29

**AN ORDINANCE BY PRINCETON
APPROPRIATING THE SUM OF \$125,00.00
FROM THE PRINCETON OPEN SPACE
TRUST FUND AND AUTHORIZING
PRINCETON'S PARTICIPATION IN THE
ACQUISITION AND PRESERVATION OF
BLOCK 9902, LOT 9, PRINCETON TAX
MAP.**

WHEREAS, the State of New Jersey, Department of Environmental Protection; County of Mercer and Friends of Princeton Open Space propose acquiring certain real property designated as Block 9902, Lot 9, Princeton Tax Map for the purpose of adding said property to the Princeton Battlefield Park; and

WHEREAS, the State of New Jersey, Department of Environmental Protection; County of Mercer and Friends of Princeton Open Space wish to have Princeton join in the Agreement for purchase of improved property so as to have Princeton undertake the demolition and removal of the existing buildings/man-made structures and repair of the dam on said property post-closing and to receive a portion of the property appurtenant to the existing right-of-way; and

WHEREAS, the Office of the Princeton Engineer has estimated the cost of the Princeton participation in this open space acquisition as follows:

- | | | |
|----|---|------------------|
| 1. | Removal of Structures from Property: | \$ 50,000.00 |
| 2. | Dam Repair: | 50,000.00 |
| 3. | Architectural Services and Contingency (if required): | <u>25,000.00</u> |

TOTAL: \$125,000.00; and

WHEREAS, Princeton, pursuant to P.L. 1997, c. 24 of the Laws of the State of New Jersey, has an Open Space Trust Fund which by law may be utilized for the acquisition, historic preservation and conservation purposes of property within the Princeton community; and

WHEREAS, the Princeton Chief Financial Officer has certified that funds are available in said Trust Fund for this purpose.

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

Section 1. The Mayor and Clerk of Princeton are hereby authorized and directed to enter into the Agreement for purchase of improved property with the State of New Jersey, Department of Environmental Protection; County of Mercer and Friends of Princeton Open Space with regard to the acquisition of Block 9902, Lot 9, Princeton Tax Map. The Agreement so authorized is on file in the Office of the Municipal Clerk and may be inspected during regular office hours.

Section 2. The Princeton Chief Financial Officer is hereby authorized and directed to make available from the Princeton Open Space Fund the sum not-to-exceed \$125,000.00 for the demolition and repair work referenced hereinabove as a part of the acquisition of said property.

I, Kathleen K. Brzezynski, Deputy Clerk of Princeton, County of Mercer, State of New Jersey, do hereby certify that the foregoing is a true copy of an ordinance adopted by the Mayor and Council of Princeton at its meeting held November 12, 2013.



Kathleen K. Brzezynski
Deputy Clerk

COUNTY OF MERCER

PRINCETON

STATE OF NEW JERSEY

RESOLUTION

WHEREAS, Princeton, the State of New Jersey Department of Environmental Protection, the County of Mercer and Friends of Princeton Open Space, Inc. are about to enter into an agreement for purchase of improved property with Frances M. D'Ambrisi, said property designated as Block 9902, Lot 9, Princeton Tax Map and commonly known as 480 Stockton Street; and

WHEREAS, a component of said agreement will authorize Princeton to gain immediate access upon the execution of said contract to the property in order to demolish the existing structures on the property and undertake and complete dam repair work at Princeton's expense; and

WHEREAS, Frances M. D'Ambrisi is willing to allow said demolition and dam repair work to proceed prior to the closing of title provided that Princeton holds her harmless from any claim or loss associated with said work and access to the property.

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 an indemnification and hold harmless agreement with regard to the acquisition of the above-referenced property for the benefit of Frances M. D'Ambrisi. 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 upon its adoption shall be furnished to the following: New Jersey Department of Environmental Protection, Green Acres Program, P. O. Box 420, Trenton, New Jersey, 08625, Attn: Renee R. Jones, Central Team Leader, Green Acres Program; the County of Mercer, 640 South Broad Street, Trenton, New Jersey, 08650, Attn: Lisa Fritzinger, Mercer County Planning Division; Wendy L. Mager, Esq., President, Friends of Princeton Open Space, P. O. Box 374, Princeton, New Jersey, 08542; and Lisa M. Butler, Esq., Pinto & Butler, 120 Tamarack Circle, Skillman, New Jersey, 08558.

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 special meeting held on the 8th day of September, 2014.

Linda S. McDermott, Clerk
Princeton

RELEASE AND INDEMNIFICATION AGREEMENT

This Agreement is made by and between **FRANCES M. D'AMBRISI** (hereinafter referred to as the "Landowner") and the municipality of **PRINCETON** (hereinafter referred to as "**PRINCETON**") this 8th day of September, 2014.

Reference is hereby made to an Agreement of Purchase of Improved Property about to be entered into by and between **FRANCES M. D'AMBRISI and THE STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION, THE COUNTY OF MERCER, FRIENDS OF PRINCETON OPEN SPACE** and the municipality of **PRINCETON** (hereinafter referred to as the "Agreement").

WHEREAS, in accordance with said Agreement **PRINCETON** has agreed to complete certain Demolition Work and Dam Repair Work on the Landowners' property located at 480 Stockton Street, Princeton, NJ also known as Lot 9 in Block 9902 in Princeton, New Jersey and;

WHEREAS, **PRINCETON** has agreed pursuant to said Agreement to be solely responsible for all costs and expenses associated with said Demolition Work and Dam Repair Work and;

WHEREAS **PRINCETON** has agreed pursuant to said Agreement to be solely responsible for obtaining all permits and approvals in connection with said Demolition Work and Dam Repair Work and;

WHEREAS in accordance with said Agreement, **PRINCETON** shall select the contractors to complete said Demolition Work and Dam Repair Work and provide copies of the fully executed contracts for said work to Landowner prior to the commencement of said work and;

NOW THEREFORE, the Landowner and **PRINCETON** agree to the following terms and conditions:

1. **PRINCETON** shall be responsible for, at its own expense, to defend itself against any and all liability associated with the Demolition Work and Dam Repair work as set forth in the Agreement.
2. **PRINCETON** agrees to absolutely and irrevocably release Landowner from any and all actions, suits, payments, liabilities, claims, losses, expenses,

demands and/or damages of any kind or nature, arising out of or in connection with any act or omission of **PRINCETON**, its employees, representatives, agents, independent contractors or invitees in any way related to **PRINCETON'S** Demolition Work and Dam Repair Work as set forth more specifically in the Agreement.

3. **PRINCETON** further agrees to indemnify and hold the Landowner harmless against any and all liability arising out of or in connection with any act or omission of by **PRINCETON**, its employees, representatives, agents, independent contractors or invitees including but not limited to losses, claims, demands, causes of action for environmental contamination, property damage, personal injury and/or death, costs and expenses, including legal fees that may ever be incurred as a result of **PRINCETON'S** Demolition Work and Dam Repair Work as set forth more specifically in the Agreement.
4. **PRINCETON** further agrees to provide the Landowner with Insurance Certificates for all contractors and subcontractors naming the Landowner as an insured.

It is the parties intention that this instrument be governed by the laws of the State of New Jersey and shall be legally binding upon both parties successors, heirs and or assigns.

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

Witnessed by:

FRANCES M. D'AMBRISI

Attested to by:

MUNICIPALITY OF PRINCETON

Linda S. McDermott
Municipal Clerk

Liz Lempert, Mayor