



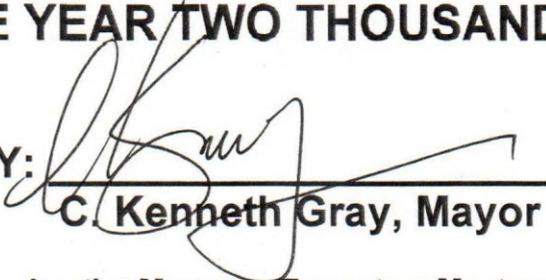
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AMESBURY CITY CLERK

**CITY OF AMESBURY
IN THE YEAR TWO THOUSAND EIGHTEEN**

SPONSORED BY:


C. Kenneth Gray, Mayor

BILL No. 2018-02

An Order to: To Authorize the Mayor to Execute a Mortgage Discharge for Property of Amesbury Industries, Inc. Located at 57 South Hunt Road, Amesbury

Summary: The City Council shall vote to authorize the Mayor to execute a mortgage discharge for a mortgage to the Town of Amesbury, acting by its Industrial Development Financing Authority.

Be it Ordered by the City Council of the City of Amesbury assembled and by the authority of the same, as follows:

Whereas, Amesbury Industries, Inc. is the owner of real property located at 57 South Hunt Road (Tax Map 95, Lot 7) in Amesbury;

Whereas, Amesbury Industries, Inc. granted a Mortgage, Loan and Security Agreement to the Town of Amesbury, acting by its Industrial Development Financing Authority (the "Mortgage"), dated January 1, 1982, recorded with the Essex South Registry of Deeds in Book 6899, Page 258 to secure a \$1,000,000 Industrial Development Bond on the property at 57 South Hunt Road;

Whereas, the Industrial Development Financing Authority was a former agency of the City of Amesbury, but has been dissolved pursuant to G.L. c. 40D, § 2;

Whereas, Amesbury Industries, Inc. has requested a discharge of the Mortgage, and asserts that the debt has been paid in full;

Whereas, the City has no evidence that Amesbury Industries, Inc. owes money on this transaction;

Whereas, G.L. c. 260, § 33 states that a mortgage which does not contain a term by which it is due expires 35 years from the date of the document;

Whereas, the Mortgage did not include a term by which it was to be paid;

Whereas, since 35 years have elapsed since the date of the Mortgage, it is, as a legal matter, deemed to be obsolete, and not enforceable by the City;

Whereas, Amesbury Industries, Inc. has had to request an extension to closing, and maintains that any further delay will be prejudicial to its interests; and

Whereas, the City of Amesbury, acting by and through its Mayor, has the authority to execute a mortgage discharge for an indebtedness to the Industrial Development Financing Agency.

Now, therefore, the City Council votes to discharge the Mortgage and to authorize the Mayor to execute and record a mortgage discharge for the Mortgage, Loan and Security Agreement from Amesbury Industries, Inc. on behalf of the City of Amesbury.

July 24, 2018

Katharine Lord Klein
kklein@k-plaw.com

BY ELECTRONIC MAIL AND
FIRST CLASS MAIL

Hon. C. Kenneth Gray
Mayor of Amesbury
Amesbury City Hall
62 Friend Street
Amesbury, MA 01913

Re: Amesbury Industries, Inc. Mortgage Discharge

Dear Mayor Gray:

You have requested guidance regarding a request from Amesbury Industries, Inc. that a mortgage agreement issued by the City's Industrial Development Financing Authority (the "IDFA") securing a note for \$1,000,000, on property located at 57 South Hunt Road be discharged to allow the disposition of that property.

As I understand the circumstances, Amesbury Industries, Inc. executed a Mortgage, Loan and Security Agreement, dated January 1, 1982 (the "Mortgage") to the Town of Amesbury, acting by and through the IDFA, securing a note for \$1,000,000, on the 57 South Hunt Road property (the "Property"). Amesbury Industries is selling the Property and requests that the Mortgage be discharged. Amesbury Industries asserts that the debt has been paid in full, although it has no documentation evidencing this. The City Treasurer has been consulted, and has no record of any outstanding indebtedness. The IDFA no longer exists and so, being defunct, has no role in this process.

In my opinion, as a legal matter, the Mortgage is no longer enforceable by the City. The provisions of G.L. c. 260, § 33 specify that a mortgage which does not contain a term, i.e., a date by which it is due, expires 35 years from the date of the document. The Mortgage was dated January 1, 1982 and does not include a term date. Over 35 years have elapsed since the issuance of the Mortgage. Accordingly, even if it were determined that money was owed to the City under the Mortgage, the City would not, in my opinion, be successful in an action brought under the Mortgage due to the operation of G.L. c. 260, § 33. Therefore, in my opinion, it would be appropriate for the City to acquiesce to the request of Amesbury Industries and provide for discharge of the Mortgage in order to avoid any action by Amesbury Industries seeking to address the Mortgage discharge.

KP | LAW

Hon. C. Kenneth Gray
Mayor of Amesbury
July 24, 2018
Page 2

Amesbury Industries has had to request an extension on the closing on the Property, which I believe was originally scheduled for mid-August. Its counsel is quite concerned about ongoing delays. Absent evidence, in the City's records, that this indebtedness remains outstanding, it is my recommendation that the City take appropriate action to issue the discharge.

The IDFA was an agency of Amesbury, and not a separate legal entity. Since the IDFA no longer exists, its role is subsumed by the City itself. In my opinion the appropriate mechanism to discharge the Mortgage is for the City Council to vote to discharge the Mortgage and further authorize you, in your capacity as Mayor, to execute the necessary discharge document.

I have requested that Amesbury Industries pay the City's attorney's fees, up to \$1,000. It has agreed to do so.

It is my understanding that the City Council will not meet in August. I recommend that the Council place this matter on its agenda for a first reading at its September 11, 2018 meeting, and vote to discharge the mortgage and authorize you to execute the discharge document at a special meeting on September 25, 2018, when the City Council is scheduled to convene in its capacity as the Finance Committee. In this manner, the request for the discharge may be addressed without any further legal action or cost to the City. I enclose a proposed Order providing for the discharge and your execution thereof, for your review and consideration.

Please contact me with any further questions regarding this matter.

Very truly yours,



Katharine Lord Klein

KLK/jsh
Enc.
cc: Chief of Staff

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