

MASON, GRIFFIN & PIERSON

A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

MEMORANDUM

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

From: Trishka W. Cecil, Esq. 
Assistant Princeton Attorney

Date: August 22, 2013

Re: **Proposed Ordinance Authorizing Lease of Portion of Monument Hall to PCH Development Corporation, Inc.**

As you know, Princeton is in the process of leasing various unused portions of Monument Hall to outside groups and organizations. One such organization that wishes to lease office space in Monument Hall is PCH Development Corporation, Inc. ("PCH"), which for years has served the Princeton community through the development and management of affordable housing. To that end, Administrator Bruschi has negotiated an agreement with PCH that would enable to PCH to lease a portion of Monument Hall for an initial term of five years, with the option to renew the lease once for an additional five years. The consideration for the lease is twenty-four thousand dollars per year beginning on January 1, 2014, payable in equal monthly installments of two thousand dollars. The lease payments will include utilities such as water and electric, but the costs of phone and internet service will be borne by PCH. PCH will also be required to carry basic insurance and to indemnify and hold Princeton harmless from any claims arising out of its use and occupancy of the leased premises. Finally, although the lease payments are not scheduled to begin until January 1, 2014, the lease would be effective immediately upon approval and execution, to enable PCH to take possession of the space right away to begin its fit-out work, with the goal of full occupancy by the end of 2013 or start of 2014.

The Local Lands and Buildings Law at N.J.S.A. 40A:12-14(c) authorizes municipalities to enter into private leases for nominal consideration with nonprofit organizations serving a public purpose. Any such lease must be authorized by ordinance. To that end, I have prepared and attach hereto for your consideration an ordinance approving the above-described lease agreement with PCH and authorizing the Mayor and Clerk to sign such lease. PCH would like to take possession of the space in early September in order to begin its fit-out work. We would therefore appreciate it if you would consider introducing the attached ordinance at the August 26, 2013 Princeton Council meeting, with the second reading and public hearing scheduled for September 9, 2013.

A draft of the lease agreement is attached. Please note, however, that this draft is still in the process of being reviewed by PCH's counsel, and could be subject to change. As soon as the agreement is finalized (and in advance of the scheduled public hearing for the ordinance), an updated copy will be distributed to the Council and placed on file in the Clerk's Office for public inspection.

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COUNSELLORS AT LAW

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In the meantime, please do not hesitate to contact me at (609) 436-1211 or trishka@mgplaw.com if you have any questions or would like more information.

TWC:twc

attach.

cc: Robert W. Bruschi, Administrator - w/attach.

Kathy Monzo, Assistant Administrator/CFO - w/attach.

Linda S. McDermott, Clerk - w/attach.

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**AN ORDINANCE BY PRINCETON
AUTHORIZING PURSUANT TO N.J.S.A.
40A:12-14(c) A LEASE OF A PORTION OF
MONUMENT HALL TO PCH
DEVELOPMENT CORPORATION, INC.,
A NON-PROFIT CORPORATION
ORGANIZED FOR PUBLIC PURPOSE
REASONS**

BE IT ORDAINED by the Princeton Council as follows:

Section 1. Findings. The Council hereby makes the following findings:

A. Princeton is the owner of Monument Hall, which is the former Princeton Borough municipal building. Monument Hall houses certain of Princeton's departments, including human services, the health department, fire prevention, affordable housing, and others. Monument Hall also contains excess space, however, that is not needed at the present time for a municipal purpose.

B. PCH Development Corporation, Inc. ("PCH") is a non-profit corporation of the State of New Jersey that develops, manages and advocates for housing affordable to low and moderate-income households.

C. The importance to the public health, safety, welfare and morals of providing housing opportunities for households with very, low and moderate incomes has been recognized by the State of New Jersey and by Princeton for decades.

D. PCH is a locally-based non-profit corporation that for decades has fostered and promoted this essential public service for existing and prospective members of the Princeton community, and enhances the quality of life in the Township.

E. It is anticipated that thousands of persons have benefited, and will continue to benefit, from the public purposes served by PHC's activities.

F. The activities of PCH promote the health, safety, morals and general welfare of the Princeton community.

G. It is the intent of the Princeton Council to lease to PCH that portion of Monument Hall which is not otherwise presently needed by Princeton for other purposes, in furtherance of the above-described public benefits provided by PCH.

Section 2. Lease Authorized. Pursuant to N.J.S.A. 40A:12-14(c) and N.J.S.A. 40A:12-15(i), the Council hereby authorizes the lease to PCH of a portion of Monument Hall for the purpose of supporting and enabling the affordable housing development, management and advocacy services provided by PCH. The lease shall be subject to the following conditions:

A. Term: Initial term of five (5) years and approximately 3 months beginning upon execution of the lease agreement authorized herein and ending on December 31, 2018, with the option of one renewal term of five (5) years.

B. Consideration: Twenty-four thousand dollars (\$24,000) per year beginning on January 1, 2014, payable in equal monthly installments of two thousand dollars (\$2,000) per month.

C. Insurance: PCH shall insure the leased portion of Monument Hall for: general comprehensive liability; fire insurance coverage; the contents of the leased portion of Monument Hall; and any liability associated with the use of the leased portion of Monument Hall by PCH and its officers, agents, and employees. PCH shall provide certificates of insurance acceptable to Princeton prior to the use and occupancy of the leased portion of Monument Hall.

D. Indemnification: PCH shall hold harmless and indemnify Princeton, its officers, employees and agents from and against any cost, expense, loss, claim or liability whatsoever, including attorney's fees, for injury to Princeton or loss or damage to Princeton's property caused by, arising out of or resulting from: (a) the negligence or wrongful misconduct of PCH, its officers, employees, and agents regarding the leased portion of Monument Hall; (b) the failure by PCH or its officers, employees or agents to comply with applicable law regarding the leased portion of Monument Hall or the terms of the lease authorized herein; (c) the performance or non-performance of PCH's obligations under the lease authorized herein; or (d) PCH's use or occupancy of the leased portion of Monument Hall. PCH shall not be required to indemnify or hold Princeton harmless for any cost, expense, loss, claim or liability caused by Princeton's negligence or wrongful misconduct.

E. Other terms and conditions: Such other terms and conditions reasonably recommended by the Princeton Attorney and approved by the Princeton Council.

Section 3. Princeton Administrator Responsible for Enforcement of Lease. The Princeton Administrator is hereby designated as the municipal official responsible for enforcement of the lease being authorized herein.

Section 4. Annual Report. For each calendar year, or portion thereof, the lease herewith authorized is in effect, PCH shall be required to submit to the Princeton Administrator a report containing the following information:

- A. The activities to which the leasehold was put during that year;
- B. The activities taken by PCH in furtherance of the public purposes as identified in Section 1 of this ordinance;

C. The approximate value or cost, if any, of the activities undertaken by PCH in furtherance of such public purposes;

D: An affirmation of the continued federal and state tax exempt status of PCH.

Section 5. Execution of Documents. The Mayor and Clerk are hereby authorized and directed to execute any and all such documents and undertake any and all such acts as necessary and prudent to effectuate to the terms of this ordinance, including the execution of a lease agreement with PCH pursuant to the terms hereof and as approved by the Princeton Attorney as to form and substance.

Section 6. Severability. If any section, paragraph, subsection, clause or provision of this ordinance shall be adjudged by the Courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudged and the remainder of this ordinance shall be deemed valid and effective.

Section 7. Effective Date. This ordinance shall take effect upon its passage and publication, as required by law.

Linda S. McDermott, Clerk

Liz Lempert, Mayor

Ordinance Introduced : August 26, 2013

Ordinance Adopted:

MONUMENT HALL LEASE AGREEMENT

THIS LEASE AGREEMENT, entered into this ___ day of September, 2013, by and between PRINCETON, a municipal corporation of the State of New Jersey, having its principal offices located at 400 Witherspoon Street, Princeton, New Jersey, 08540 (hereinafter referred to as "LANDLORD") and PCH Development Corporation, Inc., a non-profit corporation of the State of New Jersey, having its principal offices located at 245 Nassau Street, Princeton, New Jersey, 08540 (hereinafter referred to as "TENANT").

WITNESSETH:

WHEREAS, the LANDLORD is the owner of the premises located at Monument Hall, One Monument Drive, Princeton, New Jersey; and

WHEREAS, the TENANT is a non-profit corporation of the State of New Jersey that develops, manages and advocates for affordable housing; and

WHEREAS, N.J.S.A. 40A:12-14(c) permits a municipal corporation to lease to a non-profit corporation for a public purpose real property owned by said municipal corporation and not currently needed for a public use; and

WHEREAS, the TENANT, pursuant to this lease agreement, does hereby agree to hold and utilize the property described herein for a public purpose, to wit, for office and administrative

space used in support of its affordable housing development, management and advocacy services;

NOW, THEREFORE, in consideration of twenty four thousand dollars (\$24,000.00) per year and other good and valuable consideration, the LANDLORD and TENANT agree as follows:

1. Property: The TENANT agrees to rent from the LANDLORD and the LANDLORD agrees to lease to the TENANT a portion of Monument Hall as outlined in the drawing attached hereto as Exhibit "A" and made a part hereof ("Leased Premises").

2. Effective Date: This lease shall take effect immediately upon execution.

3. Term: The term of this lease is for five (5) years and approximately three (3) months, beginning upon execution of the lease and ending on December 31, 2018. The LANDLORD also hereby extends to the TENANT the option of one renewal term of five years. Should the TENANT wish to exercise this option, the TENANT must provide written notice to the LANDLORD of its intention to exercise the option not less than six months prior to the expiration of the initial term of this lease. If the option is exercised, the terms and conditions set forth herein or as otherwise established by the mutual agreement of the parties at the time of renewal (other than rent) shall be applicable and binding on the parties during said additional

five-year term. Rent for any such option period shall be established by mutual agreement of the parties.

4. Rent: Beginning on January 1, 2014, the TENANT agrees to pay to the LANDLORD twenty four thousand dollars (\$24,000.00) per year as rent, payable in equal monthly installments of two thousand dollars (\$2,000.00) on the first day of each month, payable to Princeton at 400 Witherspoon Street, Princeton, New Jersey, 08540, Attn: CFO.

5. Use of Property: The TENANT may use the Leased Premises solely for purposes consistent with the core mission of Tenant. The TENANT shall use the Leased Premises in compliance with applicable federal, State and local laws, including, without limitation, local building codes and authorities having jurisdiction over the occupancy and use of the Leased Premises and adjacent areas. The TENANT shall occupy and use the Leased Premises in a safe and proper manner. The TENANT shall not store, dispose of or transport hazardous materials or waste (as defined by applicable law) on, to or from the Leased Premises.

6. Fit-Out: Subject to Landlord's advance written approval and consent, Tenant may fit-out the Leased Premises. Fit out will be at Tenant's expense with the exception of the items identified in Exhibit "B" attached hereto and made a part hereof ("Anticipated Cost Allocation"). Any personal property, trade fixtures, equipment and other temporary installations

shall remain Tenant's property provided that any damages to the Leased Premises caused by removal shall be repaired at Tenant's expense.

7. Subletting: The TENANT shall not assign this lease or sublet the Leased Premises or any portion thereof without the prior written permission of the LANDLORD, which consent shall not unreasonably be withheld or delayed.

8. Quiet Enjoyment: The TENANT may remain in and use the Leased Premises without interference subject to the terms of this lease.

9. Care and Maintenance of the Leased Premises: Other than the work that LANDLORD is providing which is stated in Exhibit "B", the TENANT accepts the Leased Premises in "as is" condition. The TENANT agrees to maintain the Leased Premises in as good condition as they are at the start of this lease, except for ordinary wear and tear. The TENANT shall pay for all repairs, replacements and damages caused by the acts or neglect of the TENANT, the TENANT's sublessees, if any, or the TENANT's visitors. The TENANT will remove all of the TENANT's property at the end of this lease. Any property that is left on the Leased Premises becomes the property of the LANDLORD.

10. Right of Entry: The TENANT shall allow the LANDLORD or its representatives to enter the Leased Premises at

reasonable times during business hours and upon reasonable notice.

11. Indemnification: The TENANT shall hold harmless and indemnify the LANDLORD, its officers, employees and agents from and against any cost, expense, loss, claim or liability whatsoever, including attorney's fees, for injury to LANDLORD or loss or damage to LANDLORD'S property caused by, arising out of or resulting from: (a) the negligence or wrongful misconduct of the TENANT, its officers, employees, and agents regarding the Leased Premises or this lease; (b) the failure by the TENANT, its officers, employees, and agents to comply with applicable law regarding the Leased Premises or this lease; (c) the performance or nonperformance of the TENANT'S obligations under this lease; or (d) the TENANT'S use or occupancy of the Leased Premises. The TENANT is not required to hold harmless or indemnify the LANDLORD for any cost, expense, loss, claim or liability caused by the LANDLORD'S negligence or wrongful misconduct.

12. Risk of Loss: Upon commencement of the term of this lease, the risk of loss to any improvement, including fixtures and personal property, if any, located on the Leased Premises, shall be borne by the TENANT.

13. Insurance: The LANDLORD will insure the Leased Premises for general comprehensive liability and fire insurance

coverage. The TENANT or the TENANT's sublessees, if any, shall insure the Leased Premises for their contents and any liability associated with their and their officers', employees' or agents' use of the Leased Premises. Certificates of insurance acceptable to the LANDLORD shall be submitted prior to the use and occupancy of the Leased Premises by the TENANT or any sublessees.

14. Utilities: LANDLORD shall be responsible and pay for electric, heat, and water charges. TENANT shall be responsible and pay for any other utilities or services used by TENANT, including, but not limited to, telephone and internet access charges as outlined in the May 23, 2013 memorandum from Robert McQueen, CIO to Ed Truscelli, attached hereto as Exhibit "C" and made a part hereof.

15. Solid Waste Removal; Janitorial Services: TENANT shall be responsible for its own janitorial services (i.e., office cleaning services) and for all solid waste removal, including recyclables, except that TENANT shall be permitted to dispose of said solid waste and recyclables in LANDLORD's dumpsters.

16. Annual Lease Review: The LANDLORD and TENANT agree that on the annual anniversary of this lease agreement, both parties shall confer to determine whether or not any provision of this lease agreement should be changed or modified.

17. Annual Report: The TENANT shall be required to submit to the Princeton Clerk no later than December 31 of each calendar year or portion thereof during which this lease is in effect a written report setting out the uses to which the leasehold was put during each year, the activities of the TENANT taken in furtherance of its public purposes and the uses of the Leased Premises for said purposes, the approximate value or cost of such activities in furtherance of such purposes, and an affirmation of the continued tax-exempt status of the TENANT pursuant to both State and federal law.

18. Eviction: If the TENANT does not comply with the provisions of this lease agreement, the LANDLORD may evict the TENANT. If the LANDLORD determines that any provision of the lease has been violated so as to warrant eviction, the LANDLORD agrees to give at least sixty (60) days' written notice to the TENANT to cure said violation. If said violation is cured, no eviction shall take place. If said violation is not cured or if Tenant has not commenced to cure said violation which cannot be completed within the notice period, the LANDLORD may proceed to evict the TENANT. The TENANT agrees to pay all costs, including reasonable attorney's fees, related to the eviction.

19. Severability: Should any clause or provision of this lease be deemed legally invalid, the rest of this lease shall remain in effect.

20. Succession: This lease shall be binding upon and inure to the benefit of the parties and their heirs, successors and assigns.

21. Entire Agreement: The provisions of this lease constitute the entire agreement between the parties, and no amendments to this lease shall be binding unless made in writing and duly executed by the parties hereto.

22. Choice of Law: This lease shall be governed by and interpreted in accordance with the laws of the State of New Jersey.

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

ATTESTED:

PRINCETON

Linda S. McDermott, Clerk

By: _____
Liz Lempert, Mayor

ATTESTED:

PCH DEVELOPMENT CORP., INC.

, Secretary

By: _____
Rich Gittleman, President

INSERT EXHIBIT A HERE

Suggested Cost Allocation for Fit Out and Moving Costs

Item #	Cost Category	Comment	Estimated Cost	Cost to or In Kind Services from Municipality	Cost to PCH
Construction (based on estimate from Yedlin Co. dated 3/6/13)					
C1	General Conditions	municipality assumes partial responsibility	\$ 9,650.00	\$ 3,184.50	\$ 6,465.50
C2	Demolition		\$ 3,500.00	\$ -	\$ 3,500.00
C3	Masonry		\$ 4,000.00	\$ -	\$ 4,000.00
C4	Doors, Frames and Hardware	portions would be building improvements regardless of PCH	\$ 7,500.00		\$ 7,500.00
C5	Finishes (paint throughout, carpet in former workout room only, selected ceiling tiles)	building improvement regardless of PCH	\$ 12,280.00	\$ -	\$ 12,280.00
C6	Mechanical, HVAC	building improvement regardless of PCH	\$ 2,000.00	\$ 2,000.00	\$ -
C7	Electrical (not including phone, data)	building improvement regardless of PCH	\$ 3,500.00	\$ -	\$ 3,500.00
C8	Subtotal		\$ 42,430.00	\$ 5,184.50	\$ 37,245.50
C9	Permits and Inspections	can all or part of this be waived?	\$ 1,500.00	\$ 1,500.00	\$ -
C10	General Liability Insurance		\$ 439.00	\$ -	\$ 439.00
C11	Contractor Fee (10%)		\$ 4,437.00	\$ -	\$ 4,437.00
C12	Subtotal		\$ 48,806.00	\$ 6,684.50	\$ 42,121.50
C13	Construction Contingency (10%)	potential cost of building improvements	\$ 4,881.00	\$ -	\$ 4,881.00
C14	Subtotal Construction		\$ 53,687.00	\$ 6,684.50	\$ 47,002.50
Data and Phone (based on conversation with Bob McQueen, 2/26/13)					
D1	VOIP Phones (6 @ \$500/ea.)		\$ 3,000.00	\$ -	\$ 3,000.00
D2	Wiring/Outlets to accommodate office layout	building improvement regardless of PCH	\$ 3,000.00	\$ 3,000.00	\$ -
D3	Phone Switch		\$ 2,000.00	\$ -	\$ 2,000.00
D4	Related Equipment		\$ 1,000.00	\$ -	\$ 1,000.00
D5	Contingency (30%)		\$ 3,000.00	\$ -	\$ 3,000.00
D6	Subtotal Data and Phone		\$ 12,000.00	\$ 3,000.00	\$ 9,000.00
Moving					
M1	Subtotal Moving	in previous discussions, the idea of the Municipality providing in kind services to load, transport and unload PCH items from PCH's current location was identified	\$ -	in kind transportation, loading and unloading	boxes, packing, loading, unloading, responsibility for items
Rent Adjustment					
R1	Subtotal Rent Adjustment	Reduction of monthly rent from \$2500 to \$2000 for total of 5 years. Monthly rent in sixth year would adjust by cumulative CPI factor during initial 5 years plus the applicable factor for the 6th year. Rent includes janitorial and electricity.	\$ -	\$ 30,000.00	\$ (30,000.00)
GRAND TOTAL			\$ 65,687.00	\$ 39,684.50	\$ 26,002.50

EXHIBIT B



Princeton

400 Witherspoon Street
Princeton, NJ 08540

Office of Information Technology, Robert McQueen, CIO

Telephone: (609) 688-2037

Fax: (609) 688-2031

www.Princetonnj.gov

TO: Ed Truscelli

FROM: Robert McQueen, CIO 

DATE: May 23, 2013

SUBJ: Princeton Community Housing

Princeton Community Housing and I have been discussing technology needs if they were to rent space in Monument Hall. I would like to propose the following to make it affordable and cost effective for both PCH and Princeton.

I recommend that PCH piggy back off our phone system. They would buy all the hardware, such as the POE Switch, phone sets, licensing for the phones and licensing for voicemail. I suggest we raise their rent by \$100.00 per month to cover the cost of local and long distance calls. Any cost's associated with porting your 7 digit numbers to our system would be the responsibility of PCH.

I recommend that PCH use our fiber network for internet purposes. I suggest we increase their rent by \$50.00 to cover our cost. PCH is looking to add approximately 7 devices, which would be \$43.75 per month, with room to expand by one device.

Technology Support for network access would be billed at an hourly rate of \$120.00 per hour. This support is only for the back end network. This does not include Computer, Printer or other hardware support.

When I spoke with you about the technology needs, you agreed to take on the upfront cost for equipment and hardware.

I will be happy to answer any questions that you may have.

CC: Bob Bruschi
Kathy Monzo

EXHIBIT C