

MASON, GRIFFIN & PIERSON

A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

MEMORANDUM

To: Mayor and Council of Princeton

From: Allison S. Zangrilli, Esq.
Office of Princeton Attorney

Date: March 24, 2014

Re: **Griggs Corner Parking Lot Lease**
Lots 54 & 55 in Block 20.04, Princeton Municipal Tax Map

Princeton leased the above-referenced property for use as a public parking area for twenty-five (25) passenger vehicles pursuant to a lease with property owners, Wendy Peterson Osborn and E.A. Properties, LLC. The lease was for a two (2) year term and expired on December 31, 2013. It provided for an annual rental rate of \$29,334.52 for the period January 1, 2012 through December 31, 2012, increased for the period January 1, 2013 through December 31, 2013 to \$29,833.21, pursuant to the annual rate of the Consumer Price Index for all Urban Consumers (CPI-U) published by the United States Bureau of Labor Statistics in December, 2012.

The parties wish to enter into a new lease for a one (1) year term at the annual rental rate of \$31,324.87, representing a 5% increase in annual rent, payable in quarterly installments of \$7,831.22, retroactive to January 1, 2014. The attached Lease Agreement sets forth the terms of the new agreement, including the annual rental rate of \$31,324.87, a provision for repair of a retaining wall by Princeton at Princeton's expense during the term of the Lease, and a provision specifically permitting Princeton, at its option, to remove existing meter fixtures and install a new multi-meter parking system.

Attached for your consideration is a Lease Agreement and Resolution authorizing the same.

ASZ:jv
attach.

cc: Robert W. Bruschi, Administrator (w/attach.) - *via e-mail*
Kathryn Monzo, Assistant Administrator (w/attach.) - *via e-mail*
Linda S. McDermott, Clerk (w/attach.) - *via e-mail*
Robert V. Kiser, P.E., Princeton Engineer (w/attach.) - *via e-mail*
Trishka W. Cecil, Princeton Attorney (w/attach.) - *via e-mail*
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COUNTY OF MERCER

PRINCETON

STATE OF NEW JERSEY

RESOLUTION

WHEREAS, Princeton leases certain real property known and designated as Lots 54 and 55 in Block 20.04 on the Princeton Municipal Tax Map, also known as the “Griggs Corner Parking Lot” (the “Property”) pursuant to a lease with Wendy Peterson Osborn and E.A. Properties, LLC (collectively, the “Landlord”) for purposes of a public parking area for twenty-five (25) passenger vehicles; and,

WHEREAS, the said lease expired on December 31, 2013; and,

WHEREAS, Princeton desires to continue leasing the Property pursuant to the terms of the Lease Agreement attached hereto; and,

WHEREAS, pursuant to N.J.S.A. 40:60-25.2, a municipality may authorize, by resolution, a lease of real property for purposes of a public parking area for passenger vehicles,

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

1. The Mayor and Clerk are authorized to enter into and execute the attached Lease Agreement with the Landlord pursuant to the terms stated therein.
2. A copy of the Lease Agreement will be on file in the Office of the Municipal Clerk and may be inspected during regular business hours.

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 _____ day of _____, 2014.

Linda S. McDermott, Clerk
Princeton

Prepared by:

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made and dated on _____, 2014, by and between:

Wendy Peterson Osborn, 3244 Kinross Circle, Herndon, Virginia 20171, and **E.A. Properties, LLC**, c/o Palmer Square Management, LLC, 40 Nassau Street, Princeton, New Jersey 08542 (collectively, the "Landlord"), and

Princeton, a Municipal Corporation of the State of New Jersey, in Mercer County, 400 Witherspoon Street, Princeton, New Jersey 08540 (the "Tenant")

WITNESSETH:

1. Demised Premises. The Landlord is the sole fee simple owner of certain real property known and designated at **Lot 54 and Lot 55 in Block 20.04** on the Princeton Municipal Tax Map (the "Demised Premises" or the "Property"). In consideration of the rents and covenants herein set forth, the Landlord hereby leases the Demised Premises to the Tenant and the Tenant hereby rents the Demised Premises from the Landlord.

2. Permitted Use of Demised Premises. The Demised Premises will be used by the Tenant as a municipal public parking area for twenty-five (25) passenger vehicles.

3. Term. The term of the Lease shall be one (1) year, commencing on January 1, 2014 and ending on December 31, 2014 (the "Lease Term").

4. Rent. The Annual Rent for the Lease Term shall be Thirty-One Thousand Three Hundred and Twenty-Four and 87/100(\$31,324.87) Dollars. The Tenant shall pay the Annual Rent for the Lease Term in quarterly installments of Seven Thousand Eight Hundred and Thirty-One and 22/100 (\$7,831.22) Dollars, retroactive to January 1, 2014.

5. Rent Payments. The Tenant shall make each quarterly rental payment as follows: 50% payable to Wendy Osborne at the address shown on Page 1 of this Lease, and 50% to E.A. Properties, LLC, c/o Palmer Square Management, LLC, at the address shown on Page 1 of this Lease, or at such other address(es) as Landlord may hereafter designate in writing. Wendy Osborne and E.A. Properties, LLC, each indemnify and hold the Tenant harmless from and against any and all claims either of them may assert against one another.

6. Triple Net Lease. The Landlord and the Tenant intend and agree that the rent set forth in Paragraph 3, above, shall be net, net, net rental, and shall be in addition to any other payments required to be made by the Tenant pursuant to the terms of this Lease.

The Tenant shall pay all taxes and assessments, water and sewer rents and charges, and public utilities charges assessed, levied, confirmed, or imposed, which become due and payable with respect to the Property during the Lease Term.

7. Insurance. Tenant shall, at Tenant's sole cost and expense, maintain the following insurance coverage for the mutual benefit of the Tenant and the Landlord as named insureds, providing copies of all policies to the Landlord: public liability insurance, including personal injury and property damage liability insurance in an amount of not less than \$10,000,000.00 for personal injury or death and \$5,000,000.00 for property damage.

8. Improvements and Alterations – Maintenance and Repairs.

(a) Tenant, at Tenant's sole cost and expense, will maintain the parking area, sidewalks, curbs, and fences, and shall keep the Premises in good repair and condition. Tenant will keep and maintain all portions of the Premises including the parking area, sidewalks, driveways, and ways of ingress and egress clean and free of snow and ice.

(b) Tenant is permitted to make alterations and improvements to the Demised Premises including, but not limited to, installation, removal, and repair of parking meters, meter posts, wheel stop bumpers, and similar improvements as Tenant may desire to construct in connection with Tenant's permitted use of the Demised Premises. Tenant is specifically permitted, at Tenant's option, to remove the existing meter fixtures and appurtenances, and install a multi-meter system, including gazebo-type ticketing stations and such other structures as may be necessary to the operation and maintenance of a multi-meter parking system.

(c) With the exception of parking meters, meter posts, wheel stop bumpers, benches, signs, multi-meter gazebo-type ticketing stations and similar appurtenances, and other equipment and improvements installed on the Demised Premises by the Tenant at Tenant's expense, all changes and alterations to the Demised Premises shall, at the expiration or early termination of this Lease, belong to the Landlord and become the property of the Landlord without payment therefore by the Landlord, and shall be surrendered to the Landlord at the time of expiration or termination of the Lease.

(d) Tenant shall retain full title to all parking meters, meter posts, wheel stop bumpers, benches, signs, multi-meter gazebo-type ticketing stations and similar appurtenances, and other equipment and improvements installed on the Demised Premises by the Tenant at Tenant's expense. Tenant shall be responsible for the removal of all such installed equipment and improvements from the Demised Premises at the expiration or termination of the Lease, and Tenant shall be responsible for the cost of any repairs to the Demised Premises necessary as a result of the removal of the said installed equipment and improvements.

(e) Tenant shall be responsible for the repair of a retaining wall located on the Demised Premises at _____. Said repairs will be completed, at Tenant's expense, during the Lease Term.

(f) Tenant shall repair any damage or injury to the Demised Premises done or caused by the Tenant, its agents, employees, or business invitees, and shall quit and surrender the Demised Premises to Landlord in good condition at the expiration or termination of the Lease.

9. Groundwater Monitoring Wells. Tenant will not damage or interfere with the four (4) existing groundwater monitoring wells located on the Demised Premises. Tenant will permit, upon Landlord's request, the taking of samples and specimens of the well water by persons authorized to do so by the Landlord, provided such activities do not interfere with Tenant's use of the Premises for the uses stated in this Lease.

10. Exceptions to Tenant's Responsibility. Landlord is not required to provide any services or facilities, or to make any repairs or alterations in or to the Demised Premises during the Lease Term. Tenant assumes full responsibility for the condition, operation, repair, replacement, maintenance, and management of the Demised Premises during the Lease Term, except that Tenant does not assume responsibility for compliance with any applicable State or Federal laws regarding removal or disposal of any contaminated soil or contaminated groundwater on the Property. The responsibility for and the cost of maintenance, repair and remediation involving the four (4) existing groundwater monitoring wells located on the Premises and any other pre-existing condition on the Demised Premises which has not been created by the acts or operations of the Tenant are expressly that of the Landlord.

11. Condemnation. If all or substantially all of the Property is taken during the Lease Term by condemnation or eminent domain, or by agreement in lieu thereof, at the Tenant's option, this Lease shall terminate and expire on the date of such taking. In that event, the net rent to be paid by the Tenant shall be apportioned and paid as of the date of the taking. In such event, the Tenant will not be entitled to receive any credit for taxes or other expenses paid by the Tenant under the Lease. "Substantially all" of the Demised Premises is deemed to have been taken if more than 50% of the original area of the Demised Premises has been taken or if the taking results in the Tenant being unable to use the Property for the same purposes and in the same manner (as a parking area for twenty-five (25) passenger vehicles).

12. Indemnification. Tenant indemnifies and holds the Landlord harmless from and against any and all claims, actions and damages to persons or property on the Demised Premises, arising out of Tenant's use of or actions on the Demised Premises, or Tenant's failure to act.

13. Quiet Enjoyment. The Landlord covenants and agrees that the Tenant shall, at all times during the Lease Term, as long as Tenant makes prompt payment of rent and complies with the terms of this Lease, have peaceful and quiet use and enjoyment of the Demised Premises without interference or hindrance of any kind by the Landlord.

14. Default. In the event of a default by the Tenant under this Lease, Landlord shall give written notice of such default to the Tenant, the Princeton Municipal Clerk, and the Princeton Municipal Attorney, and Tenant shall have thirty (30) calendar days to cure such default. If Tenant fails to cure such default within the 30 day period, the Landlord

may terminate this Lease. Tenant shall not be deemed to be in default of Tenant's responsibilities to conduct work or to remedy conditions on the Premises if the Tenant has made good faith efforts to address said conditions and continues working toward completing the same without delay. The Landlord and the Tenant shall have all rights and remedies available at law and in equity against one another for breach of any of the terms of this Lease.

15. Sublease and Assignment. The Tenant shall not sublet the Demised Premises. The parties will not assign this Lease to any other person or entity without the express written consent of the other party hereto.

16. Governing Law. This Lease is governed by the laws of the State of New Jersey. The Landlord and the Tenant agree to comply with all applicable laws, rules, regulations, and ordinances applicable to this Lease and the activities thereunder.

17. Recording of Lease and Subordination. This Lease will be recorded at Tenant's expense in the Office of the Mercer County Clerk. Tenant agrees to execute any documents necessary to subordinate this Lease to any mortgages placed on the Premises subsequent to this Lease, provided that such mortgages do not impact Tenant's rights under this Lease as long as Tenant is in compliance with the terms hereof. Upon expiration or termination of this Lease, the Tenant will deliver a Discharge of Lease in recordable form to the Landlord.

18. Entire Agreement. This Lease constitutes the entire agreement between the Landlord and the Tenant. Any modifications to this Lease must be in writing, signed by both parties, and must be recorded in the Office of the Mercer County Clerk.

19. Binding Agreement. This Lease is binding upon the Landlord and the Tenant, and their respective successors and assigns.

In Witness Whereof, the parties hereto have caused this Lease to be executed on the date first written above.

Witness/Attest:

Landlord

Wendy Peterson Osborn

E.A. Properties, LLC
By: Victoria Zak

Tenant
Princeton, a Municipal Corporation of
the State of New Jersey

Linda McDermott, Clerk

By: Liz Lempert, Mayor

STATE OF _____)
COUNTY OF _____)SS.

I CERTIFY that on _____, 2014, Wendy Peterson Osborn personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person): (a) is named in and personally signed this document; (b) signed, sealed and delivered this document as her act and deed; and (c) made this document in consideration of the mutual covenants contained therein

Notary Public

STATE OF New Jersey)
COUNTY OF Mercer)SS.

I CERTIFY that on _____, 2014, VICTORIA ZAK, personally came before me, and this person acknowledged under oath, to my satisfaction, that: (a) this person is the President of E.A. Properties, LLC, the corporation named in this document; (b) this person was authorized to execute this document on behalf of the corporation; and, (c) this person executed this document as the voluntary act of the corporation; and (d) made this document in consideration of the mutual covenants contained therein.

Notary Public

STATE OF New Jersey)
COUNTY OF Mercer)SS.

I CERTIFY that on _____, 2014, Linda McDermott personally came before me, the subscriber, and she acknowledged under oath, to my satisfaction, that she is the Clerk of Princeton, the municipal corporation named in this document; that she well knows the corporate seal of the said municipal corporation, and that the seal affixed to said document is the seal of said municipal corporation; that the said seal was so affixed and the said document, signed and delivered by Liz Lempert, who at the date thereof was the Mayor of Princeton, the municipal corporation named herein, who acknowledged that she signed, sealed and delivered the same as her voluntary act and

deed, and as the voluntary act and deed of said municipal corporation, by virtue of authority from its governing board; that the document was made in consideration of the mutual covenants contained therein; and, that the deponent, at the same time, subscribed her name to said document as an attesting witness to the execution thereof.

Linda McDermott

Sworn to and Subscribed before me
this ____ day of _____, 2014.

Notary Public

**RECORD & RETURN TO:
Mason, Griffin & Pierson, PC
101 Poor Farm Road
Princeton, NJ 08540**