

NORTHAMPTON COUNTY COUNCIL - EASTON, PA

Ordinance No.

SESSION 2019

Bill No. 768

Introduced by Tara M. Zrinski and Lori Vargo Heffner on November 7, 2019

Enacted

Effective

Title:

AN ORDINANCE OF THE NORTHAMPTON COUNTY COUNCIL AUTHORIZING THE COUNTY OF NORTHAMPTON, EASTON, PENNSYLVANIA, TO LEASE APPROXIMATELY 2,650 RENTABLE SQUARE FEET OF SPACE IDENTIFIED AS 1710 BUTLER STREET, EASTON, PENNSYLVANIA FROM JAMES S. GARAFALO, 1700 NORTHAMPTON STREET, EASTON, PENNSYLVANIA

WHEREAS, Northampton County Administrative Code Article XIII, Section 13.14 Purchase, Sale and Lease of Real Estate Section b. Sealed Appraisals, provides, "The County shall not purchase, sell, or lease real estate without first obtaining sealed appraisals from two (2) professional real estate appraisers."; and

WHEREAS, Northampton County Administrative Code Article XIII, Section 13.14 Purchase, Sale and Lease of Real Estate Section c. (1) Purchase/Sale/Lease of Real Estate, provides, "The County Executive, or his designee, may negotiate a contract for the purchase, sale or lease (with the County as lessor or lessee) of real estate. Any such purchase/sale/lease shall be approved by County Council, and no such contract shall bind the County nor shall any conveyance be lawful, until County Council approves of the terms of the purchase/sale/lease."; and

WHEREAS, Northampton County Home Rule Charter Article 602 (a)(6) provides that the Northampton County Council shall enact an ordinance for any act which "purchase, conveys, leases or authorizes the purchase, conveyance or lease of any real property of the County".

NOW, THEREFORE, BE IT HEREBY ORDAINED AND ENACTED by Northampton County Council that it does hereby authorize the County of Northampton, Easton, Pennsylvania, to enter into a one year lease, commencing on January 1, 2020 and ending on December 31, 2020, for approximately 2,650 rentable square feet of space identified as 1710 Butler Street, Easton, Pennsylvania form James S. Garafalo, 1700 Northampton Street, Easton, Pennsylvania, for the sum of \$3,120.00 per month. The terms and conditions of the lease shall be in accordance with the lease agreement, a copy of which is attached hereto and made a part hereof as Exhibit "A".

Effective Date - This ordinance shall become effective thirty days after the date of enactment.

This ordinance was advertised on the ____ day of _____ 2019 and was adopted by the Northampton County Council on the ____ day of _____ 2019.

Attest:

Linda M. Zembo
Clerk to Council

Ronald R. Heckman
County Council President

Lamont G. McClure
County Executive

RECEIVED

OCT 23 2019

COUNTY COUNCIL

Lease Agreement:
Pennsylvania District Court No. 03-2-12

This Lease is made and entered into on the ____ day of _____, 2019, between JAMES S. GARAFALO, of 1700 NORTHAMPTON STREET, EASTON, PA 18042, referred to in this Lease as Lessor and/or Landlord, and the COUNTY OF NORTHAMPTON, a Pennsylvania Municipal Corporation, Northampton County Government Center, 669 Washington Street, Easton, PA 18042, referred to in this Lease as Lessee.

LESSOR LEASES TO LESSEE, AND LESSEE LEASES FROM LESSOR, THE PROPERTY LOCATED AT 1710 BUTLER STREET, EASTON, PA, 18042 HEREINAFTER CALLED LEASED PREMISES. THE LEASED PREMISES CONSISTS OF APPROXIMATELY 2,650 RENTABLE SQUARE FEET OF SPACE.

ARTICLE 1. TERM

1.01. *Lease Term.* The term of this Lease shall be for one (1) year, commencing on January 1, 2020, and ending on December 31, 2020.

1.02. *Automatic Renewal.* This Lease will continue to renew for a like term of one (1) year under the same terms and conditions as stated in this Lease unless either party gives notice, in writing to the other party at least six (6) months prior to the end of this Lease term, of its intention to terminate the Lease agreement. The Lease shall continue to renew unless terminated by either party in accordance with this section of the Lease.

ARTICLE 2. RENT

2.01. *Initial Rent.* Lessee will pay to Lessor the sum of \$3,120.00 per month, from the commencement of the term of this Lease and continuing throughout the original Lease term, on the first day of each month.

ARTICLE 3. USE OF PREMISES

3.01. *Permitted Use.* Lessee will use the Leased Premises for the operation of a District Court of the Minor Judiciary of the Commonwealth of Pennsylvania and related functions.

3.02. *Signs.* Lessee shall have the right to erect appropriate signs on the outside of the Leased Premises in accordance with applicable State and Municipal laws, ordinances and regulations.

3.03. *Governmental Functions.* It is understood and agreed between the parties hereto that the purpose for which these premises are being leased is a governmental

function. County shall have the authority to cancel this Contract upon sixty (60) days' notice to Lessor.

3.04. *Use of Common Areas.* As may be applicable to the Leased Premises, restrooms, elevators, stairs, hallways, lobbies, parking lots, courtyards, walkways, and all other common areas of the Building are for the joint use of all Lessees of the Building. Lessee and its officers, employees, agents, and invitees will use such common areas in a reasonable, orderly, and sanitary manner in cooperation with all other Lessees and their officers, employees, agents, and invitees.

ARTICLE 4. SERVICES, MAINTENANCE, AND SURRENDER

4.01. *Services and Maintenance by Lessor.* Lessor shall furnish the Leased Premises with all utilities and services required by any local, state or federal law or regulation, including, but not limited to, the following services and maintenance:

(a) *Heat and Air Conditioning.* Heat, ventilation and air conditioning to provide and maintain under all conditions air devoid of contaminants or offensive odors and a temperature not lower than 68° Fahrenheit nor higher than 74° Fahrenheit, and a relative humidity of not more than 50%.

(b) *Elevators.* If applicable, elevator service in common with other Lessees and occupants of the Building, and the invitees of Lessees and occupants.

(c) *Electricity.* Lessor shall provide electric current service for lighting and ordinary business appliances. Lessee will operate data processing equipment utilized by the Court of Common Pleas and Commonwealth of Pennsylvania. It shall be Lessor's responsibility to provide electrical service capable of operating that equipment throughout the term of this Lease or any renewal or extension thereof.

(d) *Telephone.* Lessor shall provide that telephone lines are and continue to be accessible to the premises. Nothing in this Lease Agreement shall be construed to mean that Lessor is responsible or liable for telephone service to the premises.

(e) *Water.* Hot and cold water for lavatory and drinking purposes.

(f) *Plumbing.* Operating bathroom facilities within the premises.

(g) *Parking.* Lessor shall provide adequate parking for employees and public use. In any event, Lessor shall provide not less than eight (8) off street parking spaces for the sole use of Lessee and its invitees.

(h) *Janitorial Service.* Removal of trash and garbage, recycling costs, and replacement of light globes or fluorescent tubes in the lighting fixtures.

(i) *Carpeting*. Lessor shall provide and maintain commercial grade carpeting in good condition throughout the term of this Lease. Lessee shall have the right to approve the color and design of such carpeting prior to the installation. The carpeting shall cover all office space wall to wall and cover at least one-third of the District Justice's Courtroom in an area to be designated by the Lessee.

(j) *Paint*. Lessor shall paint the premises every three (3) years as designated by the Lessee in a color acceptable to the Lessee.

(k) *Maintenance of Common Areas*. Maintenance of the public and common areas of the Building and the property on which the Building is situated, including lobbies, elevators, stairs, corridors, restrooms, walkways, lawns, courtyards, and parking areas, in reasonably good order and condition, including appropriate landscaping of outdoor areas. Maintenance includes, but is not limited to, snow and ice removal from walks, driveways and parking areas upon a timely basis by Lessor.

(l) *Maintenance of Building Structure*. Maintenance of the structure of the Building, including but not limited to, the roof, exterior walls (including windows), floors, and foundation. Lessor shall make all repairs which may be needed to the mechanical, HVAC, electrical and plumbing systems in and servicing the Premises, and all repairs to exterior windows and glass in a timely fashion.

4.02. *Maintenance of Services*. Lessor shall be solely responsible for the maintenance of the electrical, plumbing, heating, air conditioning, ventilation and other systems set forth in Paragraph 4.01 and such other systems as are required to perform and maintain the above services. All such services shall be in operating order twenty-four hours per day. If any such system shall not be in proper operating order for a period in excess of twenty-four hours, then Lessee shall have the right to repair and maintain said non-operating system and to abate the monthly rental payment otherwise due under the terms of Article 2 above until such time as the services are fully restored.

4.03. *Maintenance and Surrender by Lessee*. Except as provided in Paragraph 4.01, Lessee shall maintain the Leased Premises throughout the Lease term and any extensions of that term, and keep them free from waste or nuisance. At the termination of the Lease, Lessee shall deliver the Premises in as good a condition and state of repair as they were in at the time Lessor delivered possession to Lessee, except for reasonable wear and tear and damage by fire, flood, or other casualty.

ARTICLE 5. TAXES

5.01. *Real Property Taxes and Assessments.* Lessor shall pay and fully discharge all real property taxes, special assessments, and governmental charges of every character imposed on the Leased Premises during the term of this Lease, including any special assessments imposed on or against the Premises for the construction or improvement of public works.

5.02. *Payment of County Taxes.* Lessor certifies, as a condition precedent to the execution of the Agreement, and as an inducement for County to execute same, that Lessor is not delinquent on any taxes owed to County. Delinquent is hereby defined as the point in time at which the collection of the tax becomes the responsibility of the Northampton County Tax Claim Bureau. Lessor further agrees, as a specific condition of this Agreement, that it shall remain current on all of the taxes it owes to County. Should Lessor become delinquent on any taxes it owes to County during the term of this Agreement, Lessor may be deemed to be in breach of this Agreement by County and, in addition to any other remedies for such breach, Lessor hereby specifically agrees and authorizes County to apply funds when due lessor directly to the taxes owed to County until said taxes are paid in full. In the event Lessor becomes delinquent, it hereby authorizes County to make direct payment to the taxing authority in order to bring Lessor's County taxes current.

ARTICLE 6. ALTERATIONS, ADDITIONS, IMPROVEMENTS, AND FIXTURES

6.01. *Consent of Lessor.* Lessee shall not make any alterations, additions, or improvements to the Leased Premises without the prior written consent of Lessor. Consent for nonstructural alterations, additions, or improvements shall not be unreasonably withheld by Lessor.

6.02. *Fixtures.* Lessee has the right at all times to erect or install furniture and fixtures, provided that Lessee complies with all applicable governmental laws, ordinances, and regulations. Lessee shall have the right to remove such items at the termination of this Lease. Prior to the termination of this Lease, Lessee must repair any damage caused by removal of any fixtures. Any furniture or fixtures that have not been removed by Lessee at the termination of this Lease shall become the property of Lessor.

ARTICLE 7. DAMAGE OR DESTRUCTION

7.01. *Notice to Lessor.* If the Leased Premises or any structures or improvements on the Leased Premises should be damaged or destroyed by fire, flood, or other casualty, Lessee shall give immediate written notice of the damage or destruction to Lessor.

7.02. *Total Destruction.* If the Leased Premises are totally destroyed by fire, flood, or other casualty, or if the Building or Premises should be so damaged by such a cause that rebuilding or repairs cannot, in Landlord's reasonable judgment, be completed within thirty (30) working days, this Lease shall terminate, and rent shall be abated for the unexpired portion of this Lease, effective as of the date of written notification as provided in Paragraph 7.01.

7.03. *Partial Destruction.* If the Leased Premises are damaged by fire, flood, or other casualty, but not to such an extent that rebuilding or repairs cannot reasonably be completed within thirty (30) days, this Lease shall not be terminated except as provided in Subparagraphs (a) and (b).

(a) If the partial destruction of the Leased Premises occurs prior to the final two (2) months of the Lease term, Lessor shall, at its sole cost and risk, proceed immediately to rebuild or repair the damaged buildings and improvements to substantially the condition in which they existed prior to such damage. If the Leased Premises are untenable in whole or in part following such damage, the rent payable during the period in which they are untenable shall be abated. In the event that Lessor should fail to complete such rebuilding or repairs within thirty (30) days from the date of written notification by Lessee to Lessor of the occurrence of the damage, Lessee may terminate this Lease by ten (10) days written notice to Lessor. On such notification, all rights and obligations under this Lease shall cease.

(b) If partial destruction of the Leased Premises occurs in the final two (2) months of the Lease term, or if any mortgagee holding a lien on the Building refuses to permit insurance proceeds to be applied to the restoration of the Leased Premises, or if the insurance proceeds available for restoration are not sufficient to restore the Premises to substantially its condition prior to the casualty, Lessor need not rebuild or repair the Premises and shall notify Lessee in writing of its intention not to rebuild or repair. If Lessor elects not to rebuild or repair the Premises and the Leased Premises are untenable in whole or in part following such damage, Lessee may elect to terminate the Lease as of the date of Lessee's notice described in Paragraph 7.01 above or to continue the Lease with the rent for the remainder of the Lease period adjusted equitably. Lessee shall notify Lessor of such election within thirty (30) days after receipt of Lessor's notice described above.

ARTICLE 8. INSURANCE

8.01. *Lessor Property Insurance.* Lessor shall and will, at Lessor's sole expense, secure and maintain during the term of this Lease agreement, fire and extended coverage insurance from a good and responsible company or companies doing business within the Commonwealth of Pennsylvania, in an amount equal to the value of the Leased Premises and other improvements on the Leased Premises, provided that insurance in that amount can be obtained, and, if not, then for the highest percentage that can be obtained.

8.02. *Lessor Liability Insurance.* Landlord shall maintain comprehensive general liability insurance from a good and responsible company or companies doing business within the Commonwealth of Pennsylvania under primary and or excess policies having a combined single limit for any one (1) occurrence of not less than \$500,000.

8.03. *Lessor Certificate of Insurance.* Lessor shall deliver to Lessee copies of certificates of insurance showing that policies in compliance with paragraphs 7(a) and 7(b) are in effect. All policies of insurance will require the insurer to notify Landlord and Tenant at least thirty (30) days prior to cancellation, amendment or revision of coverage.

8.04. *Lessee Property Insurance.* Lessee shall, at Lessee's sole expense, secure and maintain during the term of this Lease Agreement, fire and extend coverage insurance from a good and responsible company or companies doing business within the Commonwealth of Pennsylvania, in an amount equal to the value of the Lessee's property, provided that insurance in that amount can be obtained, and if not then for the highest percentage that can be obtained.

8.05. *Lessee Liability Insurance.* Lessee shall, at lessee's sole expense secure and maintain during the term of this Lease Agreement a comprehensive policy of general liability naming Lessor as an additional insured.

ARTICLE 9. CONDEMNATION

9.01. *Total Condemnation.* If the whole of the Leased Premises shall be taken by any public or quasi-public authority under the power of eminent domain, condemnation, or expropriation or in the event of a conveyance in lieu thereof or if any of part the Building is taken by condemnation, then this Lease shall terminate on the date when title vests in the condemning authority.

9.02. *Partial Condemnation.* If any part of the Leased Premises shall be so taken or conveyed and if such partial taking or conveyance shall render the Leased Premises unsuitable for the business of the Lessee, or if any of the Building is taken or conveyed and, in Lessor's sole opinion, it would be impractical or the condemnation proceeds are

insufficient to restore the remainder of the Building, then the term of this Lease shall cease and terminate as of the date on which title to the Leased Premises or Building vests in the condemning authority. In the event such partial taking or conveyance is not extensive enough to render the Premises unsuitable for the business of Lessee, in Lessee's sole opinion, this Lease shall continue in full force and effect except that the rent shall be adjusted equitably during the unexpired portion of the Lease.

9.03. *Lessee's Damages.* Lessee shall have the right to claim and recover from the condemning authority, or from the Lessor if appropriate, such compensation as may be separately awarded or recoverable by Lessee under the Eminent Domain Code in Lessee's own right.

ARTICLE 10. ACCESS AND INSPECTION BY LESSOR

10.01. Lessor and its officers, agents, employees, and representatives shall have the right to enter the Leased Premises, at reasonable hours, for purposes of inspection, cleaning, maintenance, repairs, alterations, or additions as Lessor may deem necessary, or to show the Premises to prospective Lessees, purchasers, or lenders.

ARTICLE 11. ASSIGNMENT AND SUBLEASE

11.01. *Assignment and Subletting by Lessee.* Lessee reserves the right to assign this Lease, or sublet any or all of the Leased Premises, during the term of this Lease or any extension thereof, with the prior written approval of Lessor. Such written authorization shall not be unreasonably withheld by Lessor.

ARTICLE 12. DEFAULT

12.01. *Lessee's Default.* Each of the following events shall be deemed to be events of default by Lessee under this Lease:

- (a) Lessee fails to promptly pay any installment of rent due under this Lease, except when abatement of rent is permitted herein.
- (b) Lessee fails to comply with any term, provision, or covenant of this Lease, other than the payment of rent, and does not cure the failure within thirty (30) days after written notice of the failure to Lessee.

12.02. *Remedies for Default.* On the occurrence of any event of default specified in Paragraph 11.01, Lessor shall have those rights and remedies available to it by law or equity or by any other provisions of this Lease. Other than the notice of termination or notice to quit Lessee before taking action. In such a case lessor may take any or all of the following action:

- (a) Terminate this Lease without prior notice.
- (b) Sue Lessee in court to recover possession of the Leased Premises.
- (c) Sue Lessee to recover the whole balance of the rent and charges owed for the remaining Lease term.
- (d) Sue Lessee for all damages, including reasonable attorney's fees resulting from Lessee's violation of any terms, conditions, rules or regulations in this Lease.

12.03. *Lessor's Default.* If Lessor defaults in the performance of any term, covenant, or condition required to be performed by it under this agreement, Lessee may elect to do either one of the following:

- (a) After not less than ten (10) days' notice to Lessor, Lessee may remedy such default by any necessary action and, in connection with such remedy, may pay expenses and employ counsel. All sums expended or obligations incurred by Lessee in connection with remedying Lessor's default shall be paid by Lessor to Lessee on demand and, on failure of such reimbursement, Lessee may, in addition to any other right or remedy that Lessee may have, deduct these costs and expenses from rent subsequently becoming due under this Lease.
- (b) Lessee may terminate this Lease on giving at least ten (10) days' notice to Lessor of such intention. In the event Lessee elects this option, the Lease will be terminated on the date designated in Lessee's notice, unless Lessor has cured the default prior to expiration of the ten (10) day period.

12.04. *Cumulative Remedies.* Pursuit of any of the remedies provided in this Lease by either Lessor or Lessee shall not preclude pursuit of any of the other remedies provided in this Lease or by law. Pursuit of any remedy provided in this Lease or by law by either party shall not constitute a forfeiture or waiver of any damages accruing to either party by reason of the violation of any of the terms, provisions, and covenants contained in this Lease. Nor shall pursuit of any remedies provided in this Lease by Lessor constitute a waiver or forfeiture of any rent due to Lessor under this Lease.

12.05. *Waiver of Default.* No waiver by either party of any default or violation or breach of any of the terms, provision, or covenants contained in this Lease shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, and covenants of the Lease. Forbearance by either party to enforce one or more of the remedies provided in this Lease or by law on an event of default shall not be deemed or construed to constitute a waiver of such default.

ARTICLE 13. COUNTY ADMINISTRATIVE CODE PROVISIONS

13.01. *Breach of Contract.*

(a) The Lessor agrees that any breach of performance, of any covenant, representation, or warranty, indemnity, or condition, or attached appendices, shall constitute default of this Contract.

(b) When a breach of contract has occurred, the County, in exercise of its discretion, may allow the Lessor a specific period of time to correct its breach of the contract. Such period of time shall not exceed thirty (30) days.

(c) If Lessor does not correct its violation of the contract as specified, the County may terminate the contract in whole or in part if such partial termination is in the best interest of the County.

13.02. *Undue Influence.* Lessor agrees not to hire any County personnel who have exercised discretion in the awarding, administering or continuance of this lease for up to and including one (1) year following the termination of the employee from County service. Failure to abide by this provision shall constitute a breach of this Contract.

13.03. *Conflict of Interest.* Lessor agrees to notify in writing the County as soon as Lessor learns that:

(a) A Current employee of the County has commenced, or is intending to commence, employment with the Provider while continuing to maintain County employment, or;

(b) A current employee of the County has performed, or is intending to perform, services to Lessor as an independent contractor while continuing to maintain County employment. Any written notice required to be given under this section shall specify the County employee's (associate's) name, the nature of the County employee's (associate's) employment nor contract with the Provider commenced.

13.04. *Appropriation of Funds.* This Contract is contingent upon the proper appropriation of funds by Northampton County Council, in accordance with the Northampton County Home Rule Charter and Administrative Code.

13.05. *Non-appropriation of Funds.* In the event of non-appropriation of funds, at any time during the term of the Contract, which would prevent the County from making payment under the terms and conditions of the Contract, the County may terminate the Contract, without the assessment of any termination charges or financial penalties against the County, by providing written notice to terminate to the contracting party.

ARTICLE 14. MISCELLANEOUS

14.01. *Americans with Disabilities Act.* Landlord agrees that the Premises complies with all provisions of the Americans with Disabilities Act.

14.02. *Notices and Addresses.* All notices to be given under this Agreement shall be given by certified mail or registered mail, postage prepaid, return receipt requested, addressed to the proper party, at the following addresses:

Lessor: Helen Garafalo and HelenBeth G. Vilcek
Garofalo Real Estate
1700 Northampton Street
Easton, PA 18042

Lessee: County of Northampton
Office of the Solicitor
Northampton County Government Center
669 Washington Street
Easton, PA 18042

Either party may change the address to which notices are to be sent by giving the other party notice of the new address in the manner provided in this Paragraph. Notice by registered or certified mail shall be deemed given on the third business day following deposit in the mail.

14.03. *Binding Successors and Assigns.* All rights and liabilities given to, or imposed on, the respective parties to this Lease shall extend to and bind the several respective successors and assigns of the parties when otherwise permitted by this Lease.

14.04. *Reasonableness.* In all instances where Lessor's or Lessee's consent, permission, or approval is required, the same shall not be unreasonably refused, withheld, or delayed.

14.05. *Pennsylvania Law to Apply.* This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. All obligations of the parties created by this Agreement are performable in Northampton County, Pennsylvania.

14.06. *Legal Construction.* In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been included in the Agreement.

14.07. *Prior Agreements Superseded.* This Lease constitutes the only Agreement between Lessor and Lessee and supersedes any prior understandings or written or oral Agreements between the parties respecting the subject matter of this Lease.

14.08. *Amendment.* No amendment, modification, or alteration of the terms of this Lease shall be binding unless in writing, dated subsequent to the date of this Lease, and duly executed by the Lessor and Lessee.

14.09. *Time of Essence.* Time is of the essence of this Agreement.

In Witness Whereof, the parties hereto execute this Agreement, and intend to be legally bound hereby.

LEESOR

By: _____
Helen Garafalo
Garafalo Real Estate

By: _____
HelenBeth G. Vilcek
Garafalo Real Estate

LESSEE: COUNTY OF NORTHAMPTON
NORTHAMPTON COUNTY,
PENNSYLVANIA

By: _____
Lamont G. McClure
County Executive