

# NORTHAMPTON COUNTY COUNCIL - EASTON, PA

Ordinance No. \_\_\_\_\_ SESSION 2020 Bill No. 787

Introduced by Thomas A. Giovanni and Tara M. Zrinski on September 3, 2020

Enacted \_\_\_\_\_ Effective \_\_\_\_\_

TITLE: AN ORDINANCE OF THE NORTHAMPTON COUNTY COUNCIL AUTHORIZING THE COUNTY OF NORTHAMPTON, EASTON, PENNSYLVANIA, TO LEASE APPROXIMATELY 2,400 RENTABLE SQUARE FEET OF SPACE AT 31C WEST FIRST STREET, WIND GAP, PENNSYLVANIA FROM JOSEPH DEPUE, 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 two year Lease Agreement with Joseph Depue for approximately 2,400 rentable square feet of space at 31C West First Street, Wind

Gap, Pennsylvania, for an initial rent of \$17.71 per square foot beginning January 1, 2021 and ending on December 31, 2022. 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 \_\_\_\_\_ 2020 and was adopted by the Northampton County Council on the \_\_\_\_ day of \_\_\_\_\_ 2020.

Attest:

\_\_\_\_\_  
Linda M. Zembo  
Clerk to Council

\_\_\_\_\_  
Ronald R. Heckman  
County Council President

\_\_\_\_\_  
Lamont G. McClure  
County Executive

## LEASE AGREEMENT - District Court 3-3-02

This Lease is made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 2020, between JOSEPH DEPUE, referred to in this Lease as "Lessor", 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".

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Lessor leases to Lessee, and Lessee leases from Lessor, 31C West First Street, Wind Gap, Pennsylvania, hereinafter called "leased Premises". The leased Premises consists of approximately 2,400 rentable square feet of space.

## ARTICLE 1. TERM

1.01. *Lease Term.* The term of this Lease is contemplated to be two (2) years, commencing on **January 1, 2021**, and ending on **December 31, 2022**, unless sooner terminated, it being understood and agreed upon that Lessee maintains the right to terminate this lease for any reason provided herein, OR for no reason or cause, PROVIDED Lessee shall give Lessor notice in writing of its intention to terminate said lease agreement at least 120 days prior to the date certain.

1.02. *Automatic Renewal.* This Lease will continue on a year to year basis ("Renewal Term") under the same terms and conditions as stated in this lease unless either party gives notice in writing to the other party, at least three (3) months prior to the end of this lease, or each Renewal term as the case may be, of its intention to terminate the lease agreement.

## ARTICLE 2. RENT

2.01. *Initial Rent.* Lessee will pay to Lessor the sum of (TBD – an increase in rent based on the CPI of 2020). The above initial rent is based upon a cost of \$17.71 per square foot multiplied by 2,400 square feet.

(a) The Consumer Price Index for the purposes of this Lease shall be the Consumer Price Index for All Items for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor applicable to the Lehigh Valley area. For all items, 1982–84=100. If the Consumer Price Index ceases to be published by the United States Department of Labor, Bureau of Statistics, then the calculation shall be based on the closest successor index as identified by the United States Department of Labor. If no such successor exists, the calculation shall be based on an index that is mutually agreed upon between the parties.

(b) The base date shall be the calendar month preceding the dated commencement of this Lease agreement.

(c) The adjusted annual rent shall be determined by multiplying the annual rent by a fraction, the numerator of which shall be the Consumer Price Index for the month at the conclusion of the second full Lease year and the fourth full Lease year (the "Comparison Date"), as the case may be, and the denominator of which shall be the consumer price index for the Base Date. The resulting sum, if greater than the annual rent payable in Paragraph 2.01, shall be the adjusted rent payable in twelve equal monthly installments, commencing with the month following the Comparison Date.

### 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 all related functions.

3.02. Signs. Lessee shall have the right to erect signs on the outside of the leased premises in accordance with all applicable State and Municipal laws, ordinances and regulations.

3.03. Governmental Functions. It is understood and agreed between the parties hereto that if the governmental function for which these premises are being leased is abolished, limited, restricted or reorganized as a result of any act of the Pennsylvania legislature or of the United States Congress or an administrative action taken by or under the authority of the Pennsylvania Supreme Court, then the Lessee shall have the absolute privilege of canceling this lease upon thirty (30) days written notice.

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 63° Fahrenheit nor higher than 74° Fahrenheit, and a relative humidity of not more than 50%
- (b) Elevators. If applicable, the elevator service in common with other Lessees and occupants of the Building, and the invitees of Lessees and occupants.
- (c) Electricity. Electric current service for lighting and ordinary business appliances.
- (d) Telephone. If presently existing to the Premises, Lessor shall insure that proper 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) Plumbing. If presently equipped with plumbing and lavatory facilities, operating bathroom facilities including hot and cold water for lavatory and drinking purposes.
- (f) Maintenance of Common Area. 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.

- (g) *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.

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.

5.03 *Delinquent on Taxes.* If vendor becomes delinquent on taxes owed to the County during the term of the agreement, vendor shall be in breach of the agreement and the County shall withhold vendor payments in lieu of taxes until taxes are paid in full.

## 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 unreasonable 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, provided the fixtures can be removed without structural damage to the Premises. 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 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 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 untenantable in whole or in part following such damage, the rent payable during the period in which they are untenantable shall be abated. In the event that Lessor should fail to complete such rebuilding or repairs within 30 days from the date of written notification by Lessee to Lessor of the occurrence of the damage, Lessee may terminate this Lease by 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 months of the Lease term, or if any mortgage 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 untenantable 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 30 days after receipt of Lessor's notice described above.

7.04 *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 good and responsible company or companies doing business within the Commonwealth of Pennsylvania, in the 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. Lessor shall submit a certificate of insurance with the Lease.

7.05. *Lessee Insurance.* Lessee shall and will, at Lessee's sole expense secure and maintain during the term of this Lease Agreement a comprehensive policy of general liability insurance, naming Lessor as an additional insured, protecting Lessor against any liability occasioned by any occurrence on or about any part of the Leased Premises or any appurtenances thereto, with such policies to provide a minimum coverage of \$1,000,000 with respect to any one person or accident and in the minimum amount of \$500,000 with respect to any property damage.

## ARTICLE 8. CONDEMNATION

8.01 *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 or part the Building is taken by condemnation, then this Lease shall terminate on the date when title vests in the condemning authority.

8.02 *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 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 the Lessee, in Lessee's sole opinion, this Lease shall continue in full force and effect except that the rent shall be adjusted equitable during the unexpired portion of the Lease.

8.03 *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 9. ACCESS AND INSPECTION BY LESSOR

9.01 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 10. ASSIGNMENT AND SUBLEASE

10.01 *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 11. DEFAULT

11.01 *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 30 days after written notice of the failure to Lessee.

11.02 *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.

11.03 *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 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 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 10-day period.

11.04 *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.

11.05 *Waiver of Default.* No waiver by either party of any default or violation or breach of any of the terms, provisions, 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 12. COUNTY ORDINANCE MANDATED CONDITIONS

12.01 *Payment of County Taxes.* Provider certifies, as a condition precedent to the execution of the Agreement, and as an inducement for County to execute same, that it 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. Provider further agrees, as a specific condition of this Agreement, that it shall remain current on all of the taxes it owes to County. Should Provider become delinquent on any taxes it owes to County during the term of this Agreement, Provider may be deemed to be in breach of this Agreement by County and, in addition to any other remedies at law for such breach, Provider hereby specifically agrees and authorizes County to apply funds when due Provider directly to the taxes owed to County until said taxes are paid in full. In the event Provider becomes delinquent, it hereby authorizes County to make direct payment to the taxing authority in order to bring Provider’s county taxes current.

12.02 *Undue Influence.* The Provider agrees not to hire any County personnel who has exercised discretion in the awarding, administering or continuance of this contract for up to and including one year following the termination of the employee from County service. Failure to abide by this provision shall constitute a breach of this contract.

12.03 *Conflict of Interest.* The Provider agrees to notify in writing the County as soon as the Provider 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 the Provider 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, or the subject of the County employee’s (associate’s) contract with the Provider and the date on which the County employee’s (associate’s) employment or contract with the Provider commenced.

12.04 *Breach of Contract:*

(a) The Provider 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 the exercise of its discretion, may allow the Provider a specific period of time to correct its breach of the contract. Such period of time shall not exceed thirty (30) days.

(c) If Provider 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.

12.05 *Contingent on Budget Approval.* This Contract is contingent upon the proper appropriation of funds by the Northampton County Council in accordance with the Northampton County Home Rule Charter and Administrative Code. If the term of this contract exceeds a budget as adopted by the Northampton County Council, then that portion of this contract which exceeds a properly adopted budget shall be contingent upon further appropriation by the Northampton County Council. In the event of such non-appropriation of funds at any time during the term of the contract

as 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 of intent to terminate to the Provider. If the County terminates a contract due to the non-appropriation on funds, the County will pay Provider for work currently in progress, and Provider shall not begin any additional work on the effected contract upon receipt of notification of intent to terminate by the County.

### ARTICLE 13. MISCELLANEOUS

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

13.02 *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: Joseph DePue  
1033 Constitution Avenue  
Pen Argyl, PA 18072

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.

13.03 *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.

13.04 *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.

13.05 *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

13.06 *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.

13.07 *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.

13.08 *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.

13.09 *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.

LESSOR: JOSEPH DEPUE

By: Joseph Depue

Name and Title: OWNER  
(Please Print)

LESSEE: COUNTY OF NORTHAMPTON

By: \_\_\_\_\_  
Lamont G. McClure, County Executive