

**COUNTY OF LEHIGH, PENNSYLVANIA
COMMISSIONERS BILL 2016-13
SPONSORED BY COMMISSIONER NOTHSTEIN
REQUESTED DATE: JUNE 1, 2016
ORDINANCE NO. 2016 -**

APPROVING A LEASE AGREEMENT WITH C & E HOLDINGS, INC.

WHEREAS, the County of Lehigh (County) is the owner of the Hamilton Financial Center Building located at 640 West Hamilton Street, Allentown, Pennsylvania, Lehigh County; and

WHEREAS, in Resolution No. 2012-67, the Board of Commissioners authorized the County to market and negotiate lease agreements with interested parties and secure tenants for the premises known as the Hamilton Financial Center Building (HFC); and

WHEREAS, C & E Holdings, Inc. desires to lease the fifth (5th) floor of the HFC, stipulated to be 3,975 square feet, for professional offices; and

WHEREAS, a copy of the proposed Lease Agreement is attached hereto as Exhibit "A"; and

WHEREAS, Section 811(G) of the Administrative Code requires that all lease agreements for County property shall be subject to approval through the Ordinance process.

NOW, THEREFORE, IT IS HEREBY ENACTED AND ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF LEHIGH, PENNSYLVANIA, THAT:

1. The foregoing Whereas clauses are incorporated herein as if set forth in their entirety.

2. The proposed Lease Agreement between C & E Holdings, LLC and the County of Lehigh, attached hereto as Exhibit "A", is hereby approved.

3. The proper officers and other personnel of Lehigh County are hereby authorized and empowered to take all such further action, including any necessary transfers of funds, and execute additional documents as they may deem appropriate to carry out the purpose of this Ordinance.

4. The County Executive shall distribute copies of this Ordinance to the proper officers and other personnel of Lehigh County whose further action is required to achieve the purpose of this Ordinance.

5. Any Ordinance or part of any Ordinance conflicting with the provisions of this Ordinance is hereby repealed insofar as the same affects this Ordinance.

6. This Ordinance shall become effective in ten (10) days after enactment.

ADOPTED BY THE LEHIGH COUNTY BOARD OF COMMISSIONERS

on this _____ day of _____, 2016, by the following vote:

<u>Commissioners</u>	<u>AYE</u>	<u>NAY</u>
Geoff Brace		
Thomas C. Creighton, III		
Percy H. Dougherty		
Dan Hartzell		
Amanda Holt		
David S. Jones, Sr.		
Marty Nothstein		
Brad Osborne		
Michael P. Schware		

ATTEST: _____
Clerk to the Board of Commissioners

APPROVED this _____ day of _____, 2016.

THOMAS S. MULLER
County Executive

ENACTED this _____ day of _____, 2016.

LEASE AGREEMENT

THIS LEASE AGREEMENT, made this _____ day of _____, 2016, between **THE COUNTY OF LEHIGH**, 17 South Seventh Street, Allentown, Pennsylvania 18101, hereinafter called "Lessor", and **C & E HOLDINGS, INC.**, with a mailing address of 11 Ellengowan Road, Shenandoah, PA 17976, hereinafter called "Lessee".

WITNESSETH, that the Lessor, in consideration of the rents and covenants hereinafter mentioned, does hereby rent, demise and lease unto the Lessee, to be used only for the purposes of a business office, the demised premises situated at Hamilton Financial Center, 640 West Hamilton Street, 5th Floor, Allentown, Pennsylvania 18101, described as follows:

Fifth floor office suite stipulated to be 3,975 square feet of leasable space.

TO HAVE AND TO HOLD unto the Lessee, subject to the conditions of this agreement, for the term of ten (10) years commencing on the 1st day of July, 2016, (the "Commencement Date").

IN CONSIDERATION WHEREOF, the Lessee agrees to pay to the Lessor for the use of the demised premises, rent, payable, without demand on or before the first day of each month, commencing on the Commencement Date to Lessor at 17 South Seventh Street, Allentown, Pennsylvania, 18101, attention Fiscal Office, or as otherwise designated by Lessor as follows:

Year 1 - \$ 33,787.50	\$ 2,815.63 per month (\$8.50/sq. ft.)
Year 2 - \$ 34,463.25	\$ 2,871.94 per month (\$8.67/sq. ft.)
Year 3 - \$ 35,152.52	\$ 2,929.38 per month (\$8.84/sq. ft.)
Year 4 - \$ 35,855.96	\$ 2,987.96 per month (\$9.02/sq. ft.)
Year 5 - \$ 36,572.68	\$ 3,047.72 per month (\$9.20/sq. ft.)
Year 6 - \$ 37,304.13	\$ 3,108.68 per month (\$9.38/sq. ft.)
Year 7 - \$ 38,050.21	\$ 3,170.85 per month (\$9.57/sq. ft.)
Year 8 - \$ 38,811.22	\$ 3,234.27 per month (\$9.76/sq. ft.)
Year 9 - \$ 39,587.44	\$ 3,298.95 per month (\$9.96/sq. ft.)
Year 10 - \$ 40,379.19	\$ 3,364.93 per month (\$10.16/sq. ft.)

Payments not received by the 5th day of any month shall be assessed a late charge of \$200.00.

AND the said Lessee also agrees to keep the demised premises in as good repair and condition as at present and at the expiration of this lease, or any renewal of it, to surrender up same in like repair and condition, normal wear and damage by the elements excepted; to permit no unlawful business to be carried on upon said premises; not to permit anything to be done which is contrary to the conditions of the policies of insurance now on the said premises or



which may be placed thereon during the term of this lease or any renewal thereof, whereby the hazard might be increased or the insurance invalidated; not to underlet the said premises, nor assign this lease or any interest therein to any person or persons without the prior written consent of Lessor which shall not be withheld unreasonably, however, such consent shall not release Lessee from liability for the terms and conditions hereunder.

IT IS HEREBY AGREED between the parties to these presents, that in case the building or buildings erected on the premises hereby leased shall be partially damaged by fire, the same shall be repaired as speedily as possible at the expense of the Lessor; but in case of the total destruction of the premises by fire or otherwise, the rent shall be paid up to the time of such destruction, and then and from thenceforth this lease shall cease and come to an end, provided however, that such damage and destruction be not caused by the carelessness, negligence, or improper conduct of the Lessee, its agents or servants and Lessor shall be responsible for any and all demolition and removal expenses.

The Lessee agrees to keep the demised premises in a clean and sanitary condition; to permit the said Lessor to display a "for rent" or a "for sale" card upon the demised premises and to enter the demised premises upon giving reasonable prior notice for the purpose of making inspections or necessary repairs, or showing the demised premises to prospective purchasers or lessees; to abide by such other rules and regulations that may from time to time be promulgated by the Lessor and applicable to Lessee's use of the demised premises.

AND IT IS FURTHER AGREED that should the Lessee remove or attempt to remove from the demised premises during the term of this lease, or any renewal thereof, or should the Lessee break or evade, or attempt to break or evade, any of the covenants or restrictions set forth of this lease, then the entire rent for the full term of this lease, shall become due and payable at once and may forthwith be collected by distress or otherwise. Any goods removed from demised premises either before or after the expiration of the lease term, while any portion of the rent remains unpaid, whether due or not, shall remain liable to distress for such rent for the period of thirty days after such removal, the same as though they remained on the premises; and any removal of the goods from the demised premises at any time, either by day or night, without the written consent of the Lessor, shall be considered a clandestine and fraudulent removal. And if default shall be made in the payment of any part of the said rent for five days after the same becomes due, or if the said Lessee shall break or evade, or attempt to break or evade, any of the covenants or restrictions set forth in this lease, the Lessor may forfeit and annul the unexpired portion of this lease, or any renewal thereof, and enter upon and repossess the said premises without process of law and without any notice whatsoever.

AND IT IS FURTHER AGREED that the acceptance by the Lessor of any of the rent at any time after the same shall become due, or default has been made in the payment thereof or any failure of the Lessor to enforce any of the rights gained under this lease or any of the penalties, forfeitures or conditions herein contained, shall not in any way be considered as a waiver of the right to enforce the same and that such right or forfeiture may be enforced without

any notice whatsoever; and that any attempt to collect the rent by one proceeding shall not be considered as a waiver of the right of the Lessor to collect the same by any other proceeding.

The Lessee hereby waives the usual three months' notice to quit and agrees to surrender the demised premises at the expiration of the said term, or the termination of this lease or any renewal thereof, without any notice whatever, and also waives the benefit of all appraisement, stay and exemption laws, the right of inquisition on real estate and all bankrupt or insolvent laws now in force or which may hereafter be passed, upon any proceeding instituted for the recovery of the rent, either by distress or otherwise.

If default shall be made in the payment of any rent when the same shall become due, or if the Lessee shall be sold out at sheriff's or constable's sale or permit any judgment to be entered against him, or make any assignment for the benefit of creditors, or commit any act of bankruptcy whatever, then the rent for the balance of the terms shall at once become due and payable, as if by the terms of the lease it were all payable in advance, and may be collected by distress or otherwise, and shall be paid in full out of the proceeds of any such assignment, sale or bankruptcy proceedings, any law, usage or custom to the contrary notwithstanding. Notwithstanding the aforesaid, Lessor agrees to provide written notice of default and an opportunity to cure before exercising any remedies set forth herein. Five days written notice shall be given for monetary defaults and 15 days written notice shall be given for non-monetary defaults.

THE FOLLOWING PARAGRAPH SETS FORTH A WARRANT OF AUTHORITY FOR ANY ATTORNEY TO CONFESS JUDGMENT AGAINST THE LESSEE. IN GRANTING THIS WARRANT OF ATTORNEY TO CONFESS JUDGMENT AGAINST THE LESSEE, THE LESSEE, FOLLOWING CONSULTATION WITH (OR DECISION NOT TO CONSULT) SEPARATE COUNSEL FOR THE LESSEE AND WITH KNOWLEDGE OF THE LEGAL EFFECT HEREOF, HEREBY KNOWINGLY, INTENTIONALLY, VOLUNTARILY AND UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS THE LESSEE HAS OR MAY HAVE, JOINTLY OR SEVERALLY, TO PRIOR NOTICE AND AN OPPORTUNITY FOR HEARING UNDER THE RESPECTIVE CONSTITUTIONS AND LAWS OF THE UNITED STATES OF AMERICA, THE COMMONWEALTH OF PENNSYLVANIA, OR ELSEWHERE. IT IS SPECIFICALLY ACKNOWLEDGED BY THE LESSEE THAT THE LESSOR HAS RELIED ON THIS WARRANT OF ATTORNEY IN NEGOTIATING THIS AGREEMENT.

UPON THE BREACH OF ANY OF THE CONDITIONS OF THIS LEASE, LESSEE AUTHORIZES ANY ATTORNEY OR PROTHONOTARY OF ANY COURT OF RECORD TO CONFESS JUDGMENT IN FAVOR OF LESSOR FOR THE AMOUNT OF UNPAID RENT FOR THE FULL TERM OF THIS LEASE OR ANY RENEWAL OR PART THEREOF, WHETHER THE SAME SHALL HAVE BEEN DUE OR NOT, PLUS FIVE (5%) PER CENT ATTORNEY'S COMMISSION, WAIVING STAY OF EXECUTION, INQUISITION AND ALL EXEMPTION LAWS NOW IN FORCE OR WHICH MAY HEREAFTER BE PASSED;

AND FURTHER DOES HEREBY, AUTHORIZE ANY ATTORNEY OF ANY COURT OF RECORD TO APPEAR FOR HIM OR HER AND ENTER AN AMICABLE ACTION OF EJECTMENT AND CONFESS A JUDGMENT OF EJECTMENT THEREIN FOR THE PREMISES HEREIN DESCRIBED AND DOES AUTHORIZE THE IMMEDIATE ISSUING OF A WRIT OF POSSESSION WITH COSTS WITHOUT ASKING LEAVE OF THE COURT.

AND IT IS FURTHER AGREED that if the Lessee (with the consent of the Lessor) shall continue in possession of the said premises after the expiration of the term, or any renewal thereof, then this agreement shall become immediately operative on a month-to-month term, and the Lessor shall have the right to enforce any of the conditions or forfeitures of this agreement, including the confession of judgment, with the waivers, etc., as if a new agreement identical with this had been executed by the parties for the succeeding term or terms, with the proviso that in case any particular conditions are set forth in this lease to take effect upon a renewal thereof, then should there be any such renewal as above provided for, the said particular conditions shall take effect upon such renewal, but they shall apply to only such parts of this lease as it is stated herein that they are intended to supersede, and shall in no way affect any of the remaining parts of this lease.

ANY IT IS FURTHER AGREED that the following conditions, forfeitures, covenants and restrictions are a part of this agreement, and that each and all of them are binding upon the parties hereto:

- (1) The demised premises is leased to Lessee in "as is" condition except that Lessor shall professionally clean the demised premises and that all mechanical systems are operational and to code prior to occupancy. All Lessee's renovations, alterations and improvements shall require the prior written approval of the Lessor which shall not be unreasonably withheld. Lessee, upon termination of this Agreement, at Lessor's sole option, shall remove such renovations, alterations or improvements as required by Lessor, otherwise the same shall remain the property of Lessor.
- (2) Lessee shall pay for all utilities and janitorial services used on the demised premises.
- (3) Lessee shall be solely responsible to obtain all certificates, permits, and other approvals that may be required by any federal, state or local authorities which will permit Lessee to use the demised premises for its intended purposes, as set forth herein. Lessor shall cooperate with Lessee in its efforts to obtain any and all permits as may be reasonably requested.
- (4) Lessee agrees to indemnify and save Lessor harmless from and against any and all liability, damage, expense, claims or judgments, including reasonable attorneys'

fees, resulting from injury to person or damage to property resulting from or arising out of the use and occupancy of the demised premises by Lessee if caused by the negligent act or omission of Lessee, its agents, employees, invitees or guests during the term of this Agreement.

- (5) Lessee shall maintain at all times during the term of this Agreement and pay for the following types of insurance:
- a. General Liability Insurance in the amount of: \$1,000,000 per occurrence /\$1,000,000 aggregate with all risk coverage of not less than \$1,000,000 property damage.
 - b. Worker's Compensation Insurance with minimum limits of 500/500/500 for all employees who work on and visit the demised premises.
 - c. Umbrella coverage in the amount of \$5,000,000 per occurrence/ \$5,000,000 aggregate.
 - d. Such other insurances as Lessor may reasonably require from time to time.

Lessee agrees to provide Certificates of Insurance evidencing the existence of such insurance to Lessor at least ten (10) days prior to the commencement of the lease term. Lessee's general liability and umbrella insurance shall include an endorsement naming Lessor as an additional insured, a copy of the additional insured endorsements shall be provided to Lessor with certificate of insurance. Lessee shall provide at least thirty (30) days prior written notice to Lessor in the event coverage is cancelled, not renewed or coverage is reduced.

- (6) Lessee shall not display any signage except as permitted by law and all signage shall be subject to the prior written approval of the Lessor, which shall not be unreasonably withheld.
- (7) Lessee shall pay a Security Deposit in the amount of \$6,180.56 at the time of the execution of this Lease Agreement.
- (8) Any written notice provided for herein shall be given in writing and shall be deemed validly given if delivered by personal delivery, overnight air carrier service, or certified or registered United States Mail, postage pre-paid, return receipt requested, addressed as follows:

LESSOR: COUNTY OF LEHIGH
17 South Seventh Street
Allentown, PA 18101
Attn: Fiscal Office

With a copy to: COUNTY OF LEHIGH
17 South Seventh Street
Allentown, PA 18101
Attn: County Solicitor

LESSEE: C & E Holdings, Inc.
11 Ellengowan Road
Shenandoah, PA 17976
Attn: Edward C. Klein, President

- (9) This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the Commonwealth of Pennsylvania.
- (10) This Agreement contains the entire Agreement between the parties hereto and no other verbal or oral agreements, promises or understandings shall be binding upon either Lessor or Lessee in any dispute, controversy, or proceeding at law and any addition, variation or modification of this Agreement shall be void and ineffective unless made in a writing signed by Lessor and Lessee. This Agreement shall be interpreted and construed without reference to incidents of negotiation or authorship.
- (11) The Lessor is responsible for any and all broker commissions payable to NAI Summit Commercial Real Estate.
- (12) TAXES
- a. The PROVIDER hereby certifies, as a condition precedent to the execution of this contract and as an inducement for the COUNTY to execute same, that it is not "delinquent" on any taxes owed to the COUNTY. "Delinquent" is hereby defined as the point in time at which the collection of the tax becomes the responsibility of the Lehigh County Tax Claim Bureau.
- b. The PROVIDER further agrees, as a specific condition of this contract, that it shall remain current on all of the taxes it owes to the COUNTY. Should the PROVIDER become delinquent on any taxes it owes to the COUNTY during the term of this contract, the PROVIDER may be deemed to be in breach of this contract by the COUNTY and, in addition

to any other remedies at law for such breach, the PROVIDER hereby specifically agrees and authorizes the COUNTY to apply all funds when due to the PROVIDER directly to the taxes owed to the COUNTY until said taxes are paid in full.

c. In the event the PROVIDER becomes delinquent, it hereby authorizes the COUNTY to make payments to the taxing authority for the COUNTY to bring the PROVIDER'S county taxes current.

(13) UNDUE INFLUENCE

The PROVIDER agrees not to hire any COUNTY Personnel who may exercise or has exercised discretion in the awarding, administration, 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.

The PROVIDER hereto agrees that any and all payments due from the COUNTY as required under the terms of this contract are contingent upon the availability of the appropriated funds. If any or all of the funds which are due to the PROVIDER emanate from State or Federal sources, payment is also contingent upon the COUNTY receiving such moneys from the State or Federal Government.

(14) This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of the parties hereto.

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

In the presence of:

Lessor: THE COUNTY OF LEHIGH

By: _____
Thomas S. Muller, County Executive

Lessee:

C & E HOLDINGS, INC.


Catherine M. Gasiewicz
Secretary

By: 
Edward C. Klein, President