

# APPROVED

First Reading: 04/25/12

Passed 8-0: 05/09/12

**COUNTY OF LEHIGH, PENNSYLVANIA  
COMMISSIONERS BILL 2012-14  
SPONSORED BY COMMISSIONER SCHELLER  
REQUESTED DATE: APRIL 18, 2012  
ORDINANCE NO. 2012-113**

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**APPROVING A LEASE AGREEMENT BETWEEN THE COUNTY OF LEHIGH  
AND OSWALD FARMS**

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**WHEREAS**, the County of Lehigh (County) owns approximately fourteen and one half (14.5) acres of land in Whitehall Township, southeast of the Village of Egypt and adjacent to the Troxell-Steckel barn; and

**WHEREAS**, the County advertised for bids to lease this property for agricultural use, and received no bids, but did receive an expression of interest from the current lessee, Oswald Farms; and

**WHEREAS**, after negotiation with Oswald Farms, the County desires to lease the property to Oswald Farms for the purpose of cultivating the soil/farming activities and no other permitted use; and

**WHEREAS**, Section 310(a)(6) of the Home Rule Charter requires that 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 above clauses are incorporated herein and made a part hereof by this reference.

2. The Lease Agreement with Oswald Farms which is attached hereto and incorporated herein by reference 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 offices 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 Any Ordinance or part of any Ordinance conflicting with the provisions of this Ordinance is hereby repealed insofar as the same affects this Ordinance.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 this 9th day of May, 2012 by the following vote:

<u>Commissioners</u>	<u>AYE</u>	<u>NAY</u>
Thomas C. Creighton, III	X	
Percy H. Dougherty	X	
David S. Jones, Sr.	X	
Daniel K. McCarthy (absent)		
Vic Mazziotti	X	
Brad Osborne	X	
Scott Ott	X	
Lisa Scheller	X	
Michael Schware	X	

ATTEST:

Deirdre Bevilacqua  
Clerk to the Board of Commissioners

APPROVED this

14th day of May

, 2012.

Donald T. Cunningham, Jr.  
County Executive

ENACTED this

14th day of May

, 2012

**GROUND LEASE OF AGRICULTURAL LAND**  
**(Tract II – 14.5 Acres, 9.2 Tillable)**

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2012, between the COUNTY OF LEHIGH, with offices at 17 S. Seventh Street, Allentown, PA 18101, "LESSOR";

A  
N  
D

**OSWALD FARMS**, with offices located at **4636 Mulberry Street, Coplay, PA 18037** "LESSEE".

WITNESSETH:

NOW, THEREFORE, in consideration of the Covenants and Promises contained herein, the Parties Agree, as follows:

**ARTICLE I**

LESSOR hereby leases to LESSEE, and LESSEE hereby leases from LESSOR a parcel of real estate designated as follows:

- **Approximately 14.5 acres (9.2 tillable) located adjacent to the Troxell-Steckel Barn in Whitehall Township, southeast of the Village of Egypt. See attached Exhibit #1.**

**ARTICLE II**

This Ground Lease, and the Leased Premises, are subject to all current rights, easement, restrictions, rights of way, covenants, other matters of record, and municipal zoning ordinances, regulations and codes.

**ARTICLE III**

LESSEE leases the Premises solely for the purpose of cultivating the soil/farming activities. There shall be no other permitted use of the Leased Premises.

**ARTICLE IV**

LESSEE'S obligation to pay, Rent, and to occupy the Leased Premises in accordance with this Lease, shall be for an initial term of **one (1) year**, commencing on **May 1, 2012**, and ending on **April 30, 2013**, unless sooner terminated as herein provided. LESSOR also grants unto LESSEE **two (2) options to extend** the initial term of this Ground Lease, provided LESSEE is not in default. The options shall be for **one (1) year each** and shall be exercisable by LESSEE, by giving LESSOR written Notice of such intention ninety (90) days before the expiration of the term. All provisions of this Lease and the Rent shall remain in force during the Option Periods.

**ARTICLE V**

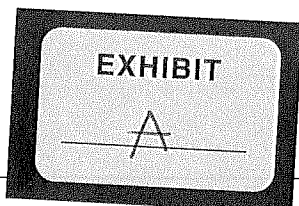
The Rent for the Leased Premises shall be the sum of **\$464.00 Dollars per year**, payable in two (2) installments annually. The first installment is due on the date of execution of this Lease for the 1<sup>st</sup> year and on or before March 1st thereafter. The second installment is due on or before September 1st. Payments during subsequent years shall be made on the same dates and in the same amounts as payments in the first year, unless altered by acreage changes.

**ARTICLE VI**

LESSEE shall keep and properly maintain the Premises.

**ARTICLE VII**

LESSEE agrees not to assign or sublet the Leased Premises or any part thereof, without the prior written consent of the LESSOR.



#### ARTICLE VIII

LESSEE agrees not to sell, or permit to be sold, any liquor, beer or malt liquor nor permit the consumption of same, on the Leased Premises during the term of this Lease. LESSEE also acknowledges that it is not permitted to erect any building or other improvements of any kind on the Leased Premises nor to use or occupy the Premises in any manner, other than for the uses and purposes expressly authorized herein.

#### ARTICLE IX

LESSEE agrees to cultivate the land according to the accepted methods of farming and cultivating, such as contour farming, and does hereby agree to farm the said land in accordance with such practices as may be set up by the Lehigh County Farm Agent and/or the County Soil Stabilization Offices. Furthermore, LESSEE shall have a current Soil Conservation Service (SCS) Plan on file, and shall apply the provisions of said Plan.

#### ARTICLE X

LESSEE will operate the farm in an efficient and proper manner and will do the plowing, seeding, cultivating and harvesting in a manner that will conserve the property. LESSEE will not, without the prior written consent of LESSOR,

- a) plow permanent pasture or meadowland,
- b) cut live trees for sale or personal uses, but will take for fuel or use on the farm only dead or unmarketable timber designated by the Party of the first part,
- c) allow livestock other than his own on fields,
- d) burn or remove cornstalks, corncobs, straw, or other crop residues grown on the farm,
- e) pasture new seedlings or legumes or grasses in the year they are seeded, and
- f) Commit any waste on.. or damage to, the farm, and will use due care to prevent others from so doing.

#### ARTICLE XI

LESSEE will use diligence to prevent weeds from going to seed on the farm and will destroy the same, and will keep the weeds and grass cut or destroyed on the fields, farmstead, roadside, and fence rows.

LESSEE will also keep any fences, and other improvements on the farm in as good repair and condition as they are when it takes possession.

#### ARTICLE XII

LESSEE will control soil erosion as completely as practicable by strip-cropping and contouring, and by filling in or otherwise controlling small washes or ditches that may form. LESSEE will also keep in good repair all terraces, open ditches, and inlets and outlets of tile drains, preserve all established watercourses, or ditches including grass waterways, and will refrain from any operations or practices that will injure them.

#### ARTICLE XIII

When LESSEE leaves the farm, he will pay LESSEE reasonable compensation for any damages to the farm for which the LESSEE is responsible, except and damages beyond LESSEE'S control.

LESSEE shall also assume full responsibility and liability during the term of the Lease for any legal actions brought as the result of using pesticides, spray materials, or any other agricultural chemicals or fertilizers in the production of crops, and will hold LESSOR harmless.

#### ARTICLE XIV

LESSOR reserves the right to terminate this Lease, or withdraw parcels of land from this Lease, by giving sixty (60) days written Notice to the LESSEE of that intention and specifying the property to be withdrawn. For any property withdrawn from this Lease during its term, the County hereby agrees to pay to LESSEE for loss incurred by said act, for loss of crops, fertilizer and labor. Further, if the County only withdraws a portion of the land leased, the Rent will be adjusted accordingly for the remainder of the term. In the event the Party of the second part abandons or vacates the Premises before the expiration of the term of this Lease, LESSOR may, at its option, declare the Lease forfeited. In the event LESSEE declares an intention to vacate the Premises, the LESSOR shall have the right to distrain for all the Rent then due and thereafter to become due during the term of this Lease.

#### ARTICLE XV

This Lease sets forth all of the promises, agreements, conditions and understandings between the LESSOR and the LESSEE relative to the Premises, and there are no promises, agreements, conditions or understandings, either oral or written, between them other than set forth herein. It is further understood and agreed

that, except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon the Parties unless reduced to writing and signed by them.

ARTICLE XVI

LESSEE shall not permit the Premises, or structures or improvements thereon, to become subject to any lien, change or encumbrance, and LESSEE shall Indemnify and Hold Harmless LESSOR from any and all liability, damage, expense, actions, suits, claims or judgments arising from injury to persons or property on the Leased Premises or elsewhere which arise out of the act, failure to act or negligence of the LESSEE, its agents or employees.

ARTICLE XVII

LESSEE shall not have the right to drill for oil, gas or water, or to mine or remove coal, stone or other mineral products or to cut or remove trees, stumps, wood or other forest products from the Leased Premises.

ARTICLE XVIII

1) LESSEE 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.

2) The LESSEE Agrees, as a specific condition of this Contract, that it shall remain current on all of the taxes it owes to the County. Should LESSEE become delinquent on any taxes it owes to the County during the term of this Agreement, LESSEE may be deemed to be in breach of this Agreement by County and, in addition to any other remedies at law for such breach, the LESSEE hereby specifically Agrees and authorizes the County to apply all funds when due to LESSEE directly to the taxes owed to the County until said taxes are paid in full.

3) LESSEE Agrees not to hire any County Personnel who may exercise or has exercised discretion in the awarding, administration or continuance of this Agreement 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 Agreement.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties hereto have set their hands and seals to this Ground Lease on the day and year first above written.

WITNESS:

COUNTY OF LEHIGH

\_\_\_\_\_

BY:

\_\_\_\_\_  
Donald T. Cunningham, Jr.  
County Executive

WITNESS:

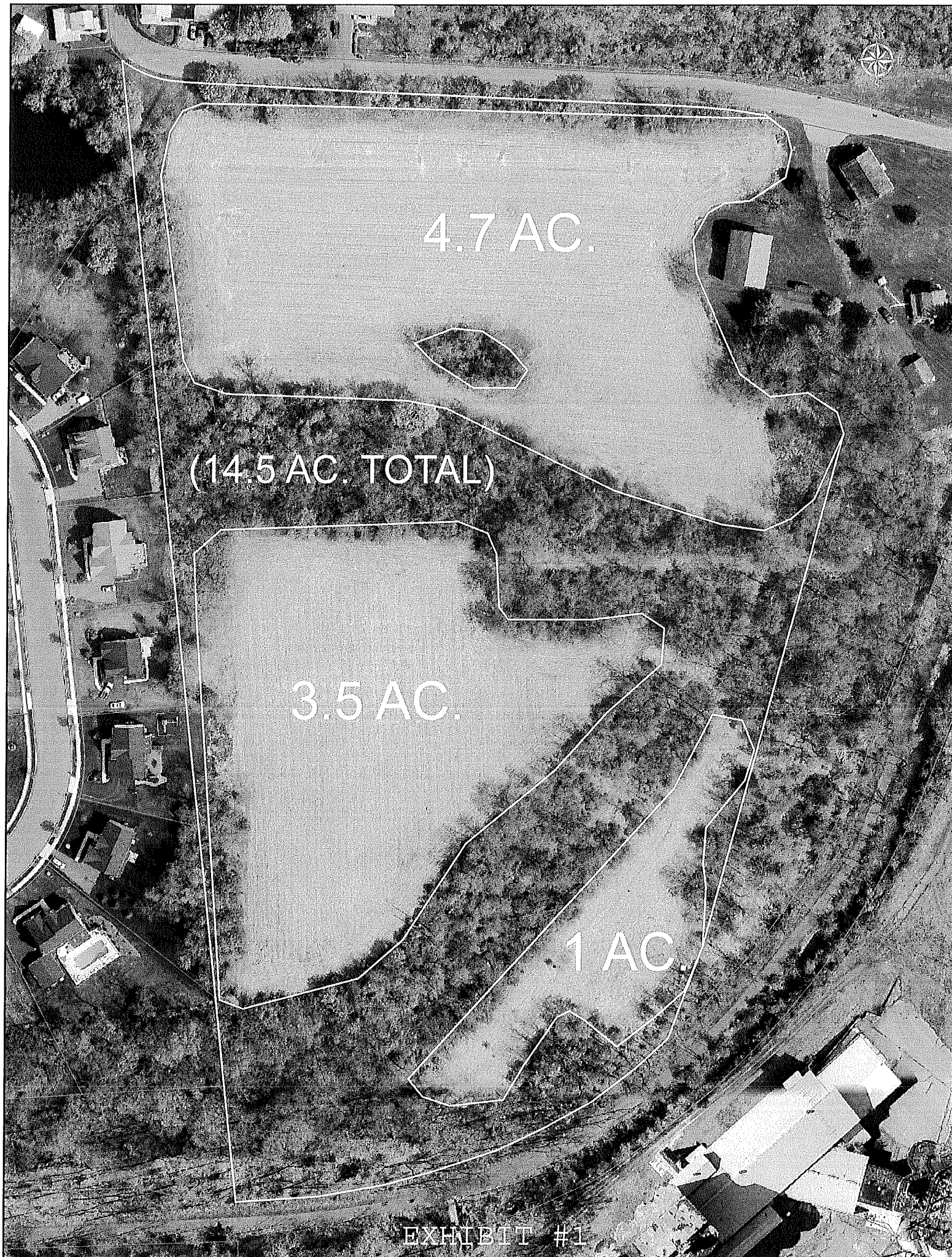
OSWALD FARMS

\_\_\_\_\_

BY:

*David H. Oswald*  
\_\_\_\_\_  
David H. Oswald  
Owner





4.7 AC.

(14.5 AC. TOTAL)

3.5 AC.

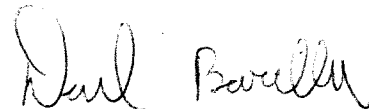
1 AC.

EXHIBIT #1

COUNTY OF LEHIGH ORDINANCE 2012 – NO. 113

**CERTIFICATION**

I, DAVID BARILLA, Clerk to the Board of Commissioners of Lehigh County, do hereby certify that the attached is a true and correct copy of the ordinance adopted at a regular meeting of the Commissioners of Lehigh County held on the 9th day of May, 2012, and approved on the 14th day of May, 2012 by the Lehigh County Executive, and effective on the 24th day of May, 2012.



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DAVID BARILLA, Clerk  
Board of Commissioners