

COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND

2013 Legislative Session

Legislative Day No. 04

Resolution No. 24-2013

Introduced by: The President of the Council at the request of the County Executive

A RESOLUTION TO AUTHORIZE THE COUNTY EXECUTIVE TO EXECUTE ON BEHALF OF WICOMICO COUNTY A LEASE TO ITC SERVICES, LLC, TRADING AS "BABYKICKS".

WHEREAS, pursuant to Section 22-1 of Chapter 22, entitled "County-owned property" paragraph E, the County Executive is authorized and empowered to lease County property in furtherance of public purposes; and

WHEREAS, ITC Services, LLC, trading as "Babykicks" would like to lease space, Units 2 & 3 within the David J. Ward Building, also known as the "Old Airport Terminal Building"; and

WHEREAS, the County Executive proposes that Wicomico County, Maryland enter into a lease agreement with ITC Services, LLC for a term of six months, commencing April 1, 2013 and ending on September 30, 2013, with one renewal term for a period of six months, and be given the authority to execute such agreement on behalf of Wicomico County, Maryland; and

WHEREAS, ITC Services, LLC shall pay rent at a monthly rental rate of \$633.33 for Unit 2 and a monthly rental rate of \$481.25 for Unit 3; and

WHEREAS, the leased premises shall be used by ITC Services, LLC for the production of cloth diapers and office space.

NOW, THEREFORE, BE IT RESOLVED by the County Council of Wicomico County, Maryland that the County Executive be, and is hereby, authorized to execute, on behalf of the County, a Lease Agreement, in substantially the form attached hereto as Exhibit A and made a part hereof, with ITC Services, LLC for a term of six months, commencing April 1, 2013 and ending on September 30, 2013, with one renewal term for a period of six months, at a monthly rental rate of \$633.33 for Unit 2 and \$481.25 for Unit 3.

Done at Salisbury, Maryland, this 5th day of March, 2013.

ATTEST:

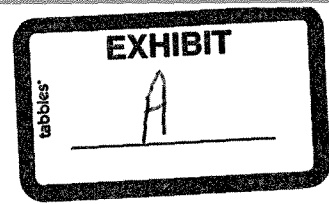
Matthew E. Creamer, Council Administrator

COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND Matt Holloway, Council President

CERTIFICATION

This Resolution was Adopted [checked], Adopted with Amendments \_\_\_\_, Failed \_\_\_\_, Withdraw \_\_\_\_ by the County Council on March 5, 2013.

Certified by Matthew E. Creamer, Council Administrator



LEASE AGREEMENT

THIS LEASE AGREEMENT, made this \_\_\_\_\_ day of March, 2013, by and between the Wicomico County Airport Commission, acting for and on behalf of Wicomico County, Maryland, a body corporate and politic of the State of Maryland (hereinafter referred to as "Airport Commission" or "Lessor") and ITC Services, LLC, trading as "Babykicks"(hereinafter referred to as "Lessee"); WITNESSETH:

WHEREAS, Wicomico County, Maryland, is the owner of the airport known as the Salisbury-Ocean City Wicomico Regional Airport, lying near the City of Salisbury, Maryland; and

WHEREAS, Wicomico County, Maryland, has authorized and directed said Wicomico County Airport Commission to operate said airport to the best use and advantage of the citizens of said County; and

WHEREAS, said Airport Commission is desirous of leasing to ITC Services, LLC, and ITC Services, LLC is desirous of leasing from the Airport Commission the area more fully set forth herein; and

WHEREAS, the use of the premises hereby leased shall be for the production of cloth diapers.

NOW, THEREFORE, THIS LEASE AGREEMENT WITNESSETH: That in consideration of the payments hereinafter provided for, and other good and valuable considerations, the receipt of which is hereby acknowledged, the parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

**ARTICLE I**  
**PREMISES**

The Airport Commission for and in consideration of the payments of the rentals and fees hereinafter specified and the performance of each, every and all of the covenants, conditions and agreements herein contained at the time and in the manner herein set forth, does hereby lease unto ITC Services, LLC and ITC Services, LLC hereby leases from the Airport Commission, the following premises and facilities, situate at the Salisbury-Ocean City Wicomico Regional Airport, as more particularly hereinafter set forth:

A. The area to be leased is situate in the David J. Ward Building, also known as the "old terminal building," herein referred to as the "Ward Building." The area in said building to be leased unto the Lessee consists of 1,155 square feet on the first floor of the "Ward Building, as shown on the attached floor plan as Unit 3 and 1,520 square feet on the first

floor of the "Ward Building", shown as Unit 2.

B. It is specifically agreed between the parties hereto that the aircraft parking ramp adjacent to the "Ward Building" and the concourse, are not to be considered or included as part of the property to be leased.

C. The Airport Commission hereby agrees to furnish to ITC Services, LLC, three (3) reserved parking spaces on the south side of the premises hereby leased, provided ITC Services, LLC furnishes to the Airport Commission appropriate signs marked "Reserved - ITC Services, LLC." The use of these parking spaces also includes the access thereto for the purposes of ingress and egress. The Airport Commission further agrees to provide up to six (6) parking permits, as needed, in the designated employee parking lot for use by ITC Services, LLC employees.

## **ARTICLE II** **TERMS**

The term of this Agreement shall be for a period of six (6) months, beginning on the 1<sup>st</sup> day of April, 2013 and ending on September 30, 2013. This Lease shall have a renewable term for one six (6) month period beginning October 1, 2013 on the same terms and conditions set forth herein, including the rental rate. ITC Services, LLC shall provide the Wicomico County Airport Commission with at least forty-five (45) days notice of its intention to exercise each said renewal. Furthermore, the Airport Commission has the right to terminate this lease for any reason, with forty-five (45) days notice to Lessee.

## **ARTICLE III** **RENTAL**

Lessee, in consideration for the occupancy and use of the herein leased premises, hereby agrees to pay unto the Airport Commission, the following rental:

A. The rental rate shall be \$5.00 per square foot, which is payable monthly in advance on the first day of each month, at the rate of \$633.33 per month for Unit 2 and \$481.25 per month for Unit 3, beginning on April 1, 2013; and shall continue during any or all of the renewals which may be exercised.

B. Lessee will be required to pay any and all property or other taxes which may be assessed during the term hereof and any renewal against Lessee or against Wicomico County or the Airport Commission and levied and charged against the demised premises.

C. Lessee shall be responsible for its pro-rata share of the electrical bill for the David J. Ward Building, based on square footage leased and shall promptly remit payment to the Airport Commission upon receipt of each monthly electrical bill.

**ARTICLE IV**  
**MAINTENANCE OF STRUCTURE**

The Airport Commission agrees that it will, at all times, maintain, repair and replace, as appropriate, the physical structure of the building (roof and exterior) hereby leased. Lessor warrants and represents that, as of the Term Commencement Date, (i) the Premises shall be in compliance with all applicable laws, codes, ordinances, orders, rules and regulations of any governmental or other public authority; (ii) all electrical, plumbing, lighting, fire protection and heating, ventilation and air conditioning systems shall be in good condition and repair, and (iii) there shall be no restrictions or other legal impediments, either imposed by law (including without limitation applicable zoning and building codes or ordinances) or by instrument, which would prevent the use of the Premises for the Permitted Uses hereunder. If at any time during the Term, as the same may be extended, applicable law shall not permit the use of the Premises as aforesaid, then Lessee, without waiving any other right Lessee may have an account thereof, may terminate this Lease upon no less than thirty (30) days prior written notice to Lessor.

**ARTICLE V**  
**LESSEE'S OBLIGATIONS**

ITC Services, LLC covenants and agrees to comply with and perform the following terms and conditions:

1. ITC Services, LLC shall be responsible for its own janitorial, sanitary, trash and rubbish removal and pest control services for that area of the building which it occupies, including all supplies necessary for the proper maintenance of the facility. In addition, ITC Services, LLC shall be responsible to pay a pro-rated portion of the janitorial expenses associated with the common area.
2. ITC Services, LLC shall be responsible for all routine maintenance, lighting, replacement bulbs, ceiling tiles, air conditioning systems, electrical system, heating system, mechanical, water, sewer and plumbing in the leasehold area and shall pay all costs associated with such maintenance.
3. For each of its activities or lines of business, ITC Services, LLC shall obtain and possess at all times, all required Federal, State and local permits and licenses.
4. ITC Services, LLC shall not interfere in any manner whatsoever with any activity of the Airport Commission or any of its lessees, agents, or employees, nor engage in any unfair or unethical business practices or unfair competition with other operators at said Airport.
5. ITC Services, LLC agrees to dispose of all garbage from the leased premises on a regular basis and without further notification from the Airport Commission.

6. ITC Services, LLC shall not block any areas used for ingress or egress of public traffic, or otherwise permit, continue or cause any unsafe condition.
7. Permit, at all reasonable times and upon prior notice during its hours of operation and in the company of an employee of Lessee, inspections of the said area hereby leased, by any authorized officials of the Airport Commission and comply promptly with any lawful order issued as a result of such inspections.
8. Comply with all fire prevention codes of the State of Maryland and Wicomico County and all regulations and requirements of proper authorities for fire prevention which are applicable to the building premises used and the activities conducted by Lessee. And, in addition thereto, to provide and maintain, at its own expense, all necessary and reasonably required fire extinguishers, sand buckets, axes and other fire prevention devices including warning signs, in order to properly protect the said building and facilities, all premises used and all property in and about said building, facilities and premises.
9. Keep the premises and facilities in the area hereby leased in good order and repair, ordinary wear and tear excepted, as herein provided at all times.
10. Strictly comply with applicable municipal, county, state and federal laws, ordinances, rules and regulations, as well as observe all reasonable and lawful rules and regulations (not in conflict with the rules of the Department of Transportation or the Federal Aviation Administration, or the provisions of this Agreement), which may, from time to time, during the term of this Lease or any renewal thereof, be promulgated by the Airport Commission for any and all operations at said Airport.
11. Provide at its own expense, all required operating equipment for Lessee's business.
12. Not make alterations (except those specifically provided for herein), other than ordinary maintenance of said leased area, without first obtaining the prior written approval of the Airport Commission. Such approval shall not be unreasonably withheld.
13. Pay the rentals and fees provided for herein promptly when due.
14. Lessee shall manage said operation of its business, and any and all parts thereof, itself, and shall be personally responsible to said Airport Commission for each and every obligation, responsibility and requirement hereunder. In the event that any such obligation or responsibility shall not be complied with, in the opinion of the Airport Commission, notices of such default to Lessee shall be deemed notice to any person or corporation performing said service or function for said Lessee.

15. Lessee shall manage said operation of its business, and any and all parts thereof, in such manner as to avoid interference with the activities of the Federal Aviation Administration's operations, located on the second floor of the Ward Building, including, but not limited to, excessive noise, odors, environmentally hazardous substances, etc.

16. ITC Services, LLC shall comply with all requirements associated with the Federal Community Development Block Grant Program (CDBG).

Notwithstanding anything to the contrary contained herein, in no event shall Lessee be obligated to make any repairs or replacements which would constitute items of expense properly chargeable to "capital account" under GAAP or which are required as the result of the negligence or willful misconduct of Lessor, its agents, employees, representatives or contractors, or the failure of Lessor to perform any of its obligations under this Lease, all of which repairs and replacements shall be made by Lessor at Lessors' sole cost and expense.

## **ARTICLE VI** **CANCELLATION BY COMMISSION**

In the event Lessee shall file a voluntary petition in bankruptcy, or that proceedings in bankruptcy shall be instituted against it and Lessee is thereafter adjudicated bankrupt, pursuant to such proceedings, or that any Court shall take jurisdiction of Lessee and its assets, pursuant to proceedings brought under any Federal Reorganization Act, or that Lessee shall make a deed for the benefit of its creditors, or that a receiver for its assets shall be appointed or that Lessee shall fail to perform, keep or preserve any of the terms, covenants or conditions herein contained on the part of the Lessee to be performed, kept or observed for a period of thirty days after written notice thereof from Lessor, the Airport Commission may give Lessee immediate written notice to terminate this Lease in the same manner and to the same effect as if it were the expiration of the term hereto, and if any of such events, conditions or defaults shall occur, and continue as aforesaid so that this Agreement is terminated as aforesaid, Lessee, the referee in bankruptcy, or any receiver or trustee immediately appointed to take charge of the assets of the Lessee shall yield up the use of the premises hereby permitted without claim for any of the costs or expenses incurred by Lessee in connection with doing or performing any or all of the work or operations contemplated to be done or performed by Lessee under the provisions of this Agreement; and for the purpose of taking possession upon any such default or defaults, as above provided, the Airport Commission may enter upon the premises by lawful means and by such action shall incur no liability to Lessee, its trustee in bankruptcy, or any receiver or trustee of either a civil or criminal nature.

The permissive occupancy or the acceptance of any rentals or payments by the Airport Commission for any period or periods after a default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Lessee shall not be deemed a waiver of any right on the part of the Airport Commission to

terminate this agreement for any such default, provided forty-five (45) days written notice shall have been given promptly in accordance herewith. The Lessee shall have the option to correct any such default within thirty (30) days from the date on which such default becomes known to it. No waiver of any default by the Airport Commission of any of the terms, covenants and conditions to be performed, kept, and observed by Lessee shall be construed to be or act as a waiver of any subsequent default.

The taking of said Airport by the United States of America shall automatically cancel this Agreement.

**ARTICLE VII**  
CANCELLATION BY LESSEE

Lessee, in addition to any right of cancellation or any other right herein given to Lessee, may cancel this Agreement in its entirety or terminate all or any of its obligations hereunder at any time, by ten (10) days prior written notice, upon or after the happening of any one of the following events:

1. The breach by the Airport Commission of any of the covenants or agreements herein contained which are of importance to the Lessee's operations, and the failure of the Airport Commission to remedy such breach for a period of ten (10) days after receipt of a written notice of the existence of such breach.
2. The inability of Lessee to use said premises and facilities continuing for a longer period than thirty (30) days whether due to a law or order, rule, or regulation of any appropriate governmental authority having jurisdiction over the premises or the operations of the Lessee due to war, earthquake or other casualty;
3. Should Lessee continue to perform under this Agreement for any period or periods after a default of any of the terms, covenants, and conditions herein contained to be performed, kept, and observed by the Airport Commission shall not be deemed a waiver of any right on the part of Lessee to cancel this Agreement for such default. No waiver or default by Lessee of any of the terms, conditions, or covenants hereof to be performed, kept, or observed by the Airport Commission shall be construed to be or act as a waiver by Lessee of any subsequent default.

**ARTICLE VIII**  
DELIVERY OF PREMISES

Lessee agrees to yield and deliver to the Airport Commission, possession of the building premises and area leased herein upon the termination of this Agreement, by expiration or otherwise, in the same condition as when received under the terms of this Agreement, except for any normal wear and tear, fire or other casualty, and except that nothing in this provision shall be deemed to require Lessee to remove any partitions or

make any other alterations from the condition of the premises after renovations duly approved by the Wicomico County Airport Commission. Lessee shall have the right at any time during the term or renewal thereof, and for thirty (30) days after the termination thereof, to remove all equipment and signs installed or placed by it at its expense, in or about the building and premises, provided the removal thereof will not damage said building and/or premises or alter the appearance thereof from its present form, except such facilities, fixtures, equipment and other property installed as replacement to the Airport Commission - owned property and facilities which shall be and remain from the time of their installation, the property of the Airport Commission. The removal of equipment and/or property owned by the Lessee from the building hereby leased, shall be subject to any valid lien which the Airport Commission may have thereon for unpaid fees or other charges. The premises shall in all cases be restored to good and satisfactory condition equal to that before any such removal.

Should Lessee hold over or occupy said building and premises or any part thereof beyond the termination of the term provided for in this Agreement, it shall be liable to pay to the Airport Commission the sum of one-thirtieth (1/30) of the then current monthly rental for each day or part thereof, and such sum or sums as may be regarded as lawful rental for such period of holding over.

#### **ARTICLE IX** **DAMAGE TO PREMISES**

If said area leased, or the terminal building within which said area exists, shall be partially damaged by fire or other casualty and rendered untenable, it shall be repaired with due diligence by the Airport Commission, upon recovery from the fire or casualty company carrying insurance on the said building, (the Airport Commission to provide insurance for the full value of said terminal building, covering the interest of the Airport Commission, but not the property of the Lessee therein), and this instrument shall remain in full force and effect. In such a case, the fees for such areas used shall abate proportionately, if the said building be destroyed by fire or other casualty so that it shall reasonably be expected to remain untenable for more than thirty (30) days, Lessee at its option, may thereafter, before the said building so damaged be put in order, and before any contract for the reconstruction or repair thereof has been signed, (but Airport Commission shall notify Lessee in advance of its intention to so put said building in order, or sign such contract), give Airport Commission notice of termination of this Agreement, as to said building, rent and all use fees to abate as of the date of such happening. It is agreed and understood that in the event of fire or other casualty as indicated in this Article, the Airport Commission shall begin repairs and reconstruction, as needed, not later than sixty (60) days after the date of such fire or casualty, regardless of whether insurance funds have been received unless Lessee gives notice of termination as aforesaid.

#### **ARTICLE X**



## INDEMNIFICATION AND INSURANCE

It is further agreed that in its use and enjoyment of the rights granted to Lessee herein, that except for the negligent or deliberate act or omission of Lessor, Lessee shall indemnify and save harmless the Airport Commission from any and all claims, losses, damages or demands that may proximately result to the Airport Commission for any act or acts of commission or omission on the part of the Lessee, its officers, agents or employees or any of them, and, except for the negligent or deliberate act or omission of Lessor, shall in all ways hold the Airport Commission harmless from the same; and contemporaneously herewith to more fully insure and protect the Airport Commission from claims or damages for personal injury, including wrongful death, as well as from claims for property damage which may arise from any negligent operations or activities of Lessee on, over, or in the vicinity of the Airport, Lessee shall furnish a general liability insurance policy in an amount not less than One Million Dollars (\$1,000,000.00) through an insurance company acceptable to the Airport Commission. Lessee shall furnish to the Airport Commission proper certificates certifying that such insurance is in full force and effect and providing that said insurance shall not be terminated (due to cancellation, expiration or any other cause) or materially altered without at least ten (10) days prior notification by the insurance carrier to the Airport Commission. Furthermore, said insurance shall also name the Wicomico County Airport Commission and Wicomico County, Maryland, a body politic and corporate of the State of Maryland, their successors and assigns, as their interests may appear, as additional insureds to the extent of the obligations assumed by the Lessee under this Article.

### **ARTICLE XI** ASSIGNMENT OF LEASE AGREEMENT

Lessee shall not assign this Agreement nor sublet any portion of the leased premises. Notwithstanding anything to the contrary contained in this Agreement, Lessee shall have the right to make, without Lessor's consent, any assignment of this Agreement or subletting of all or any portion of the Premises to (a) a parent, subsidiary, affiliate or division of Lessee, (b) any entity with which or into which Lessee may consolidate or merge, or (c) any entity acquiring all or substantially all of the assets of the Lessee.

### **ARTICLE XII** INTERPRETATION

Nothing contained herein shall be taken or construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners, or creating or establishing a relationship of a joint venture between the parties hereto, or as constituting Lessee as the agent or representative of the Airport Commission for any purpose or manner whatsoever.

### **ARTICLE XIII**

## INVALID PROVISIONS

It is expressly understood and agreed by and between the parties hereto that in the event that any covenants, conditions or provisions herein contained are held to be invalid by a Court of competent jurisdiction, such findings shall not invalidate the remainder of this Agreement; provided, however, that the invalidity of any such covenant, condition or provision does not materially prejudice the Airport Commission or Lessee in their respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.

This Agreement shall be binding upon the successors and assigns of the parties hereto and shall be considered as having been executed in the State of Maryland.

## **ARTICLE XIV** AFFIRMATIVE ACTION

The Lessee assures that it will undertake an Affirmative Action Program as required by 14 CFR Part 152, Subpart E to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. The Lessee assures that it will require that its covered sub-organizations provide assurances to the Lessee that they similarly will undertake Affirmative Action Programs and that they will require assurances from their sub-organizations as required by 14 CFR Part 152, Subpart E, to the same effect.

## **ARTICLE XV** HAZARDOUS SUBSTANCES AND ENVIRONMENTAL PROVISIONS

Lessee covenants and agrees to assume, whether or not covered by insurance, full and complete responsibility and liability for any cost recovery related to the removal of any remediation actions related to the release or threatened release of hazardous substances arising from Lessee's use, possession or operation of the demised premises, under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §9601, et seq., as amended and supplemented, or any state or local equivalent or any similar law now existing or hereinafter enacted. Lessee shall indemnify and save harmless the Airport Commission from any and all claims, losses, damages or demands that may proximately result to the Airport Commission for the presence, use, disposal, storage, or release of any hazardous substance on the demised premises by Lessee, its officers, agents or employees, or the presence thereof hereafter occurring due to the acts of Lessee, its officers, agents or employees.

**ARTICLE XVI**  
NOTICE

Notice to the Airport Commission provided for herein shall be sufficient if sent by registered mail, postage prepaid, to the Chairman of the Wicomico County Airport Commission, 5485 Airport Terminal Road, Unit A, Salisbury, Maryland 21804, and notice to the Lessee, if sent by registered mail, postage prepaid, addressed to ITC Services, LLC, 5475 Airport Terminal Road, Suite D, Salisbury, Maryland 21804 Attention: President.

**ARTICLE XVII**  
SPECIAL PROVISIONS

**CONCESSIONS:** Lessee shall not operate any concession at the Airport, or any business, or offer any service or advantage for the pecuniary benefit of any concessionaire or independent business, such as an airport taxi, car rental agency, or other commercial enterprise, without the prior written consent of the Airport Commission on such terms as the Airport Commission may impose.

IN WITNESS WHEREOF, the parties hereto have executed these presence in duplicate as of the day and year first above written.

ATTEST:

WICOMICO COUNTY AIRPORT  
COMMISSION

\_\_\_\_\_  
R. Wayne Strausburg Secretary

BY: \_\_\_\_\_  
Robert L. Dickey, Chairman

WICOMICO COUNTY, MARYLAND

\_\_\_\_\_

BY: \_\_\_\_\_  
Richard M. Pollitt, Jr., County Executive

ATTEST:

ITC SERVICES, LLC

\_\_\_\_\_

BY: \_\_\_\_\_  
President

STATE OF MARYLAND, WICOMICO COUNTY TO WIT:

I HEREBY CERTIFY that on this \_\_\_\_\_ day of March, 2013, before me, the subscriber, a Notary Public, in and for the state and county aforesaid, personally appeared Robert L. Dickey, Chairman of the Wicomico County Airport Commission, attested by R. Wayne Strausburg, Secretary; and each acknowledged the foregoing Lease Agreement to be the act and deed of said Airport Commission.

AS WITNESS my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

STATE OF MARYLAND, WICOMICO COUNTY, TO WIT:

I HEREBY CERTIFY that on this \_\_\_\_\_ day of March, 2013, before me a Notary Public in and for the State and County aforesaid, personally appeared Richard M. Pollitt, Jr., who acknowledged himself to be the Executive of Wicomico County, Maryland, and that he as such Executive, being authorized to do so, executed the foregoing instrument for the purposes herein contained by signing, in my presence, the name of the Corporation by himself as Executive.

AS WITNESS my hand and Notarial Seal

\_\_\_\_\_  
Notary Public  
My Commission Expires:

STATE OF COUNTY OF TO WIT:

I HEREBY CERTIFY that on this \_\_\_\_\_ day of March, 2013, before me, the subscriber, a Notary Public, in and for the state and county aforesaid, personally appeared \_\_\_\_\_, President of ITC Services, LLC, attested by \_\_\_\_\_, and each acknowledged the foregoing Lease Agreement to be the act and deed of said ITC Services, LLC.

AS WITNESS my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires: