

COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND

2013 Legislative Session

Legislative Day No. 09

Resolution No. 47-2013

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, MARYLAND, THE SECOND AMENDMENT TO LEASE AGREEMENT WITH J. BRUCE WILLIAMS AND GERALD F. O'NEILL.

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, J. Bruce Williams and Gerald F. O'Neill entered into a Lease Agreement, with a lease term of thirty (30) years, on May 19, 1987, for property improved with a Twenty Thousand Two Hundred and Fifty (20,250) square foot building, located at One Falcon Drive, Salisbury, Maryland, at the Salisbury-Ocean City: Wicomico Regional Airport; and

WHEREAS, the First Amendment to Lease Agreement dated 2003, provided for a two thousand (2,000) square foot addition to the building, extended the lease term by two (2) years, ending November 30, 2019, and revised the rental payments; and

WHEREAS, the Second Amendment to Lease Agreement provides for an extension of the lease term by an additional three (3) years, ending November 30, 2022, revised rental payments and offers the County the option to purchase the improvements on the property, at the conclusion of the first renewal period, at twenty-five percent (25%) of the then fair market value, plus an amount equal to the discounted cash value of the remaining lease term; and

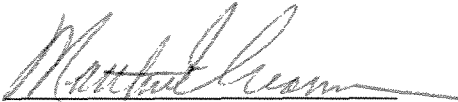
WHEREAS, the property will continue to be used by Federal Express for the purposes of conducting an air freight and air cargo business for the convenience of residents, local businesses and visitors of Wicomico County; and


WHEREAS, the County Executive proposes that Wicomico County, Maryland enter into a Second Amendment to Lease Agreement with J. Bruce Williams and Gerald F. O'Neill, and be given the authority to execute such agreement on behalf of Wicomico County, Maryland; and

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 Wicomico County, Maryland, a Second Amendment to Lease Agreement, in substantially the form attached hereto as Exhibit A, with J. Bruce Williams and Gerald F. O'Neill that provides for an extension of the lease term by an additional three (3) years, ending November 30, 2022, revised rental payments and an option to purchase the improvements on the property at the conclusion of the first renewal period.

Done at Salisbury, Maryland, this 7th day of May, 2013.

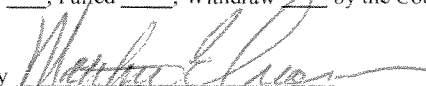
ATTEST:


Matthew E. Creamer,
Council Administrator

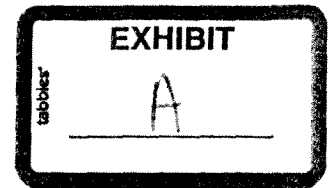
COUNTY COUNCIL OF
WICOMICO COUNTY, MARYLAND

Matt Holloway,
Council President

CERTIFICATION

This Resolution was Adopted , Adopted with Amendments , Failed , Withdraw by the County Council on May 7, 2013.

Certified by 
Matthew E. Creamer, Council Administrator

Res 47-2013



SECOND AMENDMENT TO LEASE AGREEMENT

THIS AMENDMENT TO LEASE AGREEMENT, made this _____ day of _____, 2013, by and between Wicomico County Airport Commission, acting for and on behalf of Wicomico County, Maryland, a body corporate and politic of the State of Maryland (hereinafter "Airport Commission" or "Lessor"), and J. Bruce Williams and Gerald F. O'Neill (hereinafter "Lessee"),

WITNESSETH:

WHEREAS, the parties hereto have previously entered into a Lease Agreement dated May 19, 1987, for property improved with a Twenty Thousand Two Hundred and Fifty (20,250) square foot building located at 1 Falcon Drive, Salisbury-Ocean City; Wicomico Regional Airport; and

WHEREAS, under the terms of the First Amendment to Lease Agreement dated 2003, Lessee expanded said building, constructed a two thousand square foot addition, extended the lease term by two years and revised the rental payments due thereunder; and

WHEREAS, Lessee now desire to extend the lease term by an additional three years to coincide with the current sublease to Federal Express, revise rental payments and extend an optional purchase option to the county.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and sufficient consideration, the parties hereto agree as follows:

1. Article Two, of the Lease Agreement dated May 19, 1987, as revised by the First Amendment to Lease Agreement dated 2013 by and between the parties hereto, shall be amended as follows:

ARTICLE TWO

The term of this Lease shall be for a period of thirty (30) years, the beginning date of which shall be the first day of the month following the issuance of a certificate of occupancy by Wicomico County to the Lessee, signifying the completion of construction of the demised premises, but not later than December 31, 1987, unless mutually agreed upon by both parties.

The lessee shall have the right to renew this lease for a period of two (2) years upon the same terms and conditions. Said option shall be considered automatically exercised for the aforesaid two (2) year term unless the lessee gives written notice to the lessor within thirty (30) days prior to the expiration date hereof of its intention not to exercise said option.

THE LESSEE SHALL HAVE THE RIGHT TO RENEW THIS LEASE FOR AN ADDITIONAL PERIOD ENDING NOVEMBER 30, 2022 UPON THE SAME TERMS AND CONDITIONS. SAID OPTION SHALL BE CONSIDERED AUTOMATICALLY EXERCISED FOR THE ADDITIONAL TERM UNLESS THE LESSEE GIVES WRITTEN NOTICE TO THE LESSOR WITHIN THIRTY (30) DAYS PRIOR TO THE EXPIRATION DATE OF THE FIRST RENEWAL PERIOD (TWO YEARS) OF ITS INTENTION NOT TO EXERCISE SAID OPTION.

At the completion of the FINAL LEASE TERM, WHETHER THE original thirty (30) year term or the FINAL renewal term EXERCISED, Wicomico County, Maryland, through the Wicomico County Airport Commission, will purchase the Lessee's improvements on the property at twenty-five percent (25%) of the then fair market value, such value to be agreed upon between the parties hereto. IN ADDITION WICOMICO COUNTY SHALL HAVE THE OPTION TO PURCHASE LESSEE'S IMPROVEMENTS AT THE CONCLUSION OF THE FIRST RENEWAL PERIOD (NOVEMBER 30, 2019) AT TWENTY-FIVE PERCENT (25%) OF THE THEN FAIR MARKET VALUE OF THE IMPROVEMENTS PLUS AN AMOUNT EQUAL TO THE DISCOUNTED CASH VALUE OF THE REMAINING TERM OF THE FEDERAL EXPRESS LEASE. In the event that the parties hereto cannot mutually agree upon the value of the improvements on the property, the parties shall arbitrate to determine the value of said improvements (but not the land which at all times shall be the property of Wicomico County, Maryland) through arbitrators, one of whom shall be

designated by each of the parties hereto and a third arbitrator shall be agreed upon and appointed by the two arbitrators appointed by the parties. The cost of such arbitration shall be shared equally by the parties hereto.

In the event that the parties cannot mutually agree upon the value of the improvements on the property, the arbitrators, in determining the fair market value of the improvements erected by the Lessee shall, for the purpose of appraising such improvements, evaluate the property as if it were constructed on land owned by the Lessee, but in arriving at the value of the improvements, the value of the land on which the improvements are constructed shall be deducted from the total value in order to derive the net value of the improvements erected by the Lessee.

2. Article Three, of the Lease Agreement dated May 19, 1987, as revised by the First Amendment to Lease Agreement dated 2013 by and between the parties hereto, shall be amended as follows:

ARTICLE THREE

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

For all the area contained on "EXHIBIT A" attached hereto, the annual rental shall be as hereinafter set forth, and payable in equal monthly installments due on the first of each month in advance.

The parties hereto agree that the rentals of the first through the fourth year (the first four years of the Lease) shall be based on the rate of Fifty Cents (\$.50) per square foot for the Twenty Thousand Two Hundred Fifty (20,250) square foot building to be erected on the premises by the Lessee for a total of Ten Thousand One Hundred Twenty-five Dollars (\$10,125.00) per year for each year, payable at a monthly rate of Eight Hundred Forty-three Dollars and Seventy-five Cents (\$843.75) per month.

The rental for the fifth year through the eighth year will be based on the rate of Sixty Cents (\$.60) per square foot of said improvements for a total of Twelve Thousand One Hundred Fifty Dollars (\$12,150.00) per year, or a monthly payment of One Thousand Twelve Dollars and Fifty Cents (\$1,012.50) per month.

The rental for the ninth through the tenth year will be at the rate of Seventy-five Cents (\$.75) per square foot of said improvements for a total rental of Fifteen Thousand One Hundred Eight-seven Dollars and Fifty Cents (\$15,187.50) for the year, to be payable at a rate of Twelve Hundred Sixty-five Dollars and Sixty-three Cents (\$1,265.63) per month.

The rental for the eleventh year through the fifteenth year shall be at the rate of One Dollar (\$1.00) per square foot of said improvements or Twenty Thousand Two Hundred Fifty Dollars (\$20,250.00) per year, payable at a monthly rate of Sixteen Hundred Eighty-seven Dollars and Fifty Cents (\$1,687.50) per month.

The rental for the sixteenth year through the twenty-second year shall be based on the rate of One Dollar Nineteen Cents (\$1.19) per square foot for the Twenty Thousand Two Hundred Fifty (20,250) square foot building and the Two Thousand square foot addition to be erected on the premises by the lessee (total 22,250 square feet) for a total of Twenty-Six Thousand Four Hundred Seventy-Seven Dollars And Fifty Cents (\$26,477.50) per year, payable at a monthly rate of Two Thousand Two Hundred Six Dollars And Forty-Six Cents (\$2,206.46) per month.

The rental for the twenty-third year through ~~the twenty-seventh~~ NOVEMBER 30, 2022 WHICH

IS THE TERMINATION DATE OF THIS LAND LEASE ~~year~~, IF BOTH RENEWAL TERMS ARE EXERCISED, shall be the greater of 1) One Dollar Thirty-Five Cents (\$1.35) per square foot of said improvements for a total of Thirty Thousand Thirty-Seven Dollars And Fifty Cents (\$30,037.50) per year, payable at a monthly rate of Two Thousand Five Hundred Three Dollars And Thirteen Cents (2,503.13) per month. ; or 2) a rate per square foot equal to the average of any other comparable land lease amounts payable in the air business center. The rate per square foot shall be multiplied by the square footage of the building and divided by twelve to calculate the monthly payments. In the event, the lessee's current tenant (Federal Express) fails to exercise a renewal for the period November 1, 2009 through October 31, 2014 then the lessee's rental shall be at the rate of One Dollar Nineteen Cents (\$1.19) per square foot of said improvements for a total of Twenty-Six Thousand Four Hundred Seventy-Seven Dollars And Fifty Cents (\$26,477.50) per year, payable at a monthly rate of Two Thousand Two Hundred Six Dollars And Forty-Six Cents (2,206.46) per month.

The rental for the twenty-eighth year through the thirtieth year shall be the greater of: 1) One Dollar Fifty Cents (\$1.50) per square foot of said improvements for a total of Thirty-Three Thousand Three Hundred Seventy-Five Dollars (\$33,375.00), per year, payable at a monthly rate of Two Thousand Seven Hundred Eighty-One Dollars and Twenty-Five Cents (2,781.25) per month; or 2) a rate per square foot equal to the average of any other comparable land lease amounts payable in the air business center, in which event the rate per square foot shall be multiplied by the square footage of the building and divided by twelve to calculate the monthly payments. In the event, the Lessee's current tenant (Federal Express) fails to exercise a renewal for the period November 1, 2014 through October 31, 2019 then the lessee's rental shall be at the rate of One Dollar Nineteen Cents (\$1.19) per square foot of said improvements for a total of Twenty-Six Thousand Four Hundred Seventy-Seven Dollars and Fifty Cents (\$26,477.50) per year, payable at a monthly rate of Two Thousand Two Hundred Six Dollars And Forty-Six Cents (2,206.46) per month.

~~In the event the lease is renewed for an additional two year term as provided in Article II, the rental during the renewal term, shall be the same as established in the above paragraph for years twenty-eight through thirty.~~

An expansion of the specified Twenty-Two Thousand Two Hundred and Fifty (22,250) square foot building shall be made only with the consent of the Commission with an increase of rental directly proportioned to the percentage of increase in the size of the building (for example: if the building should be doubled in size, the hereinbefore prescribed rentals shall be doubled). All expanded areas shall be subject to the same square foot rental fees as hereinbefore provided.

3. The words and phrases shown in Article Two and Three above as strike out (~~Strike out~~) indicates material deleted from the original lease. Words and phrases in capitals (CAPITALS) indicate amendments to the original lease.
4. The provisions of the Lease Agreement dated May 19, 1987, as revised by the First Amendment to Lease Agreement dated 2013 and not herein specifically modified or supplemented are hereby ratified and confirmed and shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Lease Agreement the day and year first above written.

ATTEST:

WICOMICO COUNTY, MARYLAND

Wayne Strausburg, Director

BY: _____
Richard M. Pollitt, Jr., County Executive

ATTEST:

WICOMICO COUNTY AIRPORT COMMISSION

BY: _____
Chairman

ATTEST:

J. Bruce Williams

Gerald F. O'Neill

STATE OF MARYLAND, WICOMICO COUNTY TO WIT:

I HEREBY CERTIFY that on this _____ day of _____, 2013, before me, the subscriber, a Notary Public, in and for the state and county aforesaid, personally appeared Richard M. Pollitt, Jr., County Executive, attested by Wayne Strausburg, Director of Administration; and each acknowledge the foregoing Second Amendment to Lease Agreement to be the act and deed of Wicomico County, Maryland.

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 _____, 2013, before me, the subscriber, a Notary Public, in and for the state and county aforesaid, personally appeared _____, Chairman of the Wicomico County Airport Commission and he acknowledged the foregoing Second Amendment to 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 _____, 2013, before me, the subscriber, a Notary Public, in and for the state and county aforesaid, personally appeared J. Bruce Williams and he made oath in due form of law that the foregoing Second Amendment to Lease Agreement is true and correct to the best of his knowledge, information and belief.

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 _____, 2013, before me, the subscriber, a Notary Public, in and for the state and county aforesaid, personally appeared Gerald F. O'Neill and he made oath in due form of law that the foregoing Second Amendment to Lease Agreement is true and correct to the best of his knowledge, information and belief.

AS WITNESS my hand and Notarial Seal.

Notary Public
My Commission Expires: