

COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND

2016 Legislative Session

Legislative Day No. 02

Resolution No. 07-2016

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, A LEASE AGREEMENT WITH PIEDMONT AIRLINES, INC.

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, approval of the County Council is required for any lease of County property for a term of more than one year; and

WHEREAS, the County Executive proposes that Wicomico County, Maryland enter into a Lease Agreement with Piedmont Airlines, Inc. for 3,500 square feet of the first floor of the "Old Terminal Building" to be used for back office, warehousing and distribution; and

WHEREAS, The Lease Agreement shall be for a period of one year, commencing October 1, 2015 and terminating September 30, 2016, with the option to renew for one additional year; and

WHEREAS, Piedmont Airlines, Inc. shall pay a rental rate of Fifteen Thousand, Five Hundred Seventy-Five Dollars (\$15,575) for said term.

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 Lease Agreement, in substantially the same form attached hereto as Exhibit A, with Piedmont Airlines, Inc., for a period of one year, commencing on October 1, 2015 and terminating on September 30, 2016, at a rental rate of Fifteen Thousand, Five Hundred Seventy-Five Dollars (\$15,575).

Done at Salisbury, Maryland, this 19th day of January, 2016.

ATTEST:

Matthew E. Creamer, Council Administrator

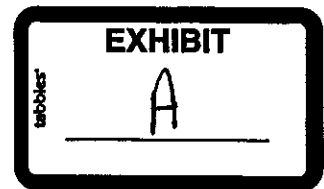
COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND

John T. Cannon, Council President

Certification

This Resolution was Adopted [checked], Adopted with Amendments, Failed, Withdrawn, by the County Council on January 19, 2016.

Certified by Matthew E. Creamer, Council Administrator



LEASE AGREEMENT

THIS LEASE AGREEMENT, made this day of _____, 2015, by and between the Wicomico County, Maryland, a body corporate and politic of the State of Maryland (hereinafter referred to as "Lessor") and Piedmont Airlines, Inc. (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, is authorized to operate said airport to the best use and advantage of the citizens of said County; and

WHEREAS, Wicomico County is desirous of leasing to Piedmont Airlines, Inc. and Piedmont Airlines, Inc. is desirous of leasing from the Wicomico County, the area more fully set forth herein; and

WHEREAS, the use of the premises hereby leased shall be for back office, warehousing and distribution.

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

Lessor 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 Lessee and Lessee hereby leases from the Lessor, the following premises and facilities, situate at the Salisbury-Ocean City Regional Airport, as more particularly hereinafter set forth:

A. The area to be leased is situated 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 3,500 square feet on the first floor of the "Ward Building, as shown on the attached floor plan as "Tenant Fitout No. 1."

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. Lessor hereby agrees to furnish to Lessee, eight (8) reserved parking spaces on the south side of the premises hereby leased, provided Lessee furnishes to Lessor, appropriate signs marked "Reserved - Piedmont, Inc." The use of these parking spaces also includes the access thereto for the purposes of ingress and egress.

ARTICLE II
TERMS

The term of this Lease shall be for a period of one (1) year, beginning on Oct. 1, 2015, 2015.

This Lease shall be renewable for one (1) additional, one (1) year period, on the same terms and conditions set forth herein, including the rental rate. Lessee shall provide Lessor with at least ninety (90) days notice of its intention to exercise each said renewal.

ARTICLE III
RENTAL

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

A. The sum of Fifteen Thousand, Five Hundred Seventy-Five Dollars (\$15,575) over the initial rental period, payable monthly in advance on the first day of each month, at the rate of One Thousand Two Hundred Ninety-Seven Dollars and Ninety-Two Cents (\$1,297.92) per month, beginning on Oct. 1st, 2015; 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 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 Lessor upon receipt of each monthly electrical bill.

ARTICLE IV
MAINTENANCE OF STRUCTURE

Lessor 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 on account thereof, may terminate this Lease upon no less than thirty (30) days prior written notice to Lessor.

Lessor shall operate and maintain the Airport in a prudent manner and shall keep the Ward Building in good condition and repair. Lessor's obligation with respect to the Ward Building shall include responsibility for all roof maintenance and all structural maintenance and

the maintenance of the heating, ventilating and air conditioning systems, the electrical system and the plumbing and sewage system up to the junction where such systems connect to Lessee's assigned space.

ARTICLE V
LESSEE'S OBLIGATIONS

Lessee covenants and agrees to comply with and perform the following terms and conditions:

1. (a) Lessee 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 performance of such services. In addition, Lessee shall be responsible to pay a pro-rated portion of the janitorial expenses associated with the common area.

(b) Lessee shall be responsible for all routine maintenance of 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 routine maintenance.
2. For each of its activities or lines of business, Lessee shall obtain and possess at all times, all required Federal, State and local permits and licenses.
3. Lessee shall not interfere in any manner whatsoever with any activity of Lessor 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.
4. Lessee agrees to dispose of all garbage from the leased premises on a regular basis and without further notification from Lessor.
5. Lessee shall not block any areas used for ingress or egress of public traffic, or otherwise permit, continue or cause any unsafe condition.
6. Lessee shall 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 Lessor and comply promptly with any lawful order issued as a result of such inspections as to the activities or responsibilities of Lessee.
7. Lessee shall 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, to the extent said devices are made necessary by alterations to the premises made by Lessee.

8. Lessee shall 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.

9. Lessee shall 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 Lessor for any and all activities of Lessee at said Airport.

10. Lessee shall provide at its own expense, all required operating equipment for Lessee's business.

11. Lessee shall 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 Lessor. Such approval shall not be unreasonably withheld.

12. Lessee shall pay the rentals and fees provided for herein promptly when due.

13. Lessee shall manage said operation of its business, and any and all parts thereof, itself, and shall be personally responsible to Lessor 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 Lessor, notices of such default to Lessee shall be deemed notice to any person or corporation performing said service or function for said Lessee.

14. 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.

15. Lessee, unless exempted, is responsible under Maryland State Law, Annotated Code of Maryland, Tax-Property Article, Section 6-102, for the payment of property taxes as though the Lessee was the owner of the leased premises. Lessee shall also be responsible for any personal property taxes related to contents of the leased premise on the attached floor plan. Failure of the Lessee to pay the taxes due shall be cause to terminate this Lease. Lessee's obligation under this Section for real property taxes is limited to any real property taxes that may be assessed solely against the lease premises, or to a prorata portion of such taxes assessed against the building as a whole (such proration to be based on the fraction, the numerator of which is the square footage within the leased premises and the denominator of which is the square footage within the building as a whole).

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 Lessor's sole cost and expense.

ARTICLE VI
CANCELLATION BY LESSOR

Except as otherwise provided by applicable law, 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 (30) days after written notice thereof from Lessor, the Lessor 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, Lessor 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 of trustee of either a civil or criminal nature.

The permissive occupancy or the acceptance of any rentals or payments by Lessor 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 Lessor to terminate this agreement for any such default, provided 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 Lessor 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 Lease.

ARTICLE VII
CANCELLATION BY LESSEE

Lessee, in addition to any right of cancellation or any other right herein given to Lessee, may cancel this Lease 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 Lessor of any of the covenants or agreements herein contained which are of importance to the Lessee's operations, and the failure of Lessor 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 Lessor shall not be deemed a waiver of any right on the part of Lessee to cancel this Lease 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 Lessor 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 Lessor, 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 Lessor as set forth in Article V, item 12 hereof. 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 Lessor- owned property and facilities which shall be and remain from the time of their installation, the property of Lessor. The removal of equipment and/or property owned by the Lessee from the building hereby leased, shall be subject to any valid lien which Lessor 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 Lessor 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 Lessor, upon recovery from the fire or casualty company carrying insurance on the said building, (Lessor to provide insurance for the full value of said terminal building, covering the interest of Lessor, 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 Lessor shall notify Lessee in advance of its intention to so put said building in order, or sign such contract), give Lessor 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, Lessor 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 Lessor from any and all claims, losses, damages or demands that may proximately result to Lessor 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 Lessor harmless from the same; and contemporaneously herewith to more fully insure and protect Lessor 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 Lessor. Lessee shall furnish to Lessor 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 Lessor. Furthermore, said insurance shall also name Wicomico County, Maryland, a body corporate and politic 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

Lessee shall not assign this Lease nor sublet any portion of the leased premises. Notwithstanding anything to the contrary contained in this Lease, Lessee shall have the right to make, without Lessor's consent, any assignment of this Lease 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 Lessor 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 Lessor or Lessee in their respective rights and obligations contained in the valid covenants, conditions and provisions of this Lease.

This Lease 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, subject to any applicable defenses or rights to contribution, whether or not covered by insurance, 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 to the extent 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 Lessor from any and all claims, losses, damages or demands that may proximately result to Lessor 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 to the extent occurring due to the acts of Lessee, its officers, agents or employees, and except for the negligent or deliberate act or omission of Lessor.

ARTICLE XVI
NOTICE

Notice to Lessor provided for herein shall be sufficient if sent by registered mail, postage prepaid, to the Director of the Airport, 5485 Airport Terminal Road, Unit A, Salisbury, Maryland

21801, and notice to the Lessee, if sent by registered mail, postage prepaid, addressed to Piedmont Airlines, Inc., 5475 Airport Terminal Road, Suite A, Salisbury, Maryland 21801 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 Lessor on such terms as Lessor may impose.

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

WICOMICO COUNTY, MARYLAND

PIEDMONT AIRLINES, INC.

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

This Agreement and the term of the Lease set forth has been approved and is consented to by the Wicomico County Council by Resolution of said Council dated _____, 2015.

ATTEST:

WICOMICO COUNTY, MARYLAND

Wayne Strausburg,
Director of Administration

Bob Culver,
County Executive

STATE OF MARYLAND, WICOMICO COUNTY, TO WIT:

I HEREBY CERTIFY, that on this ___ day of _____, 2015, before me a Notary Public in and for the State and County aforesaid, personally appeared Bob Culver, 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 purpose herein contained by signed, 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 _____, 2015, before me, the subscriber, a Notary Public, in and for the state and county aforesaid, personally appeared _____, President of Piedmont Airlines, Inc., and that he/she as such _____, being authorized to do so, acknowledged the foregoing Lease Agreement to be the act and deed of said Piedmont Airlines, Inc.

AS WITNESS my hand and Notarial Seal

Notary Public
My Commission Expires: _____