

LOCAL LAW NO. ___ - 2022

A LOCAL LAW authorizing the County of Westchester to enter into an agreement with the County of Westchester Industrial Development Agency and Westchester Airport Associates L.P. ("WAA) to terminate, effective retroactively to December 31, 2021, a lease agreement dated October 19, 1993, for property located at the Westchester County Airport in connection with WAA's construction and operation of a parking garage thereon.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. The County of Westchester is authorized to enter into an agreement with the County of Westchester Industrial Development Agency and Westchester Airport Associates L.P. ("WAA"), in substantially the same form as attached hereto, to terminate, effective retroactively to December 31, 2021, a lease agreement dated October 19, 1993, for property located at the Westchester County Airport in connection with WAA's construction and operation of a parking garage thereon.

§2. The County Executive or his authorized designee is hereby authorized and empowered to execute all instruments and to take all action necessary and appropriate to effectuate the purposes hereof.

§3. This Local Law shall take effect immediately.

[Attach Termination Agreement]

LEASE TERMINATION AND SURRENDER AGREEMENT

AGREEMENT made as of the ___ day of _____, 2022, by and among

THE COUNTY OF WESTCHESTER, a municipal corporation of the State of New York, having an office and place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York, 10601 (hereinafter referred to as the "County")

and,

COUNTY OF WESTCHESTER INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a public benefit corporation of the State of New York, having an office at 148 Martine Avenue, White Plains, New York, 10601 (hereinafter referred to as the "Agency")

and,

WESTCHESTER AIRPORT ASSOCIATES L.P., a Delaware limited partnership qualified to do business in the State of New York, having an office at 1 Renaissance Square, 4th Floor, White Plains, New York 10601 (hereinafter referred to as the "Tenant").

WITNESSETH:

WHEREAS, the County and Tenant entered into an Agreement of Lease dated October 19, 1993, (the "Ground Lease") of certain property located at the Westchester County Airport in connection with the Tenant's construction and operation of a Parking Facility thereon (the "Parking Facility"); and

WHEREAS, the Tenant thereafter assigned its interest in the Ground Lease to the Agency pursuant to the terms of an Assignment dated February 1, 1994 (the "Assignment"); and

WHEREAS, the Agency thereafter entered into a Sublease and Assignment Agreement, dated February 1, 1994 (the "Sublease"); and

WHEREAS, in order to facilitate the financing of the construction of the Parking Facility at the Airport, the Agency on February 1, 1994 issued certain

Airport Facility Revenue Bonds (Westchester Airport Associated, LP Project) comprised of Series A Bonds and Series B Bonds (Federally Taxable)(collectively, the "Bonds") and the Agency entered into a Leasehold Mortgage and Security Agreement, dated March 1, 1994 (the "Leasehold Mortgage") in favor of the bond trustee (or its successors and assigns, the "Leasehold Mortgage"); and

WHEREAS, the Ground Lease was thereafter amended by a First Amendment of Ground Lease dated August 11, 1994 (the "First Amendment") to revise the property description as set forth in Exhibit "A" of the Ground Lease; and

WHEREAS, the Ground Lease was thereafter amended by a Second Amendment of Ground Lease, dated May 23, 2001 (the "Second Amendment") to, among other things, modify the Parking Facility's hours of operation and agree to arbitrate a dispute as to the calculation of Excess Rent; and

WHEREAS, the Ground Lease was thereafter amended by a Third Amendment of Ground Lease, dated April 8, 2003 (the "Third Amendment") to clarify the calculation of Excess Revenue; and

WHEREAS, the County, the Tenant, and the Agency entered into a Settlement Agreement dated February 28, 2013 in order to, among other things, settle the claims between the parties as to the payment of Excess Rent by requiring the Tenant to pay the County \$10,416.67 per month through the expiration of the Ground Lease ("Settlement Agreement"); and

WHEREAS, the County, the Tenant, and the Agency entered into a Payment Agreement dated September 28, 2018 in order to resolve unpaid Percentage Rent for 2016-2017 by requiring the Tenant to pay \$775,000.00 in three annual installments through September 2020 ("Payment Agreement"); and

WHEREAS, the County, the Tenant, and the Agency recognize that the COVID-19 pandemic ("COVID-19) has caused a major disruption to air travel and as a result, revenues under the Ground Lease have been impacted; and

WHEREAS, in recognition of the impact of COVID-19 on the Tenant's revenues, the County for the period from June 1, 2020 through June 30, 2021, abated the Tenant's Base Rent by an amount of \$727,083.34; and

WHEREAS, the Tenant still owes the County \$326,000 under the Settlement Agreement and \$175,000 under the Payment Agreement for a total of \$501,000.00; and

WHEREAS, the County, the Tenant, and the Agency desire to terminate the Ground Lease and simultaneously enter into the new ground lease of even date herewith (the "New Lease")(attached hereto as Schedule 1).

NOW, THEREFORE, in consideration of the premises and covenants herein, the parties agree as follows:

1. All initially capitalized terms shall have the meaning ascribed to them in the Ground Lease.
2. Conditioned upon the full execution of the New Lease, the Ground Lease is hereby canceled and terminated effective as of midnight December 31, 2021, and the term demised is brought to an end as of midnight December 31, 2021 (the "Cancellation Time") with the same force and effect as if the term of the Ground Lease was fixed to expire on the Cancellation Time. The parties acknowledge that the Cancellation Time is subject to the approval of the Westchester County Board of Legislators and the Westchester County Board of Acquisition and Contract.
3. Effective on the Cancellation Time, the parties mutually agree that all obligations under the Ground Lease shall be extinguished, except that the Tenant's obligations under the Settlement Agreement and the Payment Agreement shall continue in full force and effect.
4. This Lease Surrender Agreement may not be changed orally, and shall be binding upon and inure to the benefit of the parties to it, their respective heirs, successors, and, as permitted, their assigns.
5. As of the Cancellation Time, neither Landlord, Agent, nor Tenant shall have any further rights against the other under the Ground Lease nor any further obligations or liabilities under the Ground Lease, except that the Tenant shall remain obligated under the Settlement Agreement and the Payment Agreement to pay the County any amounts due thereunder . No later than thirty (30) days after the Cancellation Time, the Tenant shall pay the County

\$501,000.00 in full satisfaction of the amounts owed under the Settlement Agreement and the Payment Agreement.

6. The Tenant shall indemnify, defend and hold harmless the County and the Agency against any claim or action brought by an Institutional Lender or any other party for amounts owed by the Tenant.
7. This Agreement shall not be enforceable until signed by all parties and approved by the Office of the County Attorney.
8. To facilitate execution, this Agreement may be executed in as many counterparts as may be required. It shall not be necessary that the signature on behalf of both parties hereto appear on each counterpart hereof. All counterparts hereof shall collectively constitute a single agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement

THE COUNTY OF WESTCHESTER

By: _____
Hugh J. Greechan, Jr., P.E.
Commissioner of Public Works
and Transportation

COUNTY OF WESTCHESTER
INDUSTRIAL DEVELOPMENT
AGENCY

By: _____
(Name and Title)

WESTCHESTER AIRPORT
ASSOCIATES, L.P.

By: _____
Louis R. Cappelli, President
Airport Parking Associates, General
Partner

Approved by the Board of Legislators of the County of Westchester on _____, 2022.

Approved by the Board of Acquisition and Contract of the County of Westchester on _____, 2022.

Approved:

County Attorney
County of Westchester
Vutera/DTR/124200/WAA Termination Agr draft 2-3-22

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