

LOCAL LAW INTRO NO. 317 - 2022

BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Local Law which, if adopted by your Honorable Board, would authorize an agreement (“Termination Agreement”) between the County of Westchester (“County”), the County of Westchester Industrial Development Agency (“Agency”), and Westchester Airport Associates L.P. (“WAA”) to terminate, effective retroactively to December 31, 2021, a lease agreement dated October 19, 1993 (“Ground Lease”) for property located at the Westchester County Airport in connection with WAA’s construction and operation of a parking garage thereon.

By way of background, it should be noted that after the County and WAA entered into the Ground Lease for a term of 30 years, WAA assigned its interest therein to the Agency pursuant to the terms of an Assignment dated February 1, 1994 (the “Assignment”). The Agency subsequently entered into a Sublease and Assignment Agreement dated February 1, 1994 (the “Sublease”). The Ground Lease was thereafter amended by a First Amendment dated August 11, 1994 (the “First Amendment”), a Second Amendment dated May 23, 2001 (the “Second Amendment”), and a Third Amendment dated April 8, 2003. The County and WAA entered into a Settlement Agreement dated February 28, 2013, to resolve claims related to WAA withholding rent as well as the County’s operation of a cell phone waiting lot. More recently, the parties entered into a Payment Agreement dated September 28, 2018, to resolve claims over the payment of Percentage Rent owed by WAA from 2016-2017 by requiring the payment of \$775,000.00 in three annual installments through September 2020. Your Honorable Board authorized all of these amendments and subsequent agreements. The term of the Ground Lease will expire on July 31, 2024.

Your Committee has been advised that since early 2020, the COVID-19 pandemic has caused a major disruption to air travel and has significantly reduced WAA’s

revenues from public parking. In recognition of this, the County abated WAA's Base Rent by \$727,083.34 from June 1, 2020 through June 30, 2021. However, this abatement has not completely offset WAA's lost revenue. Therefore, the parties propose to enter into the Termination Agreement to terminate the Ground Lease retroactive to December 31, 2021. WAA still owes the County \$326,000 under the Settlement Agreement and \$175,000 under the Payment Agreement for a total of \$501,000.00. The Termination Agreement provides that WAA will pay this amount within 30 days after the Ground Lease is canceled.

The Ground Lease provides for termination in only two instances: default by the tenant, subject to notice and the opportunity to cure; and cancellation by the County on the 7th, 14th or 21st anniversary of the lease commencement for the purpose of buying the garage. As neither of these situations is present in the current circumstances, the Termination Agreement requires the same approval as the Ground Lease and its amendments, namely a Local Law approved by a two-thirds majority of your Honorable Board.

As your Honorable Board is aware, no action may be taken with regard to the proposed legislation until the requirements of the State Environmental Quality Review Act and its implementing regulations, 6 NYCRR Part 617 ("SEQRA") have been met. The Planning Department advises that the proposed Settlement Agreement is classified as a Type II action. Therefore, no further action is required by your Honorable Board. Your Committee has reviewed the annexed SEQRA memo and concurs with that conclusion.

Your Committee has carefully considered this matter and has concluded that it is in the best interest of the County to enter into the Termination Agreement. Accordingly, your Committee recommends the adoption of the proposed Local Law.

Date: July 28, 2022
White Plains, New York

Benjamin Bruckner (WOP)
Mary Jane Smith (WOP)
Colin J. Smith
Vedat Jahn (WOP)
[Signature]
Dell. Mch (w/o pre-jud)
Catherine By (WOP)

[Signature] (WOP)
Mary Jane Smith (WOP)
Colin J. Smith
Vedat Jahn (WOP)
Teresa Sheehan (WOP)
Don [Signature] (WOP)
Dell. Mch (w/o pre-jud)
Catherine By (WOP)

Mary Jane Smith (WOP)
Colin J. Smith
Don [Signature] (WOP)
Catherine By (WOP)

Legislation
DLV/2-4-2022

COMMITTEE ON

Budget & Appropriations

Public Works &
Transportation

Dated: July 28, 2022
White Plains, New York

The following members attended the meeting remotely, as per Chapter 1 of the New York State Laws of 2022 and Executive Order 11, as extended, and approved this item out of Committee with an affirmative vote. Their electronic signature was authorized and is below.

Legislation

Margaret A. Cunzio (WOP)

Budget & Appropriations

[Signature]

[Signature] (WOP)

Public Works & Transportation

[Signature] (WOP)

FISCAL IMPACT STATEMENT

SUBJECT: Airport Parking Lease

NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ -

Total Current Year Revenue \$ (1,517,000)

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: 161-44-4110-9096

Potential Related Operating Budget Expenses: Annual Amount _____

Describe: _____

Potential Related Operating Budget Revenues: Annual Amount _____

Describe: _____

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: Estimated Net Revenue Loss of \$1,517,000

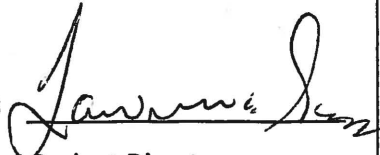
Next Four Years: Assuming that the successor agreement is terminated by mutual consent on August 1, 2024, there is no projected net revenue loss for CFY 2023 and \$1.1 million projected net revenue loss for CFY 2024.

Prepared by: Lawrence Soule

Title: Director


Department: Department of Budget

Date: May 5, 2022

Reviewed By: 
Budget Director

Date: 5/5/22

TO: David Vutera, Associate County Attorney
Department of Law

FROM: David S. Kvinge, AICP, RLA, CFM 
Assistant Commissioner

DATE: February 18, 2022

SUBJECT: **STATE ENVIRONMENTAL QUALITY REVIEW FOR AIRPORT PARKING
GARAGE LEASE TERMINATION**

PROJECT/ACTION: Termination of a lease agreement with the County of Westchester Industrial Development Agency (IDA) and Westchester Airport Associates, L.P. in connection with the construction and operation of a parking garage at the Westchester County Airport. Initiated in 1993 and amended from time to time, the lease agreement is currently due to expire on July 31, 2024. Early termination is being sought to allow for the same parties to enter into a new 5-year lease agreement that would better adjust for lost revenues associated with the pandemic. The termination will be retroactive to December 31, 2021.

With respect to the State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617, the Planning Department recommends that no further environmental review is required because the project/action:

- DOES NOT MEET THE DEFINITION OF AN "ACTION" AS DEFINED UNDER SECTION 617.2(b)**
- MAY BE CLASSIFIED AS TYPE II PURSUANT TO SECTION(S):**
- **617.5(c)(26):** routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment
-

COMMENTS: The anticipated new lease agreement will be retroactive to January 1, 2022 and will provide for continued maintenance and operations of the parking garage by Westchester Airport Associates L.P. for 5 additional years. This action may also be classified as Type II pursuant to section 617.5(c)(32).

DSK/cnm

cc: Andrew Ferris, Chief of Staff
Paula Friedman, Assistant to the County Executive
Hugh Greechan, Jr., Commissioner of Public Works & Transportation
Norma Drummond, Commissioner
Tami Altschiller, Assistant Chief Deputy County Attorney
Claudia Maxwell, Associate Environmental Planner

TALRO.
LOCAL LAW'NO. 317 - 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

DRAFT

STATE OF NEW YORK)
)
COUNTY OF WESTCHESTER) ss.

I HEREBY CERTIFY that I have compared the foregoing Local Law, Local Law Intro No. 317 - 2022, with the original on file in my office, and that the same is a correct transcript therefrom, and of the whole, of the said original Local Law, which was duly adopted by the County Board of Legislators, of the County of Westchester on September 12, 2022, and approved by the County Executive on September 16, 2022.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of said County Board of Legislators on this 19th day of September, 2022.



Malika Vanderberg

The Clerk of the Westchester County
Board of Legislators

County of Westchester, New York

