

**AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING A JANUARY 6, 2009, LEASE AGREEMENT BY AND BETWEEN IT, AS LESSOR, AND THE STATE OF WEST VIRGINIA, AS LESSEE, PERTAINING TO SPACE WITHIN THE AIRPORT TERMINAL BUILDING BEING UTILIZED BY THE WEST VIRGINIA ARMY NATIONAL GUARD BAND.**

The City of Morgantown hereby ordains that its City Manager is authorized to execute the Addendum Agreement hereto attached, by and on behalf of the City of Morgantown.

This ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

\_\_\_\_\_  
CITY CLERK

RECORDED:

## ADDENDUM I

**THIS ADDENDUM**, made **June 14, 2013**, is hereby made an integral part of the Contract of Lease ADG-022-113, which lease was made **January 6, 2009**, by and between **CITY OF MORGANTOWN**, hereinafter referred to as "Lessor," and the **STATE OF WEST VIRGINIA, by the Department of Administration, Real Estate Division**, as "Lessee", for and on behalf of the **Department of Military Affairs and Public Safety**, as "Tenant."

**WHEREAS**, the Lessor has leased unto the Lessee, for use by the Tenant, the following described Leased Premises:

**Office and storage space consisting of approximately 7,000 square feet, more or less, located in the single story metal building commonly known as the Terminal Building at 100 Hart Field Road, in the City of Morgantown, Monongalia County, West Virginia, along with adequate parking (hereinafter referred to as the "Premises").**

**WHEREAS**, the Department of Administration, Real Estate Division assigned its rights under the Contract of Lease ADG-022-113 to the State of West Virginia, Adjutant General's Department as of November 30, 2011 by letter dated November 22, 2011 (attached to this Addendum as Exhibit A).

**WHEREAS**, both parties hereto agree to extend the term of said Contract of Lease on a month to month basis effective **February 1, 2013**, at the current annual per square foot rate of **\$6.00**.

**WHEREAS**, both parties hereto agree that the above-stated changes shall be effective **January 31, 2013**.

### **NOW, THEREFORE, THIS ADDENDUM WITNESSETH:**

It is agreed by and between the parties hereto that the Lessee will now be referred to as the **STATE OF WEST VIRGINIA, ADJUTANT GENERAL'S DEPARTMENT** and the Tenant will now be referred to as the **WEST VIRGINIA ARMY NATIONAL GUARD BAND** and that certain sections of the subject Contract of Lease and addendum are amended as follows:

(A) Contract Section 1, TERM AND NOTICES, shall be amended to read as follows:

The term of this Contract of Lease, subject to the provisions hereof, shall begin on **February 1, 2013** and continue on a month to month basis until the new West Virginia Army National Guard Readiness Center facility currently under construction at the Airport is complete and the Army National Guard Band is able to move. Pursuant to provisions of W.Va. Code §18B-19-12 (e)

(3), this lease shall be considered renewed for each ensuing fiscal year during the term of the Contract of Lease unless it is canceled by the Lessee before the end of the then current fiscal year.

Notices may be given by personal service upon the party(s) entitled to such notice, being Lessor and Lessee (not Tenant); or by certified mail, duly stamped and directed to the last-known address of the party to be notified, and deposited in the post office. The proper mailing of such notice and not the receipt thereof shall constitute the giving of such notice by either party to the other. Notices shall be directed as follows:

To the Lessor

Office of the Airport Director  
Morgantown Municipal Airport  
100 Hart Field Road  
Morgantown, WV 26505

To the Lessee

State of West Virginia  
Adjutant General's Department  
Construction & Facilities Mgmt. Division  
1703 Coonskin Drive  
Charleston, WV 25311-1085  
Phone: 304.561.6353  
Fax: 304.561.6344  
Email: rocky.hodges@us.army.mil  
Attn: CPT Melvin "Rocky" Hodges

(B) Other Terms and Conditions:

The subject Contract of Lease shall now be identified as **ADG-022-114**.

All other terms and conditions shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have caused their names to be affixed to this ADDENDUM I.

WITNESS: City of Morgantown - Lessor

By \_\_\_\_\_ By \_\_\_\_\_  
Jeff Mikorski, City Manager

WITNESS: State of West Virginia,  
Adjutant General's Department - Lessee

By \_\_\_\_\_ By \_\_\_\_\_  
LTC David P. Shafer, CFMO  
On behalf of The Adjutant General for  
the State of West Virginia

Approved as to form this \_\_\_\_ day of \_\_\_\_\_, 2013.

Patrick Morrisey, Attorney General

By \_\_\_\_\_, Dan Greear, Chief Counsel

EXHIBIT A

Transfer of Assignment of Lease ADG-022 Letter

Mailed to Gessor 11/22/11

STATE OF WEST VIRGINIA  
DEPARTMENT OF ADMINISTRATION  
REAL ESTATE DIVISION  
1409 Greenbrier Street  
Charleston, West Virginia 25311

Earl Ray Tomblin  
Governor

Robert W. Ferguson, Jr.  
Cabinet Secretary

Charles D. Lawrence, Jr.  
Executive Director

November 22, 2011

Dan W. Boroff, City Manager  
Office of the Airport Director Morgantown Municipal Airport  
100 Hart Field Road  
Morgantown, WV 26505

Re: Transfer of Assignment of Lease ADG-022

Dan,

During the 2011 2<sup>nd</sup> Special Session, a Legislative change was made to West Virginia Code §5A-10-2. (7) that exempts the Adjutant General's Office from the Real Estate Division.

In order to conform to the change in Code, the Real Estate Division is informing you that as of 11/30/2011, the Adjutant General's Office, Department of Military Affairs and Public Safety will be solely responsible for Lease ADG-022.

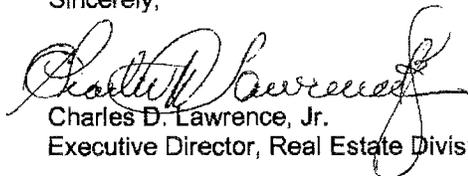
The Adjutant General's Office shall have all of the rights of Lessee contained in Lease ADG-022 including, without limitation, any option to renew, extend or cancel the Lease and shall have signatory authority as required.

As Lessee, the Adjutant General's Office assumes and agrees to be bound by all of the Real Estate Division's obligations under the Lease and shall perform all the terms, covenants and conditions of the Lease, including the payment of rent and any other required amounts to the Lessor, Office of the Airport Director Morgantown Municipal Airport.

The Adjutant General's Office shall indemnify and hold the Real Estate Division harmless from any and all claims, damages, expenses and liabilities of whatever nature, including attorney's fees, arising under the Lease or relating to the Premises after the date hereof.

All terms and conditions contained in Lease ADG-022 shall continue in full force and effect.

Sincerely,

  
Charles D. Lawrence, Jr.  
Executive Director, Real Estate Division

cc: Rhonda Combs Wick  
Attachment: West Virginia Code §5A-10-2. (7)

Telephone: (304) 558-3062

E.E.O./AFFIRMATIVE ACTION EMPLOYER

Fax: (304) 558-8082

## Attachment 1

### **§5A-10-2. Leases for space to be made in accordance with article; exceptions.**

(a) Notwithstanding any other provision of this code, no department, agency or institution of state government may lease, or offer to lease, as lessee, any grounds, buildings, office or other space except in accordance with the provisions of this article and article three of this chapter.

(b) The provisions of the article, except as to office space, do not apply to the Division of Highways of the Department of Transportation.

(c) The provisions of this article do not apply to:

(1) Public lands, rivers and streams acquired, managed or which title is vested in or transferred to the Division of Natural Resources of the Department of Commerce, pursuant to section seven, article one, chapter twenty of this code and section two, article five of said chapter;

(2) The Higher Education Policy Commission;

(3) The West Virginia Council for Community and Technical College Education;

(4) The institutional boards of governors in accordance with the provisions of subsection (v), section four, article five, chapter eighteen-b of this code;

(5) The real property held by the Department of Agriculture, including all institutional farms, easements, mineral rights, appurtenances, farm equipment, agricultural products, inventories, farm facilities and operating revenue funds for those operations;

(6) The real property held by the West Virginia State Conservation Committee, including all easements, mineral rights, appurtenances and operating revenue funds for those operations; or

(7) The Adjutant General's Department and the West Virginia National Guard, including all real property, acquisitions, leases, easements, armories, armory projects, appurtenances and operating revenue funds for those operations.