

Aunt Martha's Extravagance

Part 2 – '... to have and to hold, from this day forward ...'

Via a Mississippi Open Records Act request, USMNEWS.net recently obtained a large batch of documents from USM relating to USM president Martha Saunders' university aircraft. This series, *Aunt Martha's Extravagance*, provides analysis of these documents. Some in the USM community know little, if anything, about USM's lease agreement with the USM Foundation vis-à-vis the airplane. Still many more know little, if anything, about the responsibilities beyond the lease payments faced by USM as a result of Saunders' decision to take on the aircraft. The insert below presents the details of the former subject.

**EXCERPT FROM MINUTES OF BOARD OF TRUSTEES
OF STATE INSTITUTIONS OF HIGHER LEARNING
At Its Regular Meeting
Held on November 19-20, 2008**

CONSENT AGENDA

On motion by Mr. Blakeslee, seconded by Dr. Neely, with Mr. Patterson, Ms. Pickering, Ms. Robinson and Mr. Smith absent and not voting, it was

RESOLVED, That the Board hereby approved the following Consent Agenda.

BT Minutes Page 2

13. **USM** - Pending changes to the lease recommended by the Attorney General's Office and receipt of a revised lease payment schedule, the Board approved the request to enter a five-year lease agreement with the University of Southern Mississippi Foundation to lease a Beechcraft King Air 200 aircraft (N777AQ). The term of the lease is effective upon USM Foundation's acquisition of the aircraft projected to be December 1, 2008 to November 30, 2013. Lease payments will be issued monthly with the first 59 payments in equal monthly installments of \$16,662.98 and the 60th payment including a final balloon payment of \$907,053.85. The total cost for the lease is \$1,890,169.67. A copy of the lease is included in the *November 19-20, 2008 Board Working File*.

BT Minutes Page 4

According to the agreement approved by the Mississippi IHL Board back in November-08, USM has saddled itself with a monthly payment equal to \$16,662.98 for 59 months (4 years and 11 months). In the 60th month, the institution is expected to pay the USM Foundation a final balloon payment of \$907,053.85, all so that Saunders can have instant access to air transportation for the five years including 2009, 2010, 2011, 2012, and 2013. After that, the process may start all over again.

What about fuel costs, airport landing/hangar fees, maintenance expenses, etc.? These are the details oft forgotten by those who look past the extravagance of Saunders' aircraft. Is USM responsible for these? Information about USM's responsibility for these items, and others, was also obtained via a MORA request of USM and the IHL for details concerning the King Air model aircraft. Many of those types of details are highlighted in the insert below, which is entitled "IV OBLIGATIONS OF USM".

IV
OBLIGATIONS OF USM

USM's obligations, duties and responsibilities under the Lease are as follows:

- 4.1 Inspect the Aircraft when tendered to it by the Foundation and notify the Foundation within three (3) days of receipt of any inspection of any defects in or objections to the Aircraft and if accepted by USM to thereafter keep the Aircraft in airworthy and safe operating condition and oversee scheduled and unscheduled maintenance on the Aircraft. Should USM accept the Aircraft and not execute this Lease in time for the Foundation to close on the acquisition of the Aircraft, USM shall pay to the Foundation the Fifty Thousand Dollars (\$50,000.00) Earnest Money advanced by the Foundation, provided the Foundation loses the Earnest Money under the Aircraft Purchase Agreement with the Seller. If the Aircraft fails the inspection, USM will pay the fuel cost for Seller to retrieve the Aircraft.
- 4.2 Hire, fire, and schedule flight crew(s) and staff.
- 4.3 Provide all required documentation to the Federal Aviation Administration (FAA), manufacturer, Internal Revenue Service (IRS), and Institution of Higher Learning (IHL).
- 4.4 Oversee hangar and storage requirements for the Aircraft and necessary supplies.
- 4.5 Develop operations and training manuals for the flight department, if necessary.
- 4.6 Maintain appropriate navigation maps and charts.
- 4.7 Maintain and utilize appropriate sources for weather and flight planning to safely and efficiently plan all flights.
- 4.8 Attend annual flight training required by the FAA and the Aircraft insurance carrier.
- 4.9 Utilize fueling services as required to safely maintain and operate the Aircraft.
- 4.10 USM shall be deemed to have retained "possession, command and control" over the Aircraft within the meaning of Internal Revenue Service Revenue Ruling 58-215.
- 4.11 Review all invoices for expenses to verify the work billed for has been accomplished in a reasonable and prudent manner within industry standards and FAA and manufacturer's specifications. All such expenses for Aircraft operation, servicing, repair and maintenance shall be billed to and timely paid by USM.
- 4.12 Pay all Rent and Additional Rent as and when due and reimburse Foundation for any actual third party payments by Foundation or out-of-pocket expenses of Foundation.

633623-4

3

As the insert above indicates, USM is responsible for pilots'/flight crew's salaries/benefits, overseeing hangar/storage requirements, aircraft supplies, developing operations manuals, maintaining navigation maps, maintaining weather planning materials, maintaining flight training processes, fuel, and out-of-pocket expenses facing the USMF. The insert below, which presents a continuation of USM's obligations vis-à-vis airplane incidentals, adds "repair . . . costs" to the lengthy list just above. Clearly, USM's responsibilities with regard to the King Air go well beyond simply the monthly lease payment of about \$17,000 and the approximately \$900,000 balloon payment. One might even say that USM, and its Martha Saunders administration, are married to this airplane. Having dealt with a \$9-\$10 million budget cut in 2009, and facing a \$15 million cut in 2010 and possibly another \$10 million in 2011, one might also add that it is not a marriage made in Heaven.

4.13 Take such reasonable actions as are necessary to carry out the terms, conditions and provisions of this Lease and provide further assurances to the Foundation as are appropriate under the circumstances.

4.14 Provide an estoppel agreement to any lender to Foundation or assurances to Foundations' auditors as to the Lease being in full force and effect, there being no amendment, there being no breach, there being no advance payments or past due obligations for rent or additional rent by USM, and other reasonable assurances requested by the Foundation.

4.15 Not directly or indirectly create, incur, assume or suffer to exist any lien or with respect to the Aircraft.

4.16 Base the Aircraft at USM's cost at KHBG and will not base the Aircraft, or permit it to be based outside the limits of the United States of America, without the written consent of Foundation.

4.17 Repair and maintain the Aircraft during the term of this Lease so as to keep it in as good and safe operating condition as when delivered by Foundation to USM, ordinary wear and tear from use and ordinary deterioration accepted. USM shall pay all costs and expenses of parts and accessories for replacement, including transportation charges thereon. USM shall be entitled to any and all salvage from broken or worn out parts.