

Memorandum



Date: January 25, 2007

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Agenda Item No. 8(A)(1)(D)

Subject: First Amendment to the Development Lease Agreement T-168 with FalconTrust Air, LLC at Kendall-Tamiami Executive Airport

RECOMMENDATION

It is recommended that the Board approve the attached First Amendment to the Development Lease Agreement T-168 between Miami-Dade County and FalconTrust Air, LLC (FalconTrust) extending the original agreement for an additional 10 years, from 25 to 35 years, with one five-year extension at the option of FalconTrust. This amendment, if approved, will bring the total lease term for agreement T-168 to 40 years.

BACKGROUND

On October 23, 2001, the Board approved Development Lease Agreement T-168 with FalconTrust for the development of Lots 38 through 42 at Kendall-Tamiami Executive Airport (TMB). The agreement required FalconTrust to invest \$2.14 million in newly constructed facilities. FalconTrust's development efforts were to include a fixed-based operation consisting of a 10,000 square foot maintenance hangar, a two-story terminal building, four T-hangar buildings (consisting of 44 individual T-hangars), fuel farm, and 84 automobile parking spaces. The initial term of the agreement is for 25 years if beneficial occupancy was achieved within 39 months from the agreement's commencement date.

FalconTrust achieved beneficial occupancy within the stated time period and exceeded the required investment amount of \$2.14 million by an additional \$8.36 million for a total investment of \$10.5 million. The investment amount has been verified by an independent audit of allowable investment expenses. The facility has been a major contribution to the County's rebuilding efforts at TMB by stimulating increased aviation activity, as well as generating revenue for the County.

As a result of its large investment, FalconTrust has requested an additional 10 years on its lease to cover its investment. This will extend the lease from 25 to 35 years, with a one five-year extension for a total of 40 years. The Miami-Dade Aviation Department has determined that such an extension is reasonable, and the potential 40 year lease term is consistent with the Department's minimum development cost policy of \$10,000 per acre per year. FalconTrust's development costs of \$10.5 million is over double the minimum development cost under the policy (12.7 acres x 35 years [not including the one five year option] x \$10,000 = \$4,445,000).

The Federal Aviation Administration has reviewed this amendment and is in agreement with the term extension. Concurrently via a separate agenda item, MDAD is recommending that the Board approve a new lease, Development Lease Agreement T-3231, with FalconTrust at TMB.

Susanne M. Torrente
Chief of Staff/Assistant County Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: January 25, 2007

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Agenda Item No. 8(A)(1)(D)

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(A)(1)(D)
01-25-07

RESOLUTION NO. _____

RESOLUTION RELATING TO KENDALL-TAMIAMI EXECUTIVE AIRPORT; APPROVING FIRST AMENDMENT TO DEVELOPMENT AGREEMENT T-168 BETWEEN MIAMI-DADE COUNTY AND FALCONTRUST AIR, LLC, BY EXTENDING THE TERM THEREOF TO AN INITIAL PERIOD OF THIRTY-FIVE YEARS WITH A FIVE-YEAR RENEWAL OPTION FOR A TOTAL LEASE TERM OF FORTY YEARS; AUTHORIZING COUNTY MANAGER TO EXECUTE SUCH FIRST AMENDMENT AND TO EXERCISE TERMINATION PROVISIONS IN THE DEVELOPMENT AGREEMENT AS SO AMENDED

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum and document, copies of which are incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the attached First Amendment to Development Agreement T-168 between Miami-Dade County and Falcontrust Air, LLC, such First Amendment extending the lease term to an initial term of thirty-five (35) years with one (1) five-year extension at the option of Falcontrust for a total lease term of forty (40) years; authorizing County Manager to execute such First Amendment and the termination provisions contained in the Development Agreement as so amended.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman
Jose "Pepe" Diaz Audrey M. Edmonson
Carlos A. Gimenez Sally A. Heyman
Joe A. Martinez Dennis C. Moss
Dorrin D. Rolle Natacha Seijas
Katy Sorenson Rebeca Sosa
Sen. Javier D. Souto

The Chairperson thereupon declared the resolution duly passed and adopted this 25th day of January, 2007. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. TPA

Thomas P. Abbott

4

**FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT T-168
BETWEEN MIAMI-DADE COUNTY, FLORIDA, AS LESSOR AND FALCONTRUST AIR, LLC., AS
LESSEE,
KENDALL-TAMIAMI EXECUTIVE AIRPORT**

THIS FIRST AMENDMENT ("Amendment") to Development Lease Agreement made and entered into as of the _____ day of _____, 2006, by and between MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida ("County"), and FALCONTRUST Air LLC., a Florida Corporation ("Lessee"),

WITNESSETH:

WHEREAS, the County and the Lessee entered into that certain Development Lease Agreement ("Agreement"), dated October 23, 2001 for premises at the Kendall-Tamiami Executive Airport ("Airport"); and

WHEREAS, said premises comprise lots 38, 39, 40, 41 and 42 at the Airport; and

WHEREAS, under the Agreement, Lessee was required to obtain beneficial occupancy for improvements upon those premises by the 39th month from the commencement date of the agreement so that the initial term of the agreement would be 25 years from no later than the 39th month, with Lessee having the right to renew the agreement for an additional five-year term for a total potential leasehold term of thirty (30) years; and

WHEREAS, Lessee was to have invested within 39 months of the commencement date of the agreement the sum of approximately \$2.14 million in design and construction costs; and

WHEREAS, with the approval of the County, Lessee changed the scope of the improvements and increased its investment in such improvements such that the final design and construction costs for the improvements totaled approximately \$12.2 million dollars; and

WHEREAS, in light of such increased expenditures, Lessee has requested that the lease term be increased from 25 to 35 years so that Lessee can amortize its \$12.2 million in improvement costs over a 35 year period; and

WHEREAS, the Lessee has completed its development on Lots 38, 39, 40, 41, and 42 and the County has accepted such development as being in compliance with Lessee's obligations under the Agreement, and a Date of Beneficial Occupancy has been established for the Improvements constructed on the Premises by Lessee as being November 24, 2004; and

WHEREAS, the Lessee acknowledges that the County's policy is to require that development leases have a minimum investment requirement that is not less than the product of multiplying the lease

acreage times \$10,000 per acre times the longest lease term, which in this case would require a minimum investment of \$5,080,000 (12.7 acres x \$10,000 per acre x 40 years = \$5,080,000); and

WHEREAS, the County agrees that it would be appropriate to amend the agreement to increase the term of the entire development from 25 years to 35 years with one possible five year extension upon County approval for a maximum potential lease term of forty (40) years, expressly conditional upon Lessee's compliance with the terms set forth below that include, but are not limited to, the Aviation Department's receipt of the construction audit pursuant to Article 4.09 of the Agreement for the Lessee's constructed facilities that confirm Lessee's expenditure of not less than \$12.2 million in design and construction costs of the improvements, and that if the approved improvement costs under Article 4.09 are less than \$12.2 million, the lease term shall be reduced in a manner that reflects compliance with the minimum development obligation under the County's development lease requirements just discussed; and

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the parties agree to amend the Agreement as follows:

- A. Articles 1.01 and 1.06 are deleted in their entirety, and replaced by the following new Articles 1.01, 1.06:

1.01 Term: The County hereby leases to the Lessee and the Lessee leases from the County the Premises set forth in Article 1.03 (Premises) hereof, for the purposes and uses set forth in Articles 2 (Use of Premises) and 4 (Improvements to Premises) hereof, for an initial term (the "Initial Term") commencing on the date first written above (the "Commencement Date"), and terminating on a date that is thirty five (35) years from November 24, 2004, so that the initial term of this lease shall expire at 11:59 PM on November 23, 2039.

1.06 Renewal Option Period: (a) The Lessee shall have the option to extend this agreement for one five year term for a maximum lease term under this Agreement of forty (40) years commencing on November 24, 2004 and terminating at 11:59 PM on November 23, 2044 if Lessee exercises the right to the five-year renewal. In the event the Lessee notifies the County of its desire to extend the Agreement for the five-year renewal term, the County shall be notified in writing by at least November 23, 2038. As to the five-year extension the County shall have the right to reject any such extension by written notice to the Lessee within 60 days, following receipt of notice from the Lessee, and if so rejected this Agreement shall terminate on November 23, 2039. Failure of the County to respond to the Lessee within the 60-day period shall automatically constitute a rejection of the extension. In the event the Lessee does not give such notice, this Agreement shall terminate on November 23, 2039.

(b) Within sixty days of County's receipt of Lessee's notice of its intent to extend the Agreement for five years, the County shall conduct or cause to be conducted an inspection of the Improvements. Lessee shall be required to make all maintenance and repairs of such Improvements in accordance with Article 5.03 (Maintenance and Repairs) within 90 unless approved in writing by the Department, if the Department accepts the extension of the Agreement. If the Department rejects the extension so that the Agreement terminates on November 23, 2039, or if the Department approves the extension so that the

Agreement terminates on November 23, 2044, Lessee shall comply with its obligations under this Agreement to leave the Improvements in the condition required by such provisions at termination of the lease term. Such maintenance and repairs are subject to approval by the Department.

B. This First Amendment is conditioned upon Lessee's demonstration by its audit pursuant Article 4.09 (Approved Improvement Costs) that Lessee expended design and construction costs of the Improvements of at least \$12.2 million. If such audit shows an expenditure of less than \$12.2 million, the Lessor shall have the right to reduce the initial term of thirty-five years to an initial term that is consistent with the County's minimum development expenditure requirements as set forth above in the recital clause.

C. All other provisions of the Agreement not inconsistent herewith shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed by their duly authorized representatives as of the date first above written.

**BOARD OF COUNTY COMMISSIONERS
OF MIAMI-DADE COUNTY, FLORIDA**

By: _____

ATTEST: Harvey Ruvin, Clerk

By: _____
Deputy Clerk

(SEAL)

FALCONTRUST AIR, LLC.

By: _____
President

Adalberto L. Solero
Print Name

ATTEST: _____
Secretary

Aiselle Paz
Print Name