Memorandum

MIAMI-DADE COUNTY

Date:	June 5, 2007
To:	Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners
From:	George M. Burgess County Manager
Subject:	Second Amendment to the Development Lease Agreement T-168 with FalconTrust Air, LLC at Kendall-Tamiami Executive Airport (TMB) to clarify the 35-year amortization period

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

Recommendation

It is recommended that the Board approve the attached Second Amendment to the Development Lease Agreement between Miami-Dade County and FalconTrust Air, LLC ("FalconTrust"), so as to clarify that no rent on the improvement is due during the thirty-five year amortization period.

Scope

Kendall-Tamiami Executive Airport is located with Commission District 11. However, the impact of this agenda item is countywide in nature as Kendall-Tamiami Executive Airport is a regional asset.

Fiscal Impact/Funding Source

This is a revenue generating item. Throughout the 35-year lease period, FalconTrust Air, LLC will pay applicable fair market rentals on the land as established by the Board. Currently, the fair market rental cost is $86,129 annually for the ground rent. FalconTrust Air, LLC will pay improvement rent in addition to the ground rent starting in the 36th year of the lease term, assuming the parties have agreed to the five-year extension.

Track Record/Monitor

FalconTrust Air, LLC has been a major contributor to the County's rebuilding efforts at TMB by stimulating increased aviation activity, as well as generating revenue for the County. FalconTrust Air, LLC rent payment performance has been satisfactory according to Property Manager John O'Neal who will monitor this agreement.

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 within a specific time frame.

FalconTrust Air completed construction within the stated time period and, with the approval of the Aviation Department, exceeded the investment amount by $8.36 million for a total investment of $10.5 million. Falcon Trust therefore requested that the initial 25-year term of

its lease with the County be extended to a 35-year period in order for Falcon Trust to be able to amortize the higher cost of the improvement. On January 25, 2007, the Board, by its adoption of Resolution No. R-21-07, approved the First Amendment to the lease to accomplish the 10-year extension requested by Falcon Trust, and an additional five-year renewal option at the County's sole discretion, for a total potential lease period of 40 years.

Thereafter, FalconTrust Air noted that the lease is not clear on the point that, not only would the initial lease term be extended for 10 years to 35 years, but in order to amortize the cost of the improvement over the new 35-year initial period, the lease needs to reflect that Falcon Trust will not be paying any rent on the improvement for such 35-year period.

The Aviation Department agrees that this was the underlying intent of the First Amendment. Accordingly, in order to clarify this intent, and in order to bring certain sections of the lease to a current state, it is recommended that the Board adopt the attached Resolution approving the Second Amendment and its clarification of the no-rent requirement during the 35-year amortization period. Under the Second Amendment, FalconTrust Air will be required to pay land rent at all times during the 35-year initial term of the lease, and will be required to start paying Improvement rent following the 35th year.

Assistant County Manager

MEMORANDUM
(Revised)

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

DATE: June 5, 2007

FROM: Murray A. Greenberg County Attorney

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

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)(C)

06-05-07

RESOLUTION NO. _____

RESOLUTION RELATING TO KENDALL-TAMIAMI EXECUTIVE AIRPORT; APPROVING SECOND AMENDMENT TO DEVELOPMENT LEASE AGREEMENT WITH FALCON TRUST AIR, LLC, TO CLARIFY THAT RENT ON THE IMPROVEMENT CONSTRUCTED BY THE TENANT IS NOT PAYABLE DURING THE INITIAL TERM OF THIRTY-FIVE YEARS AND TO CLARIFY OTHER MISCELLANEOUS TERMS OF THE AGREEMENT TO REFLECT THE CURRENT STATE OF THE LEASE; AUTHORIZING COUNTY MAYOR OR HIS DESIGNEE TO EXECUTE SUCH SECOND AMENDMENT AND ANY ADDITIONAL DOCUMENTS UPON APPROVAL OF THE COUNTY ATTORNEY TO EFFECT THE PURPOSES OF THE SECOND AMENDMENT

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 Second Amendment to the Development Lease Agreement T-168 between Miami-Dade County and Falcon Trust Air, LLC, to clarify that no improvement rent shall be due and payable by the Tenant during the initial thirty-five (35) year lease term, and to clarify other miscellaneous terms of the Agreement to reflect the current state of the Agreement; authorizing the County Mayor or his designee to execute such Second Amendment and any additional documents upon approval of the County Attorney to effect the purposes of the Second Amendment.

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
Carlos A. Gimenez
Joe A. Martinez
Dorrin D. Rolle
Katy Sorenson
Sen. Javier D. Souto
Audrey M. Edmonson
Sally A. Heyman
Dennis C. Moss
Natacha Seijas
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 5th day of June, 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

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

THIS SECOND AMENDMENT ("Second 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"),

W I T N E S S E T H:

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, the Agreement provided that the Lessee was required to construct the improvements on the premises and the lease term would extend 25 years from the completion date, 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 the sum of approximately $2.14 million in design and construction costs for the improvements; 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 $10.5 million dollars; and

WHEREAS, in light of such increased expenditures, Lessee requested that the lease term be increased from 25 to 35 years so that Lessee can amortize its $10.5 million in improvement costs over a 35 year period; 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 agreed 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's approval for a maximum potential lease term of forty (40) years, and the Board of County Commissioners approved the 10-year extension in Resolution No. R- 21- 07; and

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WHEREAS, after the parties executed the First Amendment, the Lessee sought clarification that, not only would the 10-year extension period enable him to amortize the cost of the improvement, but the lease needs to make clear that no rent on the improvement is owed by the Lessee during such 35-year period; and

WHEREAS, the Aviation Department acknowledges that such a clarification is in keeping with the intent of the parties in the First Amendment, and that the 35-year initial term of the lease is an appropriate amortization period within which no rent on the improvement itself should be paid;

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

A. Articles 1.01, 1.04, 1.07, 3.01 and 3.04 are hereby amended to reflect that the initial term of the lease during which Lessee is entitled to amortize the cost of the improvement on the premises is thirty-five (35) years.

B. Article 3.01(A) had set forth the rental rates applicable to the original lease dated October 30, 2001, and had not set forth the Building number and square footage amount of the Building improvement because the Building had not been completed. In order to set forth the current rental rates effective as of the date of this Second Amendment, and, because the Building is now completed, in order to reference the Building number and its square footage, Article 3.01 is hereby amended to read as follows:

ARTICLE 3
Rentals and Payments

3.01 Annual Rentals: As annual rental for the lease of the Premises, the Lessee shall pay to the County commencing on the Date of Beneficial Occupancy of the Improvements or thirty-nine (39) months from the Commencement Date, whichever first occurs, the sum shown below to be prorated and payable in equal monthly installments shown below, in U.S. funds on the first day of each and every month, in advance and without billing, to the offices of the Department as set forth in Article 3.06 (Address for Payments). Said rent is computed as follows:

A. Upon Beneficial Occupancy:

PARCELS	SQ. FT.	RATE	YEARLY	MONTHLY
Bulding No. 238	21,000	N/A	N/A	N/A
Land (lots 38-42)	560,000	$0.12	$67,200	$5,600
Pavement (Lots 38-42)	240,000	$0.05	$12,000	$1,000
TOTAL AMT.			**$79,200**	**$6,600**

*Plus applicable State sales tax as required by law.

C. Article 3.01(B) is hereby deleted in its entirety and replaced with the following:

> B. Improvements Rental During Amortization Period: In consideration of Lessee's financing and construction of the Building Improvement, Lessor agrees that no rent payment for such Improvement shall be due within the amortization period of thirty-five (35) years from the DBO of the Improvement, which DBO date is hereby agreed between the parties to be November 24, 2004; provided, however, that rent for the underlying land shall always be due and payable in the manner and at the commencement times as set forth in this Agreement. Based on such DBO date, Lessee shall commence paying fair market rental on the Building Improvement as determined by MDAD's appraiser as of November 25, 2039, plus all other taxes and charges that may be applicable to such rent payment as provided herein. (November rent to be prorated)

D. 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 Second Amendment to be

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executed by their duly authorized representatives as of the date first above written.

BOARD OF COUNTY COMMISSIONERS
OF MIAMI-DADE COUNTY, FLORIDA

By: _____
COUNTY MAYOR OR DESIGNEE

ATTEST: Harvey Ruvin, Clerk

By: _____
Deputy Clerk

(SEAL)

FALCONTRUST AIR, LLC.

By: _____
President

Albert Sotero
Print Name

ATTEST: _____
Secretary

Rachel Benitez
Print Name

(CORPORATE SEAL)