Memorandum

MIAMI-DADE COUNTY

Date: June 30, 2009

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

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Resolution approving the First Amendment to Development Lease Agreement between Miami-Dade County and Centurion Air Cargo, Inc. and its assignee Aero Miami III, LLC (Aeroterm) at Miami International Airport

---

Recommendation

It is recommended that this Board approve the attached First Amendment to Development Lease Agreement between Miami-Dade County and Centurion Air Cargo, Inc. and its assignee Aero Miami III, LLC (Areoterm) at Miami International Airport (MIA).This First Amendment modifies the lease's commencement date, and clarifies the option for Phase II of the development lease as well as the requirements of insurance and the leasing of the second floor of Building 5A at MIA to a private party.

Scope

Miami International Airport is primarily located within Commission District Six; however the impact of this agenda item is countywide as MIA is a regional asset.

Fiscal Impact/Funding Source

This is a revenue generating item. The annual rent associated with Phase I of the development is estimated at $3.0 million. Additional annual revenue under Phase II of the lease agreement is estimated at $500,000 for combined estimated total annual revenue of $3.5 million.

The lease of the second floor of Building 5A will generate approximately $860,000 in short-term rental revenue to the Aviation Department over the three years term based on a current rental yield of approximately $287,000 per year. The rental rate will be adjusted annually over the term of the lease in accordance with fair market value appraisals.

Track Record/Monitor

Centurion and its affiliates Cielos and UNO Handling (the Group) have collectively operated at MIA since 1997 and rank among the top three cargo airline operating at MIA, with monthly payments in rent and landing fees approximating $374,000 ($311,000 in rent and $63,000 in landing fees). The group has had a history of outstanding balances but always eventually pays its bills, including late fees. This nonetheless prompted in July 2007, before this subject Development Lease Agreement was placed before the Board of County Commission for approval, a demand from MDAD for a personal guarantee by the Group's principal, Alfonso Rey. Cargo traffic has fallen nearly 30% over the last several months and the Group's delinquency has risen in tandem, approximating $1.1 million, $600,000 of which originates from an ongoing dispute of parking charges associated with a damaged aircraft that was eventually demolished. Remaining undisputed charges therefore are approximately $401,000. The aforementioned personal guarantee remains in force and the Department is satisfied that its exposure is adequately secured by the security deposit of the Group (equal to twice its monthly rent, and the personal guarantee of Mr. Rey). Moreover, developer Aeroterm, to whom the Centurion development lease agreement is also assigned, leases the cargo area known as the "Eastern U" (the Lan Chile facility) as well as the new FedEx facility which it developed at MIA, has an excellent payment history. Greg Owens, Division Director, Real Estate and Commercial Development, monitors this agreement.

Background

Centurion has long been an air carrier and tenant at MIA. Two years ago Centurion approached MDAD with its desire to develop the northeast portion of MIA into cargo facilities. The site that Centurion selected is a 46-acre site partially on the former Eastern Airlines leasehold and consists mostly of vacant land with some existing facilities that will be developed in two phases.

In September 2007, the County entered into a development lease agreement with Centurion for development of the desired cargo facilities. The Agreement provides for Centurion to assign the lease to Aero Miami III, LLC (Aeroterm) for the design, construction and operations of cargo facilities in the northeast section of MIA, and for the lease-back of the constructed facilities to Centurion.

The lease is for 30 years with two five-year options. The lease requires Centurion to invest not less than $110 million for facilities in Phase I for a 250,000 square foot warehouse, the rehabilitation of 65,000 square feet of office space, rehabilitation of 140,000 square feet of hangar space, the construction of 350,000 square feet of paved aircraft ramp, a ground services equipment storage facility, and the completion of the Taxiway "K" Project.

The lease terms also require that all Phase I Improvements must be completed no later than 30 months from the lease Commencement Date or 36 months from the Commencement Date if the development is subject to development of regional impact (DRI) requirements. However, in order for Phase I to move forward, several current facilities require demolition including Building 906 occupied by Wings Aviation, Inc. ("Wings"). The Wing's lease expired on October 31, 2007 and Wings is currently a holdover tenant for this facility but agreed to relocate to Building 704. Centurion is responsible for the first $250,000 of relocation expenses incurred by Wings.

Centurion recently requested that the Commencement Date of September 2007 be extended to January 2010. This request is due to Centurion's inability to evict Wings from its current leasehold. Wings was scheduled to relocate from Building 906 into Building 704 by October 31, 2008. Wings has not relocated to Building 704, and Building 906's utilities are interconnected to various other facilities within the Centurion premises thereby preventing the start of any work within the leasehold footprint. Wings agreed to make all the improvements to Building 704 necessary for its operations and such improvements are underway with Wings staff constructing the improvements. MDAD staff has inspected the progress of these improvements and estimates that if Wings hires a general contractor to complete the improvements, the improvements will be completed by December 2009, but If Wings completes the improvements with the Wings workforce, the improvements will not be completed until sometime late in the first quarter of 2010.

Centurion also has the obligation to develop Phase II, but Centurion has the right to delete Phase II in its entirety or else delete Building 5A from the Phase II development obligation by notifying the County within twenty-four months from the Commencement Date. Phase II will be an extension to its cargo warehouse in Phase I and may require the premises associated with Building 5A. MDAD staff occupies this space and if Centurion chooses to develop Phase II and the Building 5A site, the lease requires Centurion to replace Building 5A at its expense. Also, MDAD is in the process of closing a lease agreement with Miami-Dade Transit Department and a joint venture that includes Odebrecht Construction, Inc, the contractor for the Earlington Heights Metro Rail Extension into the Miami Intermodal Center (MIC), for the Transit Department and the joint venture to occupy the second floor of

Building 5A as a project manager's office for a term of three years with the first year's rent valued at $287,300.

This First Amendment will modify the Commencement Date from September 4, 2007, to January 1, 2010, and will extend the option date for deleting Phase II and/or Building 5A to December 31, 2012. This extension, along with the Aeroterm's commitment not to disrupt the joint venture for a period of time of up to thirty-six months in duration, will allow the Odebrecht joint venture and Miami-Dade Transit to complete the Earlington Heights extension into the MIC without having to relocate during their project.

This First Amendment also clarifies that all of Centurion's development must comply with MDAD's Design Guidelines Manual. This Amendment also clarifies that Centurion is required to obtain insurance on the premises once Centurion commences a physical presence on the premises or commences construction or demolition on the Premises.

Assistant County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: June 30, 2009

FROM: R. A. Cuevas, Jr. County Attorney

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

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 Mayor'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)(J)
6-30-09

RESOLUTION NO. _____

RESOLUTION RELATING TO MIAMI INTERNATIONAL AIRPORT; APPROVING AND AUTHORIZING MAYOR OR DESIGNEE TO EXECUTE THE FIRST AMENDMENT TO DEVELOPMENT LEASE AGREEMENT AMONG MIAMI-DADE COUNTY, CENTURION AIR CARGO, INC., AND AERO MIAMI III, LLC, THAT MODIFIES THE COMMENCEMENT DATE, CLARIFIES THE DATE ON WHICH THE LESSEE IS PERMITTED TO OMIT PHASE II FROM THE PROJECT, CONFIRMS THE LESSEE'S AGREEMENT TO A POTENTIAL AVIATION DEPARTMENT LEASE OF A PORTION OF BUILDING 5A TO A THIRD PARTY, CONFIRMS THAT THE AVIATION DEPARTMENT'S DESIGN GUIDELINES WILL APPLY TO ALL IMPROVEMENTS, CLARIFIES THE EFFECTS OF THE LESSEE'S LEGAL INABILITY TO EVICT AN EXISTING TENANT FROM THE PREMISES, CLARIFIES THE TIME AT WHICH LESSEE'S INSURANCE COVERAGE OBLIGATIONS SHALL COMMENCE, AND CONFIRMS THE REMAINING TERMS OF THE DEVELOPMENT LEASE AGREEMENT

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is 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 Lease Agreement between Miami-Dade County and Centurion Air Cargo, Inc and Aero Miami III LLC, which modifies the definition of "commencement date," clarifies the date on which the Lessee is permitted to omit Phase II from the project, confirms the Lessee's agreement to a potential Aviation Department lease of a portion of Building 5A to a third party, confirms that the Aviation Department's Design Guidelines shall apply to all improvements constructed on the premises, clarifies the effects of the Lessee's legal inability to evict an existing tenant from the premises, clarifies the time at which Lessee's insurance coverage obligations shall commence, and confirms the continuing

validity of the remaining portions of the Development Lease Agreement; authorizes the Mayor or designee to execute such First Amendment and to take all steps to place such First Amendment, and the Development Lease Agreement to which it applies, into effect.

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:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 30th day of June, 2009. 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

FIRST AMENDMENT TO
DEVELOPMENT LEASE AGREEMENT

This First Amendment to Development Lease Agreement ("First Amendment") is entered into this ___ day of _____, 2009 ("Effective Date"), by and between the MIAMI-DADE COUNTY, a political subdivision of the State of Florida ("County"), CENTURION AIR CARGO, INC ("Centurion"), and AERO MIAMI III, LLC, a Delaware limited liability company ("Aero Miami").

W I T N E S S E T H:

WHEREAS, pursuant to that certain Development Lease Agreement between Miami-Dade County, Florida, as Lessor, and Centurion, as Lessee, Miami International Airport dated September 4, 2007 (the "Agreement"), which was assigned to Aero Miami pursuant to that certain Assignment and Assumption of Development Lease dated September 4, 2007, Aero Miami leases from the County certain property ("Premises") at the Miami International Airport;

WHEREAS, as a result of the failure of a subtenant of the Premises, Wings Aviation Services, Inc., to timely vacate the Premises ("Wings Failure to Vacate"), Lessee has been prevented from achieving certain milestones set forth in the Agreement ;

WHEREAS, the County, Aero Miami and Centurion desire to amend the Agreement to account for Wings' Failure to Vacate and to make certain other modifications as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to amend the Agreement as follows:

1. **Recitals**. The Recitals set forth above are true and correct and incorporated herein.

2. **Commencement Date**. The Commencement Date as defined under the Agreement is hereby amended to be January 1, 2010 with respect to the following provisions and definitions in the Agreement: (i) the Phase I Completion Deadline (Section 2.1); (ii) the period to complete construction of the Phase II Improvements (Section 2.1); (iii) Rent Commencement Date (Section 4.1(A); (iv) the rent commencement with respect to the Phase II Premises (Section 4.1(A); (v) Section 5.3(A) completion deadlines; and (vi) Minimum Investment (Section 5.8).

3. **Phase II Premises**. Notwithstanding any provision of Section 2.3 of the Agreement to the contrary, the Drop Dead Date set forth in Section 2.3 by which date Lessee has the right to elect to delete all portions or just the Building 5A portion of the Phase II Premises shall be 11:59 PM on December 31, 2012. Lessee acknowledges that Lessor shall have the right to lease a portion of Building 5A for a period of time up to December 31, 2012 and to retain the rents and not share them with Lessee. Lessee agrees that any such third party tenant shall have quiet enjoyment of such premises for the

duration of such lease, and agrees that, if Lessee agrees in writing to an extension of such lease, the Lessee's obligation of quiet enjoyment shall continue for the period of time so agreed to by Lessee.

4. **Design Guidelines**. The third sentence of Section 5.3 of the Agreement shall be deleted in its entirety and the following shall be substituted in its place:The design of the Improvements shall comply with the Department's Design Guidelines Manual.

5. Wings. Section 2.7 of the Agreement is hereby deleted in its entirety and the following Section 2.7 is inserted in its place:

> 2.7 Existing Tenants: Wings Aviation Services, Inc., ("Wings") currently occupies space in Building 906 (the "Wings Space") on the Premises pursuant to a written lease between Lessor and Wings (the "Wings Lease") that expired on October 31, 2007. Lessee has permitted Wings to remain in Building 906 on a month-to-month basis, with Lessee and Wings having stipulated to Lessee's right to terminate Wings' tenancy therein at will. The County has assigned its interest in the Wings Lease to Lessee effective as of September 4, 2007, and Lessee and County agree to perform all of the terms, covenants and conditions of the Wings Lease on the part of the landlord therein required to be performed, from and after September 4, 2007 in proportion to the rent that each party is entitled to receive hereunder from Wings with respect to the Wings Lease. Lessee shall be responsible for the first $250,000 of costs and expenses Lessee reasonably incurs in connection with efforts to obtain possession of the Wings Space from Wings. Lessee will be entitled to a credit against the land rent payable hereunder for the costs and expenses Lessee reasonably incurs in connection with efforts to obtain possession of the Wings Space from Wings above the $250,000.00, together with interest accruing on a declining balance basis at the rate of seven percent (7%) per annum, provided the County has consented to such cost or expenses which consent shall not be unreasonably withheld, delayed or denied. The County and the Lessee waive any and all claims for damages against the other for the failure of Wings to vacate the Wings Space in the manner required by Lessee. Lessee shall use commercially reasonable efforts to seek collection from Wings of all unpaid rents due from Wings under the Wings lease up to its expiration date of October 31, 2007, as well as unpaid rents due from Wings for its use and occupancy of Building 906 after October 31, 2007. In order for Lessor to comply with its obligations under federal law, Lessee shall pay Lessor the rents Lessee collects from Wings that would have been paid to Lessor if Lessor remained the landlord to Wings, less any collection costs reasonably incurred by Lessee and a processing fee of fifteen percent (15%) of all such amounts collected by Lessee from Wings or any other party on behalf of Wings.

6. **Insurance**. Notwithstanding any provision of the Agreement to the contrary, Lessee shall not be required to procure or maintain any insurance required of Lessee pursuant to Article 12 of the Agreement until such time as Lessee commences a physical presence on the Premises or commences construction or demolition on the Premises.

7. **Lease Confirmed**. Except as otherwise set forth herein, all terms and conditions of the Agreement shall remain in full force and effect. The Agreement, as amended by this First Amendment, is hereby ratified and confirmed. The Agreement and this First Amendment, constitute and represent the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes any prior understandings or agreements, written or verbal, between the parties hereto respecting the subject matter herein.

IN WITNESS WHEREOF, the parties have set their hands to this Amendment as of the day and year first above written.

LANDLORD:

BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA

By:_____
Mayor

ATTEST:

By:_____
Name:_____
Title:_____

AERO MIAMI III, LLC

By: Sean Meehan
Name:_____
Title: **Sean Meehan**
Vice President

ATTEST:
By: Ann Dillard
Name: Ann Dillard
Title: Sr. Admin

CENTURION AIR CARGO, INC. HEREBY CONSENTS TO THIS FIRST AMENDMENT

CENTURION AIR CARGO, INC.

By:_____
Printed name_____
Title:_____

ATTEST:
By: Marta Blanco
Printed name MARTA BLANCO

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

Before me, _____, a notary public of the state and county mentioned, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself or herself to be the Mayor of Miami-Dade, Florida, or his designee, the within bargainor, a political subdivision of the State of Florida, and that he as such authorized County official , being authorized so to do, executed the foregoing instrument for the purpose therein contained, by personally signing the name of the political subdivision by himself as Mayor or his designee .

Witness my hand and seal, at office in my office in Miami, Florida , this _____ day of _____, 2009.

_____
NOTARY PUBLIC

My Commission Expires:_____

[SEAL]

STATE OF Florida
COUNTY OF Miami Dade

Before me, MARTA BLANCO, a notary public of the state and county mentioned, personally appeared Alfonso Rey, whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be Chairman of Centurion Air Cargo, Inc., ~~the within bargainor, a Delaware limited liability company,~~ and that he as such _____, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by personally signing the name of the ~~limited liability company by himself as~~ _____.

Witness my hand and seal, at office in Miami, Florida, this 1st day of June, 2009.

Marta Blanco
NOTARY PUBLIC

My Commission Expires: Mar 15/2013

[SEAL]

MARTA BLANCO
Notary Public - State of Florida
My Comm. Expires Mar 15, 2013
Commission # DD 870112
Bonded Through National Notary Assn.

STATE OF Illinois
COUNTY OF Cook

Before me, Ann Pillard, a notary public of the state and county mentioned, personally appeared Sean Meehan, whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be vice President of Aero Miami III, LLC, the within bargainor, a Delaware

limited liability company, and that he as such Vice President, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by personally signing the name of the limited liability company by himself as Vice President.

Witness my hand and seal, at office in Chicago, Illinois, this 29 day of May, 2009.

Annie F. Dillard
NOTARY PUBLIC

My Commission Expires: June 21, 2011

[SEAL]

OFFICIAL SEAL
ANNIE F. DILLARD
Notary Public - State of Illinois
My Commission Expires Jun 21, 2011