MEMORANDUM

Agenda Item No. 13(A)(3)

TO:	Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners	**DATE:**	May 3, 2011
FROM:	R. A. Cuevas, Jr. County Attorney	**SUBJECT:**	Resolution approving settlement agreement among the Chapter 7 Bankruptcy Estate of AeroThrust Corporation and Miami-Dade County through both its Aviation Department and Department of Environmental Resources Management

The accompanying resolution was placed on the agenda by the County Attorney.

R. A. Cuevas, Jr.
County Attorney

RAC/jls

Date: May 3, 2011

Memorandum

MIAMI-DADE COUNTY

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Alina T. Hudak
County Manager

R. A. Cuevas, Jr.
County Attorney

Subject: Approval of Settlement Agreement Among the Chapter 7 Bankruptcy Estate of AeroThrust Corporation, a former tenant at Miami International Airport through its Trustee in Bankruptcy, PNC Bank, AeroThrust Holdings LLC, the Purchaser in Bankruptcy of AeroThrust's Assets, and Miami-Dade County Through both Its Aviation Department and Department of Environmental Resources Management

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RECOMMENDATION

It is recommended that the Board approve the Settlement Agreement among five parties arising out of certain Chapter 7 Bankruptcy Proceedings now pending in Wilmington, Delaware, such Settlement Agreement being among and between the Chapter 7 Bankruptcy Estate of AeroThrust Corporation (AeroThrust), a former tenant at Miami International Airport (MIA); PNC Bank, the secured party of virtually all of AeroThrust's assets (PNC); AeroThrust Holdings LLC, the successor to and purchaser of AeroThrust's assets in the bankruptcy proceedings; and Miami-Dade County through both the County's Aviation Department (MDAD) and its Department of Environmental Resources Management (DERM).

SCOPE

This project is located within Commissioner Rebeca Sosa's District Six; however, the impact is countywide in nature as MIA is a regional asset.

FISCAL IMPACT

Such Settlement Agreement will, among other things, (i) secure for MDAD as much as it can reasonably expect to receive as a creditor to AeroThrust in the bankruptcy proceedings as to four of the five claims asserted by the County, (ii) as to the fifth claim, exchange the claim for an assignment of PNC's right to receive a 49% share of the net proceeds resulting from preference claims asserted and collected by the Trustee, with the County's assigned share being potentially greater than the fifth claim, (iii) assure the use of $230,000 provided by AeroThrust's Trustee and PNC for the cleanup of environmental contaminants currently in Buildings 863 and 703A at MIA, and (iv) if the cleanup is effective, satisfy DERM's closure requirements applicable to certain industrial waste permits.

TRACK RECORD/PROJECT MONITOR

The Settlement Agreement will be monitored by Michele Raymond of MDAD and Sharon Crabtree of DERM.

BACKGROUND

AeroThrust was a long-time tenant at MIA, using Building 863 for jet-engine repair and plating purposes and Building 703A for the testing of completed jet engines. In conjunction with its environmentally sensitive plating operations, AeroThrust was required to obtain from DERM industrial waste permits (IWPs), which required certain closure actions when AeroThrust ceased business activities so as to assure the County a safe and environmentally sound elimination of adverse environmental conditions in both buildings.

On December 27, 2009, AeroThrust filed a Chapter 11 reorganization petition in the Wilmington, Delaware, bankruptcy court. The Chapter 11 reorganization efforts failed and on July 20, 2010, AeroThrust converted the Chapter 11 reorganization to a straight liquidation proceeding under Chapter 7. As is usual, a Trustee was appointed by the bankruptcy court to oversee the Chapter 7 liquidation efforts, and upon the Chapter 7 conversion date, the closure obligations under the IWPs were triggered. The Trustee, however, failed to comply with the closure obligations and they remain unfulfilled at this time. Although the County has the right to look to the Trustee for compliance with the closure requirements, the County through MDAD, as owner of the buildings, ultimately has the responsibility for environmental conditions affecting the buildings.

MDAD has asserted various claims against AeroThrust in the Bankruptcy proceedings. They total $2,475,204.67 and include (i) a Chapter 11 administrative expense claim in the amount of $230,000 for the environmental damages, (ii) a Chapter 11 administrative claim of $70,444.93 for AeroThrust's use of the buildings in April, May, and June, plus July 1-19, 2010, (iii) a Chapter 7 administrative expense claim of $44,491.53 for the Chapter 7 use of the buildings from July 20 through July 31, 2010, (iv) a pre-petition claim of $1,290,961.21 for rents and other obligations arising out of the pre-bankruptcy use of the buildings, and (v) a pre-petition claim of $839,307.00 arising out of AeroThrust's failure to leave the buildings in the state of repair required by the leases. Although the claims are sound and fully justified, the County will not be entitled to receive more in cash on each of the claims than its proportionate share of the actual amount of cash ultimately made available in this bankruptcy proceeding.

To resolve the several vigorously contested issues pending in the case, all five affected parties have agreed to the terms of a Settlement Agreement. Under the Settlement Agreement:

1. AeroThrust Holdings, the purchaser of the assets, will execute five-year leases for Buildings 863 and 703A;
2. The Trustee and PNC will make the sum of $230,000 available to MDAD, and MDAD will allow such amount to be used by AeroThrust Holdings to complete the environmental cleanup;
3. AeroThrust Holdings will be responsible for contracting with an environmental contractor to perform the cleanup work, and will be allowed to access the $230,000 held by MDAD for such purpose;
4. AeroThrust Holdings will be responsible for environmental costs in excess of $230,000;
5. MDAD and DERM will monitor the cleanup activities so as to assure that the work is sufficient to meet DERM's closure requirements under the IWPs;
6. Upon completion of the work and upon compliance with the closure requirements DERM will release the Trustee from any further regulatory enforcement actions and the Trustee's and PNC's commitment not to object to MDAD's claims will become effective; and
7. The Trustee and PNC have agreed separately to divide the net proceeds of

preference claims asserted and collected by the Trustee, with 51% going to the Trustee and 49% going to PNC. The gross preference claims are currently estimated to be in excess of $1,000,000. In exchange for MDAD's claim of $44,491.53, PNC will assign to MDAD all of PNC's rights to its 49% of the net preference claims received by the Trustee.

The Settlement Agreement is advantageous to the County. It resolves the critical issue of the environmental cleanup requirements by using the $230,000 the Trustee and PNC are willing to provide, which will lead to the long-term lease of Buildings 863 and 703A by AeroThrust Holdings, which, in turn, will generate rental revenues to MDAD. Without a Settlement Agreement, unresolved bankruptcy issues would have to be litigated in the Wilmington, Delaware, court, making use of local counsel required to be retained by the County. Although the County would pursue its environmental regulatory issues here in Miami, the County could possibly be required to litigate in the Wilmington bankruptcy court the issue of the County's ability to continue such actions in the Miami courts.

It is therefore recommended that the Board approve the attached Settlement Agreement.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: May 3, 2011

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

SUBJECT: Agenda Item No. 13(A)(3)

Please note any items checked.

_____ **"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**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

✓ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

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Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 13(A)(3)
5-3-11

RESOLUTION NO. _____

RESOLUTION RELATING TO MIAMI INTERNATIONAL AIRPORT; APPROVING SETTLEMENT AGREEMENT AMONG THE CHAPTER 7 BANKRUPTCY ESTATE OF AEROTHRUST CORPORATION THROUGH ITS TRUSTEE IN BANKRUPTCY, PNC BANK, AEROTHRUST HOLDINGS, LLC, AND MIAMI-DADE COUNTY THROUGH BOTH OF ITS AVIATION DEPARTMENT AND DEPARTMENT OF ENVIRONMENTAL RESOURCES MANAGEMENT FOR RESOLUTION OF BANKRUPTCY ISSUES ARISING OUT OF AEROTHRUST'S CHAPTER 7 BANKRUPTCY PROCEEDING; AUTHORIZING MAYOR OR DESIGNEE TO EXECUTE SUCH SETTLEMENT AGREEMENT AND TO TAKE ALL ACTIONS REQUIRED TO EFFECT THE TERMS THEREOF

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 Settlement Agreement among the Chapter 7 Bankruptcy Estate of AeroThrust Corporation through its Trustee in Bankruptcy, PNC Bank, AeroThrust Holdings, LLC, and Miami-Dade County through both the County's Aviation Department and Department of Environmental Resources Management, for resolution of bankruptcy issues arising out of AeroThrust Corporation's use of Buildings 863 and 703A at Miami International Airport and arising out of the Chapter 7 bankruptcy proceeding currently pending in Wilmington, Delaware; and authorizes the Mayor or Designee to execute the Settlement Agreement and to take all actions required to effect the terms thereof after review by the County Attorney.

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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:

Joe A. Martinez, Chairman
Audrey M. Edmonson, Vice Chairwoman

Bruno A. Barreiro	Lynda Bell
Jose "Pepe" Diaz	Sally A. Heyman
Barbara J. Jordan	Jean Monestime
Dennis C. Moss	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of May, 2011. 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

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

Thomas P. Abbott

By:_____
Deputy Clerk

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 7
	)	
AEROTHRUST CORPORATION AND	)	Case No. 09-14541 (PJW)
AEROTHRUST ENGINE LEASING	)	
HOLDING COMPANY, LLC,	)	Jointly Administered
	)	
Debtors.	)	

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and among the Chapter 7 estate of AeroThrust Corporation through Jeoffrey L. Burtch, Chapter 7 Trustee (the "Trustee"), PNC Bank ("PNC"), a secured lender to AeroThrust, AeroThrust Holdings LLC ("AH"), and Miami-Dade County, Florida ("County"), through both its Aviation Department ("MDAD") and the Department of Environmental Resources Management ("DERM").

IN CONSIDERATION OF THE PREMISES AND THE UNDERTAKINGS SET FORTH BELOW, the parties hereto agree as follows:

Air Capital's Leases for Buildings 863 and 703A

1. AH will execute the two standard-form leases proffered to Air Capital by MDAD, one of which is for AH's use of Building 863 and the other of which is for AH's use of Building 703A, with both leases commencing on January 1, 2011.

Environmental Cleanup of Building 863 and 703A

2. AH shall be responsible for entering into appropriate contracts with an environmental cleaning company (hereinafter, the "Contractor") for such cleanup as is necessary in Building 863 and the restoration of Building 863 and 703A, including the cleaning and plating shops of Building 863, to a condition that is satisfactory to DERM to complete the closure of the Industrial Waste permits described herein. AH shall work with DERM and MDAD to ensure that the cleanup obligations stated in this paragraph 2 satisfies all requirements of DERM

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regarding the closure procedures necessary under the existing Industrial Waste Permits that are applicable to both Building 863 and Building 703A (IWP # 114 and IWP # 472).

3. Notwithstanding the requirement in Paragraph 1 that AH's leases for Buildings 863 and 703A shall commence as of January 1, 2011, effective October 1, 2010, AH shall be responsible for the proper closure of the Industrial Waste Permits and shall thereafter be responsible for obtaining and maintaining any additional industrial waste permits, other permits or licenses required by federal, state, or local governments regarding Buildings 863 and 703A.

4. AH shall provide MDAD, DERM, and the Trustee with a copy of all cleanup and closure documents resulting from the Contractor's and any party's efforts hereunder to effect the cleanup and closure of the Industrial Waste Permits.

Payment of Cleanup Costs

5. AH shall arrange for all cleanup costs and closure activities to be accomplished through the Contractor's services in an amount that does not exceed $230,000.00. If the cost of the Contractor's services exceed $230,000.00, AH will be responsible for payment of the excess amount, and neither the Trustee nor the Chapter 7 estates shall have any obligation for any amount in excess of $230,000.00.

6. PNC and the Trustee will cause the sum of $230,000.00 to be transferred to MDAD in full payment of all Chapter 7 administrative expense rents due for August and September 2010 for the Chapter 7 estate's use of Buildings 863 and 703A. The County shall be entitled to apply the $230,000.00 to reimbursement of AH for the cleanup and closure costs regarding Buildings 863 and 703A. The parties understand that the County intends initially to place the funds in a separate "imprest" bank account in order for AH to access such funds in accordance with MDAD's standard practices regarding distributions from imprest accounts, but the County, AH, PNC Bank, and the Trustee may determine from time to time an alternative

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methodology by which the $230,000.00 or portions thereof shall be paid to AH in reimbursement for cleanup costs billed by the Contractor. Regardless of what methodology may be used, the County and the other parties shall be entitled to review documents from AH or the Contractor that reasonably demonstrate the legitimacy of the Contractor's billings and any actual amounts paid by AH for which reimbursement from MDAD is sought.

Allowance of MDAD Claims

7. The Trustee and PNC agree that they will not object to the following claims by MDAD:

(a) A Chapter 11 administrative expense claim from MDAD in the amount of $230,000.00 representing the environmental damages claim arising out of Building 863.

(b) A Chapter 11 administrative claim in the amount of $70,444.93 arising out of the use by AeroThrust (the "Debtor") of both buildings during the months of April, May, and June, as well as July 1-19, 2010.

(c) A Chapter 7 administrative expense claim of $44,491.53 arising out of the estate's post-conversion use of the facilities from July 20 through July 31, 2010 (the "July 2010 Rent Claim").

(d) A pre-petition claim of $1,290,961.21 for rents and other obligations arising out of the leases for Building 863 and 703A.

(e) A pre-petition claim of $839,307.00 arising out of the Debtor's failure to repair the facilities to the extent required by the rejected leases for Buildings 863 and 703A.

(f) The agreements in this paragraph 7 are subject to the condition stated in paragraph 8 below.

8. Provided that the cleanup and closure activities overseen by AH and any other party hereto for Buildings 863 and 703A satisfy DERM's requirements, DERM waives

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regulatory penalties, administrative costs, and attorneys' fees that DERM otherwise asserts it can assess against the Trustee, the Chapter 7 estates or PNC, and DERM will file and serve in these bankruptcy cases a separate document stating that: (1) The closure requirements under the Industrial Waste Permits have been met; (2) DERM has no further monetary or regulatory claim against the Debtors, the Chapter 7 estates, or the Trustee (or by extension, PNC). This document is hereinafter referred to as the "Subsequent DERM Filing." The agreements by the Trustee and PNC in the foregoing paragraph 7 are conditioned upon, and are not effective until the Subsequent DERM Filing.

9. Previously MDAD filed or asserted various claims in these bankruptcy cases, including, but not necessarily limited to Proof of Claim No. 42 or Rejection Claim of Miami-Dade County filed at Docket No. 499 (hereinafter, the "MDAD Claims"). This paragraph effectively amends and supersedes the MDAD Claims, and the only claims MDAD or the County have against the Trustee or the Chapter 7 estate are those as stated in this Agreement. The County further represents that it has not transferred or assigned any claims it holds against the Trustee or the Chapter 7 estates. The County will file whatever other documents may be reasonably required by the Trustee and PNC regarding the amendment of the MDAD and DERM Claims.

Agreement Regarding a Portion of Building 863

10. A portion of Building 863 contains certain jet engines and other related personal property (collectively, the "Customer Engines") belonging to customers (the "Customers") of the Debtors. No lease or license agreement exists between such Customers and MDAD. Until such time as arrangements satisfactory to MDAD have been made between such Customers or PNC addressing storage of the Customer Engines for the period from October 1, 2010 through removal, MDAD reserves the right to exclude access by PNC or the Customers to Building 863.

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In the event that PNC pays any fees in respect of any Customer's use of Building 863 (such fees, the "Storage Fees") it will be at a rate to be agreed upon by PNC and MDAD. To the extent AH pays MDAD rent for the Premises that are also subject to the use to store the Customer Engines and to the extent MDAD separately collects a storage fee from PNC for such portion of the leased Premises, MDAD and AH shall discuss any credit due to AH as a result of MDAD's collection of a storage fee for that portion of AH's leased premises used to store the Customer Engines. MDAD agrees not to pursue PNC for any rent claims arising after October 1, 2010 other than the aforementioned Storage Fees. Nothing in this paragraph ten shall be deemed to create any liability or obligation, pecuniary or otherwise, of the Trustee or Chapter 7 estates.

11. Notwithstanding any contrary terms in this Agreement, PNC releases and discharges the County and MDAD from any claim PNC may have arising out of damage to or destruction of any of the personal property stored in Building 863 over which PNC has a legal, equitable, or possessory interest, except to the extent of any damage or destruction arising out of the sole active negligence of the County.

12. PNC agrees that, prior to removal, it will use all commercially reasonable best efforts to cause any person removing Customer Engines from building 863 to sign an agreement indemnifying and holding the County and MDAD harmless from any damage to or destruction of Building 863 or any portion thereof caused by the removal of personal property stored therein.

13. In full satisfaction of the July 2010 Rent Claim, PNC agrees to convey to the County its right to receive 49% of the net proceeds of preference actions (such right, the "Avoidance Action Recoveries") from the Estate, provided that, to the extent that the amount of Avoidance Action Recoveries exceed the July 2010 Rent Claim (such excess, the "Excess Proceeds"), the County shall refund to PNC or allow PNC to be paid from such Excess Proceeds an amount equal to all Storage Charges paid by PNC pursuant to Section 10 of this Agreement.

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14. Effective as of the time DERM files the Subsequent DERM Filing discussed in paragraph 8 above, the Trustee, for itself and on behalf of the Chapter 7 estate, releases the County, its executives, employees and departments (including, but not limited to, MDAD and DERM) from any claim the Trustee and Chapter 7 estates have or may have arising out of (i) its or their use of Buildings 863 and 703A and (ii) the bankruptcy proceedings, including any preference claims that the Trustee, and the Chapter 7 estate have or may have against the County.

15. Effective as of the time DERM files the separate document discussed in paragraph 8 above, the Trustee, to the extent he has authority to bind the Debtors (if any), releases the County, its executives, employees and departments (including, but not limited to, MDAD and DERM) from any claim the Debtors have or may have arising out of (i) its or their use of Buildings 863 and 703A and (ii) the bankruptcy proceedings, including any preference claims that the Debtors have or may have against the County.

16. The language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against any of the Parties.

17. All terms and conditions of this Agreement shall be binding upon the undersigned parties, their respective successors and assigns.

18. This Agreement shall be effective upon execution by the parties, and subject only to approval by the United States Bankruptcy Court for the District of Delaware (the "Court"), and any necessary approval by the Board of County Commissioners. After the parties to this Agreement have executed this document, MDAD and/or DERM will take all necessary steps to request approval by the Board of County Commissioners. After the parties to this Agreement have executed this document, the Trustee undertakes to draft and file a motion to seek Court approval. If, for any reason, this Agreement is not approved by the Court, the Agreement and all

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of its terms shall be deemed null and void. The Court shall retain jurisdiction over the parties to hear and determine any matters or disputes arising from or related to this Agreement, and the parties acknowledge and consent to such jurisdiction.

19. Each person signing this Agreement represents and warrants that he/she has been duly authorized and has the requisite authority to execute and deliver this Agreement on behalf of the stated party and to bind his/her respective client to the terms and conditions of this Agreement, except that neither the Trustee nor his counsel make any representation or warranty whatsoever concerning the ability of the Trustee to bind the Debtors.

20. The Settlement Agreement may be executed in several counterparts, each of which shall be an original, so that all of which taken together shall constitute one and the same instrument. Facsimile signatures hereon or .pdf signatures sent by electronic mail shall be acceptable and deemed binding as if originals.

IN WITNESS WHEREOF, the parties hereto have caused this Settlement Agreement to be executed by duly authorized representatives thereof.

The Chapter 7 Estate of
AEROTHRUST CORPORATION

BY: _____ Trustee
Jeoffrey L. Burtch, Trustee

DATE: 4/6/11

PNC BANK

BY: _____

TITLE: _____

DATE: _____

MIAMI-DADE COUNTY, FLORIDA
Aviation Department

BY: _____

TITLE: _____

DATE: _____

MIAMI-DADE COUNTY, FLORIDA
Department of Environmental Resources Management

BY: _____

TITLE: _____

DATE: _____

AEROTHRUST HOLDINGS LLC.

BY: _____

TITLE: CEO

DATE: April 4, 2011

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