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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

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

Resolution No. R-1236-09

Date: November 3, 2009

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

From: George M. Burgess
County Manager

Subject: Second Amendment to Amended and Restated Development Lease Agreement between Miami-Dade County and AA Acquisitions, LLC

Recommendation

It is recommended that the Board approve the attached Second Amendment to the Amended and Restated Development Lease Agreement between Miami-Dade County and AA Acquisitions, LLC (AA) for premises at Opa-locka Executive Airport (OPF) to incorporate Ferrell Hangar Group, LLC, lease premises into AA's Lease Agreement, and extend AA's development schedule and phasing plan.

Scope

OPF is located within Commission District 1.

Fiscal Impact/Funding Source

AA's development schedule and rent payments resulting from the development will be extended for the period of time approved in the Second Amendment; however, there will be no interruption in AA's rent payments for the premises involved in the former Fightertown lease that was purchased by Ferrell.

Track Record/Monitor

AA Acquisitions rent payment performance has been satisfactory.

Background

On March 22, 2007, the Board approved the Amended and Restated Development Lease Agreement (ARDLA) with AA in Resolution R-310-07. The ARDLA covers 240 +/- acres at OPF, and requires AA to use, occupy, and develop the premises.

On July 24, 2007, the Board approved the First Amendment to the AA Agreement in Resolution R-922-07, so as to (i) assist Miami Executive Aviation (MEA), a neighbor of AA, by increasing MEA's leasehold premises by an additional 5,600 square feet of land taken from AA's premises needed for MEA's storage hangar facility development, and decreasing the AA leasehold by the same 5,600 square feet of land, (ii) approve AA's acquisition of all interests of Ferrell Hanger Group, LLC (Ferrell), the successor to the Fightertown, Inc., lease, and (iii) amend the Ferrell lease so as to permit AA to operate a fixed-base operation within the Ferrell leasehold site.

AA and the Miami-Dade Aviation Department (MDAD) have been working closely together to bring about the proposed significant development that will be occurring on AA's leasehold site. Several inter-related matters have occurred that call for the amendment of the AA and the Ferrell Hangar Group leases.

First, as a result of AA's acquisition of the interests of Ferrell, AA desires to add the premises covered by the Ferrell lease directly into the premises of AA's lease and terminate

the Ferrell lease as of the effective date of this agreement. MDAD agreed, provided that AA continue to pay fair market rents for the land on the Ferrell premises until improvement rents are due by the terms of the Ferrell lease, at which time AA shall pay both fair market land and improvement rents as periodically determined by the County. AA shall continue to be responsible for any and all obligations arising under the Ferrell lease prior to the effective date of the ARDLA and throughout the remaining term of the ARDLA. Furthermore, the inclusion of the Ferrell premises into the AA Agreement shall not impact AA's development schedule pursuant to the lease.

Secondly, because AA has incurred delays caused by events beyond its control, such as resolution of sub-tenant issues with pre-existing tenants on the premises, and delays caused by rezoning efforts, AA and MDAD desire to extend the development schedule and phasing plan of AA's Agreement. This requires amending Articles 2.06 (C) and 4.01(E) of the ARDLA so as to extend the time at which minimum rent payments for aviation parcels are due by thirty (30) months, amending Article 2.11 (B) so as to extend the time for taking back the undeveloped portion of the premises by thirty (30) months, and amending Exhibit "C" (attached) as to the extension of the specific development schedule.

Assistant County Manager

MEMORANDUM
(Revised)

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

DATE: November 3, 2009

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

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

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**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(A)(1)(F)
11-3-09

RESOLUTION NO. **R-1236-09**

RESOLUTION APPROVING SECOND AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT LEASE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND AA ACQUISITIONS, LLC; AUTHORIZING MAYOR OR DESIGNEE TO EXECUTE SUCH SECOND AMENDMENT AND TO EXERCISE THE TERMINATION PROVISIONS THEREOF

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 Second Amendment to the Amended and Restated Development Lease Agreement between Miami-Dade County and AA Acquisitions, LLC, and authorizes the Mayor or designee to execute such Second Amendment and to exercise the termination provisions thereof.

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

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

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

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of November, 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: **DIANE COLLINS**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.
Thomas P. Abbott

SECOND AMENDMENT
TO
AMENDED AND RESTATED DEVELOPMENT LEASE AGREEMENT
BETWEEN
MIAMI-DADE COUNTY, FLORIDA
AND
AA ACQUISITIONS, LLC

This Second Amendment ("Second Amendment") to that certain Amended and Restated Development Lease Agreement dated as of March 22, 2007 ("Agreement") between Miami-Dade County, Florida ("County") and AA Acquisitions, LLC ("AA") is entered into as of this _____ day of _____, 2009, by and between the County and AA,

Whereas, by Resolution No. R-310-07, the Board of County Commissioners of the County (the "Board") approved the Agreement for AA's use, occupancy, and development of a certain portion of Opa-locka Executive Airport ("OPF"); and

Whereas, by Resolution No. R-922-07, adopted on July 24, 2007, the Board approved the First Amendment to the AA Agreement so as to (a) remove approximately 5,600 square feet from the leasehold premises under the Agreement and add such square footage to the leasehold premises of an adjoining tenant by the name of Miami Executive Aviation, Inc. , (b) approve AA's acquisitions of the interests of a certain existing tenant at OPF by the name of Ferrell Hangar Group, LLC ("Ferrell"), the successor in name to Fightertown, Inc., and (c) amend the Ferrell lease (the "Ferrell Lease") so as to permit AA to engage in fixed base operations on the Ferrell leasehold site; and

Whereas, as a result of AA's purchase of the interests of Ferrell, the County has agreed that (a) effective as of the effective date of this Second Amendment, the Ferrell

6

Lease Premises shall be added to the Premises currently contained in the Agreement, (b) the Ferrell Lease shall terminate as of the effective date of this Second Amendment and AA's rights and obligations as to the Ferrell Premises shall be determined thereafter in accordance with the Agreement, except that AA shall continue to pay fair market value land rents as determined under the Ferrell Lease until such time as the Ferrell Lease would have expired by its terms, at which time and throughout the remaining term of the Agreement AA shall commence paying fair market value land rent and fair market value improvement rent for the Ferrell Premises as periodically determined by the County, and (c) the inclusion of the Ferrell premises shall have no impact on the level of "Anticipated Development and Construction Costs," as defined in Section 2.06(C) of the Agreement, required to be made by AA, nor shall inclusion of the Ferrell premises be counted towards, or cause any change in, the Minimum Rent required to be paid by AA under Section 2.06(C) and 4.01(E) of the Agreement ; and

WHEREAS, because AA has incurred certain unanticipated delays in the initial development of the Premises due to, among other things, delays associated with resolution of sub-tenant issues with pre-existing tenants on the Premises and delays caused by rezoning efforts at the Airport, the parties desire to extend certain of the development and rental adjustment dates provided in the Agreement;

NOW THEREFORE, in consideration of the foregoing premises and of the mutual covenants and agreements herein contained, the parties agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are incorporated into this Second Amendment as if fully set forth herein.

2. **Confirmation of Agreement Date.** The parties agree and confirm that the Agreement is dated as of March 22, 2007, and that the "Effective Date" of the Agreement is therefore March 22, 2007.

3. **Inclusion of Ferrell Lease Premises Into Agreement.** The parties agree that, effective as of the Effective Date of the Agreement, the following shall apply regarding the Ferrell Lease:

a. The Agreement is hereby amended to reflect the addition of the premises covered by the Ferrell Lease into the premises of the Agreement. The Ferrell Lease Agreement shall no longer apply as of the effective date of this Second Amendment, and the terms of AA's Agreement shall thereupon apply to the Premises;

b. AA shall continue to have the right to operate a Fixed Base Operation including from the former Ferrell Premises, with such operations to be conducted in accordance with all applicable federal, state, and County regulations and requirements, and with MDAD's Minimum Standards, as all such regulations, requirements, and standards are amended from time to time;

c. AA shall be liable for all obligations arising out of the Ferrell Lease as of the effective date of such lease to and through the effective date of this Second Amendment, with AA becoming liable thereafter for obligations applying to the former Ferrell Premises as such obligations arise from the terms of the Agreement;

d. AA shall continue to be responsible for paying MDAD fair market value land rent for the former Ferrell Premises, as such fair market value is established from time to time under the terms of the former Ferrell Lease. In addition, effective as of the day following the date that the Ferrell Lease would have expired, AA shall be

responsible for paying MDAD fair market value land rent as well as fair market value improvement rent on all improvements on the Ferrell Premises whose titles revert to the County under the terms of the Ferrell Lease, with such fair market value rents for land and improvements on the Ferrell Premises to continue throughout the duration of the Agreement. Fair market value improvement rents shall be established periodically in the manner established from time to time by the County for improvement rents on all parcels of the Airport;

e. A default by AA arising out of its use of the former Ferrell Premises shall be treated in the manner of a default for any portion of the Premises under the AA Agreement as currently provided in such Agreement; and

f. The inclusion of the Ferrell premises into the AA Agreement shall have no impact on the level of "Anticipated Development and Construction Costs," as defined in Section 2.06(C) of the Agreement, required to be made by AA, nor shall the inclusion of the Ferrell premises be counted towards, or cause any change in, the Minimum Rent required to be paid by AA under Section 2.06(C) of the Agreement.

4. **Extension of Development Schedule and Phasing Plan.**

a. Exhibit "C" of the Agreement entitled "Development Schedule and Phasing Plan," is hereby deleted and replaced with Exhibit "C" attached to and made part of this Second Amendment.

b. The provisions of the Agreement relating to the time at which Minimum Rent payments for Aviation Parcels shall be payable shall be extended by thirty (30) months (which is two and one-half (2 ½) years), to be effected by omitting the last sentence of Section 2.06(C) of the Agreement and replacing it with the following:

In furtherance thereof Lessee has agreed that not less than 33% of the total Land Rent for the Aviation Parcels shall be payable commencing following seven and one-half (7 ½) years (which is ninety (90) months) after the Effective Date, not less than 66 2/3% of the total Land Rent for the Aviation Parcels shall be payable commencing following twelve and one-half (12 ½) years (which is one hundred fifty (150) months) after the Effective Date, and 100% of the total Land Rent for the Aviation Parcels shall be payable commencing following seventeen and one-half (17 ½) years (which is two hundred ten (210) months) after the Effective Date (collectively, the **"Minimum Rent"**).

c. The County's Recapture Rights contained in Section 2.11 of the Agreement shall be extended by thirty (30) months, to be effected by deleting the first sentence of Article 2.11(B) and replacing it with the following:

Additionally, if as of the commencement of the 11th year of the Term of this Lease, the Lessee has not then constructed the Improvements that were contemplated to be constructed on the Premises as of the end of seven and one half (7 ½) years (which is the ninetieth (90th) month following the Effective Date (to wit the construction of Improvements on Parcels constituting 1/3 of the Premises less Excluded Areas), then the Lessor shall have the right to take back from the then undeveloped portion of the Premises, a portion thereof not to exceed the amount equal to the difference between the portion of the Premises that was to have been improved with the construction of the Improvements by the end of such ninetieth (90th) month of the Term and the portion of the Premises which has then actually been improved with the construction of Improvements as of the date of the Recapture Notice (as defined below).

d. Article 4.01(E) is amended by deleting it in its entirety and replacing it with the following:

(E) **Minimum Rent:** Following the thirtieth (30th) month after the fifth (5th) full year of the Term, the Aviation Annual Land Rent and the Non-Aviation Annual Land Rent shall each be subject to the Minimum Rent as described in Article 2.06(C).

5. **No Other Effect on AA Agreement.** Except for the foregoing amendments of the Agreement, the Agreement and its First Amendment shall remain in full force and effect.

6. **Amendment Subject to Acceptance of the FAA.** This Second Amendment is subject to the review and acceptance of the FAA.

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to their Amended and Restated Development Lease Agreement to be executed by their appropriate officials and representatives, as of the date first above written.

BOARD OF COUNTY COMMISSIONERS OF
MIAMI-DADE COUNTY, FLORIDA

By: _____
County Manager

ATTEST: Harvey Ruvin,
Clerk

By: _____
Deputy Clerk

AA ACQUISITIONS, LLC, a Florida Limited
Liability Company

By: Adler KOPF Manager, LLC,
a Florida Limited Liability Company,
Its Manager

By: Adler KOPF Manager, Inc., a
Florida Corporation, its Manager

By: _____
Michael M. Adler
Printed name
President
Title

Opa Locka Airport
Lease Exhibit C (Amended)
Anticipated Development Schedule and Phasing

Phase 1 - Through Year 7 1/2	Construction Costs: Total Estimated Building Area Allowable under DRI Thresholds	% Estimated to be completed by end of Phase 1	Building Area to be constructed by end of Phase 1	Estimated Construction Costs	Estimated Infrastructure Costs	Total Estimated Costs	Land Rent: Total Land Area	Land Area Developed by end of Phase	% of Land Developed	County Land Rental Rate - Aviation relate use	Total Est County Land Rent	Pavement Area Rent: Existing Pavement Area	Existing Pavement Rent	Total Ramp Rent	Total Estimated County Rent
Airside International	287,000	0%	0	$ -	$ -	$ -	40.98	0.00	0%	$ 0.20	$ -	NA	NA	NA	$ -
Airside Commerce	666,448	15%	99,967	$ 7,497,540	$ 1,726,160	$ 9,223,700	66.65	10.00	15%	$ 0.20	$ 87,104	NA	NA	NA	$ 87,104.37
Airside Commons	286,966	50%	143,483	$ 10,761,225	$ 2,795,114	$ 13,556,339	38.57	19.29	50%	$ 0.20	$ 168,012	NA	NA	NA	$ 168,011.50
Landside Warehouses	280,000	50%	140,000	$ 10,500,000	$ 995,653	$ 11,495,653	18.53	9.26	50%	$ 0.20	$ 80,696	NA	NA	NA	$ 80,695.90
Airside Estates	147,760	50%	73,880	$ 5,541,000	$ 2,909,764	$ 8,450,764	14.52	7.26	50%	$ 0.20	$ 63,248	NA	NA	NA	$ 63,247.90
Buildings 101 and 102 (part of Airside International)	120,000	50%	60,000	$ 4,500,000	$ -	$ 4,500,000	2.30	1.15	50%	$ 0.20	$ 10,000	190,000	$ 0.25	$ 47,500.00	$ 10,000.00
Airside Village	197,669	0%	0	$ -	$ -	$ -	7.12	0.00	0%	$ 0.20	$ -	NA	NA	NA	$ -
Airside Park South (135th Street South)	382,000	0%	0	$ -	$ -	$ -	25.05	0.00	0%	$ 0.20	$ -	NA	NA	NA	$ -
Infrastructure	0	22%	0	$ -	$ -	$ -	36.73	8.03	22%	NA	NA	NA	NA	NA	NA
Totals	2,367,843	22%	517,330	$ 38,799,765	$ 8,426,690	$ 47,226,455	250.45	54.98	22%		$ 409,060			$ 47,500.00	$ 409,059.67
	36%						24%								

Phase 2 - Through Year 12 1/2	Construction Costs: Total Estimated Building Area Allowable under DRI Thresholds	% Estimated to be completed by end of Phase 2	Building Area to be constructed by end of Phase 2	Estimated Construction Costs	Estimated Infrastructure Costs	Total Estimated Costs	Land Rent: Total Land Area	Land Area Developed by end of Phase	% of Land Developed	County Land Rental Rate - Aviation relate use	Total Est County Land Rent	Pavement Area Rent: Existing Pavement Area	Existing Pavement Rent	Total Ramp Rent	Total Estimated County Rent
Airside International	287,000	25%	71,750	$ 5,381,250	$ 532,293	$ 5,913,543	40.98	10.24	25%	$ 0.20	$ 89,244	NA	NA	NA	$ 89,243.65
Airside Commerce	666,448	35%	233,257	$ 17,494,260	$ 4,027,706	$ 21,521,966	66.65	23.33	35%	$ 0.20	$ 203,244	NA	NA	NA	$ 203,243.53
Airside Commons	286,966	75%	215,225	$ 16,141,838	$ 4,192,670	$ 20,334,508	38.57	28.93	75%	$ 0.20	$ 252,017	NA	NA	NA	$ 252,017.25
Landside Warehouses	280,000	100%	280,000	$ 21,000,000	$ 1,991,305	$ 22,991,305	18.53	18.53	100%	$ 0.20	$ 161,392	NA	NA	NA	$ 161,391.80
Airside Estates	147,760	100%	147,760	$ 11,082,000	$ 5,819,528	$ 16,901,528	14.52	14.52	100%	$ 0.20	$ 126,496	NA	NA	NA	$ 126,495.80
Buildings 101 and 102 (part of Airside International)	120,000	100%	120,000	$ 9,000,000	$ -	$ 9,000,000	2.30	2.30	100%	$ 0.20	$ 20,000	380,000	$ 0.25	$ 95,000.00	$ 20,000.00
Airside Village	197,669	0%	0	$ -	$ -	$ -	7.12	0.00	0%	$ 0.20	$ -	NA	NA	NA	$ -
Airside Park South (135th Street South)	382,000	0%	0	$ -	$ -	$ -	25.05	0.00	0%	$ 0.20	$ -	NA	NA	NA	$ -
Infrastructure	0	45%	0	$ -	$ -	$ -	36.73	16.57	45%	NA	NA	NA	NA	NA	NA
Totals	2,367,843	45%	1,067,991	$ 80,099,348	$ 16,563,502	$ 96,662,849	250.45	114.41	46%		$ 763,148			$ 95,000.00	$ 852,392.23

Phase 3 - Through Year 17 1/2	Construction Costs: Total Estimated Building Area Allowable under DRI Thresholds	% Estimated to be completed by end of Phase 3	Building Area to be constructed by end of Phase 3	Estimated Construction Costs	Estimated Infrastructure Costs	Total Estimated Costs	Land Rent: Total Land Area	Land Area Developed by end of Phase	% of Land Developed	County Land Rental Rate - Aviation relate use	Total Est County Land Rent	Pavement Area Rent: Existing Pavement Area	Existing Pavement Rent	Total Ramp Rent	Total Estimated County Rent
Airside International	287,000	100%	287,000	$ 21,525,000	$ 2,129,170	$ 23,654,170	40.98	40.98	100%	$ 0.20	$ 356,975	NA	NA	NA	$ 356,975.40
Airside Commerce	666,448	100%	666,448	$ 49,983,600	$ 11,507,731	$ 61,491,331	66.65	66.65	100%	$ 0.20	$ 580,696	NA	NA	NA	$ 580,695.80
Airside Commons	286,966	100%	286,966	$ 21,522,450	$ 5,590,227	$ 27,112,677	38.57	38.57	100%	$ 0.20	$ 336,023	NA	NA	NA	$ 336,023.00
Landside Warehouses	280,000	100%	280,000	$ 21,000,000	$ 1,991,305	$ 22,991,305	18.53	18.53	100%	$ 0.20	$ 161,392	NA	NA	NA	$ 161,391.80
Airside Estates	147,760	100%	147,760	$ 11,082,000	$ 5,819,528	$ 16,901,528	14.52	14.52	100%	$ 0.20	$ 126,496	NA	NA	NA	$ 126,495.80
Buildings 101 and 102 (part of Airside International)	120,000	100%	120,000	$ 9,000,000	$ -	$ 9,000,000	2.30	2.30	100%	$ 0.20	$ 20,000	380,000	$ 0.25	$ 95,000.00	$ 20,000.00
Airside Village	197,669	100%	197,669	$ 14,825,175	$ 1,366,720	$ 16,191,895	7.12	7.12	100%	$ 0.20	$ 62,062	NA	NA	NA	$ 62,061.80
Airside Park South (135th Street South)	382,000	100%	382,000	$ 28,650,000	$ 4,453,480	$ 33,103,480	25.05	25.05	100%	$ 0.20	$ 218,236	NA	NA	NA	$ 218,235.60
Infrastructure	0	100%	0	$ -	$ -	$ -	36.73	36.73	100%	NA	NA	NA	NA	NA	NA
Totals	2,367,843	100%	2,367,843	$ 177,588,225	$ 32,858,161	$ 210,446,386	250.45	250.45	100%		$ 1,904,904			$ 95,000.00	$ 1,861,879.20