

Date: November 3, 2009

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

From: George M. Burgess
County Manager 

Subject: Resolution Approving First Amendment to Lease Agreement with MIA Perishables Center LLC (MIA Perishables), to Reduce Space and Request for Rental Credit totaling \$132,680.09, for Space at Bldg. 704 (former Bldg. 2121), Miami International Airport, Lease Agreement No. C-698

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

Resolution No. R-1237-09

Recommendation

It is recommended that the Board approve the accompanying resolution authorizing the First Amendment to Lease C-698 with MIA Perishables Center LLC. The Amendment allows i) the deletion of 5,711 square feet of non-air-conditioned warehouse space and land with airfield operations area (AOA) access in Building 704 from the lease agreement, retroactive to October 1, 2006, and a credit totaling \$132,680.09 to the Lessee for the space it surrendered in order to comply with Transportation Security Administration (TSA) regulations that took effect on that date, and ii) the administrative adjustment of the agreement in the event the Lessee exercises its right of first refusal on contiguous space in the same building.

Scope

Miami International Airport (MIA) is located primarily within District 6. However, the impact of this item is countywide in nature as MIA is a regional asset.

Fiscal Impact/Funding Source

The deletion of 5,711 square feet of warehouse and land will reduce annual revenues to the Miami-Dade Aviation Department (MDAD) by \$41,690.28. However, the Lessee has a right-of-first-refusal on 40,180 square feet of non-air-conditioned warehouse space. This Amendment reflects the diminution of the leasehold in order for the Lessee to comply with the new federal air-cargo security regulations.

Track Record/Monitor

MIA Perishables Center LLC has been a tenant at MIA since April 10, 2001, and employs 14 full-time employees. The Lessee's cargo handling business includes the importation, storage, marketing and distribution of cut flowers and produce. As of October 1, 2009, the tenant owed MDAD \$336,432. However, once the rent credit of \$132,680 contained in this item is applied to the amount owed to the Department, MIA Perishables will owe \$203,752, comprising of \$113,020 in disputed opportunity fees charges, \$29,662 in delinquency charges, and \$61,070 in rent and utilities. MDAD will continue to work with the tenant over the next 90 days in the hopes of resolving the disputed fees and other amounts owed. If the matter is not resolved in that period of time, MDAD will move to default the tenant.

Delegated Authority

The attached Resolution authorizes the Mayor or the Mayor's designee to execute the First Amendment to Lease Agreement C-698 with MIA Perishables Center LLC and execute the provisions authorized pursuant to the amendment.

Background

Pursuant to Resolution No. R-332-01, the Board approved a Lease Agreement between the County and Gelco International, S.A., relating to the design and construction of improvements and the leasing of Building 704 at Miami International Airport, for a term of ten (10) years. Shortly thereafter, the Board consented to the assignment of the Lease Agreement from Gelco to MIA Perishables Center LLC (MIA Perishables).

MIA Perishables assumption of the lease from Gelco was subject to the performance of all obligations and liabilities including the required 40-year recertification improvements of Building 704. However, in the midst of the recertification of the building, the tragic event of September 11 took place which sent the cargo business reeling and deeply impacted the company. Yet, MIA Perishables completed the 40-year recertification improvements in October 2003, having spent \$594,003 to recertify the building at a time when MDAD could not afford to do so.

The leased premises included 40,509 square feet of non-air-conditioned warehouse space with 5,711 square feet having access to the AOA. In May 2006, the Department of Homeland Security (DHS) through the TSA mandated new air cargo security measures effective October 23, 2006. The new mandate changed the way business was conducted in air cargo warehouses, particularly cargo facilities having access to the AOA, requiring among other things additional employee screening and cargo monitoring which in this case, MIA Perishables could not afford or did not need to operate its business. To resolve this issue, a compromise was reached by MIA Perishables and the TSA which allowed MIA Perishables to relinquish the portion of its leasehold with access to the AOA. MDAD agreed with this recommendation and installed a fence to partition-off the section of the premises with AOA access.

This amendment to delete the space that is no longer needed by MIA Perishables was delayed because concurrent with the TSA action, MDAD began negotiations with the Lessee on its future expansion plans, which would also affect the leased footprint. Essentially MIA Perishables wants to reconfigure its leased premises, deleting some of the currently leased space in favor of expanded space in a contiguous area on which it has a right of first refusal. The lease does not currently allow administrative modification, so Board action is also necessary and the Department wanted to take a single item to the Board. However, the expansion plan is temporarily on hold because of the current economic situation and the resolution of the disputed fees and delinquency.

Additionally, MDAD is seeking the right to administratively adjust the premises by letter adjustment as is done with Aviation Department Standard Leases in the event the Lessee exercises its right of first refusal on contiguous space in the building pursuant to Article 1.03 of Lease C-698.


Assistant County Manager



MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss **DATE:** November 3, 2009
and Members, Board of County Commissioners

FROM: R. A. Cuevas, Jr. **SUBJECT:** Agenda Item No. 8(A)(1)(G)
County Attorney *[Signature]*

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)(G)
11-3-09

RESOLUTION NO. R-1237-09

RESOLUTION APPROVING FIRST AMENDMENT TO LEASE AGREEMENT C-698 WITH MIA PERISHABLES CENTER LLC TO REDUCE SPACE AND REQUEST RENTAL CREDIT of BUILDING 704 (FORMER BUILDING 2121) AT MIAMI INTERNATIONAL AIRPORT; AND AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXERCISE ANY AND ALL OTHER RIGHTS THEREIN

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 hereby approves the First Amendment to Lease Agreement C-698 between Miami-Dade County and MIA Perishables Center LLC, to reduce space and request rental credit of Building 704 (former Building 2121) at Miami International Airport, in the form attached hereto and made a part hereof; authorizes the Mayor or his designee to execute same on behalf of the County; and authorizes the Mayor or his designee to exercise any and all other rights conferred therein.

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Resolution No. R-1237-09

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

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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.
David M. Murray

**FIRST AMENDMENT TO LEASE AGREEMENT C-698
BETWEEN MIAMI-DADE COUNTY, FLORIDA, AS
LESSOR, AND GELCO INTERNATIONAL, S.A.
(ASSIGNOR) AND MIA PERISHABLES CENTER,
LLC, (ASSIGNEE) AS LESSEE, MIAMI
INTERNATIONAL AIRPORT**

THIS AMENDMENT ("Amendment") made and entered into as of the _____ day of _____, _____, by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida ("County"), and GELCO INTERNATIONAL, S.A., a Nevada corporation (Assignor), and MIA PERISHABLES CENTER, LLC, (Assignee), a Florida Limited Liability company, authorized to do business in the State of Florida ("Lessee").

WITNESSETH:

WHEREAS, the Board of County Commissioners of Miami-Dade County, Florida consented to the assignment of that certain Lease Agreement, C-698 dated April 10, 2001 between Miami Dade County and Gelco International, S.A. (Gelco), for leasing the center bay portion of Building 2122 (704) at Miami International airport, from Gelco to MIA Perishables Center LLC, (MIA Perishables), and,

WHEREAS, the leased Premises include 40,509 square feet of non-air conditioned warehouse space with Airfield Operations Access (AOA), and

WHEREAS, on October 1, 2006, new federal regulations from the Transportation Security Administration (TSA), under CFR Parts 1544, 1546 and 1548 for air cargo, required additional access controls to air cargo facilities with AOA access, and

WHEREAS, Lessee elected to surrender that portion of its Premises with airfield access (AOA), comprising 5,711 square feet non air-conditioned warehouse space and land from the Lessee's premises, and

WHEREAS, effective October 1, 2006, the parties desire to amend the Lease retroactively to the date mandated by the TSA as set forth below, and

WHEREAS, the Department blocked access to 5,711 square feet of Premises under lease by the Lessee in accordance with TSA's deadline, and

WHEREAS, pursuant to Article 1.03 of that certain agreement C-698 dated April 10, 2001, the Lessee has Right of First Refusal of any portion of the remainder of the center bay, which right may be exercised through amendment of Articles 1.02 (Premises), and

WHEREAS, that certain Lease Agreement C-698 dated April 10, 2001 does not contain the standard lease provision allowing the Department to administratively adjust the leased Premises for any purpose;

WHEREAS, the parties desire to amend the agreement to reflect the Lessee's loss of use and occupancy of space retroactive to October 1, 2006;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants herein contained, the parties hereto agree to amend Lease Agreement C698 as follows:

1. The foregoing recitals are true and correct and are incorporated herein in their entirety.
2. This Amendment shall be deemed a part of, but shall take precedence over and supersede any provision to the contrary contained in the Lease.
3. The Lease is hereby amended to delete Articles 1.02 and 1.03 in their entirety and replace them as follows:

1.02 Premises: The premises leased herein are in Building 2121/704, at Miami International Airport ("Airport") and are more particularly described as follows and as shown on Exhibit A dated October 1, 2006, attached hereto and made a part hereof ("Premises"). Those premises are comprised of the following: :

Building 2121/704

- 34,798 square feet Non air-conditioned Warehouse
- 2,985 square feet Loading Dock/Support Space
- 1,988 square feet A/C Office
- 39,771 square feet Land

If the Lessee exercises the Lessee's Right of First Refusal, as described in Article 1.03 herein, this Article 1.02 shall be administratively adjusted to include the additional Premises as shown as "Vacant" on Exhibit A. The aggregate the premises and the additional premises comprises:

Building 2121/704

- 34,798 square feet Non air-conditioned Warehouse
- 40,180 square feet Non air-conditioned Warehouse (Right of First Refusal)
- 2,985 square feet Loading Dock/Support Space
- 1,988 square feet A/C Office
- 79,951 square feet Land

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1.03 Right of First Refusal: Lessee shall have the Right of First Refusal of any portion of the remainder of the center bay of Building 2121/704 as shown as "Vacant" on Exhibit A. If a prospective tenant of the County desires all or any portion (the "Portion") of such property, the County shall first make such desired portion available to the Lessee. The Lessee shall have (30) days to indicate its exercise of the Right of First Refusal, which shall be set forth in writing to the County not later than the thirtieth (30th) day of receipt of County's notice. If the Lessee exercises such right, the Portion shall be added to Exhibit "A" and incorporated into this Agreement by administrative adjustment to Articles 1.02 and 3.01 for the remainder of its term. All terms of this Agreement shall apply to such Portion.

All other terms, covenants and conditions contained in the said Lease Agreement No. C-698 not inconsistent herewith, shall remain in full force and effect.

4. Lessee shall be provided a rental credit retroactive to October 1, 2006 for 5,711 square feet non air-conditioned warehouse space in the amount of \$32,838.25, which is computed as follows: 5,711 sq. ft. non air-conditioned warehouse space at \$5.75 per square foot.

Additionally, the Lessee shall be provided a rental credit for 5,711 sq. ft. land, retroactive to 2006 at the rate for which shall be adjusted annually to account for land rate increases for years 2007 through 2009, through the effective date of this amendment. This rental credit shall be the sole and only credit due to Lessee for issues related to the Lease through the date of execution of this Agreement, including but not limited to, issues relating to loss of space by Lessee due to actions of TSA. By accepting this credit, Lessee waives and disclaims any claims it has or may have against Lessor, at law or at equity, through the date of this agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials 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

(SEAL)

LESSEE: **MIA PERISHABLES CENTER,
LLC**

By: _____
Managing Member

DANIEL E. GELFMAN

Print Name

ATTEST:

Corporate Secretary

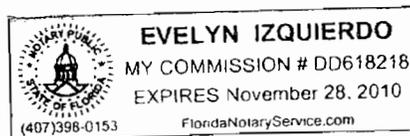
Evelyn Izquierdo

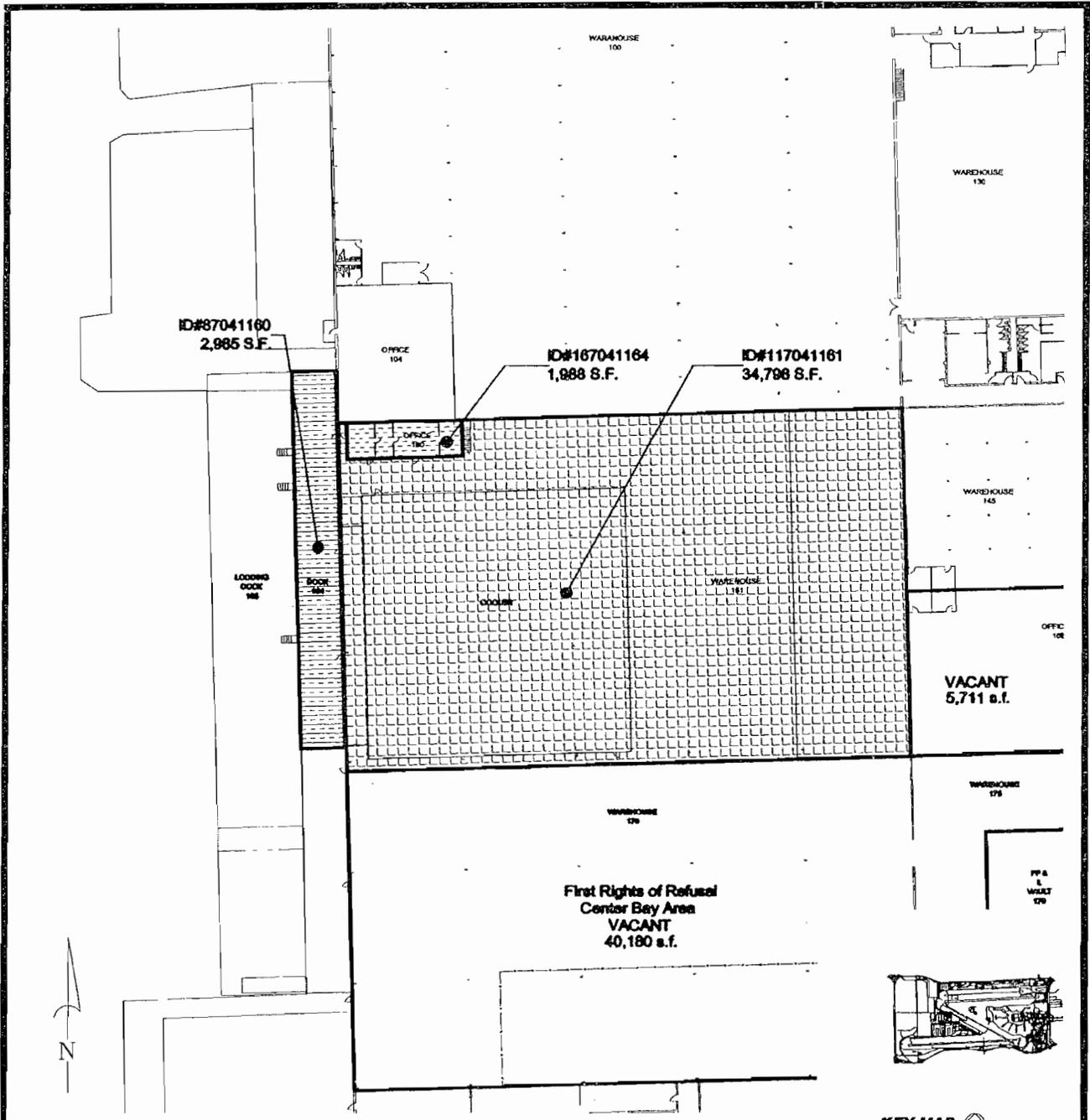
Print Name

Approved as to form
and legal sufficiency

Assistant County Attorney

(CORP. SEAL)





BLDG.# 704 - First Floor

KEY MAP

CODE:	SPACE CLASS	SQ. FT.
	A/C Office space	1,988
	Support space	2,985
	NON A/C Warehouse space	34,798
		<hr/> 39,771

MIAMI DADE
 AVIATION DEPARTMENT
 MIAMI INTERNATIONAL AIRPORT

EXHIBIT A
GELCO INTERNATIONAL
SA

SCALE: 1/64" = 1'-0" EFS #: M9384H7 DATE: 10/1/2006