

Memorandum



Date: July 14, 2015

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

Agenda Item No. 14(A)(13)

From: Carlos A. Gimenez
Mayor

Subject: Resolution Approving Third Amendment to Amended and Restated Development Lease Agreement with AA Acquisitions, LLC for Premises at Miami-Opa locka Executive Airport

Resolution No. R-650-15

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the attached Third Amendment to the Amended and Restated Development Lease Agreement with AA Acquisitions, LLC (AA) for premises at Miami-Opa locka Executive Airport (OPF). The amendment primarily alters the formula for determining land rents applicable to parcels developed for non-aviation uses to enable AA to attract non-aviation tenants to its premises.

SCOPE

OPF is located primarily within Commissioner Barbara J. Jordan's District 1; however, the impact of this agenda item is countywide as OPF is a regional asset.

DELEGATION OF AUTHORITY

In accordance with Section 2-8.3 of the Code of Miami-Dade County requiring identification of delegated authority, the Mayor or designee has the authority under the leases to (i) terminate the Agreements for any breach; (ii) approve any assignment or subletting of the premises; and (iii) reduce acreage or the leasehold term for the lessee's failure to timely or completely construct the required improvements.

FISCAL IMPACT

AA currently pays the Miami-Dade Aviation Department (MDAD) monthly rent of \$102,002.00. In addition, AA must invest a minimum of \$162,900,000.00 for design and construction of aviation and non-aviation facilities on the premises. It has currently spent more than \$60 million.

TRACK RECORD/PROJECT MONITOR

AA has an excellent track record of rental payments. The lease agreement will be monitored by MDAD's Business Development Coordinator Maria Anon.

BACKGROUND

Pursuant to Resolution No. R-310-07, on March 22, 2007, the Board approved the Amended and Restated Development Lease Agreement (ARDLA) with AA. The ARDLA, which covers 200 +/- acres at OPF, requires AA to use, occupy, and develop the premises for both aviation and non-aviation purposes; and limits non-aviation uses to 50 percent of the premises.

On July 24, 2007, the Board approved the First Amendment to the AA Agreement in Resolution R-922-07, (i) decreasing the AA leasehold by 5,600 square feet to provide its neighbor Miami Executive Aviation (MEA) an additional 5,600 square feet of land needed for MEA's storage hangar facility development; (ii) approving AA's acquisition of all interests under the Fightertown development lease, then held by the Ferrell Hangar Group, LLC; and (iii) amending the Ferrell lease to permit AA to operate a fixed base operation on the leasehold site.

Pursuant to Resolution R-1236-09, on November 3, 2009, the Board approved the Second Amendment to incorporate the Ferrell Hangar Group lease premises into AA's Lease Agreement and to extend AA's development schedule and phasing plan by 30 months.

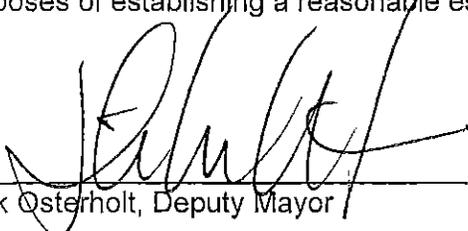
The Third Amendment primarily concerns the formula for establishing rental rates for what are called "non-aviation" parcels. It does not affect land rents for "aviation" parcels such as those used for hangars, fixed base operations, and other uses generally associated with aircraft. AA and its competitors must continue to pay full fair market value rents for aviation parcels as determined annually by an appraiser. As to non-aviation parcels, however, such as warehouses, office buildings, and improvements not associated with aircraft, the rental rate formula will be amended.

Under AA's original lease, the initial land rent applicable to a non-aviation improvement was based on the appraised fair market rent value as of the date of completion of the improvement. That appraised value would then continue for a five-year period, subject to a flat three (3) percent increase in each of the five (5) years. At the end of the fifth year, each parcel would be re-appraised to the then-current fair market value and that re-appraised value would be the basis for the next five (5) years rent payments.

Developers like AA cannot attract a sub-tenant for non-aviation purposes unless (i) there is considerable certainty as to the level of rent that the tenant must pay during a long-term sub-lease period; and (ii) the non-aviation rents that an AA sub-tenant is expected to pay cannot be considerably greater than the non-aviation land rents offered by other developers at the Airport. On this latter point, one (1) developer at the airport has a development lease agreement that identifies the non-aviation land rent to be applied starting at \$0.31 per square foot as of 2008 and increases annually thereafter in an amount not to exceed three (3) percent per year or 7.5 percent every three (3) years. AA's lease, however, states that the non-aviation rent is determined at the time of completion of a non-aviation facility (an unknown future amount) and thereafter is adjusted by a flat three (3) percent increase each year for five (5) years but adjusted further at the end of each five-year period to the then-current fair market value.

AA's lease formula for adjusting non-aviation rents does not allow AA to attract sub-tenants. A similar formula applies to the development lease agreement with another major developer that has also stated that it is unable to attract tenants because of the uncertainty associated with estimating future rents. Therefore, AA and any other developer with such a formula cannot tell a prospective sub-tenant: what its rent payment will be at the time of completion of the improvement; what the rate will be for the first five-year period; and what the rent payments will be in total over the life of the proposed sub-lease. Without the ability to project future rents at any stage of the proposed sub-lease, AA and other developers with similar land rent formulas cannot attract sub-tenants.

The Third Amendment seeks to correct this uncertainty. Apart from incidental changes and clarifications to the ARDLA, the thrust of the Third Amendment is the following: (i) non-aviation land rent is established at \$0.42 per square foot; (ii) this rate can be adjusted each year by reference to fair market values as determined through an appraiser; (iii) if AA or its sub-tenant completes a facility in a timely manner, the land rent will be that applicable at the time construction began, but such rent is then subject to annual increases capped at three (3) percent for the remainder of the sub-lease term. By establishing the formula in this manner, even though the precise amount of rent to be paid over the period of a prospective sub-lease cannot be determined, the limited nature of the annual increases is acceptable to the industry for purposes of establishing a reasonable estimate of future land rents.



Jack Osterholt, Deputy Mayor

A



MEMORANDUM
(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: July 14, 2015


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

SUBJECT: Agenda Item No. 14(A)(13)

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 Mayor'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. 14(A)(13)
7-14-15

RESOLUTION NO. R-650-15

RESOLUTION APPROVING THIRD AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT LEASE AGREEMENT BETWEEN MAIMI-DADE COUNTY AND AA ACQUISITIONS, LLC, FOR PREMISES AT MIAMI-OPA LOCKA EXECUTIVE AIRPORT; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SUCH THIRD AMENDMENT AND TO EXERCISE ALL RIGHTS CONTAINED THEREIN INCLUDING BUT NOT LIMITED TO THE TERMS OF THE LEASE AGREEMENT, INCLUDING THE TERMINATION PROVISIONS CONTAINED THEREIN, AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO PROVIDE A COPY OF THE AMENDMENT TO THE LEASE TO THE PROPERTY APPRAISER

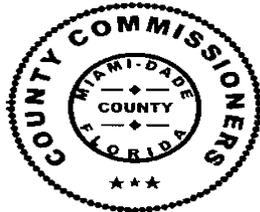
WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum and document, copies of which are incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the attached Third Amendment to Amended and Restated Development Lease Agreement between Miami-Dade County and AA Acquisitions, LLC, for premises at Miami-Opa Locka Executive Airport, and authorizes the County Mayor or County Mayor's designee to execute such Third Amendment and to exercise the terms of the Lease Agreement, including the termination provisions contained therein. The County Mayor or County Mayor's designee is hereby directed to provide to the Property Appraiser's Office an executed copy of the Third Amendment within 30 days of its execution.

The foregoing resolution was offered by Commissioner **Audrey M. Edmonson**, who moved its adoption. The motion was seconded by Commissioner **José "Pepe" Diaz** and upon being put to a vote, the vote was as follows:

	Jean Monestime, Chairman	aye	
	Esteban L. Bovo, Jr., Vice Chairman	absent	
Bruno A. Barreiro	aye	Daniella Levine Cava	aye
Jose "Pepe" Diaz	aye	Audrey M. Edmonson	aye
Sally A. Heyman	aye	Barbara J. Jordan	aye
Dennis C. Moss	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	aye	Xavier L. Suarez	aye
Juan C. Zapata	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 14th day of July, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **Christopher Agrippa**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Suzanne Villano-Charif

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

This Third Amendment ("Third 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 _____, 2015, 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 (now, the Miami-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, by Resolution No. R-1236-09, adopted on November 3, 2009, the Board approved the Second Amendment to the AA Agreement so as to (i) incorporate

into AA's leased premises the premises covered by the Ferrell Lease, and (ii) extend the development schedule and phasing plan of AA's Agreement resulting in minimum rent payments for aviation parcels being extended by thirty (30) months and amending the development schedule in Exhibit "C" of the Agreement accordingly; and

WHEREAS, Article 4.04 of the Agreement presently allows Non-Aviation and Aviation Annual Land Rent to be reduced if an appraisal determines that their fair market value ("FMV") is lower than the current land rent being paid by AA to the County, which needs to be amended to make it consistent with the policy of the County's Aviation Department ("**Department**") that a tenant's land rental rates can increase but not decrease, as well as to reflect that a rent cap applies to certain Non-Aviation Parcels; and

WHEREAS, under the Agreement, AA is at a disadvantage vis-à-vis another developer on OPF because the formula for determining AA's non-aviation rents due result in AA's non-aviation rents to be higher than the non-aviation rents payable by the other developer and AA has been unable to develop any of its Premises for non-aviation uses; and

WHEREAS, the Department has worked closely with the Federal Aviation Administration to amend the formula applicable to AA's non-aviation rent payments so as to allow AA to be able to develop a portion of the Premises for non-aviation uses; and

WHEREAS, the Department and Lessee agree that the Non-Disturbance provision in the Agreement should be amended to include Lessee's Sub-lessees in the provision;

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 Third Amendment as if fully set forth herein.

2. **Amendment of Parcel Definition.** Article 1.47 is deleted in its entirety and amended and restated as follows:

1.47 **Parcel:** An area of the Premises on which an Improvement or Improvements shall be constructed and such term shall include both Aviation Parcels and Non-Aviation Parcels, as applicable. A Parcel may include multiple Improvements. A Sub-lessee may, under a single Sub-lease, have multiple Parcels within the same Sub-lease.

3. **Amendment of Rentals Payable by Lessee.** Article 4.01 is deleted in its entirety and amended and restated as follows, including the addition of a new article designated as Article 4.01(A):

4.01 **Land Rental:**

(A) **Computation of Rent:** Rental rates shall be established through an appraisal obtained annually by Lessor from a fully qualified, independent, and certified real estate appraiser meeting the requirements of Article 4.01(C)(1)(b) below. The appraisal for Aviation Parcels on the Premises shall be based on Lessor's then-current appraisal practices for appraising all Aviation property at the Airport, and the appraisal for Non-Aviation Parcels shall be conducted as if the Premises were one hundred eighty one more or less (181 +/-) contiguous acres of undeveloped land that may be developed for aviation use ("Aviation Parcels") or non-aviation use ("Non-Aviation Parcels") subject to Article 3.04, and shall exclude any increased value to the Premises attributable to any and all Improvements (including infrastructure and site work) constructed by Lessee or its Sub-lessees.

(B) **Aviation Parcels:**

(1) As annual Land Rent for the lease of the Aviation Parcels in any Section, the Lessee shall pay the Lessor, commencing separately as of the Rent Commencement Date, as defined below, as to each such Aviation Parcel, Aviation Annual Land Rent calculated on the square footage of the Aviation Parcels and the pavement areas of same, excluding from each of same any portion which constitutes Excluded Areas, based on the fair market value ("**FMV**") rental rate for aviation uses, which rental rate shall be determined, and subject to adjustment, annually based on an MAI Appraisal performed by Lessor's appraiser at Lessor's cost, utilizing comparables for Aviation uses at similar general

aviation airports throughout the State of Florida and other then-applicable MAI appraisal principles. Rent for the Aviation Parcels shall be subject to and be the same as Lessor's aviation rents for the Airport established from time to time through the Lessor's periodic appraisals of aviation use properties at the Airport that are generally made annually or as may be required by the FAA. Such rent consists of land and pavement rent and is collectively referred to herein as the "**Aviation Annual Land Rent**." For the 2014-2015 Fiscal Year of Lessor, the Aviation Annual Land Rent is in the amount of twenty-two cents (\$.22) for each square foot of land and five cents (\$.05) for each square foot of existing pavement (excluding land and pavement on areas constituting Excluded Areas), as determined for the entirety of the Airport and not on a Parcel by Parcel basis and not only for the entire Section of which any such Parcel is a part.

(2) Based on the appraisal process or the established rate for the entire Airport utilizing the prior Aviation Rent rate as set forth herein, the Aviation Rent can be increased or left intact, and the parties acknowledge that the amount set forth above as the current Aviation Annual Land Rent may change between the date of this Third Amendment and the **Rent Commencement Date** under Article 4.01(D) based on the appraisals conducted or rates established between the date of this Third Amendment and the Rent Commencement Date. If any appraisal shows a FMV Aviation Annual Land Rent rate for the succeeding period that is lower than the existing Aviation Annual Land Rent rate, Lessee shall continue to pay the existing rate. In the event of a disagreement between Lessee and Lessor as to the amount of the Aviation Annual Land Rent, Lessee shall be entitled to appeal to the Board and thereafter, following mediation under Article 12.06, below, (unless mediation was already utilized prior to appeal to the Board, or court action is required before mediation due to the statute of limitations, in which latter event the party required to file an action may do so and then participate in mediation without being in violation hereof) to seek court action. Aviation Annual Land Rent shall be payable in equal monthly installments in U.S. funds, and shall include applicable state sales taxes. Rental payments for the first and last month of the Term shall be prorated if such rent does not commence on the first day of the month. The Lessee shall not pay rent with respect to any portion of the Premises which is an Excluded Area, the size of which shall be determined by the New Survey, which shall be at Lessee's cost.

(C) **Non-Aviation Parcels:**

(1) As annual Land Rent for the lease of the Non-Aviation Parcels in any Section (the, "**Non-Aviation Annual Land Rent**"), the Lessee shall pay the Lessor, commencing separately as of the Rent Commencement Date, as defined in Article 4.01(D) below, as to each such Non-Aviation Parcel, excluding any portion which constitutes Excluded Areas, Non-Aviation Annual Land Rent calculated on the square footage of each of the Non-Aviation Parcels at the FMV rental rate for non-aviation uses, which FMV rental rate shall be determined as follows:

(a) For FMV rental rates based on appraised values, the FMV rental rate for the Non-Aviation Premises shall be based upon an appraisal performed on behalf of Lessor which considers the highest and best use of the non-aviation land. The initial non-aviation FMV rental rate for the Premises shall be forty-two cents (\$0.42) per square foot, which shall apply to any Parcel whose Rent Commencement Date commences in the Lessor's 2014-2015 Fiscal Year and which shall be adjusted annually as provided herein.

(b) The appraisals described in subsection (a) above shall be certified by a qualified, independent, real estate appraiser who is either a General Member of the Master Appraisal Institute ("MAI") or a Member of an appraisal institute whose reputation and membership criteria are not less than those of the MAI, as reasonably determined by Lessor, and who is licensed in the State of Florida ("Appraiser").

(2) Throughout the term of this Agreement, Lessee shall pay Lessor Non-aviation FMV rental rates based on appraisals performed annually or periodically by Lessor in accordance with the standards set forth in Article 4.01(A) and Article 4.01(C)(1)(b). If any appraisal shows a FMV rental rate for the succeeding period that is lower than the existing rate, Lessee shall continue to pay the existing rate. If any appraisal shows a FMV rental rate for the succeeding period that is higher than the existing rate, Lessee shall begin paying the higher rate on the effective date of such rate increase until the next rental adjustment date, but Lessee may be eligible for a three percent (3%) maximum increase in the Non-aviation FMV rental rate (the "Rent Cap") in accordance with the following:

(a) For any Improvement to be constructed by Lessee or a Sub-lessee, the Non-aviation FMV rental rate applicable to the Improvement as of (i) the date the building permit for the Improvement is obtained by the Lessee for a Lessee-constructed Improvement or (ii) as of the date of the sublease between Lessee and its Sub-lessee for Sub-Lessee's or a contractor's construction of the Improvement (the "**Land Rent Establishment Date**"), shall be used as the base rate. Thereafter, for a Lessee-constructed Improvement, if the Lessee completes its Improvement within two and one-half years (30 months) of the Land Rent Establishment Date as evidenced by a Temporary Certificate of Occupancy (TCO) or a Certificate of Occupancy (CO) for the Improvement, then the Non-Aviation FMV rental for the portion of the Parcel applicable to such Improvement on the Rent Commencement Date under Article 4.01(D) shall be the FMV rental rate applicable as of the Land Rent Establishment Date as increased thereafter by any increases in the appraisal rates during the intervening construction period but with each annual adjustment capped at 3%. Likewise, for a Sub-lessee-constructed Improvement, if the Sub-lessee completes its Improvement within three

(3) years (thirty-six months) from the date of the sublease as evidenced by a TCO or CO for the Improvement, then the Non-Aviation FMV rental rate on the Rent Commencement Date for the Sub-lessee's Non-Aviation Parcel shall be the FMV rental rate applicable as of the Land Rent Establishment Date but increased thereafter by any increases in the appraisal rates during the intervening construction period but with each annual adjustment capped at 3%.

(b) If either the Lessee or Sub-lessee fails to complete construction of an Improvement within the two and a half year period or three year period, respectively, the rent payable on the Rent Commencement Date for such Improvement shall be the non-aviation FMV rent applicable to the non-aviation portion of the Parcel on the Land Rent Establishment Date increased thereafter by any appraisal increases during the intervening construction period, without regard to the Rent Cap, unless such failure is due to a Moratorium or Other Delay as defined in Article 2.06(E), in which case the applicable time period shall be extended during such Moratorium or Other Delay. Such rental rate applicable on the Rent Commencement Date shall continue until the effective date of Lessor's next Non-Aviation rental rates for the Premises as determined under Article 4.01(A), and thereafter, any annual increases in the appraised non-aviation FMV rental rate applicable to the Improvement shall be subject to the Rent Cap. For purposes of clarity, if a Parcel contains multiple Improvements, each Improvement may have a different Non-Aviation rental rate based on differences in rental rates applicable on the Land Rent Establishment Dates and the Lessee's or Sub-lessee's failure to complete an Improvement within the time periods described herein.

(c) If any appraisal rate for a succeeding period of time is less than the FMV rental rate then being paid by Lessee or a Sub-lessee, the Lessee or Sub-lessee shall continue paying the higher existing rate.

(d) Upon any Improvement's achieving a Rent Cap in its annual Non-Aviation FMV rental rate increases, such Rent Cap shall apply to such Improvement for the duration of the Term of this Agreement.

(e) Lessee shall cause the above clauses to be inserted in all subleases, or any variation thereof, that appraises Sub-lessees of the rent provisions applicable to their subleases.

(3) If the Lessee disagrees with the FMV rental rate determined by the Lessor's appraiser for Non-Aviation uses, the Lessee may, at its expense, engage an MAI appraiser of its choosing to determine the FMV rental rate for non-aviation uses at the Airport utilizing the same appraisal standards as set forth

above. If the Lessee's appraiser determines that the FMV rental rate for non-aviation uses is lower than that determined by the Lessor's appraiser, and the parties cannot agree on a mutually acceptable rental rate for same, then, the two appraisers engaged by the Lessor and Lessee shall designate a third MAI appraiser, whose cost will be shared equally by Lessor and Lessee, which third appraiser shall determine the FMV rental rate for non-aviation uses at the Airport utilizing the same appraisal standards as set forth above, and the FMV rental rate determined by such third appraiser shall be binding on the parties, unless the parties mutually agree to the contrary.

(4) The Non-Aviation Annual Land Rent shall be payable in equal monthly installments in U.S. funds, and shall include applicable state sales taxes. Rental payments for the first and last months shall be prorated if such rent does not commence on the first day of the month. The Lessee shall not pay rent with respect to any portion of the Premises which is an Excluded Area.

(5) Notwithstanding the appraisal principles set forth in this Article 4.01, if the FAA determines that other then-applicable MAI principles should be utilized as a means of determining FMV rates for Aviation and Non-Aviation Parcels, Lessor's appraiser shall be entitled to utilize such principles to make such determinations, subject to Lessee's right to contest such appraisals.

(6) The cost of any appraisals required to be prepared in connection with the determination of any Rent that might be due under this Lease and any adjustments to same as provided in this Lease, shall be borne by Lessor except as provided in Article 4.01(C)(3).

(7) Lessor shall provide the FAA on an annual basis with Lessee's progress on its development schedule as such schedule is set forth on Exhibit C.

(D) **Rent Commencement Date:** The term "**Rent Commencement Date**" for Aviation Annual Land Rent shall separately commence as to each Aviation Parcel on the date that is the first day of the first month following the date on which the DBO occurs for the Improvement constructed by Lessee on such Aviation Parcel. The term "**Rent Commencement Date**" for purposes of Non-Aviation Annual Land rent shall separately commence as to each Non-Aviation Parcel on the date that is the first day of the first month following the date on which the DBO occurs for the Improvement constructed by Lessee on such Non-Aviation Parcel. The Rent Commencement Date for each of Non-Aviation and Aviation Annual Land Rent is subject to extensions as provided elsewhere in this Agreement.

(E) **Initial Annual Rent:** Notwithstanding the foregoing, the Lessee agrees that as of the date that is the first day of the first full month following the date that is eighteen (18) full months after the Effective Date (the "**Initial Annual**

Rent Commencement Date”), it will begin to pay Aviation Annual Land Rent and Non-Aviation Annual Land Rent hereunder in the aggregate annual amount of One Hundred Fifty-Seven Thousand Eight Hundred and 60/100 (\$157,800.60) Dollars (the “**Initial Annual Rent**”), which Initial Annual Rent shall be payable in monthly installments. Following the time that a DBO occurs for any Aviation Parcel or Non-Aviation Parcel, the Initial Annual Rent shall be reduced by the amount of the Aviation Annual Land Rent and/or Non-Aviation Annual Land Rent then payable, until such Initial Annual rent is fully eliminated by the obligation of Lessee to pay Aviation Annual Land Rent and/or Non-Aviation Annual Land Rent for the Parcels on which a DBO has occurred in an aggregate annual amount which is equal to or in excess of the Initial Annual Rent. Such initial Annual Rent is due and payable regardless of any moratorium, DRI, or other conditions leading to a delay or freeze of the time periods under this Lease, whether caused in whole or in part by Lessor or Lessee or a combination of the two or by any other party.

(F) **Minimum Rent:** Following 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).

4. **Amendment of Rental Rate Review Article.** Article 4.04 of the Agreement, entitled “Rental Rate Review,” is hereby omitted in its entirety from the Agreement and the following is inserted in its place:

4.04 **Rental Rate Review:** Effective as of October 1 of each year of this Agreement or such other date determined by Lessor on which non-aviation land rents are adjusted for all non-aviation parcels on the Airport, and except as to any Non-Aviation land hereunder subject to a Rent Cap as provided in this Article 4, the then-applicable Non-Aviation Annual Land Rent for each Non-Aviation Parcel shall be subject to adjustment based on the FMV rent of the land without any reference to the value of the Improvement or their use (which adjusted rent may be greater or equal to but not less than the then current Non-Aviation Annual Land Rent) as described in 4.01(C) above. Effective as of October 1 of each year of this Agreement or such other date determined by Lessor on which aviation land rents are adjusted for all aviation parcels on the Airport, the then applicable Aviation Annual Land Rent for each Aviation Parcel shall be subject to adjustment based on the FMV rent of the land or its established rate without any reference to the value of the Improvement or their use (which adjusted rent may be greater or equal to but not less than the then current Aviation Annual Land Rent) as described in 4.01(B)(2) above. The cost of any appraisals required to be prepared in connection with the determination of any Rent that might be due under this Lease and any adjustments to same as provided in this Agreement, shall be borne by Lessor except as provided in Article 4.01(C)(3).

5. **Amendment of Non-Disturbance Provision.** Article 12.08 is deleted in its entirety and amended and restated as follows:

12.08 **Non-Disturbance:** In addition to the foregoing Article 12.07, the Lessor specifically agrees that in the event of a Lessee default hereunder as it applies to a specific Parcel, the Lessor will not disturb the Lessee or any Sub-lessee's rights to occupy space sub-leased to it on any other Parcels to which a default does not apply so long as Lessee is remitting applicable Land Rent and Improvement Rent to Lessor in respect of such Sub-lessee's space. Additionally, Lessor shall not disturb or evict Lessee or Sub-lessee from, or declare Lessee or Sub-lessee in default of this Lease in respect of, any portion of the Premises upon which Lessee or Sub-lessee continues to timely pay applicable Land Rent and Improvement Rent and comply with other Lease provisions in respect of such portion of the Premises, notwithstanding that the Lessee may otherwise be in default of this Lease in respect of other portions of the Premises, inclusive of the failure to pay all rentals due in respect of such other portion of the Premises, and regardless of whether the Lease has been terminated as to any other portion of the Premises as a result of a default by Lessee. Lessee may provide notice to Lessor at the time of the remittance of its Rent payments due under this Lease, of the Sections or Parcels as to which such Rent is being paid (or conversely the portion of the Premises for which Rent is not then being paid if the Rent remitted is not the full Rent then due), and Lessor agrees that such notice shall be binding on Lessor in respect of this Article 12. The remedies provided in this Article 12 to Lessor in the event of a partial payment of Rent by Lessee, shall be limited to the Parcel(s) for which the Rent has not been paid or a default has occurred should Lessee give notice as aforesaid that such non-payment or partial payment is applicable to, or specifically excludes payment for, a specific Parcel or Parcels.

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

7. **Amendment Subject to Acceptance of the FAA.** This Third Amendment is subject to the review and acceptance of the FAA.

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to the 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: _____
Mayor or Mayor's Designee

ATTEST: Harvey Ruvin,
Clerk

By: _____
Deputy Clerk

AA ACQUISITIONS, LLC, a Florida Limited
Liability Company

By: AA Acquisitions Manager LLC, a Florida
Limited Liability Company

By: 

Stephen Gans
Its: Manager