

REQUESTED COMMISSION ACTION:

X Consent Ordinance X Resolution Consideration/ Discussion Presentation

SHORT TITLE A Resolution of the City Commission of the City of Pompano Beach, Florida, approving and authorizing the proper City Officials to execute a Closing Agreement among the City of Pompano Beach, Sheltair Pompano Beach, LLC, and the Commissioner of the Internal Revenue and a Consent To Disclose Tax Information relating to the Special Facility Airport Revenue Bonds; Providing an effective date. (NO COST)

Summary of Purpose and Why:

In 2008 the City of Pompano Beach (the City) issued Special Facility Airport Revenue Bonds, adjustable rate series 2008-D-1 (the Bonds) as a conduit for Sheltair Pompano Beach, LLC (Sheltair) to allow for the financing of certain improvements, on a tax exempt basis, to property leased by Sheltair at the Pompano Beach Airpark. Through a review process by Sheltair, an instance of non-compliance with Internal Revenue Code rules governing the issuance of the bonds was discovered. The instance of non-compliance relates to an IRS requirement that the bond proceeds for the acquisition of existing buildings, "rehabilitation expenditures" with respect to such buildings financed with the proceeds of the bonds must equal at least 15% of the portion of the cost of acquiring such buildings financed with the proceeds of the bonds, which rehabilitation expenditures must be incurred within 2 years after the later of (i) the date on which the buildings were acquired or (ii) the date on which the bonds were issued. In an effort to resolve such non-compliance, in December 2013, the City (as the issuer of the bonds) at the request of Sheltair, approved submission of a settlement request to the IRS under the Voluntary Compliance Agreement Program (the Request).

This Resolution is to approve and authorize a Closing Agreement between the City (as Issuer), Sheltair Pompano Beach, LLC (as the Borrower), and the Commissioner of the Internal Revenue, and a Consent to Disclose Tax Information relating to the Special Facility Airport Revenue Bonds. The Agreement outlines agreed upon penalties due the IRS by Sheltair as a result of the IRS's review of the instance of non-compliance.

Sheltair is 100% responsible for any and all costs, expenses and liabilities arising from any settlement agreement with the IRS.

- (1) Origin of request for this action: Finance Department
- (2) Primary staff contact: Suzette Sibble, Finance Director Ext. 4680
- (3) Expiration of contract, if applicable: NA
- (4) Fiscal impact and source of funding: NA

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Finance	12/29/14	Approval	S. Sibble
City Attorney	12/29/14	Approval	[Signature]
Budget	12-30-14	Approval	[Signature]

City Manager

ACTION TAKEN BY COMMISSION:

<u>Ordinance</u>	<u>Resolution</u>	<u>Consideration</u>	
<u>Workshop</u>			
1 st Reading	1 st Reading	Results:	Results:
2 nd Reading			



City Attorney's Communication #2015-352

December 15, 2014

TO: Suzette Sible, Finance Director

FROM: Gordon B. Linn, City Attorney

RE: Resolution – Closing Agreement and Consent Regarding Special Facility Airport Revenue Bonds

The above-referenced resolution is attached and captioned as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A CLOSING AGREEMENT AMONG THE CITY OF POMPANO BEACH, SHELTAIR POMPANO BEACH, LLC, AND THE COMMISSIONER OF THE INTERNAL REVENUE AND A CONSENT TO DISCLOSE TAX INFORMATION RELATING TO THE SPECIAL FACILITY AIRPORT REVENUE BONDS; PROVIDING AN EFFECTIVE DATE.

Please feel free to contact me if I may be of further assistance.

GORDON B. LINN

GBL/jrm
l:cor/finance/2015-352

Attachment

RESOLUTION NO. 2015-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A CLOSING AGREEMENT AMONG THE CITY OF POMPANO BEACH, SHELTAIR POMPANO BEACH, LLC, AND THE COMMISSIONER OF THE INTERNAL REVENUE AND A CONSENT TO DISCLOSE TAX INFORMATION RELATING TO THE SPECIAL FACILITY AIRPORT REVENUE BONDS; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That an Agreement among the City of Pompano Beach, Sheltair Pompano Beach, LLC, and the Commissioner of the Internal Revenue, and a Consent to Disclose Tax Information relating to the Special Facility Airport Revenue Bonds, copies of which are attached hereto and incorporated by reference as if set forth in full, are hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement and Consent.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2015.

LAMAR FISHER, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERK

CLOSING AGREEMENT ON FINAL DETERMINATION COVERING SPECIFIC MATTERS

Under section 7121 of the Internal Revenue Code of 1986, as amended (the "Code"), City of Pompano Beach, Florida EIN 59-6000411 (the "Issuer"), Sheltair Pompano Beach, LLC EIN (26-2939611) (the "Borrower"), and the Commissioner of Internal Revenue (the "IRS") make this closing agreement (the "Agreement").

WHEREAS, this Agreement is based on the following facts and representations:

- A. This Agreement is in settlement of issues raised in a request for a voluntary closing agreement pertaining to the \$6,880,000 City of Pompano Beach, Florida Special Facility Airport Revenue Bonds (Holland Sheltair Aviation Group — Pompano Beach Project), Adjustable Rate Series 2008D-1 (the "Bonds"), issued on December 22, 2008.
- B. The Issuer and Borrower make the following representations:
 1. The Bonds were Issued and sold under the representation to bondholders that the Bonds comply with all provisions of the Code such that interest on the Bonds is not included in the bondholders' gross income.
 2. The Bonds were issued to among other things finance the cost of the acquisition of a leasehold interest in existing airport facilities consisting of a fixed base operation facility whose first use was not pursuant to the acquisition.
 3. Rehabilitation expenditures of 15 percent of the portion of the cost of acquiring existing airport facilities financed with the net proceeds of the issue were not made within 2 years after the date on which the facilities were acquired. By December 21, 2010 the Borrower had completed \$354,139 of qualifying rehabilitation expenditures required by section 147(d) of the Code.
 4. Rehabilitation expenditures of more than 15 percent of acquisition expenditures were made by February 2013.
- C. Based on the representations of the Issuer and Borrower in paragraph B, the IRS has a basis to conclude that interest on the Bonds is not excludable from the bondholders' gross income pursuant to section 103(b) because the Bonds are nonqualified private activity bonds because a portion of the net proceeds of the Bonds were used to acquire existing property and the requirements for the exception provided in section 147(d)(2) of the Code were not met.
- D. The IRS has not formally asserted any claims against the Issuer or Borrower, or sought to tax interest on the Bonds.
- E. The Issuer, the Borrower and the IRS desire to resolve the violations described in paragraph C.

- F. The terms of this Agreement were arrived at pursuant to negotiation among the Issuer, the Borrower and the IRS and may differ from the settlement terms of other closing agreements.
- G. Payment of the Settlement Amount defined below shall be made from sources other than proceeds of bonds described in sections 103, 54A or 54AA of the Code.

NOW, IT IS HEREBY DETERMINED AND AGREED PURSUANT TO THIS AGREEMENT EXECUTED BY THE PARTIES HERETO UNDER SECTION 7121 OF THE CODE THAT FOR FEDERAL INCOME TAX PURPOSES:

1. Prior to the execution of this Agreement by the IRS, the Issuer shall cause to be electronically paid the sum of \$74,940.52 (Seventy Four Thousand Nine Hundred Forty Dollars and Fifty Two Cents) (the "Settlement Amount") to the U.S. Treasury via the Electronic Federal Tax Payment System and in accordance with the directions contained in Exhibit A of this Agreement.
2. The Settlement Amount is not refundable or subject to credit or offset under any circumstance.
3. The Settlement Amount or any portion thereof paid by or on behalf of the Issuer shall not be deductible or amortizable for federal income tax purposes by any person.
4. The Settlement Amount shall not be treated as income to any person benefiting from this Agreement.
5. The bondholders shall not be required to include interest paid on the Bonds in gross income because of the specific violation identified in paragraph C.
6. The IRS may take any appropriate action, including requiring bondholders to include interest paid on the Bonds in gross income, for any violation not specifically listed in paragraph C that has occurred or will occur with respect to the Bonds.
7. This Agreement is not based upon an examination of the Bonds by the IRS and does not preclude or impede an examination of the Bonds, the Issuer, the Borrower, or any Bondholder with respect to matters not addressed herein.
8. This Agreement may not be cited or relied upon by any person or entity whatsoever as precedent in the disposition of any other case.
9. This Agreement is final and conclusive, except that:
 - a. The matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of a material fact;
 - b. It is subject to sections of the Code that expressly provide that effect be given to their provisions notwithstanding any other law or rule of law; and

CLOSING AGREEMENT between/among City of Pompano Beach, Florida (EIN 59-6000411), Sheltair Pompano Beach, LLC (EIN 26-2939611), and the Commissioner of Internal Revenue

- c. If it relates to a tax period ending after the effective date of this agreement, it is subject to any law enacted after the Agreement date that applies to that tax period.

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CLOSING AGREEMENT between/among City of Pompano Beach, Florida (EIN 59-6000411), Sheltair Pompano Beach, LLC (EIN 26-2939611), and the Commissioner of Internal Revenue

By signing, the above parties certify that they have read and agreed to the terms of this Agreement.

ISSUER: City of Pompano Beach, Florida EIN: 59-6000411

By signing, I certify that I have the authority to execute this Agreement on behalf of Issuer

BY:

SIGNATURE

NAME (PLEASE PRINT)

TITLE

DATE

BORROWER: Sheltair Pompano Beach EIN: 26-2939611

By signing, I certify that I have the authority to execute this Agreement on behalf of Borrower

BY:

Gerald M. Holland, M.M.

SIGNATURE

Gerald M. Holland

NAME (PLEASE PRINT)

Managing Member + CEO

TITLE

1/5/15

DATE

COMMISSIONER OF INTERNAL REVENUE:

BY:

SIGNATURE

Karen A. Skinder, Acting Manager,
Tax Exempt Bonds Compliance & Program
Management

NAME AND TITLE

DATE

"CITY"

Witnesses:

CITY OF POMPANO BEACH (ISSUER)

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH
CITY MANAGER

Attest:

(SEAL)

MARY L. CHAMBERS
CITY CLERK

Approved As To Form:

GORDON B. LINN
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2015 by **LAMAR FISHER**, as Mayor, **DENNIS W. BEACH** as City Manager and **MARY L. CHAMBERS**, as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

Exhibit A

Taxpayer Information Worksheet for Electronic Federal Tax Payment System Deposit

This Agreement requires the electronic deposit of an amount to the U.S. Treasury through the Electronic Federal Tax Payment System (EFTPS) as a term for resolution of certain identified matters related to the tax-advantaged treatment of interest paid on a municipal obligation. This payment must be deposited in accordance with the directions contained herein.

Please carefully review the taxpayer information listed below and immediately report any errors to the IRS Tax Exempt Bonds employee assigned to your case. If, to the best of your knowledge, the information is correct, then please deposit all required payments through the EFTPS (either *EFTPS – Direct* or *EFTPS – Through a Financial Institution*) accurately and in accordance with this information and the terms of this Agreement.

1. Total Amount of Tax Deposit: \$74,940.52
2. Taxpayer's Employee Identification Number (EIN): 59-6000411
3. Taxpayer Name Control (4 characters): CITY
4. Taxpayer Name (up to 35 characters): City of Pompano Beach, Florida
5. Tax Type (5 characters): 80384
6. Tax Year (2 digits): 08
7. Tax Month (2 digits): 12

Your financial institution may call the EFTPS Financial Institution Helpline for questions or assistance at **1-800-605-9876** (Monday – Friday, 8:00 a.m. – 8:00 p.m., Eastern Standard Time).

NOTE: If you are not enrolled in *EFTPS – Direct* or *EFTPS – Through a Financial Institution*, or otherwise wish to use the Same Day Payment option, then please provide your financial institution with the information listed above and direct them to accurately deposit your payments utilizing the following routing and account numbers: **Note that the Receiving ABA/Routing Number, Receiving FI Name, Tax Type (under Beneficiary) and Beneficiary FI indicated below do not change.**

Receiving ABA/Routing Number: **091036164 FRB MPLS ETA**
Receiving FI Name: **US TREAS SINGLE TX**
Beneficiary: **59-6000411:CITY:Cityof PompanoBeach,Florida:80384:08:12**
Beneficiary FI: **20092900IRS**

If the financial institution has difficulty transmitting the EFTPS same-day payment, please call **1-800-382-0045** (Monday – Friday, 7:45 a.m. – 4:30 p.m. Central Standard Time) to receive assistance from a Customer Service Representative at the Minneapolis Federal Reserve Bank.

CONSENT TO DISCLOSE TAX INFORMATION

I hereby consent, pursuant to section 6103(c) of the Internal Revenue Code of 1986 (as amended), to the disclosure of return information (as defined in section 6103(b)(2)) relating to the Closing Agreement (Agreement) between City of Pompano Beach, Florida EIN (59-6000411) (the "Taxpayer"), Sheltair Pompano Beach EIN (26-2939611) (the "Borrower"), and the Commissioner of Internal Revenue pertaining to the \$6,880,000 City of Pompano Beach, Florida Special Facility Airport Revenue Bonds (Holland Sheltair Aviation Group — Pompano Beach Project), Adjustable Rate Series 2008D-1, executed by the Taxpayer on _____, as follows:

The Internal Revenue Service may disclose the existence and subject matter of the Agreement to the extent that the Internal Revenue Service deems necessary to correct any material misstatement with respect to the Agreement in response to a public statement by Taxpayer or Borrower, or an agent of Taxpayer or Borrower.

Such disclosure may be made to Members of Congress, the press, and the general public, and may be made by any means, including press releases and notices in Internal Revenue Service publications.

I am aware that in the absence of this authorization, the returns and return information of City of Pompano Beach, Florida are confidential and may not be disclosed except as authorized by the Internal Revenue Code.

I certify that I have the authority to execute this consent on behalf of Taxpayer.

Taxpayer Name: City of Pompano Beach, Florida

Taxpayer TIN: 59-6000411

Taxpayer Address: 100 West Atlantic Boulevard, Fourth Floor,
Pompano Beach, Florida 33060

By: _____

Title: _____

Signature: _____

Date: _____