

## APPENDIX C

FAA and City of Pompano Beach Memorandum of Agreement



**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 MEMORANDUM OF AGREEMENT BETWEEN THE FEDERAL AVIATION ADMINISTRATION AND THE CITY OF POMPANO BEACH; PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That a Memorandum of Agreement between the Federal Aviation Administration and the City of Pompano Beach, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement between the Federal Aviation Administration and the City of Pompano Beach.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 11th day of September, 2007.

  
\_\_\_\_\_  
LAMAR-FISHER, MAYOR

ATTEST:  
  
\_\_\_\_\_  
MARY E. CHAMBERS, CITY CLERK



**AGREEMENT  
BETWEEN  
THE CITY OF POMPANO BEACH  
AND  
THE FEDERAL AVIATION ADMINISTRATION**

**INTRODUCTION**

The City and the FAA entered into a 5-year operating agreement in 1992 regarding the operation of the Pompano Beach Airport (PMP) and use of the Airport premises for non-aviation purposes. The agreement provided for two additional 5-year extensions which were exercised by the City in 1997 and 2002. The existing operating agreement between the City and the FAA expires on September 30, 2007 and will not be renewed by the FAA in its current form.

There have been numerous discussions and correspondence for several years between the FAA and the City of Pompano Beach regarding the existing Airport Enterprise Fund agreement, dated July 28, 1992. The City and the FAA have previously discussed the uniqueness of the agreement and the advisability of continuing the agreement if other mutually agreeable financial arrangements could be developed. The future long term needs of the Airport in terms of size, operating costs and capital improvements are a concern to both the City and the FAA.

A Memorandum of Agreement has been negotiated between the City and the FAA to be effective on October 1, 2007 that will provide an agreement for the future operation of the Airport, establishes rental rates for the use of non-aviation parcels by the City and provides for the release of the deed restriction on certain parcels.

**BACKGROUND**

The Pompano Beach Airport is owned by the City of Pompano Beach, but is encumbered by a deed restriction for aeronautical use. The land was originally acquired from the citizens of Pompano Beach by the United States government through condemnation. In the United States District Court In And For the Southern District of Florida No. 791-M-Civil, the United States of America condemned 1036 acres for the Airport in Pompano Beach as a satellite field of the Naval Air Station in Fort Lauderdale. The land was to be used for an air operational training base. The Judgment for Taking was October 16, 1942 and was in favor of the US Navy in the amount of \$26,917. On Authority of James V. Forrestal, acting Secretary of the Navy, the runways were built and operational on June 14, 1943. The land was subsequently quit claimed to the City in 1947 with the aeronautical restrictions.

For several years, the City has been seeking the removal of the deed restrictions on land that is not in aviation use, has never been used for aviation purposes and is not projected to be needed for future aviation purposes. Clearly, several land parcels are no longer needed for the purposes they were acquired and it is obvious that the amount of the land was grossly in excess of what was needed at the time it was acquired and at the present. The removal of deed restrictions at the Airport is not unprecedented as there have been several past actions by FAA to remove the

deed restrictions. In 1960, the deed restrictions were removed from approximately 60 acres that were sold for the construction of the Pompano Square Mall. In 1964, the deed restrictions were removed on approximately 10 acres that were sold to the Elks Club. In 1965, the deed restrictions on approximately 14 acres were removed and the land was donated for the construction of the Pompano Beach Middle School. In 1994, the FAA approved the establishment of a 12 acre conservation easement without cost since the master plan indicated that the parcel was not needed for future aviation related purposes and that there was no potential for non-aviation revenue producing uses.

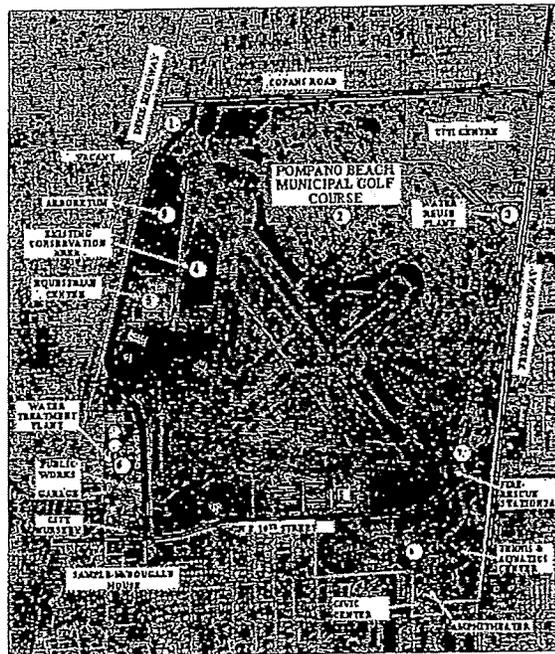
The existing agreement precludes the City from Joint Participation Agreements (JPAs) involving Federal funds for capital improvement costs. As a result of the existing agreement with the FAA, the State has unilaterally excluded the City from JPAs without regard to the agreement with the FAA that states that the City is not precluded from eligibility for State of Florida grants available through the Florida Department of Transportation and that the City shall maintain its right to apply and receive such grants. This action by the State was not anticipated nor contemplated when the City entered into the existing agreement.

Over the years, the City of Pompano Beach has been able to make beneficial use of certain properties at the Airport that have not been needed for aviation use. These uses have continued for many years and include the City Golf Course, Amphitheater, Civic Center, Community Park, Reuse Water Plant, Potable Water Plant, Nursery, Equestrian Center, Fire Station, Pine Scrub Conservation Easement and Public Works Complex. The City has a particular interest in these properties not currently used for aviation purposes. The Master Plan does not indicate the need for future expansion of the Airport beyond the current acreage in aviation use and it does not appear that the land in non-aviation use will be required for aviation purposes now or in the future.

EXHIBIT 1  
Pompano Beach Airport

A map of the Pompano Beach Airport is shown on Exhibit 1 and the various parcels of interest have been identified for reference and location.

Parcel	
1	Vacant
2	Golf Course
3	Water Reuse Plant
4	Conservation Area
5	Sand & Spurs
6	Public Works/WTP
7	Fire Station 24
8	Community Park
9	Arboretum



- PARCEL 1: This is a vacant parcel with the exception of a City well and well-house. It is anticipated that this parcel may be used in the future for park or nursery purposes or both. It has been discussed as a potential site for a dog park. The City does not project any future structures being constructed on this 10.7 acre parcel.
- PARCEL 2: This is the existing City Golf Course consisting of 36 holes. The future use for this 317 acre parcel is for the existing golf course. There are no planned changes in use or additions to the present use.
- PARCEL 3: This is the site of the City's reclaimed water plant. The plant has been expanded in recent years and future expansions are planned. There are no other future planned additional uses for this 4.2 acre parcel.
- PARCEL 4: This parcel is a conservation easement for a pine scrub stand. There are no planned additional future uses for this 12.4 acre parcel.
- PARCEL 5: This parcel contains the City's Sand and Spurs equestrian center. The City has refurbished the facility in recent years. There are no planned additional future uses for this 11.5 acre parcel.
- PARCEL 6: This parcel contains the City's Public Works complex, water treatment plant, nursery and central garage. The water treatment plant has been expanded to add a membrane treatment component. The area south of 10<sup>th</sup> Street is presently used as part of the City's nursery and the historic Sample-McDougald House. There are no planned additional future uses for this 37.7 acre parcel.
- PARCEL 7: This parcel is the site of the City's Fire/EMS Station #24 that services the Airport and part of the central City. There are no planned future changes in the use of this 1.2 acre site.
- PARCEL 8: This parcel is the site of the City's Civic Center, Amphitheater, Four-Fields complex, Community Pool and Community Park. There are no planned future changes in the use of this 70.6 acre site.
- PARCEL 9: This parcel is a pine scrub area is most commonly referred to as the "arboretum". There are no planned future changes in the use of this 69 acre site.

#### EXISTING AGREEMENT

The existing agreement with the FAA requires the payment of rent to the Airport Enterprise Fund for the use of Airport premises for non-aviation purposes based on 10% of the 1992 appraised land value. The appraised value of the land (less the golf course) in 1992 was \$12,100,790. The annual rent for the parcels is \$1,210,079 plus 10% of gross golf course revenues (less \$500,000 of golf course revenues). There has been no escalation of the rent or inflation of the land value over the term of the agreement. The existing rent amount paid by the City for FY 2007 under the existing agreement is shown in Table A below. The total amount of rent has varied each year based on the gross revenues at the golf course.

TABLE A EXISTING LAND VALUES & RENT NON-AVIATION PARCELS				
Parcel	Parcel Description	Acres	Existing Appraised Value	Existing Rent Amount
2a	Golf Course	190.00	See Note	\$247,943
2b	Golf Course	182.00	Included in Parcel #2a	
3	Water Reuse Plant	4.20	Included in Parcel #6	
5	Equestrian Center	18.00	\$870,431	\$87,431
6	Public Works/WTP	37.70	\$3,905,670	\$390,567
7	Fire Station	1.20	\$140,168	\$14,168
8a	Municipal Stadium	34.50	Included in Parcel # 8b & 8c	
8b	Amphitheater/Civic Center	14.60	\$6,724,432	\$672,432
8c	Tennis/Aquatics Center	21.50	\$310,700	\$31,700
	TOTAL	503.70		\$1,444,241

NOTE: Golf Course rent is based on 10% of gross golf course revenues less \$500,000.

### MEMORANDUM OF AGREEMENT

The City and FAA have negotiated a Memorandum of Agreement (MOA) for the continued operation of PMP and use of the premises by the City at a rental amount based on the current (2007) fair market value of the property. The MOA also includes provisions regarding the release of deed restrictions on certain parcels of Airport property to be purchased by the City. Simply stated, the City can continue to rent the land and/or may choose to purchase the property, at which time the rent would be discontinued. The City Commission has taken the initial step in the process and adopted Resolution 2007-166 in April 2007 requesting the release of the deed restrictions. A draft of the MOA was provided to the City Commission at that time. The Resolution requested the release of the deed restrictions for Fire Station 24, the Reuse Plant, Community Park, Public Works Area/Water Treatment Plan and 50% of the Golf Course as had been negotiated and agreed with the FAA. After the Resolution was adopted, the FAA provided 30 days public notice of its intent to release the deed restrictions on the parcels. There were two responses to the public notice.

The MOA required that the Airport parcels to be used by the City for non-aviation purposes must be appraised to establish the 2007 fair market value and that the annual rent for the parcels will be five percent (5%) of the appraised value. For those parcels which the City is seeking the release of the deed restrictions, a second appraisal of the parcels was required (except for the golf course) to establish the fair market value at the time the City first used the property for non-aviation purposes. The value of the parcels at the time the City first placed the parcels in non-aviation use was escalated to the year 2007 using the U.S Treasury Rate in effect on the date the parcel was placed in non-aviation use by the City and is referred to as the historic value of the parcels. It was agreed by the City and the FAA that the date would be based on the year of initial construction of facilities or buildings on the parcels. The purchase of golf course parcel 2b will

be based on the 2007 fair market value using the income approach method of appraisal and the historic value used for the release of the deed restrictions on other parcels does not apply to the golf course.

The current 2007 fair market value of the property has been determined by an appraisal of all parcels in non-aviation use and is shown in Table B below. The parcels listed in Table B include only those parcels used by the City. Other parcels such as the arboretum, vacant parcel in the northwest corner and the conservation area are not included since the City does not use the property for non-aviation purposes and since the FAA would not agree to release the deed restrictions at this time.

The "FY 08 Rent Amount" shown in Table B is five percent (5%) of the "2007 Appraised Value" and is approximately double the rent amount (see Table A) currently paid to the Airport Fund by the City based on the 1992 agreement. The five percent (5%) rental rate was negotiated with the FAA as part of the MOA and will replace the current rental rate of ten percent (10%).

**TABLE B**  
**LAND VALUES & RENT**  
**CATEGORY "A" & "B" NON-AVIATION PARCELS**

Parcel	Parcel Description	Acres	2007 Appraised Value	FY 08 Rent Amount	Parcel Category	Notes
2a	Golf Course	190.00	\$4,462,500	\$223,125	A	1
2b	Golf Course	182.00	\$4,287,500	\$214,375	B	1
3	Water Reuse Plant	4.20	\$4,574,000	\$228,700	B	
5	Equestrian Center	18.00	\$5,881,000	\$294,050	A	.2
6	Public Works/WTP	37.70	\$12,317,000	\$615,850	B	3
7	Fire Station	1.20	\$1,045,000	\$52,250	B	
8a	Municipal Stadium	34.50	\$15,028,000	\$751,400	B	4
8b	Amphitheater/Civic Center	14.60	\$7,632,000	\$381,600	B	4
8c	Tennis/Aquatics Center	21.50	\$11,238,000	\$561,900	B	4
	<b>TOTAL</b>	<b>503.70</b>	<b>\$66,465,000</b>	<b>\$3,323,250</b>		

*Note 1:* The FAA agreed to release only 50% of the golf course. It is the FAA's belief that one-half of the golf course should be retained as aviation land to provide for the possible future expansion of the Airport in future years. The golf course was divided into two separate parcels of approximately the same size and containing 18 holes in each parcel. Parcel 2a is closest to the aviation operations and will be retained as part of the Airport, but will continue to be rented to the City. Parcel 2b contains 18 holes closest to Federal Highway and to Copans Road. The parcel would be sold to the City. The appraised value of the golf course parcels is based on the income approach. The operation of the golf course will not be affected by the release of deed restrictions on part of the golf and the retention of the other part of the golf course as Airport premises.

appraised value and will be deposited in the Airport Enterprise Fund to fund the operation and maintenance of the Airport. The City will also be required to pay rent on the parcels to be purchased (Category B parcels) at 5% of the 2007 appraised value shown in Table B. The purchase price is based on the historic value escalated to the year 2007, as shown in Table C. Until the full purchase price has been paid to the CIA, the City will be required to pay rent on each parcel that has not been purchased. The rent paid on parcels to be purchased shall be paid to the CIA and credited against the purchase of the property. Each year beyond 2007 that a parcel is not purchased, the purchase value of the parcel increases by the applicable treasury rate and the annual rent is escalated by the increase in the CPI for the previous year.

The City was unable to successfully negotiate the purchase of parcel 2a (1/2 golf course) and parcel 3 (Sand & Spurs) and the City will continue to be required to pay rent on these parcels based on 5% of the FMV. Since the FAA was firm in their desire to retain these parcels, purchase of these two parcels is not an option at the present time. Accordingly, the City will pay \$517,175 in FY2008 to the AEF for the continued non-aviation use of these parcels. The rent on these parcels in future years will be adjusted by the CPI. The remaining parcels may be purchased for \$8,512,769 as shown in Table C above. These funds will be deposited in the Airport CIA as parcels are purchased. The City can purchase all of the parcels at one time or make annual contributions to the CIA until the parcels have been purchased (See Schedule D of the MOA). As payments are made to the CIA, the deed restrictions will be released on the individual parcels as sufficient funding is paid equal to the value of each parcel.

### PURCHASE OPTIONS

There are several scenarios that the City may want to consider for release of the deed restrictions. In any case, rent will have to be paid on all parcels whose deed restrictions have not been released; however, the rent on the Category B parcels will be deposited in the Airport Capital Improvements Account and credited as "net proceeds" toward the purchase of the parcels as set forth in Section 3.E. of the MOA. The value of all parcels that have not been purchased will increase by the CPI and the annual rent will increase by 5% of that amount. The purchase price of the Category B parcels will also increase annually by an amount equal to the treasury rate for each parcel. The City could avoid the escalating rent and purchase price on Category B parcels by making a single lump sum deposit in the CIA for the purchase of all Category B parcels. As an alternative, the City may wish to absorb the annual inflation of rent and escalation of the land value in lieu of making additional purchase deposits in the CIA. These scenarios are briefly discussed below.

- The first scenario is to simply pay the annual rent on the Category B parcels without making an additional purchase contribution to the CIA. Although the rent will escalate on these parcels, the increased annual payments will be credited toward the purchase price. However, the purchase price will increase annually by the amount of the treasury rate for each parcel. The FY2008 annual rent for the Category B parcels will be \$2,806,075 and will be deposited in the CIA. Assuming the City would use the FY2008 CIA funds to purchase parcel 3 to avoid the 6.00% treasury rate on a land value of \$2,768,424, the FY2009 rental for the remaining Category B properties would be \$2,660,080 at an estimated inflation rate of 3.5%. This annual rental amount would be

deposited in the CIA during FY2009 to cover the purchase of parcels 6, 7, and 8 in the amount of \$1,503,531 leaving a balance in the CIA of \$1,627,420 for the purchase of parcel 2b in the year 2010 and beyond. The rental amount paid in 2010 will be \$214,375 and when combined with the accumulated CIA balance, required funds to complete the release of all deed restrictions would be \$2,408,054. This could be funded by the annual rent payment on parcel 2b over a period of approximately 10 years or the City could choose to make additional single or multiple lump sum payments to complete the acquisition.

- The second scenario is to purchase the release of deed restrictions on all Category B parcels by a lump sum payment to the CIA on or about October 1, 2007. This scenario will avoid the payment of any future rent on these parcels as well as the increased purchase price from the escalation of the land value. Although the rent payment to the CIA is considered "net proceeds" and credited against the cost of the land, the escalation of the land value during FY 2008, FY 2009 and FY2010 will exceed \$650,000 and will be additional costs that could be avoided.
- A third scenario would include the combination of the first two scenarios whereby the City would supplement the annual rent paid to the CIA in such amounts as needed to cover the entire purchase price of a parcel since the deed restrictions on the parcels cannot be partially released. The supplemental deposits in the CIA would be further governed by the availability of funds.

The time value of money or the potential income from interest earnings from the investment of City funds has not been included in the above calculations.



## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (the "Agreement") dated as of 9/172007, is entered into between the United States of America, hereinafter referred to as the Federal Aviation Administration ("FAA") and the City of Pompano Beach, Florida ("City") and sets out the agreement, commitments and obligations of the Parties.

WHEREAS, by Indenture executed on August 29, 1947, under the Surplus Property Act of 1944, as amended, and correctional Indenture executed on December 18, 1947, the United States of America did demise, release, convey, and forever quitclaim, for use as a civil airport, to the City, its successors and assigns, without warranty express or implied, subject to certain conditions, covenants, reservations and restrictions, all right, title, interest, claim and demand which the Government had in certain tracts of land (the "Surplus Property") at the site located in Broward County, Florida now commonly known as the Pompano Beach Air Park (the "Airport");

WHEREAS, by supplemental Indenture executed on June 24, 1948, under the Surplus Property Act of 1944, as amended, the United States of America did demise, release, convey, and forever quitclaim, additional supplemental property which was to be construed in conjunction with the above conveyances for use as a civil airport and which is part of the Airport premises;

WHEREAS, the Surplus Property comprising the Airport premises on the effective date of this Agreement consists of approximately 942 acres;

WHEREAS, the City desires the FAA, to release certain parcels of Airport property from all of the covenants, reservations, obligations, assurances and restrictions (hereinafter referred to as "Restrictions") of the Indentures in order to permit the disposal and non-aeronautical use by the City of the subject parcels of Airport premises;

WHEREAS, the City Commission has adopted Resolution No. 2007-166, dated April 10, 2007 authorizing the City's request for release of the Restrictions for the subject parcels of Airport premises;

WHEREAS, the City seeks FAA's release of the City from its obligations to maintain for aeronautical use the Surplus Property constituting certain parcels of land as depicted on Exhibit A hereto, upon which is located certain non-aeronautical improvements owned by the City, including but not limited to a golf course, water treatment plant, fire station, amphitheater, tennis center, recreation center, municipal stadium and pool, water reuse plant, and a civic center;

WHEREAS, the City seeks FAA's concurrence in the use of the Category A parcels by the City, as identified on Exhibit A as non-aeronautical property that will continue to be part of the Airport premises;

WHEREAS, FAA finds that an *interim* use of certain of the Category A parcels, as identified on Exhibit A, will obligate the City to pay to the Airport ground rent that will result in financial benefits to aviation by generating additional revenue for the Airport's enterprise fund;

WHEREAS, the City seeks FAA's release of certain other Surplus Property constituting the Category B parcels, upon which is located certain non-aeronautical improvements owned by the City, for the purpose of disposing or removing the Category B parcels from the Airport to the control of the City;

WHEREAS, the FAA finds that such a release of the Category B parcels will enable the Airport to accrue benefits to aviation by generating significant additional revenue for the improvement of the Airport;

WHEREAS, the FAA may release property obligated under the Surplus Property Act pursuant to 49 U.S.C. § 47122 (a) and § 47153, 14 C.F.R. Part 155, and FAA Order

5190.6A, for disposal upon the repayment or reinvestment of certain amounts and upon a finding by the FAA that the release will not prevent accomplishing the purpose for which the property was made subject to the Restrictions and is necessary to protect or advance the interests of the United States in civil aviation;

WHEREAS, it is the longstanding and continuing policy of the FAA to enforce the obligations under the Surplus Property Act to maintain obligated property as a public airport, unless the net effect of the release of part of an airport's premises would be a benefit to civil aviation;

WHEREAS, the City has identified a means for the interim use of parcels to generate additional revenue for the Airport by paying fair market value ground rent for certain Category A parcels that will remain Airport property and by paying fair market proceeds (hereinafter referred as the "Net Proceeds") for the disposal of the Category B parcels that will no longer remain as Airport premises;

WHEREAS, the City has agreed to make significant general aviation airport improvements on the Airport with the Net Proceeds from the disposal of the Category B parcels;

WHEREAS, the FAA and City have identified, and included on Exhibit B, hereto, general aviation airport projects (hereinafter referred as the "Projects") at the Airport that will promote capacity and convenience to general aviation users of the Airport;

WHEREAS, in consideration of the fact that the proposed use of the parcels will produce substantial revenue for the Airport; and the fact that a significant part of this revenue stream will be committed to the specifically identified Projects at the Airport; the FAA finds that the release of the Category B parcels depicted on Exhibit A will advance the interests of the United States in civil aviation; and

NOW, THEREFORE, THIS MEMORANDUM OF AGREEMENT is entered into on this 9/17 day of, 2007 between the United States of America, hereinafter referred to as the Federal Aviation Administration (FAA), and the City of Pompano Beach, Florida, (hereinafter referred to as the "City").

For and in consideration of the mutual covenants and agreements set forth herein, the benefits accruing to the City and the FAA, and other good and valuable consideration, the receipt, adequacy and legal sufficiency of which is hereby acknowledged, the "Parties" hereto covenant and agree that:

1. Releases. Prior to the execution of the Agreement by the Parties, FAA will issue a Letter of Intent to Release for publication in the Federal Register to receive public comment for a period of 30 days concerning the terms and conditions of the proposed release as outlined by the Agreement. The FAA shall then release, using the procedures outlined in Section 3. herein and a Deed of Release document as illustrated by attached Exhibit E hereto, the City from the Restrictions to maintain the subject parcels for aeronautical use to enable the Airport to collect significant additional revenue for the improvement of the Airport that will benefit civil aviation.
2. Appraisals. The City agrees to retain the services of one or more appraisers certified as general appraisers in the state of Florida that are qualified to appraise the fair market value of the Category A and B parcels in conformance with the Uniform Standard of Professional Appraisal Practice (USPAP) and FAA requirements. The City and its appraiser(s) will consult with FAA prior to the commencement of work to ensure there is a consensus on the scope of the appraisal task by the City and FAA. The appraisal work shall be performed as follows, unless otherwise agreed to by the Parties:
  - A. The appraisals for certain Category A parcels, that shall remain as Airport non-aeronautical properties, shall be performed for the purpose of establishing a fair market value ground rent.

1. The appraisal shall establish the 2007 fair market value of the Category A land parcels, identified on Exhibit A. The property shall be appraised as vacant land subject to retained restrictions to ensure airport compatible land use is maintained as addressed by Section 7 herein. The existing municipal and recreational uses and improvements are considered a conforming land use on the appraised land. If the parcel includes infrastructure funded by the United States or airport revenue, the appraisal shall include the contributory value of that infrastructure.
  2. The initial ground rent shall be established as the product of the appraised fair market value of the land parcel and a 5% capitalization rate.
  3. The ground rent shall be adjusted to account for inflation by applying annually in May of each year an agreed upon published index (e.g. the United States Bureau of Labor Statistics, Consumer Price Index) to the appraised land value. The Parties shall identify the published index by the effective date of the Agreement. In the alternative, the City may have by the land reappraised in accordance with 2.A.1.
  4. Certain Category A parcels are either vacant or part of a conservation area reserve with restricted use and not in use by the City. These parcels are not assessed ground rent until placed into productive use by the City.
- B. The appraisals for the Category B parcels shall be prepared to determine the Net Proceeds due the Airport for the disposal of the parcels and an interim fair market ground rental due the Airport until the disposal of each Category B parcel.
1. The appraisal shall establish the fair market value for each Category B parcel or sub-parcel, as the case may be, when a parcel contains more than one use. The property shall be appraised as vacant land subject to retained restrictions to ensure airport compatible land use is maintained as addressed by Section 7 herein. The existing municipal

and recreational uses and improvements are considered a conforming land use on the appraised land. If the parcel includes infrastructure funded by the United States or with airport revenue, the appraisal shall reflect the contributory value of that infrastructure.

2. Interim fair market value ground rent for each Category B parcel or sub-parcel, as the case may be, shall be established based on a 2007 appraisal and determined in the same manner as Category A parcels by A.1.2. and 3 above. Provided, interim ground rent shall cease on the date the Category B parcel or sub-parcel is disposed of and removed from the Airport premises.
  3. A second historic appraisal shall establish a fair market value for the disposal of each parcel or sub-parcel. The historic valuation date shall be the year that the City's non-aeronautical improvement was placed into service. This marks the date of the permanent conversion from an aeronautical to non-aeronautical use.
  4. The United States Treasury rates of interest, as shown on Exhibit C, shall be applied to the historic appraised fair market value for each Category B parcel or sub-parcel starting on the valuation date identified by B.3 above and compounded year by year thereafter at the treasury rate on the valuation date until the City deposits an amount in a special interest bearing account identified as the "Airport Capital Improvements Account" that is equal or greater than the Net Proceeds due for the parcel or sub-parcels. Once Net Proceeds for a parcel or sub-parcels are deposited in the Airport Capital Improvements Account, United States Treasury Interest will cease being applied to that parcel or sub-parcel.
- C. The appraisal of the golf course property shall include the "income approach" to appraise the market value of the golf course, as agreed upon by the Parties. The appraisal will include the "land residual" valuation of the land and will identify the golf course annual net income amount that

accounts for the market rent to the land (market financial return to the land). The portion of the golf course that remains part of the Airport (sub-parcel 2a) shall be subject to this market rental paid to the Airport by the City. The market rental of the golf course land shall be updated with periodic reappraisals of the golf course every five years until the property is converted to an aeronautical use. The method of determining the Net Proceeds for the portion of the golf course subject to disposal (sub-parcel 2b) shall be determined by the income approach where value is the capitalized income for that portion of the golf course no longer Airport premises. Interim ground rent for parcel 2b shall be established as with parcel 2a and paid the Airport until parcel 2b is disposed of and removed from the Airport premises.

3. Development with Net Proceeds. Provided that the City makes reasonable efforts to commence progress on the identified Projects from the list on Exhibit B and completes them as provided under the schedule shown on Exhibit D provided that funding is available; the provisions of this Agreement shall be deemed met. FAA approval for the City to construct the Projects shall not be unreasonably withheld. Delay in completing a Project under the schedule shown on Exhibit D shall not be considered unreasonable if the delay is due to Force Majeure reasons beyond the control of the City. The term "Force Majeure" as used herein shall mean acts of God, acts of the public enemy, acts of governmental authority (excluding the FAA and the City), sabotage, riots, strikes, boycotts, shortages of material, or other similar circumstances for which the City is not responsible.
  - A. On the effective date of the Agreement, the City shall establish the Airport Capital Improvements Account and shall periodically deposit Net Proceeds into the account based on the schedule as shown on Exhibit D. Interest may be earned on the Net Proceeds by the investment in liquid, short-term United States Security Instruments, as approved by FAA, until the Net Proceeds are needed to design and construct a Project. All funds in the Airport Capital Improvements

Account, including all deposits made by the City and all interest earned thereon, will be used for the improvement of the Airport by completing the Projects. All funds in the account shall be disbursed solely to fund the Projects listed on Exhibit B and developed according to the schedule in Exhibit D. The list of Projects in Exhibit B and the schedule in Exhibit D may be amended from time to time by the Parties.

- B. Use and disbursement of funds in this account in a manner other than as reflected in this Agreement will be considered the equivalent of an improper use of Federal assistance.
- C. Within twenty-one (21) days of receipt of confirmation by the City that it has commenced the deposit of Net Proceeds for Category B parcels or sub-parcels in the Airport Capital Improvements Account, the FAA shall, by a separate Deed of Release:
  - (1) Release for disposal certain Category B parcels or sub-parcels of an appraised value, as adjusted by the application of interest from Exhibit C, that is equal to but not greater than the current balance of Net Proceeds deposited by the City into the Airport Capital Improvements Account from all Restrictions of the above identified Indentures from the United States of America, which conveyed the Surplus Property to the City;
  - (2) Continue to dispose of all Category B parcels as total Net Proceeds due have been deposited in the Airport Capital Improvements Account by the City; and
  - (3) Release the golf course sub-parcel 2b that will no longer be part of the Airport premises as in C.1. above.
- D. In accordance with Subparagraphs 3 (J) and (K), and subject to the proviso immediately following below, the City shall place all of the Net Proceeds (as defined in Subparagraph E, below) realized from the disposal of the Category B parcels into the Airport Capital Improvements Account to fund the design and construction of the Projects.

- E. For purposes of this Agreement, the term Net Proceeds means the amount of funds deposited in the Airport Capital Improvements Account for the disposal of the Category B parcels to include deductions or allowances that have been made for costs incurred by the City related to the disposal of each Category B parcel including, but not limited to, costs involving legal and accounting services, surveys, appraisals, taxes, commissions, title insurance, escrow services, and environmental services; such deductions and allowances shall not to exceed fifteen percent (15%) of the Net Proceeds due for deposit in the Airport Capital Improvements Account. Net Proceeds shall also include any interim ground rent due for Category B parcels up to the date of disposal and removal from the Airport premises. Interim ground rent for Category B parcels shall be deposited monthly into the Airport Capital Improvements Account and credited toward the disposal costs of Category B parcels.
- F. Net Proceeds shall not mean the ground rent due for Category A parcels and paid the Airport by the City for the Category A parcels. Ground rent revenue due shall be deposited monthly in the Airport enterprise fund and shall be used for the operation and maintenance costs of the Airport.
- G. (1) The City shall use all funds accumulated in the Airport Capital Improvements Account exclusively for the Projects identified on Exhibit B, as may be amended in writing from time to time by the Parties. The Projects shall be designed and constructed in accordance with applicable FAA standards, unless the FAA agrees to a modification of the applicable standards, as requested by the City.
- (2) The City shall seek FAA authorization in advance to disburse Net Proceeds from the Airport Capital Improvements Account to pay for the Projects identified in Exhibit B. The FAA shall have the right to audit the Airport Capital Improvements Account. The City shall complete the Projects at the Airport in

accordance with the schedule shown on Exhibit D, as the Parties may amend in writing from time to time.

- H. Funds in the Airport Enterprise Fund may be used as matching funds for a grant-in-aid under any program administered by the FAA, as may be agreed to by the FAA. The Net Proceeds used to construct the Projects will not be considered by the FAA as available for funding the Airport's Capital Improvement Program in the FAA's consideration under 49 USC § 47115(c) of any application by the City for AIP discretionary funds unless permitted and allowed by the FAA.
- I. Within one-hundred and eighty (180) days after the end of the City's fiscal year, the City shall provide the FAA Orlando Airports District Office with an audit report of the Airport Capital Improvements Account showing revenues, deposits, payments, and year end balance and sufficient information to show compliance with the terms of this Agreement.
- J. The City agrees to treat the Net Proceeds deposited in the Airport Capital Improvements Account as airport revenue within the meaning of 49 U.S.C. §§ 47107(b) and 47133. Should the FAA find that the City is in non-compliance with the provisions of this Agreement, the FAA may take the enforcement actions available to it under law.
- K. The obligations set forth herein of this Agreement related to the Net Proceeds, shall remain in effect until all Net Proceeds deposited or required to be deposited in the Airport Capital Improvements Account are obligated to be spent on the Projects in accordance with the requirements of this Agreement, whichever is later.

- L. The obligations set forth herein of this Agreement related to the payment of ground rent by the City to the Airport for property remaining part of the Airport premises shall continue until the use of such property is converted to an airport use.
- M. The agreement between the FAA and the City of Pompano Beach, Florida, regarding the use of airport revenues from the Pompano Beach Airpark dated July 28, 1992, and effective October 1, 1992, expires of its own accord on September 30, 2007. The City agrees from the expiration date forward that use of airport revenues will comply with the FAA's Policy and Procedures Concerning the Use of Airport Revenues published in the Federal Register on February 16, 1999. Should the FAA find that the City is in non-compliance with the provisions of this paragraph, the FAA may take the enforcement actions available to it under law. Payments due the Airport from the City under the terms of this Agreement shall commence on October 1, 2007
4. Legal Rights and Obligations. As part of the release process, the City will act consistently with all applicable legal rights and obligations.
5. Reasonable Cooperation. The City will extend every reasonable cooperation in connection with existing tenants located on the Property, including such adequate notice and relocation assistance as required by law.
6. No Third-Party Rights or Liability. Nothing in this agreement shall be deemed to create any obligation or liability of any kind or grant any right, right of action, or claim of any kind to any third party.
7. Noise, Obstruction and Hazard Stipulations
- A. The City shall be required, in any and all subsequent transfer agreements, including deed conveyances or easements, to reserve unto itself, its successors and assigns, for the use and benefit of the public a right of flight for the passage of

aircraft in the airspace above the surface of the subject parcel of real property subject to release from the Restrictions in this Agreement or any applicable FAA document of release together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating the Airport.

B. The City shall ensure that all subsequent transfer agreements, including deed conveyances for the Category B parcels shall carry an express prohibition to develop the parcel for residential use.

C. The City shall be required, in any and all subsequent transfer agreements, including deed conveyances or easements, to expressly agree for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions in the subject parcel of real property subject to the release from the Restrictions of this Agreement or any applicable FAA document of release to heights which will not penetrate FAR Part 77 surfaces and;

D. The City shall be required, in any and all subsequent transfer agreements, including deed conveyances or easements, to expressly agree for itself, its successors and assigns, to prevent any use of the subject parcel of real property subject to the release from the Restrictions of this Agreement or any applicable FAA document of release which would interfere with the landing or taking off of aircraft at the Airport, or otherwise constitute an airport hazard.

8. Charge For Municipal Services. Effective October 1, 2007, the City may commence charging the Airport for municipal services provided to the Airport. The FAA Policy and Procedures Concerning the Use of Airport Revenue (Policy) permits the Airport to pay for City Services in proportion to the services the Airport uses, provided: The Airport's portion of the costs comply with Section V.B. of the Policy which states the costs billed to the Airport are similarly billed

to other comparable entities within the City, and the City records support the charges in accordance with Section V.C. of the Policy, standards of documentation.

9. Miscellaneous. If for any reason this Agreement is not executed or effective, it shall be null and void and the Restrictions will remain in full force and effect. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have each caused this Agreement to be duly executed as of the date first written above.

UNITED STATES OF AMERICA  
FEDERAL AVIATION ADMINISTRATION  
By: Robert B. Chapman  
Title: Manager, Airports Division, Southern Region

CITY OF POMPANO BEACH,  
a Florida municipal corporation  
By: Lamar Fisher  
Lamar Fisher, Mayor  
By: Keith Chadwell  
Keith Chadwell, City Manager

Attest:  
Mary L. Chambers  
Mary L. Chambers, City Clerk

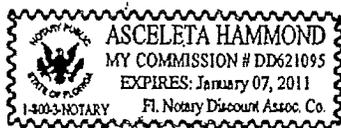
Approved by:  
Gordon B. Linn  
Gordon B. Linn, City Attorney

STATE OF FLORIDA )  
 ) SS.  
COUNTY OF BROWARD )

On this 17th day of September, 2007, personally appeared before me \_\_\_\_\_  
Asceleta Hammond, a Notary Public in and for BROWARD County,  
FLORIDA, Lamar Fisher, Keith Chadwell, Mary Chambers, personally known to  
me to be the Mayor, City Manager, City Clerk City of POMPANO  
BEACH, FLORIDA, who, upon being duly sworn, acknowledges her/him self to be the  
identical person whose name is affixed by signature to the foregoing agreement and  
she/he duly acknowledges the execution by her/him of the same, on the day and date  
appearing thereon, for and on behalf of the City of Pompano Beach, Florida.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal at Pompano  
Beach, Florida, the day and year last above written.

SEAL



Asceleta Hammond

Notary Public

My commission expires: \_\_\_\_\_

Exhibit A

## Surplus Property Obligations

1. Category A Parcels subject to interim non-aeronautical use or restricted use that remain Airport premises.

<u>Parcel</u>	<u>Acres</u>
1 (Vacant)	5.0
2a Golf Course	190.0
4 Conservation area (restricted use)	12.0
5 Equestrian Center	18.0
9 Arboretum (restricted use)	25.0

2. Category B Parcels released from the Surplus Property Obligations that are disposed of and no longer Airport premises.

<u>Parcel</u>		<u>Acres</u>	<u>Year</u>
2b	Golf Course	182.0	1954
3	Water Reuse Plant	4.2	1988
6	Public Works Area/Water Treatment Plant	37.7	1962
7	Fire Station	1.2	1969
8a	Municipal Stadium	34.5	1957
8b	Amphitheater/Recreation Center/Civic Center	14.6	1961
8c	Tennis and Aquatics Center	21.5	1950

**EXHIBIT B**  
 Airport Projects To Be Developed with Net Proceeds  
 Pompano Beach Air Park  
 Capital Improvement Program

<b>Phase I: 2008-2012</b>	<b>Year</b>	<b>Estimated Cost</b>
Replace Security Fence (NE 5th Ave)	2008	\$200,000
Design Runway 15-33 Ext./rehab	2008	\$400,000
Construct Maintenance Storage Building, 2007	2008	\$437,967
Widen Taxiway Fillets	2008	\$234,000
Extend Runway 15-33 five hundred feet	2009	\$1,650,130
Runway 15-33 Pavement Rehabilitation	2010	\$2,027,539
Drainage Master Plan	2010	\$165,013
Design TWY H & G	2011	\$100,000
Implement Drainage Improvements	2011	\$550,043
Design Helipads	2012	\$25,000
Overlay Runway 6-24	2012	\$1,223,869
<b>Total, Phase 1: 2008-2012</b>		<b>\$7,013,561</b>
<b>Phase II: 2013-2017</b>	<b>Year</b>	<b>Estimated Cost</b>
Airfield Pavement Rehabilitation	2013	\$2,850,105
Construct Helipads	2013	\$180,000
Construct Taxiway Golf	2013	\$500,000
Landside/Airside Access for Parcel Y	2014	\$585,202
Construct Taxiway Hotel	2014	\$425,734
Environmental Management Plan	2014	\$161,713
Administration Building Renovations	2015	\$650,000
Expand Administration Parking Lot	2016	\$300,000
<b>Total, Phase 2: 2013-2017</b>		<b>\$5,652,754</b>
<b>Phase III: 2018-2028</b>	<b>Year</b>	<b>Estimated Cost</b>
Construct Service Road	2019	\$2,015,799
Plan/Design New ATCT	2022	\$295,000
Construct New ATCT	2023	\$2,200,174
<b>Total, Phase 3: 2018-2028</b>		<b>\$4,510,973</b>
<b>Total Capital Improvement Program, 2008-2028</b>		<b>\$17,177,288</b>

Exhibit C

## United States Treasury Rates

<u>Parcel</u>		<u>Acres</u>	<u>Year</u>	<u>Treasury Rate</u>
2b	Golf Course	182.0	1954	N/A
3	Water Reuse Plant	4.2	1988	6.00%
6	Public Works Area/Water Treatment Plant	37.7	1962	2.78%
7	Fire Station	1.2	1969	6.67%
8a	Municipal Stadium	34.5	1957	3.27%
8b	Amphitheater/Recreation Center/Civic Center	14.6	1961	2.78%
8c	Tennis and Aquatics Center	21.5	1950	1.22%

Exhibit D

## Schedule of Anticipated Deposit of Net Proceeds

Date	Accumulated	
	Amount	Total
10/1/2007	1,000,000	1,000,000
10/1/2008	1,000,000	2,000,000
10/1/2009	1,000,000	3,000,000
10/1/2010	1,000,000	4,000,000
10/1/2011	1,000,000	5,000,000
10/1/2012	1,000,000	6,000,000
10/1/2013	1,000,000	7,000,000
10/1/2014	1,000,000	8,000,000
10/1/2015	1,000,000	9,000,000
10/1/2016	1,000,000	10,000,000
10/1/2017	1,000,000	11,000,000
10/1/2018	1,000,000	12,000,000
10/1/2019	1,000,000	13,000,000
10/1/2020	1,000,000	14,000,000
10/1/2021	1,000,000	15,000,000
10/1/2022	1,000,000	16,000,000
10/1/2023	1,000,000	17,000,000
10/1/2024	1,000,000	18,000,000
10/1/2025	1,000,000	19,000,000
10/1/2026	1,000,000	20,000,000
10/1/2027	1,000,000	21,000,000
10/1/2028	1,000,000	22,000,000

Exhibit E

## Sample Deed of Release

**DEED OF RELEASE**

This instrument, a Deed of Release, made by the United States of America, acting by and through \_\_\_\_\_, Federal Aviation Administration, under and pursuant to the powers and authority contained in the provisions of Public Law 81-311 (63 Stat. 700), as amended, to the (Airport Owner), a body politic under the laws of the State of \_\_\_\_\_, Witnesseth

**WHEREAS,**

(Here follows the necessary recital of the facts and circumstances involved in each release, including descriptive reference to deed from United States to (Airport Owner) authorized by P.L. 80-289).

**NOW, THEREFORE,**

For and in consideration of the above-expressed recitals and of the benefits to accrue to the United States and to civil aviation, the United States of America, upon inclusion by the (Airport Owner) in the Instrument of Transfer conveying title to the hereinafter described real property of provisions as follows:

- (1) That the (Airport Owner) reserves unto itself, its successors and assigns, for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface of the real property hereinafter described, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on \_\_\_\_\_ Airport,
- (2) That the Grantee expressly agrees for itself, its successors and assigns to restrict the height of structures, objects of natural growth and other obstructions on the hereinafter described real property to a height of not more than \_\_\_\_\_ feet above sea level,
- (3) That the Grantee expressly agrees for itself, its successors and assigns to prevent any use of the hereinafter described real property which would interfere with landing or taking off of aircraft at the \_\_\_\_\_ Airport, or otherwise constitute an airport hazard,

(4) (Here may be inserted other conditions that may appear to be necessary), hereby releases the said real property from the conditions, reservations and restrictions as contained in the above-mentioned Instrument of Transfer from the United States of America to the (airport owner) dated \_\_\_\_\_, which real property is described as follows:

(Description)

By its acceptance of this Deed of Release the (airport owner) covenants and agrees for itself, its successors and assigns, to comply with and observe all of the conditions and limitations hereof, which are expressly limited to the above-described real property.

IN WITNESS WHEREOF the United States of America has caused this Deed of Release to be executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

UNITED STATES OF AMERICA

By \_\_\_\_\_  
Federal Aviation Administration

ACCEPTED:

CITY OF POMPANO BEACH,  
a Florida municipal corporation

By: \_\_\_\_\_  
Lamar Fisher, Mayor

By: \_\_\_\_\_  
Keith Chadwell, City Manager

Attest:

\_\_\_\_\_  
Mary L. Chambers, City Clerk

Approved by:

\_\_\_\_\_  
Gordon B. Linn, City Attorney

