

**NOTICE: DEVELOPERS, PURCHASERS, GRANTEEES, HEIRS, SUCCESSORS AND ASSIGNS OF ANY INTEREST IN THE PROPERTY SET FORTH ON EXHIBIT "A" ARE HEREBY PUT ON NOTICE OF THE OBLIGATIONS SET FORTH WITHIN THIS AGREEMENT WHICH SHALL RUN WITH THE PROPERTY UNTIL FULLY PERFORMED.**

**AGREEMENT RESTRICTING NEW RESIDENTIAL DEVELOPMENT WITHIN 60+ DNL NOISE CONTOURS AND NON-AIRPORT COMPATIBLE LAND USES**

This is an Agreement, made and entered into by and between: **BROWARD COUNTY**, a political subdivision of the state of Florida, hereinafter referred to as "COUNTY,"

AND

**CITY OF DANIA BEACH**, a municipal corporation of the state of Florida hereinafter referred to as "CITY."

**RECITALS**

WHEREAS, CITY is in the process of approving a redevelopment plan for the Property more particularly described in Exhibit "A", attached hereto ("Property"); and

WHEREAS, CITY initiated a proposed Land Use Plan Amendment PC-09-5 (Amendment PC 09-5) for the Property establishing a Regional Activity Center ("RAC") land use designation, to promote economic vitality and community redevelopment within the City, a copy of which is attached hereto as Exhibit "B"; and

WHEREAS, the CITY is proposing the inclusion of approximately 7,818 residential units within the RAC; and

WHEREAS, COUNTY is the owner and operator of the Fort Lauderdale-Hollywood International Airport ("Airport"); and

WHEREAS, CITY agrees to restrict new residential development in the areas of the RAC that fall within the Airport's 60 DNL and above noise contours as shown on the FAA approved 2020 Noise Exposure Map for the Airport, a copy of which is attached hereto as Exhibit "C"; and prohibit non-compatible uses within the RAC as identified in Chapter 333, Florida Statutes; and

WHEREAS, the CITY has voluntarily agreed to enter into this Agreement as a condition of approval of Amendment PC 09-5 to enable legal enforcement of the commitments made by the City to the County herein; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, and covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, COUNTY and CITY agree as follows:

1. RECITALS

The above recitals are true and correct and incorporated herein by reference.

2. NOISE MITIGATION MEASURES

2.01 CITY agrees that any application for a residential building permit for any new residential development within that portion of the RAC located within the 60 DNL and above noise contours as shown on the FAA approved 2020 Noise Exposure Map for the Airport, a copy of which is attached hereto as Exhibit "B"; shall be subject to the requirement that the developer provide appropriate noise mitigation measures for such residential development in order to achieve outdoor-to-indoor Noise Level Reduction (NLR) of at least twenty-five decibels (25 dB) to thirty decibels (30 dB).

2.02 CITY shall provide written notice to the COUNTY'S Director of Environmental Protection and Growth Management Department, or designee, upon site plan or plat approval of any residential project authorized pursuant to Amendment PC 09-5. Such notification shall include project location and number and type of units at the time of site plan or plat approval and shall be confirmed by the CITY at the time of building permit.

2.03 CITY agrees it will not accept an application for a building permit for any new residential unit development within the 60 DNL Area shown on Exhibit "C", attached hereto and made a part hereof, unless CITY receives documentation from the developer evidencing the inclusion of noise mitigation measures in the construction of the project in accordance with subsection 2.01 above, and a commitment from the developer to provide notice to all purchasers of such residential housing that the property lies within the 60 DNL noise contour and up to but not including the 65 DNL noise contour, as shown on the most current FAA approved Noise Exposure Map.

2.04 Any other requirements of this Agreement notwithstanding, the following conditions will be exempt from the requirements of Sections 2.01 and 2.03.

- (a) Any residential project which is the subject of an approved site plan or building permit that was issued prior to December 8, 2009, provided the number of residential units with respect to the project shall not be increased above the number that was approved for the project prior to December 8, 2009.
- (b) Replacement of residential units that existed on a parcel prior to December 8, 2009 provided there shall be no increase in the number of

residential units above the number that existed on the parcel on December 8, 2009.

- (c) Issuance of building permits relating to residential uses that exist on December 8, 2009 provided that there shall be no increase in the number of residential units on any parcel above that which existed on the parcel on December 8, 2009.

2.05 Prior to issuance of a building permit for the construction or erection of any structure to be located in the RAC, City shall verify that City and the developer are complying with the provisions of this Section 2.

### 3. DEFAULT BY CITY

3.01 CITY, its successor and assigns, agrees that no building permits or certificate of occupancy shall be obtained from the CITY for any residential development on any property shown in Exhibit "C" until such time as the developer provides the noise mitigation measures required herein. Failure to ensure that such residential development includes such noise mitigation measures shall constitute a default of this Agreement.

3.02 Nothing herein shall waive or affect the right of COUNTY to otherwise require the CITY to comply with the conditions of Amendment PC 09-5 or this Agreement by any remedy provided by law or equity. In the event of a breach of this Agreement, or if enforcement of this Agreement is required, the parties agree that COUNTY shall not be obligated to pay for any noise mitigation measures for any residential projects or any other projects whatsoever within the RAC that are not in compliance with this Agreement.

3.03 In the event CITY fails to ensure that Developer incorporates noise mitigation measures into residential developments within the RAC shown in Exhibit "C", as required by Section 2, above, CITY agrees to accept responsibility for such noise mitigation measures.

3.04 A failure by CITY to perform hereunder shall be considered a material breach of this Agreement and COUNTY shall be entitled to seek such legal remedies against CITY as may be available to COUNTY.

### 4. GOVERNMENTAL IMMUNITY

4.01 CITY is a municipality as defined in Chapter 768.28, Florida Statutes, and agrees to be responsible for acts and omissions of its agents or employees when required by law. Nothing herein is intended to serve as a waiver of sovereign immunity by CITY to the extent sovereign immunity may be applicable. Nothing herein shall be construed as consent by CITY to be sued by third parties in any matter arising out of this Agreement or any other contract.

4.02 COUNTY is a political subdivision of the state as defined in Chapter 768.28, Florida Statutes, and agrees to be responsible for acts and omissions of its agents or employees when required by law. Nothing herein is intended to serve as a waiver of sovereign immunity by COUNTY to the extent sovereign immunity may be applicable. Nothing herein shall be construed as consent by COUNTY to be sued by third parties in any matter arising out of this Agreement or any other contract.

## 5. CONTRACT INDEMNIFICATION BY CITY

As consideration for the COUNTY entering into this Agreement with CITY and adopting the Land Use Plan Amendment identified in this Agreement, CITY shall, to the full extent permitted by law, at all times indemnify, hold harmless and, at the County Attorney's option, defend or pay for an attorney selected by the County Attorney to defend COUNTY, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, related in any respect to the subject matter of this Agreement, the RAC or any development within the RAC, including without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property, or resulting from any inverse condemnation action or other takings related claims. In the event any lawsuit or other proceeding is brought against COUNTY by reason of any such claim, cause of action or demand, CITY shall, upon written notice from COUNTY, resist and defend such lawsuit or proceeding by counsel satisfactory to COUNTY or, at COUNTY'S option, pay for an attorney selected by County Attorney to defend COUNTY. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement.

## 6. INSURANCE

CITY is an entity subject to Section 768.28, Florida Statutes, and CITY shall furnish COUNTY with written verification of liability protection in accordance with state law prior to final execution of this Agreement.

## 7. NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR BROWARD COUNTY:

County Administrator  
Government Center, Suite 409  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301

WITH COPY TO:

Director  
Environmental Protection and Growth Management  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301

FOR CITY:

City Manager  
City of Dania Beach  
100 W. Dania Beach Blvd  
Dania Beach, FL 33004

8. THIRD PARTY BENEFICIARIES

Neither CITY nor COUNTY intends to directly or substantially benefit a third party by this Agreement. The parties expressly acknowledge that it is not their intent to create any rights in or obligations to any third person or entity by this Agreement; therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

10. WAIVER OF BREACH

COUNTY'S failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless it is in writing, signed by COUNTY, and such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver, shall not be deemed a waiver of any subsequent breach, and shall not be construed to be a modification of any of the terms of this Agreement.

10. SEVERANCE

In the event that a provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall continue to be effective.

11. JOINT PREPARATION AND INTERPRETATION

The parties acknowledge that they have sought and received whatever competent advice and counsel necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

12. CONSTRUCTION OF AGREEMENT; COOPERATION

The parties agree that they will cooperate, act in good faith, and make best efforts to accomplish any and all of the terms, conditions, and provisions of this Agreement, and shall take all appropriate and necessary actions and execute such additional documents as are necessary to effectuate this Agreement.

13. PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 21 of this Agreement shall prevail and be given effect.

14. JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. By entering into this Agreement, CITY and COUNTY hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to this Agreement.

15. AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by COUNTY and CITY, or others delegated authority to or otherwise authorized to execute same on their behalf.

16. PRIOR AGREEMENTS

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

17. REMEDIES

In the event of breach or default of any term, condition, covenant, or obligation of this Agreement by either party, the other party may exercise any right available to it at law or equity, including without limitation, actions for specific performance and injunctive relief, and all such remedies shall be cumulative.

18. INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibits "A" and "B" are incorporated into and made a part of this Agreement.

19. RECORDING OF AGREEMENT

The CITY agrees to record this Agreement in the Official Records of Broward County, Florida, at its expense.

20. MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its Board of County Commissioners, signing by and through its Mayor or Vice Mayor, authorized to execute same on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and CITY, signing by and through its CITY Manager, duly authorized to execute same on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

COUNTY

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

\_\_\_\_\_  
County Administrator and Ex-Officio Clerk of the Board of County Commissioners of Broward County, Florida

By \_\_\_\_\_  
Mayor  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.



AGREEMENT BETWEEN THE CITY OF DANIA BEACH AND BROWARD COUNTY  
RESTRICTING NEW RESIDENTIAL DEVELOPMENT WITHIN 60 DNL+ NOISE  
CONTOURS AND NON-AIRPORT COMPATIBLE LAND USES

Approved as to form  
Jeffrey J. Newton, County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, FL 33301  
Telephone: 954-357-7600  
Telecopier: 954-357-7641

By \_\_\_\_\_  
Christine C. Lee  
Senior Assistant County Attorney

CITY

ATTEST:

CITY OF DANIA BEACH

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
\_\_\_\_\_, City Manager

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Approved as to Form:

By \_\_\_\_\_

\_\_\_\_\_  
City Attorney

8/25/2009  
#06-401.39  
#09-071.31

ACKNOWLEDGEMENT FOR CITY

STATE OF FLORIDA       )  
COUNTY OF BROWARD    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, as City Manager of the City of Dania Beach, a Florida municipal corporation, on behalf of the municipal corporation, who is personally known to me.

My Commission Expires:

\_\_\_\_\_  
(Signature of Notary taking acknowledgement)  
NOTARY PUBLIC, STATE OF FLORIDA

Commission Number:

\_\_\_\_\_  
(Name of Acknowledger typed/printed/stamped)

STATE OF FLORIDA       )  
COUNTY OF BROWARD    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as City Clerk of the City of Dania Beach, a Florida municipal corporation, on behalf of the municipal corporation, who is personally known to me.

My Commission Expires:

\_\_\_\_\_  
(Signature of Notary taking acknowledgement)  
NOTARY PUBLIC, STATE OF FLORIDA

Commission Number:

\_\_\_\_\_  
(Name of Acknowledger typed, printed or stamped)

ACKNOWLEDGEMENT FOR COUNTY

STATE OF FLORIDA       )  
COUNTY OF BROWARD    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ as Mayor/Vice Mayor of the Broward County Board of County Commissioners, a political subdivision of the State of Florida, on behalf of Broward County, who is personally known to me.

My Commission Expires:

\_\_\_\_\_  
(Signature of Notary taking acknowledgement)  
NOTARY PUBLIC, STATE OF FLORIDA

Commission Number:

\_\_\_\_\_  
(Name of Acknowledger typed, printed or stamped)

**EXHIBIT "A"**

**Property**

**EXHIBIT "B"**

Land Use Plan Amendment PC-09-5

**EXHIBIT "C"**

60 DNL Area