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Through The Fence Transactions: A Way to Spur Airside Development

- The economic and competitive environment for airport and airport users is changing and will continue to change in the 1990's.
- Financial institutions and other traditional lenders were burned badly by airport-related loans in the 1980's and no longer view leasehold land as adequate collateral.
- Through-the-fence land may be a way to entice lenders back into the airport market.
- The FAA has sent mixed messages to airport operators about the permissibility of through-the-fence deals.
- Airports who find creative ways to do through-the-fence deals and remain in compliance may be able to gain competitive advantages when attracting airside users.
- If a user is substantial enough and there is enough residual benefits for a community (i.e. jobs), a through-the-fence will probably happen.

The change in economic landscape which applies to all phases of the aviation industry will undoubtedly effect airports as the decade of the 90's progresses. These changes are, of course, merely a reflection of the general economic climate as the impact of the deficit, over leveraging in the 1980's and other factors which effect society as a whole. The problems which have always applied to airport development - those of an extremely limited and specialized market, will become more acute in the 1990's and the competition for stable, solvent airport users will intensify.

A major fallout for all real estate from the 1980's has been a wave of regulation and a super-cautious attitude with regard to lenders about real estate projects of all kinds. This relates primarily to the massive overhang on real estate which exists in certain markets, and also the staggering rate of foreclosures which occurred in the wake of the real estate collapse of the late 1980's. Unfortunately for the aviation business, some of the most difficult and frustrating experiences lenders have had involve airside real estate. Airside property, like other forms of commercial and semi-commercial real estate were the victims of lending policies which at best, could be described as wishful thinking.

When specialized airside property such as fixed base operations, airline maintenance hangars and other airport specific improvements returned to the hands of the lenders upon foreclosure, lenders had the unpleasant experience of finding out just how difficult and specialized the market for these properties was. In addition, few lenders were adequately prepared for the restrictions they faced due to most major airport's participation in the Airport Improvement Program and the sponsor's assurances which effect the uses airside properties can be legally put. As a result, few lenders are now willing to lend on airside



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parcels, and the standard practice of long-term ground leases is generally viewed as insufficient collateral to secure the lender's position.

The few airside financing deals which are being done often are basically secured by the credit-worthiness of the tenant and not the property aspect which they occupy. Organizations and businesses with healthy balance sheets can get capital - for a price. However, the general skepticism of the lenders with regard to the security which leased airside land offers them in the event of a default is currently minimal or nonexistent. Although it is unrealistic to expect lenders to return to the aviation property and marketplace in droves, one solution may be to find creative ways for airports to do "through-the-fence" deals with airport operators. This may help ameliorate lender's concerns about the security of the position their mortgage instrument has created for them.

The through-the-fence concept is one which engenders lots of controversy. In a nutshell, through-the-fence land is land which is adjacent to an airport but not owned by the airport itself. In general, this land is used for aviation purposes. The FAA has discouraged through-the-fence land for a number of reasons. The FAA's position is that for safety, economic and other considerations involving the competitive balance between FBOs and similar aviation service businesses, the official position has been to frown on, and/or actively discourage through-the-fence transactions. The relative scarcity of through-the-fence deals made this a viable policy until the advent of Alliance Airport. The creation of an entire airport founded on the principle of through-the-fence airside land transactions has potentially opened up new vistas of creative ways for airports to market their facility to potential users. In addition to Alliance Airport, United Parcel Service has successfully pursued through-the-fence development at Philadelphia International, Standiford Field at Louisville, Kentucky and at Ontario Airport just outside Los Angeles, California.

It appears that there is enough flexibility inherent in the sponsor's assurances to creatively do through-the-fence transactions and remain in compliance with the sponsor's assurances. For instance, most through-the-fence agreements allow for some compensation to be paid the airport for the wear and tear a through-the-fence user may inflict on the runway and taxiway system. This is an entirely logical and fair consideration, and allows the airport a way in which the replacement of important operational surfaces can be accomplished. Additionally, it is possible to create through-the-fence agreements with airports which physically limit development so that the integrity of the areas around the airport remain intact and does not adversely effect aircraft safety. Finally, the type of use and occupant for the facility can be specified in such a way that the aviation orientation of the property is not significantly altered and the airport's viability as a public facility can continue unimpeded.



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Airports which can offer users the advantage of fee simple ownership may find themselves in a competitively more attractive position with regard to the user's capacity to collateralize their assets more easily with lenders. The obvious beneficiaries of through-the-fence land are large employers like cargo operators or some form of manufacturing or overhaul facilities. These airside users bring numerous benefits to a community through employment and other economic opportunity for the people in businesses around the airport. The promise of economic development is one which involves a variety of factors and can provide the impetus for airport operators to modify their land use policies. When I once asked an aviation official at a major airport why he had allowed an airside user to operate through-the-fence at his facility, his answer spoke volumes about the entire process. He replied quite simply "The governor told me to."