



is not in violation of then applicable federal laws governing Aircraft flight operations (the "Passage of Aircraft").

**B. Noise and Other Effects of Aircraft Operation.** This Avigation Easement includes the right to cause within, and to enter or penetrate into or transmit through, any improved or unimproved portion of the Property, or any air space above the ground surface of the Property, such noise, sounds, vibrations, fumes, deposits of dust or other particulate matter, fuel particles (which are incidental to the normal operation of Aircraft), fear, interference with sleep and communication, air currents, electronic interference, Aircraft engine exhaust and emissions, and any and all other effects that may be alleged to result from or be related to the taking-off, landing or flight of Aircraft to, from or over the Airport, the flight of Aircraft over the Property, or the testing of Aircraft within the Airport (the "Noise and Other Effects of Aircraft Operation").

**Definition of Aircraft.** As used herein, the term "Aircraft" shall mean any and all types of aircraft, whether now in existence or hereafter manufactured and developed, to include, but not limited to, jet aircraft, propeller driven aircraft, civil aircraft, military aircraft, commercial aircraft, helicopters and all types of aircraft or vehicles now in existence or hereafter developed, regardless of existing or future noise levels, for the purpose of transporting persons or property through the air, by whoever owned or operated.

**Preservation of Existing Rights; Intended Application.** It is expressly intended by Grantor and Grantee that this Avigation Easement shall apply to the Passage of Aircraft and to Noise and Other Effects of Aircraft Operation that would otherwise be objectionable or would otherwise constitute a trespass, a permanent or continuing nuisance, personal injury or taking or damage to the Property. It is understood and agreed that this Avigation Easement is not a conveyance of the fee estate of the Property, nor of any interest in the oil, gas and other minerals in, on, or under the Property, but is a grant solely of the Avigation Easement described herein. Grantor retains for itself, and its successors and assigns, the right to use and enjoy the Property so long as such use and enjoyment does not materially interfere with the Avigation Easement rights herein granted.

## COVENANTS

**Waiver and Covenant Not to Sue.** Grantor, for itself and its heirs, successors and assigns, does hereby waive and release, and covenants not to assert or bring any right or cause of action which it might now have, or which it may have in the future, as owner of the Property against Grantee, its successors and assigns, or against the tenants, licensees, invitees, or users of the Airport, caused by or relating to the use of the Avigation Easement, including the Passage of Aircraft and Noise and other Effects of Aircraft Operation as defined above.

**Interference with Air Navigation.** In furtherance of this Avigation Easement and rights herein granted, Grantor hereby covenants, for itself and its successors and assigns, at all times hereafter, that it will not hereafter:

(i) erect, construct, permit or allow to remain on the Property any building, object, structure, tree or vegetation extending into the airspace above the aforesaid Imaginary Plane,

(ii) erect, construct, permit or allow to remain on the Property any building, object or structure which might create glare, misleading lights, or make it difficult for flyers to distinguish between Airport lights and others;

(iii) use, permit or allow the use of the Property in such a manner as to create the generation or discharge of fumes, dust or smoke so as to impair visibility in the vicinity of the Airport or as otherwise to interfere with or endanger the landing, taking off or maneuvering of Aircraft; and,

(v) use, permit or allow the use of the Property in such a manner as to create electrical interference with radio communications between any Aircraft and the Airport, or to create or allow any electronic emissions which would conflict with or interfere with the Airport and the operation of Aircraft in the vicinity of the Airport.

**Changes.** The rights, easements benefits, waivers, covenants and agreements granted hereunder, including the Avigation Easement, shall continue notwithstanding any increase or other change in the boundaries, volume of operations, noise, or pattern of air traffic at the Airport. No diminution or change in use of the Avigation Easement shall constitute a termination or abandonment of the Avigation Easement.

**Covenants Binding On and Benefiting Successive Owners and Assigns.** The parties intend that all waivers, restrictions, covenants and agreements set forth herein related to use, repair, maintenance or improvement of the Property or the Airport, or some part thereof, shall run with the Property and the land of Grantee, and any grantee, successor or assign of Grantor who acquires any estate or interest in or right to use the Property shall be bound hereby for the benefit of the Airport, Grantee and any successor or assign of Grantee, including, without limitation, the tenants, invitees and licensees of Grantee, and all users of the Airport. Grantor binds itself and its successors and assigns to warrant and forever defend all and singular this Avigation Easement in and to the Property to Grantee and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by through or under Grantor, but not otherwise, subject to all prior matters of record to the extent the same are validly existing and affect the Property or the Avigation Easement.

IN WITNESS WHEREOF, this Avigation Easement has been executed and delivered as of this \_\_\_\_ day of \_\_\_\_\_, 2010.

**“GRANTOR”**

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(PROPERTY OWNER)

THE STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_ day of  
\_\_\_\_\_ 2010, by \_\_\_\_\_, and \_\_\_\_\_  
\_\_\_\_\_.

\_\_\_\_\_  
(notary seal) Notary Public, State of \_\_\_\_