



APPENDIX M

AVIGATION EASEMENT EXAMPLES (2)





Prepared by:

AVIGATION EASEMENT

THIS GRANT OF AN AVIGATION EASEMENT made this ____ day of _____, 20__, by and between _____, whose mailing address is _____ ("Grantor," which term shall include the singular and plural, masculine and feminine), and Escambia County, a political subdivision of the State of Florida, acting by and through its duly authorized Board of County Commissioners, whose mailing address is 223 Palafox Place, Pensacola, Florida 32502 ("Grantee").

WITNESSETH

WHEREAS Grantor is the owner of certain real property located in Escambia County, Florida; and

WHEREAS, Grantee requires, as a condition precedent to the development or use of the property, conveyance from Grantor of an Avigation Easement; and

WHEREAS Grantor has agreed to grant an Avigation Easement to Grantee in and over Grantor=s property under the terms and conditions set forth in this instrument;

NOW, THEREFORE, Grantor, for good and valuable consideration the receipt and sufficiency of which is acknowledged, does grant to Grantee and Grantee=s heirs, assigns, successors, and legal representatives, a perpetual Avigation Easement in and over the following described property (Property):

See legal description attached as Exhibit A

This Avigation Easement is granted with the following express terms and conditions:

1. Grantor grants, bargains, sells, and conveys to Grantee, its successors and assigns, for the use and benefit of Grantee and any civilian or military airfields that may be located in Escambia County and any operators, owners, or users of civilian or military Aircraft that may operate in the airspace in and above Escambia County, a perpetual Avigation Easement for the free and unobstructed flight of Aircraft ("Aircraft" being defined for the purpose of this instrument as any





contrivance now known or hereafter invented, used, or designed for flight in and through the air) in and through the airspace above, over, and across the surface of the Property, together with the right to create or cause in the airspace such noise, vibrations, odors, vapors, exhaust, smoke, dust or other effects that may be inherent in the operation of Aircraft, and for the use of the airspace by Aircraft for launching from, maneuvering about, and landing at local civilian or military airfields.

2. Nothing in this instrument shall operate to preclude claims by Grantor, his heirs, assigns, successors, and legal representatives, for any physical injuries or damages caused by Aircraft crashing into or otherwise coming into direct physical contact with the Property or persons located thereon.

3. Grantor, for himself, his heirs, assigns, successors, and legal representatives, expressly releases and forever discharges Grantee, its elected or appointed officials, representatives, agents, employees, and any operators, owners, or users of civilian or military Aircraft or airfields, from any and all liability whatsoever, including any and all suits, claims, debts, obligations, costs, expenses, actions, or demands, vested or contingent, known or unknown, whether for injuries to persons or damages to property, which Grantor may own, hold, or assert by reason of noise, vibrations, odors, vapors, exhaust, smoke, dust or other effects that may be inherent in the operation of Aircraft, caused or created by the flight or passage of Aircraft in or through the airspace subject to the easement described in this instrument. Additionally, Grantor, for himself, his heirs, assigns, successors, and legal representatives, waives any and all right to sue Grantee, its elected or appointed officials, representatives, agents, or employees, and any operators, owners, or users of civilian or military Aircraft or airfields, and agrees to dismiss any and all such suits that may be now or subsequently asserted against Grantee, its elected or appointed officials, representatives, agents, or employees, and any operators, owners, or users of civilian or military Aircraft or airfields, for injuries to persons or damage to property arising from noise, vibrations, odors, vapors, exhaust, smoke, dust or other effects that may be inherent in the operation of Aircraft, caused or created by the flight or passage of Aircraft in or through the airspace subject to the easement described in this instrument. Grantor acknowledges that the above-stated consideration is all that Grantor will receive for this easement and no promise for any other or further consideration has been made by anyone. Grantor further acknowledges that Grantor is executing this instrument solely in reliance upon his own knowledge, belief, and judgment and not upon any representations made by any party released or others in their behalf.

4. Grantor shall not build, construct, cause or permit to be built or constructed, or permit to remain on the Property any building or structure that would interfere with the rights conveyed by this instrument or that would violate any local, state, or federal law or regulation regarding the operation of Aircraft or airfields.

5. Grantor shall not use or permit the use of the Property in such a manner as to create electrical, electronic, or other interference with radio, radar, microwave, or other similar means of Aircraft communications, or to make it difficult for pilots to distinguish between airfield navigation lights





and visual aids and other lights, or to result in glare or other condition that would impair the vision of pilots, or to otherwise endanger the operation of Aircraft.

6. In the event of any violation of the rights and restrictions contained in this instrument, Grantee shall have the right, at its sole option after giving five (5) days prior notice to Grantor, to use any and all means to remedy the violation. Additionally, Grantee shall have a perpetual easement for ingress to and egress from the Property for the purpose of inspecting or removing any instrumentality that may be causing or contributing to a violation of the rights and restrictions conveyed by this instrument.

7. Grantor acknowledges that the Property is located in an area impacted by Aircraft noise and that present and future Aircraft noise may interfere with the unrestricted use and enjoyment of the Property. Grantor further acknowledge that Aircraft noise may change over time by virtue of greater numbers of Aircraft, louder Aircraft, variations in airfield operations, and changes in airfield and air traffic control procedures.

8. This Avigation Easement and all of the terms and conditions described in this instrument shall run with the land in perpetuity and shall be binding upon Grantor and his heirs, assigns, successors and legal representatives.

9. In the event that one or more of the provisions contained in this instrument or any part thereof or any application thereof shall be held invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired and shall remain in full force and effect.

10. In the event that any civilian or military airfield adjacent to the Property ceases to operate, or if such other circumstances subsequently arise that would obviate the purpose underlying this instrument, then Grantor, his heirs, assigns, successors, and legal representatives, may petition the Board of County Commissioners of Escambia County to terminate this Avigation Easement. If the Board of County Commissioners approves the termination of this Avigation Easement, then it shall promptly execute and record in the public records an appropriate document reflecting the termination.

11. Grantor, for himself and his heirs, assigns, successors, and legal representatives, covenants with Grantee, its successors and assigns, that Grantor is lawfully seized and possessed of the Property in fee simple, has a good right and full power to grant, bargain, sell and convey this Avigation Easement over the Property.





IN WITNESS WHEREOF Grantor has executed this instrument on the date first above written.

GRANTOR:
 Witness _____ By: _____
 Print Name _____ (name of corporation/other business entity)
 Print Name _____

Witness _____
 Print Name _____

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____. He/She is () personally known to me, () produced current _____ as identification.

 Signature of Notary Public

 Printed Name of Notary Public

(Notary Seal)

GRANTOR:
 Witness _____ By: _____
 Print Name _____ (name of corporation/other business entity)
 Print Name _____

Witness _____
 Print Name _____

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this ____ day of _____, 20____ by _____. He/She is () personally known to me, () produced current _____ as identification.

 Signature of Notary Public

 Printed Name of Notary Public

(Notary Seal)





ACCEPTANCE

This Avigation Easement accepted by Escambia County, Florida on the _____ day of _____, 20____, as authorized by the Board of County Commissioners of Escambia County, Florida at its meeting held on the _____ day of _____, 20 ____.

**BOARD OF COUNTY COMMISSIONERS
ESCAMBIA COUNTY, FLORIDA**

Chairman

ATTEST: Ernie Lee Magaha
Clerk of the Circuit Court

Deputy Clerk

(Seal)

This Avigation Easement utilizes the form provided by Escambia County in accordance with Section 3, Ordinance No. 2004-52. Therefore, acceptance is executed by the Planning and Zoning Director on behalf of the County, without further action required by the Board. Accepted on behalf of Escambia County, Florida, on the _____ day of _____, 20 ____ by

Planning and Zoning Director

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by _____. He/She is () personally known to me, () produced current _____ as identification

Signature of Notary Public

Printed Name of Notary Public

(Notary Seal)





Recording Requested By And When Recorded Return To:

Burbank-Glendale-Pasadena
Airport Authority
2627 Hollywood Way
Burbank, CA 91505
Attn: Director, Airport Engineering

**EASEMENT DEED AND AGREEMENT
(Avigation Rights)**

This EASEMENT DEED AND AGREEMENT ("Avigation Easement Agreement") is executed and delivered as of this _____ day of _____, 1999, by [COMPANY NAME], a California corporation _____, as trustee under the Land Title Agreement dated _____, 1999 ("Grantor") and the **BURBANK-GLENDALE-PASADENA AIRPORT AUTHORITY**, a public entity formed under a joint exercise of powers agreement among the cities of Burbank, Glendale and Pasadena, California, pursuant to the California Joint Exercise of Powers Act ("Grantee"), with reference to the following facts:

RECITALS

- A Grantor is the owner in fee simple of that certain real property (the "Property") located in the City of Burbank, County of Los Angeles, and State of California, legally described in Exhibit "A" attached hereto and incorporated herein by reference.
- B Grantee is the owner and operator of the Burbank-Glendale-Pasadena Airport (the Burbank-Glendale-Pasadena Airport, together with any future expansion thereof or modification thereof being hereinafter referred to as the "Airport") situated in the County of Los Angeles, State of California, which is more particularly described in Exhibit "B" attached hereto and incorporated herein by reference.
- C This Avigation Easement Agreement is made, executed and delivered pursuant to and in accordance with the terms of a Land Title Trust Agreement among the Trustee, Grantee and the City of Burbank, dated August __, 1999 (the "Trust Agreement")

1. GRANT OF AVIGATION EASEMENT

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Grantor, for itself and its successors and assigns, does hereby grant to Grantee, its successors and assigns, for the use and benefit of Grantee, the tenants and licensees of Grantee, and all users of the Airport, the following easements, rights and servitudes, which shall be appurtenant to the Airport, as to Grantee, and in gross, as to the tenants and licensees of Grantee and as to all users of the Airport (collectively the "Avigation Easement"):

- 1.1 Passage of Aircraft. A perpetual nonexclusive easement and right of way for the "Passage of Aircraft" (as hereinafter defined) by whomsoever owned and operated in, to, over and through all air space of the Property located above the height of the lowest of the "imaginary





surfaces" established in relation to the Airport and to each runway at the Airport in accordance with the applicable provisions of Federal Aviation Administration regulations set forth in 14 C.F.R. §§77.21-77.29 (as the same may be amended from time to time), to an indefinite height above said imaginary surfaces. As used herein, the term "Aircraft" shall mean any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air, and the term "Passage of Aircraft" shall include, but not be limited to, Aircraft operation, navigation and flight; however, except to the extent constituting "Incidental Effects" as provided in Section 1.2 below, the term "Passage of Aircraft" shall not include Aircraft landing, explosion, crash, falling objects, dumping or spillage of liquid fuel or other occurrence causing direct physical injury to persons or direct physical damage to property.

- 1.2 Incidental Effects. A perpetual nonexclusive easement and 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, electronic interference, fumes, dust, fuel vapor particles, and all other similar effects that may result from or be related to the ownership, operation or maintenance of the Airport, the use of the Airport by Aircraft, the flight of Aircraft to, from or over the Airport, or the flight of Aircraft over the Property (at heights above the "imaginary surfaces" described in Section 1.1 above), or the taking-off or landing of Aircraft from or at the Airport (collectively, "Incidental Effects"), including, without limitation, any Incidental Effects that may be objectionable or would otherwise constitute a trespass, a permanent or continuing nuisance, personal injury or taking or damage to the Property due to invasiveness, intermittence, frequency, loudness, intensity, toxicity of Aircraft emissions or fuel, interference, emission, odor, annoyance or otherwise.

2. COVENANTS

- 2.1 Interference With Air Navigation. In furtherance of the easements and rights herein granted, Grantor hereby covenants, for itself and its successors and assigns, at all times hereafter, that it will not take any action, cause or allow any electronic, electromagnetic or light emissions, allow any obstruction to exist, or construct any structure on the Property which would conflict or interfere with or infringe Grantee's rights hereunder, including the full use and enjoyment of the Avigation Easement.
- 2.2 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. The Avigation Easement and this Avigation Easement Agreement may not be modified, amended, terminated or abandoned except by execution and delivery of an instrument executed and acknowledged by Grantee, and Grantor agrees that, in the absence of such an instrument, no conduct by Grantee or increase, diminution or change in use of the Avigation Easement shall constitute either an overburdening of the Avigation Easement or a termination or abandonment of the Avigation Easement.



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- 2.3 Covenants Binding On and Benefiting Successive Owners and Assigns. The parties intend that all waivers, restrictions, covenants and agreements set forth herein relate to the use, repair, maintenance or improvement of the Property or the Airport, or some part thereof, and shall run with the land of Grantor and 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 and for the benefit of any grantee, successor or assign of Grantee, including, without, limitation, the tenants and licensees of Grantee, and all users of the Airport.

3. GENERAL PROVISIONS

- 3.1 Attorneys' Fees. Should Grantor or Grantee or any of their respective successors or assigns retain counsel to enforce any of the provisions herein or protect their interests in any matter arising under this Avigation Easement Agreement, or to recover damages by reason of any alleged breach of any provision of this Avigation Easement Agreement, the losing party in any action pursued in a court of competent jurisdiction shall pay to the prevailing party all costs, damages, and expenses incurred by the prevailing party, including, but not limited to, attorneys' fees and costs incurred in connection therewith.
- 3.2 Interpretation. No provision of this Avigation Easement Agreement is to be interpreted for or against any party because that party or that party's legal representative drafted such provision.
- 3.3 Waiver. No violation or breach of any provision of this Avigation Easement Agreement may be waived unless in writing. Waiver of any one breach of any provision of this Avigation Easement Agreement shall not be deemed to be a waiver of any other breach of the same or any other provision of this Avigation Easement Agreement.
- 3.4 Severability. In the event that any one or more covenant, condition, right or other provision contained in this Avigation Easement Agreement is held to be invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Avigation Easement Agreement and shall in no way affect, impair or invalidate any other covenant, condition, right or other provision contained in this Avigation Easement Agreement.
- 3.5 Additional Documents. In addition to the documents and instruments to be delivered as provided in this Avigation Easement Agreement, Grantor or its successors and assigns, as the case may be, shall, from time to time at the request of Grantee, execute and deliver to Grantee such other documents and shall take such other action as may be reasonably required to carry out more effectively the terms of this Avigation Easement Agreement.
- 3.6 Governing Law. This Avigation Easement Agreement has been negotiated and entered into in the State of California, and shall be governed by, construed and enforced in accordance with the statutory, administrative and judicial laws of the State of California.



- 3.7 Integration. This Avigation Easement Agreement, including the exhibits, constitutes the final, complete and exclusive statement of the parties relative to the subject matter hereof and there are no oral or parol agreements existing between Grantor and Grantee relative to the subject matter hereof which are not expressly set forth herein and covered hereby. This is an integrated agreement.

- 3.8 Prior Rights. The rights, easements, benefits, waivers, covenants and agreements in favor of Grantee, its successors and assigns, the tenants and licensees of Grantee, and all users of the Airport under this Avigation Easement Agreement are subject and subordinate to, and do not terminate, modify, restrict, or impair in any manner the rights, easements, benefits, waivers, covenants and agreements in favor of the City of Burbank, a municipal corporation ("City"), its grantees, successors and assigns, under that certain document pertaining to the Property entitled Grant of Easements, Declaration of Use Restrictions and Agreement for Trust Property executed as of _____, 1999, by the Authority, the City, and the Trustee, and recorded on _____, 1999 as Document Number ____ at Book _____, Page _____ of Official Records, County of Los Angeles, State of California (the "Trust Property Easement"). Nothing in this Avigation Easement Agreement is intended to, nor shall be interpreted in any manner to (i) terminate, modify, restrict, or impair in any manner the rights of the City under that certain Grant of Easements, Declaration of Use Restrictions and Agreement for Adjacent Property executed by the Authority and the City as of _____, 1999, and recorded on _____, 1999 as Document Number ____ at Book _____, Page _____ of Official Records, County of Los Angeles, State of California; (ii) permit or require use of the Property for purposes of expanding or enlarging the Airport under California Public Utilities Code Section 21661.6 ("PUC Section 21661.6"), or (iii) create rights that will result in the preemption of or otherwise affect adversely the applicability, validity and enforceability of PUC Section 21661.6 or local land use laws, including, but not limited to the City of Burbank's Zoning Ordinance and General Plan, or the Burbank Redevelopment Agency's Golden State Redevelopment Plan.

IN WITNESS WHEREOF, the parties have executed and delivered this Avigation Easement Agreement as of the date first set forth above.

"GRANTOR"
SECURITY TRUST COMPANY,
 a California corporation,

 as trustee under Land Title Trust Agreement
 dated August _____, 1999

By: _____
 Title: _____





"GRANTEE"
BURBANK-GLENDALE-PASADENA AIRPORT
AUTHORITY

By: _____
Its: President

STATE
OF
CALIFORNIA
COUNTY OF LOS ANGELES

On _____, _____, before me, _____ [INSERT NAME], a Notary Public,
personally appeared _____, personally known to me (or proved to me on
the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon
behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.
Signature _____ (SEAL)

STATE
OF
CALIFORNIA

COUNTY OF LOS ANGELES

On _____, _____, before me, _____ [INSERT NAME], a Notary Public,
personally appeared _____, personally known to me (or proved to me on
the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon
behalf of which the person(s) acted, executed the instrument. WITNESS my hand and official seal.

Signature _____ (SEAL)





CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the attached Easement Deed and Agreement (Aviation Rights) dated as of _____, _____, FROM _____, as a trustee under Land Title Trust Agreement dated _____, 1999, to the Burbank-Glendale-Pasadena Airport Authority, a public entity formed under a joint exercise of powers agreement among the cities of Burbank, Glendale and Pasadena, California, pursuant to the California Joint Exercise of Powers Act, is hereby accepted by the undersigned on behalf of the Burbank-Glendale-Pasadena Airport Authority pursuant to authority granted by motion at a meeting held on, _____, and Grantee consents to the recordation thereof by its duly authorized officer.

Dated: As of _____, _____

**BURBANK-GLENDALE-PASADENA
AIRPORT AUTHORITY**

By: _____

Its: President