

When Recorded, Return to:

CITY CLERK
City of Prescott
201 South Cortez Street
Prescott, Arizona 86303

For Recorder's Use

SURFACE AND OVERHEAD AVIGATION EASEMENT

This Surface and Overhead Avigation Easement (this "**Easement**") is made this [___] day of [____], 20[___] by [**PROPERTY OWNER**], whose address is [**ADDRESS**] ("**Grantor**"), for the City of Prescott, located in Yavapai County in the State of Arizona ("**Grantee**").

RECITALS

- 1) Grantee is the owner and operator of the Prescott Regional Airport ("**Airport**"), situated in the City of Prescott, Yavapai County, Arizona.
- 2) Grantor is the fee owner of the certain real property ("**Grantor's Property**") located in close proximity to the Airport and described in **Exhibit A** attached to this Easement.
- 3) Grantee desires to obtain and preserve and provide notice to the public of the right of free and unobstructed flight for aircraft landing upon, taking off from, or maneuvering about the Airport, as more fully set forth herein.

AGREEMENT

1) Grant of Easement. In consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor does hereby grant, bargain, sell and convey to Grantee, a perpetual, nonexclusive easement and right-of-way for the free, unobstructed passage of aircraft, by whomsoever owned or operated, in and through the air space over and across the Grantor's Property. For purposes of this easement, the term "navigable airspace" shall mean: the airspace at or above the minimum altitudes of flight that includes the airspace needed to ensure safety in the takeoff and landing of aircraft at the Airport.

In furtherance of this easement and right-of-way, Grantor, for the consideration recited above, grants and conveys to Grantee:

- A) The unobstructed use and passage of all types of aircraft in and through the navigable airspace above the surface of Grantor's Property, now or in the future, including any future change or increase in the boundaries of the Airport, the volume or nature of operation of the Airport, or noise and patterns of air traffic therefrom, including without limitation, airfield configuration, and location and length of runways.

B) The right of said aircraft to cause noise, vibrations, fumes, deposits of dust, or fuel particles over Grantor's Property; to cause fear, interference with sleep or communication; and to cause any other effects and annoyances as may be associated with the normal operation of aircraft within the navigable airspace while taking off, landing or operating in the vicinity of the Airport.

As used herein, the term "aircraft" shall mean any and all types of aircraft, present or future, whether now in existence or hereafter manufactured and developed, to include, without limitation, jet, propeller-driven, civil, military or commercial aircraft, and helicopters, regardless of existing or future noise levels, for the purpose of transporting persons or property through the air, by whoever owned or operated.

2) Grantor Covenants. Grantor shall not cause or allow Grantor's Property to be used to discharge fumes, smoke, dust, electronic, light, glare, laser or other emissions that may obstruct visibility or adversely affect or interfere with the operation of aircraft or any navigational facilities. No structure, building, mast, tree, vegetation, or other object may be placed, constructed or erected on Grantor's Property that would interfere with the continuous operation of the Airport and free passage of aircraft in the navigable airspace to and from the Airport, including in the airspace over Grantor's Property. Any and all structures, walls, soundproofing, or other structures or measures taken to mitigate sound, vibration or other effects of being within the vicinity of the Airport shall be the sole responsibility of Grantor and its successors and assigns, and in no event will the Airport Parties (as defined below) be held responsible or liable for such mitigation measures.

3) Acknowledgements. Grantor acknowledges that the noise and other effects associated with the Airport will likely increase over time, and may increase substantially due to changes in aircraft, flight paths, flight frequency, flight timing, flight training and other changes in operations at the Airport.

4) Waiver/Release. Grantor hereby releases and discharges Grantee, the Airport, and all of Grantee's officers, officials, employees, agents, lessees, permittees, invitees, successors and assigns (collectively, the "**Airport Parties**") for, from and against any liability and for any and all claims for damages of any kind to persons or property that may arise at any time in the future over or in connection with flights in, to, over and through all navigable airspace above Grantor's Property, and on and to the surface of Grantor's Property, and on and to all structures now existing or hereafter constructed on Grantor's Property or any portion thereof, whether such damage shall originate from attendant noise, vibration, fumes, dust, fuel and lubricant particles, and all other effects that may be caused by the operation of aircraft that are operating within the navigable airspace while landing at, or taking off from, or operating at or in the vicinity of the Airport. The waiver and release granted herein does not release owners or operators of aircraft from liability or damage or injury to person or property caused by falling aircraft or falling physical objects from aircraft, except as stated herein with respect to noise, fumes, dust, fuel, lubricant particles, etc.

5) Term; Binding Effect. This document shall be effective until the Airport shall be abandoned and shall cease to be used for public airport purposes. This document runs with the Grantor's Property in favor of Grantee and Grantee's successors and assigns, and shall be binding upon Grantor, its heirs, administrators, executors, successors and assigns until such time that the easement is extinguished in accordance with these terms. Grantor shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the Grantor's Property which accrue during the period of Grantor's ownership. Upon conveyance of

fee simple interest in Grantor's Property or portion thereof, as applicable, each new record owner of fee simple title in Grantor's Property or portion thereof shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the portion of the Grantor's Property owned by it which accrue during the period of such ownership, and Grantor, and any other transferor of fee simple title in Grantor's Property as applicable from time to time, shall be released from the obligations of this Easement arising subsequent to the effective date of the transfer.

[Remainder of Page Left Intentionally Blank; Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Surface and Overhead Avigation Easement as of the date first written above.

GRANTOR:

Signature: _____

Printed Name: _____

Title: _____

STATE OF ARIZONA

COUNTY OF _____

Acknowledged before me this _____ day of _____, 20[___], by _____, the _____ of _____, on behalf thereof.

Notary Public

My commission expires:

EXHIBIT A

GRANTOR'S PROPERTY

[*Legal Description*]