## Model Avigation Easement

[Note to user: This model easement has been prepared as a reference for Arizona jurisdictions and airports. This is a basic form which does not contemplate all possible scenarios and may require modification for the user’s intended purpose. Please consult with legal counsel prior to implementing this or any other model document in the Airport Land Use Manual.]

**WHEN RECORDED RETURN TO:**

[Municipality/Airport Sponsor]

[Address]

Exempt under A.R.S. § 11-1134(A)(2)

**AVIGATION EASEMENT AND RESTRICTIVE COVENANT**

This Avigation Easement and Restrictive Covenant (Easement) is made, entered into, and effective this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ by and between the [Municipality/Airport Authority] (Grantee) and [Property Owner] (Grantor). Grantee and Grantor may be referred to herein each as a “Party” or collectively as the “Parties”.

 **RECITALS**

A. Grantor owns the real property, including the airspace above it, located at [address] (Property), which is in close proximity to the Airport identified below. The legal description of the Property is attached and marked **Exhibit A**. A map depicting the location of the Property is attached and marked **Exhibit B**.

B. Grantee owns and operates \_\_\_\_\_\_\_\_\_ Airport, located at [address] (Airport).

C. Grantee desires to obtain and preserve for the use and benefit of Grantee and the general public a right of free and unobstructed flight for Aircraft, as defined below, landing at, taking off from, or maneuvering about the Airport.

D. Grantor desires to grant to Grantee and the general public an avigation easement and burden the Property with certain restrictive covenants for the benefit of Grantee and the general public.

 **EASEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby mutually acknowledged, the Parties agree as follows:

1. Incorporation. The Recitals and attached Exhibits are a material part of this Easement and are incorporated herein by this reference.

2. Definitions. The following words have the following meanings:

A. *Aircraft* means any device that is used or intended to be used, now and in the future, for flight in the air, including jet airplanes, propeller-driven airplanes, helicopters, gliders, ultra-lights, drones, model airplanes, hot air balloons, and blimps.

B. *Airport Operations* means any and all existing and future activities that are inherent in the operation of the Airport and Aircraft using the Airport, including landing at, taking off from, and maneuvering about the Airport

C. *Airspace* means the airspace above and within the boundaries of the Property beginning at [number, e.g., 100, 200, etc.] feet above the surface of the ground.

 D. *Grantee* means the [Municipality] and its officials, officers, representatives, agents, and employees.

3. Term. This Easement is effective on the date set forth above. The term of this Easement is perpetual.

4. Termination. This Easement will terminate only (A) when the Airport is no longer used for airport purposes, (B) when Grantee terminates this Easement for any reason or no reason in its sole discretion, or (C) when the Parties mutually agree to terminate this Easement. The termination of this Easement shall be in writing, executed by the Parties, and recorded in the Office of the \_\_\_\_\_\_\_\_\_ County Recorder. Grantee may cancel this Easement pursuant to A.R.S. § 38-511.

5. Successors. This Easement binds Grantor and Grantor’s heirs, successors, and assigns and operates in perpetuity for the benefit of Grantee and the general public. This Easement is a covenant that binds and runs with the Property. This Easement is appurtenant to and a direct benefit of the Airport and is in gross for the benefit of Grantee and the general public.

6. Recordation. Grantee shall record this Easement in the Office of the \_\_\_\_\_\_\_\_\_ County Recorder.

7. Easement Rights. Grantor hereby grants, conveys, and transfers to Grantee and the general public an avigation easement and the following rights:

(a) the free and unobstructed right to use of the Airspace for Aircraft Operations,

(b) to cause noise and other negative impacts in the Airspace related to Aircraft Operations, including the imposition of light, smoke, dust, noise, sleep loss, air currents, electronic and other emissions, vibrations, discomfort, inconvenience, and interference with the use and quiet enjoyment of the Property, as such negative impacts may increase or worsen over time,

(c) to operate any Aircraft in, through, across, and about the Airspace, including Aircraft landing at, taking off from, and maneuvering about the Airport,

(d) to enter and remain on the Property as long as necessary to enforce Grantee’s rights under this Easement at Grantor’s expense,

(e) to enter and remain on the Property as long as necessary to install one or more permanent markers, beacons, or lights related to Aircraft Operations,

(f) to enter and remain on the Property as long as necessary to eliminate or abate the source of any interference with radio communications between the Airport and any Aircraft or with radar operations at the Airport or by any Aircraft,

(g) to enter and remain on the Property as long as necessary to eliminate or abate anything that interferes with Airport Operations or that may constitute a hazard to any Aircraft or the Airport, and

(h) to enter and remain on the Property as long as necessary to remove any obstacle from and to keep the Airspace free of any obstructions of any kind, including but not limited to plants and trees or any portion thereof. Grantee shall give Grantor at least five days’ notice of Grantee’s intent to remove any obstruction.

8. Restrictive Covenants. Grantor hereby agrees to the following restrictive covenants, which bind and run with the Property:

 (a) Grantor, now and in the future, shall keep the Airspace free and clear of all objects of any kind or nature, including buildings, trees, towers, tethered objects, smoke, drones, and other things,

(b) Grantor shall not construct, cause, or allow any object of any kind or nature to be located in the Airspace,

(c) Grantor shall not use or allow others to use the Property in any manner that obstructs or interferes with Grantee’s rights under this Easement,

(d) Grantor shall not install, cause, or allow any device to be located on the Property that causes any electrical or electronic interference with radio communications or radar operations between the Airport and any Aircraft,

(e) Grantor shall not use the Property in any manner that impairs the visibility of the Airport or endangers Aircraft taking off from, landing at, or maneuvering about the Airport,

(f) Grantor shall not use the Property in any manner that interferes with Airport Operations or constitutes a hazard to the Airport or any Aircraft, including landfills, water retention ponds, wetlands, or any activity that may attract birds, and

(g) Grantor shall not use the Property in any manner that is inconsistent with this Easement or that may be incompatible with Airport Operations, including causing glare or making it difficult for pilots to identify or land at the Airport.

9. Release. Grantor hereby releases Grantee and all Aircraft operators using the Airport from all claims, losses, liabilities, and expenses (collectively, Losses) that Grantor has now or may have in the future arising from the burdens imposed upon the Property and Grantor by this Easement, including noise and other negative impacts. Grantor hereby waives the right to sue for damages suffered in connection with Losses and covenants not to attempt to enjoin the burdens imposed upon the Property and Grantor by this Easement. Grantor hereby waives the right to object to, enjoin, or interfere with any Aircraft Operations in the Airspace and waives any claim for any diminution in the value of the Property resulting from this Easement or Airport Operations.

10. No Waiver. Grantee’s failure to insist on Grantor’s strict performance of any provision of this Easement shall not be construed as a waiver of Grantee’s right to enforce the provision breached or any other provision of this Easement. Grantor’s waiver of or consent to Grantor’s breach of any provision of this Easement shall not be construed as a waiver of or consent to any other or subsequent breach of the same provision or any other provision hereof.

11. Severability. If a court finds any provision of this Easement invalid or unenforceable, then the remaining provisions hereof shall remain unaffected and in full force and effect.

12. Amendment. This Easement may not be modified or amended except by a writing duly executed by Grantor and Grantee.

13. Governing Law and Cancellation. This Easement shall be interpreted and enforced in accordance with Arizona law.

Dated this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

GRANTOR:

**[Property Owner]**

By:

Name:

Its:

STATE OF \_\_\_\_\_\_\_\_\_ )
 ) ss.
County of \_\_\_\_\_\_\_\_\_\_ )

This Avigation Easement and Restrictive Covenant dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, and consisting of \_\_\_\_ pages, was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ by [Property Owner].

(seal)

Notary Public

GRANTEE

**[Municipality/Airport Sponsor]**

By:

Name:

Its:

ATTEST:

[City/Town/County] Clerk

APPROVED AS TO FORM:

[City/Town/County] Attorney

**Exhibit A**

Legal Description

**Exhibit B**

Map