

AVIGATION EASEMENT

THIS AVIGATION EASEMENT (hereinafter "Easement") is made and granted this day of _____ 2019, by **INDIAN RIVER COUNTY**, a political subdivision of the State of Florida whose mailing address is 1801 27th Street, Vero Beach, FL 32960, hereinafter the "GRANTOR," in favor of the **CITY OF VERO BEACH, FLORIDA**, a Florida municipal corporation, whose mailing address is P.O. Box 1389, Vero Beach, Florida 32961-1389, hereinafter the "GRANTEE."

W I T N E S S E T H :

WHEREAS, GRANTOR is the sole record owner in fee simple of that certain real property situated in Indian River County, Florida, which is more particularly described as follows:

(See *Exhibit "A"* attached hereto and incorporated herein by this reference),

hereinafter called GRANTOR'S "Property," said Property being located as approximately depicted on the map attached hereto as *Exhibit "B"* incorporated herein by this reference; and

WHEREAS, GRANTEE is the owner and operator of the Vero Beach Regional Airport (hereinafter "Airport" as it now exists or may hereafter be enlarged, expanded and/or further developed or re-named), situated in the City of Vero Beach, Indian River County, Florida; and

WHEREAS, GRANTOR'S Property is in close proximity to GRANTEE'S Airport; and

WHEREAS, GRANTOR anticipates making improvements and developing the Property for passive recreations, environmental projects or activities that are ancillary to and consistent with the use of the Dodgertown Property and, although the Airport currently has a voluntary comprehensive noise abatement program, GRANTOR recognizes that the Property is and will continue to be subject to noise and other effects from aircraft operations as a result of the Property's proximity to the Airport; and

WHEREAS, GRANTOR and GRANTEE desire to preserve for the use and benefit of the public its right of free and unobstructed flight for aircraft landing upon, taking off from, or maneuvering about or in the vicinity of the Airport; and

WHEREAS, GRANTOR has heretofore agreed, and desires hereby, to grant to GRANTEE an avigation easement over, across and through the GRANTOR'S Property for such free and unobstructed flight of aircraft landing upon, taking off from, or maneuvering about or in the vicinity of the Airport;

NOW, THEREFORE, in consideration of the terms, covenants and conditions set forth herein, together with other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the purposes of complying with all applicable laws and regulations of

the City of Vero Beach, Indian River County, and the Federal Aviation Administration, the GRANTOR, for itself, its successors and assigns, does hereby grant, bargain, sell, alien, convey, confirm, transfer and set over unto GRANTEE, its successors and assigns, for the use and benefit of the public, including any and all officers, employees, representatives, agents, tenants, licensees, guests and invitees of GRANTEE, and persons, firms, corporations, and entities operating aircraft to or from the Airport, a perpetual and assignable easement and right-of-way over and across the Property pursuant to the following terms, covenants and conditions:

1. Adoption of Predicate. The foregoing clauses are hereby adopted and incorporated herein as part of the basis for this Easement.

2. Airspace. The Easement and right-of-way herein granted shall be through and within that airspace located directly over, above, and across the Property (hereinafter "Airspace"). The Easement and right-of-way shall be appurtenant to and for the benefit of the Airport, including any additions thereto wherever located, hereafter made by GRANTEE, its successors or assigns.

3. Passage of Aircraft. The Easement and right-of-way granted herein shall be for the free and unobstructed passage of aircraft in and through the Airspace, together with the right to cause in the Airspace and its vicinity such noise, vibrations, fumes, deposits of dust or other particulate matter, fuel particles, interference with sleep and communication, psychological, emotional, or physical distress, and any and all other effects as may be inherent in or alleged to be incident to or caused by the operation of such aircraft, now known or hereinafter used, for navigation or flight in the Airspace and its vicinity and for use of the Airspace for landing on, taking off from, and maneuvering about or in the vicinity of the Airport, provided such operation complies with all applicable federal and state laws and regulations concerning operation of aircraft and use of the Airport. 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.

4. Restrictions on Structures and Improvements. GRANTOR, for itself and its successors and assigns, does hereby expressly agree to restrict the height of structures, objects of natural growth and other obstructions of any kind or nature whatsoever on the Property to a height of not more than one hundred (100) feet above ground level or the height permitted under applicable laws and regulations, whichever is lower. GRANTOR, for itself and its successors and assigns, does hereby agree that they will not hereafter erect or construct, permit the erection or construction of, growth of, create, or permit or suffer to remain upon the Property, in the Airspace, or in the Airport Runway Protection Zone, any structure, facility, improvement, or natural growth, that is or might be a hazard to aviation or which might create glare, misleading lights, smoke, fumes, dust, or which attracts or results in a concentration of birds. The restrictions contained in this Easement shall not be construed to limit the construction of any structure or improvement on the Property that is otherwise in compliance with the terms of this Easement and all applicable development conditions, zoning ordinances, laws, and regulations of or imposed by the City of Vero Beach or any other governmental entity or agency having jurisdiction regarding such construction.

5. Restrictions on Use. The GRANTOR, for itself and its successors and assigns, does hereby expressly agree to not hereafter use or permit or suffer the use of the Property in such a manner as to (i) interfere with the operation, development or maintenance of the Airport, (ii) create electrical interference with radio communications between any installation upon the Airport and aircraft, or otherwise interfere with the operation of air navigation and communication facilities serving the Airport or aircraft, (iii) make it difficult for aircraft pilots to distinguish between Airport lights and other lights, (iv) result in glare in the eyes of aircraft pilots using the Airport, (v) impair the visibility in the vicinity of the Airport, or (vi) otherwise endanger the landing, taking off, or maneuvering of aircraft.

6. Alleviation of Hazards. GRANTOR, for itself and its successors and assigns, expressly agrees to develop and maintain the Property or cause the Property to be developed and maintained, at their expense, so as not to create any aviation hazard, including, but not limited to, those specified in this Easement. GRANTOR does hereby grant and convey to GRANTEE a continuing right and easement to take such action necessary to prevent the erection or growth of any structure, facility, improvement, tree or other object into the Airspace or on the Property, and to remove such from the Airspace or the Property at GRANTOR'S expense, together with the right of ingress to, egress from, and passage over the Property for such purposes, if GRANTOR fails to adequately alleviate any such hazard upon notification. In addition to, and in no way limiting the generality of the foregoing, if any trees on the Property extend into the Airspace, the GRANTOR does hereby grant unto the GRANTEE the permission to reduce the height of such trees by cutting the tops of such trees.

7. Release. GRANTOR, for itself and its successors and assigns, and any and all other persons and entities bound hereby, does hereby expressly and fully waive, remise, and release any and all right, claim, or cause of action which they may now have or which they may have in the future against GRANTEE, its representatives, agents, tenants, licensees, officers, employees, successors or assigns, including any and all guests and invitees of GRANTEE, and persons, firms, corporations and entities operating aircraft to or from the Airport, arising from or due to such noise, vibrations, fumes, deposits of dust or other particulate matter, fuel particles, interference with sleep and communication, psychological, emotional, or physical distress, and any and all other effects, as may be inherent in or alleged to be incident to or caused by the operation of such aircraft landing at, or taking off from, operating at or on, or maneuvering about or in the vicinity of, the Airport or the Airspace. However, this paragraph shall not be construed to deprive the Grantor of any claim for injury or damages against any person or entity whereby injury or damage is caused by negligent use of the airspace above the Property or as result of the use of the airspace above the Property in a manner inconsistent with this Easement.

8. Taxes and Assessments. GRANTEE and its successors and assigns shall not, by reason of this Easement, be obligated to pay any real estate taxes or special assessments levied against the Property.

9. Successors and Assigns. This Easement and each and every term, covenant and condition hereof, shall be binding upon the GRANTOR and its successors and assigns, and upon all owners, tenants, invitees, mortgagees, and occupants of the Property, their heirs, representatives, invitees, licensees, tenants, successors and assigns, including without limitation each and every record owner

from time to time of the Property or any portion thereof, and any other person or entity having an interest therein, and shall run with the land and shall inure to the benefit of the GRANTEE and its representatives, agents, tenants, licensees, officers, employees, successors and assigns, including any and all guests and invitees of GRANTEE, and persons, firms, corporations and entities operating aircraft to or from the Airport. The acceptance by any person or entity of any right of use, deed, lease, mortgage, or other interest in or privilege pertaining to the Property whatsoever shall constitute acknowledgement and acceptance of the terms of this Easement and the binding effects hereof.

10. Waiver. No waiver of, acquiescence in, or consent to any breach of any term, covenant or condition hereof shall be construed as, or constitute, a waiver of, acquiescence in, or consent to any other, further or succeeding breach of the same or any other term, covenant or condition hereof.

11. Headings. The title and section headings contained herein are not substantive parts of this Easement and shall not expand, limit or restrict the Easement or right-of-way granted in any way.

12. Severability. If any term or provision of this Easement shall, to any extent, be invalid or unenforceable under applicable law or regulations, then the remaining terms and provisions shall not be affected thereby, and each such remaining term and provision shall be valid and enforceable to the fullest extent permitted by applicable law or regulation.

13. Amendment. This Easement shall not be modified or amended, except by a writing executed by the GRANTOR and GRANTEE, or their respective successors or assigns, and recorded in the Public Records of Indian River County, Florida.

14. Governing Law. This Easement shall be construed and enforced in accordance with the laws of the State of Florida and the United States and the venue for enforcement hereof or resolution of any dispute arising hereunder shall be in Indian River County, Florida, or in the case of federal jurisdiction, in the United States District Court for the Southern District of Florida. In any action arising hereunder, the prevailing party shall be entitled to recover its reasonable attorney's fees through trial and appeal, together with costs of the action. In the event each party shall partially prevail in such action, costs and attorneys' fees shall be equitably apportioned between the parties by the court.

15. Recording. GRANTOR, at GRANTOR'S expense, shall record this Avigation Easement in the Public Records of Indian River County, Florida. Any and all plats of the Property to be recorded in such Public Records shall make reference to and incorporate this Avigation Easement.

TO HAVE AND TO HOLD said Easement and right-of-way together with all rights appertaining thereto unto the GRANTEE, its successors and assigns, limited only to the proper use and benefit of GRANTEE, its successors and assigns forever, as long as the same is used by GRANTEE for the purposes of this conveyance.

IN WITNESS WHEREOF, the GRANTOR has executed this Avigation Easement this _____ day of _____, 2019.

WITNESSES:

GRANTOR:

INDIAN RIVER COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

ATTEST:

Jeffrey R. Smith, Clerk of Court and
Comptroller

BY: _____
Bob Solari, Chairman

Approved by BCC _____

Deputy Clerk

(SEAL)

ACCEPTANCE BY GRANTEE
CITY OF VERO BEACH

Tammy K. Bursick
City Clerk

BY: _____
Mayor

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____, as Mayor, and attested by Tammy K. Bursick, as City Clerk of the City of Vero Beach, Florida. They are both known to me.

Notary Public
Print Name:
My commission expires:

ADMINISTRATIVE REVIEW
(For Internal Use Only—Sec. 2-77 COVB Code)

Approved as to form
and legal sufficiency:

Approved as conforming to
municipal policy:

Kira C. Honse
Interim City Attorney

James R. O'Connor
City Manager

Approved as to technical
requirements:

Ericson W. Menger
Airport Director

EXHIBIT "A"
PROPERTY DESCRIPTION
AVIGATION EASEMENT #2019-EG-251
PORTIONS OF DODGERTOWN PARCELS 1-A AND 2-A
PARCEL #'s 32-39-26-00011-0230-00001.3 AND 32-39-26-00011-0230-00001.2

Situated in the State of Florida, County of Indian River, City of Vero Beach, and being a part of Section 3, Township 33 South, Range 39 East and being more particularly bounded and described as follows:

An Avigation easement described as follows:

Commencing at the Northwest corner of Section 3, Township 33 South, Range 39 East;

Thence South 00°00'47" West along the west line of said Section 3 for a distance of 200.31 feet;

Thence South 89°45'39" East and parallel with the north line of said Section 3 for a distance of 50.00 feet to a point on the east right of way of 43rd Avenue, said point being the Point of Beginning of an avigation easement;

Thence from the Point of Beginning run South 54°09'06" East along the southwesterly line of the Vero Beach Regional Airport Runway Protection Zone for a distance of 45.29 feet;

Thence North 27°122'13" East along the southeasterly line said Runway Protection Zone for a distance of 489.23 feet to a point on the south right of way of the Indian River Farms Water Control District Canal A-3;

Thence North 89°45'39" West along said south right of way of Canal A-3 for a distance of 432.09 feet;


Thence South 68°26'07" West for a distance of 5.38 feet to a point being 2 feet south of said Canal A-3;

Thence North 89°45'39" West on a line 2.0 feet south of and parallel with said Canal A-3 for a distance of 116.03 feet;

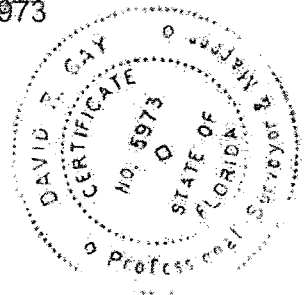
Thence South 45°07'21" West for distance of 56.46 feet to a point on the east right of way of 43rd Avenue;

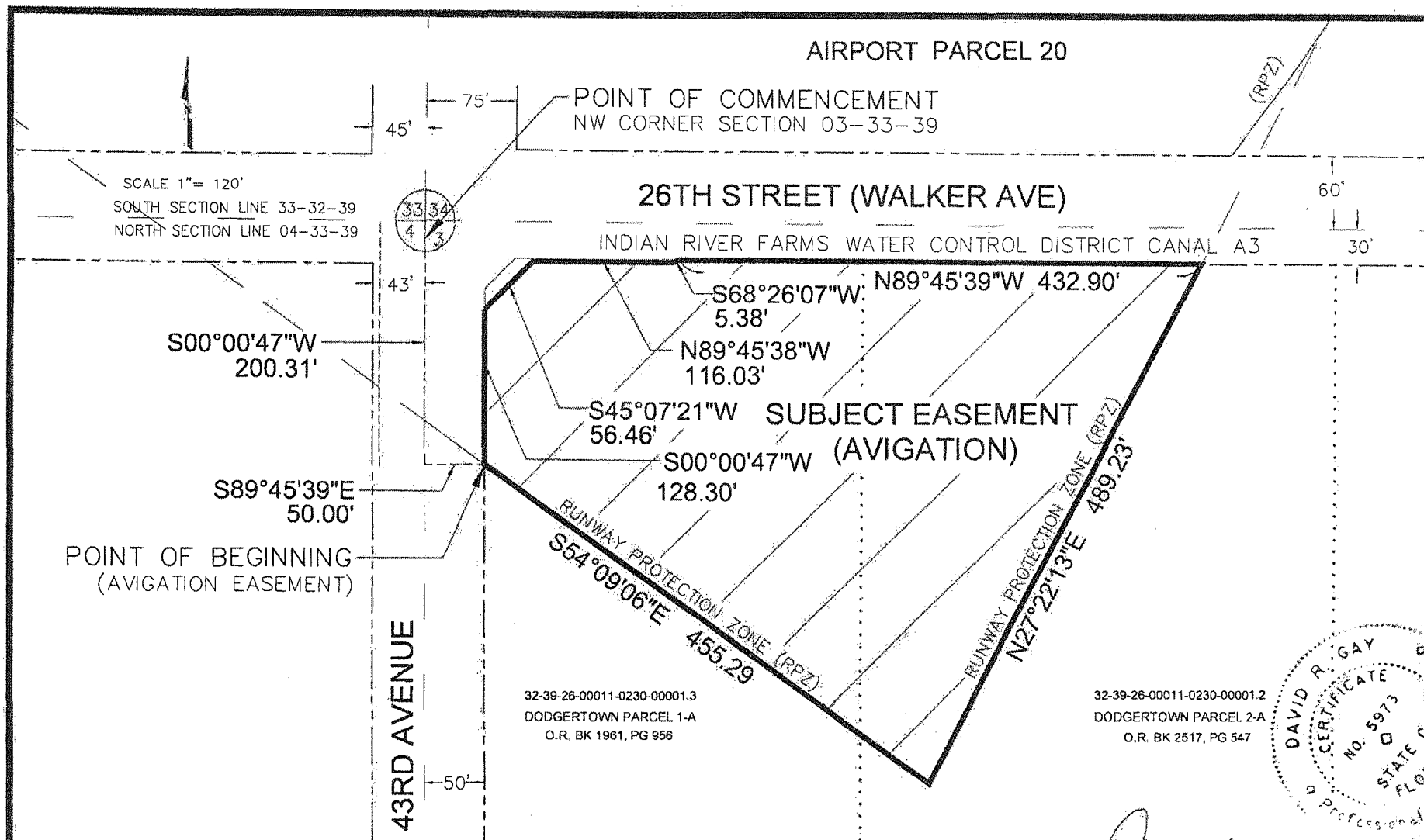
Thence South 00°00'47" West along the east right of way of 43rd Avenue for a distance of 128.30 feet to the Point of Beginning;

Said Avigation Easement containing 159,613 square feet or 3.66 acres more or less.



David Gay, PSM #5973





THIS SKETCH IS NOT A SURVEY

David R. Gay
DAVID R. GAY, PSM #5973 DATE 2/5/19

SHEET 3 OF 3

CITY OF VERO BEACH	SKETCH OF PROPERTY DESCRIPTION AVIGATION EASEMENT PORTION OF SECTION 03-33-39	EXHIBIT "A"		REV. NO.	AUTHORIZED BY
DEPARTMENT OF PUBLIC WORKS		CITY PROJECT NO. 2019-EG-251		DRWN. BY	DATE
SURVEY & ENGINEERING DIVISION		DATE 02/2019	DRWN BY DG	CHKD BY MKF	DESCRIPTION