

## AVIGATION EASEMENT AND RELEASE

This **AVIGATION EASEMENT AND RELEASE** is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ (collectively the "**Grantor**"), whose address is \_\_\_\_\_, Cook County, Illinois, and the **CHICAGO EXECUTIVE AIRPORT**, an intergovernmental cooperative of the City of Prospect Heights and the Village of Wheeling, 1020 South Plant Road, Wheeling, Illinois 60090 (the "**Grantee**")

### **Witnesseth**

Grantee is the owner and operator of a General Aviation airport in Cook County, Illinois, presently known as Chicago Executive Airport (together with any future configuration or modification thereof, being hereinafter referred to as the "Airport"); and

Grantor is the owner in fee simple absolute of the property legally described in Exhibit A, attached hereto and made a part hereof (the "**Premise**").

Grantee is administering a noise mitigation program (hereinafter "**Program**") providing for the acquisition of easements in properties located in the Village of Wheeling, City of Prospect Heights and Village of Mount Prospect, which are inside certain noise exposure contours; and

NOW, THEREFORE, WITNESSETH Grantor for itself, heirs, successors and assigns desires to grant and convey to Grantee a perpetual, nonexclusive avigation easement for the use and benefit of Grantee, the Airport, its tenants, invitees and licensees, including any and all persons, firms, or corporations operating Aircraft to or from the Airport, allowing the free and unobstructed passage of aircraft in the airspace on, upon, over, across, adjacent to, above and in the vicinity of the Servient Tract as more specifically described herein.

#### 1. Avigation Easement Grants

Grantor hereby declares, grants, imposes upon, and binds Grantor, its successors in interest and assigns, for the use and benefit of the public for so long as the Airport is used as an airport, easements (the "**Avigation Easement**") and right of way appurtenant to the Airport, for the unobstructed passage of all types of aircraft (as defined below) in and through the Avigation Easement Area (as hereafter defined), which allows and permits those navigating the airspace contained in the Avigation Easement to have the right to cause in and emit from the Avigation Easement such noise, vibrations, fumes, dust, fuel particles and all other effects, whether or not confined to the Avigation Easement herein granted (which areas outside of the Avigation Easement Area to include in and about the Premises) as may be incident to the operation of aircraft within the Avigation Easement. The Grantor and any and all subsequent owners of all or any portion of the Premises shall, by acceptance of conveyance of the Premises, be deemed to have expressly waived and released, and agreed to indemnify and hold the Grantee, its successors and assignees, harmless from and against, any and all claims and demands of any nature whatsoever for injury to persons or property

damage that Grantor or such subsequent owner, its successors in interest or assigns may now or in the future have arising out of or in any way related to the operation of aircraft within the Avigation Easement, Grantor, for him/herself and his/her successors and assigns, further declares and agrees that the Premises shall not be used in any manner so as to create interference with visual contact, radio, radar, microwave, electromagnetic or any other communication between any installation serving the Airport and aircraft, or as to make it difficult for flyers to distinguish between Airport lights and others, or as to impair visibility in the vicinity of the Airport, or as may otherwise endanger or constitute a hazard to the landing, taking off or maneuvering of aircraft under the applicable regulations of the U.S. Department of Transportation, Federal Aviation Administration, in effect from time to time or of any successor agency, or of any other agency having jurisdiction.

For purposes of this instrument, the term “**aircraft**” as used herein shall mean any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air without limit, now or in the future, as to speed, size, characteristics, frequency, or time of operation, by whomsoever owned and operated.

## 2. Avigation Easement Area

The term “**Avigation Easement Area**” as used herein shall mean that portion of the airspace above ground level (AGL) at the Premises as shall be permitted by Federal Aviation Regulations Part 77 or such other applicable U.S. Code of Federal Regulations (Title 14) in effect from time to time or of any successor agency, or of any other agency having jurisdiction. Any and all subsequent owners of all or any portion of the Premises shall, by acceptance of conveyance of the Premises, be deemed to have acknowledged that aviation is an expanding and developing activity, and that the degree to which one or more of the rights granted herein may affect the Premises may change with the passage of time, and any such changes shall not be cause for any such subsequent owner, his/hers/its heirs, successors and/or assigns, to seek or recover additional compensation or damages.

This Avigation Easement Area includes the free and unobstructed rights of use and passage by Aircraft in and through the airspace above the Servient Tract, with such rights of use and passage by Aircraft to be unlimited as to frequency, time of passage, and type of Aircraft so long as the exercise of such rights is not in violation of the applicable Federal Laws governing Aircraft flight operations (the “Passage of Aircraft”).

## 3. Intended Application and Release

It is expressly intended by Grantee and Grantor that this Avigation Easement shall apply to the Passage of Aircraft and to Noise and Other Effects of Aircraft Operation that may otherwise be objectionable or constitute a trespass, a permanent or continuing nuisance, personal injury, a taking, or damage to the Servient Tract. Grantor, for itself and its heirs, successors and assigns, does hereby expressly waive and release Grantee, its successors and assigns, legal representatives, officers, employees and agents from any and all rights or claims of liability of the Grantor or of any other person or entity entitled to the benefits of this

Avigation Easement for damage to property or physical or emotional injury to persons, animals, or any other living thing, the diminution in value of any personal or real property, and discomfort or interference with the audio portion of television and/or radio by, from or arising from the operation of aircraft, as well as any claim or cause of action for inverse condemnation.

#### 4. Changes

The rights, easements benefits, waivers, releases, 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, and 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.

#### 5. Term

The Term of this Avigation Easement and Release begins upon the date of its execution by Grantor and shall run with and be applicable to the Premises and covenants running with the land so long as the Airport continues to be operated as an airport, and in addition to all other enforcement rights and/or remedies by any other party, shall be specifically enforceable by the Grantee. The Avigation Easement shall inure to the benefit of the Grantee and be binding upon any and all subsequent owners of all or any portion of the Premises and their respective legal representatives, heirs, successors and/or assigns. The invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provision hereof. This instrument shall be governed by and construed under the law of the State of Illinois and applicable Federal laws and regulations. This instrument shall not be amended, superseded, modified or released except by express written agreement of the Grantee.

#### 6. Recordation

This Avigation Easement shall be recorded in the Public Records of Cook County at the expense of the Grantee.

(Remainder of page intentionally blank; signatures begin on following page.)

IN TESTIMONY WHEREOF, witness the execution hereof by the Grantor(s) and by the Grantee by its duly authorized officers, as of the day and year first written above.

**GRANTOR:**

\_\_\_\_\_  
(Grantor No. 1 Name)

\_\_\_\_\_  
(Grantor No. 2 Name)

THE STATE OF ILLINOIS     )  
  )  
COUNTY OF COOK     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, by \_\_\_\_\_ and \_\_\_\_\_ personally known to me or whose identity was confirmed by the following satisfactory documentary evidence: \_\_\_\_\_ (collectively the "**Grantor**"), each an individual and a resident of Cook County, Illinois.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of Illinois

IN TESTIMONY WHEREOF, witness the execution hereof by the Grantor(s) and by the Grantee by its duly authorized officers, as of the day and year first written above.

**GRANTEE:**

CHICAGO EXECUTIVE AIRPORT

BY: \_\_\_\_\_

TITLE: Jeffrey Miller  
Executive Director of  
Chicago Executive Airport

THE STATE OF ILLINOIS        )  
  )  
COUNTY OF COOK            )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, by Jeffrey Miller, as Executive Director of Chicago Executive Airport personally known to me (the "**Grantee**"), a body politic and corporate existing pursuant and on behalf of the Grantee.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of Illinois