


THIS DOCUMENT PREPARED BY
AND SHOULD BE RETURNED TO:
JUAN CARLOS B. GOMEZ, ESQ.
MARCHENA AND GRAHAM, P.A.
976 LAKE BALDWIN LANE; SUITE 101.
ORLANDO, FL 32814

DOC# 20110354246 B: 10237 P: 1157
07/08/2011 10:07:47 AM Page 1 of 10
Rec Fee: \$86.50
Deed Doc Tax: \$0.00
DOR Admin Fee: \$0.00
Intangible Tax: \$0.00
Mortgage Stamp: \$0.00
Martha O. Haynie, Comptroller
Orange County, FL
MB - Ret To: MARCHENA & GRAHAM PA



AVIGATION EASEMENT AGREEMENT

THIS AVIGATION EASEMENT AGREEMENT, is made and entered into on this 28 day of June, 2011, by and between the **CITY OF APOPKA, FLORIDA**, a municipal corporation existing under the laws of the State of Florida (hereinafter referred to as the "City") and **ORLANDO APOPKA AIRPORT ASSOCIATION, INC.**, a Florida not for profit corporation (hereinafter referred to as the "Association").

WITNESSETH:

WHEREAS, The City owns that certain real property situated in Orange County, Florida more particularly described as follows (hereinafter referred to as "Unit 162"):

Parcel ID: 35-20-27-6645-01-620

Unit 162 of Orlando-Apopka Airport, a commercial land condominium, according to the Declaration of Condominium thereof recorded in Official Records Book 7431, Page 1846, Public Records of Orange County, Florida;

and

WHEREAS, the Association is the managing entity created in furtherance of that certain Declaration of Condominium, recorded in O.R. Book 7431, Page 1846, Public Records of Orange County, Florida, as amended, for the real property described on Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter referred to as the "Airport Property"); and

WHEREAS, the Airport Property includes that certain paved runway lying adjacent and contiguous to Unit 162 and which is more particularly described as "Tract C" on the Amended Survey and Plot Plan, recorded in Condominium Book 37, Pages 25 and 26, Public Records of Orange County, Florida, a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference, (hereinafter referred to as "Tract C"); and

WHEREAS, the Federal Aviation Administration ("FAA") requires the land located a minimum of 125 feet to the East and West of the centerline of Tract C to be free of objects or improvements of any kind, including but not limited to, taxiing and parked airplanes and object penetrations, except for frangible visual NAVAIDS that need to be located in this area because of their function, said 250 foot wide area of land is referred to as the runway Obstacle Free Zone by the FAA; and

WHEREAS, Unit 162 is situated within the Association's required runway Obstacle Free Zone located to the East of Tract C; and

WHEREAS, the Association has argued that Unit 162 is a common element of the Airport Property, not capable of private ownership, and Orlando Country Aviation Services, Inc., the previous owner of Unit 162 and the developer of the Airport Property (hereinafter the "Developer"), has disputed the Association's argument by claiming that Unit 162 is not a common element of the Airport Property, but rather that it is a separate "Unit" which is capable of private ownership; and

WHEREAS, the City, subject to the terms and conditions hereinafter set forth and to resolve the above referenced dispute, agrees to grant the Association a nonexclusive avigation easement over Unit 162 for the purpose of allowing the Association to utilize Unit 162 as a runway Obstacle Free Zone.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Title of Unit 162.** The Association hereby acknowledges that the City is the fee simple title holder of Unit 162, and that Unit 162 is an individual Unit of the Airport Property, capable of private ownership. The Association further acknowledges that as of the date of this Avigation Easement Agreement, Unit 162 is current on all assessments, maintenance fees, and other charges due to the Association, and the Association has no claim against Unit 162 or the City for past due assessments, maintenance fees, or other charges.
2. **Grant of Easement by City.** The City does hereby grant and convey to the Association, for the benefit of the Association, successors in title to the Airport Property and its assigns, a nonexclusive easement over, to, from and across Unit 162 which is located to the East of Tract C, for the express purpose of making Unit 162 available to the Association as a runway Obstacle Free Zone as required by the FAA (hereinafter referred to as the "OFZ Easement").
3. **Assessments.** As a condition of conveying the OFZ Easement to the Association, the Association hereby agrees to timely pay for all condominium assessments imposed upon Unit 162 until the Termination Date (as hereinafter defined).
4. **Maintenance.** As a condition of conveying the OFZ Easement to the Association, the Association hereby agrees to maintain Unit 162 and the improvements located thereon in good repair and condition, at the Association's sole cost and expense, until the Termination Date (as hereinafter defined).
5. **Indemnity.** The Association agrees to and shall indemnify and hold the City harmless from and against any and all costs, losses, expenses or liabilities arising

out of or incurred in connection with use of the OFZ Easement area by it and its invitees, customers, employees, tenants, licenses, concessionaire, successors and assigns hereunder.

6. **Term of Easement.** The term of this Easement shall commence upon recordation hereof, and shall terminate on the date upon which the Association shall permanently cease to use Tract C as an airport runway (hereinafter the "Termination Date"). The Association shall be deemed to have permanently ceased using Tract C as an airport runway if Tract C is not available for use as an airport runway for a period of 120 consecutive days.
7. **Title Upon Termination of Easement.** The Association acknowledges that as of the Termination Date, the City, or the then current owner of Unit 162 if other than the City, shall be the fee simple title holder of Unit 162, free of all claims by the Association for assessments, maintenance fees, and other charges associated with Unit 162. Commencing on the Termination Date, however, Unit 162 shall be owned, used and occupied by its owner in accordance with the Declaration.
8. **Other Easements; Matter of Record.** It is expressly agreed and understood that the OFZ Easement hereby granted, together with all rights and privileges granted hereby, are and shall be non-exclusive, and the City hereby reserve for itself, its successors and assigns, the right to grant such other easements as it deems desirable in, over, under, upon or across its property, provided that such other easements shall not unreasonably interfere with the rights under the OFZ Easement granted hereby. The City further agrees that any grant of an easement to itself or another party which results in a violation of applicable FAA and Federal Department of Transportation Authority ("FDOT") clearance requirements for the runway shall be deemed "per se" unreasonable. The City further agrees that it shall not take any action or authorize any other party to take any action which would materially interfere with the rights of the Association under the OFZ Easement granted hereby. The rights of the Association hereunder are subject to all matters (to the extent they are valid and existing) disclosed by the Public Records of Orange County, Florida which affect Unit 162 and other property owned by the City.
9. **Binding Effect.** The terms of this Easement Agreement shall run with Unit 162 and the Airport Property and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
10. **Proposed Future Improvement of Tract "C".** The City understands that the Association has intentions to make improvements to Tract C. The present plans include re-grading the current runway, which may also require re-grading of Unit 162. If and when the Association commences these runway improvements, the City agrees that the scope of this Avigation Easement over Unit 162 shall include the right to re-grade Unit 162, at the Association's expense, to accommodate improvement of the Tract C runway. Notwithstanding the foregoing, however, prior to commencing any re-grading activities on Unit 162, the Association shall

be required to obtain the City's prior written consent, which consent will not be unreasonably withheld.

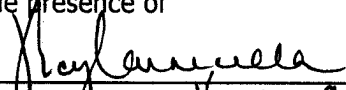
11. **Disclaimer of Derivative Rights**. No consent to the modification, from time to time, or termination of the provisions of this Easement Agreement shall ever be required of any tenant, licensee or concessionaire as to any portion of either party's property; nor shall any such tenant, licensee or concessionaire or any employee, customer or business invitee of same, have any right to enforce any of the provisions herein.

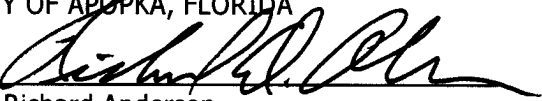
[SIGNATURE PAGE TO FOLLOW]

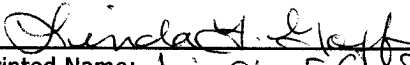
IN WITNESS WHEREOF, the parties have executed this Avigation Easement Agreement in manner and form sufficient to bind them as of the date first above written.

Signed, sealed and delivered in the presence of

CITY OF APOPKA, FLORIDA


Printed Name: Vicki Cravencia

By: 
Richard Anderson
Chief Administrative Officer

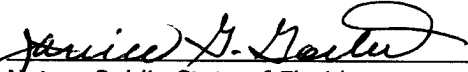

Printed Name: Linda E. Goff

STATE OF FLORIDA
COUNTY OF ORANGE

Acknowledged and subscribed before me this 24th day of June 2011 by Richard Anderson, as the Chief Administrative Officer of the City of Apopka, Florida, a Florida municipal corporation existing under the laws of the State of Florida, who is personally known to me.

[SEAL]




Notary Public-State of Florida
Printed Name: JANICE G GOEBEL
My Commission Expires: 12-11-2013

ORLANDO APOPKA AIRPORT
ASSOCIATION, INC.

A. Azam
Printed Name: ASIMA AZAM

By: *[Signature]*
Printed Name: Greg Mackland
Title: President

E. Anne Weaver
Printed Name: E. Anne Weaver

STATE OF FLORIDA
COUNTY OF ORANGE

Acknowledged and subscribed before me this 29th day of June 2011 by Greg Mackland, as the President of Orlando Apopka Airport Association, Inc., a Florida not for profit corporation, who is personally known to me or who produced DL# M 624-296-66-453 as identification.

[SEAL]

E. Anne Weaver
Notary Public-State of Florida
Printed Name: E. Anne Weaver
My Commission Expires: _____

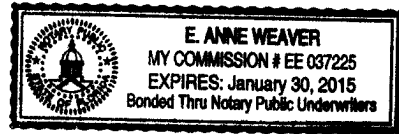


EXHIBIT A

LEGAL DESCRIPTION

**ORLANDO COUNTRY AIRPORT,
A CONDOMINIUM
SECTION 35, TOWNSHIP 20 SOUTH, RANGE 27 EAST
THE CITY OF APOPKA, ORANGE COUNTY, FLORIDA**

DESCRIPTION:

Commence at the Southwest corner of the Northwest 1/4 of the Southeast 1/4 of Section 35, Township 20 South, Range 27 East, Orange County, Florida and run N 0°54'22"E along the West line of the Northwest 1/4 of the Southeast 1/4 of said Section 35, 60.00 feet to the Point of Beginning; thence continue N 0°54'31" E along said West line, 1251.37 feet to the Northwest corner of the Northwest 1/4 of the Southeast 1/4 of said Section 35; thence run N 86°06'12"W along the South line of the Northwest 1/4 of said Section 35, 330.00 feet; thence run N 0°54'18"E 1646.44 feet; thence run S 86°23'29"E 330.02 feet to a point on the West line of the Northeast 1/4 of said Section 35; thence run N 0°54'31"E along said West line, 98.17 feet; thence run N 27°21'14"W 651.26 feet to a point on the North line of Lot II of LAKEVIEW GARDENS, according to the plat thereof as recorded in Plat Book K, Page 26 of the Public Records of Orange County, Florida; thence run S 86°40'18"E along said North line, 261.61 feet to a point on the Westerly right-of-way line of the CSX Railroad, said point being on a curve concave Southwesterly having a radius of 5699.65 feet, a chord of 213.55 feet and a chord bearing of S 29°04'25"E; thence run Southeasterly along said curve and right-of-way line, 213.57 feet to the end of said curve; thence run S 28°00'01"E along said right-of-way line, 2605.64 feet to a point on the East line of the Northwest 1/4 of the Southeast 1/4 of said Section 35; thence run S 0°56'14"W along said East line and right-of-way line, 62.00 feet thence run S 28°00'01"E along said right-of-way line, 931.77 feet; thence leaving said right-of-way line run N 86°09'03"W 451.42 feet to a point on the East line of the Northwest 1/4 of the Southeast 1/4 of said Section 35; thence run S 0°56'14"W along said East line, 306.96 feet; thence run N 86°10'29"W 1320.47 feet to the Point of Beginning; Containing 3869897.98 Square Feet or 88.8406 Acres.

EXHIBIT B

[Insert Amended Plot Plan]

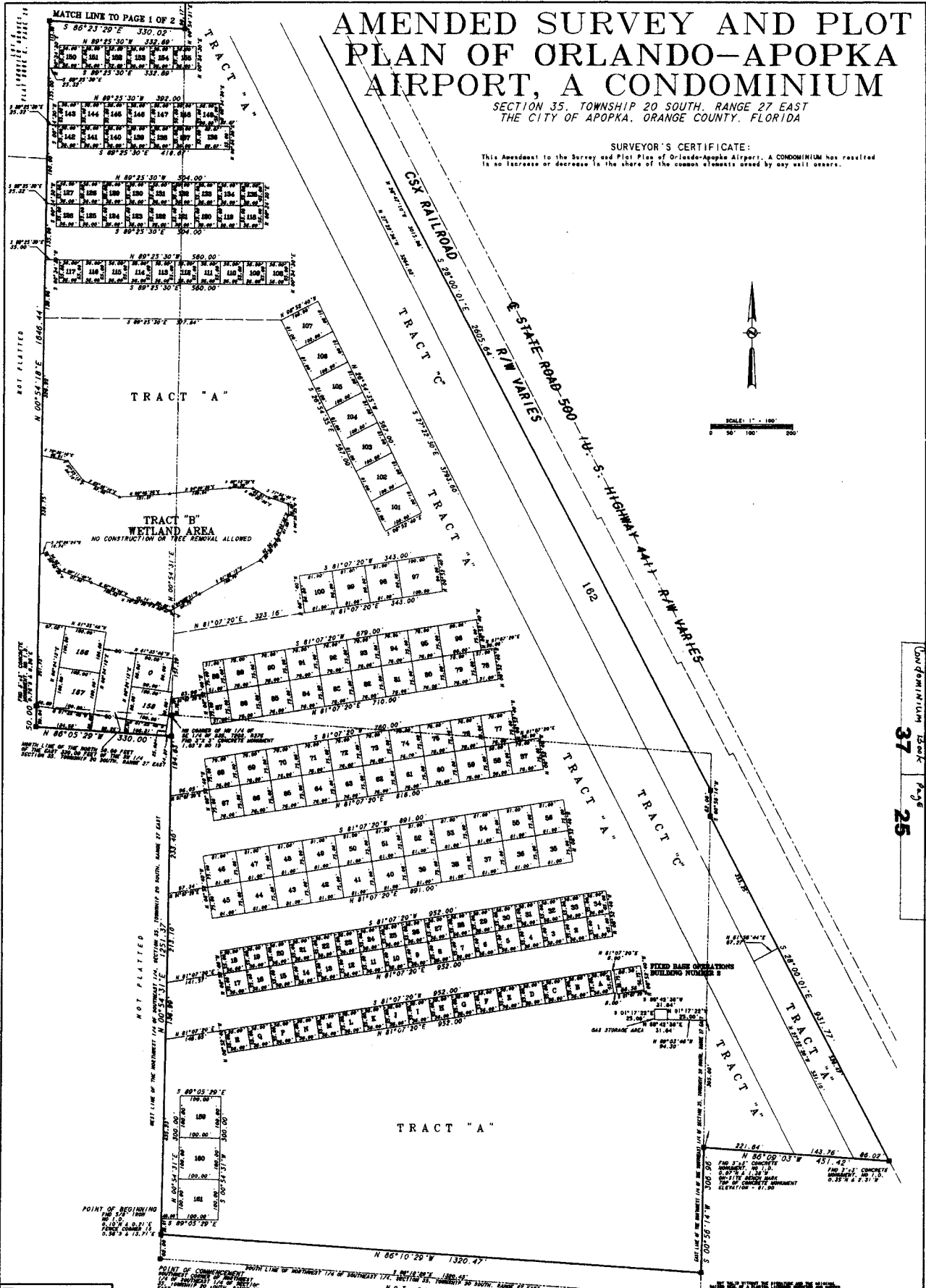
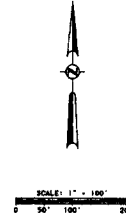
Book 37 Page 25 CFN#200505357

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AMENDED SURVEY AND PLOT PLAN OF ORLANDO-APOPKA AIRPORT, A CONDOMINIUM

SECTION 35, TOWNSHIP 20 SOUTH, RANGE 27 EAST
THE CITY OF APOPKA, ORANGE COUNTY, FLORIDA

SURVEYOR'S CERTIFICATE:
This Amendment to the Survey and Plot Plan of Orlando-Apopka Airport, A CONDOMINIUM has resulted in no increase or decrease in the share of the common elements owned by any unit owners.



Condominium Book 37 Page 25

DOUDNEY SURVEYING AND MAPPING CORP.

PROFESSIONAL SURVEYORS AND MAPPERS 200 EAST COMMERCIAL STREET SANFORD, FLORIDA 32771

FILED	M.C.P.	RECORDING	DATE
2005	APR 11	2005	11:11 AM
BOOK	37	PAGE	25
RECORDED AND INDEXED BY THE CLERK OF THE COUNTY OF ORANGE, FLORIDA			

CERTIFIED TO FIDELITY BOOK OF FLORIDA AND TO SOUTHERN TITLE
PAGE 2 OF 2

