

When recorded, return to:

City of Mesa
Real Estate Department
20 East Main Street
Mesa, Arizona 85201

**AIRCRAFT OPERATION, SOUND AND AVIGATION EASEMENT
AND RELEASE FOR FALCON FIELD AIRPORT AND FLIGHT OPERATIONS AT
THE BOEING COMPANY FACILITY**

WHEREAS _____, an Arizona limited liability company ("**Owner**") is the owner of that certain parcel of land situated in the City of Mesa, Maricopa County, Arizona, consisting of approximately ____ acres, legally described on the attached Exhibit A, and incorporated by reference herein, (the "**Land**") and which the Owner desires to develop the Land for a residential community under the name of _____.

WHEREAS, the Owner is aware that the Land lies in an area that is subject to aircraft flight patterns overflights and operations for aircraft utilizing airspace in connection with "Falcon Field Airport," generally located at 4800 E. Falcon Drive, Mesa, AZ 85215 ("**Airport**") and also in connection with "Boeing Flight Operations," located at 5000 E. McDowell Road, Mesa, AZ 85215, as legally described on the attached Exhibit B-1 and depicted on Exhibit B-2, which are incorporated by reference herein ("**Boeing Field**").

WHEREAS, the Owner recognizes that all airspace is governed by the U.S. Code, and the U.S. Government has exclusive sovereignty of airspace in the United States. Owner is willing to develop such Land subject to the sovereign authority of the U.S. Government subject to the plans and policies developed by the Federal Aviation Administration ("**FAA**") for use of the navigable airspace including the right of flight and other airspace uses over the Land and all effects flowing therefrom.

NOW THEREFORE, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby fully acknowledged, Owner and its heirs, administrators, executors, occupants, users, developers, successors and assigns (collectively, "**Owner**"), does hereby give and grant to the Airport, the City of Mesa, a municipal corporation, and its respective administrators, successors and assigns (collectively, "**City**"), Boeing Field, The Boeing Company, a Delaware corporation, and its affiliates, successors and assigns (collectively, "**Boeing**"), and Aircraft users of the Airport, Airport facilities, Boeing Field, and Boeing Field facilities a perpetual, nonexclusive and appurtenant easement that runs with and benefits the land and owners of the land hereby benefited (the "**Easement**") for all avigation purposes and uses over and across the Land in connection with flights, flight patterns and paths, airspace usage, passage, operations, testing, development of Aircraft (the term "**Aircraft**" shall include any device that is used or intended to be used for flight or passage in the air or space, existing or future), and other related uses and flight or airspace activities, in, to, over, across and through all navigable airspace above the surface of the Owner's

Land in such flights, flight patterns and paths, routes, uses, and all other Aircraft uses for all of the foregoing purposes and at altitudes that are in conformance with FAA regulations and to an infinite height above such Owner's Land, which Easement shall include, but not be limited to, the right of flight of all Aircraft above, across and over the Land in such flights, flight patterns and paths, routes, and all other Aircraft uses, provided all the foregoing purposes and altitudes are in conformance with FAA regulations, together with all related inconvenience, smoke, attendant sound and noise, vibrations, fumes, dust, fuel, gas and lubricant particles, and dripping and all other effects that may be caused by the operation of Aircraft including for the purposes and uses described above and also landing at, or taking off from, touching down and departing, or operating in relation to, on, from or around the Airport and Boeing Field (the foregoing are collectively call **"Airport Operations"**).

Owner, to the fullest extent permitted by law, does further waive, release and discharge the City, Airport, Aircraft Users, Boeing, Boeing Field, and the third party beneficiaries (as described below) of and from any and all claims, causes of action, and liabilities including claims for losses or damages of any kind to persons or property that may arise now or at any time in the future from Aircraft Operations (which includes, but is not limited to, take offs, landings, flights, testing, airspace usage and passage) from, at, or around the Airport or Boeing Field and/or over or in connection with the Owner's Land above, in, to, over and through all navigable air space above Owner's Land, and on and to the surface of the Land and on and to all structures, improvements and personal property now existing or hereafter located or constructed on the Land, or any portion of the Land, whether such loss or damage shall originate from smoke, noise, vibration, fumes, dust, fuel and lubricant particles, and all other effects that may be caused by any type of Aircraft Operations (which includes, but is not limited to, take offs, landings, flights, testing, airspace usage and passage); provided that such claim, cause of action or liability does not solely and exclusively arise out of either a failure to comply with an applicable FAA regulation for that flight or an expressed requirement made by the Falcon Field Airport Tower for that flight; and if either such failure occurs, this waiver, release and discharge shall not apply as to the owner of, or person or entity responsible for, that Aircraft; provided further that the foregoing waiver, release and discharge shall not apply as to liability for damage or injury to person or property caused by falling Aircraft or falling physical objects from such Aircraft, except the foregoing waiver, release and discharge does apply for inconvenience, smoke, attendant sound and noise, vibrations, fumes, dust, fuel and lubricant particles.

This Easement is granted for the above purposes and uses for the passage of all Aircraft, specifically including but not limited to military and developmental and test aircraft, present or future, by whomever owned or operated on, from, around or to the Airport and/or Boeing Field and any other airport or air facility which is or may be located at or near the site of the Airport and Boeing Field, including any future change, increase, or expansion in the boundaries of the Airport, Boeing Field, or their air facilities, including any expansion or address or location change to new areas for which there is no legal description attached hereto, the volume or nature of Airport Operations of the Airport, Boeing Field, or noise or patterns or timing of air traffic thereof.

Aircraft Users, Aircraft owners, operators, and other third party users of the Airport and Boeing Field are expressly intended to be third party beneficiaries of this Easement and are expressly granted all the same rights and benefits in this Easement and the release and discharge of and from any claims, causes of action and liabilities for any and all losses or damages as set

forth in this Easement.

Owner Desert Vista 100, LLC, an Arizona limited liability company (and any successor owner that is a developer of unimproved lots), prior to the initial sale of residential lots, shall give notice of this Easement by: (i) disclosing this Easement in the Subdivision Public Report filed with the Arizona Department of Real Estate; (ii) recording this Easement in Maricopa County Recorder's Office; and (iii) providing disclosure in compliance with Mesa City Code 11-19-5(C), which requirements include: (x) disclosure on the final subdivision plat, (y) notice to all prospective buyers at the sales offices, and (z) signage at the sales office notifying prospective buyers. Owners that are owners of improved residential lots, *i.e.*, not a developer, ("**Homeowners**") shall provide notice of this Easement to their successors, users, occupants, and tenants (collectively, "**Property Users**") of the Land, or any portion thereof; provided that the foregoing notice requirements in this paragraph are not intended to and do not require the Homeowner to provide any additional notice as part of a sale of an improved residential lot to a subsequent Homeowner other than the customary and usual information provided as part of a closing such as a title report.

The Property Users, to the fullest extent permitted by law, are bound by the terms of this Easement.

This Aircraft Operation, Sound and Avigation Easement and Release shall be binding upon Owner, Property Users and successors in interest to the Land, and any part thereof, and it is further agreed that this Easement shall be a covenant running with the Land and shall be recorded in the office of the County Recorder of Maricopa County, Arizona. Provided further, the release and discharge provisions in this Easement, to the extent permitted by law, are binding upon the Property Users of the Land.

This Easement may not be amended, modified, terminated or retracted without the prior written consent of City, Owner, and Boeing. Additionally, the unenforceability or invalidity of one or more provisions in this Easement shall not have an effect on any other provision in this Easement.

[Signatures appear on following pages]

EXECUTED this _____ of _____, 202_.

OWNER:

_____,
an Arizona limited liability company

By _____

Name _____

Its _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing Easement was acknowledged before me this _____ day of _____, 202_, by
_____, the _____ of _____, an Arizona limited
liability company, in his/her capacity as _____ of and on behalf of Owner.

Notary Public

My commission expires:

CITY OF MESA, ARIZONA,
an Arizona municipal corporation

By_____

Name_____

Its_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing Easement was acknowledged before me this_____day of_____, 202_, by
_____, the_____of the City of Mesa, Arizona, an Arizona municipal
corporation who acknowledged that he signed the foregoing instrument on behalf of City.

Notary Public

My commission expires:

THE BOEING COMPANY,
a Delaware corporation

By_____

Name_____

Its_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing Easement was acknowledged before me this_____day of_____, 202_, by
_____, the_____of The Boeing Company, a Delaware corporation, in
his/her capacity as_____of and on behalf of The Boeing Company.

Notary Public

My commission expires:

Exhibit A
Legal Description of the Land
(appears on the following pages)

EXHIBIT B-1
Legal Description of Boeing Field
(appears on the following pages)

EXHIBIT B-2
Depiction of Boeing Field
(appears on the following page)