

When recorded, return to:

City of Mesa

**AIRCRAFT OPERATION, SOUND AND AVIGATION EASEMENT
AND RELEASE FOR PHOENIX-MESA GATEWAY AIRPORT**

WHEREAS, [REDACTED] company, hereinafter called "Owner," is the owner of that certain parcel of land situated in the City of Mesa, Maricopa County, Arizona, consisting of approximately [REDACTED] acres, legally described on the attached Exhibit A, and incorporated by reference herein, which is hereinafter referred to as the "**Land**," and which the Owner desires to develop as a **mixed use community** which will include **both residential and non-residential** uses.

WHEREAS, the Owner is aware that the Land lies in an area that is subject to aircraft overflights and operations for aircraft utilizing airspace in connection with "Phoenix-Mesa Gateway Airport" (formerly known as Williams Air Force Base), which is hereinafter referred to as the "**Airport**."

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 as a mixed-use community 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 referred to herein as "**Owner**"), does hereby give and grant to the Airport, the Phoenix-Mesa Gateway Airport Authority (the "**Authority**") and the City of Mesa, a municipal corporation, and its respective administrators, successors and assigns ("City") and Aircraft users of the Airport and Airport facilities ("**Aircraft Users**"), a perpetual, nonexclusive easement for all avigation purposes and uses over and across the Land in connection with flights, 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 in the air or space, existing or future, that is regulated by the FAA), 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 flight patterns, routes, uses, the above purposes and 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 flight patterns, routes, uses, the foregoing purposes and altitudes that are in conformance with FAA regulations, together with its 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, or operating in relation to, on, from or around the Airport. The Owner does further release and discharge the City, the Authority, the Airport, Aircraft Users, The Boeing Company, a Delaware corporation, and its affiliates ("**Boeing**"), and other third party beneficiaries (as described below) of and from any liability for any and all claims for damages of any kind to persons or property that may arise now or at any time in the future 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 now existing or hereafter constructed on the Land, or any portion of the Land, whether such damage shall originate from smoke, noise, vibration, fumes, dust, fuel and lubricant particles, and all other effects that may be caused by the operation of Aircraft landing at, or taking off from, or operating at or around the Airport.

This easement is granted for the above purpose 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 any other airport or air facility which is or may be located at or near the site of said Airport, including any future change or increase in the boundaries of the Airport or air facility(ies), the volume or nature of operation of the Airport or air facility(ies), or noise or pattern of air traffic thereof; and these Aircraft Users, Boeing, Aircraft owners, operators, and users are and shall be third party beneficiaries of this Easement and the rights granted.

Owner shall give notice of this Easement to invitees, occupants, and tenants (collectively referred to herein as "Property Users") of the Land, or any portion thereof, and the Property Users, to the fullest extent permitted by law, are bound by the terms of this Easement.

This instrument does not release the owners and operators of Aircraft from liability for damage or injury to person or property caused by falling Aircraft or falling physical objects from such Aircraft, except as stated herein with respect to inconvenience, smoke, attendant sound and noise, vibrations, fumes, dust, fuel and lubricant particles. This Aircraft Operation, Sound and Avigation Easement and Release shall be binding upon said Owner and successors in interest to the Land, and any part thereof, and it is further agreed that this instrument shall be a covenant running with the Land and shall be recorded in the office of the County Recorder of Maricopa County, Arizona and other counties as applicable. This Easement may not be amended, terminated or retracted without the prior written consent of City, Owner, and Boeing.

[Signatures appear on following page]
EXECUTED this ____ of ____, 2020.

OWNER:

By _____

Name _____

Its _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____, the _____ of _____ corporation or limited liability company, in his/her capacity as _____ of and on behalf of said entity.

Notary Public

My commission expires:

THE BOEING COMPANY, a
Delaware corporation

By_____

Name_____

Its_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____, the _____ of The Boeing Company, a Delaware corporation, in his/her capacity as _____ of and on behalf of such corporation.

Notary Public

My commission expires:

Exhibit A

Legal Description