

PERMANENT EXCLUSIVE WATER EASEMENT

This Permanent Exclusive Water Easement is made this _____ day of _____, 2008, by and between, Airpark Village, LLC, a Colorado Limited Liability Company, whose address is 1593 S. Jamaica St., Aurora, Colorado 80012 (“GRANTOR”), and the City of Greeley, a Municipal corporation, whose address is 1000 10th Street, Greeley, Colorado 80631 (“GRANTEE”).

GRANTOR, for and in consideration of the sum of Ten and no/100 dollars (\$10.00) and other valuable consideration paid by the GRANTEE to the GRANTOR, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by this Permanent Exclusive Water Easement does grant, bargain, sell, convey and confirm to the GRANTEE, its successors and assigns forever, a permanent exclusive water easement on, under, and across the property as per Exhibit A “Property Description and Exhibit Map” attached hereto and incorporated herein by this reference, located in Larimer County, Colorado (“Easement”); for the purposes of:

1. Surveying, locating, installing, constructing, using, operating, maintaining, inspecting, repairing, altering, removing, and replacing one or more buried water pipelines, in whole or in part, and all necessary subsurface and surface appurtenances for the transportation of water and the operation and control of water facilities (hereinafter referred to as the “WATER PIPELINE”);
2. Marking the location of the Easement and pipeline or pipelines there under by suitable markers set and maintained in the ground at locations which shall not interfere with such reasonable use as GRANTOR shall make of the Easement under the terms of this Permanent Exclusive Water Easement;
3. Clearing debris and other obstructions on the Easement that might interfere with the operation and maintenance of GRANTEE’S activities and facilities on the Easement; and
4. Access for purposes of maintaining, inspecting, repairing, altering, removing and replacing one or more buried water pipelines across property owned by the GRANTOR that is contiguous to the Easement with the GRANTOR’S consent, which consent shall not be unreasonably withheld. Access shall be from a designated entry as shown on Exhibit B “Construction Road and Entries,” attached hereto and incorporated herein by this reference.

The GRANTEE shall:

5. Bury all pipe and communication and control cables to a depth substantially as indicated on Exhibit C “Construction Plan Sheets” 12-16, dated August 1, 2008, sheet 16 revised

October 13, 2008, attached hereto and incorporated herein by this reference;

6. Restore the surface of the ground to its condition prior to installation, construction, maintenance, alteration, or replacement of the pipeline or pipelines and appurtenances thereto;
7. Restore fences, drain tile, irrigation systems, landscaping, private roads and other improvements, to the conditions existing prior to GRANTEE'S activities on the Easement;
8. Pay the GRANTOR the actual damages to personal property caused by GRANTEE'S activities on the Easement;
9. Coordinate construction activities with representatives of GRANTOR'S tenant(s) to minimize loss of use of runway areas marked "Police & Sheriff Wednesday Only Uses" on Exhibit B for driver training; and pay the GRANTOR for any loss of use for driver training purposes the actual lost rental fees not to exceed \$2400 representing two months' rental fee;
10. Restore or replace improvements made by the GRANTOR on the Easement that were made with the written consent of the GRANTEE, as provided in paragraph 16 below, should those improvements be disturbed by the GRANTEE, on the condition that the GRANTOR pays the costs for such restoration or replacement; and
11. Install five, six-inch (6") solid polyethylene sub-drain pipes approximately ten feet (10') long crossing perpendicularly and centered six inches (6") clear below the WATER PIPELINE extending from edge of trench to edge of trench, one each at 5 cut-off wall locations. At both ends of the 6" pipe, a 6" perforated flexible polyethylene pipe shall extend vertically along the edge of the trench and be capped at the surface. At the west end of the horizontal sub-drain shall be a Tee connected to a 10 foot long perforated pipe extending upstream in the bottom corner of the trench. Filter fabric shall be placed around the pipe to keep bedding material out of the pipe. All materials for the sub-drain piping to be supplied by the GRANTOR. GRANTEE shall have no responsibility for maintenance or operation of such drain pipes within the easement. GRANTOR shall take all protective measures to assure no backflow of water or other substance shall enter the easement. GRANTOR shall operate this drain pipe in accordance with all Federal, State, and Local regulations. GRANTOR'S use of such drain pipes shall be at its own risk and without any right to use the easement for maintaining, repairing, altering, removing, or replacing such drain pipes without the prior written consent of GRANTEE. Manholes and standpipes for the drain pipes will be located outside of the easement area. Access for purposes of cleaning the drain pipes will be from outside the easement area and will require written notice to GRANTEE no later than ten (10) days prior to cleaning, and GRANTEE's written

approval;

The GRANTOR reserves the right to use and occupy the Easement for any purpose consistent with the rights and privileges granted herein which will not interfere with or endanger any of the GRANTEE'S facilities on or under the Easement of GRANTEE'S use thereof, provided that GRANTOR shall not:

12. Construct or allow the construction of any buildings or other structures on or under the Easement;
13. Impound water or other substance on or over the Easement, except for ornamental fountain located within the traffic circle of such design as per Exhibit D "Fountain Design", attached hereto and incorporated herein by this reference;
14. Store or dispose of any dangerous, toxic, or hazardous substance on or under the Easement;
15. Alter or replace any fence on the Easement without the prior written consent of GRANTEE, which consent will not be unreasonably withheld for replacement of fences with similar fences;
16. Use the Easement for any purpose except agricultural, or public right of way for local roadways and related uses that do not involve grading more than two feet below the surface without the prior written consent of GRANTEE; provided, however, the written consent of the GRANTEE will not be unreasonably withheld, delayed, or conditioned for the following additional uses:
 - a. Open space areas with or without landscaping but excluding fences, retaining walls, and trees;
 - b. Paved, gravel-surfaced, unsurfaced local roadways, or arterial roadway corridor as per Exhibit E "Approximate location of Easement in Planned Future Roadway, including subsurface storm drainage or similar underground facility crossings owned or to be owned by the City of Fort Collins and associated with the construction and operation of local roadways, provided that such underground facility crossings will not interfere with or endanger any of the GRANTEE'S facilities on or under the Easement or GRANTEE'S use thereof;
 - c. Temporary covers or enclosures not requiring the construction of a foundation and not to be used for long-term storage.
 - d. Utility service crossings at near right angles of the WATER PIPELINE with a minimum of two feet of clearance from actual pot-holed elevations of the pipe. GRANTOR may also install utility service crossings with less than two feet (2') but

a minimum of one foot (1') of separation subject to suitable special provisions approved in writing by GRANTEE. Such special provisions shall include, but not be limited to, a requirement that Sanitary Sewer crossings above the WATER PIPELINE, or beneath the WATER PIPELINE with a separation of eighteen inches (18") or less, will require a minimum eight inch (8") PVC casing at least twenty-five feet (25') in length centered at the point of crossing. Other industry standards for crossings may apply and would be addressed during the plan review for each crossing. There will be no fees required for GRANTEE'S review of crossing plans, issuance of the necessary crossing permits, inspection during construction, or review for final acceptance of crossing construction.

- e. Sub-drain piping connected to the six-inch (6") polyethylene pipe to be installed by GRANTEE pursuant to Paragraph 11 above. The sub-drain piping shall be limited to 10 total, six-inch (6") PVC pipes located at the invert of the WATER PIPELINE upstream of 5 trench cutoff walls, and extending at near right angles from the WATER PIPELINE, one to the east and one to the west at each location. GRANTEE shall have no responsibility for maintenance or operation of such drain pipes within the easement. GRANTOR shall take all protective measures to assure no backflow of water or other substance shall enter the easement. GRANTOR shall operate this drain pipe in accordance with all Federal, State, and Local regulations. GRANTOR'S use of such drain pipes shall be at its own risk and without any right to use the easement for maintaining, repairing, altering, removing, or replacing such drain pipes without the prior written consent of GRANTEE. Manholes and standpipes for the drain pipes will be located outside of the easement area. Access for purposes of cleaning the drain pipes will be from outside the easement area and will require written notice to GRANTEE no later than ten (10) days prior to cleaning, and GRANTEE's written approval.

- 17. Plant or allow any trees, shrubs or other landscaping to exceed three (3) feet at mature growth to grow on the Easement, or alter the ground level, without the prior written consent of GRANTEE.

GRANTOR warrants, represents, and covenants that the former airport has ceased operations and is hereafter prohibited from resuming same by the zoning regulations applicable to the property subject to the Easement as well as by the Findings of Fact, Analysis and Orders Granting Defendants' Renewed Motion for Summary Judgment entered by the Larimer County District Court on November 5, 2008 in Case No. 2006 CV 958, and recorded November ____, 2008 at Reception No. _____ of the records of the Larimer County Clerk and Recorder, and that GRANTOR has taken action to prevent any further take-offs and landings by third parties, including partial destruction of the runway and obstructing the high speed taxiway. GRANTOR further covenants to take other reasonable action to prevent any parties from operating aircraft on the Easement or adjacent property owned by GRANTOR, or in response to any claim of right to same, as necessary to prevent interference with GRANTEE's exercise of rights hereunder.

Such covenants shall burden, attach to and run with the property subject to the Easement and shall be binding upon GRANTOR's successors, assigns and any other persons who acquire an ownership or leasehold interest in all or part of such property; such covenants also shall benefit, attach to and run with the Easement, and shall inure to the benefit of GRANTEE's successors, assigns and any other persons who acquire an ownership interest in the Easement.

GRANTOR agrees to indemnify and hold harmless GRANTEE, its agents, employees, and contractors, from all claims and liability for damages or injury (including costs and reasonable attorneys fees) which might be brought against GRANTEE by the Plaintiffs, or any of them, now named in the Larimer County District Court action in Case No. 2006 CV 958, their successors and assigns, arising under the claim of easement rights they have asserted in the lawsuit.

GRANTOR warrants and will forever defend the title to the Easement.

GRANTOR: Airpark Village, LLC

By: _____

Print Name: _____

Title: _____

STATE OF COLORADO)

) ss.

COUNTY OF _____)

Acknowledged before me on this _____ day of _____ 20__.

by _____

WITNESS MY HAND AND MY SEAL.

MY COMMISSION EXPIRES _____

(Notary Public)

Accepted By City of Greeley Water & Sewer Department:

Name: _____

(Title) _____

(Date) _____