

## **GRANT OF PERMANENT AVIGATION EASEMENT AGREEMENT**

**THIS GRANT OF PERMANENT AVIGATION EASEMENT AGREEMENT** is made and entered into this 19<sup>th</sup> day of April, 2018 by and between MORGAN HILL INVESTORS, LLC, a Colorado limited liability company, whose address is 2500 Arapahoe Avenue, Suite 220, Boulder, CO 80302, hereinafter called "Grantor" and the TOWN OF ERIE, COLORADO, a Colorado municipal corporation, whose address is P.O. Box 750, Erie, CO 80516, hereinafter called "Grantee";

### **WITNESSETH:**

**WHEREAS**, Grantor owns the real property (hereinafter referred to as the "Property") over, across and through which the Grantee wishes to acquire a permanent, perpetual non-exclusive easement for avigation and aviation purposes, as described in paragraph 1, below;

**WHEREAS**, the Grantor and the Grantee have agreed to terms and conditions for the grant of the easement to the Grantee and the Grantee's use and operation of the easement; and,

**WHEREAS**, the Grantor and the Grantee hereby wish to set forth their agreement and enter into this Grant of Permanent Avigation Easement Agreement.

**NOW, THEREFORE**, in consideration of the foregoing recitals and the obligations, covenants and agreements herein set forth, the legal sufficiency of which the parties due hereby acknowledge, the parties hereto agree as follows:

1. Grant of Easement. The Grantor hereby grants to the Grantee an easement and right-of-way for the use and benefit of the Grantee and of the public appurtenant to, over, across and through the property described on Exhibit "A", which exhibit is attached hereto and incorporated herein by this reference (herein referred to as the "Property"), for the passage of all aircraft ("aircraft" being defined for the purposes of this instrument as any device now known or hereinafter invented, used or designated for navigation of or flight in the air) by whomsoever owned and operated, in the airspace above the surface of Grantor's Property to an infinite height above said Grantor's Property, together with the right to cause in said airspace such noise, vibration, and all other effects that may be caused by the operation of aircraft using said airspace for landing at, taking off from, or operating at the Erie Municipal Tri-County Airport and/or the Parkland Estates airport (herein after referred to as the "Avigation Easement"); and Grantor hereby waives, remises and releases the Grantee from any and all rights or causes of action which Grantor now has or which Grantor may have in the future against the Grantee, its successors and assigns, due to such noise, vibration, and other effects that may be caused by the operation of aircraft landing at, taking off from, or operating at the Erie Municipal Tri-County Airport and/or the Parkland Estates airport, or the use in general of the Avigation Easement as granted herein.

2. No Structure to Interfere with the Avigation Easement. This Avigation Easement grants and conveys unto the Grantee, its agents, servants and employees, a continuing right and easement to take any action necessary to prevent the erection or growth of any structure, tree or other object into the airspace, or to mark or light as obstructions to air navigation any and all structures, trees or other objects, that may interfere with the use of the Erie Municipal Tri-County Airport and/or the Parkland Estates airport, together with the right of ingress to, egress from, and passage over the Grantor's Property for such purpose.

3. No Electrical Interference. The Grantor further agrees that this Avigation Easement and the Property described hereon is subject to a covenant whereby the Property will not hereafter be used or permitted or suffered to use in such a manner as to create electrical interference with navigational signals or radio communications at the Erie Municipal Tri-County Airport and/or the Parkland Estates airport and aircraft, or which mimics airport lights, or which results in glare affecting aircraft using the Erie Municipal Tri-County Airport and/or the Parkland Estates airport, or which otherwise endangers the landing, take-off, and passage of aircraft in the vicinity of the Grantor's Property.

4. Grantor's Warranty. Grantor warrants that he has full right and lawful authority to make the Grant of Easement herein contained, and promises and agrees to defend against any defect in title to the Property or the right to make the Grant of Easement as herein contained.

5. Inurement. Each and everyone of the benefits and burdens of this Permanent Grant of Avigation Easement shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and assigns of the parties hereto.

6. Complete Agreement. This Permanent Grant of Avigation Easement represents the complete agreement between the parties hereto, and supersedes any and all other prior agreements, written and oral, between the parties.

7. Headings for Convenience Only. The paragraph headings are for convenience only and the substantive portions hereof control without regard to the headings.

8. Modification. This Permanent Grant of Avigation Easement shall be modified by a writing only, which writing must be only executed by the parties hereto in order to be effective.

9. Controlling Law. This Permanent Grant of Avigation Easement shall be governed under, and construed pursuant to, the laws of the State of Colorado, and the parties hereto agree to jurisdiction in the Courts of Weld County, Colorado.

IN WITNESS WHEREOF, the parties hereto have executed this GRANT OF PERMANENT AVIGATION EASEMENT as of the day and year first above written.

**GRANTOR:**


**MORGAN HILL INVESTORS, LLC,**  
a Colorado limited liability company

By:   
Jon Lee, Authorized Representative

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF Boulder     )

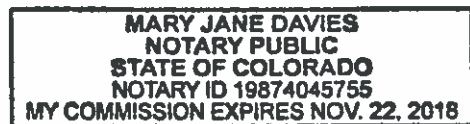
The forgoing instrument was acknowledged before me this 19<sup>th</sup> day of April, 2018, by Jon Lee, Authorized Representative of Morgan Hill Investors, LLC.

WITNESS my hand and official seal.  
My commission expires: 11-22-2018.

  
Notary Public

**GRANTEE:**

**TOWN OF ERIE,**  
A Colorado municipal corporation



By: \_\_\_\_\_  
Mayor

**ATTEST:**

By: \_\_\_\_\_  
Town Clerk

## EXHIBIT "A"

### (Legal Description of Real Property)

A PARCEL OF LAND LOCATED IN THE NORTH HALF OF SECTION 7, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 7 FROM WHENCE THE NORTHEAST CORNER LIES N89°42'31"E, 2,627.25 FEET (BASIS OF BEARINGS);

THENCE N89°42'31"E, 2,587.24 FEET ALONG THE NORTHERLY LINE OF THE NORTHEAST QUARTER OF SECTION 7;

THENCE ALONG THE EASTERLY RIGHT OF WAY OF WELD COUNTY ROAD 3 THE FOLLOWING EIGHT COURSES:

- 1) S00°56'30"W, 1,094.48 FEET;
- 2) N89°03'30"W, 5.00 FEET;
- 3) S00°56'30"W, 400.00 FEET;
- 4) N89°03'30"W, 5.00 FEET;
- 5) S00°56'30"W, 300.01 FEET;
- 6) S89°03'30"E, 5.00 FEET;
- 7) S00°56'30"W, 819.78 FEET;
- 8) S45°40'45"W, 42.62 FEET;

THENCE N89°35'04"W, 3,345.34 FEET ALONG THE NORTHERLY RIGHT OF WAY LINE OF WELD COUNTY ROAD 10.5;

THENCE NORTHERLY ALONG THE APPROXIMATE CENTERLINE OF THE COTTONWOOD EXTENSION IRRIGATION DITCH THE FOLLOWING THIRTY-NINE COURSES:

- 1) N39°24'29"W, 40.78 FEET;
- 2) N26°38'23"W, 135.20 FEET;
- 3) N13°53'36"W, 158.68 FEET;
- 4) N36°23'43"W, 31.70 FEET;
- 5) N59°52'05"W, 62.16 FEET;
- 6) N53°03'38"W, 85.80 FEET;
- 7) N04°51'35"W, 61.01 FEET;
- 8) N51°35'28"E, 155.73 FEET;
- 9) N28°20'58"E, 261.76 FEET;
- 10) N26°39'54"W, 47.96 FEET;
- 11) N74°15'05"W, 227.61 FEET;
- 12) N47°24'48"W, 137.09 FEET;
- 13) N74°40'43"W, 112.08 FEET;
- 14) N49°11'34"W, 56.76 FEET;
- 15) N14°32'25"E, 235.64 FEET;
- 16) N72°08'01"E, 158.71 FEET;
- 17) N53°54'06"E, 50.99 FEET;
- 18) N34°52'42"E, 225.05 FEET;
- 19) N17°48'58"E, 23.12 FEET;
- 20) N07°00'02"W, 40.81 FEET;
- 21) N33°54'02"W, 71.50 FEET;
- 22) N39°36'41"W, 129.87 FEET;

23) N26°48'46"W, 45.48 FEET;  
24) N10°53'00"W, 47.78 FEET;  
25) N09°53'00"E, 101.59 FEET;  
26) N30°12'45"E, 230.36 FEET;  
27) N47°57'28"E, 85.66 FEET;  
28) N59°51'01"E, 165.88 FEET;  
29) N32°03'18"E, 35.53 FEET;  
30) N05°46'02"W, 34.26 FEET;  
31) N22°03'27"W, 35.67 FEET;  
32) N01°16'55"E, 37.91 FEET;  
33) N43°16'32"E, 62.61 FEET;  
34) N60°37'03"E, 83.57 FEET;  
35) N78°42'40"E, 123.21 FEET;  
36) N82°06'59"E, 105.09 FEET;  
37) N75°47'10"E, 52.30 FEET;  
38) N53°02'56"E, 18.25 FEET;  
39) N28°58'49"E, 15.57 FEET;  
THENCE N89°50'02"E, 366.91 FEET ALONG THE NORTH LINE OF THE NORTHWEST QUARTER  
OF SECTION 7 TO THE POINT OF BEGINNING, CONTAINING 214.86 ACRES, MORE OR LESS.