

## EASEMENT DEED AND AGREEMENT

(Avigation Rights)

This **EASEMENT DEED AND AGREEMENT** (“Avigation Easement Agreement”) is executed and delivered as of this \_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ (“Grantor”) and **RICHLAND COUNTY, SOUTH CAROLINA**, a body corporate and politic and a political subdivision of the State of South Carolina (the “County” or “Grantee”), with reference to the following facts:

### R E C I T A L S

A. Grantor is the owner in fee simple of that certain real property (the “Property”) located in the County of Richland, State of South Carolina, legally described in Exhibit “A” attached hereto and incorporated herein by reference.

B. The County is the owner and operator of the Jim Hamilton – LB Owens Airport (CUB) (together with any future expansion thereof or modification thereof being hereinafter referred to as the “Airport”) situated in the County of Richland, State of South Carolina.

### SECTION 1

#### GRANT OF AVIGATION EASEMENT

**FOR VALUABLE CONSIDERATION** in the amount of \$\_\_\_\_,\_\_\_\_.00 (\_\_\_\_\_ Dollars and no/100s) paid in hand by Grantee to Grantor, receipt of which is hereby acknowledged, Grantor, for itself and its successors and assigns, does hereby grant, bargain, sell and convey to Grantee, its successors and assigns, for the use and benefit of Grantee, the successors, assigns, tenants, employees, agents and licensees of Grantee, and all users of the Airport, the following easements, rights, and servitudes, which shall be appurtenant to the Airport, as to Grantee, and in gross, as to the tenants and licensees of Grantee and as to all users of the Airport (collectively the “Avigation Easement”):

**1.1. Passage of Aircraft.** A perpetual nonexclusive easement and right of way for the “Passage of Aircraft” (as hereinafter defined) by whomsoever owned and operated in, to, over and through all air space of the Property located above the height of the lowest of the “imaginary surfaces” established in relation to the Airport and to each runway at the Airport in accordance with the applicable provisions of Federal Aviation Administration (FAA) regulations set forth in 14 C.F.R. §§77.21-77.29 (as the same may be amended from time to time), to an indefinite height above said imaginary surfaces. As used herein, the term “Aircraft” shall mean any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air, and the term “Passage of Aircraft” shall include, but not be limited to, Aircraft operation, navigation and flight; however, except to the extent constituting “Incidental Effects” as provided in Section 1.2 below, the term “Passage of Aircraft” shall not include Aircraft landing, explosion, crash, falling

objects, dumping or spillage of liquid fuel or other occurrence causing direct physical injury to persons or direct physical damage to property.

Without limiting the generality of the foregoing paragraph, Grantor acknowledges and agrees that the Property is subject in all respects to the following (collectively the “Airport Regulations”): (i) all current and future FAA regulations, as applicable, (ii) any regulations or ordinances previously or hereafter adopted by Grantee, as applicable, or (iii) any other federal, state or local law, ordinance or regulation relating to the Airport. Grantee further acknowledges that current and future Airport Regulations may restrict the height of obstructions of the Property or otherwise require the clearing or removal of obstructions located on the Property. Such obstructions may include, without limitation, trees, shrubs, any other object of natural growth, buildings, structures, towers, antennae, and the like. The easement granted herein shall include a right of access to clear, remove, destroy, shorten, or otherwise alter any such obstructions as may be necessary to ensure the safe passage of Aircraft in accordance with federal, state, and local law. Grantee agrees that, to the extent the removed obstructions have commercial value (for example, timber) and to the extent that such removed obstructions are in fact sold or otherwise generate revenues to Grantee, it will remit the net proceeds remaining after paying all costs of removal to Grantor.

**1.2. Incidental Effects.** A perpetual nonexclusive easement and right to cause within, and to enter or penetrate into or transmit through, any improved or unimproved portion of the Property, or any air space above the ground surface of the Property, such noise, sounds, vibrations, electronic interference, fumes, dust, fuel vapor particles, and all other similar effects that may result from or be related to the ownership, operation or maintenance of the Airport, the use of the Airport by Aircraft, the flight of Aircraft to, from or over the Airport, or the flight of Aircraft over the Property (at heights above the “imaginary surfaces” described in Section 1.1 above), or the taking-off or landing of Aircraft from or at the Airport (collectively, “Incidental Effects”), including, without limitation, any Incidental Effects that may be objectionable or would otherwise constitute a trespass, a permanent or continuing nuisance, personal injury or taking or damage to the Property due to invasiveness, intermittence, frequency, loudness, intensity, toxicity of Aircraft emissions or fuel, interference, emission, odor, annoyance or otherwise.

## **SECTION 2 COVENANTS AND RESTRICTIONS**

**2.1. Interference with Air Navigation.** In furtherance of the easements and rights herein granted, Grantor hereby covenants, for itself and its successors and assigns, and restricts the Property such that, at all times hereafter, no action will be taken to cause or allow any electronic, electromagnetic or light emissions, and no structure will be constructed, and no structure or other obstruction will be allowed to exist on the Property that would conflict or interfere with or infringe Grantee’s rights hereunder, including the full use and enjoyment of the Avigation Easement, or otherwise violate any Airport Regulation.

**2.2. Changes.** The rights, easements, benefits, waivers, covenants, and agreements granted hereunder, including the Avigation Easement, shall continue notwithstanding any increase or other change in the boundaries, volume of operations, noise, or pattern of air traffic at the Airport. The Avigation Easement and this Avigation Easement Agreement may not be modified, amended, terminated, or abandoned except by execution and delivery of an instrument executed and acknowledged by Grantee, and Grantor agrees that, in the absence of such an instrument, no conduct by Grantee or increase, diminution, or change in use of the Avigation Easement shall constitute either an overburdening of the Avigation Easement or a termination or abandonment of the Avigation Easement.

**2.3. Covenants and Restrictions Run with Land and Binding On and Benefiting Successive Owners and Assigns.** The parties agree that all waivers, restrictions, covenants, and agreements set forth herein relate to the use, repair, maintenance or improvement of the Property or the Airport, or some part thereof, and shall run with the Property and Airport, and any grantee, successor or assign of Grantor who acquires any estate or interest in or right to use the Property shall be bound hereby for the benefit of the Airport and for the benefit of any grantee, successor or assign of Grantee, including, without, limitation, the tenants and licensees of Grantee, and all users of the Airport.

### **SECTION 3 GENERAL PROVISIONS**

**3.1. Attorneys' Fees.** Should Grantor or Grantee or any of their respective successors or assigns retain counsel to enforce any of the provisions herein or protect their interests in any matter arising under this Avigation Easement Agreement, or to recover damages by reason of any alleged breach of any provision of this Avigation Easement Agreement, the losing party in any action pursued in a court of competent jurisdiction shall pay to the prevailing party all costs, damages, and expenses incurred by the prevailing party, including, but not limited to, attorneys' fees and costs incurred in connection therewith.

**3.2. Interpretation.** No provision of this Avigation Easement Agreement is to be interpreted for or against any party because that party or that party's legal representative drafted such provision.

**3.3. Waiver.** No violation or breach of any provision of this Avigation Easement Agreement may be waived unless in writing. Waiver of any one breach of any provision of this Avigation Easement Agreement shall not be deemed to be a waiver of any other breach of the same or any other provision of this Avigation Easement Agreement.

**3.4. Severability.** In the event that any one or more covenant, condition, right, or other provision contained in this Avigation Easement Agreement is held to be invalid, void, or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of

this Avigation Easement Agreement and shall in no way affect, impair, or invalidate any other covenant, condition, right, or other provision contained in this Avigation Easement Agreement.

**3.5. Additional Documents.** In addition to the documents and instruments to be delivered as provided in this Avigation Easement Agreement, Grantor or its successors and assigns, as the case may be, shall, from time to time at the request of Grantee, execute and deliver to Grantee such other documents and shall take such other action as may be reasonably required to carry out more effectively the terms of this Avigation Easement Agreement.

**3.6. Governing Law.** This Avigation Easement Agreement has been negotiated and entered into in the State of South Carolina, and shall be governed by, construed, and enforced in accordance with the statutory, administrative, and judicial laws of the State of South Carolina.

**3.7. Integration.** This Avigation Easement Agreement, including the exhibits, constitutes the final, complete, and exclusive statement of the parties relative to the subject matter hereof and there are no oral or parol agreements existing between Grantor and Grantee relative to the subject matter hereof which are not expressly set forth herein and covered hereby. This is an integrated agreement.

**3.8. Prior Rights.** The rights, easements, benefits, waivers, covenants and agreements in favor of Grantee, its successors and assigns, the tenants and licensees of Grantee, and all users of the Airport under this Avigation Easement Agreement are subject and subordinate to, and do not terminate, modify, restrict, or impair in any manner the rights, easements, benefits, waivers, covenants and agreements in favor of Grantee under any existing or future easement or other document.

[SIGNATURES ON NEXT PAGE]

**IN WITNESS WHEREOF**, the parties have executed and delivered this Avigation Easement Agreement as of the date first set forth above.

\_\_\_\_\_  
**GRANTOR:**

\_\_\_\_\_  
**WITNESS NO. 1**

Printed Name:

\_\_\_\_\_  
by: \_\_\_\_\_

\_\_\_\_\_  
**WITNESS NO. 2**

Printed Name:

Richland County

**GRANTEE:**

\_\_\_\_\_  
**WITNESS NO. 1**

Printed Name:

\_\_\_\_\_  
by: \_\_\_\_\_

County Administrator

\_\_\_\_\_  
**WITNESS NO. 2**

Printed Name:

EXHIBIT "A"

[Insert Deed Description]