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200410150139
Skagit County Auditor

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Document Title: Avigation Easement

Reference Number of Related Document: BP04-1316

Grantor(s): B C Cypress Construction Inc.

Additional Grantor(s) on page ____ of document.

Grantee(s): Port of Skagit County

Additional Grantee(s) on page ____ of document.

Abbreviated legal description: Red Tail Flats Lot 6 PL03-0016

Additional legal description(s) o page(s) ____ of document.

Assessor's tax/parcel numbers: P121879

Revision date: 12/15/03 CH

AVIGATION EASEMENT

This easement made this 15 day of Oct, 2004 between B.C. Cypress Coast, INC (hereafter "Grantor"), and the Port of Skagit County, a municipal corporation within the County of Skagit of the State of Washington (hereafter "Grantee"), provides that:

RECITALS

The parties hereto acknowledge the following:

- A. Grantor owns certain real property in Skagit County, Washington, described on Exhibit A and depicted on Exhibit B (the "Property"). All exhibits mentioned herein and attached hereto are incorporated herein as if set forth in full.
- B. Grantee is the owner and operator of the Skagit Regional Airport ("Airport"), an identified essential public facility pursuant to the Washington Growth Management Act, Chapter 36.70A RCW. The Airport is operated pursuant to federal law and Title 53 RCW and RCW 36.70A.510 and RCW 36.70.547 and legally described in Exhibit C and depicted in Exhibit D hereto.
- C. The Airport is the principal airport in Skagit County, serving both recreational and commercial aircraft, including freight and passenger carriers. The Airport represents a public asset currently valued at over \$132,230,000.00. The Airport provides an essential transportation service and facilitates economic growth in Skagit County.
- D. Skagit County has identified undeveloped property in the vicinity of the Airport as part of an Urban Growth Area in which urban development is planned to occur. Unless carefully managed, urban development in the vicinity of airports leads to incompatible uses. Persons owning or occupying property within the vicinity of airports experience noise, exhaust fumes, illumination, smoke, vibration and loss of quiet enjoyment due to aircraft overflights associated with landing and taking off ("Overflight Effects"). In response to Overflight Effects, some persons are prone to assert legal claims or to exert other pressures to limit or terminate airport operations. The occurrence of urban development in the vicinity of the Airport therefore could, unless mitigated, have a harmful effect on Airport operations, limit the usefulness of an essential public facility and be contrary to the public interest and the requirements of the Growth Management Act.
- E. Portions of the Property lie within the Skagit Regional Airport Safety Overlay Zones established by the Washington State Department of Transportation's Aviation Division as set forth in Airport Land Use Compatibility Study, prepared by Reid Middleton and published in 2000 and on file with Skagit County. Portions of the Property also lie within certain aircraft noise contours established in the Airport Maser Plan, 1995, prepared by W & H Pacific and on file at the Port of Skagit County. These zones and contours are depicted on maps comprising a portion of the Skagit County UDC Airport Environs Overlay Map Portfolio.



- F. The Property has been continuously subject to aircraft overflights, either directly above the Property or over adjacent properties for an uninterrupted period in excess of ten years. These overflights, known to Grantor and/or Grantor's predecessors, by aircraft either landing at or taking off from the Skagit Regional Airport have subjected the Property to Overflight Effects. Grantee has not sought, nor has either Grantor nor Grantor's predecessors granted, permission to operate the Airport or to cause Overflight Effects upon the Property.
- G. The term "Average sound level" as used herein shall mean the level, in decibels, of the mean-square, A-weighted sound pressure during a specified period, with reference to the square of the standard reference sound pressure of 20 micropascals.
- H. The term "Day-night average sound level" or "DNL" as used herein shall mean the 24-hour Average Sound Level, in decibels, for the period from midnight to midnight, obtained after the addition of ten decibels to sound levels for the periods between midnight and 7 a.m., and between 10 p.m., and midnight, local time.
- I. The federal Aviation Administration has determined that noise from Overflight Effects is incompatible with ground uses when in excess of sixty-five (65) DNL.
- J. Urban Development in the vicinity of the Airport upon which noise from Overflight Effects is sixty-five 65 DNL or less poses minimal risk of harmful effects on the Airport.
- K. Pursuant to Section 14.16.210 of the Skagit County Code, Grantor must grant to Grantee an aviation easement for the portions of Grantor's real property within the Skagit Regional Airport Safety Overlay Zones,
- L. Grantor is willing to grant Grantee an easement with respect to Grantor's real property in accordance with the terms and conditions of this Agreement as a condition of development approval by Skagit County.

COVEYANCE OF EASEMENT

1. The GRANTOR for and in consideration of fulfillment of a condition of a Skagit County project approval, Skagit County permit number BP04-1316, does hereby grant to Grantee, its successors and assigns, a perpetual and assignable easement in, near, upon and over the Property (legally described in Exhibits "A" and "B") for the free and unrestricted passage and flight of aircraft of the class size and category as is now or hereinafter may be operationally compatible with the Skagit Regional Airport ("Aircraft"), across and about the airspace above an imaginary plane, as such plane is defined by Part 77 of the Federal Aviation Regulations, over or in the vicinity of the Property (the "Airspace").



(Acknowledgement for Corporate Grantor)

STATE OF WASHINGTON)
) SS
COUNTY OF SKAGIT)

On this 15th day of October, 2004, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared William B Critchley and NA, to me known to be the President and VP, respectively, of the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they was duly authorized to execute the same and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto the day and year in this certificate first above written.

[Signature]
(signature)
Jennifer Morrow
(print name)
NOTARY PUBLIC in and for the State of Washington,
residing at Mount Vernon
My appointment expires: July 10, 2007

Easement
SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

OCT 15 2004

Amount Paid \$ 0
Skagit Co. Treasurer
By [Signature] Deputy



200410150139
Skagit County Auditor