



200505230122

Skagit County Auditor

5/23/2005 Page

1 of

8 11:24AM

WHEN RECORDED RETURN TO:

Port of Anacortes
P.O. Box 297
First & Commercial Avenue
Anacortes, Washington 98221
Attn: Dan Stahl, Executive Director

GRANT OF AVIGATION EASEMENT

GRANTOR:

DG CONSTRUCTION LLC, a Washington
limited liability company

GRANTEE:

PORT OF ANACORTES, a Washington
Municipal corporation

LEGAL DESCRIPTION:

Easement
SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

A Parcel of Land Lying in the SE 1/4 of
the SW 1/4 of Section 23, Township 35
North, Range 1 East, W.M., Being a Portion
of Northern Pacific Addition to Anacortes

MAY 23 2005

Amount Paid \$
Skagit Co. Treasurer
By *man* Deputy

Complete legal description is found in
Exhibit A-1 of document.

ASSESSOR'S TAX PARCEL
IDENTIFICATION NUMBERS:

P58252, P122506, P122507, P122508,
P122499, P122509, P122510, P122511

AVIGATION EASEMENT

THIS AVIGATION EASEMENT is entered into as of this 7TH day of MARCH, 2005, by DG Construction LLC, a Washington limited liability company ("Grantor"), and the Port of Anacortes, a Washington municipal corporation ("Grantee").

RECITAL

A. Grantor is the owner of certain real property situated in Skagit County, Washington and legally described in Exhibit A attached hereto and by this reference incorporated herein (the "Property") and as outlined on the map attached hereto as Exhibit B and by this reference incorporated herein.

B. Grantor desires to grant an Avigation Easement over the Property for the benefit of Grantee to protect the continued operation of the Anacortes Airport.

AGREEMENT

NOW THEREFORE, in consideration of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor agrees as follows:

1. Grant of Easement. Grantor does hereby grant, bargain, sell, transfer, convey, warrant and establish a perpetual, exclusive easement for the free and unobstructed use and passage of all types of Aircraft (as defined in Article G hereof) over, across and through the airspace in excess of 35 feet above the Property and in the vicinity of the Property, with such use and passage being unlimited as to noise, time of day or frequency (the "Avigation Easement"). The Avigation Easement shall be for the benefit of Grantee, its commissioners, agents, contractors, successors and assigns and all employees, invitees, guests and passengers now or hereafter utilizing the Airport (as hereinafter defined), including any and all persons or entities operating Aircraft to or from the Airport and for the benefit of all property now owned or hereafter acquired by the Port of Anacortes, its successors and assigns and operated as an airport (the "Airport"), including, but not limited to, certain real property situated in Skagit County, Washington and commonly known as the Anacortes Airport and legally described in Exhibit C attached hereto and by this reference incorporated herein.

2. Terms and Conditions of Easement. The Avigation Easement granted herein is subject to the following terms, reservations, and conditions:



200505230122
Skagit County Auditor

A. Scope of Easement. This Avigation Easement includes the right to invade or otherwise interfere with the Property from time to time with noise, vibration, dust, fumes, deposits of particulate matter or fuel particles, and other disturbances to the Property arising from Grantee's use of the Avigation Easement, including any resulting fear, interference with sleep, interference with conversation, interference with radio, telephone or television transmission or reception to Grantor, its officers, members, employees, and lessees and their respective heirs, successors, assigns or invitees and/or any and all other things which may be alleged to, or be incident to, or to result from, flights of Aircraft over or in the vicinity of the Property or from Aircraft landing at, taking off from, or operating at or near the Airport. The Grantor, on behalf of itself, its successors and assigns, further acknowledges that this Avigation Easement contemplates and includes all existing and future operations at the Airport, acknowledging that future Aircraft numbers and types will most likely increase and noise patterns may also change or increase, and that the rights, obligations and covenants herein set forth shall not terminate or vary in the event of changes in Aircraft volumes or changes in noise, traffic patterns, runway lengths or locations or characteristics, types of categories of Aircraft using the Airport.

B. Waiver. Grantor does hereby fully waive, remise and/or release any and all damages, rights, claims or causes of action for damages which it may now have or which it may in the future acquire against Grantee, its successors and assigns, and caused or alleged to have been caused by or incidental to the operation of Aircraft over or in the vicinity of the Property or in Aircraft landing at, taking off from, or operating at or near the Airport.

C. Exclusive. Grantor shall not grant any person any easement or other right in the Property which would in any way interfere with the Grantee's exercise of its rights under this Avigation Easement.

D. Reservation. Grantor reserves the right to use the Property for any purpose; provided, however, that Grantor (1) shall not hereafter erect, permit the erection of, or the growth of, or permit or suffer to remain upon the Property any building, structure, tree or other object extending more than 35 feet into the airspace above the surface of the Property and (2) agrees not to use or permit to suffer the use of the Property in such a manner as to create electrical interference with radio communication between any installation aboard said Aircraft and Airport or as to make it difficult for pilots to distinguish between airport lights and other lights or as to impair visibility in the vicinity of the Airport or otherwise as to endanger the landing, taking off or maneuvering of Aircraft in the vicinity of the Airport, it being understood that the aforesaid covenants and agreements shall run with the Property.

E. Liens and Encumbrances. The Avigation Easement granted herein shall be perpetual and shall have priority over any and all liens, encumbrances or other interests in the Property, and shall survive transfer of the fee ownership or any leasehold estate in the Property. Grantor shall at its sole cost and expense, obtain any and all consents and/or subordination of other interests in the Property as may be necessary to insure that the Avigation Easement constitutes a valid easement encumbering the Property, free and clear of all liens, encumbrances or other interest in the Property except such liens, encumbrances or



other interests in the Property as shall have been approved by Grantee in writing and subordinated to Grantee's rights under this Avigation Easement.

F. Maintenance. Grantee shall have the right to enter upon the Property (following such prior notice to Grantor as is practicable under the circumstances, due deference being given to Grantee's exercise of its discretion to protect the public now or hereafter utilizing the Airport), and remove any building, structure, tree or other object extending more than 35 feet into the airspace above the surface of the Property or which, in Grantee's sole discretion, poses a threat to Aircraft landing at, taking off from or operating at or near the Airport, together with the right of ingress to, egress from and passage over the Property for the above purpose, all at Grantor's sole cost and expense. Grantor hereby grants Grantee the right to enter upon the Property and mark and light as obstructions to Aircraft any and all buildings, structures, trees or other objects which now or hereafter may be located upon the Property, together with the right of ingress to, egress from and passage over the Property for the above purpose. In addition to any other remedies provided for herein or provided by law, Grantee shall have the right to bring an action for specific performance to enforce the provisions of this Avigation Easement, including the right to enjoin construction of buildings or other structures upon the Property.

G. "Aircraft". As used herein, the term "Aircraft" shall mean any and all types of aircraft, whether now in existence or hereafter manufactured and developed and shall include, but not be limited to, jet aircraft, propeller-driven aircraft, civil aircraft, military aircraft, commercial aircraft, crop dusters, helicopters and any and all other types of aircraft or vehicles now in existence or hereafter developed for the purpose of transporting persons or property through the air, by whomsoever owned or operated.

3. Severability. In case any one or more of the provisions contained in this Avigation Easement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Avigation Easement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

4. Eminent Domain. Nothing in this Avigation Easement shall constitute, or be construed as constituting any limitation upon Grantee or any waiver by Grantee with respect to its exercise of the power of eminent domain in connection with any property.

5. No Modification; Integration. This Avigation Easement shall not be modified or amended except by a subsequent agreement in writing signed by Grantor and Grantee. This Avigation Easement, including the exhibits attached hereto, constitutes the entire agreement and understanding between the parties hereto and supersedes all prior and contemporaneous agreements and undertakings of the parties in connection therewith. No statements, agreements, understandings, representations, warranties or conditions not expressed in this Avigation Easement shall be binding upon the parties hereto or shall be effective to interpret, change or restrict the provisions of this Avigation Easement unless such is in writing signed by both parties hereto and by reference made a part hereof.



200505230122

Skagit County Auditor

6. Notice. Any notice permitted or required to be given by either party to this Avigation Easement shall be given in writing and may be effected by certified United States mail, with return receipt requested, properly addressed, postage prepaid, by reputable overnight delivery service, or by personal delivery, as follows:

To Grantor:

DG Construction, LLC
P.O. Box 1356
Anacortes, Washington 98221
Attn: Anthony Malo, Jr.

To Grantee:

Port of Anacortes
P.O. Box 297
First & Commercial Avenue
Anacortes, Washington 98221
Attn: Dan Stahl, Executive Director

7. Successors and Assigns. This Avigation Easement shall run with the land and the benefits and burdens hereof shall be binding upon the Grantor, and its successors and assigns, as owner of the Property, and the benefits hereof shall inure to the benefit of Grantee, its commissioners, agents, contractors, successors and assigns, as owner of the Airport, and all employees, invitees, guest and passengers now or hereafter utilizing the Airport, including any and all persons or entities operating Aircraft to or from the Airport.

8. Governing Law. This Avigation Easement shall be construed, interpreted and enforced in accordance with the laws of the State of Washington.

9. Attorneys' Fees. In the event of any dispute arising from or relating to this Avigation Easement, the prevailing party in any such proceeding shall be entitled to recover its reasonable attorneys' fees and costs.

IN WITNESS WHEREOF, the parties have executed this Avigation Easement as of the date and year first above written.

GRANTOR

DG Construction, LLC,
a Washington limited
liability company

By: 
Anthony Malo, Jr.

Its: Member

GRANTEE

Port of Anacortes,
a municipal corporation

By: 
Dan Stahl

Its: Executive Director



200505230122
Skagit County Auditor

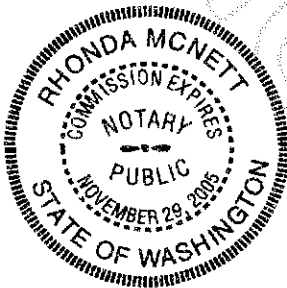
STATE OF WASHINGTON)

) ss.

COUNTY OF SKAGIT

On this 7th day of March, 2005, personally appeared before me Anthony Malo, Jr., to me known to be the member of DG Construction, LLC, the Washington limited liability company named in the within and foregoing instrument, and acknowledged to me that he signed the same on his free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.



Rhonda McNett
Print Name: Rhonda McNett
NOTARY PUBLIC in and for the State of Washington,
Residing at Anacortes, Wa.
My commission expires: 11/29/05

STATE OF WASHINGTON)

) ss.

COUNTY OF SKAGIT

On this 11th day of May, 2005, personally appeared before me Dan Stahl, to me known to be the Executive Director of the Port of Anacortes, the municipal corporation named in the within and foregoing instrument, and acknowledged to me that he signed the same on his behalf, as he is so authorized to do, as his free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.



Julianne M. Lindsey
Print Name: Julianne M. Lindsey
NOTARY PUBLIC in and for the State of Washington,
Residing at Anacortes
My commission expires: 07-24-08



200505230122
Skagit County Auditor

Exhibit A - 1

Legal Description

LOTS 12-22 INCLUSIVE, BLOCK 1120, NORTHERN PACIFIC ADDITION TO ANACORTES, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 2 OF PLATS, PAGE 9, RECORDS OF SKAGIT COUNTY, WASHINGTON;

EXCEPT THE FOLLOWING DESCRIBED TRACT;

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 22 THENCE NORTH 69-41-51 EAST, ALONG THE NORTH LINE OF SAID LOT 22, FOR 40.00 FEET; THENCE SOUTH 24-41-51 WEST FOR 56.57 FEET, TO A POINT ON THE WEST LINE OF SAID LOT 22; THENCE NORTH 20-18-09 WEST, ALONG SAID LINE FOR 40 FEET TO THE POINT OF BEGINNING.

SITUATED IN SKAGIT COUNTY, WASHINGTON

LOTS 12-22, INCLUSIVE, BLOCK 1121, NORTHERN ADDITION TO ANACORTES, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 2 OF PLATS, PAGE 9, RECORDS OF SKAGIT COUNTY, WASHINGTON.



200505230122

Skagit County Auditor

