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Skagit County Auditor

6/11/2009 Page

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7 10:28AM

Document Title: **Avigation Easement**

Reference Number of Related Document: **BP09-0270**

Grantor(s): **John K. & Jeanne L. Whitney**

Additional Grantor(s) on page \_\_\_\_ of document.

Grantee(s): **Port of Skagit County**

Additional Grantee(s) on page \_\_\_\_ of document.

Abbreviated legal description: **BAY HILL VILLAGE DIV 1, LOT 42**

Additional legal description(s) on page(s) \_\_\_\_ of document.

Assessor's tax/parcel numbers: **P95894/4551-000-042-0001**

SKAGIT COUNTY WASHINGTON  
REAL ESTATE EXCISE TAX

JUN 11 2009

Amount Paid \$ \_\_\_\_\_  
By MF Skagit Co. Treasurer Deputy

## AVIGATION EASEMENT

This easement made this 4 day of 6, 09 between **John K. & Jeanne L. Whitney** (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 avigation 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.

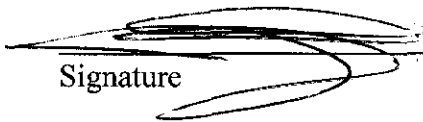
### COVEYANCE OF EASEMENT

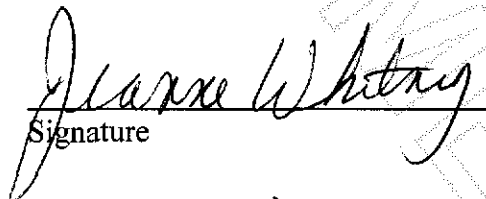
1. The GRANTOR for and in consideration of fulfillment of a condition of a Skagit County project approval, Skagit County permit number **BP09-0270**, does hereby grant to Grantee, its successors and assigns, a perpetual and assignable easement in, near, upon and over the Property (legally described in 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").



2. The aforesaid easement described in Paragraph Number 1 above includes but is not limited to:
- For the use and benefit of the public and Grantee, the continuing right to fly, or cause or permit the flight by any and all persons of Aircraft in, through, across or about any portion of the Airspace hereinabove described; and
  - The right to cause or create, or permit or allow to be caused or created upon the Property, Overflight Effects as may be inherent in the proper operation of Aircraft.
  - Provided*, that the rights conveyed to Grantee pursuant to this Avigation Easement shall be limited to those operations of the Skagit Regional Airport that meet noise level classification sixty-five (65) DNL.
3. The easement herein granted shall be deemed both appurtenant to and for the direct benefit of that real property which now or hereinafter constitutes the Skagit Regional Airport, and shall further be deemed in gross, being conveyed to the GRANTEE for the benefit of the GRANTEE, and any and all members of the general public who may use said easement taking off from, landing upon, or operating such aircraft in or about the Airport, or in otherwise flying through said Airspace.
4. This grant of avigation easement shall not operate to deprive the GRANTOR, its successors or assigns, of any rights that it may otherwise have from time to time against any individual or private operator for negligent or unlawful operation of aircraft.
5. It is understood and agreed that these covenants and agreements run with the land and shall be binding upon the heirs, representatives, administrators, executives, successors, an assigns of the GRANTOR, and that for the purposes of this instrument, the Property shall be the servient tenement and the Airport shall be the dominant tenement.
6. The avigation easement, covenants and agreements described herein shall continue in effect until the Airport shall be abandoned or shall cease to be used for public airport purpose, at which time this easement shall terminate.

GRANTOR:

  
Signature  
6-4-09  
Date  
  
John Whitney Owner  
Print Name and Title

  
Signature  
6-4-09  
Date  
  
Jeanne Whitney Owner  
Print Name and Title



**EXHIBIT A**

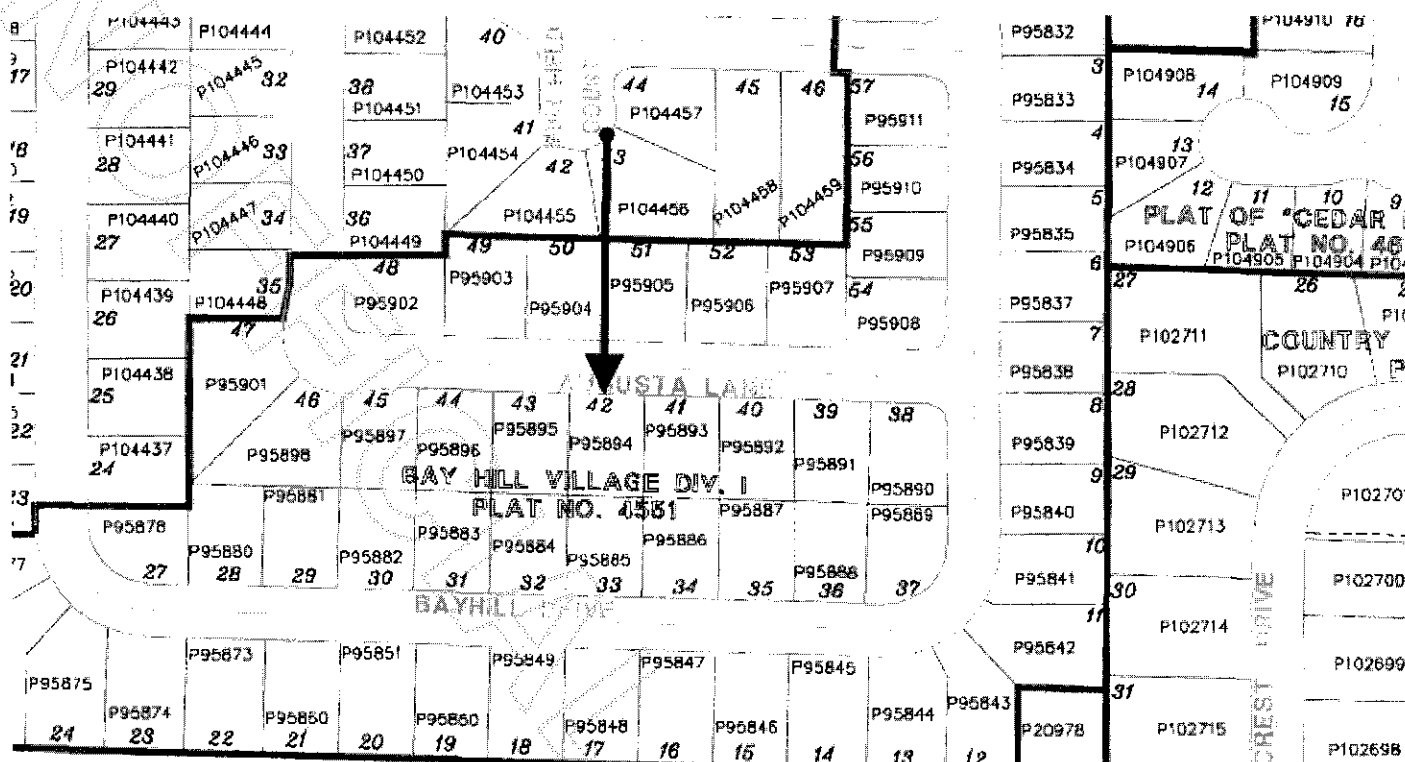
**P95894 - 4551-000-042-0001**

**BAY HILL VILLAGE DIV 1, LOT 42**



**200906110059**  
**Skagit County Auditor**

# EXHIBIT B



200906110059  
Skagit County Auditor

**(Acknowledgement for Individual Grantor)**

STATE OF WASHINGTON )  
 ) SS  
COUNTY OF SKAGIT )

On this 4th day of June, 2009 before me, personally appeared JOHN + JEROME WHITNEY to me known to be the individual described in and who executed the within instrument and acknowledged he signed and sealed the same as his free and voluntary act and deed for the uses and purposes herein mentioned. Ther

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



Ronald D Gilbertson  
(signature)  
RONALD D GILBERTSON  
(print name)

NOTARY PUBLIC in and for the State of Washington,  
residing at MOUNT VERNON  
My appointment expires: 10/1/10

