

AVIGATION EASEMENT

This indenture, made this ____ day of _____, 20___, between Passco **Ocean DST** (hereinafter "GRANTOR"), and Monroe County, a political subdivision of the State of Florida (hereinafter "GRANTEE"), provides that:

A. The GRANTOR for and in consideration of fulfillment of a condition of project approval, does hereby grant to the GRANTEE, its successors and assigns, a perpetual and assignable easement in and over that certain parcel of real property more particularly identified and described in Exhibits "A" and "B" attached hereto and made a part hereof (said parcel hereinafter referred to as PARCEL), and a right-of-way 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 Key West International Airport (the "Airport"), in, through, across and about the airspace above an imaginary plane, as such plane is defined by Part 77 of the Federal Aviation Regulations, over said PARCEL, or the portion of such area as may be otherwise determined, pursuant to an airspace study performed by the Federal Aviation Administration, to be needed for air navigation as described below (hereinafter "Airspace").

B. The Airspace for avigation easement purposes above said PARCEL consists of all of the air space above the imaginary plane that is described by Part 77 of the Federal Aviation Regulations or the portion of such area as may be otherwise determined, pursuant to an airspace study performed by the Federal Aviation Administration, to be needed for air navigation .

C. The aforesaid easement and right-of-way described in Paragraphs A and B includes but is not limited to:

1. For the use and benefit of the public, the easement and continuing right to fly, or cause or permit the flight by any and all persons or aircraft, of the class, size and category as is now or hereinafter may be operationally compatible with the Key West International Airport, in, through, across or about any portion of the Airspace hereinabove described; and

2. The easement and right to cause or create, or permit or allow to be caused or created within the Airspace, such noise, dust, turbulence, vibration, illumination, air currents, fumes, exhaust, smoke and all other effects as may be inherent in the proper operation of aircraft, now known or hereafter used for navigation of or flight in air; and

3. The continuing and perpetual right to clear and keep clear the Airspace of any portions of buildings, structures, or improvements of any and all kinds, and of trees, vegetation, or other objects, including the right to remove or demolish those portions of such buildings, structures, improvements, trees or any other objects which extend into said Airspace and the right to cut to the ground level and remove any trees which extend into the Airspace; provided, however that

the right described in this paragraph 3 shall be exercised only the Grantor or other public entity that owns and operates the Airport and shall not be exercised by nor create any right in any private person or entity or member of the public; and

4. The right to mark and light, or cause or require to be marked or lighted, as obstructions to air navigation, any and all buildings, structures, or other improvements, and trees or other objects now upon, or that in the future may be upon, said PARCEL, and which extend into the Airspace; provided, however that the right described in this paragraph 4 shall be exercised only the Grantor or other public entity that owns and operates the Airport and shall not be exercised by nor create any right in any private person or entity or member of the public; and

5. The right of ingress to, passage within, and egress from said PARCEL, solely for the above stated purposes and subject to the above-stated limitations.

D. GRANTOR, on behalf of itself, its successors and assigns hereby covenants with the GRANTEE, Monroe County, as follows:

1. GRANTOR, its successors and assigns, will not construct, install, permit or allow any building, structure, improvement, tree, or other object on said PARCEL, to extend into the Airspace, or to constitute an obstruction to air navigation, or to obstruct or interfere with the use of the easement and right-of-way herein granted; and

2. GRANTOR, its successors and assigns, will not hereafter use or permit the use of said PARCEL in such a manner as to create electrical or electronic interference with radio communication or radar operation between any installation upon the Key West International Airport and any aircraft.

E. The easement and right-of-way herein granted shall be deemed both appurtenant to and for the direct benefit of that real property which now or hereinafter constitutes the Key West International 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 or right-of-way in connection with taking off from, landing upon, or operating such aircraft in or about the Key West International Airport, or in otherwise flying through said Airspace.

F. This grant of aviation 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.

G. 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, and assigns of the GRANTOR, and that for the purposes of this instrument, the PARCEL shall be the servient easement and the Key West International Airport shall be the dominant tenement.

H. The avigation easement, covenants and agreements described herein shall continue in effect until the Key West International Airport shall be abandoned or shall cease to be used for public airport purpose, at which time it shall terminate.

IN WITNESS WHEREOF, the parties have caused this easement agreement to be executed by their respective officer or representative thereunto duly authorized the day and year first written above.

(SEAL)
ATTEST: KEVIN MADOK, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By _____
Clerk

By _____
Mayor/Chairperson

Passco Ocean DST
GRANTOR

By: _____

State of California
County of Orange

The foregoing instrument was acknowledged before me this ____ day of _____, 2018 by _____, who is personally known to me or who produced a _____ as identification, regarding the attached instrument described as an Avigation Easement and to whose signature(s) this notarization applies.

SEAL

notary public signature

notary public printed name