

When Recorded Return to:

City of Eloy
City Clerk's Office
595 North C Street
Suite 104
Eloy, Arizona 85131

Permit No.: _____

**AVIATION EASEMENT AND COVENANT AND
WAIVER AGREEMENT OF RESIDENTIAL LAND USE RESTRICTION**

THIS AVIATION EASEMENT AND COVENANT AND WAIVER AGREEMENT OF RESIDENTIAL LAND USE RESTRICTION (hereafter the "**AECWA**") is entered into as of the ____ day of _____, 202____, by and between _____, _____ (hereafter the "**Owner**"), and the City of Eloy, an Arizona municipal corporation (hereafter the "**City**"). Owner and City are collectively referred to herein as the "**Parties**," or individually as the "**Party**."

RECITALS

A. The **Owners** owns property described in **Exhibit A** (the "**Property**") that lies within the AO-2 Area of the Aviation Overlay District described in the **Exhibit B** that was established as part of the Eloy Code under the Eloy Zoning Ordinance, Section 21-2-7.12 and related sections, subsections, paragraphs, tables, et al, therein and thereafter, adopted by the Eloy City Council in Ordinance Number 18-880, on July 23, 2018, as amended from time-to-time (hereafter the "**Aviation Overlay District**"); and

B. The Eloy Zoning Ordinance prohibits residential development within the AO-2 Area of the **Aviation Overlay District**, and identified in Exhibit B; and

C. The **Owner** has requested that the **City** waive the prohibition of residential development on **Property**, and allow the **Owner** to develop a residential dwelling and related accessory structures on the **Property**; and

D. Pursuant to Eloy Zoning Ordinance, Section 21-2-7.17, attached as **Exhibit C**, at the time of development or as a building permit is required, the owner of property within the Aviation Overlay shall dedicate an aviation easement to the City of Eloy over and across that property. This easement shall hold the City, public and airport harmless from any damages caused by noise, vibration, fumes, dust, fuel, fuel particles, or other effects that may be caused by the operation of aircraft taking off, landing, or operating on or near the Eloy Municipal Airport, not including the physical impact of aircraft or parts thereof.

E. Pursuant to Eloy Zoning Code 21-5.5 et. seq.; duly adopted, the Eloy City Council authorized the Eloy City Manager and the Community Development Director, or their designee, to execute this **AECWA** on behalf of the **City**.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the foregoing and of the **City's** approval of this **Waiver**, the **Owner** and the **City** as follows:

1. Recitals. The recitals set forth above are incorporated into this **AECWA** by reference.
2. Effective Date. This **AECWA** shall be effective upon execution by the parties.
3. Avigation Easement Granted. FOR ONE DOLLAR (\$1.00) and other good and valuable consideration received, the **Owner** hereby grants to the **City** a perpetual, non-exclusive Avigation Easement upon, over, and across the **Property**. The purpose of the easement is for a right of flight for aircraft in the airspace above the Property.
 - 3.1. "Aircraft" means any manned or unmanned device that flies.
 - 3.2. Without limitation, the right of flight includes the right to operate aircraft over and near the Property, and aircraft may generate odors, fumes, smoke, vibrations, fuel, fuel particles, vapor particles, electronic interference, dust, annoyances, nuisances, emissions, vibrations, visual impacts, and noise, all of which the volume, pitch, frequency, and occurrence will vary depending on numerous factors, including but not limited to: altitude, wind direction, meteorological conditions, number of aircraft, and aircraft type, and any other effects relating to operating aircraft (collectively, and hereafter, the "**Aircraft Effects**").
 - 3.3. The Owner, and its heirs, successors, assigns, transferees, and occupants of the **Property**, shall not cause or allow the **Property** to be used to discharge fumes, smoke, dust, or electronic, light, laser, or other emissions, which may obstruct visibility or adversely affect or interfere with the operation of aircraft or any navigational facilities. No building, mast, tree, vegetation, or other thing upon the **Property** shall exceed Federal Aviation Administration-approved height restrictions. Building and structure height on the Property shall not exceed the allowance of the Eloy Zoning Ordinance.
4. Acknowledgment of Restriction. The **Owner** acknowledges that residential development is prohibited in the AO-2 Area of the **Aviation Overlay District**, and the **Property** is within the AO-2 Area.
5. Acknowledgment of Airport Proximity and Impacts. The **Owner** acknowledges that the **Property** is located in the proximity of the Eloy Airport and within the flight paths of aircraft taking off from and landing at the airport, and operating in and around the airport. The **Owner** further acknowledges and accepts pursuant to Eloy Zoning Ordinance, Section 21-2-7.17 that:
 - 5.1. The Eloy Airport is a 24-hour operating airport with unrestricted flight operations, meaning aircraft may take off, land, and operate over and around the **Property** at any time of the day or night, without limitation.
 - 5.2. Aircraft operations may occur directly over the Property and adjacent properties.
 - 5.3. Such airport operations and aircraft may cause **Aircraft Effects**.
 - 5.4. Aircraft may include a variety of propulsion systems, including but not limited to propeller-driven, turbo-prop, and jet-powered aircraft.
 - 5.5. Airport activity levels, operational practices, use and types of aircraft, and propulsion systems may change in the future, and such changes may increase or alter the nature and frequency of impacts.
 - 5.6. Aircraft Effects might be annoying to users of the **Property** and might interfere with the unrestricted use and enjoyment of the **Property**.
 - 5.7. Aircraft Effects will likely increase over time.

5.8. The **Owner**, and on behalf of itself and all heirs, successors, assigns, transferees, and occupants of the **Property**, voluntarily accepts these conditions as a foreseeable and continuing burden associated with ownership, development, and occupancy of the **Property**.

6. Compliance with Eloy Code. The **Owner**, and on behalf of itself and all heirs, successors, assigns, transferees, and occupants of the **Property**, agrees that all improvements on the Property shall receive all applicable permits and be constructed in accordance with the Eloy Code applicable at the time of development.

7. Release of Liability and Claims. The **Owner**, and on behalf of itself and all heirs, successors, assigns, transferees, and occupants of the **Property**, hereby fully and forever releases, discharges, and waives any and all claims, demands, damages, or causes of action against the City of Eloy, and the Eloy Airport, its officers, employees, agents, and representatives, whether known or unknown, arising out of or relating in any way to the provisions of Eloy Zoning Ordinance, Section 21-2-7.17 and this **AECWA**, and:

7.1. The issuance of any permits, approvals, or authorizations for residential development, use, or occupancy on the Property;

7.2. The Avigation Easement;

7.3. The Aircraft Effects;

7.4. The location of the Property in proximity to the Eloy Airport;

7.5. The operation and related activities of the Eloy Airport;

7.6. The approval of this **AECWA**; and

7.7. Any alleged diminution of property value, marketability, or desirability attributable to airport operations, overflights, impacts, or activities of any nature.

The **Owner** understands and agrees that this release is a binding legal provision of this document and is intended to be as broad and inclusive as allowed by law.

8. Indemnification and Defense. The **Owner** agrees to indemnify, defend, and hold harmless the **City**, its officers, employees, agents, and representatives, from and against any and all claims, demands, liabilities, damages, costs, expenses, and attorney's fees arising out of or related to:

8.1. The City's approval of this **AECWA**;

8.2. The issuance of permits for residential development on the **Property**;

8.3. The use, occupancy, or enjoyment of any residential development or accessory structures on the **Property**; and

8.4. Any factor of the operation and related activities of the Eloy Airport, including but not limited to aircraft takeoffs, landings, overflights, maneuvers, parachuting, ground operations, fueling, maintenance activities, training activities, changes in airport facilities or operations, the presence or use of aircraft of any type or propulsion system, and **Aircraft Effects**.

9. Waiver of Objections and Complaints. The **Owner**, on behalf of itself and all heirs, successors, assigns, transferees, and occupants of the **Property**, hereby expressly:

9.1. Waives any and all rights to object to, oppose, or challenge the current and future operations, activities, or modifications of the Eloy Airport;

9.2. Waives any and all rights to file, submit, or communicate objections or complaints, in any form or to any regulatory person, agency, body, or authority, regarding the current and future operations, activities, or modifications of the Eloy Airport;

9.3. Acknowledges and agrees that any such objection, opposition, or complaint made by the **Owner** or by any heirs, successors, assigns, transferees, or occupants of the **Property** shall be deemed a breach of this **AECWA**; and

9.4. Agrees that the **City** may hold the **Owner** and all heirs, successors, assigns, transferees, and occupants of the **Property** liable for any such objections or complaints.

10. Waiver Granted. The **City** hereby grants a waiver of the residential development prohibition of the AO-2 Area of the Aviation Overlay District for the **Property**. This waiver is limited to the development, use, and occupancy of a residential dwelling and related accessory structures on the **Property**.

11. Covenant Granted. The **Owner** hereby grants to the **City** a covenant on the **Property** expressly including all acknowledgments, releases, waivers, indemnifications, and obligations of this **AECWA**.

12. Holder of Title and Authority to Grant. The **Owner** warrants and covenants to the **City**, and its successors and assigns, that the **Owner** is lawfully seized and possessed of the **Property**; that the **Owner** has good and lawful right and authority to grant the conveyance described herein; and that the **City** shall have good title and the right to quiet possession against claims of all persons.

13. Covenant Running with the Land. This **AECWA**, including all acknowledgments, releases, waivers, and indemnification obligations, shall run with the land and shall be binding upon the **Owner** and all heirs, successors, assigns, transferees, and occupants of the **Property**.

14. Mandatory Disclosure Requirement.

14.1. As a condition of any sale, lease, assignment, transfer, or conveyance of the **Property**, in whole or in part, the **Owner** and any successors shall be required to provide and execute **Exhibit D**: Airport Disclosure Notice to all prospective purchasers, transferees, tenants, and occupants.

14.2. Each purchaser, transferee, tenant, or occupant shall be required to review, acknowledge, and execute **Exhibit D** before acquiring or occupying any interest in the **Property**.

14.3. A fully executed copy of **Exhibit D** shall be retained by the **Owner** and provided to the **City** upon request.

15. Enforcement and Noncompliance.

15.1. **Owner's** failure to provide and obtain acknowledgment of **Exhibit D** shall constitute a breach of this **AECWA**.

15.2. The **City** shall be entitled to enforce this provision by all lawful means, including, without limitation, injunctive relief, damages, and recovery of attorney's fees and costs.

15.3. The **City** is expressly authorized to record a Notice of Noncompliance, **Exhibit E**, in the official records of the Pinal County, Arizona in which the **Property** is located, identifying the breach, which notice shall constitute constructive notice to all parties claiming an interest in the **Property** until such time as the breach has been remedied and the **City** records a release of the Notice of Noncompliance, **Exhibit F**.

16. Expiration of the **AECWA**. Upon the expiration or termination of this **AECWA** all covenants, conditions, restrictions, provisions and obligations set forth herein shall expressly survive such

expiration or termination and shall be deemed covenants running with the **Property**, binding upon and inuring the **Owner** and all heirs, successors, assigns, transferees, and occupants of the **Property** and the **City**.

17. Authority to Execute this Document. The person(s) executing this document on behalf of the corporation, trust, or other organization warrants his or her authority to do so and that all persons necessary to bind **Owner** have joined in this document.

18. Run with the Land. This document runs with the land in favor of the **City** and its successors and assigns.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have executed this **AECWA** on the date(s) written below.

OWNER:

Name: _____

Signature: _____

Title: _____

Date: _____

Name: _____

Signature: _____

Title: _____

Date: _____

STATE OF _____)

County of _____)

County of _____)

On this _____ day of _____, 202____, before me personally appeared
_____, _____ of _____
_____, for and on behalf thereof, whose
identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be and
acknowledged that he signed the above/attached document.

[Affix notary seal here]

Notary Public

STATE OF _____)
)
County of _____)

On this _____ day of _____, 202____, before me personally appeared _____ of _____, _____, for and on behalf thereof, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be and acknowledged that he signed the above/attached document.

[Affix notary seal here]

Notary Public

CITY OF ELOY:

By: _____
[City Manager / Community Development Director or Designee]

STATE OF ARIZONA)
)
County of Pinal)

On this _____ day of _____, 202____, before me personally appeared _____, Its _____, of the City of Eloy, an Arizona municipal corporation, for and on behalf thereof, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above/attached document

[Affix notary seal here]

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

(Insert full legal description here.)

EXHIBIT B

LEGAL DESCRIPTION OF AVIATION OVERLAY DISTRICT

EXHIBIT C

Eloy Zoning Ordinance Section 21-2-7.17

21-2-7.17: SUPPLEMENTAL DEVELOPMENT PROVISIONS (AO):

A. All or some of the following mitigation measures may be required prior to site plan/plat approval or the issuance of a building permit; depending upon the location of the project (within the overlay area) relative to the airport location (see section 21-2-7.15, table 2.7-2 of this section 21-2-7 for requirements):

1. Public Disclosure Of Potential Noise Impacts: No person shall sell, nor offer for sale, or rent/lease any property unless the prospective buyer or renter has been notified of the fact that the property is located within the Aviation Overlay and that the property therein is subject to potential noise impacts from the Eloy Municipal Airport.
2. Notification Of Plat Or Title: When a subdivision plat or parcel split is required, the following note shall be placed on the plat and/or recorded with the title:

These properties, due to their proximity to the Eloy municipal airport, are likely to experience aircraft overflights, which could generate noise levels which may be of concern to some individuals.

3. Noise Attenuation: The construction, alteration, moving, partial demolition, repair and use of any occupied building or structure within the Aviation Overlay shall comply with the sound attenuation standards in order to achieve an exterior to interior noise level reduction (NLR) of twenty five (25) decibels (dB). Certification of such NLR measures, by an Arizona registered engineer or a registered architect, shall be required to be submitted along with the application for a building permit.
4. Avigation Easement: At the time of development or as a building permit is required, the owner of property within the Aviation Overlay shall dedicate an avigation easement to the City of Eloy over and across that property. This easement shall hold the City, public and airport harmless from any damages caused by noise, vibration, fumes, dust, fuel, fuel particles, or other effects that may be caused by the operation of aircraft taking off, landing, or operating on or near the Eloy Municipal Airport, not including the physical impact of aircraft or parts thereof. (Ord. 18-880, 7-23-2018)

EXHIBIT D

AIRPORT DISCLOSURE NOTICE

This Disclosure is made to ensure that all current and future owners, heirs, successors, assigns, transferees, lenders, occupants, and other parties with an interest in the Property described in **Exhibit A** are fully informed of the following:

1. The Property is located in close proximity to the Eloy Airport and within flight paths used by aircraft.
2. The Eloy Airport is a 24-hour operating airport with unrestricted flight operations. Aircraft may take off, land, and operate overhead or nearby at any time of the day or night.
3. Airport operations may include, but not limited to, propeller, turbo-prop, and jet aircraft, as well as aircraft takeoffs, landings, overflights, maneuvers, parachuting, ground operations, fueling, maintenance activities, and training activities.
4. Aircraft operations and aircraft may generate odors, fumes, smoke, vibrations, fuel, fuel particles, vapor particles, electronic interference, dust, annoyances, nuisances, emissions, visual impacts, and noise, which may vary in intensity and frequency.
5. Airport operations and facilities may expand, change, or intensify in the future.
6. By accepting an interest in, occupying, or using the Property, the undersigned acknowledges these conditions and those specified in the Aviation Easement and Covenant and Waiver Agreement of Residential Land Use Restriction recorded in Pinal County, Arizona against the property, waives any and all claims or complaints regarding airport operations and related activities, and accepts the obligations and waivers set forth in the Aviation Easement and Covenant and Waiver Agreement of Residential Land Use Restriction to which this disclosure is attached.

Acknowledgment of Receipt (Mandatory for All Transfers and Occupancies):

I/we, _____, hereby acknowledge that I/we have received, reviewed, and understood this Airport Disclosure Notice regarding the Property described in Exhibit 1.

Signature: _____ Date: _____

Signature: _____ Date: _____

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

(Insert full legal description here.)

When Recorded Return to:

EXHIBIT E

City of Eloy
City Clerk's Office
595 North C Street
Suite 104
Eloy, Arizona 85131

NOTICE OF NONCOMPLIANCE

Property Owner: _____
Property Address: _____
City: _____ **State:** _____ **Zip:** _____
Legal Description: See Exhibit A

RECITALS:

A. The Aviation Easement and Covenant and Waiver Agreement of Residential Land Use Restriction (hereafter, the "**AECWA**") recorded in Pinal County, Arizona with the Pinal County Recorder Number: of _____, provides that the property owner (hereafter, the "**Owner**") of the property (hereafter, the "**Property**") is subject to certain obligations, including providing **Exhibit B: Airport Disclosure Notice**, attached to the **AECWA**, to all prospective owners, heirs, successors, assigns, transferees, lenders, occupants, and other parties with an interest in the **Property**, and obtaining their execution and acknowledgment prior to any transfer, lease, or occupancy of the **Property**;

B. The **AECWA** further provides that such obligation is mandatory, runs with the land, and is enforceable by the City of Eloy, including the authority to record a Notice of Noncompliance in the Official Records of the Pinal County's Record's Office;

C. The City of Eloy has determined that the Owner of the Property has failed to provide or obtain the certain acknowledgment of Exhibit B as required under the **AECWA**.

NOTICE:

NOW, THEREFORE, in consideration of the foregoing recitals, the City of Eloy gives notice that:

1. The Owner and all heirs, successors, assigns, transferees, and occupants of the Property are in noncompliance with the **AECWA**.

2. This noncompliance constitutes a breach of the **AECWA** and may result in enforcement actions, including but not limited to:

- 2.1 Injunctive relief;
- 2.2 Recovery of costs, expenses, and attorney's fees; and

2.3 Recording of this Notice of Noncompliance in the Official Records, constituting constructive notice to all parties claiming an interest in the Property.

3. The City of Eloy may record a Release of Notice of Noncompliance upon satisfactory compliance, including provision of Exhibit B to all required parties and acknowledgment thereof.

IN WITNESS WHEREOF, the City of Eloy's authorized agent has executed this Notice of Compliance on the date(s) written below.

CITY OF ELOY:

By: _____
[City Manager / Community Development Director or Designee]

STATE OF ARIZONA)
)
County of Pinal)

On this _____ day of _____, 202____, before me personally appeared _____, Its _____, of the City of Eloy, an Arizona municipal corporation, for and on behalf thereof, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above/attached document

[Affix notary seal here]

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

(Insert full legal description here.)

When Recorded Return to:

EXHIBIT F

City of Eloy
City Clerk's Office
595 North C Street
Suite 104
Eloy, Arizona 85131

RELEASE OF NOTICE OF NONCOMPLIANCE

Property Owner: _____
Property Address: _____
City: _____ **State:** _____ **Zip:** _____
Legal Description: See Exhibit A

RECITALS

A. The City of Eloy recorded a **Notice of Noncompliance** with the Pinal County Recorder Number: of _____ against the property described in **Exhibit A** (hereafter, the **Property**) providing notice that the property owner (hereafter, the "**Owner**") of the **Property** to comply with the mandatory requirements of the Aviation Easement and Covenant and Waiver Agreement of Residential Land Use Restriction (hereafter, the "**AECWA**") with the Pinal County Recorder Number: of _____, specifically the provision and acknowledgment of **Exhibit C: Airport Disclosure Notice** that is required to be executed by Owner, heirs, successors, assigns, transferees, and other parties with an interest **Property**;

B. The City of Eloy has now determined that all required parties have obtained the necessary acknowledgments in full compliance with the **AECWA**.

NOTICE:

NOW, THEREFORE, in consideration of the foregoing recitals, the City of Eloy hereby:

1. Releases, cancels, and terminates the **Notice of Noncompliance** recorded against the **Property**;
2. Confirms that the **Property** is no longer subject to the recorded **Notice of Noncompliance**, provided the **Owner**, heirs, successors, assigns, transferees, continue to comply with all other terms of the **AECWA**; and
3. Authorizes the recordation of this release to be recorded in the Pinal County's Recorder's Office as constructive notice to all parties with an interest in the **Property**.

IN WITNESS WHEREOF, the City of Eloy's authorized agent has executed this Notice of Compliance on the date(s) written below.

CITY OF ELOY:

By: _____
[City Manager / Community Development Director or Designee]

STATE OF ARIZONA)
)
County of Pinal)

On this _____ day of _____, 202____, before me personally appeared
_____, Its _____, of the
City of Eloy, an Arizona municipal corporation, for and on behalf thereof, whose identity was proven to
me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he
signed the above/attached document

[Affix notary seal here]

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

(Insert full legal description here.)