

Prepared by/after recording return to:
Bonnie N. Brown
Deputy City Attorney
VSB No. 83690
Hampton City Attorney's Office
22 Lincoln Street
Hampton, Virginia 23669
757-727-6157

Consideration:
LRSN:

Exempt from Grantor's Tax, Grantee's Tax, and Clerk's fees
Under Virginia Code §§ 58.1-811(A)(3), 58.1-811(C)(4) and 17.1-266

THIS DEED OF PERPETUAL RESTRICTIVE USE EASEMENT ("Easement") made as of this _____ day of _____, 2020, by the **CITY OF HAMPTON**, Virginia, a municipal corporation of the Commonwealth of Virginia with an address of 22 Lincoln Street, Hampton Virginia 23669 (the "**Grantor**") and **THE UNITED STATES OF AMERICA**, acting by and through the Secretary of the Air Force (the "**Grantee**") pursuant to delegated authority. When used in this Easement, unless the context otherwise specifies, "Grantor" includes its heirs, successors and assigns, and "Grantee" includes the assigns of The United States of America and the successors of the Secretary of the Air Force. The Grantor and the Grantee may be collectively referred to as "**Parties**," or in the singular, each may be referred to as a "**Party**," in which event those words include their respective successors and assigns.

In consideration of the sum of _____, the receipt thereof acknowledged, and the mutual covenants, terms, and conditions contained in this Easement, the Grantor hereby grants and conveys to the Grantee a restrictive easement in perpetuity on and over the land described in **Exhibit A** and incorporated herein by reference (the "**Property**"), on terms and conditions set forth in this Easement.

The acquiring Federal agency is the Department of Defense, United States Air Force pursuant to 10 U.S.C. § 2684a.

1. **Purpose**. It is the purpose of this Easement to limit any development or use of the Property that would otherwise be incompatible with the mission of Joint Base Langley Eustis-Langley (the "**Installation**"), or might interfere, whether directly or indirectly, with current or future military training, testing, or operations on, near, or adjacent to the Installation.

2. **Rights and Obligations of the Grantee**. To accomplish the purpose of this Easement, the Grantor conveys the following rights by this Easement to the Grantee:

- a. To limit any development or use of the Property that would otherwise be incompatible with the mission of the Installation, including flying operations, as contemplated by the Air Installation Compatible Use Zones and referenced documents in effect on the date this Easement is granted, or as may be amended from time to time;
- b. The right of ingress, egress and passage over the Property in order to monitor compliance with, and enforce the terms of, this Easement;

- c. To prevent any activity on, or use of, the Property that is inconsistent with the purpose of this Easement, and to require the restoration, by the Grantor, of areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to paragraph 4; including, but not limited to, the right to prevent and remove the erection or growth upon the Property of any building, structure, tree or other object that extends into the air space that exceeds a height established by C.F.R 14 Federal Aviation Regulations Part 77 (dated May 27, 2015 or as amended) or established by a military airport hazard area zoning standard together with the right of ingress, egress and passage over the Property for the above purposes;
- d. To unobstructed passage of all aircraft, ("aircraft" being defined as any contrivance now known or later invented used or designed for navigation of or flight in the air by whomsoever owned or operated, in all air space above the surface of the Property, to an infinite height above the Property);
- e. To cause in all air space above the surface of the Property such noise, vibrations, fumes, dust, fuel particles, light and all other effects that may be caused by the landing, taking off or any other operation of any aircraft or such as may be caused by the operation of any other thing directly or indirectly related to the mission of the Installation;
- f. To post signs on the Property indicating the nature and extent of this Easement.

3. Rights and Obligations of the Grantor. To accomplish the purpose of this Easement, the Grantor retains the following rights:

- a. To limit any development or use of the Property that would otherwise be incompatible with the mission of the Installation, including flying operations, as contemplated by the Air Installation Compatible Use Zones and other related documents in effect on the date this Easement is granted, or as may be amended from time to time;
- b. To enter upon the Property at reasonable times in order to monitor compliance with, and enforce the terms of, this Easement;
- c. To prevent any activity on, or use of, the Property that is inconsistent with the purpose of this Easement, and to require the restoration, by the Grantor, of areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to paragraph 4; including, but not limited to the right to prevent and remove the erection or growth upon the Property of any building, structure, tree or other object that extends into the air space that exceeds a height established by C.F.R 14 Federal Aviation Regulations Part 77 (dated May 27, 2015 or as amended), or established by Unified Facility Criteria Standard 3-260-01, or other military airport hazard area zoning standard together with the right of ingress, egress and passage over the Property for the above purposes;
- d. To post signs on the Property indicating the nature and extent of this Easement.

4. Prohibited Uses. Any activity or use of the Property inconsistent with the purpose of this Easement is prohibited by the Grantor. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- a. Any use of the Property that is incompatible with the mission of the Installation, including but not limited to, the incompatibilities contemplated by the Air Installation Compatible Use Zones and other related documents in effect on the date this Easement is granted, and as may be amended from time to time.
- b. Any structure, tree, or object sited on the Property, including a mobile object, that exceeds a height established by C.F.R 14 Federal Aviation Regulations Part 77 (dated May 27, 2015 or as amended) or established by any military airport hazard area zoning standard, required to keep area free of obstructions and provide safe air navigation for flying operations.
- c. Lighting that may be dangerous, distracting, or misleading to pilots or people operating aircraft from, to or around the Installation. This type of lighting includes, but is not limited to, strobe lights, non-emergency vehicle rotating beacons, or light sources above 16,000 lumens. Light sources above 16,000 lumens must be angled 15 degrees below the horizon.
- d. Operations of any type that produce smoke, glare, or other visual hazards, or that encourage large concentrations of birds, that could interfere with aircraft operating from, to, or around the Installation or could interfere with the mission of the Installation, including flying operations.

5. Grant of Easements Only: Warranty of Title. Grantor is not hereby conveying any land or title thereto, but merely is granting this Easement. Grantor hereby represents, warrants and covenants that Grantor owns fee simple title to the Property and is duly authorized and empowered to execute and deliver this Easement and grant the rights, interests and easement herein.

6. Enforcement and Remedies. Upon any breach of a term of this Easement, the Grantee may institute suits to enjoin any breach or enforce any term by injunction and require that the Property be restored promptly to the condition required by this Easement. The remedies of the Grantee shall be cumulative, and shall include any other rights and remedies available to the Grantee at law or in equity.

7. Discretion of the Grantee. Enforcement of the terms of this Easement shall be undertaken at the discretion of the Grantee. No failure on the part of the Grantee to enforce any term of this Easement on one occasion shall discharge or invalidate that term or any other term of this Easement, or affect the enforcement right of the Grantee in the event of a subsequent breach or default.

8. Notices. Any notice, approval, or communication that either Party is required or desires to give related to this Easement must be given in writing and may be served personally (including by recognized courier service) or sent by certified mail, return receipt requested, by the U.S. Postal Service, to:

To Grantor:

Director Federal Facilities Support
City of Hampton
22 Lincoln Street
Hampton, VA 23669

With copy to:

City Attorney
City of Hampton
22 Lincoln Street
Hampton, VA 23669

To Department of the Air Force:

JBLE-Langley
633 CES/CEIA
37 Sweeney (Bldg.328)
Langley AFB, VA 23665

With copy to:

Air Force Civil Engineer Center
AFCEC/CIUB
3515 5. South General McMullen, Suite 155
San Antonio, TX 78226

Or to any other address that a Party may designate by written notice to the other Party.

10. Subsequent Transfers. The Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of the Fee interest or any lesser interest. The Grantor further agrees to give written notice, by the means specified in section 8, to the Grantee of the transfer of any interest in the Property at least twenty (20) days prior to it.

11. Severability. If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of that provision to persons or circumstances other than those in favor of which it is found to be invalid, as the case may be, shall not be affected.

12. Runs with the Land. The covenants, terms, conditions, and restrictions of this Easement shall be deemed to touch and concern, and run with, the land.

13. Entire Agreement. This Easement sets forth the entire agreement of the Parties for the conveyance of a restrictive easement on the Property, and supersedes all prior discussions, negotiations, understandings, or agreements, oral or written, relating to this Easement, all of which are merged into this Easement.

14. Termination of Easement. This Easement will automatically extinguish by operation of law upon the closure of the Installation and termination of its missions or upon written and recorded agreement of the parties.

IN WITNESS WHEREOF, the Parties have affixed their hands and seals on the days and year written below.

Executed this ____ day of _____, 2020, by the duly authorized officer of the Grantor.

GRANTOR:

CITY OF HAMPTON, VIRGINIA

By: _____
Mary B. Bunting, City Manager/designee
City of Hampton, Virginia

COMMONWEALTH OF VIRGINIA
CITY OF HAMPTON, to-wit:

I, _____, a Notary Public in and for the City and State aforesaid do hereby certify that Mary B. Bunting or her authorized designee, on behalf of the City of Hampton, Virginia, has this day acknowledged the same before me in my City and State aforesaid. She/he is personally known to me.

Given under my hand this ____ day of _____, 2020.

Notary Public

My commission expires: _____

Notary registration #: _____

Approved as to Legal Sufficiency:

Approved as to Content:

Deputy City Attorney

Director of Federal Facilities Support

[SIGNATURES CONCLUDE ON FOLLOWING PAGES]

GRANTEE:

THE UNITED STATES OF AMERICA

By the Secretary of the Air Force

By: _____

Robert E. Moriarty
Director, Installations Directorate
Air Force Civil Engineer Center
City of Hampton, Virginia

ACKNOWLEDGEMENT

STATE OF TEXAS)
) SS:
COUNTY OF BEXAR)

On the _____ day of _____, 2020, before me _____
the Undersigned Notary Public, personally appeared ROBERT E. MORIARTY, personally
known to me to be the person whose name is subscribed to the foregoing Instrument, and
personally known to me to be the Director of the Air Force Civil Engineer Center Installation
Directorate and acknowledged that the same was the act and deed of the Secretary of the Air
Force and that he executed the same as the act of the Secretary of the Air Force for the
purposes and consideration cited therein.

Notary Public, County of Bexar

Printed Name and Commission Expiration Date

EXHIBIT A

ALL THAT certain lot, piece or parcel of land situate, lying and being in the City of Hampton, Virginia, shown and designated as parcel Numbered Seven (7), on a certain plat entitled, "Tidewater Farms," dated January 15, 1953, made by John H. Lawson, C.L.S., a copy of which is attached to and made a part of a certain instrument establishing restrictive covenants upon the lot shown on said plat, made by S. S. Bohannon, dated March 9, 1953, of record in the Clerk's Office of the Circuit Court for the City of Hampton, Virginia, in Deed Book 204, at page 280 (erroneously referred to as Plat Book 4, page 280).

LESS AND EXCEPT that portion of the property acquired by the State Highway Transportation Commission for repair of Armistead Avenue as shown in State Highway Plat Book 5, page 189.

LESS AND EXCEPT that portion of the property acquired by the State Highway Transportation Commission as contained in Certificate recorded in Deed Book 670, at page 372 (erroneously referred to as page 174) and Order in Deed Book 683, at page 174.

Together with all right, title and interest of the Landowner, if any, in and to any and all easements, rights of way, private roads and other rights of access, ingress and/or egress adjacent to, appurtenant to or in any way benefiting the above described parcel.

BEING the same property conveyed to the City of Hampton, Virginia by deed from Oceanfront Enterprises, LLC, a Virginia limited liability company, dated December 11, 2019 and recorded December 11, 2019 in the aforesaid Clerk's Office as Instrument Number 190016520.

Property known as: Vacant Parcel on Tidewater Drive (LRSN 6000755).