

Return to:  
Janice Napper, City Clerk and Recorder  
City of Aurora Colorado  
15151 East Alameda Parkway  
Aurora Colorado 80012

### AVIGATION EASEMENT

1. The undersigned (the "Grantor(s)") (is)(are) the owner(s) of that certain parcel of real property more particularly identified and described in the legal description attached to and made a part of this instrument as Exhibit A (the "Property").

2. Grantor(s), for (itself)(themselves), (its)(their) successors and assigns, hereby grant(s) and convey(s) to THE CITY OF AURORA, COLORADO, its successors and assigns (the "City"), and Denver Int'l Airport, its successors and assigns (the "Airport")(collectively, the "Grantees"), a perpetual and assignable easement in and over the Property and a right-of-way for the free and unrestricted passage and flight of all aircraft in the navigable airspace above the surface of the Property as defined by the Federal Aviation Act of 1958, 49 U.S.C. § 40101, et seq., and the regulations adopted pursuant thereto, as the same are from time to time amended (the "Airspace").

3. Said easement and right-of-way shall include, but is not limited to:

- a. 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 of any and all aircraft now known or hereafter invented, used, or designated for navigation of or flight in the air, in, through, across or about any portion of the Airspace;
- b. The right to cause or create, or permit or allow to be caused or created in 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;
- c. The 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 the Airspace and the right to cut to the ground level and remove any trees which extend into the Airspace;
- d. 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, the Property, and which extend into the Airspace; and
- e. The right of ingress to, passage within, and egress from the Property, solely for the above stated purposes.

4. Grantor(s) hereby covenant(s) with Grantees as follows:

- a. Grantor(s) will not construct, install, permit or allow any building, structure, improvement, tree, or other object on the Property to extend into the Airspace, constitute an obstruction to air navigation, or obstruct or interfere with the use of the easement and right-of-way herein granted; and
- b. Grantor(s) will not use or permit the use of the Property in such a manner as to create electrical or electronic interference with radio communication or radar operation between any installation upon the Airport and any aircraft.

5. The easement and right-of-way granted herein shall be deemed in gross, being conveyed to Grantees for their benefit and the benefit of any and all member of the general public who may use

said easement or right-of-way operating aircraft in or about, or in otherwise flying through, the Airspace.

6. The covenants and agreements made herein shall run with the land and shall be binding upon Grantor(s) and (its)(their) successors and assigns.

7. The City is hereby designated as agent for all purposes regarding the enforcement or removal of the easement and right-of-way granted herein.

8. It is understood and agreed that Grantor(s) shall have no right or cause of action, either in law or in equity, for damages or injury to any person or property arising out of or resulting directly or indirectly, from the overflight of aircraft, or for damages or injury to any person or property resulting from any noise or nuisance of any kind or description resulting, directly or indirectly, from aircraft overflights; provided, however, that nothing herein shall divest Grantor(s) of any right or cause of action for damages to any person or property resulting from the negligent operation of aircraft overflights over the described premises at any altitude above ground level.

9. Nothing herein shall be construed to be a waiver of the governmental immunity afforded to the City or any other governmental agency or department by virtue of the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S., as amended.

EXECUTED this 5th day of September, 2013.

GRANTOR(S)

**ACP DIA 1287 Investors, LLC, a Colorado limited liability company**

By: DIA 1287 Holdings, LLC, an Arizona limited liability company  
Its: Sole Member and Manager

By: A&C Properties, Inc., an Arizona corporation  
Its: Manager  
By: William P. Wichterman  
Name: William P. Wichterman  
Title: Vice President

**STATE OF ARIZONA            )**  
                                       **) ss.**  
**County of Maricopa          )**

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of Sept., 2013, by William Wichterman (and \_\_\_\_\_), Grantor(s).

**Witness my hand and official seal.**

My commission expires: 3.10.2017

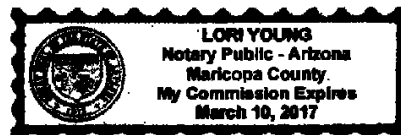


Exhibit A

Legal Description

**PARCEL 1:**

THE SOUTHWEST 1/4 OF SECTION 4, TOWNSHIP 3 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO.

EXCEPT FOR THE FOLLOWING PARCEL:

BEGINNING AT THE CENTER 1/4 CORNER OF SAID SECTION 4, A FOUND 3.25" ALUMINUM CAP STAMPED P.L.S. #13239; THENCE SOUTH 00°00'52" WEST ON THE EAST LINE OF SAID SOUTHWEST 1/4 A DISTANCE OF 110.93 FEET; THENCE DEPARTING SAID EAST LINE NORTH 89°45'33" WEST PARALLEL WITH THE NORTH LINE OF SAID SOUTHWEST 1/4 A DISTANCE OF 110.00 FEET; THENCE NORTH 00°00'52" EAST PARALLEL WITH THE EAST LINE OF SAID SOUTHWEST 1/4 A DISTANCE OF 110.93 FEET TO A POINT ON THE NORTH LINE OF SAID SOUTHWEST 1/4; THENCE SOUTH 89°45'33" EAST ON SAID NORTH LINE A DISTANCE OF 110.00 FEET TO THE POINT OF BEGINNING.

**PARCEL 2:**

THE SOUTH 1/2 OF SECTION 5, TOWNSHIP 3 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO.

**PARCEL 3:**

THE NORTH ONE-HALF AND THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 3 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO, EXCEPTING THEREFROM THE SOUTH 110 FEET OF THE SOUTHWEST QUARTER.

**PARCEL 4:**

THE WEST 1/2 OF SECTION 9, TOWNSHIP 3 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO.