

**RECORDING REQUESTED BY:**

EL DORADO COUNTY PLANNING DEPARTMENT

**WHEN RECORDED, RETURN TO:**

NAME: Planning Department  
MAILING ADDRESS: 2850 Fairlane Court  
CITY, STATE, ZIP: Placerville, CA 95667

SPACE ABOVE RESERVED FOR RECORDERS USE

**AVIGATION AND NOISE EASEMENT**

This Easement and Agreement is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between the County of El Dorado, a political subdivision of the State of California, hereinafter "County," and \_\_\_\_\_ Michael Kabour \_\_\_\_\_, hereinafter "Grantor," pursuant to the authority of Chapter 17.38 of the El Dorado County Ordinance Code.

**RECITALS**

**WHEREAS**, pursuant to the requirements of Section 65302.3 of the Government Code of the State of California, the County of El Dorado, on May 12, 1987, amended Chapter 17.38 of the El Dorado County Ordinance Code and, on June 4, 1986, consistent with Section 17.38.030, the Foothill Airport Land Commission had adopted the \_\_\_\_\_ South Lake Tahoe \_\_\_\_\_ Airport Comprehensive Land Use Plan; and,

**WHEREAS**, Grantor is the owner in fee of that parcel of land identified by Assessor's Parcel Number \_\_\_\_\_ 033-703-02 \_\_\_\_\_ (Building Permit # \_\_\_\_\_ 167212 \_\_\_\_\_) and more particularly described and identified in Exhibit A attached hereto and made a part hereof (hereinafter "Parcel"); and,

**WHEREAS**, the Parcel lies within airport safety zone \_\_\_\_\_ 3 \_\_\_\_\_ as shown on the Comprehensive Land Use Plan of the \_\_\_\_\_ South Lake Tahoe \_\_\_\_\_ Airport (hereinafter "Airport");

**AGREEMENT AND GRANT OF EASEMENT**

**NOW, THEREFORE**, Grantor, on behalf of itself, its successors and assigns, for and in consideration of the determination by County that Grantor is in compliance with Section 17.38.062 of the El Dorado County Ordinance Code, does hereby grant to the County, its successors and assigns, for the benefit of the public, a perpetual avigation and noise easement, and makes warranties as follows:

1. The easement granted herein shall be for the free and unobstructed passage and flight of aircraft in, through, over, and across the airspace over said Parcel by County, its successors, assignees and their licensees and permittees, and by the public.

2. The rights herein granted shall include the right to overfly the Parcel and to allow, make and emit noise, light, vibrations, fumes, exhaust, smoke, air currents, dust, fuel particles and communications signals, including any inherent radio, television and other electromagnetic interferences, and all other effects as may be inherent to the operation of aircraft using said airspace or landing at, taking off from, or operating on the Airport, subject to the following limitation. The rights granted herein shall be applicable to aircraft of

any and all kinds now known or hereafter invented, used or designed for navigation or flight in the air; provided, that such aircraft shall be of a class, size and category operationally compatible with the Airport, and that the level and nature of the use are consistent with general civil aviation use of the Airport in its configuration at the time of this grant, or with such improvements as may be reasonably foreseeable at the time of this grant, so that nothing in this paragraph is intended to abrogate the doctrine of "overburdening" of easements as defined by statutory and common law.

3. For and on behalf of itself, its successors and assigns, Grantor hereby covenants with County for the direct benefit of the real property constituting the Airport that neither Grantor nor its successors in interest or assigns shall hereafter construct or install, or permit the construction or installation, of any structure or object, or allow the growth of any tree or other vegetation over forty (40) feet in height, except with prior written consent of County or its designee. Grantor warrants and agrees that Grantor will comply with the forty (40) foot height limitation set forth herein and in Section 17.28.040 of the El Dorado County Ordinance Code, regardless of any amendment of Section 17.28.040 or any other section of the El Dorado County Ordinance Code that otherwise may increase the permissible height limitation applicable.

4. In addition to any other rights the County may have to enforce compliance with the height restrictions contained in paragraph 3, above, by Grantor, its successors and assigns, County, its successors and assigns, after thirty (30) days written notice to Grantor, its successors or assigns, shall have the right to remove any structure or object in excess of the forty (40) foot height limitation (or such portion of a structure or object as may exceed forty (40) feet in height, to the extent that such partial removal is feasible and reasonable), and shall have the right to cut or remove any vegetation exceeding forty (40) feet in height (or such portion as may exceed forty (40) feet in height, to the extent that such partial removal is feasible and reasonable) if such vegetation is determined by the County to constitute a hazard or obstruction to aerial navigation, violates any law or regulation, including, but not limited to, regulations of the Federal Aviation Administration, or otherwise interferes with the exercise of rights granted herein. County, its successors and assigns, are granted the right of ingress to, egress from, and passage over the Parcel for the foregoing purposes. No notice shall be required if it is determined by the County or its designee that the structure, object or vegetation constitutes an immediate threat to safety. Removal of any structure or vegetation not in compliance with the terms of this easement shall be at the expense of Grantor.

5. Grantor warrants and agrees that Grantor will refrain from any action or use of the Parcel that creates any electrical interference with radio communications between any installation at the Airport and aircraft. Grantor warrants that Grantor will refrain from erecting any structure or fixture which constitutes a barrier to pilots seeking to distinguish between airport lights and other lights or which impairs the visibility of the airport in such a manner as to endanger the landing, takeoff or maneuverability of aircraft seeking to land at, or take off from the Airport. County agrees that Grantor shall not be in violation of this warranty unless Grantor shall have been given express written notice by County, or County's assignees, of any breach of this warranty and that Grantor shall have a reasonable time within which to remedy the breach. Unless otherwise stated in the notice, thirty (30) days shall be deemed a reasonable time within which to remedy the breach. If the Grantor fails to cure the breach within the reasonable period of time after notice, County, its successors or assigns, shall have the same rights of access over and upon the Parcel for the purpose of curing such breach as are set forth in paragraph 4, above, and such cure shall be at the expense of Grantor. Advance notice shall not be required if it is determined by County that the breach constitutes an immediate threat to safety.

6. All covenants, conditions and warranties contained in this instrument are made and entered into for the benefit of County on behalf of the Airport and the public. These promises, covenants, conditions and warranties shall run with the Parcel, described and identified on Exhibit A, attached, and bind Grantor's heirs, administrators, executors, successors and assigns to the maximum extent permitted by law.

7(a). Grantor, on behalf of itself, its successors and assigns, hereby releases, waives, discharges and relinquishes, any and all claims, actions, causes of action, demands and liabilities of any nature whatsoever, which the Grantor now has or which may hereafter accrue, against the County, its officers, employees, and board or commission members, arising in any manner out of the operation of the Airport, the exercise of any rights granted under this easement or any aviation activities associated in any way with the Airport, except as provided in Section 7(b), below. Types of claims, actions, causes of action, demands and liabilities released, waived, discharged and relinquished herein include, but are not limited to, claims for property damage, bodily injury, personal injury, nuisance, trespass, conversion of property and inverse condemnation. The release, waiver and relinquishment contained in this paragraph shall be effective whether or not the claim or action arises out of conduct which is within or exceeds the rights granted by this easement, and whether or not the conduct is in compliance with the terms of this easement.

It is understood and agreed that all rights under Section 1542 of the Civil Code of California and any similar law of any state or territory of the United States are hereby expressly waived. Said section reads as follows:

“1542. Certain Claims Not Affected By General Release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

7(b). In the event that the County of El Dorado elects to directly operate and maintain the Airport, the release and waiver set forth in the foregoing Section 7(a) shall not apply in cases where the alleged harm or liability is caused by an act or omission of the County of El Dorado or an employee thereof constituting gross negligence, recklessness or willfulness; provided, that this Section 7(b) is not intended, in any event, to except from the release and waiver contained in Section 7(a) claims such as inverse condemnation and nuisance where the acts complained of are the exercise of rights granted under this easement.

In addition, if the County of El Dorado elects to directly operate and maintain the Airport, the release and waiver set forth in the foregoing Section 7(a) shall not apply to any action seeking injunctive relief based on allegations of any violation of any rule, regulation or practice of the Federal Aviation Agency (and/or any successor agency), the Division of Aeronautics of the California Department of Transportation (and/or any successor agency) or the Foothill Airport Land Use Commission (and/or any successor agency) or any other alleged violation of law governing the conduct of the County in the operation and maintenance of the Airport; provided, that no claim for monetary damages or any monetary award may be maintained in any such action unless the standard of gross negligence, recklessness or willfulness set out above is satisfied.

8. Nothing in this easement shall be construed to preclude Grantor, or Grantor's heirs, successors or assigns, from bringing a cause of action against any pilot, fixed base operator, manufacturer, maintenance entity or any person (other than the County of El Dorado and its officers, board and commission members) for an act or omission which constitutes a violation of any rule, regulation or practice of the Federal Aviation Agency (and/or any successor agency), the Division of Aeronautics of the California Department of Transportation (and/or any successor agency) or the Foothill Airport Land Use Commission (and/or any successor agency) or any other act, omission or breach of duty of ordinary care otherwise cognizable under the laws of the State of California.

9. Grantor agrees to defend at its own cost, hold harmless and indemnify County from any liability arising out of Grantor's failure to comply with the terms of this easement.

10. This easement and the warranties made a part hereof shall continue in effect until the Airport shall be permanently abandoned and shall cease to be used for public airport purposes.

11. County may assign all or any portion of the rights herein to any special district heretofore or hereafter formed for the purpose of operating the Airport, or to any other public entity which assumes responsibility for such operation; provided, however, that both Sections 7(a) and 7(b) shall be applicable with respect to any such public entity assignee. In addition, the terms and limitations contained in Sections 7(a), 7(b) and 8 shall remain in effect and binding as between Grantor, its heirs and successors, and County, its officers, employees and board and commission members notwithstanding any assignment of rights herein.

For Grantor(s): \_\_\_\_\_ For the County of El Dorado  
By: [Signature] \_\_\_\_\_ By: \_\_\_\_\_  
Print: MICHAEL KABOUR \_\_\_\_\_ Print: \_\_\_\_\_  
  
By: \_\_\_\_\_  
Print: \_\_\_\_\_

ATTEST:  
Nevada  
STATE OF CALIFORNIA  
Carson City ) ss.  
County of El Dorado )

On July 25, 2006 before me, Carrie Lindquist, Notary Public, personally appeared Michael Kabour, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



[Signature]  
Notary Public in and for said State

RECORDING REQUESTED BY

ORDER # Michael P Kabour  
APN 081-153-06-100  
WHEN RECORDED MAIL TO

Name  
Street  
Address  
City  
State  
Zip  
Michael P. Kabour and  
Kirsten D. Kabour & Phillip  
Michael Kabour et al  
P.O. BOX 2003  
NOVATO, CA 94948

El Dorado, County Recorder  
William E. Schultz Co Recorder Office  
DOC- 2000-0010343-00  
Acct 5-OLD REPUBLIC TITLE CO  
Tuesday, FEB 29, 2000 13:28:00  
T&I Pd \$10.00 Mbr-0000015153  
JTB/CZ/1-2

SPACE ABOVE THIS LINE FOR RECORDER'S USE

### Grant Deed

The undersigned grantor(s) declare(s):  
Documentary transfer tax is \$ -0- adding children to title  
( X ) computed on full value of property conveyed, or  
( ) computed on full value less value of liens and encumbrances remaining at time of sale.  
( X ) Unincorporated area: ( ) City of \_\_\_\_\_  
( ) Realty not sold.

PCOS  
FILED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
Michael P. Kabour and Kirsten D. Kabour, husband and wife

hereby GRANT(S) to Michael P. Kabour and Kirsten D. Kabour, husband and wife and  
Phillip Michael Kabour, a single man and Marianne Michelle Kabour, a single woman  
and John Michael Kabour, a single man, all as joint tenants

RECEIVED  
PLANNING DEPARTMENT  
FEB 29 17 PM 2:31

that property in El Dorado County, State of California, described as:  
Property is described on Exhibit A attached hereto and made a part hereof.

Mail Tax Statements to Grantee at address above

Date February 17, 2000

*Michael P. Kabour*  
Michael P. Kabour

STATE OF CALIFORNIA

COUNTY OF El Dorado

*Kirsten D. Kabour*  
Kirsten D. Kabour

On February 17, 2000 before me, the  
undersigned, a Notary Public in and for said State, personally appeared  
Michael P Kabour and Kirsten D.  
Kabour

personally known to me (or proved to me on the basis of satisfactory  
evidence) to be the person(s) whose name(s) are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies) and that by his/her/their signature(s) on  
the instrument the person(s), or the entity upon behalf of which the person(s)  
acted, executed the instrument.

WITNESS my hand and official seal.

Signature *A M Calder*  
Name A M Calder  
(typed or printed)



(This area for official notarial seal)

010343

Order No. 355298-BAC

Exhibit A

**Legal description of the property**

Lot 88, Map of Rolling Wood Heights Subdivision, filed September 28, 1959, in Map Book C, Page 30, El Dorado County Records.

The undersigned spouses of the above named Grantees hereby consent to the creation of said joint tenancy.

  
Michael F. Kabour

  
Kristen D. Kabour

WHEN RECORDED, RETURN TO  
THE BOARD OF SUPERVISORS  
EL DORADO COUNTY

CERTIFICATE  
OF ACCEPTANCE

THIS IS TO CERTIFY that the interest in real property conveyed by the Avigation and Noise Easement dated July 25, 2006, from Michael Kabour, to the COUNTY OF EL DORADO, a political subdivision of the State of California, is hereby accepted by order of the Board of Supervisors of the County of El Dorado on October 17, 2006, and the grantee consents to the recordation thereof by its duly authorized officer.

DATED this 17th day of October 2006

COUNTY OF EL DORADO

By

\_\_\_\_\_  
Chairman  
Board of Supervisors

ATTEST:

CINDY KECK  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk

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