

RECORDING REQUESTED BY:

EL DORADO COUNTY PLANNING SERVICES

WHEN RECORDED, RETURN TO:

NAME: Board of Supervisors
MAILING ADDRESS: 330 Fair Lane 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 _____ Brian Kuelper _____, 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 _____ 033-781-04-100 _____ (Building Permit # _____ 175910 _____) 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 know 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):
By: [Signature]
Print: BRIAN KUEPPEL

For the County of El Dorado
By: _____
Print: _____

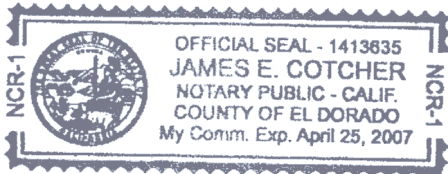
By: _____
Print: _____

ATTEST:

STATE OF CALIFORNIA)
County of El Dorado) ss.

On September 25, 2006 before me, James E. Cotcher, Notary Public, personally appeared Brian Stephen Kuepfer, ~~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
James E. Cotcher

RECORDING REQUESTED BY:
Fidelity National Title Company of California
Escrow No.: 06-2001043-MA
Locate No.: CAFNT0909-0909-0008-0002001043
Title No.: 06-2001043-DP

**When Recorded Mail Document
and Tax Statement To:**
Mr. Brian Kuelper
PO Box 7205
South Lake Tahoe, CA 96158



El Dorado, County Recorder
William Schultz Co Recorder Office
DOC- 2006-0021807-00

Acct 2-FIDELITY NATL TITLE CO
Friday, MAR 31, 2006 14:30:00
Ttl Pd \$230.00 Nbr-0000847222
CLG/C1/1-2

APN: 033-781-04-100

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

PCOS
FILED

**The undersigned grantor(s) declare(s)
Documentary transfer tax is \$220.00**

- computed on full value of property conveyed, or
- computed on full value less value of liens or encumbrances remaining at time of sale,
- Unincorporated Area City of ~~South Lake Tahoe~~ unincorporated

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Arlene C. Grotz, a married woman as her sole and separate property

hereby **GRANT(S)** to Brian Kuelper, an unmarried man

the following described real property in the Unincorporated Area of South Lake Tahoe, County of El Dorado, State of California:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

DATED: March 22, 2006

STATE OF CALIFORNIA
COUNTY OF San Mateo
ON 3-27-06 before me,
David Twoy, Notary Public
(here insert name and title of the officer), personally
appeared Arlene C. Grotz #F

Arlene C. Grotz
Arlene C. Grotz

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 _____

MAIL TAX STATEMENTS AS DIRECTED ABOVE

021807

Escrow No.: 06-2001043-MA

Locate No.: CAFNT0909-0909-0008-0002001043

Title No.: 06-2001043-DP

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA, COUNTY OF EL DORADO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Lot 4 of Tahoe Paradise Addition Unit No. 6, filed in the office of the County Recorder, County of El Dorado, State of California on April 9, 1968 in Book E of Maps at page 5.

EXCEPTING THEREFROM all oil, gas and hydrocarbon substances, and all minerals of whatever kind or nature, together with the right to recover the same, provided however, that such recovery shall only be by means of slant drilling or by mine shaft mining below a depth of 100 feet from the surface, as excepted in deed recorded May 23, 1969, Series No. 9218, Book 932, Page 616, Official Records.

03/31/2006, 20060021807

Initials: AG

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 September 25, 2006, from Brian Kuelper, 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 November 7, 2006, and the grantee consents to the recordation thereof by its duly authorized officer.

DATED this 7th day of November 2006

COUNTY OF EL DORADO

By

Chairman
Board of Supervisors

ATTEST:

CINDY KECK
Clerk of the Board of Supervisors

By: _____
Deputy Clerk