



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: November 12, 2013

TO: Mayor and Councilmembers

FROM: Facilities Planning and Development, Airport Department

SUBJECT: Avigation And Noise Easement For 7000 Hollister Avenue, Goleta

RECOMMENDATION: That Council:

- A. Approve and authorize the City Administrator to execute and record a grant deed of avigation and noise easement and agreement imposing conditions on real property by and between Goleta Hollister, LLC and the City of Santa Barbara; and
- B. Adopt, by reading of title only, A Resolution of the Council of the City Of Santa Barbara Accepting an Avigation and Noise Easement Imposing Conditions on Real Property known as Assessor's Parcel Numbers 073-030-020 and 073-030-021.

DISCUSSION:

On October 2, 2012, the Planning Commission of the City of Goleta approved construction of a new 22 acre mixed-use development at 7000 Hollister Avenue (APN 073-030-020 and 073-030-021), which is bisected by the boundary of the Santa Barbara County Airport Land Use Plan's "Safety Area 2 – Approach Zone" for Runway 7. The City of Goleta imposed a condition of approval on the project requiring the property owner, Goleta Hollister, LLC, to grant the City of Santa Barbara an avigation and noise easement. The avigation and noise easement will provide notice to current and future property owners of the effects of airport operations and will establish provisions allowing aircraft using the Airport to have the free and unobstructed right of flight in the airspace above the parcel.

ATTACHMENT: Grant Deed of Avigation and Noise Easement

PREPARED BY: Andrew Bermond, AICP, Project Planner

SUBMITTED BY: Karen Ramsdell, Airport Director

APPROVED BY: City Administrator's Office

Recorded for the Benefit of:
City of Santa Barbara

**Recording requested by and when recorded
mail to:**

Santa Barbara Airport
601 Firestone Road
Santa Barbara, CA 93117

and

Goleta Hollister, LLC
c/o Westar Associates
2925 Bristol Street
Costa Mesa, CA 92626

THE ABOVE SPACE RESERVED FOR RECORDER USE ONLY

**GRANT DEED OF AVIGATION AND NOISE EASEMENT AND AGREEMENT
IMPOSING CONDITIONS ON REAL PROPERTY**

APN No.: 073-030-21 and 073-030-20

RECITALS

WHEREAS, Goleta Hollister, LLC, a Delaware limited liability company (herein the "**Grantor**") is the owner in fee simple of that certain parcel of land situated in the County of Santa Barbara commonly known as 7000 Hollister Avenue, Goleta, California and more particularly described in Exhibit A and attached hereto and made a part hereof (herein the "**Grantor's property**") ; and,

WHEREAS, City of Santa Barbara, a municipal corporation (herein the "**Grantee**") is the owner of certain properties within the County of Santa Barbara which are described in a Deed from the United States of America to Grantee dated February 24, 1949, which was recorded in Book 861 at Page 33 of the official records of the County of Santa Barbara, State of California (herein the "**Dominant Parcel**") ; and,

WHEREAS, the Santa Barbara Municipal Airport, (herein the "**Airport**") is operated on the Dominant Parcel which is in close proximity to Grantor's property; and,

WHEREAS, on October 2, 2012, Grantor received approval from the City of Goleta for construction of a 22.32 acre mixed use development project on Grantor's property consisting of multi-family residential apartment units, a community shopping center, and related improvements, a portion of which (herein the "**Servient Parcel**") is located within the Santa Barbara County Airport Land Use Plan's Safety Area 2-Approach Zone, with said approvals being conditioned upon Grantor providing Grantee with an avigation easement over the Servient Parcel; and,

WHEREAS, the Servient Parcel is more particularly described in Exhibit B attached hereto and made a part hereof: and

WHEREAS, Grantor and Grantee wish to establish provisions so that aircraft using Airport shall have the right of flight and the right to cause noise, light, and other effects associated with the operation of aircraft in the airspace over and above the Servient Parcel.

NOW, THEREFORE, Grantor, for consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants and conveys to Grantee a perpetual public-use aviation and noise easement in, through, across and over the airspace of the Servient Parcel subject to termination as expressly provided herein and right-of-way for the free and unobstructed flight of aircraft, of any and all kinds now known or hereafter invented, used or designed for navigation or flight in the air, of the class, size and category permitted by law to operate at Airport, as more particularly described below.

1. Grantor, understands and acknowledges that the rights herein granted shall include, but not be limited to, the right in such airspace to allow, make and emit such noise, light, vibrations, fumes, exhaust, smoke, air currents, dust fuel particles, radio, television, and other electromagnetic interferences, and all other effects as may be inherent to the operation of aircraft for navigation flight in the air.

2. Grantor hereby fully waives, remises and releases any right or cause of action that it may now have or that it may have in the future against Grantee, its successors, and assigns, and covenants not to sue due to such noise, light, vibrations, fumes, exhaust, smoke, air currents, dust fuel particles, radio, television, and other electromagnetic interferences, and all other similar or related effects that may be caused or may have been caused by the operation of aircraft landing at, taking off from, or operating at Airport as permitted under this easement (collectively the "effects"). Said release and covenant shall include, but not limited to, claims, known or unknown, for damages for physical or emotional injuries, discomfort, inconvenience, property damage, death, interference with use and enjoyment of property, diminution of property values, nuisance, or inverse condemnation or injunctive or other extraordinary or equitable relief arising out of the effects.

3. It is further agreed that Grantee as owner and operator of Airport shall have no duty to avoid or mitigate such damages by, without limitation, setting aside or condemning buffer lands, rerouting air traffic, erecting sound or other barriers, or establishing curfews, noise or other regulations, except to the extent, if any, that such actions are validly required by government authority. Grantor reserves such use, rights and privileges in the Servient Parcel as may be exercised and enjoyed without interference with or abridgment of the rights hereby granted.

4. This grant of an aviation and noise easement shall not operate to deprive Grantor and its successors or assigns of any rights that it may have from time to time against any other individual aircraft operator for the negligent or unlawful operation of an aircraft.

5. For and on behalf of itself and its successors and assigns, Grantor hereby covenants with Grantee for the direct benefit of the real property constituting Airport that neither Grantor nor its successors in interest or assigns shall hereafter construct or permit the construction or growth of any structure, tree or other object within the Servient Parcel that penetrates an approved approach, transitional, horizontal, or control surface, or that constitutes an obstruction to air navigation, or that obstructs or interferes with the use of the flight easements and rights of way herein granted, or that creates electrical interference with radio communication between any installation upon Airport and aircraft, or that makes it difficult for pilots to distinguish between airport lights and other lights, or that impairs visibility in the vicinity of Airport, or that otherwise endangers the landing, take-off or maneuvering of aircraft. Grantee reserves the

right, upon reasonable notice to Grantor, to mark and light as obstructions to air navigation any such building, structure, tree or other object now upon, or that in the future may be upon, the Servient Parcel, together with the right of ingress to, egress from, and passage over the Servient Parcel for the above purpose, which shall be accomplished at Grantee's expense.

The foregoing notwithstanding, Grantor and Grantee acknowledge, accept and agree that the Servient Parcel may be improved pursuant to the approvals described in the Recitals and that such improvements shall not be deemed in violation or breach of the terms and conditions set forth in this Grant.

6. All promises, covenants, conditions and reservations contained in this easement are made and entered into for the benefit of Grantee. These promises covenants, conditions, and reservations, shall run with the Servient Parcel, described and identified on Exhibit B attached hereto, shall bind Grantor's heirs, administrators, executor, successors and assigns to the maximum extent now or hereafter permitted by statute or case law, and are intended by the parties to comply with California Civil Code Section 1468. "Successors and assigns" as used in this paragraph includes, without limitation, invitees, licensees, permittees, tenants, and lessees.

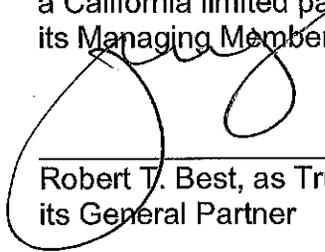
7. The aviation and noise easement, covenants, and agreements described herein shall continue in effect until the Airport shall be abandoned and shall cease to be used for public airport purposes.

IN WITNESS WHEREOF, Grantor and Grantee have caused this grant of easement to be executed on _____, 2013.

GRANTOR:

GOLETA HOLLISTER, LLC,
a Delaware limited liability company

By: THE BEST GROUP, L.P.,
a California limited partnership,
its Managing Member

By: 
Robert T. Best, as Trustee of the Best Family Trust u/d/t October 2, 2001
its General Partner

GRANTEE:

CITY OF SANTA BARBARA
Municipal Corporation

City Administrator

ATTEST:

By: _____
City Clerk

APPROVED AS TO CONSENT:

By: _____
Airport Director

APPROVED AS TO FORM:

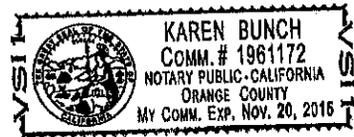
By: _____
Assistant City Attorney

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On OCTOBER 23, 2013, before me, KAREN BUNCH, Notary Public, personally appeared ROBERT T. BEST, who 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(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Karen Bunch (SEAL)
Notary Public

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2013, before me, _____, Notary Public, personally appeared _____, who 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(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (SEAL)
Notary Public

EXHIBIT A

Real property in the City of GOLETA, County of SANTA BARBARA, State of California, described as follows:

PARCEL 1: (APN NO.: 073-030-21)

PARCEL "A" OF PARCEL MAP NO. 11,218, IN THE CITY OF GOLETA, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 7, PAGE 19 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING ALL URANIUM, THORIUM AND OTHER FISSIONABLE MATERIALS, ALL OIL, GAS PETROLEUM, ASPHALTUM AND OTHER HYDROCARBON SUBSTANCES AND OTHER MINERALS AND MINERAL ORES OF EVERY KIND AND CHARACTER WHETHER SIMILAR TO THOSE HEREIN SPECIFIED OR NOT, WITHIN OR UNDERLYING, OR WHICH MAY BE PRODUCED FROM THAT PORTION OF THE HEREINBEFORE DESCRIBED LAND WHICH LIES BELOW A PLANE PARALLEL TO AND FIVE HUNDRED (500) FEET BELOW THE PRESENT SURFACE OF SAID LAND, OR TO USE SAID LAND OR ANY PORTION THEREOF TO SAID DEPTH OF FIVE HUNDRED (500) FEET, FOR ANY PURPOSE WHATSOEVER, AS RESERVED BY MONO POWER COMPANY, IN THAT DEED RECORDED JULY 3, 1970 AS INSTRUMENT NO. 17511, BOOK 2313, PAGE 944 OF OFFICIAL RECORDS OF SANTA BARBARA COUNTY, CALIFORNIA.

PARCEL 2: (APN NO.: 073-030-20)

PARCEL B OF PARCEL MAP NO. 11218, IN THE CITY OF GOLETA, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON THE MAP FILED IN BOOK 7, PAGE 19 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2A:

A NON-EXCLUSIVE RIGHT OF WAY 3 FEET WIDE FOR A WATER PIPE LINE OVER, UNDER AND ACROSS THAT PORTION OF TRACT NO. 1, AS SHOWN ON THE MAP OF SUBDIVISION OF THE WEST DIVISION OF TRACT "B" OF THE HOLLISTER RANCHO, IN RANCHO LOS DOS PUEBLOS, AS PER MAP FILED IN THE OFFICE OF THE COUNTY RECORDER OF SANTA BARBARA COUNTY, STATE OF CALIFORNIA, AND DESIGNATED AS MAP NO. 5, IN RACK NO. 3, SAID RIGHT OF WAY BEING DESCRIBED AS LYING ADJACENT TO AND EXTENDING 3 FEET WIDE ALONG THE SOUTHERLY AND EASTERLY BOUNDARY LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY'S RIGHT OF WAY, BEGINNING AT A POINT IN THE WESTERLY LINE OF PARCEL NO. 19, AS SHOWN ON THE MAP OF SURVEY OF THE "GILBERT AND WATKINS TRACTS OF THE RANCHO LOS DOS PUEBLOS", FILED IN THE BOOK 22, PAGE 26 OF RECORD OF SURVEYS OF SAID COUNTY; THENCE FOLLOWING THE SOUTHERLY AND EASTERLY BOUNDARY LINE OF SAID RAILROAD RIGHT OF WAY ACROSS SAID PARCEL NO. 19 TO THE EASTERLY LINE OF SAID PARCEL NO. 19; THENCE STILL EXTENDING 3 FEET WIDE ALONG THE BOUNDARY LINE OF SAID RAILROAD RIGHT OF WAY ACROSS PARCELS NO. 18, 17, 16, 15, 14, 13, 12, 11, 10, 9, AND 8, AS SHOWN ON THE MAP OF SAID RECORD OF SURVEYS, TO THE EAST BOUNDARY LINE OF SAID PARCEL NO. 8.