

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____
No. ADDITIONAL FTE POSITIONS (Cumulative)	<u># See below</u>	_____	_____	_____	_____

Is Item Included In Current Budget? Yes X No _____
 Budget Account No: Fund 4100 Department 120 Unit _____ RSource _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:
 No fiscal impact.

C. Departmental Fiscal Review: GM Serrin

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

N. Davis 7/30/2014 Dr. J. Jacobson 7/30/14
7/29 Am 7/29 **OFMB** **Contract Dev. and Control**
 7-30-14 B. Wheeler

B. Legal Sufficiency:
Anne Delgado 7/31/14
Assistant County Attorney

C. Other Department Review:

Department Director

Prepared By:
Stephen S. Mathison PA
5606 PGA Boulevard
Palm Beach Gardens
Florida 33418

AVIGATION EASEMENT

THIS AVIGATION EASEMENT, conveyed this 16th day of January, 2014 by and between **BRIDGEWATER LAKE OSBORNE, LLC**, a Florida limited liability company whose mailing address is 5604 PGA Boulevard, Suite 109, Palm Beach Gardens, Florida 33418 (“Grantor”) and **PALM BEACH COUNTY**, a political subdivision of the State of Florida, whose mailing address is 301 North Olive Avenue, West Palm Beach, FL 33401 (“County”).

WITNESSETH:

WHEREAS, Grantor is the owner of the parcel of property located on Lantana Road, Palm Beach County, Florida, and described in the attached EXHIBIT A (“Property”); and

WHEREAS, County is the owner and operator of the Palm Beach County Park Airport, located in Palm Beach County, Florida (“Airport”); and

WHEREAS, County requires, as a condition precedent to the development or use of the Property, conveyance from Grantor of an Avigation Easement in order to preserve for the use and benefit of the public a right of free and unobstructed flight for Aircraft landing upon, taking off from, or maneuvering about the Airport.

NOW, THEREFORE,

1. Grantor, for and in consideration of the sum of Ten Dollars and 00/100 (\$10.00) and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, does grant, bargain, sell, and convey unto the County, its heirs, successors, and assigns this perpetual Avigation Easement, described as the following:

A. A perpetual air and flight easement, and a perpetual Aircraft operations and Aircraft noise easement, for the use of the airspace over, through or adjacent to the Property. Such easement shall be for air navigation purposes and shall include, but not be limited to, the right any Aircraft utilizing the Airport now or in the future to discharge noise, vibrations, odors, fumes, vapors, air currents, illumination, particulates, smoke, dust, radio, television and other electromagnetic or communications emissions, or other effects as may be inherent in or related to the operation of Aircraft, on the Property and its occupants. For the purposes of this instrument, the term “Aircraft” shall be defined as any contrivance now known or hereafter invented, used, or designed for navigation of or flight through the air.

B. A perpetual easement for the right to discharge from the Airport any noise, vibrations, odors, fumes, vapors, air currents, illumination, particulates, smoke, dust,

radio, television and other electromagnetic or communications emissions, or other effects as may be inherent in or related to the operation of Aircraft and the Airport, which effects may reach, or otherwise affect use of, the Property.

C. This Avigation Easement is unlimited as to the number and frequency of Aircraft operations and includes any flight tract that Aircraft now or in the future may utilize.

2. This Avigation Easement shall be appurtenant to and shall run with the Property, and shall constitute a permanent burden upon the Property which shall be binding upon and enforceable against Grantor, its heirs, successors, and assigns in interest for the benefit of the County and the Airport. In order to ensure the perpetual nature of the restrictions, terms, conditions, and easements contained herein, Grantor agrees, on behalf of itself and its heirs, successors, and assigns, to reference this Avigation Easement and the restrictions, terms, conditions, and easements contained herein in any subsequent deed of conveyance, including the recording book and page number of this Avigation Easement.

3. This Avigation Easement is granted with the following express terms and conditions, which are binding on Grantor and its heirs, successors, and assigns:

A. Use of Property. Grantor's use of the Property shall be restricted in the following manner:

i. The Property shall not be used in any way that would interfere with the landing or taking off of Aircraft at the Airport, interfere with air navigation and/or communication facilities serving the Airport, or otherwise constitute an airport hazard. The County shall have reasonable discretion to determine whether Grantor has violated any of the restrictions on use of the Property provided herein.

ii. Grantor and its heirs, successors and assigns shall use the Property in compliance with all current and future federal, state, and local laws, rules, regulations orders and circulars, as well as all County ordinances, directives and policies.

B. Construction/Improvements. In no event shall any temporary or permanent improvement, modification, installation, or fixture, including without limitation buildings, structures, light fixtures, billboards, vegetation, or other natural or man-made objects ("Improvements") be constructed or installed on the Property that are determined by either the County or FAA to be an airspace obstruction or to pose a potential threat to air navigation. Grantor shall comply with FAA standards, including without limitation, height restrictions governing objects affecting navigable airspace found at 14 C.F.R. Part 77 ("Part 77"), as the same may be amended. The construction and use of Improvements on the Property shall also be consistent with all County ordinances, directives, and policies, including but not limited to the Palm Beach County Airport Zoning Ordinance (codified in Article 16 of the Palm Beach County Unified Land Development Code) as required by Chapter 333, Florida Statutes.

C. **Obligation to Mitigate; Right to Self-help.** Upon notification by the County that any conditions on the Property are adversely affecting air navigation or have resulted in complaints from FAA or pilots operating Aircraft at the Airport, Grantor or its heirs, successors, or assigns, shall, at its own cost, immediately take whatever action is necessary to mitigate such effects. In the event that the Grantor has not remedied the condition that led to the County notice within thirty (30) days, or should such a condition not be reasonably remedied in thirty (30) days, commence such remedy within thirty (30) days and complete such remedy in no more than sixty (60) days, without limiting the generality of the foregoing, Grantor acknowledges that the County shall then be entitled to enter the Property and mitigate adverse conditions and Improvements including, but not limited to, terminating light, noise, electro-magnetic and other emissions and removing violating natural or man-made objects, at Grantor's sole expense. In the event of a dispute regarding the effects that conditions on the Property have on air navigation, Grantor, on behalf of itself and its heirs, successors, and assigns, agrees to cease use or operation of such conditions or Improvements alleged by the County, FAA, or pilots operating Aircraft at the Airport to be adversely affecting air navigation pending the initiation and completion of any dispute resolution process, including, without limitation, mediation or litigation.

D. **Right-of-Entry.** In addition to the self-help remedies provided in this Avigation Easement, Grantor acknowledges that the County may enter the Property consistent with the terms and conditions established herein, including for the purpose of assessing or inspecting the Property and Grantor's activities for compliance with this Avigation Easement after providing reasonable notice to Grantor of such assessment or inspection.

E. **Waiver of Claims against County.** Grantor, on behalf of itself, its heirs, successors, and assigns, hereby waives, releases and forever discharges the County and its elected officials, officers, employees, agents, attorneys, consultants, contractors (including independent contractors), representatives, heirs, successors, and assigns from all claims, demands, judgments, orders, awards, liabilities, costs, attorneys' fees, causes of action, administrative proceedings and lawsuits of every kind, nature or description, whether known or unknown, fixed or contingent, under any theory of recovery, arising out of or connected to this Avigation Easement and the terms and conditions herein contained. Such waived claims include, but are not limited to, disputes involving noise, vibrations, odors, fumes, vapors, air currents, illumination, particulates, smoke, dust or other effects as may be inherent in the operation of Aircraft, as well as discomfort, inconvenience, interference with the use and enjoyment of the Property and any damage to or reduction of market value of the Property related to the operation of Aircraft to and from the Airport. Grantor acknowledges that the above-stated consideration is all that Grantor will receive for this Avigation Easement and no promise for any other or further consideration has been made by anyone. Grantor further acknowledges that Grantor is executing this instrument solely in reliance upon its own knowledge, belief, and judgment and not upon any representations made by any party released or others in their behalf.

F. Indemnification of County. Grantor hereby agrees to indemnify and save harmless the County and its elected officials, officers, employees, agents, attorneys, consultants, contractors (including independent contractors), representatives, heirs, successors, and assigns from and against any and all liability, losses, damages, claims, actions, causes of action, costs and expenses (including attorneys' fees) for personal injury (including death) and/or property damage to whomsoever or whatsoever occurring, arising from or growing out of, directly or indirectly, compliance with, or breach of, this Avigation Easement and the terms and conditions herein contained.

G. Disclosure. Grantor and its heirs, successors, and assigns agree to, as soon as practicable, convey notification regarding disclosure of the Property's proximity to the Airport, and the associated potential hazards to and limitations on the Property, to any and all parties seeking to acquire any interest in the Property, and to prospective tenants of the Property. Such notice shall comply with all applicable requirements and guidelines for disclosure, including the County's Airport Zoning Ordinance (Article 16 of the Palm Beach County Unified Land Use Development Code) and any and all other County requirements then in force. Such notification of disclosure shall be signed by the parties to the transaction and shall be recorded along with any conveyance instrument.

4. Grantor acknowledges that the terms and conditions pursuant to this Avigation Easement are being imposed, in part, to satisfy the County's obligations to the federal government pursuant to federal laws and regulations and, notwithstanding this Avigation Easement or the terms and conditions herein contained, Grantor agrees that the Property shall not be considered to be or administered or designated as a public park, recreation area or wildlife or waterfowl refuge of national, state or local significance. The foregoing restriction shall not be construed as prohibiting the conveyance of the Property to any governmental agency or body for the uses permitted herein; provided, however, the Property shall remain subject to the restriction set forth in this paragraph.

5. Grantor agrees that, in the event any term or condition of this Avigation Easement is violated, the County and its heirs, successors, and assigns shall be entitled to exercise all remedies available under the law, including, without limitation, immediate injunctive relief, both temporary and permanent, and the right of specific performance. In the event Grantor fails to promptly mitigate a hazard or adverse effect on air navigation following notification from the County in accordance with Section 3.C. of this Agreement, Grantor shall reimburse the County for any and all costs and expenses incurred by the County in exercising its self-help rights hereunder.

6. If any portion of this Avigation Easement is held to be invalid by any court of competent jurisdiction, the invalidity of such provisions shall not affect the validity of any other provisions hereof. All such other provisions shall continue unimpaired in full force and effect.

7. Any subsequent amendments or modifications to this Avigation Easement must be in writing and executed by both the County and Grantor or their respective heirs, successors or assigns and be recorded in the Official Public Records of Palm Beach County, Florida, in order to be effective.

IN WITNESS WHEREOF, Grantor has executed this instrument on the date first above written.

[SIGNATURE PAGES FOLLOW]

GRANTOR:
BRIDGEWATER LAKE OSBORNE
a Florida limited liability company

By: **EASTWIND LAKE OSBORNE, LLC**
a Florida limited liability company
Its: **Managing Member**

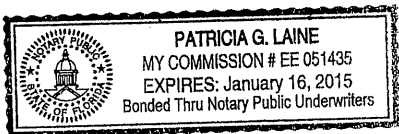
John F. Weir
By: John F. Weir, Managing Member

Witness: [Signature]
Printed Name: Dennis Kelly

Witness: [Signature]
Printed Name: Valerie Amys

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 16 day of January of 2014, by John F. Weir as Managing Member of Eastwind Lake Osborne, LLC, a Florida limited liability company. He/She is personally known to me, or produced current _____ as identification.



Patricia G. Laine
Signature of Notary Public
Patricia G. Laine
Printed Name of Notary Public

(Notary Seal)

EXHIBIT "A"
Property

All of the Plat of Bridgewater at Lake Osborne, a P.U.D. according to the map thereof as recorded in Plat Book 108, Page(s) 5, of the Public Records of Palm Beach County, Florida.

ACCEPTANCE

This Avigation Easement is hereby accepted by Palm Beach County, Florida, on the ____ day of _____, 20 __, as authorized by the Board of County Commissioners of Palm Beach County, Florida.

ATTEST:

**PALM BEACH COUNTY,
A POLITICAL SUBDIVISION OF THE
STATE OF FLORIDA, BY ITS BOARD
OF COUNTY COMMISSIONERS**

**SHARON R. BOCK,
CLERK AND COMPTROLLER**

By: _____
Deputy Clerk

By: _____
Priscilla A. Taylor, Mayor

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS
AND CONDITIONS**

By: _____
County Attorney

By: 
Director, Department of Airports

JOINER AND CONSENT OF MORTGAGEE

Branch Banking and Trust Company (the "Mortgagee") is the owner and holder of the following documents recorded in the public records of Palm Beach County, Florida (collectively, the "Loan Documents"):

- (i) Mortgage recorded in Official Records Book 25748, page 0952;
- (ii) Assignment of Leases and Rents recorded in Official Records Book 25748, page 0960; and
- (iii) UCC-1 Financing Statement recorded in Official Records Book 25748, page 0966.

The Loan Documents encumber certain property which includes the Easement Property. Mortgagee hereby consents to the Avigation Easement and hereby subordinates the lien of the Loan Documents to the easement interests in the Easement Property conveyed to Grantee.

Witnesses:

W. Dale Kahle
 Print: W. DALE KAHLE

Ken Galaska
 Print: Ken Galaska

BRANCH BANKING AND TRUST COMPANY

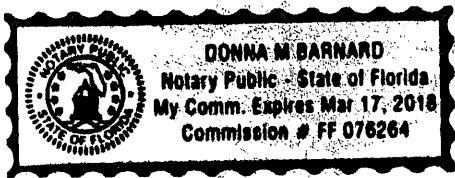
By: *H Bruce Gosman*
 Its: H BRUCE GOSMAN

STATE OF FLORIDA
 COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 5th day of JUNE, 2014, by H BRUCE GOSMAN, the SENIOR VICE PRESIDENT of Branch Banking and Trust Company, on behalf of the bank. He/she (check one) is personally known to me or produced _____ as identification.

Donna M Barnard
 Notary Public, State and County Aforesaid
 Name: DONNA M BARNARD
 My Commission Expires: 3/17/18
 My Commission Number is: _____

[SEAL]



AFFIDAVIT OF LIMITED LIABILITY COMPANY

STATE OF FLORIDA

COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, personally appeared, the undersigned who by me being first duly sworn, depose(s) and say(s) that:

1. The undersigned is the Managing Member of Eastwind Lake Osborne, LLC, a limited liability company organized and existing under the laws of the State of Florida ("Company"). Company is the Managing Member of Bridgewater Lake Osborne, LLC, a limited liability company organized and existing under the laws of the State of Florida ("Bridgewater").

2. Articles of Organization of the Company have been filed, and are on-file with, the Florida Department of State and such articles are incorporated herein by reference.

3. The Company is in good standing and is authorized to transact business in the State of Florida as of the date hereof.

4. The company is a member managed limited liability company.

5. The undersigned is the sole managing member of the Company or has been authorized by majority vote of the managing members to act on behalf of the Company and legally bind the Company and execute contracts and other instruments relating to the transaction of business of the Company.

6. The undersigned has the right and authority to execute and deliver that certain Avigation Easement in favor of Palm Beach County, a political subdivision of the State of Florida and the Company (the "Easement"), which is incorporated herein by reference and made a part hereof, and such other instruments as may be necessary and appropriate for the Company to fulfill its obligations under such Easement, including amendment(s) of such Easement.

7. Upon execution and delivery of such Easement and documents by the undersigned, all of the aforesaid shall be valid agreements of and be binding upon the Company.

8. The transactions contemplated herein will not violate any of the terms and conditions of the Company's member agreement, operating agreement certificate of organization or of any other agreement and amendments thereto of whatever kind between the Company and any third person.

9. The undersigned acknowledges that affiant is familiar with the nature of an oath and the penalties provided by the laws of the State of Florida and that this Affidavit is being given to induce Palm Beach County to accept the Easement.

FURTHER AFFIANT SAYETH NAUGHT,

John F. Weir
John F. Weir, Managing Member

SWORN TO AND SUBSCRIBED before me on this 4th day of February, 2014, by John F. Weir, Managing Member of Eastwind Lake Osborne, LLC, on behalf of the Company, who is personally known to me OR who produced _____, as identification and who did take an oath.

Patricia G. Laine
Notary Signature

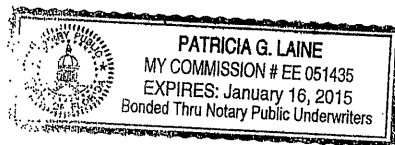
Patricia G. Laine
Print Notary Name

NOTARY PUBLIC

State of Florida at large

My Commission Expires:

1-16-2015

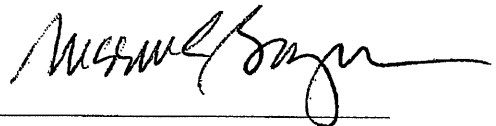


CERTIFICATE OF AUTHORITY

I, the undersigned, being the duly elected and acting Associate General Counsel of Branch Banking and Trust Company ("BB&T"), a banking corporation organized and in good standing under the law of the State of North Carolina, hereby certify that:

I am familiar with certain records of BB&T, including its Articles of Incorporation and By-laws.

Bruce Gosman is the duly elected Senior Vice President of BB&T, and is authorized to execute any and all contracts, deeds, and instruments that are credit or loan related on behalf of BB&T, pursuant to the By-laws of BB&T and as authorized by BB&T's Chief Executive Officer, without any other signature or approval, and that such contract, deed or instrument executed by him is binding upon BB&T.

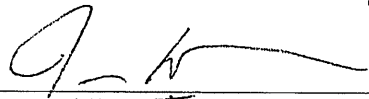


Russell S. Bogue, III,
Associate General Counsel

STATE OF GEORGIA
COUNTY OF FULTON

I, a Notary Public of the County and State aforesaid, certify that Russell S. Bogue, III, appeared before me this day and acknowledged the execution of the foregoing instrument in his capacity as Associate General Counsel of Branch Banking and Trust Company, A North Carolina banking corporation.

Witness my hand and official stamp or seal, this 22nd day of July, 2014.


Notary Public JASON DUNN
Print Name

My commission expires: 5/14/16

(Notary Seal)

Jason Dunn
NOTARY PUBLIC
Cobb County, GEORGIA
My Commission Expires
5/14/2016