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FEDERAL AVIATION ADMINISTRATION

RECORDER'S OFFICE, CASS COUNTY, ND
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.
JEWEL A. SPIES, COUNTY RECORDER

6/6/2018 2:08 PM

by *Shana Garcia* Deputy

1538930



(Space above reserved for Recorder's certification)

Title of Document: AGREEMENT NO. DTFACN-17-L-00223
VORTAC Restrictive Aerial Easement

City and State: (FAR) Fargo, North Dakota

Date of Document: 09/21/2017

Grantor/Lessor(s): Richard Family Trust

Grantee/Lessee: United States of America

Recording by: Melinda Taber (817)222-4320
Department of Transportation

Return: DOT/ Federal Aviation Administration,
Attn: Real Estate & Utilities Group, ALO-720
10101 Hillwood Parkway
Fort Worth, TX 76177

Legal Description: Reference full text on pages 1 and 2 of document, plot located in
Cass County, North Dakota.

Document Drafted by: Demetra S. Johnson, Federal Aviation Administration, Real Estate
and Utilities Team, ALO-720, 10101 Hillwood Parkway, Fort Worth, TX 76177, phone
817-222-4308



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FEDERAL AVIATION ADMINISTRATION

RESTRICTIVE AERIAL EASEMENT AGREEMENT

Between

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

And

RICHARD FAMILY TRUST

**AGREEMENT No. DTFACN-17-L-00223
(FAR) VORTAC RESTRICTIVE AERIAL EASEMENT
FARGO, ND**

THIS RESTRICTIVE AERIAL EASEMENT AGREEMENT is made by and between **RICHARD FAMILY TRUST**, whose address is 4217 Ponderosa N.E., Albuquerque, New Mexico 87110 hereinafter referred to as the Grantor and the United States of America, hereinafter referred to as the Government. This agreement shall become effective when it is fully executed by all parties. The terms and provisions of this agreement, and conditions herein, bind the Grantor and the Grantor's heirs, executors, administrators, successors, and assigns.

This agreement succeeds Lease No. DTFAGL-09-L-00002 and all other previous agreements between the parties for the property described in this document.

WITNESSETH: The Parties hereto, and for the consideration hereinafter mentioned covenant and agree as follows:

Grantor owns a certain 18.31 acres' tract of land located in the City of Fargo, County of Cass and State of North Dakota ("Grantor's Property").

Grantor desires to grant to the Government a restrictive aerial easement over a portion of Grantor's Property, that being a certain 18.31 acres' tract more particularly described below.

Grantor and the Government acknowledge that the proposed aerial easement will benefit the Grantor while helping to advance the FAA's mission.

EASEMENT PROPERTY - A 18.31-acre tract of land located at 4150 88th Avenue South, Fargo, North Dakota 58102, and being more particularly shown on the attached Drawing No. 15.00994, dated July 1, 2016 and further described as follows:

The South One-half (S 1/2) of the Northeast Quarter (NE 1/4) of Section Twenty-two (22), in Township One Hundred Thirty-eight (138) North, Range Forty-nine (49) West of the Fifth Principal Meridian.

1.3.16 Restrictive Aerial Easement

CLSA January 2016

OMB Control No. 2120-0595



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 (FAR) Vortac Aerial Easement
 Fargo, North Dakota

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A tract of land located in the Northeast Quarter of Section 22, Township 138 North, Range 49 West, of the Fifth Principal Meridian, Cass County, North Dakota, being more fully described as follows:

Beginning at the center of said Section 22; thence N 01°59'20" W along the north-south quarter line of said Section 22, 1,042.50 feet; thence southeasterly 1,584.13 feet along a non-tangential curve concave to the southwest with a radius of 1,000.00 feet, a central angle of 90°45'50", and whose chord bears S 44°56'51" E, to a point on the east-west quarter line of said Section 22; thence S 87°58'24" W along the east-west quarter line of said Section 22, 970.15 feet to the Point of Beginning. Said tract contains 18.31 acres, more or less as more particularly identified as Exhibit "A," attached hereto and made a part hereof.

2. EASEMENT PURPOSE - An Aerial Easement to restrict Grantor's use of the Easement Property for the purpose of the continued operation of the Government's facility.

3. GRANT OF EASEMENT - Grantor hereby confirms, establishes, grants, and conveys to the Government and its successors and assigns an exclusive Aerial Easement in, on, over, and across the Easement Property. The Easement includes the right to prohibit all obstructions above ground surface as shown on "VORTAC Siting Criteria/VORTAC Aerial Easement Criteria" identified as Exhibit "B," (2 pages) attached hereto and made a part hereof, together with the right to trim, cut, fell, and remove trees, underbrush, obstructions and other obstacles (e.g., vegetation structures) or obstacles that abridge the rights hereby granted. The Government shall provide the Grantor at least fifteen (15) days' notice prior to any work being performed by the Government. The Easement herein granted does not convey any right or interest in the Easement Property, except as stated herein. The Grantor shall not be prevented from the use of the Easement Property for the type and height of the permitted exceptions shown on Exhibit "B." Further, this Aerial Easement is subject to existing structures in place under existing easements for public roads and highways, public utilities, railroads, and pipelines, and any present or future use by Lessor and assigns, provided such use does not interfere with the operation of the Government's facility and with prior concurrence by the Government. Lessor or Lessor's contractor/agent is required to go to website <https://oeaaa.faa.gov> to submit essential data for Federal Aviation Administration (FAA) evaluation prior to any construction or alteration, including any construction activities planned/performed by third parties.

4. TERM (08/02) - To have and to hold, for the term commencing on October 1, 2018 and continuing through September 30, 2028 inclusive, provided that adequate appropriations are available from year to year for the payment of consideration herein.

5. CONSIDERATION (08/02) - The Government shall pay the Grantor for use of the premises 8th the amount of EIGHT HUNDRED DOLLARS (\$800.00) per annum. Payments shall be made in arrears at the end of each Government fiscal year without the submission of invoices or



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vouchers. The payments shall be made by electronic fund transfer. Payments shall be considered paid when an electronic funds transfer is made.

6. PAYMENT BY ELECTRONIC FUND TRANSFER (07/14) - All payments by the Government under this lease will be made by electronic funds transfer (EFT). The Government will make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR Part 210. The Lessor is responsible to maintain correct payment information with the Government. If the Lessor's EFT information is incorrect or outdated, the Government is not required to make payments to the Lessor until correct/current EFT information is submitted to the Government for payment distribution.

7. LEGAL AUTHORITY - This agreement is entered into under the authority of 49 U.S.C. § 106(l) and (n), which authorizes the Administrator of the Federal Aviation Administration to enter into and perform such acquisitions of interests in real property, agreements, and other transactions on such terms and conditions as the Administrator determines necessary.

8. SCOPE OF EASEMENT - The Easements, covenants, and restrictions contained herein are appurtenant to, run with, and inure to the benefit of all or any portion of the Grantor's Property, whether or not the Easement is referenced or described in any conveyance of all or such portion of Grantor's Property. This Easement is exclusive to the Government.

9. BINDING EFFECT - The provisions of this Easement shall run with the land, and be binding upon, and for the benefit of, the parties and their successors and assigns. In the event of any sale or transfer of ownership of the Easement Property or any portion thereof, the Government will be deemed to have attorned to any purchaser, successor, assign, or transferee. The succeeding owner will be deemed to have assumed all rights and obligations of the Grantor under this agreement establishing direct privity of estate and contract between the Government and said succeeding owner, with the same force, effect, and relative priority in time and right as if the agreement had initially been entered into between such succeeding owner and the Government.

10. CANCELLATION (08/02) - The Government may terminate this Easement at any time, in whole or in part, if it determines that a termination is in the best interest of the Government. The Government shall terminate by delivering to the Grantor a written notice specifying the effective

date of the termination. The termination notice will be delivered by registered mail, return receipt requested, and mailed at least 30 days before the effective termination date.

11. HOLDOVER (10/13) - If after the expiration of the Easement agreement, the Government shall retain possession of the premises, the Easement shall continue in force and effect on a month-to-month basis. Payment shall be made in accordance with the terms of the agreement, in



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arrears on a prorated basis, at the rate paid during the Easement term. This period shall continue until the Government signs a new Easement agreement with the Grantor, or acquired the property in fee, or vacated the Easement Premises.

12. DISPUTES (11/03) - All disputes arising under or related to this Easement shall be resolved through the Government's dispute resolution system at the Office of Dispute Resolution for Acquisition (ODRA), and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. Section 46110 and shall apply only to final agency decisions. A Grantor may seek review of a final decision by the Government only after its administrative remedies have been exhausted.

13. NOTICES - All notices/correspondence shall be in writing, reference the Easement number, and shall be deemed to be given when delivered personally or when deposited in the United States mail, certified or registered, postage prepaid, and addressed as follows:

TO GRANTOR

TO GOVERNMENT

Richard Family Trust
c/o Daniel F. Richard and
Grace L. Richard, Trustees
4217 Ponderosa N.E
Albuquerque, NM 87110

DOT/Federal Aviation Administration
Real Estate & Utilities Group, ALO-720
10101 Hillwood Parkway
Fort Worth, TX 76177

IN WITNESS WHEREOF, Grantor and the Government have executed this Agreement as of the dates set forth below.

GRANTOR

Daniel Richard
Daniel F. Richard, Trustee

8/31/17
Date

Deceased
~~Grace L. Richard, Trustee~~ 9/7/17

Date

UNITED STATES OF AMERICA

Demetra S. Johnson
Demetra S. Johnson
Real Estate Contracting Officer

9-21-17
Date



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(FAR) Vortac Aerial Easement
Fargo, North Dakota

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF NM
COUNTY OF Bernalillo

On this, the 31 day of August, 2017, before me, Cheryl Goehring, the undersigned Notary Public, personally appeared **Daniel F. Richard, Trustee** known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes therein contained.



Cheryl Goehring
Notary Public

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF _____
COUNTY OF _____

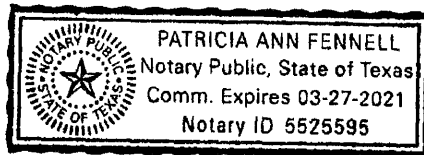
On this, the _____ day of _____, 2017, before me, N/A 9-7-17, the undersigned Notary Public, personally appeared **Grace L. Richard, Trustee** known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes therein contained.

Notary Public

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF TEXAS
COUNTY OF TARRANT

On this, the 21st day of Sept, 2017, before me, Patricia Ann Fennell the undersigned Notary Public, personally appeared **Demetra S. Johnson**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes therein contained.



Patricia Ann Fennell
Notary Public

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CERTIFICATE OF SURVEY

Certificate of Survey for: U.S. Department of Transportation Federal Aviation Administration
 Central Logistics Service Area Real Estate & Utilities Group, ALO-720
 Fort Worth, Texas

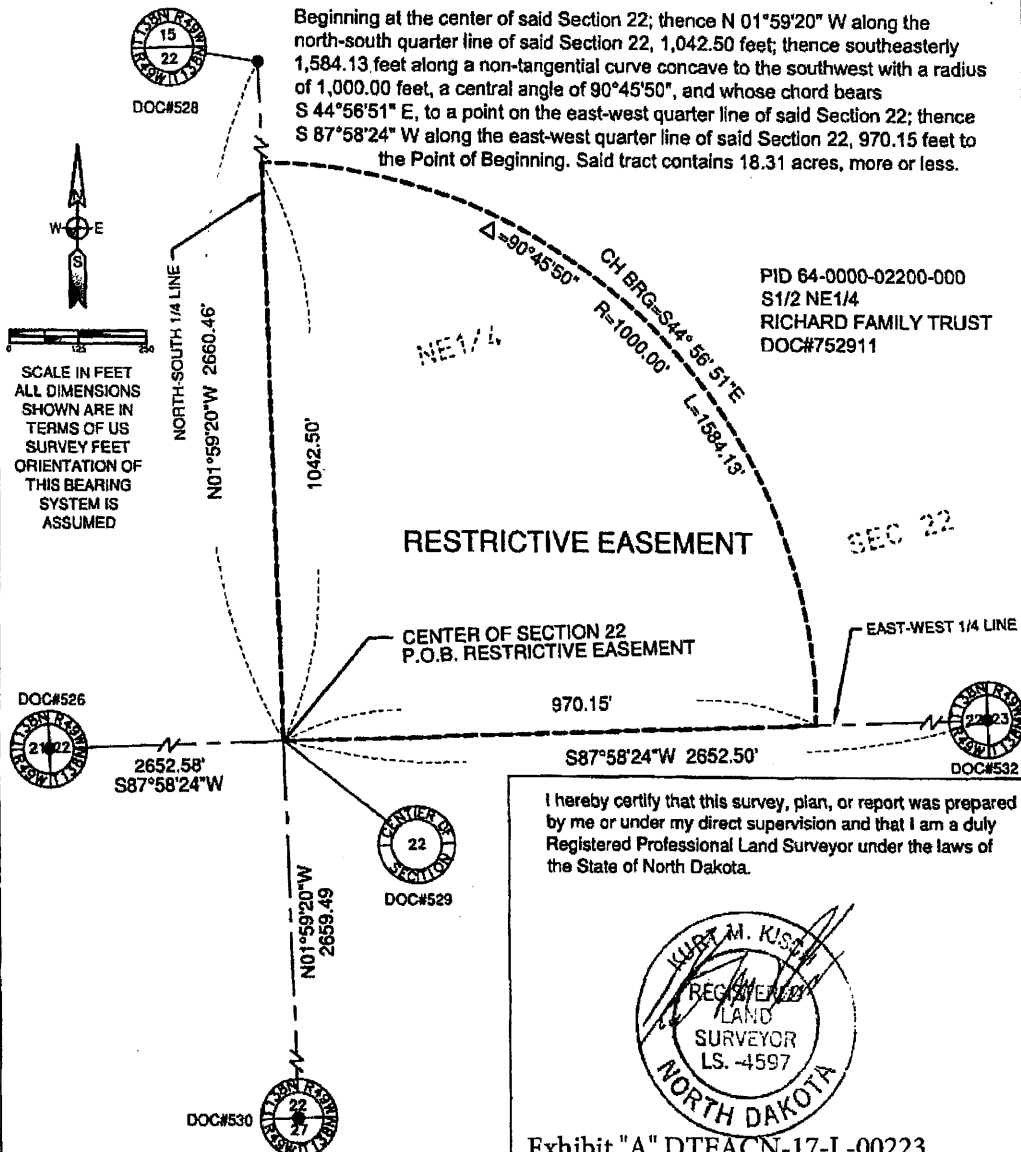
Parent Parcel Owner: Richard Family Trust, Parcel Identification Number 64-0000-02200-000

PARENT PARCEL DESCRIPTION:
 (per Cass County Recorder's Document No. 752911)

The South One-half (S 1/2) of the Northeast Quarter (NE 1/4) of Section Twenty-two (22), in Township One Hundred Thirty-eight (138) North, Range Forty-nine (49) West of the Fifth Principal Meridian.

RESTRICTIVE EASEMENT DESCRIPTION:

A tract of land located in the Northeast Quarter of Section 22, Township 138 North, Range 49 West, of the Fifth Principal Meridian, Cass County, North Dakota, being more fully described as follows:



I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Registered Professional Land Surveyor under the laws of the State of North Dakota.



Exhibit "A" DTFACN-17-L-00223

Ulteig
 Bismarck - Cedar Rapids - Denver - Detroit Lakes - Fargo - St. Paul - Sioux Falls - Williston
 3350 38th Avenue South
 Fargo, North Dakota 58104
 Phone: 701.280.8500 Fax: 701.280.8739
 Web: www.ultieg.com

CERTIFICATE OF SURVEY (FAR) VORTAC
 NORTHEAST 1/4, SECTION 22,
 TOWNSHIP 138 N, RANGE 49 W
 CASS COUNTY, NORTH DAKOTA

Project Number: 1500984
 Date: 7/1/2016
 Drawn By: NES
 Approved By: KMK
 Sheets: 1 of 1

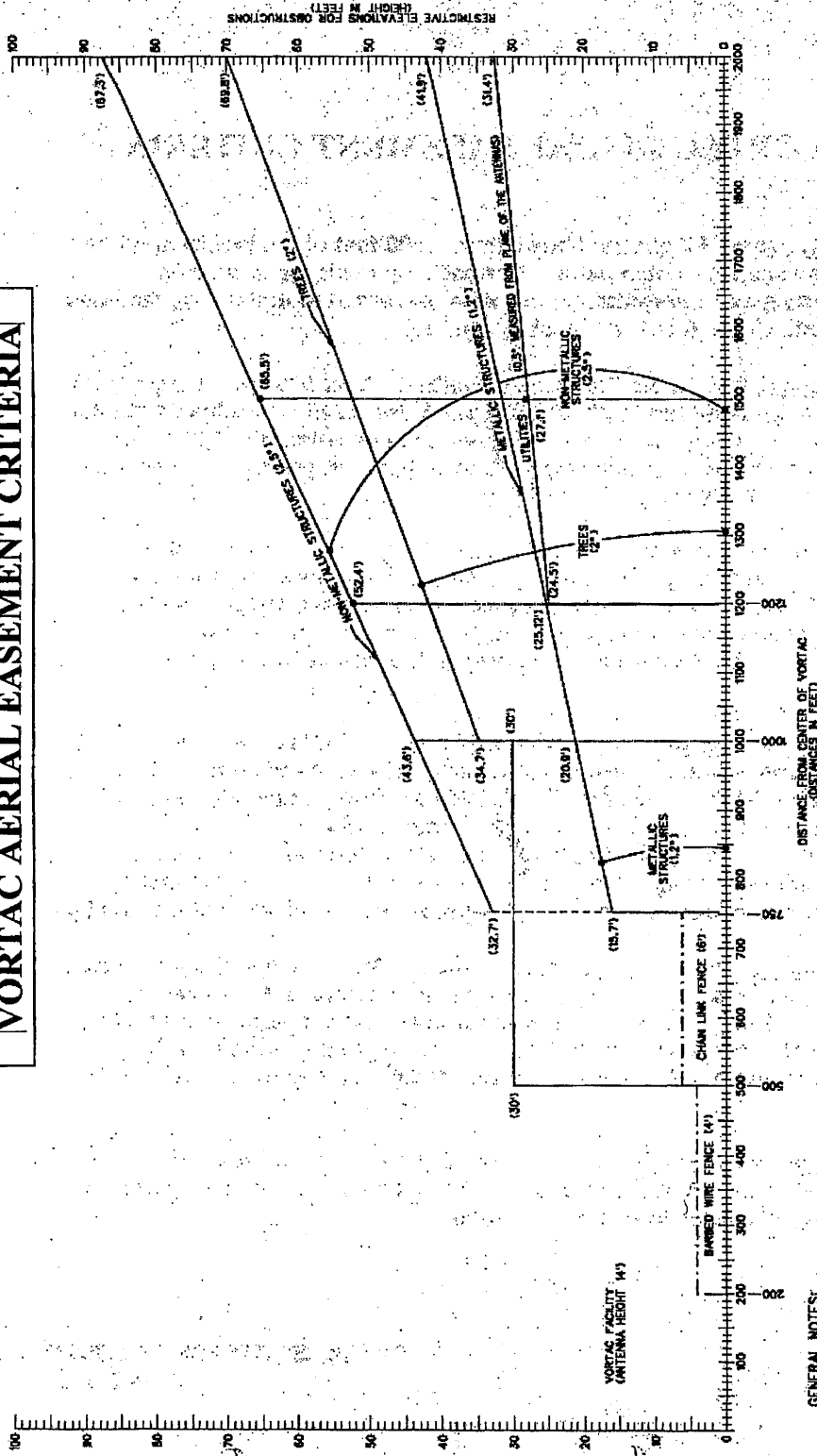


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VORTAC AERIAL EASEMENT CRITERIA



GENERAL NOTES:
 NO OVERHEAD UTILITY LINES ALLOWED INSIDE 1200 FOOT RADIUS.
 THIS DRAWING IS TO BE USED AS A GUIDELINE AND DOES NOT
 SUPERSEDE OTHER REGULATORY CRITERIA THEREABOUT.

Exhibit "B" DTFACN-17-L-00 223
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VORTAC AERIAL EASEMENT CRITERIA

1. **Obstructions:** All obstructions within 1,000 feet of the facility shall be removed except as noted below. Normal crop raising and grazing operations may be permitted in this area, except at mountain top facilities where antennas are only 4 feet above grade.
2. **Trees and Woods:** No Trees are permitted within 500 feet. Single trees of moderate height (up to 30 feet) are permitted within the 500 to 1,000 foot radius of the facility. No groups of trees shall be within the 1,000 foot radius or subtend a vertical angle of more than 2 degrees. No trees shall be within 1,000 feet at a mountain top site.
3. **Fences:** Farm type wire fences four feet high are not permitted within 200 feet of the facility. Six foot high chain link fences are not permitted within 500 feet. No wire fence shall extend .5 degrees above the plane of the facility antennas. Exceptions may be granted, with the prior written permission of the Government, for fences that are essentially radial to the facility.
4. **Power and Control Lines:** Power and control shall be installed underground within 600 feet of the facility. All overhead lines shall be radial to the facility between 600 to 1,200 feet from the facility. No overhead lines or supporting structures may subtend a vertical angle as measured from the ground at the facility of 1.5 degrees. No overhead conductor may extend .5 degrees above a plane containing the facility antennas and occupy more than 10 degrees of azimuth around the facility.
5. **Structures:** No structures are permitted within 750 feet of the facility. All structures that are partly or entirely metallic shall subtend vertical angles of 1.2 degrees or less as measured from the ground at the facility. Wooden structures with negligible metallic (including internal wiring) content are permissible if they subtend vertical angles of 2.5 degrees or less.
6. **Temporary Obstructions:** No vehicles, farm implements or other mobile objects shall be left in the clear-zone. Farming equipment is permissible only when in use while in the clear-zone.

(01/10)