



# Office of Chicago City Clerk



**O2011-3340**

Office of the City Clerk

## City Council Document Tracking Sheet

<b>Meeting Date:</b>	<b>4/13/2011</b>
<b>Sponsor(s):</b>	<b>Mayor Daley</b>
<b>Type:</b>	<b>Ordinance</b>
<b>Title:</b>	<b>Authorization for Aviation Easement Agreement with Risen Savior Assembly of God</b>
<b>Committee(s) Assignment:</b>	<b>Committee on Aviation</b>

AVIAT.



OFFICE OF THE MAYOR  
CITY OF CHICAGO

RICHARD M. DALEY  
MAYOR

April 13, 2011

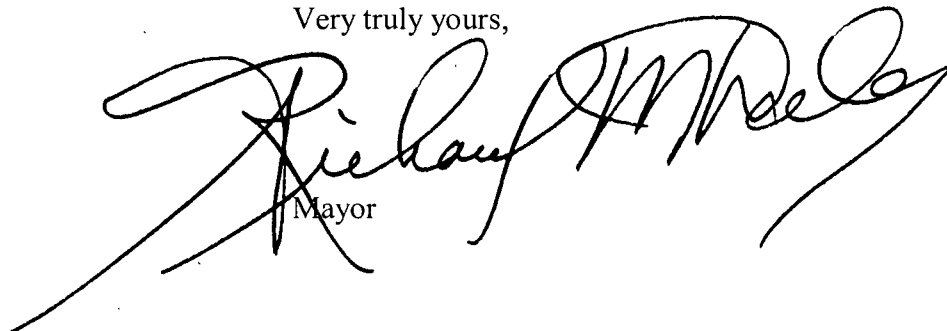
TO THE HONORABLE, THE CITY COUNCIL  
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Aviation, I transmit herewith an ordinance authorizing the execution of an avigation easement with Savior Assembly Church.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

  
Mayor

## ORDINANCE

WHEREAS, the City of Chicago ("City") is a home rule unit of local government by virtue of the provisions of the Constitution of the State of Illinois of 1970 and, as such, may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the City owns and operates the airport known as Chicago Midway International Airport ("Midway Airport"); and

WHEREAS, the City possesses the power and authority to acquire private and public property for airport uses and purposes, and for uses and purposes related thereto, pursuant to its home rule powers and the provisions of Divisions 101 and 102 of Article 11 of the Illinois Municipal Code; and

WHEREAS, Risen Savior Assembly of God ("Risen Savior") is an Illinois not-for-profit corporation; and

WHEREAS, Risen Savior owns certain real property located at 6059 South Archer Avenue, Chicago, Illinois and described on Exhibit A, which property is improved with a church building including a steeple (the "Church Building"), which building was originally constructed in approximately 1911, prior to the construction of Midway Airport; and

WHEREAS, the Federal Aviation Administration has established regulations for airspace penetration surrounding Midway Airport, and published such regulations in Title 14 of the Code of Federal Regulations, Part 77, Section 25 (the "FAA Airspace Regulations"), and these regulations establish an airspace approach plane extending from the runways with a slope of 34 to 1; and

WHEREAS, the steeple of the existing Church Building reaches a height of 682 feet above mean sea level, exceeding the FAA Airspace Regulations approach plane for Midway Airport Runway 13C by 1.13 feet (such penetration, the "Airspace Penetration").

WHEREAS, the City has been authorized by a majority in interest of airline carriers operating at Midway Airport to spend certain capital fund reserves to mitigate off-airport obstructions such as the Airspace Penetration; and

WHEREAS, the City desires to provide certain funds to Risen Savior to enable Risen Savior to retain a contractor to alter the steeple of the Church Building in order to eliminate the Airspace Penetration and to comply with the FAA Airspace Regulations and to perform certain ancillary roofing work (the "Corrective Work"); and

WHEREAS, in exchange for providing funds for the Corrective Work, the City

desires to acquire a real property easement interest that is necessary and appropriate to comply with the FAA Airspace Regulations and to protect Midway Airport's airspace in the future; and

WHEREAS, the easement interest to be acquired furthers the general usefulness and utility of the Airport and the national air transportation system, by enhancing the protection of airspace and operating environment; now, therefore

Be It Ordained by the City Council of the City of Chicago:

SECTION 1. The foregoing recitals are hereby adopted as the findings and determinations of the City Council.

SECTION 2. The Commissioner of the Department of Aviation ("Commissioner") or a designee of the Commissioner is hereby authorized to execute and enter into an easement agreement between Risen Savior and the City substantially in the form attached hereto as Exhibit B and made a part hereof (the "Easement Agreement"), to acquire on behalf of the City the real property easement interest described therein, and to execute such other supporting documents as may be necessary or appropriate to carry out and comply with the provisions of the Easement Agreement (including, without limitation, ancillary agreements with any telecommunications company or siting company having equipment located upon, or possessory or use rights related to, the Church Building), with such changes, deletions, and insertions as shall be approved by the persons executing the Easement Agreement.

SECTION 4. If any provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect any of the other provisions of this ordinance.

SECTION 3. All ordinances, resolutions, motions, or orders in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 5. This ordinance shall take effect upon its passage and approval.

## **EXHIBIT A**

### **Legal Description of Property**

Lot Twenty-eight (28) in Subdivision of that part of the Southeast Quarter (SE 1/4) of Section Eight (8), Township Thirty-eight (38) North, Range Thirteen (13), East of the Third Principal Meridian, lying South of center line of Archer Avenue, in Cook County, Illinois.

**PIN:** 19-08-424-012-0000  
**Address:** 6059-6061 S. Archer Avenue  
Chicago, IL 60638

**EXHIBIT B**  
**Page 1 of 1**

**Form of Avigation Easement Agreement**

**[SEE ATTACHMENT]**

This Instrument Prepared  
By and After Recording  
Return to:

Steve Holler  
Chief Asst. Corp. Counsel  
Real Estate Division  
Department of Law  
City of Chicago  
121 N. LaSalle Street, Room 600  
Chicago, Illinois 60602

## AVIGATION EASEMENT AGREEMENT

THIS AVIGATION EASEMENT AGREEMENT ("Easement Agreement") is entered into by and between the CITY OF CHICAGO, a municipal corporation and a home rule unit of government under Article VII, Sections 1 and 6(a) respectively, of the 1970 Constitution of the State of Illinois (the "City"), having its principal office at 121 North LaSalle Street, Chicago, Illinois 60602 and the RISEN SAVIOR ASSEMBLY OF GOD, an Illinois not-for-profit corporation ("Risen Savior"), having its principal office at 6059 South Archer Avenue, Chicago, Illinois 60638-2723.

### RECITALS

A. Risen Savior owns certain real property located at 6059 South Archer Avenue, Chicago, Illinois and described on Exhibit A (the "Property"). The Property is improved with a church building including a steeple (the "Church Building"), which was originally constructed in approximately 1911, prior to the construction of Midway Airport.

B. The Federal Aviation Administration (the "FAA") has established regulations for airspace penetration for Midway Airport, and published such regulations in Title 14 of the Code of Federal Regulations, Part 77, Section 25 (the "FAA Airspace Regulations"). These regulations establish an airspace approach plane extending from the runways with a slope of 34 to 1.

C. The steeple of the Church Building reaches a height of 682 feet above mean sea level, exceeding the FAA Airspace Regulations approach plane for Midway Airport Runway 13C by 1.13 feet (such penetration, the "Airspace Penetration").

D. This Airspace Penetration was originally identified in 2003 by a federal National Geodetic Survey, which was carried out by the FAA and the City to identify obstructions to the Midway Airport airspace.

E. The City has been authorized by a majority in interest of airline carriers operating at Midway Airport to spend certain capital fund reserves to mitigate off-airport obstructions such as the Airspace Penetration ("MII Approval").

**F.** The City has advised Risen Savior of the Airspace Penetration. Risen Savior has asserted that, unless adequately compensated, it has no obligation to cooperate in removing such Airspace Penetration.

**G.** To avoid litigation over the compensation due for such removal and the ancillary work resulting therefrom, the City desires to provide certain funds to Risen Savior to enable Risen Savior to retain a contractor to alter the steeple of the Church Building in order to eliminate the Airspace Penetration and to comply with the FAA Airspace Regulations and to perform certain ancillary roofing work (the "Corrective Work"). Such assistance shall be funded from the City's MII Approval funds and shall be paid to Risen Savior through an escrow agent.

**H.** In consideration of the Settlement Payment (as referred to in Section 2 below), and in order to remove the Airspace Penetration and to avoid any litigation concerning such removal or the compensation due with respect thereto, Risen Savior has agreed to grant the City the easement right described in Section 3 below, and to perform the Corrective Work.

**NOW, THEREFORE,** in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **AGREEMENTS**

### **SECTION 1. INCORPORATION OF RECITALS AND EXHIBITS.**

The recitals set forth above and the exhibits attached hereto constitute an integral part of this Agreement and are incorporated herein by this reference as the agreements of the parties.

### **SECTION 2. SETTLEMENT PAYMENT.**

Simultaneously with the execution of this Easement Agreement, the City has deposited into escrow with Attorneys' Title Guaranty Fund, Inc. the sum of not more than \$126,800 (the "Settlement Payment"). The Settlement Payment shall be disbursed from such escrow account pursuant to the escrow instructions executed pursuant to Section 5 below.

### **SECTION 3. GRANT OF EASEMENT; PERFORMANCE OF CORRECTIVE WORK.**

In consideration of the Settlement Payment, Risen Savior hereby grants the City an easement right restricting Risen Savior's ability to hereafter erect or modify any structure on the Property such that it would violate the FAA Airspace Regulations, whether such regulations are currently existing or have been established or modified subsequent to the date of this Easement Agreement. Such restriction is intended to apply to the existing



Church Building and to such other structures as may be built on the Property in the future. Such restriction shall be appurtenant to the Property, and shall run with the land, and be binding upon Risen Savior and its successors and assigns in title to the Property. Risen Savior covenants to complete the Corrective Work within one year of the date of this Easement Agreement.

#### **SECTION 4. HEADINGS.**

The headings of the various sections of this Agreement have been inserted for convenient reference only and shall not in any manner be construed as modifying, amending, or affecting in any way the express terms and provisions thereof.

#### **SECTION 5. ENTIRE AGREEMENT.**

This Agreement constitutes the entire agreement between the parties as to the easement granted herein. This Agreement may not be modified or amended in any manner other than by supplemental written agreement executed by the parties. The parties agree to enter into escrow instructions consistent with this Easement Agreement to govern the funding and performance of the Corrective Work.

#### **SECTION 6. SEVERABILITY.**

If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word, or the application thereof is held invalid, the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

#### **SECTION 7. NOTICES.**

Any notice, demand or communication required or permitted to be given hereunder shall be given in writing at the addresses set forth below by any of the following means: (a) personal service; (b) electronic communications, whether by telex, telegram or telecopy, provided that there is written confirmation of such communications; (c) overnight courier; or (d) registered or certified first class mail, postage prepaid, return receipt requested:

If to the City:

City of Chicago  
Department of Transportation  
30 North LaSalle Street  
11th Floor  
Chicago, Illinois 60602  
Attn: Commissioner

With a copy to:

City of Chicago  
Department of Law  
121 North LaSalle Street  
Room 600 - City Hall  
Chicago, Illinois 60602  
Attn: Real Estate Division

If to Risen Savior:

Risen Savior Assembly of God  
6059 South Archer Avenue  
Chicago, Illinois 60638-2723

Any notice, demand or communication given pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means, respectively, provided that such electronic dispatch is confirmed as having occurred prior to 5:00 p.m. on a business day. If such dispatch occurred after 5:00 p.m. on a business day or on a non-business day, it shall be deemed to have been given on the next business day. Any notice, demand or communication given pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier. Any notice, demand or communication sent pursuant to clause (d) shall be deemed received three business days after mailing. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, demands or communications shall be given.

#### **SECTION 8. SUCCESSORS AND ASSIGNS.**

Except as otherwise provided in this Agreement, the terms and conditions of this Agreement shall apply to and bind the successors and assigns of the parties.

#### **SECTION 9. EASEMENT IN PERPETUITY.**

The easement granted under this Agreement shall be an easement in perpetuity.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on or as of the date first above written.

**CITY OF CHICAGO**, an Illinois municipal corporation, acting by and through its Department of Aviation

By: \_\_\_\_\_

Rosemarie Andolino  
Commissioner

**RISEN SAVIOR ASSEMBLY OF GOD**, an Illinois not-for-profit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

[Easement Agreement - No Buildv3.doc]

STATE OF ILLINOIS     )  
                                      ) SS.  
COUNTY OF COOK     )

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Rosemarie Andolino, personally known to me to be the Commissioner ("Commissioner") of the Department of Aviation of the City of Chicago ("City") and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and being first duly sworn by me acknowledged that as such Commissioner, she signed and delivered the instrument in her capacity as such Commissioner on behalf of the City as her free and voluntary act and as the free and voluntary act and deed of the City, for the uses and purposes therein set forth.

GIVEN under my notarial seal this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF ILLINOIS       )  
  ) SS.  
COUNTY OF COOK       )

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, do hereby certify that \_\_\_\_\_, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and being first duly sworn by me acknowledged that as \_\_\_\_\_, he signed and delivered the instrument pursuant to authority given by the \_\_\_\_\_ as his free and voluntary act and as the free and voluntary act and deed of the \_\_\_\_\_, for the uses and purposes therein set forth.

GIVEN under my notarial seal this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
NOTARY PUBLIC

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

**Lot Twenty-eight (28) in Subdivision of that part of the Southeast Quarter (SE 1/4) of Section Eight (8), Township Thirty-eight (38) North, Range Thirteen (13), East of the Third Principal Meridian, lying South of center line of Archer Avenue, in Cook County, Illinois.**

**PIN: 19-08-424-012-0000**

**Address: 6059-6061 S. Archer Avenue**

**Chicago, IL 60638**