805.25 PRIVATE NUISANCE.

A nuisance is the substantial and unreasonable interference with the use and enjoyment of another's property.

The (*state number*) issue reads:

"Did the defendant substantially and unreasonably interfere with the use and enjoyment of the plaintiff's property?"

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, two things:

First, that the defendant substantially[1] interfered with the plaintiff's use and enjoyment of the plaintiff's property. Interference is substantial when it results in significant annoyance, material physical discomfort, or injury to a person's health or property.[2] A slight inconvenience or a petty annoyance is not a substantial interference.

Second, that such substantial interference was unreasonable. Substantial interference is unreasonable if a person of ordinary prudence and discretion would consider it excessive or inappropriate after giving due consideration to the interest of the plaintiff, the interest of the defendant and the interest of the community.[3] In determining whether such substantial interference is unreasonable, you may consider

[the surroundings and conditions under which the defendant's interference occurs]

[the character of the location]

[the nature, utility and social value of the defendant's operation]

[the nature, utility and social value of the plaintiff's use and enjoyment that have been invaded]

[the suitability of the location for the defendant's operation]

[the suitability of the location for the plaintiff’s use]

[the extent, nature and frequency of the harm to the plaintiff's interest]

[the priority in time of occupation or conflicting uses between the plaintiff and the defendant][4]

[(*state any other factor arising from the evidence*)].

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the defendant substantially and unreasonably interfered with the plaintiff's use and enjoyment of the plaintiff’s property, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

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1. *Morgan v. High Penn Oil Co.*, 238 N.C. 185, 193, 77 S.E.2d 682, 689 (1953). *See also Pendergrast v. Aiken*, 293 N.C. 201, 221, 236 S.E.2d 787, 799 (1977) (citing *Midgett v. Highway Commission*, 265 N.C. 373, 144 S.E.2d 121 (1965)).

2. *Pake v. Morris*, 230 N.C. 424, 426, 53 S.E.2d 300, 301 (1949).

3. *Watts v. Pama Mfg. Co.*, 256 N.C. 611, 618, 245 S.E.2d 809, 814 (1962) ("[The] question is *not whether reasonable persons in plaintiff's or defendant's position* would regard the invasion as unreasonable, but whether reasonable persons generally, looking at the whole situation impartially and objectively, would consider it unreasonable") (emphasis added).

4. *Watts*, 256 N.C. at 618, 245 S.E.2d at 814.