

APPENDIX H

MODEL NOISE EASEMENT AND RELEASE

[Owner]¹ (Grantor), hereby grants to [airport operator] (Grantee) a perpetual easement on the following terms:

1. Description. The easement shall be an easement on, over and upon that certain real property situated on within the [City, County], State of California and the airspace above said real property (PARCEL) which property is described in Exhibit 1 attached hereto, and by this reference incorporated herein, the airspace being formed by a plane parallel to the surface of the real property, and having the same boundaries as those described in Exhibit 1 attached hereto and extending the boundaries of the plane perpendicular to the plane upwards to the limits of the atmosphere of the earth.

2. Benefit. The easement shall be appurtenant to and for the benefit of all of the real property comprising the [airport], hereafter called Airport, a legal description of which is attached hereto designated Exhibit 2 and by this reference incorporated herein, and such other additional property or interest therein as shall be subsequently acquired or designated from time to time by Grantee or its successors as constituting a part of the Airport, and the easement shall be in gross for the benefit of Grantee and all other persons and entities who directly or indirectly use the easement as a result of any type of use of the property and facilities constituting the Airport, including aviation ground and flight operations.

3. Use and Purpose. The easement shall be used for the existence on, over, upon and within the described PARCEL, of all noise, vibration, air currents, natural or artificial illumination and such matter, emissions, activities or other things that may occur or result directly or indirectly from the operations of the Airport, now and in the future, including but in no way limited to ground and flight operations of aircraft at, over, on or about the Airport. The easement shall not be used for the passage and flight of aircraft. However, this easement shall not affect such rights for the passage and flight of aircraft as such rights existed prior to the date of the easement and as are now or may be provided or permitted by law.

All of such uses shall be without any liability of Grantee or of any other person or entity entitled to the benefits of this easement to Grantor, Grantor's heirs, assigns or successors in interest to all or any part of the property or any interest therein or to any other person or entity using or located on or in the area subject to the easement for:

¹ Insert appropriate names, titles, etc. in brackets used throughout the model

- o damage to property or physical or emotional injury to persons, animals or any other living thing,
- o the diminution in value of any personal or real property,
- o discomfort or inconvenience of any type or kind to any person or thing,
- o or interference with television, radio or other types or kinds of electrical reception, transmissions or activities in the easement.

4. Release. Grantor, for itself and on behalf of the Grantor's heirs, assigns or successors in interest to all or any part of the property, or any interest therein and each person or entity using or located on or in the area subject to this easement, hereby releases and discharges Grantee and all persons and entities entitled to the benefits of the easement from all claims, demands, actions and causes of action of all types or kinds, known or unknown, existing or that might be created hereinafter by statute or case decision, arising out of any of the foregoing described injuries or damages resulting from the use of this easement by Grantee and any other person or entity entitled to the benefits of this easement pursuant to Civil Code Section 1542. Grantor further agrees to defend at its own cost, hold harmless and indemnify Grantee from any liability for or based upon the exercise of the easement rights granted herein.

5. (a) This grant of easement allows the level of aircraft noise impinging on Grantor's PARCEL to be the lesser of:

(1) The annual CNEL reflected on the latest map validated by the [County of] and filed with the California Department of Transportation, Division of Aeronautics in accordance with Section 5050 of Title 21 of the California Administrative Code, or

(2) The annual CNEL reflected on any subsequent map validated by the [County of] and filed with the California Department of Transportation, Division of Aeronautics in accordance with Section 5050 of Title 21 of the California Administrative Code.

(b) There is hereby created an irrebutable presumption that this grant of easement is overburdened by unreasonable use if the noise which impinges on the burdened property exceeds the easement by an amount equal to or greater than 1.5 dB CNEL, and Grantor may seek injunctive relief from the unreasonable use of the easement.

(c) There is hereby created an irrebutable presumption that this grant of easement is so overburdened by unreasonable use that its purpose is defeated if the noise which impinges on the burdened property exceeds the easement by an amount equal to or greater than 3.0 dB CNEL, and Grantor may seek a court finding that the easement is extinguished.

(d) The provisions of subdivisions (b) or (c) shall not apply under the following circumstances: [specify exceptions, if desired].

6. This easement and release and the uses authorized herein shall run with the property described in Exhibit 1, and bind Grantor's heirs, administrators, executors, 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 Civil Code Section 1468. The real property first hereinabove described as the PARCEL is the servient tenement and said [airport] is the dominant tenement.

7. This noise easement, covenants and agreements described herein shall continue in effect until [airport] shall be abandoned and shall cease to be used for public airport purposes.

Dated: _____

By: _____

(Signatures of Grantor)

Source: Modified from Harbor Bay Isle Noise Easement and Release for Oakland International Airport, and other examples.