

APPENDIX I

MODEL AVIGATION AND NOISE EASEMENT

WHEREAS, [property owner]¹, hereinafter called Grantor, is the owner in fee of that certain parcel of land situated in the [City, County, State] more particularly described and identified in Exhibit A (legal description of property) attached hereto and made a part hereof, hereinafter called "PARCEL" and

WHEREAS, [] hereinafter called Grantee, is the [owner and/or operator] of certain properties upon which [airport], described in Exhibit B attached hereto, is located, said properties lying within [City, County, State] and furthermore being in close proximity to said PARCEL; and

WHEREAS, Grantor and Grantee wish to establish provisions so that aircraft using the [airport] shall have the right of flight and the right to cause noise, light, and other effects associated with the operation of aircraft in the airspace over and above said PARCEL.

NOW, THEREFORE, Grantor, for its heirs, executors, administrators, successors and assigns, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, hereby grants and conveys to Grantee, its successors and assigns forever:

1. A perpetual public-use avigation/noise easement subject to termination as expressly provided herein, and right-of-way for the free and unobstructed passage and flight of aircraft, of any and all kinds now known or hereafter invented, used or designed for navigation or flight in the air, of the class, size and category operationally compatible with [airport]. Said easement shall be in, through, over and across the airspace of said PARCEL in an airspace as described and depicted in Exhibit C (map of areas protected by easement including description of imaginary surfaces and elevations).
2. The rights herein granted shall include the right in such airspace to allow, make and emit such noise, light, vibrations, fumes, exhaust, smoke, air currents, dust, fuel particles, radio, television, and other electromagnetic interferences, and all other effects as may be inherent to the operation of aircraft for navigation or flight in the air.

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

3. Grantor hereby fully waives, remises and releases any right or cause of action that it may now have or that it may have in the future against Grantee, its successors, and assigns, and covenants not to sue due to such noise, light, vibrations, fumes, exhaust, smoke, air currents, dust, fuel particles, radio, television, and other electromagnetic interferences, and all other effects that may be caused or may have been caused by the operation of aircraft landing at, or taking off from, or operating at or on [airport]. Said release and covenant shall include, but not be limited to claims, known or unknown, for damages for physical or emotional injuries, discomfort, inconvenience, property damage, death, interference with use and enjoyment of property, diminution of property values, nuisance, or inverse condemnation or for injunctive or other extraordinary or equitable relief.
4. It is further agreed that Grantee as [owner and/or operator] of [airport] shall have no duty to avoid or mitigate such damages by, without limitation, setting aside or condemning buffer lands, rerouting air traffic, erecting sound or other barriers, establishing curfews, noise or other regulations, except to the extent, if any, that such actions are validly required by governmental authority. Grantor reserves such use, rights and privileges in said PARCEL as may be exercised and enjoyed without interference with or abridgment of the rights hereby granted.
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 §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 §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 grant of avigation/noise easement shall not operate to deprive the Grantor, his successors or assigns, of any rights that it may from time to time have against any individual or private operator for negligent or unlawful operation of aircraft.
7. For and on behalf of itself, its successors and assigns, Grantor hereby covenants with Grantee for the direct benefit of the real property constituting [airport] that neither Grantor nor its successors in interest or assigns shall hereafter construct or permit the construction or growth of any structure, tree or other object that penetrates an approved transitional, horizontal, or control surface as described and depicted in Exhibit C or that constitutes an obstruction to air navigation under FAA Part 77, or that obstructs or interferes with the use of the flight easements and rights of way herein granted or that creates electrical interference with radio communication between any installation upon said airport and aircraft, or as to make it difficult for pilots to distinguish between airport lights and other lights, or as to impair visibility in the vicinity of the airport, or as otherwise to endanger the landing, take-off or maneuvering of aircraft. Grantee reserves the right to mark and light as obstructions to air navigation any such building, structure, tree or other object now upon, or that in the future may be upon Grantor's property, together with the right of ingress to, egress from, and passage over Grantor's property for the above purpose.
8. All promises, covenants, conditions and reservations contained in this document are made and entered into for the benefit of [owner and/or operator] of [airport]. These promises, covenants, conditions and reservations shall run with the PARCEL, described and identified on Exhibit A attached, 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 California Civil Code §1468. The real property first hereinabove described as the PARCEL is the servient tenement and said [airport] is the dominant tenement. Grantor for itself and its successors and assigns waives all rights under Civil Code §1542. "Successors and assigns" as used in this paragraph includes without limitation: invitees, licensees, permittees, tenants, lessees, and others who may use easement rights reserved herein or use or be upon said PARCEL, and/or their respective officers, agents, and employees.
9. Grantor 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.
10. The avigation/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: _____