

Appendix I

Sample

Agreements and Easements

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SAMPLE AGREEMENTS AND EASEMENTS

These agreements and easements are provided as examples only. These examples should be tailored to reflect each community's local circumstances and should not be directly reproduced from this document.

SAMPLE AGREEMENTS AND EASEMENTS

- 1. Noise Easement**
- 2. Avigation and Hazard Easement**
- 3. Hold Harmless Agreement**
- 4. Fair Disclosure Statement**
- 5. Suggested Disclosure to Real Estate Buyers**

EXAMPLE 1

NOISE EASEMENT

THIS AGREEMENT, made this _____ day of _____, 20____, between the _____ (Airport Authority), a municipal corporation of the State of Oregon, hereinafter referred to as "Grantee";

The Grantor does hereby grant, in consideration for the right to develop the subject property for residential use, pursuant to City Planning and Zoning Code, Chapter _____ (No.), to the Grantee, its successors and assigns, to have and to hold an easement for aircraft noise impact until _____ shall be abandoned or shall cease to be used for airport purposes, over the following described parcel of land situated in the County of _____, State of Oregon, as follows:

(Legal description and street address of Grantor's parcel of land)

Said Easement shall encompass the right, in the airspace above the surface of the Grantor's property having the same boundaries as the above described property and extending from the surface upwards to the limits of the atmosphere of the earth, to cause in said airspace a maximum of such noise as reflected by the Noise Impact Zone Map adopted by City Ordinance _____ (No.). This easement is only applicable to airport noise caused from runway alignments existing in _____ (Year). More specifically, the noise created by aircraft now known or hereafter used for navigation of or flight in air, shall not exceed the permitted annual average DNL level obtained by using established measurement standards and procedures. The permitted annual average DNL level shall not be greater than the annual average DNL level established in _____ (Year), or the most recent annual average DNL established, pursuant to Section _____ (No.), prior to the date of said Easement, whichever is the lesser. If the permitted annual average DNL level can be shown to have been exceeded, as provided for by Section _____ (No.), said Easement shall be void.

The granting of said Easement shall establish the Grantor's right to develop the above-described parcel of land for residential use. The Grantor's execution and offering of said Easement is sufficient to fulfill the requirements for the issuing of a building permit if all other zoning requirements have been met.

It is understood and agreed that these covenants and agreements shall run with the land, that notice shall be made to and shall be binding upon heirs, administrators, executors, successors, and assigns of the Grantor.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal this _____ day of _____, 20_____.

Grantor

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EXAMPLE 2

AVIGATION AND HAZARD EASEMENT

WHEREAS, (full name of property owner(s)) hereinafter called the Grantors, are the owners in fee of that certain parcel of land situated in the City of _____, County of _____, State of _____, more particularly described as follows:

(Full description of property to be covered by easement)

hereinafter called "Grantors' property," and outlined on the attached map (Exhibit 1);

NOW, THEREFORE, in consideration of the sum of _____dollars (\$_____) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors, for themselves, their heirs, administrators, executors, successors, and assigns, do hereby grant, bargain, sell, and convey unto (owner and operator of airport, i.e., City of _____) hereinafter called the Grantee, its successors and assigns, for the use and benefit of the public, as easement and right of way, appurtenant to (full name of airport) or the unobstructed passage of all aircraft, ("aircraft" being defined for the purpose of this instrument of any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air) by whomsoever owned and operated.

In the air space above Grantors' property above an imaginary plane rising and extending in a general (i.e., Easterly) direction over Grantors' property, said imaginary plane running from approximately (i.e., 25) feet Mean Sea level above Point A on Exhibit 1 at the rate of one foot vertically for each (i.e., 50) feet horizontally to approximately (i.e., 55) feet Mean Sea level above Point B on Exhibit 1, to an infinite height above said imaginary plane,¹

(OR USE THE FOLLOWING)

in the air space above Grantors' property above a Mean Sea level of (i.e., 150) feet, to an infinite height above said Mean Sea level of (i.e., 150) feet,¹

(OR USE THE FOLLOWING)

in all air space above the surface of Grantors' property, to an infinite height above said Grantors' property.¹

Together with the right to cause in all air space above the surface of Grantors' property such noise, vibrations, fumes, dust, fuel particles, 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 said _____(full name of airport).

¹ Alternative language depending upon desired coverage of easement

The easement and right of way hereby granted includes the continuing right in the Grantee to prevent the erection or growth upon Grantors' property of any building, structure, tree, or other object, extending into the air space above the aforesaid imaginary plane,

(OR USE THE FOLLOWING)

extending into the air space above the said Mean Sea level of (i.e., 150) feet,¹

(OR USE THE FOLLOWING)

extending into the air space above the surface of Grantors' property;¹

and to remove from said air space, or at the sole option of the Grantee, as an alternative, to mark and light as obstructions to air navigation, any such building, structure, tree or other objects now upon, or which in the future may be upon Grantors' property, together with the right of ingress to, egress from, and passage over Grantors' property for the above purposes.

TO HAVE AND TO HOLD said easement and right of way, and all rights appertaining thereto unto the Grantee, its successors, and assigns, until said (full name of airport) shall be abandoned and shall cease to be used for public airport purposes.

AND for the consideration hereinabove set forth, the Grantors, for themselves, their heirs, administrators, executors, successors, and assigns, do hereby agree that for and during the life of said easement and right of way, they will not hereafter erect, permit the erection or growth of, or permit or suffer to remain upon Grantors' property any building, structure, tree, or other object extending into the aforesaid prohibited air space, and that they shall not hereafter use or permit or suffer the use of Grantors' property in such a manner as to create electrical interference with radio communication between any installation upon said airport and aircraft, or as to make it difficult for flyers to distinguish between airport lights and others, or as to impair visibility in the vicinity of the airport or as otherwise to endanger the landing, taking off, or maneuvering of aircraft, it being understood and agreed that the aforesaid covenants and agreements shall run with the land.

In consideration of the premises and to assure Grantee of the continued benefits accorded it under this Easement, (name of mortgagee), owner and holder of a mortgage dated _____ and recorded _____ covering the premises above described, does hereby covenant and agree that said mortgage shall be subject to and subordinate to this Easement and the recording of this Easement shall have preference and precedence and shall be superior and prior in lien to said mortgage irrespective of the date of the making or recording of said mortgage instrument.²

² Local recordation and subordination practices must also be met. If subordination is necessary, in which case the mortgagee must join in the agreement, the above language is suggested.

IN WITNESS WHEREOF, the Grantors have hereunto set their hands and seals this _____ day of _____, 20____.

Signed, sealed, and delivered in the presence of:

_____ (SEAL)

_____ (SEAL)

(Notarial Acknowledgment)

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EXAMPLE 4

FAIR DISCLOSURE STATEMENT

A disclosure statement, adhering to the form of the statement below, shall be provided to and signed by each potential purchaser of property within the Airport Influence Area as shown on the approved Airport Land Use Drawing. The signed statement will then be affixed by the Seller to the agreement of the sale.

The tract of land situated at

_____ in _____ (County and State), consisting of approximately _____ acres which is being conveyed from _____ to _____ lies within _____ miles of _____ (airport name) may be subjected to varying noise levels, as the same is shown and depicted on the official Zoning Maps.

CERTIFICATION

The undersigned purchaser(s) of said tract of land certify(ies) that (he) (they) (has) (have) read the above disclosure statement and acknowledge(s) the pre-existence of the airport named above and the noise exposure due to the operation of said airport.

(SIGNED)

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EXAMPLE 5**SUGGESTED DISCLOSURE TO REAL ESTATE BUYERS**

Customarily, someone will request a letter from the municipality about outstanding charges and assessments against a property. Something similar to this language, adapted for your airport, can be incorporated into a letter sent to buyers and title companies in preparation for closing.

“Please be advised that the subject property is located within the height restriction zone of the (blank) airport, or is located within a similar distance from the airport. It is conceivable that standard flight patterns would result in aircraft passing over (or nearly so) the property at altitudes of less than (blank) feet. Current airport use patterns suggest that the average number of takeoffs/touchdowns exceeds (blank) annually. A property buyer should be aware that use patterns vary greatly, with the possibility of increased traffic on (blank). The airport presently serves primarily recreational aircraft, and there are no current initiatives to extend any runway beyond the current (blank) length. Airport plans allow for runway extension in the future, which might impact the number and size of both pleasure and non-pleasure aircraft. Generally, it is not practical to redirect or severely limit airport usage and/or planned-for expansion, and residential development proximate to the airport ought to assume, at some indefinite date, an impact from air traffic.”

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