

AVIGATION EASEMENTS

Overview

FAA's AIP Handbook (Order 5100.38D), Appendix R sets forth the guidelines for obtaining avigation easement. The FAA encourages airport sponsors to obtain a noise easement in return for mitigation. The regulations state

“An easement may be conveyed by the property owner in exchange for the sound insulation improvements provided. However, an AIP grant may not include a requirement that a property owner convey an easement or other interest in the property to the sponsor in exchange for sound insulation. The FAA encourages sponsors to work out such voluntary property agreements locally.”

Communities should be aware that while the easement is not required, if an approved noise compatibility plan includes language stating there will be an easement in exchange for sound insulation or other mitigation measure then all eligible property owners would be required to convey the easement as a condition of participation.

Easement Definition

An avigation easement is a conveyance of a specified property interest for a particular area that restricts the use by the owner of the surface yet assures the owner of the easement the right and privilege of a specific use contained within the easement document. Avigation easements, which are conveyed by a property owner to the airport owner, are often used in noise mitigation programs in exchange for sound insulation, sales assistance, and purchase assurance.

The easement may consist of right-of-flight of aircraft; right to cause noise, dust, etc.; and the right to remove all objects protruding into the airspace together (typically trees) with the right to prohibit future obstructions in the airspace. The easement may also contain any number of additional restrictions as the airport owner deems necessary.

Reasons to Require an Easement

An easement provides notice to future owners that property is located in an aircraft noise impacted area and those impacts have been mitigated. The easement rights run with the land and will apply to all future owners of the property. Additionally, the easement helps to establish the property is now compatible with the recommended land use.

Examples of Easement Language

Three aviation easements are being provided as examples of language that has been used on noise mitigation programs in the FAA New England region; Bradley International Airport in Windsor Locks, CT; T.F. Green Airport in Warwick, RI; and Tweed- New Haven Airport in New Haven CT. The language in these can help in developing easement language for Burlington International Airport and understand the variations at different airports.

Easement for Public Buildings

Our research indicates that when an easement is given in exchange for mitigation to a public building (school, church, etc.) the easement language is the same easement as used for residential buildings. In some cases, no easement is given since the entity with jurisdictional authority of the public building also has authority over the airport.

AVIGATION EASEMENT
BRADLEY INTERNATIONAL AIRPORT

THIS EASEMENT granted this _____ day of _____, 2011, by **Name, Street Address, City or Town, CT Zip Code** and their successors or assigns hereinafter referred to as the "Grantors", to the State of Connecticut, Department of Transportation, Bureau of Aviation and Ports, and their successors or assigns, hereinafter referred to as the "Grantee".

WITNESSETH:

WHEREAS, "Grantee" is charged with the operation, administration, improvement, regulation and protection of state-owned airports; and

WHEREAS, Bradley International Airport is a state owned airport located in the Town of Windsor Locks, Connecticut, hereinafter referred to as the "Airport"; and

WHEREAS, certain real estate is owned by "Grantors", in fee simple, more particularly described in **Book ____ Page ____** of the records of the Town of _____, CT and by this reference made a part hereof, and referred to hereinafter as the "Property"; also known as **Street Address, City or Town, CT Zip Code** and

WHEREAS, "Grantee" is undertaking a residential sound insulation program to grant certain relief regarding aviation noise to property owners residing near the "Airport" and whose property lies within certain noise zones more commonly referred to as those areas above DNL 65 dB as shown upon the 2008 Noise Exposure Map from the FAA approved 14 CFR Part 150 Study, in return for which the "Grantors" must convey to "Grantee" an avigation and noise easement; and

WHEREAS, "Grantee" has agreed to provide "Grantors" sound insulation, and "Grantors" have elected to participate in this program.

NOW THEREFORE, for valuable consideration, receipt of which is hereby acknowledged by the parties, Grantors hereby grant and convey unto Grantee, for the use and benefit of the grantee and the public, a perpetual easement on, over, across, and upon the Property for the unobstructed use and passage of all types of aircraft (as hereinafter defined), in and through the airspace above Grantors' property, more particularly described as follows:

- 1) Said easement to run on, over, across, and upon the above described real property encompasses the air space above the surface of Grantors' 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. Grantor further agrees that no structures, improvements or vegetation exceeding 320 feet elevation shall be permitted to be located, constructed or remain on the Property. Grantor further grants to the Grantee the right to enter upon the Property to trim any trees or other vegetation which exceed the above elevation at no cost or expense to Grantor. Any such entry by the Grantee shall be at reasonable hours and with reasonable notice to Grantor and the Grantee shall remove any limbs, wood or other debris generated by its entry so as not to interfere with Grantor's continuing use of the Property.
- 2) To have and to hold said easement in perpetuity unto the said Grantee, and its successors and assigns, until said Airport shall be abandoned and shall cease to be used for airport purposes.

3) Said easement shall run with the land and be appurtenant to and for the benefit of all of the real property comprising and known as Bradley International Airport and such other additional property or interest therein as shall be subsequently acquired or designated from time to time by Grantee or its successors and assigns 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.

4) Said easement shall encompass all things which may be alleged to be incident to or resulting from the use and enjoyment of said easement, including, but not limited to the right to cause in all airspace above or in the vicinity of the surface of Grantors' Property such noise, vibrations, fumes, deposits of dust or other particulate matter, fuel particles (which are incidental to the normal operation of said aircraft), fear, interference with sleep and communication and any and all other effects that may be alleged to be incident to or caused by the operation of aircraft over or in the vicinity of Grantors' Property or in landing at or taking off from, or operating at or on said Bradley International Airport; and Grantors do hereby fully waive, remise, and release for themselves and their heirs, administrators and executors, successors and assigns, any right or cause of action which they may now have or which they may have in the future against Grantee, its successor and assigns, due to such noise, vibrations, fumes, dust, fuel particles and all other effects that may be caused or may have been caused by the normal operation of aircraft landing at, or taking off from, or operating at or on said Airport, now and in the future, while recognizing that the quantity of such operations may increase in the future.

5) All of the uses provided for in this easement shall be without any liability of Grantee or of any other person or entity entitled to the benefits of this easement for emotional injury to persons, animals or any other living thing, the diminution in value of any personal or real property, and discomfort or interference with the audio portion of television and/or radio by, from, or arising from, noise generated from the normal operation of aircraft. This grant expressly does not exclude claims by the Grantor or those claiming under it for physical or personal injury caused by any air traffic utilizing the easement, which does actual physical damage to the property or persons located therein.

6) The Grantors for their heirs, successors, and assigns, do hereby covenant that they are lawfully seized of an indefeasible estate in the herein described property; and they have the right to grant and convey the estate, interest and easement herein conveyed; and that they will specially warrant and defend unto the Grantee and its assigns, forever, the quiet and peaceable use and enjoyment of the herein granted easement.

7) As used herein, the term "aircraft" shall mean any and all types of aircraft, whether now in existence or hereafter manufactured and developed, to include, but not limited to, jet aircraft, propeller driven aircraft, civil aircraft, military aircraft, commercial aircraft, helicopters and all types of aircraft or vehicles now in existence or hereafter developed for the purpose of transporting persons or property through the air, by whoever owned or operated.

IN WITNESS WHEREOF, this Agreement is duly executed on the day and year first above written, by the parties hereto, intending themselves to be legally bound hereby.

HOMEOWNER(S)

By:

By:

STATE OF CONNECTICUT

COUNTY OF HARTFORD

On this _____ day of _____, 2011, before me personally appeared

_____ to me known and known by me to be the parties executing the foregoing instrument, and they acknowledged said instrument, by them executed, to be their free act and deed.

Notary Public My Commission Expires:

STATE OF CONNECTICUT
Department of Transportation
Bureau of Aviation and Ports

Approved as to form:

Deputy Commissioner Albert Martin

Date

Notary Public My Commission Expires:

AVIGATION EASEMENT CONSENT

WHEREAS, **Mortgagee, Address, City or Town, State Zip Code** is the Mortgagee of a certain deed mortgage **dated 3/30/10** from **Homeowner Name** Mortgagor (s), which mortgage encumbers the real property at **Address, City or Town, State Zip Code** and which mortgage is recorded at Town Clerk's Office, Town of Suffield, CT, Volume XXX, Page XXX. Recorder's Office (Town Clerk) of **Suffield, CT**;

WHEREAS, the Connecticut Department of Transportation / Bradley International Airport (Authority), has proposed to acquire from the said mortgagor(s) an Avigation Easement over the said encumbered real property in exchange for the said mortgagor(s) participation in Bradley International Airport's Residential Sound Insulation Program; and

WHEREAS, the said Authority requests the consent of mortgagees to the granting by their mortgagors of such Avigation Easements;
Now, therefore for valuable considerations paid, **Mortgagee** by and

through _____ its _____ hereby consents to the
(Name) (Title)
granting of an Avigation Easement by **Homeowner Name** to the Connecticut Department of Transportation and Bradley International Airport, which said Avigation Easement shall encumber the above-referenced real property, which is more particularly described in the Exhibit "A" attached hereto. Further, the mortgagee consents to the filling of this consent instrument with the said Avigation Easement as evidence of such consent to grant.

Signed this _____ day of _____, 20____.

Signed in the presence of:

Witness (Company)

Witness by _____
(Name)

its _____
(Title)

State of _____:ss
County of _____:

The foregoing was acknowledged me by _____,
(Name)

_____ on behalf of _____
(Title) (Company)

as the date last set forth above.

Notary Public

My Commission Expires _____

DEED OF EASEMENT

THIS DEED OF EASEMENT made this _____ day of _____, 2015, by and between _____ of Warwick, Rhode Island, and their successors or assigns hereinafter referred to as the "**Grantors**", and Rhode Island Airport Corporation and its successors or assigns any current or future owners or operators of Theodore France Green State Airport, including, without limitation, the State of Rhode Island, hereinafter collectively referred to as the "**Grantee**".

WITNESSETH:

WHEREAS, Grantee is charged with the operation, administration, improvement, regulation and protection of state-owned airports; and

WHEREAS, Theodore Francis Green State Airport is a state owned airport located in the City of Warwick, Rhode Island, hereinafter referred to as the "Airport"; and

WHEREAS, certain real estate is owned by Grantors, in fee simple, more particularly described as _____, Plat ____, Lot____, in Book _____ Page ____, and referred to as the "Property";

WHEREAS, Grantee is offering a residential sound insulation program that will make changes to Grantor's property to reduce aircraft noise experienced by Grantor in the interior of the structure located on the Property to make the Property compatible with the noise environment created by the Airport;

WHEREAS, Grantor's Property meets certain interior noise level criteria and lies within certain noise zones commonly referred to as those areas above Day Night Average Sound Level of 65 decibels. The areas are depicted on the Federal Aviation Administration accepted noise contour map prepared by VHB/Harris, Miller, Miller & Hanson, the Official Noise Contour Map of the Airport dated ("2010 Official Noise Contour Map") and publicly available for review and inspection at RIAC's administrative offices, 2000 Post Road, Warwick, RI 02886; and,

WHEREAS, Grantor has elected to receive, and Grantee has agreed to provide, sound insulation, more particularly described in Exhibit "A", (attached hereto and made a part hereof); and,

NOW THEREFORE, for valuable consideration, receipt of which is hereby acknowledged by the parties signatures below, Grantors hereby grant and convey and assign to Grantee, for the use and benefit of the Grantee and the public, a perpetual easement on, over, across, and upon the Property, "the Easement" more particularly described as follows:

- 1) The Easement herein granted on, over, across, and upon the above described real property encompasses the air space above the surface of Grantor's Property having the same boundaries as the Property and extending from the surface upwards to the limits of the atmosphere of the earth.
- 2) The Easement is granted in perpetuity unto the said Grantee, and its successors and assigns, until said Airport shall be abandoned and shall cease to be used for airport purposes.
- 3) The Easement shall run with the land and be appurtenant to and for the benefit of all of the real property comprising and known as the Airport and such other additional property or interest therein, as may be subsequently acquired or designated from time to time by Grantee, or its successors and assigns, as constituting a part of the Airport. 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 Airport, including aviation ground and flight operations.

- 4) The Easement grants the privilege of passage of all lawful flight operations and all noise, and vibration, discomfort, inconvenience, interference with use and enjoyment, and any consequent reduction in market value, all due to noise caused directly or indirectly by the lawful operation of aircraft, recognizing that such use and passage is unlimited as to frequency, type of aircraft, and proximity, and that the quantity of such operations at the Airport may increase in the future.
- 5) The uses provided for in this Easement shall be without any liability of Grantee, or of any other person or entity entitled to the benefits of this Easement, for all lawful flight operations and all noise, or other intrusions associated with the passage of lawful flight operations associated with Airport noise, which may be alleged to be incident to or to result from flights of aircraft over or in the vicinity of the Property, including the landing at or taking-off from the Airport. Grantor furthermore waives all claims for damages caused or alleged to be caused by or incidental to such use including emotional injury to persons, animals or any other living thing associated with Airport noise, the diminution in value of any personal or real property, and discomfort or interference with the audio portion of television and/or radio by, from, or arising from, the normal operation of aircraft. This Easement does not exclude claims by the Grantor, or those claiming under the Grantor, for physical or personal injury caused by any air traffic utilizing the easement which does actual physical damage to the Property or persons located therein by coming into direct physical contact with the Property or persons located therein. This Easement also does not exclude the Grantor from seeking to participate in any future Federal Aviation Administration noise mitigation programs offered by Grantee for which Grantor may be eligible due to changes to the 2010 Official Noise Contour Map.
- 6) The Grantors for their heirs, successors, and assigns, do hereby covenant that they are lawfully seized of an indefeasible estate in the Property; and they have the right to grant and convey the Easement; and that Grantors will warrant and defend unto the Grantee and its assigns, forever, the quiet and peaceable use and enjoyment of the Easement.

IN WITNESS WHEREOF, the Grantors have set their hands and seals this __ day of _____, 2015.

STATE OF RHODE ISLAND
COUNTY OF KENT

In Warwick, Rhode Island on the _____ day of _____, 2015, before me personally appeared _____
_____ to me known and known by me to be the party executing the foregoing instrument and they acknowledged said instrument, by them executed, to be their free act and deed.

Notary Public
Printed Name: _____
My commission expires: _____

After recording, return to:
Updike, Kelly & Spellacy, P.C.
265 Church Street - 10th Floor
New Haven, CT 06510

Attention: Hugh I. Manke, Esq.

EASEMENT

THIS EASEMENT made this ____ day of _____, 2016, by and between _____ of New Haven/East Haven, Connecticut, and their successors or assigns hereinafter referred to as the "Grantor(s)", and Tweed-New Haven Airport Authority, a public instrumentality and political subdivision of the State of Connecticut created under Connecticut General Statutes Sec. 15-120g et seq., as amended, hereinafter referred to as the "Grantee".

WITNESSETH:

WHEREAS, Grantee is charged with the management and operation of Tweed New Haven Airport; and

WHEREAS, certain real property is owned by Grantor(s), in fee simple, commonly known as **Address, City**, Connecticut and more particularly described in Exhibit A attached hereto and made a part hereof, and referred to as the "Property";

WHEREAS, the Property meets certain interior noise level criteria and lies within certain noise zones commonly referred to as those areas above Day Night Average Sound Level of 65 decibels, as depicted on the Official Noise Contour Map of the Airport ("2017 Future DNL Contour") dated November, 2012 and available for review and inspection at the Airport's administrative offices, 155 Burr Street, New Haven, CT 06512; and

WHEREAS, Grantee is offering a residential sound insulation program for the Property to reduce aircraft noise experienced by Grantor(s) in the interior of the structure located on the Property; and

WHEREAS, Grantor(s) have elected to receive, and Grantee has agreed to provide, sound insulation on the Property, more particularly described in Schedule 1 attached hereto and made a part hereof; and

NOW THEREFORE, for valuable consideration, receipt of which is hereby acknowledged by Grantor(s), Grantor(s) hereby grant and convey and assign to Grantee, a perpetual easement more particularly described as follows:

1) The real property subject to the grant of easement hereinafter described is an airspace parcel ("Airspace Parcel") above the surface of the Property having the same boundaries as the Property and extending from the surface upwards to the limits of the atmosphere.

2) Grantor(s) hereby grant to Grantee a perpetual easement (“Easement”) in and across the Airspace Parcel for passage of lawful flight operations, including take-offs and landings, and for all sound, vibration, discomfort, inconvenience, intrusion, interference with use and enjoyment, and any consequent reduction in market value, all due to noise caused directly or indirectly by the lawful operation of aircraft at or near the Airport, regardless of frequency, time of day, type of aircraft, or proximity to the Property.

3) The Easement is granted in perpetuity unto said Grantee and its successors and assigns, until said Airport shall be abandoned and shall permanently cease to be used for airport, heliport or helipad purposes. For purposes of the preceding sentence, no temporary suspension or cessation of aviation operations because of adverse weather conditions, natural or man-made disaster, war, war-like or terroristic acts or conditions, interruption in the availability of navigational, radar, air traffic control, electrical or communications utilities, construction or maintenance and repair operations or similar circumstance shall be construed as an abandonment of use for airport, heliport or helipad purposes.

4) The Easement shall run with the land and be appurtenant to and for the benefit of all of the real property comprising and known as the Airport. The Easement shall also be in gross for the benefit of Grantee, its successors and assigns, and all other persons and entities that directly or indirectly use the Easement as a result of any type of use of or activity at the Airport, but do not own an interest in land with respect to the Airport.

5) This Easement does not exclude the making of claims by the Grantor(s), or those claiming under the Grantor(s), for physical or personal injury caused by any air traffic utilizing the Easement which does actual physical damage to the Property or persons located therein by coming into direct physical contact with the Property or persons located therein. This Easement also does not exclude the Grantor(s) from seeking to participate in any future Federal Aviation Administration noise mitigation programs offered by Grantee for which Grantor(s) may be eligible due to changes to the 2017 Future DNL Contour.

6) The Grantor(s), for their heirs, successors, and assigns, do hereby covenant that they are lawfully seized of an indefeasible estate in the Property; and they have the right to grant and convey the Easement; and that Grantor(s) will warrant and defend unto the Grantee and its assigns, forever, the quiet and peaceable use and enjoyment of the Easement.

7) In the event any section, paragraph, sentence or clause of this Easement shall be found to be illegal or unenforceable under the laws of Connecticut, such defect shall not be construed as invalidating any other section, paragraph, sentence or clause of this Easement.

IN WITNESS WHEREOF, the Grantor(s) have executed this instrument this _____ day of _____, 2016.

In the presence of:

Name:

Name:

Name:

Name:

STATE OF CONNECTICUT)

) ss. at _____, 2016

COUNTY OF NEW HAVEN)

Then and there, before me, the undersigned officer, personally appeared _____ and _____, to me known (or adequately proven) to be the party or parties executing the foregoing instrument and acknowledged the same to be his/her/their free act and deed.

By: _____

Printed Name: _____

Notary Public

My commission expires: _____

Commissioner of the Superior Court

EXHIBIT A
[Legal Description]

SCHEDULE 1
[Schedule of sound insulation work]