

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FRIENDS OF THE EAST HAMPTON AIRPORT, INC.,
ANALAR CORPORATION, ASSOCIATED AIRCRAFT
GROUP, INC., ELEVENTH STREET AVIATION LLC,
HELICOPTER ASSOCIATION INTERNATIONAL, INC.,
HELIFLITE SHARES LLC, LIBERTY HELICOPTERS,
INC., SOUND AIRCRAFT SERVICES, INC., and
NATIONAL BUSINESS AVIATION ASSOCIATION, INC.,

No. 15 Civ. 2246 (SJF) (ARL)

Plaintiffs,

-against-

THE TOWN OF EAST HAMPTON,

Defendant.

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DECLARATION OF SCOTT E. ASHTON

I, Scott E. Ashton, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am the President of Associated Aircraft Group, Inc. (“AAG”), one of the Plaintiffs in this action. I am also a certified Airline Transport Pilot, which is the highest grade certificate issued to pilots by the Federal Aviation Administration (“FAA”).

2. I make this declaration, based upon personal knowledge, in support of Plaintiffs’ application for a temporary restraining order enjoining the Town of East Hampton’s recently-enacted restrictions on access to the East Hampton Airport (“the Airport” or “HTO”).

Background of AAG

3. AAG is a business corporation duly organized and existing under the laws of the State of Connecticut, with a principal office located at 32 Griffith Way, Wappingers Falls, New York 12590. AAG is owned by Sikorsky Aircraft Company, a division of United Technologies Corporation.

4. Founded in 1989, AAG provides “on-demand” helicopter charter services to passengers to and from various destination points in New York, New Jersey, Pennsylvania, Connecticut, Maryland, Massachusetts, Rhode Island, and the District of Columbia. AAG owns or operates 10 helicopters—all Sikorsky S-76 helicopters. In addition to providing charter and aircraft management services, AAG provides maintenance services to other aircraft, primarily at AAG’s headquarters at Dutchess County Airport in Wappingers Falls, NY.

5. AAG holds a 14 C.F.R. Part 135 certification conferred by the FAA. This Part 135 certification authorizes AAG to provide non-scheduled operations for compensation or hire. AAG also holds authority from the Department of Transportation to engage in interstate air travel. Pursuant to Part 135, AAG complies with various FAA and industry requirements and safety standards, including those related to flight operations, maintenance, and training.

6. As a subsidiary of Sikorsky, AAG markets itself as exclusively operating the Sikorsky helicopter, which is the most popular VIP helicopter in the industry. Indeed, AAG’s entire identity is tied to the Sikorsky brand.

7. AAG offers and operates a fractional ownership program to its customers, known as Sikorsky Shares. Catered toward frequent helicopter users, fractional ownership allows several owners to share in the ownership and maintenance costs of a helicopter. Many of AAG’s fractional owners fly to and from HTO. AAG also offers its customers a prepaid flight card called the AAG Excalibur Card. This card provides the customers with prepaid flight units with no blackout dates and guaranteed availability. Several of our customers who fly to East Hampton are Excalibur Card holders.

8. AAG has 62 employees.

AAG's Operations to and from HTO

9. Flights to and from HTO account for a substantial portion of AAG's flight operations and overall company revenue. Nearly 35% of AAG's flight operations involve HTO. Moreover, flights to and from East Hampton account for approximately 25% of AAG's total annual revenue.

10. AAG has been flying to HTO for over 25 years, ever since AAG was founded in 1989.

11. The vast majority of AAG's flights to and from HTO occur during the summer months. Many of AAG's passengers reside in East Hampton or maintain second homes there. Many of AAG's customers fly by helicopter to East Hampton on Thursday or Friday evening and fly out on Monday morning.

12. Many of AAG's flights also involve transporting passengers between HTO and points located outside of New York State. In 2014, approximately 10% of AAG's flights to and from the Airport involved such interstate transportation.

East Hampton's Recently-Enacted Restrictions

13. I understand that on April 16, 2015, the Town Board adopted three new local laws restricting access to HTO ("the Restrictions"). I am familiar with the Restrictions.

14. I understand that the Restrictions include (1) a mandatory curfew, prohibiting use of HTO between 11:00 p.m. and 7:00 a.m. (the "Mandatory Curfew"); (2) an extended curfew for so-called "Noisy Aircraft" banning use of the Airport from 8:00 p.m. to 9:00 a.m. ("the "Extended Curfew"); and (3) a one-trip limit during the summer, prohibiting "Noisy Aircraft" from flying more than one trip per week to HTO during the summer season (the "One-Trip Limit"). I further understand that the Restrictions define "Noisy Aircraft" as including any

aircraft that has a published Effective Perceived Noise in Decibels (EPNdB) approach (AP) level of 91.0 or greater.

15. All of AAG's helicopters fall under the Town's definition of "Noisy Aircraft." The Sikorsky S-76C+ and C++ helicopters both have an EPNdB AP level of 96.1; and the S-76B is of an equivalent design to the C-76C+ and C++, and has an equivalent EPNdB AP level of approximately 96.1 as well. AAG operates two S-76C++, six S-76C+, and two S-76B helicopters.

16. As a an experienced pilot and AAG's president, I object to the Town's definition of "Noisy Aircraft" because it targets helicopters and fails to take into account the actual noise impact generated by AAG's helicopters at arrival or departure on the area surrounding the Airport. Further, the Town's definition of "Noisy Aircraft" is inconsistent with and contrary to well established International Civil Aviation Organization ("ICAO") and FAA Stage 3 Noise definitions, which are global industry certification standards for aircraft noise. ICAO and FAA both establish Stage 3 noise limits of EPNL as a function of Maximum Gross Takeoff Weight, not as a fixed limit for all aircraft.

17. The EPNdB AP level for AAG's helicopters is not a fair indicator of the noise impact our helicopters have on people living outside airport boundaries. I believe the actual noise impact to be lower. Among other things, AAG pilots adhere to HTO's voluntary noise abatement procedures, which recommend that helicopters (1) maintain high altitudes (as high as 3,500') when approaching the Airport; (2) climb quickly when departing the Airport; (3) avoid having the rotors turning when passengers board and deplane; and (4) avoid operating the rotors for more than five minutes while on the ramp. AAG tracks all of its flights in real time, and any pilot that does not adhere to the noise abatement procedures must provide an explanation to me

as to why he or she did not follow the procedures. Based upon AAG's flight tracking, and pilot reports, I know that AAG's pilots consistently comply with the noise abatement procedures, which significantly decrease our helicopters' noise impact. AAG pilots are also trained to follow the noise abatement procedures listed in the Sikorsky Rotorcraft Flight Manual. Instances of noncompliance with the procedures are usually due to weather conditions or the direction of air traffic control. EPNdB AP is the perceived noise level of helicopters on approach, which happens to be the loudest measure of noise, and is not indicative of the actual perceived noise level as a helicopter passes overhead. EPNdB OV (Overflight) noise levels are substantially lower (up to 3db) than approach noise levels, but still do not take into account AAG's and the industry's efforts to mitigate its noise impact.

18. The Town's Noise Committee Final Report published on January 20, 2015 confirmed that the 65 DNL Contour, which the FAA uses as the basis for initiating mitigation efforts at airports, lies completely within the airport boundary.

19. The Town, in establishing its classification for "Noisy Aircraft," selected an EPNdB AP level of 91.0 or greater with no justification of what that specific EPNdB AP level represents other than having the effect of excluding 97% of helicopter operations at the airport, per the town's own noise committee study.

20. All of AAG's S-76 aircraft that it currently operates meet the ICAO and FAA requirements to be considered for Stage 3 noise limits, although these models have not gone through the actual type certification process. The FAA does not permit airport operators to discriminate against Stage 3 aircraft.

21. If the Restrictions are enforced, AAG immediately will be subject to all three of the Restrictions—the Mandatory Curfew, Extended Curfew and One-Trip Limit. Our helicopters

will immediately be prohibited from flying into or out of HTO between 8:00 p.m. and 9:00 a.m., year-round. In addition, AAG's helicopters will be barred under the One-Trip Limit from flying more than one trip per calendar week during its busiest season.

The Restrictions' Impact on AAG

22. The Restrictions will severely harm AAG's operations and revenue, and threaten the viability of AAG's business model.

23. AAG projects that (1) the One-Trip Limit will result in a more than 90% decrease in its flights to and from HTO; (2) the Extended Curfew will result in a 17% decrease in its flights to and from HTO; and (3) the Mandatory Curfew will result in a 3% decrease in its flights to and from HTO.

24. As indicated, flight operations to and from HTO account for approximately 25% of AAG's total annual revenue. If the Restrictions take effect—and in particular the One-Trip Limit—we anticipate loss of as many as 50% of our clients, and the corresponding loss of revenue. AAG projects that it likely would need to lay off as many as eight pilots, two or more mechanics, two or more dispatchers, plus additional overhead positions.

25. Specifically, AAG will lose all of the direct flight fees for trips prohibited under the Restrictions. AAG will also lose significant revenue from our fractional ownership program, as we anticipate that clients would likely sell back their shares of fractionally-owned aircraft if they are no longer able to access East Hampton during the most common days and times of airport usage. Additionally, AAG will lose revenue from maintenance activities it conducts if other aircraft subject to the One-Trip Limit are prohibited from using the Airport, and those owners reduce the utilization of the aircraft, reducing or eliminating the maintenance required by such utilization. Finally, the Restrictions will likely result in the loss of the overall value of our

aircraft assets, as the Sikorsky S-76 will not be the preferable aircraft to fly to and from HTO.

26. The Restrictions will also harm AAG's reputation for providing exceptional client service built around the transportation needs of its clients because the Restrictions arbitrarily brand the Sikorsky S-76 as a "Noisy Aircraft," thereby nearly eliminating AAG's ability to fly its helicopters to HTO during the summer. AAG markets itself as exclusively flying the Sikorsky helicopter, but if the Sikorsky helicopter is limited to one trip per week, our customers may choose to use a different company to transport them to East Hampton.

27. AAG further predicts that it will also lose market share, as customers traveling to or from East Hampton may elect to travel by other aircraft or other means of transportation that are not subject to the Restrictions. Even if the Town were to loosen the Restrictions at some later point, AAG will have been permanently harmed, as its customers might not return.

28. AAG has already been harmed just by the prospect of the Restrictions going into effect. Prospective fractional owners have delayed in purchasing shares, some existing fractional owners have delayed in renewing their shares, and at least one Excalibur card client has deferred renewal of their account pending the outcome of these actions.

29. Our clients will likely suffer harm as well, as they may be forced to utilize smaller, single engine helicopters that are not subject to the Extended Curfew and One-Trip Limit. Our clients choose the S-76 and AAG because all of our flights are operated on helicopters with two engines, have installed safety equipment such as emergency pop out floats, and advanced Traffic Collision Alert Systems, are flown by two experienced pilots, are capable of flight under Instrument Flight Rules, and are maintained to the highest standards. AAG also conducts safety and operational audits to the highest standards in the industry, which include Wyvern, ARGUS, International Standards for Business Aviation Operations (IS-BAO), and the

Air Charter Safety Foundation (ACSF). If our clients' only option is to use smaller helicopters with only one engine, one pilot, and limited to Visual Flight Rules only, their ability to access transportation operated to higher standards will be severely limited.

30. Moreover, the harm to AAG from the Restrictions cannot be avoided by AAG by using other airports on the East End of Long Island. Other airports in Long Island, including Montauk Airport ("Montauk"), Francis S. Gabreski Airport ("Gabreski"), which is in Westhampton, and the Southampton Heliport ("Southampton") are inadequate alternatives to HTO, and will not cure or avoid the serious economic, operational and reputational harm that AAG will suffer if the Restrictions take effect.

31. Montauk is more than 20 miles east of HTO. Flying to Montauk leads to greater fuel needs and increased flight times. Montauk also has very limited ramp space, thereby precluding more than one or two helicopters from parking there. Montauk does not have instrument approaches and weather instrumentation suitable for Part 135 aircraft to land in inclement weather; so in inclement weather, Part 135 operators are prohibited from landing or from taking off at Montauk. In addition, because there are no fuel services at Montauk, AAG's helicopters would still need to refuel at either Gabreski or HTO. Landing at another airport simply to refuel will subject AAG to additional landing fees at those airports, and in fact will likely have an adverse effect on our efforts to mitigate overall noise by creating more, not fewer, overall operations on Long Island because of the extensive helicopter repositioning required. Moreover, landing at HTO simply to refuel would either not be possible under the Restrictions, or would use up that aircraft's one trip under the One-Trip Limit. We also anticipate losing customers who will forego commuting to East Hampton by helicopter if it means that they will have to pay for longer flight times to Montauk and then drive twenty miles to their final

destination.

32. Gabreski is more than 25 miles west of HTO. AAG's clients who land at Gabreski would then have to drive via Route 27—which is heavily congested during the summer—to get to East Hampton. AAG's clients choose to fly to East Hampton via helicopter in order to avoid a lengthy commute. My clients have informed me that they will likely forego the expense of flying into Gabreski if they will still face heavy traffic en route to East Hampton.

33. Southampton consists of one helipad, does not have fuel services and does not allow for the parking of aircraft. Also, Southampton allows a helicopter to remain on the helipad for only five minutes. Thus, when flying in and out of Southampton, helicopter operators have to make additional stops for fuel and to standby for passengers at another airport, resulting in increased flight times and additional and unnecessary landing and parking fees in order to reposition our aircraft. Like Montauk, Southampton also does not have instrument approaches suitable for Part 135 aircraft, so Part 135 operators cannot land there in inclement weather. Furthermore, during the summer months, Southampton is only available until from 8:00 a.m. to 7:00 p.m., and is not available for operations after sunset.

34. It is also entirely unclear whether Southampton, Montauk and Gabreski would even have the capacity or ability to accommodate helicopter traffic that can no longer land at HTO—which for years has been the main airport hub on the East End for helicopter services. Further, if Southampton, Gabreski, and Montauk airports were suitable alternatives, which they are not, and if the restrictions at HTO are allowed to stand as passed by the Town Board, there is no guarantee that other local officials and communities where these airports are located will not be emboldened to attempt the same restrictions at those airports as well. If these actions were to be successful, effectively all helicopter service would be ended for residents of Eastern Long

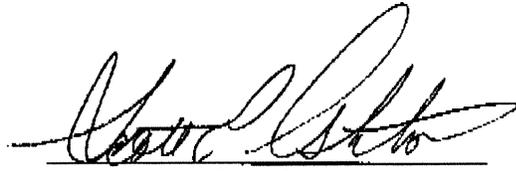
Island, driving AAG out of business as an air carrier.

35. Finally, in addition to harming AAG and other HTO users, the Restrictions will harm HTO itself. The Restrictions will have the effect of significantly reducing HTO's revenues, which will in turn deprive HTO of funds desperately needed to maintain the Airport in good repair. Even prior to its enactment of the Restrictions, the Town had failed, and continues to fail, to maintain HTO in proper condition as required by federal law. For this reason, on January 29, 2015, AAG and others filed an administrative complaint with the FAA, alleging that the Town has violated its federal grant assurances (specifically, Grant Assurance 19.a) by, among other things, failing to remove obstructions to runways, allowing runways to deteriorate, and failing to maintain an effective perimeter fence. *See Friends of the East Hampton Airport, Inc. et al. v. East Hampton Airport*, FAA Docket No. 16-15-02 (2015). That administrative complaint is pending. If the Restrictions are enforced, then HTO's revenues—which are currently the only source of funding for Airport maintenance—will plummet, causing HTO to fall further into disrepair.

36. If the Restrictions take effect, AAG will be seriously and immediately harmed—economically, operationally and reputationally. Its future ability to survive will be imperiled. It is unclear to me whether AAG could survive, or for how long, given the importance of flights to and from HTO to AAG's revenue, and given further that AAG's entire business model is based on the Sikorsky S-76—a helicopter that the Restrictions deem to be a "Noisy Aircraft" and effectively ban from operation during our busiest season. The deep cuts in clients, charter services and flight operations that we will suffer under the Restrictions put AAG at serious risk of needing to close or restructure.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: April 28, 2015
Wappingers Falls, NY



Scott E. Ashton