

15-2334-cv(L), 15-2465-cv(XAP)

United States Court of Appeals
for the
Second Circuit

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.,
NATIONAL BUSINESS AVIATION ASSOCIATION, INC.,
Plaintiffs-Appellees-Cross-Appellants,
– v. –
TOWN OF EAST HAMPTON,
Defendant-Appellant-Cross-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK IN CASE NO. 2:15-CV-2246-JS-ARL
JOANNA SEYBERT, UNITED STATES DISTRICT JUDGE

JOINT APPENDIX
Volume 1 of 2 (Pages A-1 to A-289)

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APPEAL, ACO

U.S. District Court
Eastern District of New York (Central Islip)
CIVIL DOCKET FOR CASE #: 2:15-cv-02246-JS-ARL

Friends of the East Hampton Airport, Inc. et al v. The Town of East Hampton
Assigned to: Judge Joanna Seybert
Referred to: Magistrate Judge Arlene R. Lindsay
Cause: 28:2201 Constitutionality of State Statute(s)

Date Filed: 04/21/2015
Jury Demand: Plaintiff
Nature of Suit: 950 Constitutional - State Statute
Jurisdiction: Federal Question

Plaintiff

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V.

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Date Filed	#	Docket Text
04/21/2015	1	COMPLAINT against All Defendants filing fee \$ 400, receipt number 0207-7681465 Was the Disclosure Statement on Civil Cover Sheet completed -YES,, filed by Heliflite Shares LLC, Associated Aircraft Group, Inc., Liberty Helicopters, Inc., Analar Corporation, Sound Aircraft Services, Inc., Eleventh Street Aviation LLC, Friends of the East Hampton Airport, Inc., Helicopter Association International, Inc.. (Attachments: # 1 Civil Cover Sheet, # 2 Proposed Summons) (Zornberg, Lisa) (Entered: 04/21/2015)
04/21/2015	2	NOTICE of Appearance by Eric Bregman on behalf of The Town of East Hampton (aty to be noticed) (Bregman, Eric) (Entered: 04/21/2015)
04/21/2015	3	NOTICE of Appearance by Matthew Gage Coogan on behalf of All Plaintiffs (aty to be noticed) (Coogan, Matthew) (Entered: 04/21/2015)
04/21/2015	4	NOTICE of Appearance by Jonathan Daniel Lamberti on behalf of All Plaintiffs (aty to be noticed) (Lamberti, Jonathan) (Entered: 04/21/2015)
04/21/2015	5	NOTICE of Appearance by Michael Dayton Longyear on behalf of All Plaintiffs (aty to be noticed) (Longyear, Michael) (Entered: 04/21/2015)
04/21/2015	6	DISCLOSURE of Interested Parties by Liberty Helicopters, Inc.. (McMahon, Carol) (Entered: 04/22/2015)
04/22/2015	7	This attorney case opening filing has been checked for quality control. See the attachment for corrections that were made. (McMahon, Carol) (Entered: 04/22/2015)
04/22/2015		Case Assigned to Judge Joan M. Azrack and Magistrate Judge Anne Y. Shields. (McMahon, Carol) (Entered: 04/22/2015)
04/22/2015	8	In accordance with Rule 73 of the Federal Rules of Civil Procedure and Local Rule 73.1, the parties are notified that <i>if</i> all parties consent a United States magistrate judge of this court is available to conduct all proceedings in this civil action including a (jury or nonjury) trial and to order the entry of a final judgment. Attached to the Notice is a blank copy of the consent form that should be filled out, signed and filed electronically only if all parties wish to consent. The form may also be accessed at the following link: http://www.uscourts.gov/uscourts/FormsAndFees/Forms/AO085.pdf . You

		may withhold your consent without adverse substantive consequences. Do NOT return or file the consent <u>unless</u> all parties have signed the consent. (McMahon, Carol) (Entered: 04/22/2015)
04/22/2015	9	Summons Issued as to The Town of East Hampton. (McMahon, Carol) (Entered: 04/22/2015)
04/22/2015	10	Notice of Related Case indicated on the civil cover sheet in case 15cv2246 (JMA)(AYS). (McMahon, Carol) (Entered: 04/22/2015)
04/22/2015	11	MOTION for Leave to Appear Pro Hac Vice Filing fee \$ 150, receipt number 0207-7687912. by The Town of East Hampton. (Attachments: # 1 Affidavit Certification of W. Eric Pilsk, Esq. in Support of Motion to Admit Counsel Pro Hac Vice, # 2 Exhibit A, # 3 Exhibit B, # 4 Proposed Order Proposed Order to Admit W. Eric Pilsk, Esq. Pro Hac Vice) (Bregman, Eric) (Entered: 04/22/2015)
04/23/2015		Electronic ORDER granting 11 Motion for Leave to Appear Pro Hac Vice, W. Eric Pilsk for Defendant The Town of East Hampton. Counsel is directed to electronically file a notice of appearance and comply with all local rules. So Ordered by Magistrate Judge Anne Y. Shields on 4/23/2015. (Casalini, Rosalinde) (Entered: 04/23/2015)
04/23/2015		ORDER REASSIGNING CASE. Case reassigned to Judge Sandra J. Feuerstein and Magistrate Judge Arlene R. Lindsay as related to 15cv441 for all further proceedings. Judge Joan M. Azrack, Magistrate Judge Anne Y. Shields no longer assigned to case. Ordered by Chief Judge Carol Bagley Amon on 4/23/2015. (Bowens, Priscilla) (Entered: 04/23/2015)
04/24/2015	12	NOTICE of Appearance by William E. Pilsk on behalf of All Defendants (notification declined or already on case) (Pilsk, William) (Entered: 04/24/2015)
04/24/2015		Email Notification Test - DO NOT REPLY (Mahon, Cinthia) (Entered: 04/24/2015)
04/27/2015	13	Letter MOTION for Leave to File <i>motion for a temporary restraining order</i> by Analar Corporation, Associated Aircraft Group, Inc., Eleventh Street Aviation LLC, Friends of the East Hampton Airport, Inc., Helicopter Association International, Inc., Heliflite Shares LLC, Liberty Helicopters, Inc., Sound Aircraft Services, Inc.. (Attachments: # 1 Proposed Order) (Zornberg, Lisa) (Entered: 04/27/2015)
04/27/2015	14	Letter MOTION to Consolidate Cases by Analar Corporation, Associated Aircraft Group, Inc., Eleventh Street Aviation LLC, Friends of the East Hampton Airport, Inc., Helicopter Association International, Inc., Heliflite Shares LLC, Liberty Helicopters, Inc., Sound Aircraft Services, Inc. (Zornberg, Lisa) Modified original letter entry into a motion on 4/28/2015 (Florio, Lisa). (Entered: 04/27/2015)
04/28/2015	15	Notice of MOTION for Leave to Appear Pro Hac Vice Filing fee \$ 150, receipt number 0207-7698907. by The Town of East Hampton. (Attachments: # 1 Affidavit /Certification of Peter J. Kirsch, Esq. in Support of Motion to Admit Counsel Pro Hac Vice, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit

		D, # 6 Proposed Order Admission of Peter J. Kirsch, Esq. to Practice Pro Hac Vice) (Bregman, Eric) (Entered: 04/28/2015)
04/28/2015	16	AMENDED COMPLAINT against The Town of East Hampton, filed by Heliflite Shares LLC, Associated Aircraft Group, Inc., Liberty Helicopters, Inc., Analar Corporation, Sound Aircraft Services, Inc., Eleventh Street Aviation LLC, Friends of the East Hampton Airport, Inc., Helicopter Association International, Inc., National Business Aviation Association, Inc.. (Zornberg, Lisa) (Entered: 04/28/2015)
04/28/2015	17	ORDER granting 13 Motion for Leave to File motion for a temporary restraining order. IT IS HEREBY ORDERED that Plaintiffs shall file their TRO application along with supporting papers on April 29, 2015; Deft shall file any opposition papers on May 8, 2015; and Plaintiffs shall file any reply papers on May 13, 2015. An initial conference and hearing on plaintiffs' TRO application shall be held on May 14, 2015 at 11:00 am before this Court. Deft has agreed not to enforce the Restrictions, or any proposed laws related to the Restrictions, until the conclusion of the hearing scheduled on May 14, 2015 at 11:00 a.m. Ordered by Judge Sandra J. Feuerstein on 4/28/2015. (Florio, Lisa) (Entered: 04/28/2015)
04/29/2015		ORDER re 15 : The Motion of Peter J. Kirsch for Leave to Appear Pro Hac Vice is granted. Ordered by Magistrate Judge Arlene R. Lindsay on 4/29/2015. c/ecf (Imrie, Robert) (Entered: 04/29/2015)
04/29/2015	18	NOTICE of Appearance by Peter Kirsch on behalf of All Defendants (aty to be noticed) (Kirsch, Peter) (Entered: 04/29/2015)
04/29/2015	19	MOTION for Temporary Restraining Order by Analar Corporation, Associated Aircraft Group, Inc., Eleventh Street Aviation LLC, Friends of the East Hampton Airport, Inc., Helicopter Association International, Inc., Heliflite Shares LLC, Liberty Helicopters, Inc., National Business Aviation Association, Inc., Sound Aircraft Services, Inc.. (Zornberg, Lisa) (Entered: 04/29/2015)
04/29/2015	20	AFFIDAVIT/DECLARATION in Support re 19 MOTION for Temporary Restraining Order <i>D. Kirk Shaffer (Expert)</i> filed by All Plaintiffs. (Zornberg, Lisa) (Entered: 04/29/2015)
04/29/2015	21	AFFIDAVIT/DECLARATION in Support re 19 MOTION for Temporary Restraining Order <i>Andrew S. Harris (Expert)</i> filed by All Plaintiffs. (Zornberg, Lisa) (Entered: 04/29/2015)
04/29/2015	22	AFFIDAVIT/DECLARATION in Support re 19 MOTION for Temporary Restraining Order <i>Michael Renz</i> filed by All Plaintiffs. (Zornberg, Lisa) (Entered: 04/29/2015)
04/29/2015	23	AFFIDAVIT/DECLARATION in Support re 19 MOTION for Temporary Restraining Order <i>Eric Jungck</i> filed by All Plaintiffs. (Zornberg, Lisa) (Entered: 04/29/2015)
04/29/2015	24	AFFIDAVIT/DECLARATION in Support re 19 MOTION for Temporary Restraining Order <i>Christopher Vellios</i> filed by All Plaintiffs. (Zornberg, Lisa) (Entered: 04/29/2015)

04/29/2015	25	AFFIDAVIT/DECLARATION in Support re 19 MOTION for Temporary Restraining Order <i>Cindy L. Herbst</i> filed by All Plaintiffs. (Zornberg, Lisa) (Entered: 04/29/2015)
04/29/2015	26	AFFIDAVIT/DECLARATION in Support re 19 MOTION for Temporary Restraining Order <i>Matthew S. Zuccaro</i> filed by All Plaintiffs. (Zornberg, Lisa) (Entered: 04/29/2015)
04/29/2015	27	AFFIDAVIT/DECLARATION in Support re 19 MOTION for Temporary Restraining Order <i>Steve Brown</i> filed by All Plaintiffs. (Zornberg, Lisa) (Entered: 04/29/2015)
04/29/2015	28	AFFIDAVIT/DECLARATION in Support re 19 MOTION for Temporary Restraining Order <i>Kurt Carlson</i> filed by All Plaintiffs. (Zornberg, Lisa) (Entered: 04/29/2015)
04/29/2015	29	AFFIDAVIT/DECLARATION in Support re 19 MOTION for Temporary Restraining Order <i>Scott E. Ashton</i> filed by All Plaintiffs. (Zornberg, Lisa) (Entered: 04/29/2015)
04/29/2015	30	AFFIDAVIT/DECLARATION in Support re 19 MOTION for Temporary Restraining Order <i>Andrew Sabin</i> filed by All Plaintiffs. (Zornberg, Lisa) (Entered: 04/29/2015)
04/29/2015	31	AFFIDAVIT/DECLARATION in Support re 19 MOTION for Temporary Restraining Order <i>Lisa Zornberg</i> filed by All Plaintiffs. (Zornberg, Lisa) (Entered: 04/29/2015)
04/29/2015	32	MEMORANDUM in Support re 19 MOTION for Temporary Restraining Order filed by All Plaintiffs. (Zornberg, Lisa) (Entered: 04/29/2015)
04/29/2015	33	AFFIDAVIT/AFFIRMATION re 19 MOTION for Temporary Restraining Order <i>Certificate of Service</i> by Analar Corporation, Associated Aircraft Group, Inc., Eleventh Street Aviation LLC, Friends of the East Hampton Airport, Inc., Helicopter Association International, Inc., Heliflite Shares LLC, Liberty Helicopters, Inc., National Business Aviation Association, Inc., Sound Aircraft Services, Inc. (Zornberg, Lisa) (Entered: 04/29/2015)
05/04/2015	34	Letter by Federal Aviation Administration (FAA) (Schumacher, Robert) (Entered: 05/04/2015)
05/04/2015	35	MEMORANDUM in Opposition re 14 MOTION to Consolidate Cases filed by All Defendants. (Pilsk, William) (Entered: 05/04/2015)
05/05/2015	36	AFFIDAVIT/DECLARATION in Support re 19 MOTION for Temporary Restraining Order (<i>Corrected</i>) filed by All Plaintiffs. (Zornberg, Lisa) (Entered: 05/05/2015)
05/07/2015	37	WAIVER OF SERVICE Returned Executed by Heliflite Shares LLC, National Business Aviation Association, Inc., Associated Aircraft Group, Inc., Liberty Helicopters, Inc., Analar Corporation, Sound Aircraft Services, Inc., Eleventh Street Aviation LLC, Friends of the East Hampton Airport, Inc., Helicopter Association International, Inc.. The Town of East Hampton waiver sent on 4/22/2015, answer due 6/22/2015. (Zornberg, Lisa) (Entered: 05/07/2015)

05/08/2015	38	MEMORANDUM in Opposition re 19 MOTION for Temporary Restraining Order filed by The Town of East Hampton. (Attachments: # 1 Declaration, # 2 Declaration, # 3 Declaration, # 4 Declaration, # 5 Declaration, # 6 Declaration) (Pilsk, William) (Entered: 05/08/2015)
05/12/2015		NOTICE of Hearing: Due to a change in the Court's calendar, the hearing originally scheduled before Judge Feuerstein on 5/14/2015 is advanced to 5/13/2015 at 11:00 am. c/ecf (Morabito, Bryan) (Entered: 05/12/2015)
05/12/2015		Case Reassigned to Judge Joanna Seybert. Judge Sandra J. Feuerstein no longer assigned to the case. (Mahoney, Brenna) (Entered: 05/12/2015)
05/12/2015	39	AFFIDAVIT/DECLARATION in Support re 19 MOTION for Temporary Restraining Order (<i>Supplemental</i>) filed by All Plaintiffs. (Zornberg, Lisa) (Entered: 05/12/2015)
05/12/2015	40	AFFIDAVIT/DECLARATION in Support re 19 MOTION for Temporary Restraining Order (<i>Supplemental</i>) filed by All Plaintiffs. (Zornberg, Lisa) (Entered: 05/12/2015)
05/12/2015		NOTICE of Hearing on 19 MOTION for Temporary Restraining Order: Due to the case being reassigned, the Motion Hearing is rescheduled to 5/18/2015 at 10:00am in Courtroom 1030 before Judge Joanna Seybert. (Baran, Charles) (Entered: 05/12/2015)
05/12/2015	41	AFFIDAVIT/DECLARATION in Support re 19 MOTION for Temporary Restraining Order (<i>Supplemental Eric Jungck</i>) filed by All Plaintiffs. (Zornberg, Lisa) (Entered: 05/12/2015)
05/12/2015	42	AFFIDAVIT/DECLARATION in Support re 19 MOTION for Temporary Restraining Order (<i>Supplemental Chris Vellios</i>) filed by All Plaintiffs. (Zornberg, Lisa) (Entered: 05/12/2015)
05/12/2015	43	AFFIDAVIT/DECLARATION in Support re 19 MOTION for Temporary Restraining Order (<i>Supplemental Scott E. Ashton</i>) filed by All Plaintiffs. (Zornberg, Lisa) (Entered: 05/12/2015)
05/12/2015	44	AFFIDAVIT/DECLARATION in Support re 19 MOTION for Temporary Restraining Order (<i>Michael Norbeck</i>) filed by All Plaintiffs. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit) (Zornberg, Lisa) (Entered: 05/12/2015)
05/12/2015	45	REPLY in Support re 19 MOTION for Temporary Restraining Order filed by All Plaintiffs. (Zornberg, Lisa) (Entered: 05/12/2015)
05/12/2015	46	AFFIDAVIT/AFFIRMATION re 19 MOTION for Temporary Restraining Order (<i>Certificate of Service of Plaintiffs' Reply Papers</i>) by Analar Corporation, Associated Aircraft Group, Inc., Eleventh Street Aviation LLC, Friends of the East Hampton Airport, Inc., Helicopter Association International, Inc., Heliflite Shares LLC, Liberty Helicopters, Inc., National Business Aviation Association, Inc., Sound Aircraft Services, Inc. (Zornberg, Lisa) (Entered: 05/12/2015)
05/12/2015	47	Letter MOTION to Continue <i>Restrictions until the conclusion of the TRO hearing on May 18, 2015</i> by Analar Corporation, Associated Aircraft Group, Inc., Eleventh Street Aviation LLC, Friends of the East Hampton Airport, Inc.,

		Helicopter Association International, Inc., Heliflite Shares LLC, Liberty Helicopters, Inc., National Business Aviation Association, Inc., Sound Aircraft Services, Inc.. (Attachments: # 1 Proposed Order) (Zornberg, Lisa) (Entered: 05/12/2015)
05/15/2015	48	Letter MOTION to Intervene <i>as plaintiff</i> by Air Pegasus Corp.. (Lynn, Robert) (Entered: 05/15/2015)
05/15/2015	49	NOTICE of Appearance by Tiffany D. Frigenti on behalf of Air Pegasus Corp. (aty to be noticed) (Frigenti, Tiffany) (Entered: 05/15/2015)
05/15/2015	50	NOTICE of Appearance by Joseph Covello on behalf of Air Pegasus Corp. (aty to be noticed) (Covello, Joseph) (Entered: 05/15/2015)
05/18/2015	51	Minute Order for proceedings held before Judge Joanna Seybert: Show Cause Hearing held on 5/18/2015. Argument heard on Motion 19 for T.R.O.; decision reserved. Court to issue decision on or before 6/8/2015. As stipulated on the record, defendant Town of East Hampton will not enforce subject local laws pending decision. Motion 47 to extend non-enforcement is terminated as moot. Letter motion 48 for Air Pegasus to intervene is denied with leave to file a formal motion. (Court Reporter DT) (Baran, Charles) (Entered: 05/18/2015)
06/01/2015	52	MOTION for Leave to File <i>Amicus Curiae Brief</i> by Committee to Stop Airport Expansion. (Ogden, Thomas) (Entered: 06/01/2015)
06/01/2015	53	MEMORANDUM in Support re 52 MOTION for Leave to File <i>Amicus Curiae Brief</i> filed by Committee to Stop Airport Expansion. (Ogden, Thomas) (Entered: 06/01/2015)
06/01/2015	54	Letter MOTION to Expedite <i>Motion to File Amicus Curiae Brief</i> by Committee to Stop Airport Expansion. (Ogden, Thomas) (Entered: 06/01/2015)
06/02/2015	55	Letter to Judge Joanna Seybert from Lisa Zornberg of Lankler Siffert & Wohl LLP dated 6/2/2015 in opposition to Movants Committee to Stop Airport Expansion, Pat Trunzo, Jr., and Pat Trunzo, III's Motion for Leave to File an <i>Amicus Curiae Brief</i> by Analar Corporation, Associated Aircraft Group, Inc., Eleventh Street Aviation LLC, Friends of the East Hampton Airport, Inc., Helicopter Association International, Inc., Heliflite Shares LLC, Liberty Helicopters, Inc., National Business Aviation Association, Inc., Sound Aircraft Services, Inc. (Zornberg, Lisa) (Entered: 06/02/2015)
06/03/2015	56	Letter to Judge Joanna Seybert from Eric Pilsk of Kaplan Kirsch & Rockwell LLP dated 6/3/2015 in Response to Movants Committee to Stop Airport Expansion, Pat Trunzo, Jr., and Pat Trunzo, III's Motion for Leave to File an <i>Amicus Curiae Brief</i> by The Town of East Hampton (Pilsk, William) (Entered: 06/03/2015)
06/03/2015		ELECTRONIC ORDER re 19 MOTION for Temporary Restraining Order filed by Plaintiffs. On May 18, 2015, the Court held oral argument on Plaintiffs' pending motion for a temporary restraining order. At the conclusion of the argument, the Court informed the parties that it would construe Plaintiffs' motion as one for a preliminary injunction and issue a decision by June 8, 2015. Counsel for the Town agreed not to enforce the Town laws at issue pending the

		Court's decision. Given the complexity of the issues involved and the impact a decision may have on the ultimate outcome of this case, the Court will extend the deadline for issuing its decision to June 26, 2015. If the Town is unwilling to continue not enforcing the Town laws pending the Court's decision, counsel for the Town is directed to contact chambers immediately. Ordered by Judge Joanna Seybert on 6/3/2015. (Mascia, Raymond) (Entered: 06/03/2015)
06/03/2015	57	NOTICE of Appearance by William F. Dahill on behalf of Committee to Stop Airport Expansion (aty to be noticed) (Dahill, William) (Entered: 06/03/2015)
06/03/2015	58	NOTICE of Appearance by Joanna H Schorr on behalf of Committee to Stop Airport Expansion (aty to be noticed) (Schorr, Joanna) (Entered: 06/03/2015)
06/03/2015	59	REPLY to Response to Motion re 52 MOTION for Leave to File <i>Amicus Curiae Brief</i> filed by Committee to Stop Airport Expansion. (Ogden, Thomas) (Entered: 06/03/2015)
06/15/2015	60	Letter by Committee to Stop Airport Expansion (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C) (Ogden, Thomas) (Entered: 06/15/2015)
06/16/2015	61	Letter to Judge Joanna Seybert from Lisa Zornberg of Lankler Siffert & Wohl LLP dated 6/16/2015 in response to Movants' 6/15/2015 letter submitting supplemental authorities in support of their Motion for Leave to File <i>Amicus Curiae Brief</i> by Analar Corporation, Associated Aircraft Group, Inc., Eleventh Street Aviation LLC, Friends of the East Hampton Airport, Inc., Helicopter Association International, Inc., Heliflite Shares LLC, Liberty Helicopters, Inc., Sound Aircraft Services, Inc. (Zornberg, Lisa) (Entered: 06/16/2015)
06/16/2015	62	MEMORANDUM AND ORDER denying 52 Motion for Leave to File; finding as moot 54 Motion to Expedite. For the foregoing reasons, the Committee's motion for leave to file an amicus curiae brief (Docket Entry 52) is DENIED. The Committee's motion to set an expedited briefing schedule for such brief (Docket Entry 54) is consequently DENIED AS MOOT. So Ordered by Judge Joanna Seybert on 6/16/2015. C/ECF (Valle, Christine) (Entered: 06/16/2015)
06/19/2015	63	ANSWER to 16 Amended Complaint, by The Town of East Hampton. (Pilsk, William) (Entered: 06/19/2015)
06/26/2015	64	MEMORANDUM & ORDER re: 19 Plaintiffs' Motion for preliminary injunction enjoining enforcement of the Town Laws is GRANTED IN PART and DENIED IN PART. It is GRANTED with respect to the One-Trip Limit and is DENIED with respect to the Mandatory Curfew and with respect to 14 Plaintiffs' Motion to Consolidate Cases the Court RESERVES JUDGMENT pending the filing of the FAA's response to the Complaint in the FAA Action. Ordered by Judge Joanna Seybert on 6/26/2015. (Nohs, Bonnie) (Entered: 06/26/2015)
06/26/2015	65	ELECTRONIC ORDER re 64 Order on Motion for TRO, Order on Motion to Consolidate Cases. On June 26, 2015, the Court granted in part and denied in part Plaintiffs' motion for a preliminary injunction. (Docket Entry 64.) After the Court's order was entered, Plaintiffs made an oral application pursuant to Rule 8 of the Federal Rules of Appellate Procedure, seeking an order granting Plaintiffs' entire motion pending an expedited appeal. Plaintiffs' Rule 8

		application is DENIED. Ordered by Judge Joanna Seybert on 6/26/2015. (Mascia, Raymond) (Entered: 06/26/2015)
07/22/2015	66	NOTICE OF APPEAL as to 65 Order,, 64 Order on Motion for TRO, Order on Motion to Consolidate Cases,, by The Town of East Hampton. Filing fee \$ 505, receipt number 0207-7901369. (Pilsk, William) (Entered: 07/22/2015)
07/22/2015		Electronic Index to Record on Appeal sent to US Court of Appeals. 66 Notice of Appeal Documents are available via Pacer. For docket entries without a hyperlink or for documents under seal, contact the court and we'll arrange for the document(s) to be made available to you. (Cox, Dwayne) (Entered: 07/22/2015)
08/04/2015	67	NOTICE OF CROSS APPEAL as to 64 Order on Motion for TRO, Order on Motion to Consolidate Cases,, by Analar Corporation, Associated Aircraft Group, Inc., Eleventh Street Aviation LLC, Friends of the East Hampton Airport, Inc., Helicopter Association International, Inc., Heliflite Shares LLC, Liberty Helicopters, Inc., National Business Aviation Association, Inc., Sound Aircraft Services, Inc.. Filing fee \$ 505, receipt number 0207-7930121. (Zornberg, Lisa) (Entered: 08/04/2015)
08/05/2015		Electronic Index to Record on Appeal sent to US Court of Appeals. 67 Notice of Cross Appeal, Documents are available via Pacer. For docket entries without a hyperlink or for documents under seal, contact the court and we'll arrange for the document(s) to be made available to you. (Cox, Dwayne) (Entered: 08/05/2015)
08/24/2015		ORDER. Plaintiffs have withdrawn their motion to consolidate (Docket Entry 14). The Clerk of the Court is therefore directed to TERMINATE that motion. Ordered by Judge Joanna Seybert on 8/24/2015. (Hawkins, Theodore) (Entered: 08/24/2015)
09/09/2015	68	<i>Letter to Judge Joanna Seybert from Lisa Zornberg of Lankler Siffert & Wohl LLP dated 9/9/2015 regarding caption</i> by Analar Corporation, Associated Aircraft Group, Inc., Eleventh Street Aviation LLC, Friends of the East Hampton Airport, Inc., Helicopter Association International, Inc., Heliflite Shares LLC, Liberty Helicopters, Inc., National Business Aviation Association, Inc., Sound Aircraft Services, Inc. (Zornberg, Lisa) (Entered: 09/09/2015)
09/10/2015		ORDER re 68 Letter. The Clerk of the Court is directed to TERMINATE Air Pegasus Corp. as a party to this action. The Court already denied Air Pegasus Corp.'s letter motion to intervene and it appears that Air Pegasus Corp. does not intend to file a formal motion to intervene in this case. Ordered by Judge Joanna Seybert on 9/10/2015. (Hawkins, Theodore) (Entered: 09/10/2015)
09/18/2015		Supplemental Electronic Index to Record on Appeal sent to US Court of Appeals. 66 Notice of Appeal, 67 Notice of Cross Appeal, Documents are available via Pacer. For docket entries without a hyperlink or for documents under seal, contact the court and we'll arrange for the document(s) to be made available to you. (Cox, Dwayne) (Entered: 09/18/2015)

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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,

AMENDED
COMPLAINT

-against-

THE TOWN OF EAST HAMPTON,

Jury Trial Demanded

Defendant.

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Plaintiffs 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. (collectively, "Plaintiffs"), by their undersigned attorneys, allege as follows:

Introduction

1. Plaintiffs seek declaratory and injunctive relief against the Town of East Hampton (the "Town") to enjoin the Town from unlawfully restricting access to East Hampton Airport (the "Airport") in violation of federal law. Specifically, Plaintiffs seek to enjoin the Town from putting into effect and enforcing the local laws adopted by the Town on April 16, 2015 (and other laws they may soon adopt), which severely restrict access to East Hampton Airport through the imposition of mandatory curfews and trip limits. See Town of East Hampton Res. 2015-411,

2015-412, and 2015-413, *to be codified at* Town of East Hampton Code §§ 75-38, 75-39 (collectively, the “Restrictions”). The Restrictions are preempted under the Supremacy Clause of the U.S. Constitution because they violate and conflict with federal law and policy. The Restrictions also violate the Commerce Clause of the U.S. Constitution because they unduly burden interstate commerce.

2. East Hampton Airport is a public-use, federally funded airport that the Federal Aviation Administration (“FAA”) has specifically designated as important to our national air transportation system. Of the approximately 19,000 airports and landing facilities in the United States, the FAA has deemed fewer than 3,400 important to the nationwide system of air transportation – and East Hampton Airport is one of them. Built in the 1930s with federal funds, and developed in the decades since with federal funds, East Hampton Airport connects the eastern end of Long Island to the rest of the nation and supports local and regional economies. Throughout its 79-year history, the Airport has been open to commercial and recreational aircraft of all kinds.

3. Although the Town owns and operates East Hampton Airport (as the Airport’s local proprietor), the Town has no authority to promulgate airport restrictions that conflict with federal aviation law and policy. Congress has preempted the field of aviation regulation to promote and protect a national air transportation system – recognizing that no national system would be possible if left to patchwork regulation by local governments and subject to local political winds.

4. Under well-established federal law, local governments have no authority to use their police powers to regulate aircraft in flight or to impose airport noise or access restrictions. Furthermore, local airport proprietors have no authority to impose noise or access restrictions

unless such regulations (i) comply and conform with federal law and policy, and (ii) are otherwise reasonable, non-arbitrary and non-discriminatory. Simply put, “Congress has left room only for local action that advances and is consistent with federal policy; other, noncomplementary exercises of local prerogative are forbidden.” *British Airways Bd. v. Port Auth. of N.Y.*, 558 F.2d 75, 84–85 (2d Cir. 1977).

5. In adopting the Restrictions, the Town has knowingly and purposefully transgressed the bounds of its extremely limited authority. The Town adopted the Restrictions in blatant violation of the Airport Noise and Capacity Act of 1990 (“ANCA”), 49 U.S.C. §§ 47521-47533, in which Congress established a national aviation noise policy that bars airport proprietors from imposing any noise or access restrictions on any aircraft classified by the FAA as “Stage 2” and “Stage 3” aircraft unless the proprietor has first complied with ANCA’s requirements.¹ Among other things, ANCA requires the airport proprietor to prepare and publish specific, extensive analyses at least 180 days before any proposed restriction on Stage 2 aircraft may take effect. ANCA furthermore prohibits any restriction from being imposed on Stage 3 aircraft unless the proprietor has first obtained FAA approval or the consent of all affected aircraft operators. Yet, here, the Town adopted the Restrictions – imposing severe access restrictions on both Stage 2 and Stage 3 aircraft – without remotely complying with ANCA’s requirements.

¹ The FAA has classified aircraft into “Stages” based on each aircraft’s ability to operate beneath various noise thresholds specified by the FAA. Generally speaking, Stage 2 aircraft emit less noise than Stage 1, and Stage 3 aircraft emit less noise than Stage 2. In 2005, the FAA promulgated a new Stage 4 classification for the quietest aircraft currently in operation. Stage 4 aircraft emit less noise than Stage 3 aircraft and receive the same ANCA protections as Stage 3 aircraft.

6. Further, the Town adopted the Restrictions in violation of the Airport and Airway Improvement Act of 1982 (the “AAIA”), 49 U.S.C. §§ 47101-47131. Under the AAIA, in return for federal airport funding, the Town gave binding assurances to the federal government that, at least until September 2021, it would: (i) keep the airport open and accessible to all types of aircraft and aeronautical activities, including commercial activities, on reasonable terms; (ii) maintain the Airport in a safe and well-serviced condition; and (iii) not impose anti-competitive restrictions. The Restrictions violate these grant assurances because they are unreasonable and anti-competitive in nature, unfairly discriminate against certain aircraft, and will so deprive the Airport of revenue as to make it difficult or impossible for the Airport to be properly maintained.

7. The Restrictions, without justification or regard for federal interests, severely limit flight operations by Stage 2, Stage 3, and Stage 4 aircraft. Under the Restrictions, nearly all helicopters and many jets will be barred from using the Airport for 13 hours of every day, year-round, including when passenger demand is highest. The Restrictions further bar those aircraft from accessing the Airport for more than one trip per week during the summer – effectively shutting down commercial charter service by helicopters during the busiest season. The Restrictions are excessive and unprecedented in their severity for a public-use, federally obligated airport. They will disrupt the national transportation system and interfere with federal policy for maintaining safe and efficient airports and navigable airspace.

8. Moreover, in contravention of federal regulations and policy, the Restrictions purport to create new local standards and requirements for aircraft classification and the determination of aviation noise impact.

9. Although the Town has attempted to justify its disregard of federal law by pointing to a 2005 settlement involving the FAA to which the Town was not even a party, that settlement does not – and could not – relieve the Town of its obligation to refrain from imposing restrictions that violate federal law.

10. The Restrictions stand as an obstacle to the accomplishment and execution of established federal law and policy. If allowed to take effect, the Restrictions will undermine Congress’s will, unduly burden interstate commerce, and irreparably harm the Plaintiffs.

11. Plaintiffs accordingly seek declaratory and injunctive relief confirming that the Town’s Restrictions are invalid and unenforceable under the Supremacy Clause and the Commerce Clause.

The Parties

12. Plaintiff Friends of the East Hampton Airport, Inc. (“FOEHA”) is a non-profit corporation organized and existing under the laws of the State of New York, and located in Suffolk County. FOEHA represents the interests of those who seek to keep East Hampton Airport open to all types, kinds, and classes of aircraft activities and flying services. FOEHA’s members include, among others, operators and users of Stage 2, Stage 3, and Stage 4 aircraft. FOEHA’s members will be irreparably harmed by the Restrictions.

13. Plaintiff Analar Corporation (“Analar”) is a New Jersey corporation located in Princeton, New Jersey. Analar is an air carrier that is federally authorized to provide helicopter charter services. Using Stage 2 helicopter aircraft, Analar flies passengers to and from points throughout the East Coast. Analar uses East Hampton Airport extensively to transport passengers intrastate and interstate. Analar will be irreparably harmed by the Restrictions.

14. Plaintiff Associated Aircraft Group, Inc. (“AAG”) is a Connecticut corporation located in Wappingers Falls, New York. AAG is an air carrier that is federally authorized to (i) provide helicopter charter services, and (ii) manage a fractional aircraft ownership program that involves selling partial ownership or leasehold interests of a helicopter to private persons who desire to operate their own helicopter using the safety support services provided by AAG as the program manager. As the fractional program manager, AAG serves the aircraft ownership and operating interests of the private aircraft to whom it has sold the helicopter shares, including customers that fly into and out of East Hampton Airport. AAG’s aircraft are Sikorsky helicopters presently classified by the FAA as Stage 2 helicopters; those helicopters also meet, but are not currently certified to, the FAA’s newly enacted standards for Stage 3 helicopters. AAG transports passengers to various locations throughout the East Coast, and uses East Hampton Airport extensively to transport passengers both intrastate and interstate. AAG will be irreparably harmed by the Restrictions.

15. Plaintiff Eleventh Street Aviation LLC (“Eleventh Street”) is a Delaware limited liability company located in Highland Heights, Ohio. Eleventh Street is federally authorized to operate aircraft for private use. Eleventh Street operates a Stage 4, state-of-the-art Dassault Falcon 7x jet airplane (“Falcon 7x”), which is based at East Hampton Airport. Eleventh Street also operates a Stage 2 helicopter. Eleventh Street conducts extensive intrastate, interstate, and international flight operations to and from East Hampton Airport. Eleventh Street will be irreparably harmed by the Restrictions.

16. Plaintiff Helicopter Association International, Inc. (“HAI”) is a Delaware corporation located in Alexandria, Virginia. HAI is a trade association that represents and serves the interests of helicopter operators around the world. Its members include one or more

providers of helicopter services at East Hampton Airport. HAI's members will be irreparably harmed by the Restrictions.

17. Plaintiff HeliFlite Shares LLC ("HeliFlite") is a Delaware limited liability company located in Newark, New Jersey. HeliFlite is an air carrier that is federally authorized to (i) to provide helicopter charter services, and (ii) manage a fractional aircraft ownership program. HeliFlite provides flight services to clients throughout the East Coast using Stage 2 helicopter aircraft. HeliFlite uses East Hampton Airport extensively to transport passengers intrastate and interstate. HeliFlite will be irreparably harmed by the Restrictions.

18. Plaintiff Liberty Helicopters, Inc. ("Liberty") is a New York corporation located in Kearny, New Jersey. Liberty is an air carrier that is federally authorized to provide helicopter charter services. It provides flight services to customers throughout the East Coast using Stage 2 helicopter aircraft. Liberty transports passengers from points within New York and New Jersey to East Hampton Airport. Liberty will be irreparably harmed by the Restrictions.

19. Plaintiff Sound Aircraft Services, Inc. ("Sound") is a New York corporation and fixed-base operator ("FBO") located at East Hampton Airport. Sound leases airport property from the Town and is the main provider of fuel and other on-site services to the aircraft and passengers that use East Hampton Airport. Sound will be irreparably harmed by the Restrictions.

20. Plaintiff National Business Aviation Association, Inc. ("NBAA") is a non-profit corporation organized and existing under the laws of the District of Columbia, and located in Washington, D.C. NBAA is the leading national organization for companies that rely on general aviation aircraft to help make their businesses more efficient, productive, and successful. Its members include operators of both fixed-wing aircraft and helicopters that fly to and from East Hampton Airport. NBAA's members will be irreparably harmed by the Restrictions.

21. Defendant Town of East Hampton is a town on the east end of Long Island consisting of the village East Hampton, the hamlets of Montauk, Amagansett, Wainscott, and Springs, and part of the incorporated village of Sag Harbor. The Town's legislative power is vested in a town board (the "Town Board") consisting of five members.

Jurisdiction and Venue

22. Plaintiffs' claims for declaratory and injunctive relief arise under the Supremacy and Commerce Clauses of the United States Constitution, the Declaratory Judgment Act, 28 U.S.C. § 2201, and this Court's inherent equitable powers. This Court has jurisdiction under 28 U.S.C. § 1331.

23. Venue is proper in this District under 28 U.S.C. § 1391(b) because Defendant Town of East Hampton is located in this District and the events giving rise to Plaintiffs' claims occurred in this District.

Pertinent Law

24. Congress has established the federal government's exclusive sovereignty over the airspace of the United States and preempted the field of aviation regulation in order to promote and protect a national air transportation system.

25. Among Congress's stated goals in enacting federal aviation laws are to promote and encourage a competitive, privately owned United States air transport industry, and to ensure that consumers in all regions of the United States, including those in small communities, have access to air service. *See* 49 U.S.C. § 40101.

26. The FAA is responsible for implementing, enforcing, and overseeing the federal aviation laws enacted by Congress. The FAA has promulgated extensive federal regulations

implementing Congress's directives and establishing rules, standards, and federal policies governing the operation of airports and aircraft.

27. Under federal law, local governments have no authority to regulate or control aircraft in flight, no authority to impose airport noise or access restriction using their police powers, and no authority to enact or enforce airport noise or access restrictions that violate or conflict with federal law and policy.

28. Congress has expressly preempted local governments from enacting or enforcing "a law, regulation, or other provision having the force and effect of law related to price, route, or service of an air carrier" 49 U.S.C. § 41713(b)(1). Congress has left no more than extremely limited room for a local government that is "carrying out its proprietary powers and rights" as an airport proprietor. *Id.* § 41713(b)(3).

29. A local proprietor may promulgate airport regulations only to the extent that such regulations (i) conform with federal law and (ii) are otherwise reasonable, non-arbitrary and non-discriminatory.

30. The FAA is vested with special expertise, knowledge and responsibility to determine whether airport restrictions are reasonable, non-arbitrary and non-discriminatory. The FAA has stated that to be reasonable, a regulation restricting airport uses for noise control purposes must, among other things, reflect a balanced approach to addressing the identified problem that fairly considers both local and federal interests.

31. Airport restrictions that violate federal law or inhibit the accomplishment of legitimate national goals are unreasonable *per se*.

32. Particularly relevant here are the federal laws governing noise control and the federal funding of airports.

A. Noise Control – The Airport Noise and Capacity Act

33. Congress has legislated repeatedly in the area of aviation noise control, culminating in Congress's enactment in 1990 of the Airport Noise and Capacity Act ("ANCA"), 49 U.S.C. § 47521, *et seq.* ANCA established a "national aviation noise policy" applicable to all U.S. airports. 49 U.S.C. § 47523.

34. Prior to ANCA's enactment in 1990, various federal statutes and regulations addressing noise control had already established, among other things: (i) uniform federal standards and procedures for the measurement of aircraft noise; (ii) a single system – using the Day-Night Average Sound Level ("DNL") noise metric – for determining the exposure of individuals to airport noise resulting from airport operations; (iii) federal policy guidelines regarding land use compatibility (including standards for evaluating when residential property near an airport may be considered adversely affected by flight operations); (iv) a program to make federal funding available for local noise abatement efforts; (v) a classification system for aircraft based on noise level – classifying aircraft into "Stages" 1, 2 and 3 (and later 4); and (vi) time-frames and procedures for phasing out certain aircraft based on noise level.²

35. The FAA has classified aircraft into "Stages" based on their ability to operate beneath various noise thresholds specified by the FAA. In general, Stage 1 aircraft emit the most noise; Stage 2 aircraft emit less noise than Stage 1; and Stage 3 aircraft emit less noise than Stage 2. In 2005, the FAA promulgated a Stage 4 classification for certain airplanes. Stage 4 is

² See Act of July 21, 1968, Pub. L. No. 90-411, § 1, 82 Stat. 395 (codified as amended at 49 U.S.C. § 44715); Noise Control Act of 1972, Pub. L. 92-574, § 7(b), 86 Stat. 1234 (codified as amended at 42 U.S.C. §§ 4901–4918, 49 U.S.C. § 44715); Aviation Safety and Noise Abatement Act of 1979, Pub. L. No. 96–193, 94 Stat. 50 (codified as amended at 49 U.S.C. §§ 47501–47510); FAA Modernization and Reform Act of 2012, Pub. L. No. 112-95, 126 Stat. 11 (codified in scattered sections of 49 U.S.C.); *see also* 14 C.F.R. Pts. 36, 150, 161; 14 C.F.R. §§ 91.801-.883.

currently the quietest classification. *See* 70 Fed. Reg. 38742, 38748 (July 5, 2005). This classification system serves Congress's goal of alleviating community noise concerns through the use of new technology and noise abatement strategies, rather than through airport access restrictions.

36. In 1990, Congress enacted ANCA, legislating a national aviation noise policy. ANCA applies to all airports in the United States. *See* 49 U.S.C. § 47524(b)-(c); 14 C.F.R. §§ 161.3, 161.5.

37. In enacting ANCA, Congress expressly found that "community noise concerns have led to uncoordinated and inconsistent restrictions on aviation that could impede the national air transportation system," and that, while "local interest in aviation noise management shall be considered in determining the national interest," "a noise policy must be carried out at the national level." 49 U.S.C. § 47521(2)-(4) (emphasis added).

38. ANCA expressly prohibits airport proprietors from imposing any noise or access restriction on Stage 2 or Stage 3 aircraft unless ANCA's requirements have been satisfied. At Congress's direction, the FAA has promulgated extensive regulations, published at 14 C.F.R. Part 161, establishing a consistent nationwide process for review of airport noise and access restrictions.

ANCA Requirements for Stage 2 Aircraft

39. ANCA prohibits any access or noise restriction from being imposed on Stage 2 aircraft unless, at least 180 days before the effective date of the proposed restriction, the airport proprietor prepares, publishes and makes available for public comment:

- (1) An analysis of the anticipated or actual costs and benefits of the proposed noise or access restriction;

- (2) A description of alternative restrictions; and
- (3) A description of alternative measures considered that do not involve aircraft restrictions, and a comparison of the costs and benefits of such alternative measures to costs and benefits of the proposed noise or access restriction.

14 C.F.R. § 161.205(1)-(3), implementing 49 U.S.C. § 47524(b) (emphasis added).

40. In addition, as part of these extensive analyses, the airport proprietor must prepare a noise study – commonly referred to as a “Part 161 noise study” – to determine, using federally prescribed methodologies and standards, noise levels at the airport and surrounding areas, and the exposure of individuals to noise resulting from airport operations. *See* 14 C.F.R.

§§ 161.205(b); 161.9(a) (Part 161 noise study “must be” prepared in accordance with FAA specifications, methods, criteria and computer models set forth under Appendix A of 14 C.F.R. Part 150).

41. An airport proprietor that fails to comply with these requirements cannot lawfully impose any noise or access restriction on Stage 2 aircraft.

ANCA Requirements for Stage 3 and Stage 4 Aircraft

42. ANCA’s requirements regarding Stage 3 aircraft are even more stringent, prohibiting any restriction on Stage 3 aircraft unless the airport proprietor has first obtained either (i) FAA approval or (ii) the unanimous consent of all aircraft operators affected by the restriction. 49 U.S.C. § 47524(c)(1); 14 C.F.R. §§ 161.101, 161.301(c).

43. Moreover, reflecting Congress’s deep discouragement of any noise or access restriction on Stage 3 aircraft, ANCA prohibits the FAA from approving any application for a Stage 3 restriction unless “substantial evidence” demonstrates that the restriction: (i) is reasonable, non-arbitrary and nondiscriminatory; (ii) does not create an unreasonable burden on

interstate or foreign commerce; (iii) is consistent with maintaining the safe and efficient use of navigable airspace; (iv) does not conflict with a law or regulation of the United States; (v) has received adequate opportunity for public comment; and (vi) does not create an unreasonable burden on the national aviation system. 49 U.S.C. § 47524(c)(2). To comply with these statutory requirements, the FAA has promulgated numerous stringent regulations requiring airport proprietors to prepare extensive and detailed analyses, including a Part 161 noise study, addressing these statutory requirements. *See* 14 C.F.R. §§ 161.305, 161.9(a).

44. Stage 4 aircraft – the quietest designation for jet aircraft flying today – by definition operate beneath the noise thresholds specified for Stage 3 aircraft and thus are protected by the same ANCA requirements that apply to Stage 3 aircraft.

45. An airport proprietor that fails to comply with ANCA’s requirements cannot lawfully impose any noise or access restriction on Stage 3 or Stage 4 aircraft.

B. Federal Funding – The Airport and Airway Improvement Act of 1982

46. Since at least the 1930s, the federal government has encouraged the development of a national system of public-use airports through federal grants.

47. The Airport and Airway Improvement Act of 1982 (the “AAIA”), as amended, 49 U.S.C. § 47101, *et seq.*, established the Airport Improvement Program (“AIP”), a federal grant program that encourages the nationwide development and improvement of airports through federal funding.

48. As a condition of the receipt of AIP funding, airport proprietors are required to provide statutorily mandated, written assurances to the federal government – known as grant assurances – which become a binding obligation between the federal government and the airport proprietor, both statutorily and by contractual agreement. *See* 49 U.S.C. § 47108(a). Congress

imposed these grant assurance requirements to insure the maintenance of conditions essential to an efficient national air transport system, including public access, safety and competition. A grant agreement is not an ordinary contract, but part of a procedure mandated by Congress to assure federal funds are disbursed in accordance with Congress's will.

49. The FAA has implemented the AAIA's grant assurance requirements by, among other things, maintaining and publishing an official list of the specific assurances with which recipients of AIP grant funding must comply. A copy of the FAA's list of assurances, in its current form, is attached hereto as Exhibit A.

50. One of those mandated grant assurances, Grant Assurance 22.a, assures public access on reasonable terms, specifically providing that:

It [the airport proprietor] will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

Ex. A at 10, implementing 49 U.S.C. § 47107(a)(1).

51. Another mandated grant assurance, Grant Assurance 19.a, assures that the federally funded airport will be properly maintained, which requires adequate funding for an effective maintenance program. Grant Assurance 19.a specifically provides that:

The airport and all facilities which are necessary to serve the aeronautical users of the airport, . . . shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation.

Ex. A at 9-10, implementing 49 U.S.C. § 47107(a)(7).

52. Another mandated grant assurance, Grant Assurance 23, assures that the federally funded airport will not impose restrictions that are anti-competitive in nature, by effectively

granting exclusive rights to use of the airport to some aircraft operators at the expense of others.

Grant Assurance 23 specifically provides that:

It [the airport proprietor] will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public.

Ex. A at 12, implementing 49 U.S.C. § 47107(a)(4).

53. The FAA has interpreted the AAIA as mandating that Grant Assurances 22.a and 19.a be complied with for the useful life of the federally funded improvements, which the FAA has interpreted to be at least 20 years. Grant Assurance 23 never expires. *See* FAA Airport Compliance Manual, FAA Order 5190.6B ¶¶ 4.3-4.4; Exhibit A at 1; *see also, e.g.*, 53 Fed. Reg. 3104-03, 1988 WL 276277 (Feb. 3, 1988) (publicizing grant assurance duration terms).

54. The FAA is statutorily mandated to ensure that airport proprietors comply with their grant assurances, and to pursue enforcement action when it determines that violations of the grant assurances have occurred. *See* 49 U.S.C. §§ 46101(a), 47107(g).

Pertinent Facts

A. East Hampton Airport

55. East Hampton Airport was constructed in 1936 with federal funds from the Works Progress Administration. The Airport opened in 1938 as one of the great public works projects of the New Deal era.

56. Upon information and belief, many or all of the residential homes built in the immediate environs of East Hampton Airport post-date the Airport's construction. Upon information and belief, the homes within a one-mile radius of the Airport were purchased subject to easements, restrictions, or covenants in which the homeowners were notified about possible airport noise and waived claims based on airport-related noise. The Code of the Town of East

Hampton requires that subdivisions located within a one-mile radius of the Airport grant airport noise easements to the Town. *See* Town of East Hampton Code § 220-1.06(E).

57. From its inception, and at all times during the last 79 years, East Hampton Airport has been open to the public and has served aviators and aircraft operators of all sorts, including commercial and recreational. Chartered flight services (by jet, helicopter, and seaplane) have been continuously provided at the Airport for decades. At various points in the Airport's history, commercial airlines have provided scheduled airline services to and from the Airport.

58. East Hampton Airport is important to people and businesses on Long Island and elsewhere. It is an engine for regional and local commerce. The Airport connects the East End of Long Island to New York City and destinations up and down the East Coast, around the United States, and internationally. The Airport's operation has enabled the East End of Long Island to be an accessible, highly desirable destination – particularly during the summer season. Users of the Airport include many East Hampton and East End business owners and homeowners for whom the Airport was an important feature in deciding where to locate their business or purchase their home. The Airport is also a base for flight instruction and training, and serves medical, law enforcement, and search and rescue operations.

59. The FAA has identified East Hampton Airport as “important to national air transportation” and included East Hampton Airport in its 2015-2019 National Plan of Integrated Airport Systems (“NPIAS”), a report the FAA provides to Congress. *See* FAA Report to Congress: National Plan of Integrated Airport Systems (NPIAS) 2015-2019, available at http://www.faa.gov/airports/planning_capacity/npias/reports/. Of the approximately 19,000 airports and other landing facilities nationwide, only approximately 3,330 are included in the NPIAS report. East Hampton Airport is one of them.

60. The FAA has furthermore classified East Hampton Airport as a “regional” general aviation airport, recognizing that the Airport supports interstate commerce. *See* FAA, *General Aviation Airports: A National Asset*, 12 (May 2012).³ The FAA classifies general aviation airports as being either National (serving national and global markets), Regional (serving regional and national markets), Local (serving local and regional markets), or Basic (low levels of activity).

B. The Town’s Grant Assurances to the Federal Government

61. From 1983 to 2001, the Town received numerous AIP grants for the development of East Hampton Airport, including grants for the construction and improvement of its terminal, runway, taxiways, lighting, and other major capital improvements.

62. Most recently, the Town received AIP funding in 2001. Specifically, on September 25, 2001, the Town accepted a federal grant in the amount of \$1,410,000 for rehabilitating and repaving the airport terminal apron, the main parking area for aircraft. In accepting that grant, the Town provided the AAIA-mandated grant assurances. Grant Assurances 19.a, 22.a and 23 have not materially changed from when the Town signed its grant assurance agreement in 2001.

63. The Town is obligated to comply with Grant Assurances 22.a and 19.a for at least 20 years from the date of its acceptance of federal funds – *i.e.*, at least until September 25, 2021. The Town is obligated to comply with Grant Assurance 23 in perpetuity.

³ This report is available at http://www.faa.gov/airports/planning_capacity/ga_study/media/2012AssetReport.pdf; *see also id.* Appendix B, *available at* http://www.faa.gov/airports/planning_capacity/ga_study/media/2012AssetReportAppB.pdf.

C. The Restrictions Adopted on April 16, 2015

64. The Town adopted the Restrictions on April 16, 2015, for the stated basis of reducing noise.

65. The Town publicly noticed the proposed Restrictions on February 10, 2015, just sixty-six days before adopting them. The Restrictions are expected to take effect imminently, upon public filing by the New York Secretary of State.

66. The Restrictions consist of three local laws (attached hereto as Exhibits B–D, including:

- (1) a mandatory curfew, prohibiting use of East Hampton Airport between 11:00 p.m. and 7:00 a.m. (the “Mandatory Curfew”) (*see* Exhibit B);
- (2) an extended curfew for “Noisy Aircraft” banning flight from 8:00 p.m. to 9:00 a.m. (“the “Extended Curfew”) (*see* Exhibit C); and
- (3) a one-trip limit prohibiting “Noisy Aircraft” from flying more than one trip per week during the “season”⁴ (the “One-Trip Limit”) (*see* Exhibit D).

67. The Restrictions define a “Noisy Aircraft” as “any airplane or rotorcraft for which there is a published Effective Perceived Noise in Decibels (EPNdB) approach (AP) level of 91.0 or greater.” Ex. C § 75-38(A)(4)(a). The Town has published a list of the aircraft that are deemed “Noisy Aircraft” under this definition. The Town’s list of “Noisy Aircraft” includes nearly all helicopters and many jet aircraft that use East Hampton Airport, including Stage 2 helicopters and Stage 3 and Stage 4 jets.

⁴ The One-Trip Limit, as adopted, does not define “season,” although additional legislation was noticed by the Town on April 15, 2015, to define “season” as the “months of May, June, July, August and September.”

68. Violations of the Restrictions are deemed criminal offenses punishable by a sliding scale of mandatory financial fines for the first three violations (up to \$10,000 per violation) and mandatory prohibition from the Airport for a period of up to two years for a fourth violation. *See id.* § 75-39(B). Punishment can also include “discretionary” additional fines of an amount not less than the Town’s “actual costs incurred,” *id.* § 75-39(D), and a mandatory fine of “not less than \$2000” for any person or entity found to have violated the Restrictions within five years of a previous violation, *id.* § 75-39(D).

69. The Restrictions further provide that the Town can seek court injunctions, restraining orders, and financial fines against any person or entity holding an ownership interest in the violating aircraft. *See id.* § 75-39(E).

70. The Town adopted the Restrictions without seeking or obtaining FAA approval.

71. On April 7, 2015, one of the Town Board’s members issued a press release stating that the Town estimates that the Restrictions will prohibit 75% of all helicopter operations and 23% of all aircraft operations at the Airport.

72. In February 2015, prior to adopting the Restrictions, the Town stated publicly that it would have the Town Board’s Budget & Finance Advisory Committee (“BFAC”) analyze the proposed legislation to ensure that, if adopted, the Airport could remain financially sustainable and be able to meet its capital needs. The BFAC never issued such an analysis. Instead, the BFAC reported to the Town in March 2015 that it was unable to reach a consensus on whether and how severely the Restrictions would affect the financial sustainability of the Airport. The Town nonetheless adopted the Restrictions.

D. The Restrictions Violate and Conflict with Federal Law and Policy

73. The Restrictions violate and conflict with federal statutes, regulations and policy in myriad ways.

74. The Town violated ANCA and its implementing regulations by imposing noise and access restrictions on Stage 2 aircraft without complying with ANCA's statutory requirements. Among other things, the Town: (i) failed to provide 180 days' notice and opportunity to comment before the effective date of the Restrictions; (ii) failed to publish an analysis of the anticipated or actual costs and benefits of the proposed Restrictions before adopting them; (iii) failed to conduct a Part 161 noise study; (iv) failed to publish any meaningful description of alternative restrictions; and (v) failed to publish a comparison of the costs and benefits of alternative measures to the costs and benefits of the proposed Restrictions.

75. Likewise, the Town violated ANCA and federal regulations by imposing restrictions on Stage 3 and Stage 4 aircraft without complying with ANCA's statutory requirements. Among other things, the Town: (i) failed to seek or obtain the FAA's approval of the Restrictions; (ii) failed to seek or obtain the approval of Stage 3 and Stage 4 aircraft operators affected by the Restrictions; (iii) failed to prepare a Part 161 noise study; and (iv) failed to prepare all of the other extensive analyses required by law before any restriction can be imposed on Stage 3 or Stage 4 aircraft.

76. Not only did the Town fail to prepare a Part 161 noise study, as ANCA requires, but the Town also unreasonably based the Restrictions on noise studies prepared in contravention of federal regulations and policies for the determination of aviation noise impact on areas surrounding an airport. Federal law expressly prescribes a process using a single noise metric – yearly DNL – that must be used for determining the exposure of individuals to airport noise

resulting from airport operations. *See* 14 C.F.R. Pt. 150, A150.3. Under that system, exposure of residential areas to cumulative noise levels under DNL 65 dB is generally acceptable. In East Hampton's case, past studies commissioned by the Town in accordance with these federally prescribed methods have identified no area outside the Airport boundaries with an exposure level of DNL 65 dB or higher. In other words, federally prescribed methods for noise impact measurement have not yielded data to support the imposition of the Restrictions. A technical memorandum prepared by one of the Town's noise consultants in 2014 likewise concluded: "There is no area off the Airport subject to DNL 65 noise levels or above."

77. Because the Town's past studies (conducted in accordance with federal law) did not support the conclusion that there was an airport noise problem in East Hampton, the Town Board, in enacting the Restrictions, ignored those past studies and relied instead on a database of self-selected noise complaints solicited from and called into a telephone hotline by certain homeowners throughout the East End of Long Island. Those so-called "noise studies" are deeply flawed, unscientific, unreliable and inadequate to justify the Restrictions. Among other things:

(a) The noise complaint data used by the Town came from the entire East End of Long Island – a large geographic area including households as far as 23 miles away from East Hampton Airport. The complaint data were not tailored or narrowed in any manner to identify complaints relating specifically to noise generated by landings or takeoffs from East Hampton Airport. The Town used noise complaint data regardless of proximity of the complaining households to East Hampton Airport.

(b) All of the 23,954 noise complaints called in to the telephone hotline were generated by 633 households – which represent approximately 1.2% of the approximately 52,811 occupied housing units within the broad geographic area covered by the

complaint database. The remaining 99% of households in the area did not generate a single complaint.

(c) Approximately 50% of the 23,954 complaints came from only 10 households, with one household submitting approximately 2,800 complaints in a 12-month period (averaging approximately 7.5 complaints every day for one year).

(d) The complaint data were not verified to ensure reliability.

(e) The noise complaint data included – and the Town made no attempt to eliminate – noise complaints relating to aircraft flying to or from airports other than East Hampton Airport. The complaint data did not distinguish whether particular noise complaints related to flights to or from East Hampton Airport, or to or from different airports.

(f) The noise complaint data included – and the Town made no effort to eliminate – complaining households that are subject to noise easements, covenants and restrictions and have thus waived their right to complain about airport-related noise.

(g) The noise complaint data included – and the Town made no effort to eliminate – complaints from households outside of East Hampton and the immediate environs of the Airport, who are complaining not about aircraft noise from arrivals or departures from East Hampton Airport, but about fly-over noise from aircraft in flight, which are complying with federally prescribed flight routes.

78. The One-Trip Limit and Extended Curfew further conflict with federal law and policy because those Restrictions are based on the Town-devised “Noisy Aircraft” standard, which is unreasonable, discriminatory and arbitrary for many reasons, including but not limited to the following:

(a) The “Noisy Aircraft” standard creates a local aircraft classification system that interferes with the existing federal scheme for aircraft classification. Federal regulations classify aircraft into “Stages” 1 through 4 based upon noise level and provides for phasing out noisier fleets over time. *See, e.g.*, 49 U.S.C. §§ 47521(5), 47528. This regulatory scheme serves Congress’s goal of alleviating community noise concerns through the use of new aircraft technology and through noise abatement strategies that do not restrict airport access. That the “Noisy Aircraft” standard conflicts with the federal scheme is best evidenced by the fact that even some Stage 4 aircraft – the quietest jets in the sky under the FAA’s classification system – are deemed “Noisy Aircraft” under the Restrictions. Plaintiff Eleventh Street operates a Stage 4 jet, the Dassault Falcon 7x, that is among those aircraft deemed “Noisy Aircraft” and hence subjected to the Extended Curfew and One-Trip Limit.

(b) The definition of “Noisy Aircraft” (*i.e.*, any aircraft for which there is a published EPNdB approach level of 91.0 or greater) is based on a type of data – FAA-certified EPNdB approach levels – that is not a valid indicator of noise that actually occurs in the normal operation of an aircraft, or of the ground-level impact of aircraft noise on a residential community. The FAA uses EPNdB data for a discrete and different purpose: to certify the maximum noise output of aircraft, regardless of how the aircraft is flown under normal approach and departure scenarios, under a different set of federal regulations governing manufacturing requirements. The Town has used EPNdB data to deem many aircraft “Noisy Aircraft,” without making any effort to determine the noise impact of those aircraft in actual operation.

(c) Many of the aircraft operators at East Hampton Airport, including Plaintiffs, follow the Airport's voluntary noise abatement procedures for landing and takeoff, which significantly reduce actual noise impact. It is thus further unreasonable and arbitrary for the Restrictions to use 91.0 EPNdB (AP) as the threshold for designating "Noisy Aircraft" while no effort has been made to determine actual noise impact.

(d) The Restrictions' use of 91.0 EPNdB (AP) to limit airport access is discriminatory because not all aircraft have published EPNdB certification levels. Under the Restrictions, aircraft that do not have a published EPNdB certification level (such as sea planes) are not considered to be "Noisy Aircraft," regardless of their actual noise level. Because helicopters and jet aircraft do have published EPNdB certification levels, they are targeted by the Restrictions. Indeed, the Town appears to have selected 91.0 EPNdB (AP) as the threshold for "Noisy Aircraft" for the principal and discriminatory purpose of barring as many helicopter operations as possible from the Airport.

79. The Restrictions are further unreasonable because they interfere with federal law and policies controlling the safe and efficient use of navigable airspace. The Restrictions will disrupt the national system of civil aviation, and cause operational difficulties at other local and regional airports, including congestion, and potentially dangerous situations.

80. All of the Restrictions pose potential operational safety risks and concerns at odds with federal policy. As the FAA recently explained, mandatory curfews implicate safety concerns because they potentially "reach[] into the cockpits of individual aircraft and interact[] with safety parameters affecting critical . . . decisions" by pilots; in particular, restrictions with the prospect of an injunction or financial penalties impose factors "that could influence operators and pilots to reduce safety margins in making operational decisions." FAA Determination

Pursuant to 14 Code of Federal Regulations Part 161 of LAWA Application Dated January 13, 2013 (supplemented May 14, 2014) (FAA Nov. 7, 2014), at 41-42, *available at* http://www.faa.gov/airports/environmental/airport_noise/part_161/media/Final-Determination-LAX-Part%20161-Application-20141107.pdf. In that case, the FAA rejected a proposed mandatory curfew to restrict certain flights from 12 midnight to 6:30 a.m. as conflicting with federal regulations and policy. The FAA also has similarly rejected the imposition of mandatory curfews as unreasonable on multiple other occasions, and has approved mandatory curfews only for a few airports in limited and special circumstances, after extensive analysis of safety and national concerns.

81. The Restrictions are further unreasonable because they do not reflect a balanced approach for addressing airport noise concerns. The Town failed to take federal interests into account and gave inadequate consideration to non-restrictive and less restrictive means to address any noise problem. There is no evidence that the Restrictions are the only way to address the Town's noise concerns effectively.

82. The Restrictions are further unreasonable because they interfere with federal control of in-flight aircraft, flight paths and routes. Many of the noise complaints upon which the Restrictions are based were lodged by East End residents living far from East Hampton Airport, well outside earshot of landings and takeoffs at the Airport, who were complaining about fly-over noise by in-flight aircraft following federally prescribed flight paths. For the Town to impose Restrictions based on such complaints interferes with federal control of national airspace.

83. The Restrictions are further unreasonable because they create an unwarranted burden on interstate commerce. If each locality in the nation was allowed to set different

requirements and standards for aircraft operating within its limits, there would be substantial negative effect on commerce. The need for nationwide uniformity is clear.

84. The Restrictions are further unreasonable because they violate the Town's grant assurances under AAIA. In adopting the Restrictions, the Town violated Grant Assurance 22.a, under which it agreed – at least until September 2021 – to make the airport publicly available on reasonable terms and without unjust discrimination to all types of aircraft and aeronautical activities. Because the Restrictions are unreasonable and discriminatory, including for the reasons stated above, they violate Grant Assurance 22.a.

85. The Restrictions also violate Grant Assurance 19.a., which obligates the Town – at least until September 2021 – to maintain the Airport in a safe and serviceable condition at all times. All Airport maintenance and capital improvements are currently self-funded by Airport revenues. Even before the imposition of these Restrictions, the Town has in recent years failed to maintain the Airport properly, causing cancellation of the instrument landing approach systems at night because of uncut trees, an aircraft to strike a deer upon landing due to inadequate fencing to keep wildlife off the runway, inadvertent intrusions by cars due to failure to maintain working gates, closure of a runway for failure to maintain the pavement, and deterioration of the two remaining runways and parking ramp resulting from lack of pavement maintenance, among other problems. Now, the Restrictions will greatly reduce the revenue that East Hampton Airport generates from landing fees and fuel flowage fees, placing the Airport's maintenance and economic viability further at risk. The greatest share of Airport revenue occurs during the summer season, when operations will be most affected under the Restrictions. Further, the greatest share of revenue comes from charter jet and helicopter operators – whose operations will be severely curtailed under the Restrictions. Without the revenue from the

summer season and from jet and helicopter charter operators, the Town may not have the funds to complete overdue Airport maintenance or capital improvements, leading to further degradation of the Airport infrastructure. Nevertheless, the Town adopted the Restrictions, knowing the Restrictions will reduce Airport revenue, and despite the fact that the BFAC was unable to reach consensus on how the Restrictions will affect the Airport's sustainability. By proceeding in this manner, without BFAC analysis, and without the economic cost-benefit analysis mandated by ANCA, the Town has placed the safety and viability of the Airport in jeopardy, in violation of Grant Assurance 19.a and ANCA.

86. The One-Trip Limit and Extended Curfew also violate Grant Assurance 23. Although drafted in purportedly neutral terms, the Restrictions actually target helicopter charter operators, rendering such operators non-competitive and effectively granting exclusive rights to other types of charter aircraft that are not affected by the One-Trip Limit and Extended Curfew.

E. The Town's Attempt to Avoid Compliance with Federal Law by Relying on a 2005 Settlement Agreement to which the Town was Not a Party

87. The Town appears to believe that it is entitled to disregard federal law because of a civil settlement agreement entered by the FAA in 2005, to which the Town was not even a party. The Town is wrong.

88. After the Town received its most recent AIP grant in 2001, an unincorporated association of individuals living near East Hampton Airport, who called themselves the "Committee to Stop Airport Expansion" (the "Committee"), initiated various legal actions in an attempt to stop the expansion of East Hampton Airport.

89. One of those actions, *Committee to Stop Airport Expansion v. Department of Transportation*, Case No. 03 Civ. 2634 (E.D.N.Y. 2003) (the "Committee Action"), was filed in

this District. The Committee Action challenged the legality of the FAA's approval of East Hampton's 2001 airport layout plan. The named plaintiffs in the Committee Action were the Committee and three Committee members; the named defendants included the FAA and its Administrator, and the U.S. Department of Transportation and its Secretary.

90. Neither the Town nor East Hampton Airport was party to the Committee Action.

91. In 2005, the parties in the Committee Action executed a settlement agreement ("the 2005 Settlement Agreement") that resolved the Committee Action and certain other litigation and proceedings the Committee had commenced in other fora. Paragraph 7 of the 2005 Settlement Agreement stated that Grant Assurance 22.a and three other grant assurances (Grant Assurances 22.h, 29.a and 29.b) "will not be enforced [by the FAA] beyond December 31, 2014." The 2005 Settlement Agreement further provided that, aside from the four referenced Grant Assurances, "[a]ll other grant assurances with respect to any grant awarded to East Hampton Airport . . . shall be enforced in full." *Id.* The Agreement further provided that if the Town was awarded additional AIP grant funding after the Agreement's effective date (April 29, 2005), then all grant assurances would be enforced in connection with that new funding. *Id.*

92. The Town was not a party to the 2005 Settlement Agreement and did not sign it. No representative of East Hampton Airport, authorized or otherwise, was a party to the Committee Action or the 2005 Settlement Agreement.

93. The 2005 Settlement Agreement does not mention ANCA and contains no provisions relating to ANCA.

94. The District Court did not retain jurisdiction over the Committee Action for the purpose of enforcing the 2005 Settlement Agreement, and the Committee Action was closed by the Court in 2005.

95. As alleged in a separate action pending in this Court, the FAA exceeded its statutory authority, and violated its statutory obligations, when it agreed in the 2005 Settlement Agreement not to enforce certain grant assurances as to East Hampton Airport after December 31, 2014. *See Friends of the East Hampton Airport, Inc., et al. v. Federal Aviation Administration, et al.*, 15 Civ. 441 (DRH) (the “FAA Action”), filed on January 29, 2015.⁵ Indeed, the FAA has unequivocally stated in proceedings relating to other airports that, because of its statutorily imposed duties, the FAA lacks authority to settle pending litigation by waiving either the FAA’s prospective enforcement jurisdiction or an airport proprietor’s grant assurances. *See, e.g., Platinum Aviation and Platinum Jet Center BMI v. Bloomington-Normal Airport Authority, Illinois*, FAA 16-06-09, 2007 WL 4854321, at *4 (Nov. 28, 2007); *In the Matter of Compliance with Federal Obligations by the City of Santa Monica, California*, FAA 16-02-08, 2008 WL 6895776, at *26 (May 27, 2008) (Director’s Determination).

96. The FAA Action seeks declaratory and injunctive relief confirming that the FAA is statutorily required to ensure that the Town complies with all of its grant assurances until at least September 25, 2021, and that the FAA cannot be constrained by the 2005 Settlement Agreement from exercising its enforcement powers and Congressionally mandated responsibilities with respect to East Hampton Airport.

97. The 2005 Settlement Agreement did not, and could not, release the Town or East Hampton Airport from their federal obligations under AAI, ANCA, and other federal law. The Town and East Hampton Airport were neither parties nor signatories to the 2005 Settlement Agreement. Nor did the 2005 Settlement Agreement contain any provision releasing the Town

⁵ In filing this Complaint, Plaintiffs designated the FAA Action as a related case. Many of the plaintiffs in the FAA Action are also Plaintiffs in this action.

or East Hampton Airport from its federal obligations under the AAIA, ANCA or any other federal law or regulation.

98. The Town's duty to comply with its obligations under federal law exists independent of the FAA's obligation to enforce the law.

99. The Town cannot rely on the 2005 Settlement Agreement as a basis for imposing Restrictions that violate federal law and policy.

F. The Restrictions Will Irreparably Harm Plaintiffs and Other Airport Users

100. The Restrictions will cause serious and irreparable harm to the Plaintiff helicopter operators – Analar, AAG, HeliFlite, and Liberty. All of these Plaintiffs provide charter helicopter services to and from East Hampton Airport, and those flights account for a significant portion of their annual operations and revenues. Moreover, the vast majority of those flights occur from May through September. Because their aircraft are now deemed “Noisy Aircraft” under the Restrictions, their access to East Hampton will be severely restricted, devastating their charter businesses. The One-Trip Limit effectively closes East Hampton Airport to charter helicopter operators from May through September – the busiest season of the year. The Extended and Mandatory Curfews will prohibit the Plaintiff helicopter operators from using the Airport for 13 hours of every day, year-round. The Town has itself forecasted that the Restrictions will prohibit at least 75% of total helicopter operations at the Airport; the impact on charter helicopter operators will be even higher. The Restrictions will thus impose serious financial harm on the Plaintiff helicopter operators' businesses and operations and cause them to take such measures as reducing the size of their fleet, laying off pilots and employees, and reorganizing or possibly terminating their business operations.

101. The Restrictions will cause serious and irreparable harm to Plaintiff Eleventh Street, which conducts extensive private flight operations to and from East Hampton Airport using its state-of-the-art Stage 4 jet aircraft and helicopter. The Restrictions will severely disrupt Eleventh Street's operations out of East Hampton Airport, where the Falcon 7x is based. As an FAA-designated Stage 4 aircraft, the Falcon 7x is one of the quietest jet aircraft in operation. It is often referred to by pilots as a "whisper jet." Nevertheless, under the Restrictions' aircraft classification system, the Falcon 7x is a "Noisy Aircraft," and will thus be prohibited from takeoffs or landings between 8:00 p.m. and 9:00 a.m., year-round, and from making more than one trip per week from May through September.

102. The Restrictions will cause serious and irreparable harm to Plaintiff Sound. Sound is the fixed-base operator at East Hampton Airport that provides fuel and other services to landing aircraft and passengers. Sound's primary source of revenue is the sale of fuel to jets and helicopters in the summer months. The dramatic reduction in flight operations to and from the Airport, and severe restrictions on Stage 2, Stage 3, and Stage 4 aircraft, will have devastating financial impacts on Sound's business.

103. The Restrictions will cause serious and irreparable harm to the many people and businesses that depend upon the Airport's accessibility for their livelihood and enjoyment, including pilots, passengers and local businesses. The Restrictions will interfere with people's ability to work, and to get to work and home.

FIRST CLAIM FOR RELIEF

THE RESTRICTIONS ARE PREEMPTED BY FEDERAL LAW AND VIOLATE THE SUPREMACY CLAUSE OF THE U.S. CONSTITUTION

104. Plaintiffs repeat and reallege the allegations of Paragraphs 1 through 102 of this Complaint.

105. The Supremacy Clause of the U.S. Constitution provides that the “Constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.” U.S. Const., art. VI.

106. Under the Supremacy Clause, local laws that interfere with or are contrary to federal law are invalid and unenforceable.

107. The Restrictions are contrary to and interfere with federal law, including but not limited to ANCA, the AAIA and their implementing regulations.

108. The Restrictions are contrary to and interfere with federal policy and national aviation goals.

109. The Restrictions relate to the “route[s]” and “service[s]” of the Plaintiffs are thus expressly preempted by 49 U.S.C. § 41713(b)(1). The Restrictions are not within the extremely limited proprietor’s exception, *id.* § 41713(b)(3), because the Restrictions are unreasonable, arbitrary, and discriminatory.

110. All of the Restrictions are *per se* unreasonable and unlawful because the Town adopted them in violation of the Town’s federal obligations under ANCA.

111. All of the Restrictions are *per se* unreasonable and unlawful because the Town adopted them in violation of the Town’s federal obligations under the AAIA.

112. The Town cannot invoke the proprietor’s exception because it purposefully acted in violation of federal law. The Restrictions in any event exceeded a local proprietor’s limited rights.

113. All of the Restrictions are unreasonable, discriminatory and/or arbitrary.

114. The Restrictions are preempted by federal law.

115. The Restrictions violate the Supremacy Clause of the U.S. Constitution.

SECOND CLAIM FOR RELIEF

THE RESTRICTIONS VIOLATE THE COMMERCE CLAUSE OF THE U.S. CONSTITUTION

116. Plaintiffs repeat and reallege the allegations of Paragraphs 1 through 114 of this Complaint.

117. The Commerce Clause of the U.S. Constitution provides that “Congress shall have Power . . . [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” U.S. Const., art. I, § 8, cl. 3. The Commerce Clause limits the power of local governments to erect barriers against interstate trade.

118. East Hampton is a travel destination for people all over the United States.

119. As a regional general aviation airport, East Hampton Airport serves as a gateway to the East End of Long Island, bringing travelers from around the nation.

120. Plaintiffs include companies engaged in the interstate transportation of passengers between East Hampton Airport and points inside and outside of New York State.

121. The Restrictions render air travel between East Hampton and points outside New York unavailable, unfeasible and impractical.

122. The Restrictions will cause neighboring airports in the East End of Long Island to become congested and exceed their capacity during the busiest season of the year, further hampering access to East Hampton by interstate air travel.

123. The Restrictions, in their practical operation and/or in their purpose, discriminate against and exclude many types of interstate air travel to and from East Hampton, including interstate air travel that Plaintiffs have operated and seek to continue to operate.

124. The Restrictions, in their practical operation and/or purpose, block the flow of interstate commerce.

125. The Restrictions in their practical operation and/or purpose, interfere with the freedom of travel and movement of persons between states.

126. The Restrictions violate the Commerce Clause of the U.S. Constitution.

PRAYER FOR RELIEF

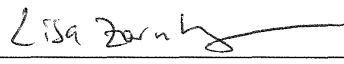
Plaintiffs respectfully request that this Court grant the following relief:

- (a) A declaration that:
 - 1. The Town's Restrictions are preempted by federal law and are therefore invalid and unenforceable; and
 - 2. The Town's Restrictions violate the Commerce Clause of the U.S. Constitution and are therefore invalid and unenforceable;
- (b) An injunction directing Defendants and their agents to act in accordance with the above declarations of law; and
- (c) Such other and further relief as the Court may deem appropriate.

Dated: New York, New York
April 28, 2015

LANKLER SIFFERT & WOHL LLP

By:



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EXHIBIT A



**FAA
Airports**

ASSURANCES

Airport Sponsors

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

B. Duration and Applicability.

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. Airport Planning Undertaken by a Sponsor.

Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 25, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Airport Revenue so long as the airport is used as an airport.

C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

1. General Federal Requirements.

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

Federal Legislation

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.¹
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act – 5 U.S.C. 1501, et seq.²
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.^{1 2}
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).¹
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.¹
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.¹
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.¹
- s. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.¹
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.¹
- u. Copeland Anti-kickback Act - 18 U.S.C. 874.1
- v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.¹
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- x. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.²
- y. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

Executive Orders

- a. Executive Order 11246 - Equal Employment Opportunity¹
- b. Executive Order 11990 - Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 - Intergovernmental Review of Federal Programs
- e. Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction¹
- f. Executive Order 12898 - Environmental Justice

Federal Regulations

- a. 2 CFR Part 180 - OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].^{4, 5, 6}
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment
- d. 14 CFR Part 13 - Investigative and Enforcement Procedures 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- e. 14 CFR Part 150 - Airport noise compatibility planning.
- f. 28 CFR Part 35- Discrimination on the Basis of Disability in State and Local Government Services.
- g. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- h. 29 CFR Part 1 - Procedures for predetermination of wage rates.¹
- i. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.¹
- j. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).¹
- k. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).¹
- l. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.³
- m. 49 CFR Part 20 - New restrictions on lobbying.
- n. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.

- p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.^{1 2}
- q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- r. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.¹
- s. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- t. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- u. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)
- v. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- w. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.

Specific Assurances

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

Footnotes to Assurance C.1.

¹ These laws do not apply to airport planning sponsors.

² These laws do not apply to private sponsors.

³ 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

⁴ On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.

⁵ Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.

⁶ Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

2. Responsibility and Authority of the Sponsor.

a. Public Agency Sponsor:

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Sponsor Fund Availability.

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

4. Good Title.

a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. Preserving Rights and Powers.

a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

- b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

6. Consistency with Local Plans.

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

7. Consideration of Local Interest.

It has given fair consideration to the interest of communities in or near where the project may be located.

8. Consultation with Users.

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. Public Hearings.

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

10. Metropolitan Planning Organization.

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

11. Pavement Preventive Maintenance.

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. Terminal Development Prerequisites.

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and

has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. Accounting System, Audit, and Record Keeping Requirements.

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. Minimum Wage Rates.

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. Veteran's Preference.

It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. Conformity to Plans and Specifications.

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans,

specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.

17. Construction Inspection and Approval.

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. Planning Projects.

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. Operation and Maintenance.

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal,

state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-

- 1) Operating the airport's aeronautical facilities whenever required;
 - 2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
 - 3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation.

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. Compatible Land Use.

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. Economic Nondiscrimination.

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or

to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

- 1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
 - 2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
 - d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
 - e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
 - f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
 - g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
 - h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
 - i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. Exclusive Rights.

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. Fee and Rental Structure.

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. Airport Revenues.

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
 - 1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or

operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

- 2) If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
 - 3) Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
 - c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. Reports and Inspections.

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and

- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 - 1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 - 2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. Use by Government Aircraft.

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that –

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. Land for Federal Facilities.

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. Airport Layout Plan.

- a. It will keep up to date at all times an airport layout plan of the airport showing
 - 1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
 - 2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and

roads), including all proposed extensions and reductions of existing airport facilities;

- 3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon; and
 - 4) all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.
- b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

30. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

- a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.
- b. Applicability
 - 1) Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
 - 2) Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.

3) Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

- 1) So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
- 2) So long as the sponsor retains ownership or possession of the property.

d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

“The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

e. Required Contract Provisions.

- 1) It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
- 2) It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
- 3) It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
- 4) It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a

covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:

- a) For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b) For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

31. Disposal of Land.

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.
- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested or transferred to another

eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.

- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
- d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. Engineering and Design Services.

It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

33. Foreign Market Restrictions.

It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. Policies, Standards, and Specifications.

It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated _____ (the latest approved version as of this grant offer) and included in this grant, and in accordance

with applicable state policies, standards, and specifications approved by the Secretary.

35. Relocation and Real Property Acquisition.

- a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
- b. It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. Access By Intercity Buses.

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

37. Disadvantaged Business Enterprises.

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its DBE and ACDBE programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

38. Hangar Construction.

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. Competitive Access.

- a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-
 - 1) Describes the requests;
 - 2) Provides an explanation as to why the requests could not be accommodated; and
 - 3) Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

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EXHIBIT B

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4.A.11



East Hampton Town Board
159 Pantigo Road
East Hampton, NY 11937

Meeting: 04/16/15 06:30 PM
Department: Town Attorney
Category: Local Law
Prepared By: Elizabeth Vail
Initiator: Elizabeth Vail
Sponsors: Councilwoman Kathee Burke-Gonzalez
DOC ID: 15229 B

ADOPTED

RESOLUTION 2015-411

Adopt Local Law- Amending Chapter 75 (Airport) of the Town Code Regulating Nighttime Operation of Aircraft at East Hampton Airport

WHEREAS, the Town of East Hampton is an established resort community that is renowned for its peaceful, quiet beaches and outdoor areas; and

WHEREAS, the economy of the Town of East Hampton is tied intrinsically to the use and enjoyment of its natural and scenic environment, including its world-renowned ocean beaches, wetlands, shorelines, harbors, bays, woodlands, and historic hamlets; and

WHEREAS, residents and visitors are attracted to the Town and the East End of Long Island to enjoy the area's unique scenic beauty, its outdoor spaces, and the peaceful and restful atmosphere they provide; and

WHEREAS, peace, quiet, repose, outdoor recreation, sea, air, and a beautiful and unique natural environment are the essential characteristics that make East Hampton and the East End, as a whole, such an attractive and desirable area; and

WHEREAS, the Town and its residents have invested heavily in preserving the rural, quiet pace of life by preserving land and adopting land use policies that are designed to protect the unique quality of life in East Hampton; and

WHEREAS, in the busy season of May - September, residents and visitors spend a significant portion of time outdoors engaged in recreational activities, entertaining, dining with family and friends, and otherwise enjoying the peaceful, restful atmosphere of the area; and

WHEREAS, the unique quality of life in the Town and entire East End means that residents are particularly susceptible to disturbances to their pastoral lifestyle, especially when those disturbances interfere with the qualities which make this Town a highly desirable place to live and visit; and

WHEREAS, the area surrounding the East Hampton Airport is notably quiet because of the lack of industrial noises, relatively low population density and rural roadway network, which, taken together, accentuates the perception of noise, both in terms of peak levels and also in terms of the duration of the noise events themselves; and

WHEREAS, in the past three decades, noise from aircraft overflights has disrupted outdoor activities and diminished the quality of life in the Town and the entire of the East End; and

WHEREAS, the aircraft noise problem has increased dramatically in recent years, as overall operations increased by 23 percent from 2013 to 2014 and helicopter operations alone increased by 47 percent from 2013 to 2014; and

WHEREAS, noise from loud aircraft and helicopters is particularly disruptive because it interrupts conversations and other ordinary activities and makes it very difficult to enjoy

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outdoor activities; and

WHEREAS, the sheer frequency of overflights also poses a significant problem because there are extended periods of repeated loud noise events that make it very difficult to enjoy outdoor activities and that destroy the peaceful quiet of this rural area; and

WHEREAS, aircraft noise has been a major source of controversy and community strife for many years, with increasingly strong demands by the public that the Town take action to reduce the disruptive and harmful effects of aircraft noise; and

WHEREAS, the controversy has resulted in a number of lawsuits, and additional threatened lawsuits, aimed at compelling the Town or the federal government to take action to address the problem of aircraft noise; and

WHEREAS, in its capacity as proprietor of the East Hampton Airport, the Town Board has a responsibility to protect residents from the adverse effects of aircraft noise; and

WHEREAS, aircraft noise is not merely annoying and disturbing but threatens the economic vitality of the Town and its brand as a place where people can escape the noise and stresses of urban life in favor of tranquility and rural quiet; and

WHEREAS, that threat could result in lower rates of visitation, reduction in property values, and, more generally, a loss in the attractiveness of the Town; and

WHEREAS, in addition to formal noise complaints, residents and visitors have expressed their anger and frustration about aircraft noise at numerous public meetings, Town Board meetings, in letters to local papers, and in communications with Town officials; and

WHEREAS, the problem of aircraft noise was a major topic of discussion and debate in the recent Town election; and

WHEREAS, the Town has received numerous communications from residents and officials of neighboring and nearby jurisdictions demanding that the Town take action to reduce the effect of noise from aircraft flying to and from East Hampton Airport; and

WHEREAS, the Town of Southampton, the Town Shelter Island, the Town of Southold, the Village of North Haven, the Village of East Hampton, and the Village of Sag Harbor all have adopted resolutions requesting that the Town Board of the Town of East Hampton adopt a comprehensive aircraft noise limitation policy; and

WHEREAS these other towns and villages, and all residents and visitors to the East End, depend upon the Town to address the aircraft noise problem since the Town operates the East Hampton Airport, which is the destination of many of the noisy aircraft flights; and WHEREAS, for over two decades, the Town has diligently identified and promoted voluntary measures, including helicopter noise abatement procedures and a nighttime curfew, in order to secure relief from the disturbance of aircraft noise; and

WHEREAS, Town officials have met repeatedly with the New York Congressional delegation, to discuss this issue in the hope of finding a federal legislative solution to the problem of aircraft noise; and

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WHEREAS, Town officials have met repeatedly with the Federal Aviation Administration (FAA) officials at the local, regional and headquarters level and with the FAA's Air Traffic Organization, to discuss proposed measures and use restrictions, including the use of voluntary measures; and

WHEREAS, the Town worked with the New York Congressional delegation and all levels of the FAA in the implementation of a mandatory North Shore Helicopter Route, which was initially implemented in August 2012 and recently extended through August 2016; and

WHEREAS, the Town has repeatedly tried, unsuccessfully, to convince the FAA to adopt a mandatory helicopter route along the south shore of Long Island or to adopt mandatory transition routes for helicopters transitioning from the mandatory routes to the East Hampton Airport; and

WHEREAS, the Town has spent the last several summer seasons studying various voluntary measures or measures in cooperation with the FAA to address the noise problem but the level of resident concern has actually increased over that time; and

WHEREAS, the Town's past several years of efforts to address the problem of aircraft noise through voluntary measures promoted by the Town combined with mandatory flight tracks for helicopters imposed by FAA have provided some limited relief in certain neighborhoods, but those measures alone have not reduced to an acceptable level the overall intensity of community disturbance from noise associated with aircraft flying to and from East Hampton Airport; and

WHEREAS, the Town's ability to address the problem of aircraft noise has been constrained legally by obligations under certain of its federal grants that the FAA has stated will no longer be enforced after December 31, 2014; and

WHEREAS, the Town first announced its intent to pursue use restrictions on operations at East Hampton Airport to address the problem of aircraft noise by the adoption of Resolution 2012-832 on August 2, 2012; and

WHEREAS, Town officials and staff have met repeatedly with airport stakeholders, including Eastern Region Helicopter Council, Friends of the East Hampton Airport, the National Business Aviation Association, the Aircraft Owners and Pilots Association, the National Air Transportation Association, and other informal local groups of users and service providers to discuss their respective concerns; and

WHEREAS, the Town held a special public meeting on August 27, 2014, provide the public an opportunity to comment on the problem of aircraft noise and to share views on potential solutions and the meeting was attended by almost 400 people, including 22 elected officials, all of whom expressed support for finding a solution to the noise problem; and

WHEREAS, the Town announced its commitment to finding a solution to disturbance resulting from noise associated with Airport operations; announced its intent to adopt lawful measures to ensure the peace, quiet, tranquility and health of communities affected by Airport noise; resolved to consider the most serious disturbances, the causes of the disturbances, and reasonable and practical solutions tailored to address the source of those disturbances before making a decision; and announced its intent to identify and adopt

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regulations to address noise and disturbance from Operations at East Hampton Airport before the 2015 season by the adoption of Resolution 2014-1180 on September 18, 2014; and

WHEREAS, FAA's traditional Day/Night Average Sound Level (DNL) noise metric has proved, after considerable study, not to be a useful tool for measuring the impact of noise from operations at East Hampton Airport because it averages noise data over 24 hours, and does not capture the demonstrated community annoyance and disruption from individual aircraft noise events (especially noise events associated with helicopters); and

WHEREAS, beginning in 2014, the Town commissioned a series of comprehensive analyses of the noise and related complaints, including the following:

- Henry Young of Young Environmental Sciences and Les Blomberg of Noise Pollution Clearinghouse: (1) analyzed 2013 operational data collected by the AirScene system, (2) converted that data for use in the Integrated Noise Model (INM), (3) used the INM to develop Day-Night Average Sound Level (DNL) noise contours for 2013 operations (for total annual operations, annual helicopter operations, busiest day total operations, and busiest day helicopter operations), (4) used the INM to calculate the maximum sound level (Lmax) for each modeled flight in 2013 at each property parcel in a 10-mile radius from the airport, (5) applied the Town Code noise standards to determine the number of "exceedances" (i.e., the number of times each parcel experienced a noise impact above the Town's limits) by aircraft type and type of operation; and
- Peter Wadsworth analyzed 2014 complaint data collected by the PlaneNoise system; and
- Ted Baldwin of Harris Miller Miller & Hanson Inc. (HMMH) led HMMH analyses of November 1, 2013 - October 31, 2014 data, including: (1) analysis of PlaneNoise complaint data to identify temporal and geographic complaint patterns for different aircraft types (e.g., jet, turboprop, piston prop, seaplane, and helicopter), (2) analysis of Vector operations data to identify patterns of activity by day of year, day of week, hour of day (for each day of the week and for the average annual day), and season; (3) correlated PlaneNoise complaint data and Vector operations data to identify patterns; (4) used the independent and correlated data analyses to develop a refined problem definition and promising alternatives for addressing that definition; (5) analyzed the effect of those alternatives in terms of the historical operations that each would have affected and of the associated noise complaints; and (6) identified and reviewed technical studies in the literature that have attempted to identify the most effective noise metric for understanding response to helicopter noise, whether the metric should include a special "adjustment" for helicopters, and otherwise provide useful information on the best means of assessing helicopter noise and predicting human response; and

WHEREAS, the Town also commissioned several advisory groups to assist in identifying the

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noise problem with specificity and identifying meaningful, practical and carefully tailored measures that the Town could adopt which would help reduce or eliminate the noise problem; and

WHEREAS, these advisory groups have held many, many public meetings, discussions and debates about how best to address the Town's noise problem; and

WHEREAS, the Town held meetings on October 30, 2014; December 2, 2014; and February 4, 2015; to review the findings of each phase of the recent noise analyses; and

WHEREAS, the Town Board announced four proposed use restrictions for East Hampton Airport on February 10, 2015; and

WHEREAS, the Town Board held public hearings on March 12, 2015, to consider the following four local laws amending Chapter 75 (Airport) of the Town Code: (1) a local law to regulate nighttime operation of aircraft; (2) a local law to regulate nighttime and early morning operation of noisy aircraft; (3) a local law to regulate the operation of helicopters; and (4) a local law to regulate the operation of noisy aircraft; and

WHEREAS, the Town has been soliciting public comment through encouraging comments at Town Board meetings, and emailed comments through a dedicated email address; and

WHEREAS, the Town Board has reviewed all of those comments plus written comments and comments appearing in several local newspapers over the course of the last year; and

WHEREAS, there is no single or simple measure which is certain to solve the Town's noise problem; and

WHEREAS, the Town is committed to testing measures for their practical, real-world effectiveness but needs to have at least one summer season to collect adequate data on real world effects; and

WHEREAS, the Town is committed to collecting data during the summer 2015 season and to assessing all noise control measures in October 2015 for their effectiveness; and

WHEREAS, the Town will modify any restrictions to improve their effectiveness based upon the results of these restrictions during the summer 2015 season; and

WHEREAS, the Town encourages residents, visitors, airport stakeholders, users and all other interested parties to provide the Town with input on the effectiveness of particular measures in addressing, mitigating or eliminating the noise problem; and

WHEREAS, after considering the history of noise disturbance caused by operations at the Airport, reviewing the data provided by the Town's consultants and the comments of the public, and after holding public hearings, the Town Board believes that the enactment of a local law to implement a nighttime curfew at the East Hampton Airport is in the best interests of the Town of East Hampton for the following reasons:

- Disturbance by all types of aircraft is most significant in the evening, nighttime, and early morning hours; and

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- Professional studies confirm that nighttime aircraft noise is highly disturbing, that it can disrupt normal sleep patterns, and that it has a particularly serious adverse effect on people's lives; and
- The Town's voluntary curfew has not proven to be sufficiently effective at reducing nighttime noise from aircraft and nighttime operations still generate a significant number of complaints; and

WHEREAS, the proposed local law is an Unlisted Action pursuant to the New York State Environmental Quality Review Act (SEQRA) and Chapter 128 of the Town Code; and

WHEREAS, the Town Board has prepared and considered an Environmental Assessment Form which evaluates the potential environmental impacts of the proposed amendment; and

WHEREAS, the Board has determined that the adoption of this Local Law will not have a significant negative impact upon the environment; and now, therefore be it

NOW, THEREFORE, BE IT RESOLVED, that a negative declaration is hereby made pursuant to the State Environmental Quality Review Act (SEQRA); and

RESOLVED, that said local law is hereby adopted to read as follows:

LOCAL LAW NO. 3 OF 2015
INTRODUCTORY NO. 2 OF 2015

A Local Law providing for the amendment of Chapter 75 ("AIRPORT") of the East Hampton Town Code to read as follows:

BE IT ENACTED by the Town Board of the Town of East Hampton as follows:

SECTION 1. Legislative Intent

In the past three decades, the residents of the Town of East Hampton have experienced a significant increase in noisy aircraft traffic at the East Hampton Airport. By its extensive complaints to the Town Board and to other governmental entities, the public has made clear, and this Town Board recognizes, the negative impact that this aircraft noise has made to the health and welfare of its citizenry, to wildlife and their habitat, as well as to the peace, quiet, and repose of the region. Aircraft noise has substantially diminished the quiet enjoyment of homes and properties and compromised the pleasures of the woodlands, beaches, fields, and preserved lands that define our community and sense of place.

East Hampton is an established resort community whose entire economy is intrinsically tied to the use and enjoyment of its natural and scenic environment, including its world renowned ocean beaches, wetlands, shorelines, harbors, bays, woodlands, and historic hamlets. Visitors and residents alike enjoy East Hampton's unique scenic beauty and the Town has made significant efforts to preserve the natural environs of the Town, spending a total of \$229,431,502 of Community Preservation Funds to preserve approximately 1,924 acres since 1998.

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The Town's Comprehensive Plan has outlined the vital connection between preserving the natural scenic beauty and enjoyment of its community and the Town's economy, stating in its vision statement the goal to

"[t]ake forceful measures to protect and restore the environment, particularly groundwater. Reduce the impacts of human habitation on groundwater, surface water, wetlands, dunes biodiversity, ecosystems, scenic resources, air quality, the night sky, noise and energy consumption."

The 2007 Airport Master Plan Report that then became the basis for the adopted 2010 Airport Master Plan states, at 11-73:

"The East Hampton Airport is owned, maintained and operated for the benefit of the Town and its residents. The airport continues to be classified as a General Aviation Airport under federal criteria. Its primary role is the accommodation of light aircraft traffic. Aircraft operating at greater weights will be accommodated on condition [sic] without unjust discrimination. The airport is also managed with the objective of providing emergency access and facilitation of all other public and community responsibilities. The size and operation of the airport takes into consideration the needs of East Hampton and Southampton residents for protection from excessive noise disturbance and adverse environmental impacts."

"Control of noise and adverse environmental impacts at the airport is consistent with current Town goals for improved quality of life and land and water conservation. These goals recognize that protecting the environment is essential for improving the Town's seasonal and year round economy. These controls are achieved through reasonable, non arbitrary and non discriminatory management practices. These may limit the maximum size of aircraft to be accommodated, regulate excessive peak demand during the summer season and otherwise adjust use patterns such as for helicopter access to minimize community disturbances."

In an effort to address the impacts of aircraft noise, the Town Board undertook an extensive analysis of the citizenry's complaints, and of the aircraft traffic itself, by the Town's aviation consultants and noise engineers, the results of which have only confirmed the seriousness of the community's noise disturbance. Of 24,000 airport noise complaints logged last year, the latest noise analysis discloses that they are overwhelmingly attributable to helicopters and jets, the noisiest types. Noise complaints at East Hampton Airport far exceed the level of complaints at major airports around the country. This is surely due, not least, to the incongruity of jet and helicopter noise in what is otherwise a very quiet, exurban and rural environment.

Specifically, noise from aircraft operating at the East Hampton Airport disturbs many

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residents of the East End of Long Island. Disturbance by all types of aircraft is most significant in the evening, nighttime, and early morning hours. Myriad professional studies from airports throughout the world have confirmed what the residents of East Hampton know from personal experience: nighttime aircraft noise is more disturbing, more annoying, can disrupt normal sleep patterns, and, generally, has a particularly seriously adverse effect on people's lives.

In its capacity as proprietor of the East Hampton Airport, the Town Board has a public policy responsibility to protect residents from the adverse effects of aircraft noise. It has developed a set of restrictions on the use of East Hampton Airport that are reasonable, non-arbitrary, and non-discriminatory. These restrictions address the problems of aircraft noise that are unique to the Town and neighboring communities while preserving for the community the benefits of aviation.

The Town Board recognizes the value of the East Hampton Airport to the community and does not want to impose any greater restriction than is necessary to achieve the Town's objectives.

To that end, the Town Board recognizes the importance of addressing nighttime noise problems, during sleeping hours when there is a heightened expectation of quiet, by imposing a curfew for nighttime hours. The legislation is intended to restrict aircraft operations during the most sensitive times of the day.

By enacting this legislation, the Town Board seeks to achieve immediate, substantial nighttime noise relief for residents and visitors, maintain the intended and traditional use of the East Hampton Airport by recreational aircraft, and continue sufficient air traffic to maintain a financially self-sustaining Airport.

The Town Board is committed to balancing the need to address the impact of the aircraft noise on the Town's environment with the equally important need to maintain an economically viable and safe airport for East Hampton.

The proposed legislation expressly excludes from its application aircraft operated by any federal, state or local government, any emergency services, evacuation services, public or private, and any operation by an aircraft in an emergency. The airport will remain open to such operations at all times without restriction or charge.

These restrictions are adopted on an interim basis. The effects of the legislation on the operations at the Airport for the period May 1 to October 31, 2015 shall be evaluated to determine whether the restrictions should be made permanent or modified. The Town Board will seek public comment throughout the Season and immediately following the Season to determine the success and/or failure of the use restrictions and whether they function the way they were intended or need to be adjusted.

SECTION 2. Amendment

The Code of the Town of East Hampton is hereby amended by adding the following new section to Chapter 75 (Airport).

§ 75-38 AIRPORT USE RESTRICTIONS:

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A. Definitions.

(1) - (2) - *Reserved*

(3) "Individual Aircraft" shall mean an aircraft, of whatever type, with a distinct registration number ("N number" if such registration is issued by the United States Government).

(4) - (5) - *Reserved*

(6) "Use of the Airport" shall mean either one arrival (landing) at, or one departure (takeoff) from, the Airport, shall not include any repositioning of any aircraft on the Airport or any aborted takeoff or landing, but shall include touch-and-go operations that result in use of an Airport runway.

B. Nighttime Operations. Use of the Airport is prohibited between the hours of 11:00 pm and 7:00 am (local time).

C. [*Reserved*]

D. [*Reserved*]

E. Exemptions. The restrictions of this section 75-38 shall not apply to any aircraft operational emergency, any medical emergency operation, whether by public or private aircraft, or to any operation by a government-owned aircraft, including, without limitation, police, emergency services, and military operations. In the case of an aircraft emergency or medical emergency operation, the operator shall submit a sworn statement to the Airport Manager within 24 hours of such operation attesting to the nature of the emergency and reason for the operation.

§ 75-39 PENALTIES:

A. Section 75-34 shall not apply to violations of Section 75-38 and this Section 75-39 shall apply for all violations of Section 75-38. For the purpose of conferring jurisdiction upon courts and judicial officers in general, violations of Section 75-38 shall be deemed misdemeanors, and, for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations.

B. Any Use of the Airport by an Individual Aircraft in violation of Section 75-38 shall be punishable by a fine assessed against any person, organization, corporation, group or other entity which holds an ownership interest in such aircraft, as follows:

(1) For the first violation by an Individual Aircraft, a fine of not more than \$1,000.

(2) For the second violation by an Individual Aircraft, a fine of not more than \$4,000.

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(3) For the third violation by an Individual Aircraft, a fine of not more than \$10,000.

(4) For the fourth violation by an Individual Aircraft, a prohibition on any Use of the Airport by the Individual Aircraft involved in such violation for a period of not more than two years.

C. Each Use of the Airport by an Individual Aircraft in violation of Section 75-38 shall constitute a separate offense.

D. In addition, any entity convicted hereunder of not complying with the requirements of Section 75-38 may be subject to a fine of not less than the amount of the actual costs incurred and owed to the Town and not more than an amount equal to twice said actual costs. Should any person, organization, corporation, group or other entity be found in violation of the provisions of Section 75-38 within five years of a previous violation of this chapter, the minimum additional fine shall be not less than \$2000.

E. In addition to the above penalties, the Town may also maintain an action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation Section 75-38 by any person, organization, corporation, group or other entity which holds an ownership interest in the Individual Aircraft.

(1) If a finding is made by a court of competent jurisdiction that the defendants or any of them has caused, permitted or allowed a violation of Section 75-38, a penalty to be jointly and severally included in the judgment may be awarded at the discretion of the court in an amount not to exceed \$10,000.00 for each violation that the defendants or any one of them individually caused, permitted or allowed the violation.

SECTION 3. Authority

The Town Board is authorized to establish and promulgate rules and regulations regarding use of the East Hampton Airport pursuant to Municipal Home Rule Law §10(1)(ii)(a)(11) and (12) and Town Law §130 and pursuant to its powers as the proprietor of East Hampton Airport under federal statutory and case law and regulations of the Federal Aviation Administration.

SECTION 4. Severability

If any section or subdivision, paragraph, clause or phrase of this law shall be adjudged invalid, unenforceable, or unconstitutional by any order or judgment of a court of competent jurisdiction, or pursuant to any order of any administrative agency having jurisdiction, whether such judgment or order is temporary or permanent, such judgment or order shall not affect the validity of this law as a whole or any part thereof other than the part or

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provision so adjudged to be invalid or unconstitutional.

SECTION 5. Effective Date

This local law shall take effect upon filing with the Secretary of State.

Dated: April 16, 2015

BY ORDER OF THE TOWN BOARD
TOWN OF EAST HAMPTON
CAROLE BRENNAN, TOWN CLERK

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Kathee Burke-Gonzalez, Councilwoman
SECONDER:	Peter Van Scoyoc, Councilman
AYES:	Burke-Gonzalez, Van Scoyoc, Overby, Overton, Cantwell

EXHIBIT C

A-85

4.A.12



East Hampton Town Board
159 Pantigo Road
East Hampton, NY 11937

Meeting: 04/16/15 06:30 PM
Department: Town Attorney
Category: Local Law
Prepared By: Elizabeth Vail
Initiator: Elizabeth Vail
Sponsors: Councilwoman Kathee Burke-Gonzalez
DOC ID: 15230 B

ADOPTED

RESOLUTION 2015-412

Adopt Local Law- Amending Chapter 75 (Airport) of the Town Code Regulating Evening, Nighttime and Early Morning Operation of Noisy Aircraft at East Hampton Airport

WHEREAS, the Town of East Hampton is an established resort community that is renowned for its peaceful, quiet beaches and outdoor areas; and

WHEREAS, the economy of the Town of East Hampton is tied intrinsically to the use and enjoyment of its natural and scenic environment, including its world-renowned ocean beaches, wetlands, shorelines, harbors, bays, woodlands, and historic hamlets; and

WHEREAS, residents and visitors are attracted to the Town and the East End of Long Island to enjoy the area's unique scenic beauty, its outdoor spaces, and the peaceful and restful atmosphere they provide; and

WHEREAS, peace, quiet, repose, outdoor recreation, sea, air, and a beautiful and unique natural environment are the essential characteristics that make East Hampton and the East End, as a whole, such an attractive and desirable area; and

WHEREAS, the Town and its residents have invested heavily in preserving the rural, quiet pace of life by preserving land and adopting land use policies that are designed to protect the unique quality of life in East Hampton; and

WHEREAS, in the busy season of May - September, residents and visitors spend a significant portion of time outdoors engaged in recreational activities, entertaining, dining with family and friends, and otherwise enjoying the peaceful, restful atmosphere of the area; and

WHEREAS, the unique quality of life in the Town and entire East End means that residents are particularly susceptible to disturbances to their pastoral lifestyle, especially when those disturbances interfere with the qualities which make this Town a highly desirable place to live and visit; and

WHEREAS, the area surrounding the East Hampton Airport is notably quiet because of the lack of industrial noises, relatively low population density and rural roadway network, which, taken together, accentuates the perception of noise, both in terms of peak levels and also in terms of the duration of the noise events themselves; and

WHEREAS, in the past three decades, noise from aircraft overflights has disrupted outdoor activities and diminished the quality of life in the Town and the entire of the East End; and

WHEREAS, the aircraft noise problem has increased dramatically in recent years, as overall operations increased by 23 percent from 2013 to 2014 and helicopter operations alone increased by 47 percent from 2013 to 2014; and

WHEREAS, noise from loud aircraft and helicopters is particularly disruptive because it interrupts conversations and other ordinary activities and makes it very difficult to enjoy

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outdoor activities; and

WHEREAS, the sheer frequency of overflights also poses a significant problem because there are extended periods of repeated loud noise events that make it very difficult to enjoy outdoor activities and that destroy the peaceful quiet of this rural area; and

WHEREAS, aircraft noise has been a major source of controversy and community strife for many years, with increasingly strong demands by the public that the Town take action to reduce the disruptive and harmful effects of aircraft noise; and

WHEREAS, the controversy has resulted in a number of lawsuits, and additional threatened lawsuits, aimed at compelling the Town or the federal government to take action to address the problem of aircraft noise; and

WHEREAS, in its capacity as proprietor of the East Hampton Airport, the Town Board has a responsibility to protect residents from the adverse effects of aircraft noise; and

WHEREAS, aircraft noise is not merely annoying and disturbing but threatens the economic vitality of the Town and its brand as a place where people can escape the noise and stresses of urban life in favor of tranquility and rural quiet; and

WHEREAS, that threat could result in lower rates of visitation, reduction in property values, and, more generally, a loss in the attractiveness of the Town; and

WHEREAS, in addition to formal noise complaints, residents and visitors have expressed their anger and frustration about aircraft noise at numerous public meetings, Town Board meetings, in letters to local papers, and in communications with Town officials; and

WHEREAS, the problem of aircraft noise was a major topic of discussion and debate in the recent Town election; and

WHEREAS, the Town has received numerous communications from residents and officials of neighboring and nearby jurisdictions demanding that the Town take action to reduce the effect of noise from aircraft flying to and from East Hampton Airport; and

WHEREAS, the Town of Southampton, the Town Shelter Island, the Town of Southold, the Village of North Haven, the Village of East Hampton, and the Village of Sag Harbor all have adopted resolutions requesting that the Town Board of the Town of East Hampton adopt a comprehensive aircraft noise limitation policy; and

WHEREAS these other towns and villages, and all residents and visitors to the East End, depend upon the Town to address the aircraft noise problem since the Town operates the East Hampton Airport, which is the destination of many of the noisy aircraft flights; and WHEREAS, for over two decades, the Town has diligently identified and promoted voluntary measures, including helicopter noise abatement procedures and a nighttime curfew, in order to secure relief from the disturbance of aircraft noise; and

WHEREAS, Town officials have met repeatedly with the New York Congressional delegation, to discuss this issue in the hope of finding a federal legislative solution to the problem of aircraft noise; and

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WHEREAS, Town officials have met repeatedly with the Federal Aviation Administration (FAA) officials at the local, regional and headquarters level and with the FAA's Air Traffic Organization, to discuss proposed measures and use restrictions, including the use of voluntary measures; and

WHEREAS, the Town worked with the New York Congressional delegation and all levels of the FAA in the implementation of a mandatory North Shore Helicopter Route, which was initially implemented in August 2012 and recently extended through August 2016; and

WHEREAS, the Town has repeatedly tried, unsuccessfully, to convince the FAA to adopt a mandatory helicopter route along the south shore of Long Island or to adopt mandatory transition routes for helicopters transitioning from the mandatory routes to the East Hampton Airport; and

WHEREAS, the Town has spent the last several summer seasons studying various voluntary measures or measures in cooperation with the FAA to address the noise problem but the level of resident concern has actually increased over that time; and

WHEREAS, the Town's past several years of efforts to address the problem of aircraft noise through voluntary measures promoted by the Town combined with mandatory flight tracks for helicopters imposed by FAA have provided some limited relief in certain neighborhoods, but those measures alone have not reduced to an acceptable level the overall intensity of community disturbance from noise associated with aircraft flying to and from East Hampton Airport; and

WHEREAS, the Town's ability to address the problem of aircraft noise has been constrained legally by obligations under certain of its federal grants that the FAA has stated will no longer be enforced after December 31, 2014; and

WHEREAS, the Town first announced its intent to pursue use restrictions on operations at East Hampton Airport to address the problem of aircraft noise by the adoption of Resolution 2012-832 on August 2, 2012; and

WHEREAS, Town officials and staff have met repeatedly with airport stakeholders, including Eastern Region Helicopter Council, Friends of the East Hampton Airport, the National Business Aviation Association, the Aircraft Owners and Pilots Association, the National Air Transportation Association, and other informal local groups of users and service providers to discuss their respective concerns; and

WHEREAS, the Town held a special public meeting on August 27, 2014, provide the public an opportunity to comment on the problem of aircraft noise and to share views on potential solutions and the meeting was attended by almost 400 people, including 22 elected officials, all of whom expressed support for finding a solution to the noise problem; and

WHEREAS, the Town announced its commitment to finding a solution to disturbance resulting from noise associated with Airport operations; announced its intent to adopt lawful measures to ensure the peace, quiet, tranquility and health of communities affected by Airport noise; resolved to consider the most serious disturbances, the causes of the disturbances, and reasonable and practical solutions tailored to address the source of those disturbances before making a decision; and announced its intent to identify and adopt

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regulations to address noise and disturbance from Operations at East Hampton Airport before the 2015 season by the adoption of Resolution 2014-1180 on September 18, 2014; and

WHEREAS, FAA's traditional Day/Night Average Sound Level (DNL) noise metric has proved, after considerable study, not to be a useful tool for measuring the impact of noise from operations at East Hampton Airport because it averages noise data over 24 hours, and does not capture the demonstrated community annoyance and disruption from individual aircraft noise events (especially noise events associated with helicopters); and

WHEREAS, beginning in 2014, the Town commissioned a series of comprehensive analyses of the noise and related complaints, including the following:

- Henry Young of Young Environmental Sciences and Les Blomberg of Noise Pollution Clearinghouse: (1) analyzed 2013 operational data collected by the AirScene system, (2) converted that data for use in the Integrated Noise Model (INM), (3) used the INM to develop Day-Night Average Sound Level (DNL) noise contours for 2013 operations (for total annual operations, annual helicopter operations, busiest day total operations, and busiest day helicopter operations), (4) used the INM to calculate the maximum sound level (Lmax) for each modeled flight in 2013 at each property parcel in a 10-mile radius from the airport, (5) applied the Town Code noise standards to determine the number of "exceedances" (i.e., the number of times each parcel experienced a noise impact above the Town's limits) by aircraft type and type of operation; and
- Peter Wadsworth analyzed 2014 complaint data collected by the PlaneNoise system; and
- Ted Baldwin of Harris Miller Miller & Hanson Inc. (HMMH) led HMMH analyses of November 1, 2013 - October 31, 2014 data, including: (1) analysis of PlaneNoise complaint data to identify temporal and geographic complaint patterns for different aircraft types (e.g., jet, turboprop, piston prop, seaplane, and helicopter), (2) analysis of Vector operations data to identify patterns of activity by day of year, day of week, hour of day (for each day of the week and for the average annual day), and season; (3) correlated PlaneNoise complaint data and Vector operations data to identify patterns; (4) used the independent and correlated data analyses to develop a refined problem definition and promising alternatives for addressing that definition; (5) analyzed the effect of those alternatives in terms of the historical operations that each would have affected and of the associated noise complaints; and (6) identified and reviewed technical studies in the literature that have attempted to identify the most effective noise metric for understanding response to helicopter noise, whether the metric should include a special "adjustment" for helicopters, and otherwise provide useful information on the best means of assessing helicopter noise and predicting human response; and

WHEREAS, the Town also commissioned several advisory groups to assist in identifying the

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noise problem with specificity and identifying meaningful, practical and carefully tailored measures that the Town could adopt which would help reduce or eliminate the noise problem; and

WHEREAS, these advisory groups have held many, many public meetings, discussions and debates about how best to address the Town's noise problem; and

WHEREAS, the Town held meetings on October 30, 2014; December 2, 2014; and February 4, 2015; to review the findings of each phase of the recent noise analyses; and

WHEREAS, the Town Board announced four proposed use restrictions for East Hampton Airport on February 10, 2015; and

WHEREAS, the Town Board held public hearings on March 12, 2015, to consider the following four local laws amending Chapter 75 (Airport) of the Town Code: (1) a local law to regulate nighttime operation of aircraft; (2) a local law to regulate nighttime and early morning operation of noisy aircraft; (3) a local law to regulate the operation of helicopters; and (4) a local law to regulate the operation of noisy aircraft; and

WHEREAS, the Town has been soliciting public comment through encouraging comments at Town Board meetings, and emailed comments through a dedicated email address; and

WHEREAS, the Town Board has reviewed all of those comments plus written comments and comments appearing in several local newspapers over the course of the last year; and

WHEREAS, there is no single or simple measure which is certain to solve the Town's noise problem; and

WHEREAS, the Town is committed to testing measures for their practical, real-world effectiveness but needs to have at least one summer season to collect adequate data on real world effects; and

WHEREAS, the Town is committed to collecting data during the summer 2015 season and to assessing all noise control measures in October 2015 for their effectiveness; and

WHEREAS, the Town will modify any restrictions to improve their effectiveness based upon the results of these restrictions during the summer 2015 season; and

WHEREAS, the Town encourages residents, visitors, airport stakeholders, users and all other interested parties to provide the Town with input on the effectiveness of particular measures in addressing, mitigating or eliminating the noise problem; and

WHEREAS, after considering the history of noise disturbance caused by operations at the Airport, reviewing the data provided by the Town's consultants and the comments of the public, and after holding public hearings, the Town Board believes that the enactment of a local law to regulate evening, nighttime and early morning operation of noisy aircraft at the East Hampton Airport is in the best interests of the Town of East Hampton for the following reasons:

- Of the 24,000 airport noise complaints logged last year, the latest noise analysis

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discloses that they are overwhelmingly attributable to helicopters and jets, the noisiest types of aircraft; and

- Disturbance by all types of aircraft is most significant in the evening, nighttime, and early morning hours; and
- During those hours, noisy aircraft are the most annoying; and
- While all aircraft operations during the nighttime hours are disturbing, noisy aircraft can be especially intrusive during the "shoulder" times of the evening and early morning hours, which are times of the day when residents and visitors typically engage in outdoor activities and are therefore are highly sensitive to disruption by loud aircraft; and

WHEREAS, the proposed local law is an Unlisted Action pursuant to the New York State Environmental Quality Review Act (SEQRA) and Chapter 128 of the Town Code; and

WHEREAS, the Town Board has prepared and considered an Environmental Assessment Form which evaluates the potential environmental impacts of the proposed amendment; and

WHEREAS, the Board has determined that the adoption of this Local Law will not have a significant negative impact upon the environment; and now, therefore be it

NOW, THEREFORE, BE IT RESOLVED, that a negative declaration is hereby made pursuant to the State Environmental Quality Review Act (SEQRA); and

RESOLVED, that said local law is hereby adopted to read as follows:

LOCAL LAW NO. 4 OF 2015
INTRODUCTORY NO. 3 OF 2015

A Local Law providing for the amendment of Chapter 75 ("AIRPORT") of the East Hampton Town Code to read as follows:

BE IT ENACTED by the Town Board of the Town of East Hampton as follows:

SECTION 1. Legislative Intent

In the past three decades, the residents of the Town of East Hampton have experienced a significant increase in noisy aircraft traffic at the East Hampton Airport, chiefly helicopters, jets, and seaplanes. By its extensive complaints to the Town Board and to other governmental entities, the public has made clear, and this Town Board recognizes, the negative impact that this aircraft noise has made to the health and welfare of its citizenry,

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to wildlife and their habitat, as well as to the peace, quiet, and repose of the region. Aircraft noise has substantially diminished the quiet enjoyment of homes and properties and compromised the pleasures of the woodlands, beaches, fields, and preserved lands that define our community and sense of place.

East Hampton is an established resort community whose entire economy is intrinsically tied to the use and enjoyment of its natural and scenic environment, including its world renowned ocean beaches, wetlands, shorelines, harbors, bays, woodlands, and historic hamlets. Visitors and residents alike enjoy East Hampton's unique scenic beauty and the Town has made significant efforts to preserve the natural environs of the Town, spending a total of \$229,431,502 of Community Preservation Funds to preserve approximately 1,924 acres since 1998.

The Town's Comprehensive Plan has outlined the vital connection between preserving the natural scenic beauty and enjoyment of its community and the Town's economy, stating in its vision statement the goal to

"[t]ake forceful measures to protect and restore the environment, particularly groundwater. Reduce the impacts of human habitation on groundwater, surface water, wetlands, dunes biodiversity, ecosystems, scenic resources, air quality, the night sky, noise and energy consumption."

The 2007 Airport Master Plan Report that then became the basis for the adopted 2010 Airport Master Plan states, at II-73:

"The East Hampton Airport is owned, maintained and operated for the benefit of the Town and its residents. The airport continues to be classified as a General Aviation Airport under federal criteria. Its primary role is the accommodation of light aircraft traffic. Aircraft operating at greater weights will be accommodated on condition [sic] without unjust discrimination. The airport is also managed with the objective of providing emergency access and facilitation of all other public and community responsibilities. The size and operation of the airport takes into consideration the needs of East Hampton and Southampton residents for protection from excessive noise disturbance and adverse environmental impacts."

"Control of noise and adverse environmental impacts at the airport is consistent with current Town goals for improved quality of life and land and water conservation. These goals recognize that protecting the environment is essential for improving the Town's seasonal and year round economy. These controls are achieved through reasonable, non arbitrary and non discriminatory management practices. These may limit the maximum size of aircraft to be accommodated, regulate excessive peak demand during the summer season and otherwise adjust use patterns such as for helicopter access to minimize community disturbances."

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In an effort to address the impacts of aircraft noise, the Town Board undertook an extensive analysis of the citizenry's complaints, and of the aircraft traffic itself, by the Town's aviation consultants and noise engineers, the results of which have only confirmed the seriousness of the community's noise disturbance. Of 24,000 airport noise complaints logged last year, the latest noise analysis discloses that they are overwhelmingly attributable to helicopters and jets, the noisiest types. Noise complaints at East Hampton Airport far exceed the level of complaints at major airports around the country. This is surely due, not least, to the incongruity of jet and helicopter noise in what is otherwise a very quiet, exurban and rural environment.

Specifically, noise from aircraft operating at the East Hampton Airport disturbs many residents of the East End of Long Island. Disturbance by all types of aircraft is most significant in the evening, nighttime, and early morning hours. During those hours, noisy aircraft are the most disturbing. While all aircraft operations during the nighttime hours are disturbing, noisy aircraft can be especially intrusive during the 'shoulder' times of the evening and early morning hours, when people are doing daily activities around their homes, and there is a need to address the particular impacts of these noisy aircraft during these times of the day.

In its capacity as proprietor of the East Hampton Airport, the Town Board has a public policy responsibility to protect residents from the adverse effects of aircraft noise. It has developed a set of restrictions on the use of East Hampton Airport that are reasonable, non-arbitrary, and non-discriminatory. These restrictions address the problems of aircraft noise that are unique to the Town and neighboring communities while preserving for the community the benefits of aviation.

The Town Board recognizes the value of the East Hampton Airport to the community and does not want to impose any greater restriction than is necessary to achieve the Town's objectives.

To that end, the Town Board recognizes the importance of addressing the impacts of noisy aircraft operations during non-working hours of evenings and early mornings when there is a heightened expectation of quiet, by imposing shorter operating hours for these noisy types of aircraft. The legislation is intended to recognize that noisier aircraft need to be subject to greater restrictions because of the seriousness of their noise contribution to the community disturbance - that is, each aircraft's individual noise generation and the frequency and timing of its airport landings and takeoffs.

By enacting this legislation, the Town Board seeks to achieve immediate, substantial evening and morning noise relief for residents and visitors, maintain the intended and traditional use of the East Hampton Airport by recreational aircraft, and continue sufficient air traffic to maintain a financially self-sustaining Airport.

The Town Board is committed to balancing the need to address the impact of the aircraft noise on the Town's environment with the equally important need to maintain an economically viable and safe airport for East Hampton.

The proposed legislation expressly excludes from its application aircraft operated by any federal, state or local government, any emergency services, evacuation services, public or private, and any operation by an aircraft in an emergency. The airport will remain open to

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such operations at all times without restriction or charge.

These restrictions are adopted on an interim basis. The effects of the legislation on the operations at the Airport for the period May 1 to October 31, 2015 shall be evaluated to determine whether the restrictions should be made permanent or modified. The Town Board will seek public comment throughout the Season and immediately following the Season to determine the success and/or failure of the use restrictions and whether they function the way they were intended or need to be adjusted.

SECTION 2. Amendment

The Code of the Town of East Hampton is hereby amended by adding the following new section to Chapter 75 (Airport).

§ 75-38 AIRPORT USE RESTRICTIONS:

A. Definitions.

(1) - (2) - *Reserved*

(3) "Individual Aircraft" shall mean an aircraft, of whatever type, with a distinct registration number ("N number" if such registration is issued by the United States Government).

(4) "Noisy Aircraft" shall mean any airplane or rotorcraft type classified as a Noisy Aircraft type pursuant to this Section.

(a) The Airport Director is directed to maintain on the Town website a current list of aircraft based upon the noise characteristics published by the Federal Aviation Administration, or (if data is not available from that agency), the European Aviation Safety Agency. Noisy Aircraft shall be defined as any airplane or rotorcraft for which there is a published Effective Perceived Noise in Decibels (EPNdB) approach (AP) level of 91.0 or greater

(b) In lieu of being subject to the definition of "Noisy Aircraft" pursuant to subsection (a) on the basis of the Town's list of types of Noisy Aircraft, the owner of an Individual Aircraft may elect to have the noise classification of such Individual Aircraft determined by the sound levels on the basis of the EPNdB level that is published in the airplane or rotorcraft flight manual for such Individual Aircraft pursuant to 14 C.F.R. 36.1581(a). To obtain a noise classification of an Individual Aircraft, the owner of such aircraft shall provide the Airport Director with a true copy of the relevant pages from such manual showing the noise level data. In the event of a conflict between the Town's list of classifications of Noisy Aircraft types and classification based on the data set forth in the Individual Aircraft airplane or rotorcraft flight manual, the data in the Individual Aircraft airplane or rotorcraft flight manual shall prevail. Once the owner of an Individual Aircraft has provided the Airport Director with

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such data from the Individual Aircraft airplane or rotorcraft flight manual, and the Airport Director has determined the authenticity thereof, the Airport Director shall keep such data on file so that the owner need not resubmit the data for each Use of the Airport, and compliance by such Individual Aircraft with this Section shall be determined based on such data.

(5) *(Reserved)*

(6) "Use of the Airport" shall mean either one arrival (landing) at, or one departure (takeoff) from, the Airport, shall not include any repositioning of any aircraft on the Airport or any aborted takeoff or landing, but shall include touch-and-go operations that result in use of an Airport runway.

B. *[Reserved]*

C. Noisy Aircraft Operations. Use of the Airport by Noisy Aircraft is prohibited as follows:

(1) Between the hours of 8:00 pm and 9:00 am (local time).

D. *[Reserved]*

E. Exemptions. The restrictions of this section 75-38 shall not apply to any aircraft operational emergency, any medical emergency operation, whether by public or private aircraft, or to any operation by a government-owned aircraft, including, without limitation, police, emergency services, and military operations. In the case of an aircraft emergency or medical emergency operation, the operator shall submit a sworn statement to the Airport Manager within 24 hours of such operation attesting to the nature of the emergency and reason for the operation.

§ 75-39 PENALTIES:

A. Section 75-34 shall not apply to violations of Section 75-38 and this Section 75-39 shall apply for all violations of Section 75-38. For the purpose of conferring jurisdiction upon courts and judicial officers in general, violations of Section 75-38 shall be deemed misdemeanors, and, for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations.

B. Any Use of the Airport by an Individual Aircraft in violation of Section 75-38 shall be punishable by a fine assessed against any person, organization, corporation, group or other entity which holds an ownership interest in such aircraft, as follows:

(1) For the first violation by an Individual Aircraft, a fine of not more than \$1,000.

(2) For the second violation by an Individual Aircraft, a fine of not more than \$4,000.

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(3) For the third violation by an Individual Aircraft, a fine of not more than \$10,000.

(4) For the fourth violation by an Individual Aircraft, a prohibition on any Use of the Airport by the Individual Aircraft involved in such violation for a period of not more than two years.

C. Each Use of the Airport by an Individual Aircraft in violation of Section 75-38 shall constitute a separate offense.

D. In addition, any entity convicted hereunder of not complying with the requirements of Section 75-38 may be subject to a fine of not less than the amount of the actual costs incurred and owed to the Town and not more than an amount equal to twice said actual costs. Should any person, organization, corporation, group or other entity be found in violation of the provisions of Section 75-38 within five years of a previous violation of this chapter, the minimum additional fine shall be not less than \$2000.

E. In addition to the above penalties, the Town may also maintain an action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation Section 75-38 by any person, organization, corporation, group or other entity which holds an ownership interest in the Individual Aircraft.

(1) If a finding is made by a court of competent jurisdiction that the defendants or any of them has caused, permitted or allowed a violation of Section 75-38, a penalty to be jointly and severally included in the judgment may be awarded at the discretion of the court in an amount not to exceed \$10,000.00 for each violation that the defendants or any one of them individually caused, permitted or allowed the violation.

SECTION 3. Authority

The Town Board is authorized to establish and promulgate rules and regulations regarding use of the East Hampton Airport pursuant to Municipal Home Rule Law §10(1)(ii)(a)(11) and (12) and Town Law §130 and pursuant to its powers as the proprietor of East Hampton Airport under federal statutory and case law and regulations of the Federal Aviation Administration.

SECTION 4. Severability

If any section or subdivision, paragraph, clause or phrase of this law shall be adjudged invalid, unenforceable, or unconstitutional by any order or judgment of a court of competent jurisdiction, or pursuant to any order of any administrative agency having jurisdiction, whether such judgment or order is temporary or permanent, such judgment or order shall not affect the validity of this law as a whole or any part thereof other than the part or

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4.A.12

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provision so adjudged to be invalid or unconstitutional.

SECTION 5. Effective Date

This local law shall take effect upon filing with the Secretary of State.

Dated: April 16, 2015

BY ORDER OF THE TOWN BOARD
TOWN OF EAST HAMPTON
CAROLE BRENNAN, TOWN CLERK

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Kathee Burke-Gonzalez, Councilwoman
SECONDER:	Peter Van Scoyoc, Councilman
AYES:	Burke-Gonzalez, Van Scoyoc, Overby, Overton, Cantwell

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EXHIBIT D



East Hampton Town Board
159 Pantigo Road
East Hampton, NY 11937

Meeting: 04/16/15 06:30 PM
Department: Town Attorney
Category: Local Law
Prepared By: Elizabeth Vail
Initiator: Elizabeth Vail
Sponsors: Councilwoman Kathee Burke-Gonzalez
DOC ID: 15231 B

ADOPTED

RESOLUTION 2015-413

Adopt Local Law- Amending Chapter 75 (Airport) of the Town Code Regulating Operation of Noisy Aircraft at East Hampton Airport

WHEREAS, the Town of East Hampton is an established resort community that is renowned for its peaceful, quiet beaches and outdoor areas; and

WHEREAS, the economy of the Town of East Hampton is tied intrinsically to the use and enjoyment of its natural and scenic environment, including its world-renowned ocean beaches, wetlands, shorelines, harbors, bays, woodlands, and historic hamlets; and

WHEREAS, residents and visitors are attracted to the Town and the East End of Long Island to enjoy the area's unique scenic beauty, its outdoor spaces, and the peaceful and restful atmosphere they provide; and

WHEREAS, peace, quiet, repose, outdoor recreation, sea, air, and a beautiful and unique natural environment are the essential characteristics that make East Hampton and the East End, as a whole, such an attractive and desirable area; and

WHEREAS, the Town and its residents have invested heavily in preserving the rural, quiet pace of life by preserving land and adopting land use policies that are designed to protect the unique quality of life in East Hampton; and

WHEREAS, in the busy season of May - September, residents and visitors spend a significant portion of time outdoors engaged in recreational activities, entertaining, dining with family and friends, and otherwise enjoying the peaceful, restful atmosphere of the area; and

WHEREAS, the unique quality of life in the Town and entire East End means that residents are particularly susceptible to disturbances to their pastoral lifestyle, especially when those disturbances interfere with the qualities which make this Town a highly desirable place to live and visit; and

WHEREAS, the area surrounding the East Hampton Airport is notably quiet because of the lack of industrial noises, relatively low population density and rural roadway network, which, taken together, accentuates the perception of noise, both in terms of peak levels and also in terms of the duration of the noise events themselves; and

WHEREAS, in the past three decades, noise from aircraft overflights has disrupted outdoor activities and diminished the quality of life in the Town and the entire of the East End; and

WHEREAS, the aircraft noise problem has increased dramatically in recent years, as overall operations increased by 23 percent from 2013 to 2014 and helicopter operations alone increased by 47 percent from 2013 to 2014; and

WHEREAS, noise from loud aircraft and helicopters is particularly disruptive because it interrupts conversations and other ordinary activities and makes it very difficult to enjoy

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outdoor activities; and

WHEREAS, the sheer frequency of overflights also poses a significant problem because there are extended periods of repeated loud noise events that make it very difficult to enjoy outdoor activities and that destroy the peaceful quiet of this rural area; and

WHEREAS, aircraft noise has been a major source of controversy and community strife for many years, with increasingly strong demands by the public that the Town take action to reduce the disruptive and harmful effects of aircraft noise; and

WHEREAS, the controversy has resulted in a number of lawsuits, and additional threatened lawsuits, aimed at compelling the Town or the federal government to take action to address the problem of aircraft noise; and

WHEREAS, in its capacity as proprietor of the East Hampton Airport, the Town Board has a responsibility to protect residents from the adverse effects of aircraft noise; and

WHEREAS, aircraft noise is not merely annoying and disturbing but threatens the economic vitality of the Town and its brand as a place where people can escape the noise and stresses of urban life in favor of tranquility and rural quiet; and

WHEREAS, that threat could result in lower rates of visitation, reduction in property values, and, more generally, a loss in the attractiveness of the Town; and

WHEREAS, in addition to formal noise complaints, residents and visitors have expressed their anger and frustration about aircraft noise at numerous public meetings, Town Board meetings, in letters to local papers, and in communications with Town officials; and

WHEREAS, the problem of aircraft noise was a major topic of discussion and debate in the recent Town election; and

WHEREAS, the Town has received numerous communications from residents and officials of neighboring and nearby jurisdictions demanding that the Town take action to reduce the effect of noise from aircraft flying to and from East Hampton Airport; and

WHEREAS, the Town of Southampton, the Town Shelter Island, the Town of Southold, the Village of North Haven, the Village of East Hampton, and the Village of Sag Harbor all have adopted resolutions requesting that the Town Board of the Town of East Hampton adopt a comprehensive aircraft noise limitation policy; and

WHEREAS these other towns and villages, and all residents and visitors to the East End, depend upon the Town to address the aircraft noise problem since the Town operates the East Hampton Airport, which is the destination of many of the noisy aircraft flights; and WHEREAS, for over two decades, the Town has diligently identified and promoted voluntary measures, including helicopter noise abatement procedures and a nighttime curfew, in order to secure relief from the disturbance of aircraft noise; and

WHEREAS, Town officials have met repeatedly with the New York Congressional delegation, to discuss this issue in the hope of finding a federal legislative solution to the problem of aircraft noise; and

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WHEREAS, Town officials have met repeatedly with the Federal Aviation Administration (FAA) officials at the local, regional and headquarters level and with the FAA's Air Traffic Organization, to discuss proposed measures and use restrictions, including the use of voluntary measures; and

WHEREAS, the Town worked with the New York Congressional delegation and all levels of the FAA in the implementation of a mandatory North Shore Helicopter Route, which was initially implemented in August 2012 and recently extended through August 2016; and

WHEREAS, the Town has repeatedly tried, unsuccessfully, to convince the FAA to adopt a mandatory helicopter route along the south shore of Long Island or to adopt mandatory transition routes for helicopters transitioning from the mandatory routes to the East Hampton Airport; and

WHEREAS, the Town has spent the last several summer seasons studying various voluntary measures or measures in cooperation with the FAA to address the noise problem but the level of resident concern has actually increased over that time; and

WHEREAS, the Town's past several years of efforts to address the problem of aircraft noise through voluntary measures promoted by the Town combined with mandatory flight tracks for helicopters imposed by FAA have provided some limited relief in certain neighborhoods, but those measures alone have not reduced to an acceptable level the overall intensity of community disturbance from noise associated with aircraft flying to and from East Hampton Airport; and

WHEREAS, the Town's ability to address the problem of aircraft noise has been constrained legally by obligations under certain of its federal grants that the FAA has stated will no longer be enforced after December 31, 2014; and

WHEREAS, the Town first announced its intent to pursue use restrictions on operations at East Hampton Airport to address the problem of aircraft noise by the adoption of Resolution 2012-832 on August 2, 2012; and

WHEREAS, Town officials and staff have met repeatedly with airport stakeholders, including Eastern Region Helicopter Council, Friends of the East Hampton Airport, the National Business Aviation Association, the Aircraft Owners and Pilots Association, the National Air Transportation Association, and other informal local groups of users and service providers to discuss their respective concerns; and

WHEREAS, the Town held a special public meeting on August 27, 2014, provide the public an opportunity to comment on the problem of aircraft noise and to share views on potential solutions and the meeting was attended by almost 400 people, including 22 elected officials, all of whom expressed support for finding a solution to the noise problem; and

WHEREAS, the Town announced its commitment to finding a solution to disturbance resulting from noise associated with Airport operations; announced its intent to adopt lawful measures to ensure the peace, quiet, tranquility and health of communities affected by Airport noise; resolved to consider the most serious disturbances, the causes of the disturbances, and reasonable and practical solutions tailored to address the source of those disturbances before making a decision; and announced its intent to identify and adopt

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regulations to address noise and disturbance from Operations at East Hampton Airport before the 2015 season by the adoption of Resolution 2014-1180 on September 18, 2014; and

WHEREAS, FAA's traditional Day/Night Average Sound Level (DNL) noise metric has proved, after considerable study, not to be a useful tool for measuring the impact of noise from operations at East Hampton Airport because it averages noise data over 24 hours, and does not capture the demonstrated community annoyance and disruption from individual aircraft noise events (especially noise events associated with helicopters); and

WHEREAS, beginning in 2014, the Town commissioned a series of comprehensive analyses of the noise and related complaints, including the following:

- Henry Young of Young Environmental Sciences and Les Blomberg of Noise Pollution Clearinghouse: (1) analyzed 2013 operational data collected by the AirScene system, (2) converted that data for use in the Integrated Noise Model (INM), (3) used the INM to develop Day-Night Average Sound Level (DNL) noise contours for 2013 operations (for total annual operations, annual helicopter operations, busiest day total operations, and busiest day helicopter operations), (4) used the INM to calculate the maximum sound level (Lmax) for each modeled flight in 2013 at each property parcel in a 10-mile radius from the airport, (5) applied the Town Code noise standards to determine the number of "exceedances" (i.e., the number of times each parcel experienced a noise impact above the Town's limits) by aircraft type and type of operation; and
- Peter Wadsworth analyzed 2014 complaint data collected by the PlaneNoise system; and
- Ted Baldwin of Harris Miller Miller & Hanson Inc. (HMMH) led HMMH analyses of November 1, 2013 - October 31, 2014 data, including: (1) analysis of PlaneNoise complaint data to identify temporal and geographic complaint patterns for different aircraft types (e.g., jet, turboprop, piston prop, seaplane, and helicopter), (2) analysis of Vector operations data to identify patterns of activity by day of year, day of week, hour of day (for each day of the week and for the average annual day), and season; (3) correlated PlaneNoise complaint data and Vector operations data to identify patterns; (4) used the independent and correlated data analyses to develop a refined problem definition and promising alternatives for addressing that definition; (5) analyzed the effect of those alternatives in terms of the historical operations that each would have affected and of the associated noise complaints; and (6) identified and reviewed technical studies in the literature that have attempted to identify the most effective noise metric for understanding response to helicopter noise, whether the metric should include a special "adjustment" for helicopters, and otherwise provide useful information on the best means of assessing helicopter noise and predicting human response; and

WHEREAS, the Town also commissioned several advisory groups to assist in identifying the

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noise problem with specificity and identifying meaningful, practical and carefully tailored measures that the Town could adopt which would help reduce or eliminate the noise problem; and

WHEREAS, these advisory groups have held many, many public meetings, discussions and debates about how best to address the Town's noise problem; and

WHEREAS, the Town held meetings on October 30, 2014; December 2, 2014; and February 4, 2015; to review the findings of each phase of the recent noise analyses; and

WHEREAS, the Town Board announced four proposed use restrictions for East Hampton Airport on February 10, 2015; and

WHEREAS, the Town Board held public hearings on March 12, 2015, to consider the following four local laws amending Chapter 75 (Airport) of the Town Code: (1) a local law to regulate nighttime operation of aircraft; (2) a local law to regulate nighttime and early morning operation of noisy aircraft; (3) a local law to regulate the operation of helicopters; and (4) a local law to regulate the operation of noisy aircraft; and

WHEREAS, the Town has been soliciting public comment through encouraging comments at Town Board meetings, and emailed comments through a dedicated email address; and

WHEREAS, the Town Board has reviewed all of those comments plus written comments and comments appearing in several local newspapers over the course of the last year; and

WHEREAS, there is no single or simple measure which is certain to solve the Town's noise problem; and

WHEREAS, the Town is committed to testing measures for their practical, real-world effectiveness but needs to have at least one summer season to collect adequate data on real world effects; and

WHEREAS, the Town is committed to collecting data during the summer 2015 season and to assessing all noise control measures in October 2015 for their effectiveness; and

WHEREAS, the Town will modify any restrictions to improve their effectiveness based upon the results of these restrictions during the summer 2015 season; and

WHEREAS, the Town encourages residents, visitors, airport stakeholders, users and all other interested parties to provide the Town with input on the effectiveness of particular measures in addressing, mitigating or eliminating the noise problem; and

WHEREAS, after considering the history of noise disturbance caused by operations at the Airport, reviewing the data provided by the Town's consultants and the comments of the public, and after holding public hearings, the Town Board believes that the enactment of a local law to limit the number of operations of noisy aircraft at the East Hampton Airport is in the best interests of the Town of East Hampton for the following reasons:

- Noise from the noisiest aircraft operating at the East Hampton Airport is particularly disruptive of the peace and tranquility in and around the Town because their high

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noise levels contrast with the general peace and quiet of the East End to a much greater degree than quieter aircraft; and

- The relatively high volume of operations by the noisiest aircraft has caused widespread community disturbance due to the particularly disruptive effect of those aircraft; and
- The proposed restriction would affect 3,443, or 13.4 percent of the total operations but would address roughly 37.6 of the reported complaints; and
- Limiting the noisiest aircraft is the most important during the summer season when residents and visitors have a heightened expectation that they can enjoy the outdoor environment in peace; and

WHEREAS, the proposed local law is an Unlisted Action pursuant to the New York State Environmental Quality Review Act (SEQRA) and Chapter 128 of the Town Code; and

WHEREAS, the Town Board has prepared and considered an Environmental Assessment Form which evaluates the potential environmental impacts of the proposed amendment; and

WHEREAS, the Board has determined that the adoption of this Local Law will not have a significant negative impact upon the environment;

NOW, THEREFORE, BE IT RESOLVED, that a negative declaration is hereby made pursuant to the State Environmental Quality Review Act (SEQRA); and

RESOLVED, that said local law is hereby adopted to read as follows:

LOCAL LAW NO. 5 OF 2015
INTRODUCTORY NO. 5 OF 2015

A Local Law providing for the amendment of Chapter 75 ("AIRPORT") of the East Hampton Town Code to read as follows:

BE IT ENACTED by the Town Board of the Town of East Hampton as follows:

SECTION 1. Legislative Intent.

In the past three decades, the residents of the Town of East Hampton have experienced a significant increase in noisy aircraft traffic at the East Hampton Airport, chiefly helicopters, jets, and seaplanes. By its extensive complaints to the Town Board and to other governmental entities, the public has made clear, and this Town Board recognizes, the negative impact that this aircraft noise has made to the health and welfare of its citizenry, to wildlife and their habitat, as well as to the peace, quiet, and repose of the region. Aircraft noise has substantially diminished the quiet enjoyment of homes and properties and compromised the pleasures of the woodlands, beaches, fields, and preserved lands that define our community and sense of place.

East Hampton is an established resort community whose entire economy is intrinsically tied

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to the use and enjoyment of its natural and scenic environment, including its world renowned ocean beaches, wetlands, shorelines, harbors, bays, woodlands, and historic hamlets. Visitors and residents alike enjoy East Hampton's unique scenic beauty and the Town has made significant efforts to preserve the natural environs of the Town, spending a total of \$229,431,502 of Community Preservation Funds to preserve approximately 1,924 acres since 1998.

The Town's Comprehensive Plan has outlined the vital connection between preserving the natural scenic beauty and enjoyment of its community and the Town's economy, stating in its vision statement the goal to

"[t]ake forceful measures to protect and restore the environment, particularly groundwater. Reduce the impacts of human habitation on groundwater, surface water, wetlands, dunes biodiversity, ecosystems, scenic resources, air quality, the night sky, noise and energy consumption."

The 2007 Airport Master Plan Report that then became the basis for the adopted 2010 Airport Master Plan states, at II-73:

"The East Hampton Airport is owned, maintained and operated for the benefit of the Town and its residents. The airport continues to be classified as a General Aviation Airport under federal criteria. Its primary role is the accommodation of light aircraft traffic. Aircraft operating at greater weights will be accommodated on condition [sic] without unjust discrimination. The airport is also managed with the objective of providing emergency access and facilitation of all other public and community responsibilities. The size and operation of the airport takes into consideration the needs of East Hampton and Southampton residents for protection from excessive noise disturbance and adverse environmental impacts."

"Control of noise and adverse environmental impacts at the airport is consistent with current Town goals for improved quality of life and land and water conservation. These goals recognize that protecting the environment is essential for improving the Town's seasonal and year round economy. These controls are achieved through reasonable, non arbitrary and non discriminatory management practices. These may limit the maximum size of aircraft to be accommodated, regulate excessive peak demand during the summer season and otherwise adjust use patterns such as for helicopter access to minimize community disturbances."

In an effort to address the impacts of aircraft noise, the Town Board undertook an extensive analysis of the citizenry's complaints, and of the aircraft traffic itself, by the Town's aviation consultants and noise engineers, the results of which have only confirmed the seriousness of the community's noise disturbance. Of 24,000 airport noise complaints logged last year, the latest noise analysis discloses that they are overwhelmingly attributable to helicopters

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and jets, the noisiest types. Noise complaints at East Hampton Airport far exceed the level of complaints at major airports around the country. This is surely due, not least, to the incongruity of jet and helicopter noise in what is otherwise a very quiet, exurban and rural environment.

Specifically, noise from aircraft operating at the East Hampton Airport disturbs many residents of the East End of Long Island. Disturbance by the noisiest aircraft is most significant when aircraft operations are most frequent. The Town examined how best to limit the constant onslaught of air traffic and has determined that an overall limit on operations by the noisiest aircraft is essential to the quality of life to which residents and visitors are entitled.

In its capacity as proprietor of the East Hampton Airport, the Town Board has a public policy responsibility to protect residents from the adverse effects of aircraft noise. It has developed a set of restrictions on the use of East Hampton Airport that are reasonable, non-arbitrary, and non-discriminatory. These restrictions address the problems of aircraft noise that are unique to the Town and neighboring communities while preserving for the community the benefits of aviation.

As the U.S. Court of Appeals for the Second Circuit recognized in the *National Helicopter* case -- that residents have a justified, heightened expectation of quiet during non-working hours, evenings, nights, and weekends -- both year-round and seasonal residents of East Hampton and the East End have a justified, heightened expectation of quiet, yet suffer greater exposure to disturbance from aircraft noise, during the very periods when the East End is sought as a destination for repose and relief from urban ills. That is the reason why the huge influx of seasonal residents and visitors come to East Hampton. It is the reason why year-round residents struggle to stay in East Hampton despite the difficulty of earning a living in a limited economy on the end of a long, narrow peninsula on the tip of a long island. Peace, quiet, repose, outdoor recreation, sea, air, a beautiful and unique natural environment, these are the primary social and economic goods that East Hampton and the East End as a whole have to offer.

The Town Board recognizes the value of the East Hampton Airport to the community and does not want to impose any greater restriction than is necessary to achieve the Town's objectives.

To that end, the Town Board recognizes that limiting the volume and frequency of airport use by noisy aircraft types during the summer season is essential to restoring the peace and quiet that East Hampton residents and visitors have come to expect in this community. The legislation is intended to restrict aircraft according to the seriousness of their noise contribution to the community disturbance - that is, each aircraft's individual noise generation and the frequency and timing of its airport landings and takeoffs. The proposed restrictions are seasonally based, imposing greater limits during the period May 1 to September 30 each year when residents and visitors have a heightened expectation that they can enjoy our magnificent outdoor environment in peace.

By enacting this legislation, the Town Board seeks to achieve immediate, substantial noise relief for residents and visitors during the summertime, provide an incentive for airport users with noisy types of aircraft to transition to quieter types of aircraft, maintain the intended and traditional use of the East Hampton Airport by recreational aircraft, and

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continue sufficient air traffic to maintain a financially self-sustaining Airport.

The Town Board is committed to balancing the need to address the impact of the aircraft noise on the Town's environment with the equally important need to maintain an economically viable and safe airport for East Hampton.

The proposed legislation expressly excludes from its application aircraft operated by any federal, state or local government, any emergency services, evacuation services, public or private, and any operation by an aircraft in an emergency. The airport will remain open to such operations at all times without restriction or charge.

These restrictions are adopted on an interim basis. The effects of the legislation on the operations at the Airport for the period May 1 to October 31, 2015 shall be evaluated to determine whether the restrictions should be made permanent or modified. The Town Board will seek public comment throughout the Season and immediately following the Season to determine the success and/or failure of the use restrictions and whether they function the way they were intended or need to be adjusted.

SECTION 2. Amendment

Section 75-38, Airport Use Restrictions, of the Code of the Town of East Hampton is hereby amended by adding the following provisions:

CHAPTER 75, AIRPORT.

§ 75-38 AIRPORT USE RESTRICTIONS:

A. Definitions.

(1) "Calendar Week" shall mean the period beginning at 12:00:00 am on Sunday and ending at 11:59:59 pm on the following Saturday.

(2) - *Reserved*

(3) "Individual Aircraft" shall mean an aircraft, of whatever type, with a distinct registration number ("N number" if such registration is issued by the United States Government).

(4) "Noisy Aircraft" shall mean any airplane or rotorcraft type classified as a Noisy Aircraft type pursuant to this Section.

(a) The Airport Director is directed to maintain on the Town website a current list of aircraft based upon the noise characteristics published by the Federal Aviation Administration, or (if data is not available from that agency), the European Aviation Safety Agency. Noisy Aircraft shall be defined as any airplane or rotorcraft for which there is a published Effective Perceived Noise in Decibels (EPNdB) approach (AP) level of 91.0 or greater

(b) In lieu of being subject to the definition of "Noisy Aircraft" pursuant to

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subsection (a) on the basis of the Town's list of types of Noisy Aircraft, the owner of an Individual Aircraft may elect to have the noise classification of such Individual Aircraft determined by the sound levels on the basis of the EPNdB level that is published in the airplane or rotorcraft flight manual for such Individual Aircraft pursuant to 14 C.F.R. 36.1581(a). To obtain a noise classification of an Individual Aircraft, the owner of such aircraft shall provide the Airport Director with a true copy of the relevant pages from such manual showing the noise level data. In the event of a conflict between the Town's list of classifications of Noisy Aircraft types and classification based on the data set forth in the Individual Aircraft airplane or rotorcraft flight manual, the data in the Individual Aircraft airplane or rotorcraft flight manual shall prevail. Once the owner of an Individual Aircraft has provided the Airport Director with such data from the Individual Aircraft airplane or rotorcraft flight manual, and the Airport Director has determined the authenticity thereof, the Airport Director shall keep such data on file so that the owner need not resubmit the data for each Use of the Airport, and compliance by such Individual Aircraft with this Section shall be determined based on such data.

(6) "Use of the Airport" shall mean either one arrival (landing) at, or one departure (takeoff) from, the Airport, shall not include any repositioning of any aircraft on the Airport or any aborted takeoff or landing, but shall include touch-and-go operations that result in use of an Airport runway.

B. [Reserved]

C. Noisy Aircraft Operations. Use of the Airport by Noisy Aircraft is prohibited as follows:

(1) [Reserved]

(2) More than two Uses of the Airport by an Individual Aircraft during a Calendar Week, or portion of a Calendar Week, that falls within the Season.

D. [Reserved]

E. Exemptions. The restrictions of this section 75-38 shall not apply to any aircraft operational emergency, any medical emergency operation, whether by public or private aircraft, or to any operation by a government-owned aircraft, including, without limitation, police, emergency services, and military operations. In the case of an aircraft emergency or medical emergency operation, the operator shall submit a sworn statement to the Airport Manager within 24 hours of such operation attesting to the nature of the emergency and reason for the operation.

§ 75-39 PENALTIES:

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Meeting of April 16, 2015

A. Section 75-34 shall not apply to violations of Section 75-38 and this Section 75-39 shall apply for all violations of Section 75-38. For the purpose of conferring jurisdiction upon courts and judicial officers in general, violations of Section 75-38 shall be deemed misdemeanors, and, for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations.

B. Any Use of the Airport by an Individual Aircraft in violation of Section 75-38 shall be punishable by a fine assessed against any person, organization, corporation, group or other entity which holds an ownership interest in such aircraft, as follows: (1) For the first violation by an Individual Aircraft, a fine of not more than \$1,000.

(2) For the second violation by an Individual Aircraft, a fine of not more than \$4,000.

(3) For the third violation by an Individual Aircraft, a fine of not more than \$10,000.

(4) For the fourth violation by an Individual Aircraft, a prohibition on any Use of the Airport by the Individual Aircraft involved in such violation for a period of not more than two years.

C. Each Use of the Airport by an Individual Aircraft in violation of Section 75-38 shall constitute a separate offense.

D. In addition, any entity convicted hereunder of not complying with the requirements of Section 75-38 may be subject to a fine of not less than the amount of the actual costs incurred and owed to the Town and not more than an amount equal to twice said actual costs. Should any person, organization, corporation, group or other entity be found in violation of the provisions of Section 75-38 within five years of a previous violation of this chapter, the minimum additional fine shall be not less than \$2000.

E. In addition to the above penalties, the Town may also maintain an action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation Section 75-38 any person, organization, corporation, group or other entity which holds an ownership interest in the Individual Aircraft.

(1) If a finding is made by a court of competent jurisdiction that the defendants or any of them has caused, permitted or allowed a violation of Section 75-38, a penalty to be jointly and severally included in the judgment may be awarded at the discretion of the court in an amount not to exceed \$10,000.00 for each violation that the defendants or any one of them individually caused, permitted or allowed the violation.

SECTION 3. Authority

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Meeting of April 16, 2015

The Town Board is authorized to establish and promulgate rules and regulations regarding use of the East Hampton Airport pursuant to Municipal Home Rule Law §10(1)(ii)(a)(11) and (12) and Town Law §130 and pursuant to its powers as the proprietor of East Hampton Airport under federal statutory and case law and regulations of the Federal Aviation Administration.

SECTION 4. Severability.

If any section or subdivision, paragraph, clause or phrase of this law shall be adjudged invalid, unenforceable, or unconstitutional by any order or judgment of a court of competent jurisdiction, or pursuant to any order of any administrative agency having jurisdiction, whether such judgment or order is temporary or permanent, such judgment or order shall not affect the validity of this law as a whole or any part thereof other than the part or provision so adjudged to be invalid or unconstitutional.

SECTION 5. Effective Date.

This local law shall take effect upon filing with the Secretary of State.

Dated: April 16, 2015

BY ORDER OF THE TOWN BOARD
TOWN OF EAST HAMPTON
CAROLE BRENNAN, TOWN CLERK

RESULT:	ADOPTED [4 TO 1]
MOVER:	Kathee Burke-Gonzalez, Councilwoman
SECONDER:	Peter Van Scoyoc, Councilman
AYES:	Kathee Burke-Gonzalez, Peter Van Scoyoc, Sylvia Overby, Larry Cantwell
NAYS:	Fred Overton

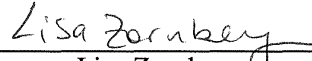
CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that she caused true and correct copies of the foregoing Plaintiffs' Amended Complaint to be served on the 28th day of April 2015, via the Court's electronic filing system on upon all counsel of record.

Dated: April 28, 2015

LANKLER SIFFERT & WOHL LLP

By



Lisa Zornberg

500 Fifth Avenue
New York, New York 10110
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Facsimile: (212) 764-3701
lzornberg@lswlaw.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

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.

-----x

EXPERT DECLARATION OF D. KIRK SHAFFER

I, D. KIRK SHAFFER, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I have been retained by Plaintiffs to provide expert testimony in this matter. I submit this declaration in support of Plaintiffs’ motion for a temporary restraining order.

EDUCATION AND EXPERIENCE

2. In 1973, I received a Bachelor of Science degree from the United States Military Academy at West Point, New York. Thereafter, I served as an Infantry rifle platoon leader, weapons platoon leader, and heavy mortar platoon leader in the 82d Airborne Division. In 1976, I was selected as one of 25 Army officers worldwide to attend law school on full scholarship, pay, and allowances. I received a Juris Doctor degree from The University of Texas School of Law in 1979. Following law school, I attended the yearlong Judge Advocate Officers’ Advanced

Course and graduated with the equivalent of a Master of Laws degree (LL.M) from The Judge Advocate General's School of the U.S. Army.

3. I have been practicing law for the past 36 years, the last 29 of which have been devoted almost exclusively to the U.S. commercial aviation industry, with particular focus on federal policies and practices relating to airport noise and access restrictions. I have been a Certified Member of the American Association of Airport Executives since 1993. I have been a member of the Airports Council International-North America's Legal Affairs Committee for almost 30 years. I was Vice Chairman and then Chairman of that Committee from 1997 through 1999, and I served as a member of the Committee's Steering Group for several years.

4. From 1986 to 2004, I served as outside general counsel of the Metropolitan Nashville (Tennessee) Airport Authority (the "Authority"), which at the time owned and operated as many as four airports in the Middle Tennessee region. I simultaneously served in executive management of the Authority and was at various times the Director of Properties and Executive Assistant to the President on the Authority's staff. As general counsel of the Authority, I was directly involved, from both a legal and management perspective, in several major, multi-year construction projects, including the construction of two air carrier runways and a major extension of a third. The construction of runway 2R/20L led to my drafting the nation's first Letter of Intent under the Federal Aviation Administration's ("FAA") Airport Improvement Program ("AIP") to provide long-term federal financing for allowable costs. During the same period, I co-authored the Airport Noise Reduction Reimbursement Act of 1989 (Public Law 101-71), permitting the FAA for the first time to issue AIP grants to reimburse airport sponsors who advance funded noise mitigation projects under 14 C.F.R. Part 150 ("Part 150"). Thereafter, I was intimately involved in the design and implementation of a Part 150 noise mitigation program

totaling over \$100 million in the communities around Nashville International Airport, including property acquisition, aviation easement acquisition, sound insulation, and other FAA-approved measures. I also was responsible for reviewing all of the Authority's federal grants to provide an independent certification to the FAA that the Authority was in compliance with applicable grant assurances, and to defend any assurance compliance issues which arose.

5. In January 2007, I was appointed by the President of the United States to serve as Associate Administrator for Airports at the FAA, a position that I held until January 2009. In that role, I was the federal official primarily responsible for overseeing policy matters that affected the nation's system of airports, including general aviation airports, and the oversight of all airport noise compatibility planning pursuant to Part 150 and airport noise and access restrictions pursuant to 14 C.F.R. Part 161 ("Part 161") system-wide. I was also the final agency decision-maker for airport compliance issues, including airport obligations under federal grant assurances.

6. As Associate Administrator for Airports, I reported directly to the FAA Administrator and the U.S. Secretary of Transportation, and I routinely briefed and testified before the U.S. Congress, its professional staff, state and local elected officials, aviation industry groups, and other Cabinet departments on a wide variety of aviation policy matters. I also was responsible for publishing the 2009–2013 National Plan of Integrated Airport Systems ("NPIAS"), a bi-annual report that identifies the public-use airports in the United States that are important to national air transportation and therefore eligible to receive grants under the FAA's Airport Improvement Program.

7. I have been a licensed fixed-wing pilot for 15 years.

8. I have been retained to provide expert testimony in approximately seven cases related to airport noise abatement and other aviation issues, including approximately three cases pending in the U.S. District Courts. I can provide a list of those matters upon request.

9. I am being paid at a rate of \$650 per hour for my time spent working on this matter.

ASSIGNMENT

10. I have been requested to render an opinion concerning the Town of East Hampton's (the "Town") enactment of Local Law Nos. 3, 4 and 5 of 2015 (the "Restrictions") and the process leading thereto. The Restrictions include a full mandatory curfew prohibiting use of East Hampton Airport (the "Airport" or "HTO") by any aircraft between 11:00 p.m. and 7:00 a.m. every day (the "Mandatory Curfew"); (2) an extended curfew banning use of the Airport by so-called "Noisy Aircraft" from 8:00 p.m. to 9:00 a.m. every day ("the "Extended Curfew"); and (3) a one-trip limit prohibiting "Noisy Aircraft" from flying more than one trip—defined as one arrival and one departure—per calendar week from May through September (the "One-Trip Limit"). The Restrictions define "Noisy Aircraft" as aircraft for which the FAA has published an Effective Perceived Noise in Decibels ("EPNdB") approach level of 91.0 or greater.

11. Lankler Siffert & Wohl LLP has provided me with materials to review as I developed my opinion. I have also reviewed certain other authoritative literature in my field that is relevant to the issues presented by this assignment. The materials that I have reviewed include the items listed in Exhibit A attached hereto.

OPINIONS

12. Upon reviewing the above materials, and based on my years of experience in the aviation industry and in government, I have concluded that: (1) the Restrictions, including the

procedure by which they were enacted, are wholly unprecedented in this country and represent an extreme departure from well-established, federally mandated methods of defining and addressing airport noise problems; (2) the Restrictions, if permitted to take effect, would have immediate adverse consequences for the federal policy goals of uniformity, safety, efficiency and predictability in the country's national system of airports; and (3) a 2005 settlement agreement between the FAA and the Committee to Stop Airport Expansion (a private advocacy group), upon which the Town appears to rely in justifying its enactment of the Restrictions, is inconsistent with established FAA policy and practice.

13. I will set forth some relevant background information before explaining the above opinions in more detail.

A. Background

1. East Hampton Airport Has Been Designated By the U.S. Government as an Important Regional Airport

14. The National Plan of Integrated Airport Systems is a planning document that is required by 49 U.S.C. § 47103 to be published by the FAA's Office of Airports every two years covering the following five-year period. NPIAS identifies certain airports across the country that are significant to national air transportation. It categorizes those airports based upon their particular role in our national airport system and estimates the amount of funding which will be required at each of those airports. Airports designated in the NPIAS are eligible for AIP grant funding, in recognition of the national importance of developing and improving those airports as part of the national airport system.

15. The FAA has determined that "[t]he national airport system is critical to the national transportation system and helps air transportation contribute to a productive national economy and international competitiveness." FAA, *National Plan of Integrated Airport Systems*

2015–2019 (Sept. 30, 2014), at 2, available at http://www.faa.gov/airports/planning_capacity/npias/reports/media/npias-2015-2019-report-narrative.pdf (hereinafter, the “NPIAS Report”). In the NPIAS Report, the FAA sets forth certain “guiding principles” for the national airport system, including the following:

- a. Airports should be safe and efficient, located where people will use them, and developed and maintained to appropriate standards;
- b. Airports should be flexible and expandable, able to meet increased demand, and to accommodate new aircraft types;
- c. Airports should be permanent, with assurance that they will remain open for aeronautical use over the long term;
- d. Airports should be compatible with surrounding communities, maintaining a balance between the needs of aviation, the environment, and the requirements of residents;
- e. The airport system should support a variety of critical national objectives, such as defense, emergency readiness, law enforcement, and postal delivery; and
- f. The airport system should be extensive, providing as many people as possible with convenient access to air transportation, typically by having most of the population within 20 miles of a NPIAS airport. *Id.*

16. According to the NPIAS, of the 19,000 aviation facilities throughout the U.S., 5,148 are public-use facilities, and only 3,331 are deemed “significant” within the national system of airports and thus eligible for federal funding under the AIP. *See id.* at 1. In order for an airport to be eligible for AIP grant funding, it must be among those airports designated as significant in the NPIAS.

17. According to the NPIAS, HTO is deemed to be a significant airport. Moreover, in the most recent NPIAS, HTO was designated as one of 467 regional general aviation airports in the nation. See FAA, *General Aviation Airports: A National Asset* (May 2012), at B59, available at http://www.faa.gov/airports/planning_capacity/ga_study/; NPIAS Report at B40, available at http://www.faa.gov/airports/planning_capacity/npias/reports/media/npias-2015-2019-report-appendix-b-part-4.pdf. HTO is located near a major metropolitan area and serves a relatively large population. Operations from HTO cross state lines, and jet and turboprop aircraft are prominent. HTO hosts two fixed-base operators who provide numerous aeronautical goods and services, including sale of aviation fuels, flight lessons, airplane rentals, major aircraft repair, aircraft hangarage, rental cars, plane catering, and aircraft lavatory services. The Airport has a seasonal air traffic control tower to enhance the safety of operations on and around the airfield and in adjacent airspace. While the Airport does not have any precision instrument landing systems on its runways (and typically would not be expected to), it does have multiple area navigation (RNAV)/global positioning system (GPS) approaches, which now outnumber the age-old ground-based instrument landing systems at U.S. airports by a margin of two to one and provide an enhanced level of accuracy and safety to aircraft approaching the airport for landing.

18. For all of these reasons, HTO is an important regional component of this country's national airport system.

2. Noise Mitigation Under the Federal Regulatory Scheme

19. Based on my years of experience in the airport industry and at the FAA, I have gained a detailed understanding of the practical context in which federal policies and procedures governing aviation and airport noise mitigation operate.

20. The Airport Noise and Capacity Act of 1990 (“ANCA”) was enacted, in part, in response to a growing patchwork of inconsistent local airport rules and restrictions across the country and the resulting need for national uniformity. Congress and the FAA envisioned an integrated, national system of airports, in which flight crews could move aircraft seamlessly from one airport to another with the knowledge that each facility would be designed and operated in a safe, uniform fashion. Conflicting local rules and regulations—including those pertaining to aircraft noise and access—ran counter to that vision and threatened to impede the flow of aircraft and commerce. Thus, a national aviation policy, including noise regulation, was established at the federal level.

21. Airport noise mitigation and mandatory access restrictions are also governed by 14 C.F.R. Part 161, which was promulgated by the FAA under ANCA and which I administered while serving at the FAA. In practice, Part 161 provides the framework by which an airport may apply to the FAA for approval of the implementation of noise and access restrictions affecting aircraft classified by the FAA as “Stage 2,” “Stage 3” or “Stage 4” aircraft. The FAA classifies aircraft based on their noise characteristics—Stage 2 being the loudest and Stage 4 being the quietest. In July 2005, the FAA adopted more stringent Stage 4 standards for certification of aircraft, effective January 1, 2006. Any aircraft that meets Stage 4 standards will meet Stage 3 standards. Accordingly, policies for review of noise restrictions affecting Stage 3 aircraft may be applied to Stage 4 aircraft as well. *See* Airport Compliance Manual, FAA Order 5190.6b ¶ 13.4.

22. Part 161 dictates that noise analyses and contour maps used to evaluate possible noise and access restrictions under that program must be developed in accordance with numerous requirements under 14 C.F.R. Part 150. The regulations contained in Part 150 (the “Part 150 Program”) were promulgated in response to 49 U.S.C. § 47101(c), amongst other authorities. I

implemented Part 150 Programs while an airport executive, and I administered the Part 150 Program while serving as Associate Administrator for Airports at the FAA.

23. The Part 150 Program applies to all public-use airports and, among other things, provides a single system for measuring aircraft noise and determining noise exposure to people in the vicinity of an airport which results from airport operations. Under the Part 150 Program, noise must be measured in A-weighted decibels (“dbA”), and noise exposure in areas surrounding the airport must be determined using annual day-night averages (“Ldn” or “DNL”), with nighttime noise incurring a 10-decibel penalty. (An increase in noise of 10 decibels is generally perceived by humans as being twice as loud.) The Part 150 Program further provides that the first step in any noise mitigation program for airport noise is the creation of a noise exposure map using the FAA’s Integrated Noise Model to plot noise contours on or around the airport, demarking which areas are exposed to DNL levels of 65, 70, and 75. Part 150 provides guidance as to which land uses are compatible or incompatible with the various noise levels in surrounding areas and steps that may be taken by local airport proprietors to mitigate the effects of airport noise. Under Part 150, noise levels below DNL 65 are generally considered to be compatible with residential land use.

24. Permissible noise mitigation steps under the Part 150 Program can include land acquisition in fee or in part (such as an avigation or noise easement); sound insulation of structures; acoustical barriers and shielding; modification of flight procedures or flight tracks (arrival or departure) to minimize the exposure of people to airport noise; preferential runway use; denial of use to aircraft which do not meet federal noise standards; capacity restrictions based on relative noisiness; landing fees; and partial or complete voluntary curfews.

25. Participation by an airport and airport users in a Part 150 Program is entirely voluntary. However, if the airport (through its proprietor) wants to impose mandatory noise and access restrictions on Stage 2, Stage 3 or Stage 4 aircraft, then determining noise impact in accordance with Part 150's standards is mandatory under ANCA and the FAA's regulations.

26. Under ANCA, airport proprietors proposing to impose restrictions on Stage 2 aircraft must, at least 180 days prior to the proposed effective date of the restriction, publish the proposed restriction and prepare and make available for public comment: "(1) an analysis of the anticipated or actual costs and benefits of the existing or proposed restriction; (2) a description of alternative restrictions; (3) a description of the alternative measures considered that do not involve aircraft restrictions; and (4) a comparison of the costs and benefits of the alternative measures to the costs and benefits of the proposed restriction." 49 U.S.C. § 47524(b). Under Part 161, this analysis must include a noise study conducted in accordance with Parts 161 and 150. 14 C.F.R. § 161.205(b).

27. Imposing noise and access restrictions on Stage 3 and Stage 4 aircraft is even more stringent, as Stage 3 and Stage 4 aircraft are significantly quieter than Stage 2 aircraft. To do so, the airport proprietor must either (1) obtain agreement to the restriction by all aircraft operators at the airport or (2) submit the restriction for, and obtain, approval by the Secretary of Transportation under the procedures provided by ANCA, Part 150, and Part 161. 49 U.S.C. § 47524(c). The Secretary of Transportation may approve a restriction on Stage 3 or Stage 4 aircraft only if the Secretary finds, on the basis of substantial evidence, that: (1) the restriction is reasonable, non-arbitrary, and nondiscriminatory; (2) the restriction does not create an unreasonable burden on interstate or foreign commerce; (3) the restriction is not inconsistent with maintaining the safe and efficient use of navigable airspace; (4) the restriction does not

conflict with a law or regulation of the United States; (5) an adequate opportunity has been provided for public comment on the restriction; and (6) the restriction does not create an unreasonable burden on the national aviation system. 49 U.S.C. § 47524(c)(2). In my experience, internal FAA review of proposed Stage 3 and Stage 4 noise and access restrictions includes extensive vetting by various offices within the FAA, including the Airports Organization, the Aviation Safety Organization, the Office of Policy and Environment, and the Air Traffic Organization.

28. Absent FAA approval, local airport proprietors are extremely limited in their powers to curb noise by Stage 3 and Stage 4 aircraft. Embodied in ANCA and relevant FAA regulations is the considered federal policy decision that, with limited exception, aircraft classified as Stage 3 or Stage 4 by the FAA (*i.e.*, quieter than Stage 2 aircraft) must be permitted to operate freely at all public-use airports in the United States, without interference by varying and uncertain local noise and access restrictions. Airport proprietors can obtain voluntary agreements by the airport's users to observe curfews and noise-mitigating flight procedures (*e.g.*, avoiding noise-sensitive areas). In addition, federally obligated airports have a responsibility to prevent incompatible land uses near the airport, so they can advocate for land use restrictions surrounding the airport.

29. Apart from ANCA, airports that receive AIP grants must provide the FAA with written assurances—known as “grant assurances”—that are binding contractual obligations between the airport and the federal government. Grant Assurance 22.a, for example, provides that the airport's proprietor “will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the

airport.” FAA, Airport Sponsors Assurances (Mar. 2014), ¶22.a, available at http://www.faa.gov/airports/aip/grant_assurances/media/airport-sponsor-assurances-aip.pdf. In practice, a federally obligated airport must seek FAA review prior to imposing access restrictions, so the FAA can scrutinize and determine whether the restrictions are reasonable and non-discriminatory, in compliance with Grant Assurance 22.a. The FAA is the federal government’s subject matter expert in performing this evaluation.

30. Grant assurances are generally binding for the life of the improvement for which the relevant federal grant provided funding. Under established FAA policy, the term of such improvements is generally deemed to be at least 20 years. Certain grant assurances, such as Grant Assurance 23 (Exclusive Rights), are given in perpetuity.

31. It is my understanding that, in September 2001, the Town received \$1,410,000 in federal airport funds for HTO, through an AIP grant. In my experience, in these circumstances, the Town and HTO would be obligated under the FAA’s grant assurances for at least 20 years (until September 2021).

B. Opinions

32. Based on my review of materials in this matter, and on my experience in the aviation industry and in government, I have reached the following opinions concerning the Restrictions and the process that led to their enactment.

1. The Restrictions Are Unprecedented

33. In my experience, the Restrictions are unprecedented for a public-use airport. In enacting them, the Town has made no apparent attempt to comply with ANCA, the Part 150 Program, or Part 161, and the traditional analyses that evaluate such factors as noise, safety, costs and economic effects, alternative measures, airfield and airspace capacity, and efficient use

of available aeronautical assets—all of which are normally provided when an airport proprietor proposes noise and access restrictions—are missing in this case. Based on my experience as an airport executive and in the FAA, it is my opinion that because the Town did not comply with Part 161 and Part 150, the FAA’s established policy and practice would require rejection of the Restrictions.

34. The Mandatory Curfew, for example, is unsupported by any noise analysis that would be required to justify any curfew. Moreover, even if the Town had completed a traditional Part 161 study, to my knowledge the FAA has yet to approve any mandatory curfew enacted in the post-ANCA period (*i.e.*, after 1990).

35. During my tenure as Associate Administrator for Airports at the FAA, I was involved in the FAA’s decision to deny an application by Bob Hope Airport (“BUR”) in Burbank, CA, for FAA approval of a mandatory curfew between 10:00 p.m. and 7:00 a.m. In that case, BUR undertook an extensive 9-year, \$7 million Part 161 study. However, the FAA rejected the proposed curfew on the ground that BUR had complied with only two of ANCA’s six statutory requirements for imposing noise and access restrictions and that the mandatory curfew proposed by the airport was unjustified under the circumstances. As the foregoing indicates, the FAA could not approve HTO’s mandatory curfew—which is significantly more restrictive than BUR’s proposed curfew, and which was enacted without any Part 161 or Part 150 study whatsoever—without ignoring both the requirements of ANCA and the FAA’s own established policies and practices in enforcing that statute.

36. The Extended Curfew and One-Trip Limit are likewise unprecedented and represent a significant departure from current federal policy. In my years as an airport executive and as Associate Administrator for Airports at the FAA, I never encountered, or even heard of, a

local curfew that closed an airport entirely to certain Stage 3 and Stage 4 aircraft for 13 hours of each day, or that allowed any particular aircraft to use the airport for only one trip per calendar week. In my opinion, such severe restrictions could not be approved without a radical departure from established FAA policy and procedures.

2. The Restrictions, if Implemented, Will Have an Immediate and Adverse Impact on the National System of Airports

37. If permitted to take effect, the Restrictions at HTO will immediately and adversely affect the federal policy goals of uniformity, safety, efficiency and predictability within the national system of airports. As noted, HTO has been designated by the FAA as one of a small number of important regional public-use airports within the United States. It is located within the busiest, most complex airspace in the nation—the corridor including New York, New Jersey, and Philadelphia. Any access restriction as severe as the Restrictions would upset the balance and uniformity that the FAA and Congress have created after years of legislation and regulation affecting this region.

38. I have reviewed a traffic diversion study created by one of the Town's consultants (the "Traffic Study"), which estimates that approximately 581 aircraft operations (takeoffs and landings, fixed wing and rotary wing) will be affected by the Mandatory Curfew, over 1,800 aircraft operations will be affected by the Extended Curfew, and over 5,800 operations will be affected by the One-Trip Limit.

39. The Traffic Study goes on to project that many of those aircraft will divert to Francis S. Gabreski Airport in Westhampton, the Southampton Heliport, and Montauk Airport. None of these suggested diversion destinations appears workable. In fact, two of them are clearly less safe based on the Traffic Study's own analysis. Gabreski Airport is over 25 miles from HTO and has its own voluntary nighttime curfew of 11:00 p.m. to 7:00 a.m. An airport

beyond 20 miles from the traveler's destination is inconsistent with the NPIAS, which generally requires that most of the United States population reside within 20 miles of an NPIAS airport. The Southampton Heliport does not have an air traffic control tower, offers no fueling services, and is subject to foggy conditions. Montauk Airport likewise is largely unattended and has no air traffic control tower, no fueling services, and no communications in an area where rapid weather changes are common. Thus, the Town is proposing to divert aircraft during the busiest season of the year from a controlled, full-service airport to one airport that has a voluntary curfew and is over 25 miles from HTO, and two that are uncontrolled and offer virtually no services. This would be unsafe.

40. The Restrictions will also likely create an arrival and departure "push" at HTO and Gabreski, as pilots try to get into or out of these airports before curfew time. It is unlikely that pilots will elect to use the Southampton Heliport or Montauk for nighttime operations given the lack of air traffic control and fuel at those facilities, so the "pushes" at HTO and Gabreski will likely be significant. This will create inefficiency in the air traffic control system, in the most complex airspace in the nation, as controllers try to accommodate the "push" and pilots make last-minute decisions in order to avoid curfew penalties.

41. The Town's Traffic Study does not address whether local airspace has the capacity to handle the diversions of potentially 8,000 aircraft. Further, aircraft operating under instrument flight rules must navigate through an "arrival fix"—or gate—in the air when approaching an airport. Such arrival fixes have capacity limits, and the air traffic controllers using them must maintain required spacing between approaching aircraft at all times. Thus, the Restrictions may not only shift aircraft but will also burden air traffic controllers as they try to

accommodate the increased air traffic at Gabreski. There is also no guarantee that all diverted aircraft can be accommodated at the other airports.

3. The FAA's 2005 Settlement Agreement with the Committee to Stop Airport Expansion Is Inconsistent with FAA Policy and Practice

42. I understand that in 2005, the FAA entered into a settlement agreement (the "2005 Settlement") with an organization called the Committee to Stop Airport Expansion in *Committee to Stop Airport Expansion, et. al., v. Department of Transportation, et. al.*, No. 03 Civ. 2643 (E.D.N.Y.), and that neither the Town nor HTO was a party to that action. I further understand that, as part of the 2005 Settlement, the FAA purported to agree not to enforce grant assurances 22.a and 22.h (Economic Nondiscrimination) and 29.a and 29.b (Airport Layout Plan) (collectively, the "Grant Assurances") against HTO after December 31, 2014.

43. Prior to my involvement in the instant matter, I was unaware of the 2005 Settlement Agreement. I had never seen or heard of it during my time as Associate Administrator for Airports at the FAA.

44. In my experience, compliance with federal grant assurances are subject to strict enforcement by the FAA.

45. For the past 29 years as an airport executive and counsel and as the chief federal airport regulator in the United States during my time at the FAA, I have personally executed billions of dollars of AIP grants. In doing so, I have never heard any discussion, request or suggestion that any of those grants would involve anything other than the fullest enforcement of each and every grant assurance (there are 39 such assurances in their present form) contained in the grant agreements. Indeed, every airport accepting an AIP grant is required to have its counsel provide an independent certification that the airport is in full compliance with all grant assurances as a condition precedent to receiving the grant proceeds.

46. In my opinion, it was at odds with the FAA's established policies and procedures regarding the fulfillment of its statutory obligations for the FAA to enter into an agreement with a private partisan advocacy group purporting to affect in any manner the contractual and statutory obligations of a nonparty airport or airport proprietor. The AAIA permits the FAA to modify a grant recipient's obligation to comply with grant assurances in certain limited circumstances, but only if the FAA first provides public notice and an opportunity for comment. *See* 49 U.S.C. § 47107(h). Based on this statutory requirement, the FAA's internal procedures provide that the FAA cannot and will not consider modifying or releasing an airport sponsor from any federal obligation unless, among other things: (1) the FAA determines that granting such a release or modification is authorized by law, FAA Order 5190.6B §§ 22.4, 22.28 (Sept. 30, 2009); (2) the airport sponsor has formally applied for release or modification in writing and the FAA has fully documented its consideration of the application (including the public notice and comments), *id.* §§ 22.14, 22.22, 22.23; and (3) granting the release or modification would "protect, advance, or benefit the public interest in civil aviation," *id.* § 22.4.

47. By purporting to waive FAA enforcement of certain key grant assurances, the 2005 Settlement appears to arbitrarily treat HTO differently than other airports, where the FAA has consistently made clear that it can neither waive the airport's grant assurances nor waive its own enforcement obligations. For example, in the Final Agency Decision issued in *Platinum Aviation & Platinum Jet Center BMI v. Bloomington-Normal Airport Authority, Illinois* (a matter in which I participated while at the FAA), the FAA stated that the "FAA can neither bargain away the rights of access to [airport facilities] nor waive the grant assurances of the Respondent [airport]." FAA 106-06-09 (2007), 2007 WL 4854321, at *15 (Nov. 28, 2007). The same view was echoed by the FAA in the Santa Monica case, *In re Compliance with Federal Obligations by*

the City of Santa Monica, California, FAA 16-02-08 (2008), 2008 WL 6895776 (May 27, 2008).

In that case, the FAA again reiterated that it “cannot agree to waive its statutory enforcement jurisdiction” nor “agree to a waiver by a Federally obligated airport of its statutory obligations under the grant assurances.” *Id.* at *27. In connection with my expert retention in this case, I have surveyed all of the more than 140 decisions issued by the FAA pursuant to 14 C.F.R. Part 16 through the end of calendar year 2012 (which was the last time a compendium of decisions was published), and I have not found any decision to the contrary.

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

Executed on: April 29, 2015
Morristown, TN

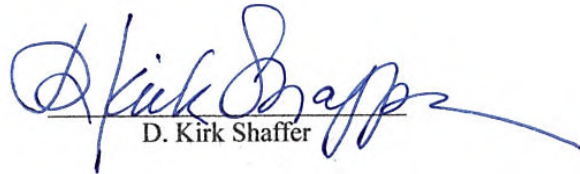

D. Kirk Shaffer

EXHIBIT A

Studies, Presentations, and Memoranda Prepared by the Town's Consultants

Staff Compilation, Development of Proposed Access Restrictions at East Hampton Airport, April 2015.

Peter Stumpp, Proposed Airport Noise Regulations, SEQRA & Traffic Diversion Study, April 14, 2015.

Peter Stumpp, Memorandum to the Town of East Hampton re Potential Traffic Diversion at East Hampton Airport, April 10, 2015.

Harris Miller Miller & Hanson, Inc. ("HMMH"), Memorandum to Kathee Burke-Gonzalez re Documentation of HMMH Noise Analyses In Reference To HMMH Project 307162.002, April 10, 2015.

HMMH & Kaplan Kirsch & Rockwell LLP ("KKR"), Regulations To Address Noise and Disturbance from Operations at East Hampton Airport, April 7, 2015.

Peter Stumpp, (Draft) Preliminary Airport Traffic Diversion Study, March 3, 2015.

HMMH, Memorandum to Kathee Burke-Gonzalez re Noisy Aircraft List In Reference To HMMH Project 3007162.002, March 3, 2015.

HMMH & KKR, Regulations To Address Noise and Disturbance from Operations at East Hampton Airport, (Updated), February 10, 2015.

HMMH & KKR, Regulations to Address Noise and Disturbance from Operations at East Hampton Airport, February 4, 2015.

HMMH, Memorandum re Review of Studies that Address Effects of Helicopter Noise In Reference To HTO Phase 3, Noise Study, HMMH Project 307161.000 Task 1, February 3, 2015.

HMMH & KKR, East Hampton Airport Phase II Noise Analysis, December 2, 2014.

Peter A. Wadsworth, Analysis of 2014 YTD Noise Complaints for East Hampton Airport, October 30, 2014.

Noise Pollution Clearinghouse & Young Environmental Sciences, East Hampton Airport Phase I Noise Analysis Interim Report, October 30, 2014.

Les Blomberg, KKR, Peter A. Wadsworth, & Young Environmental Sciences, Update on Disturbance from Operations at East Hampton Airport: Phase I Noise Analysis Interim Report, October 30, 2014.

Les Blomberg, Documentation of the Elevation Selected to Model Helicopter Noise at HTO, October 1, 2014.

Town of East Hampton, Request for Proposal EH2014-105: Noise Study at the East Hampton Airport, April 17, 2014.

Savik & Murray, LLP, Dennis Yap (“DY”) Consultants, Young Environmental Sciences, Inc., East Hampton Airport Master Plan Report, April 24, 2007.

East Hampton Airport, Draft Master Plan, Chapters I - IV and Appendices.

Young Environmental Sciences, Technical Memorandum re Integrated Noise Model (INM) Noise Contour Development for 2013 Input Data.

Proposed and Final Legislation and Resolutions Regarding Use Restrictions At East Hampton Airport

Town of East Hampton, Notice of Public Hearing to Consider a Local Law Amending Chapter 75 (Airport) of the Town Code Clarifying Penalties Provisions and Definitions in the Law and Providing for Evaluation of the Effectiveness of Restrictions, (Updated), April 17, 2015.

Town of East Hampton, Adopt Local Law - Amending Chapter 75 (Airport) of the Town Code Regulating Nighttime Operation of Aircraft at East Hampton Airport, (Updated), April 17, 2015.

Town of East Hampton, Adopt Local Law - Amending Chapter 75 (Airport) of the Town Code Regulating Evening, Nighttime and Early Morning Operation of Noisy Aircraft at East Hampton Airport, (Updated), April 17, 2015.

Town of East Hampton, Adopt Local Law - Amending Chapter 75 (Airport) of the Town Code Regulating Operation of Noisy Aircraft at East Hampton Airport, (Updated), April 17, 2015.

Town of East Hampton, Resolution 2015-212: Notice of Public Hearing to Consider a Local Law Amending Chapter 75 (Airport) of the Town Code Regulating Nighttime Operation of Aircraft at East Hampton Airport, February 10, 2015.

Town of East Hampton, Resolution 2015-213: Notice of Public Hearing to Consider a Local Law Amending Chapter 75 (Airport) of the Town Code Regulating Nighttime and Early Morning Operation of Noisy Aircraft at East Hampton Airport, February 10, 2015.

Town of East Hampton, Resolution 2015-214: Notice of Public Hearing to Consider a Local Law Amending Chapter 75 (Airport) of the Town Code Regulating Operation of Helicopters at East Hampton Airport, February 10, 2015.

Town of East Hampton, Resolution 2015-215: Notice of Public Hearing to Consider a Local Law Amending Chapter 75 (Airport) of the Town Code Regulating Operation of Noisy Aircraft at East Hampton Airport, February 10, 2015.

Statements from Town Board Members Regarding the Proposed Legislation/Resolution

Kathee Burke-Gonzalez, Airport Statement at Town of East Hampton Work Session, April 7, 2015.

Kathee Burke-Gonzalez, Town of East Hampton Proposes Four Restrictions on Use of Airport, February 4, 2015.

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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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EXPERT DECLARATION OF ANDREW S. HARRIS

I, ANDREW S. HARRIS, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I have been retained by Plaintiffs in this matter to provide expert testimony on the subject of aviation noise. I submit this declaration in support of Plaintiffs' motion for a temporary restraining order.

EDUCATION AND EXPERIENCE

2. I received a Bachelor of Arts from Harvard University (1961), a Bachelor of Architecture from the Massachusetts Institute of Technology (1965), a Master of Business Administration from Northeastern University (1976), a Master of Arts in Theological Studies from Episcopal Divinity School (1996), and a Doctor of Ministry from Episcopal Divinity School (2003).

3. I currently serve as President of Andrew S. Harris, Inc., a consulting firm specializing in airport noise assessment and control, which I co-founded in 2000. I am active in management and technical analysis in a wide variety of airport noise projects, including airport master plan studies, Federal Aviation Regulation (“FAR”) Part 150 noise and land use compatibility studies, environmental assessments, environmental impact statements, development of noise rules, sound insulation of buildings, design of aircraft noise and operations monitoring systems, development of noise-related land-use ordinances, and management of noise compatibility programs.

4. From 1981 until 2000, I served as President and then Chairman of Harris Miller Miller & Hanson, Inc., (“HMMH”) an airport consulting firm that I co-founded in 1981. At HMMH, I was responsible for administration and business development as well as project management for a broad range of airport projects. Over the course of my time at HMMH, the firm increased tenfold in size and scope of services, from four people in one location consulting on airport noise issues, to between 40 and 50 employees in several locations consulting on a broad range of services. I left HMMH in 2000, several years before the Town of East Hampton retained HMMH in connection with proposed noise restrictions at East Hampton Airport.

5. From 1963 until 1981, I worked at Bolt Beranek and Newman Inc. (“BBN”), then an acoustics, noise control and computer system consulting company based in Cambridge, MA. From 1963 until 1965, I worked in BBN’s Cambridge architectural acoustics and noise control division. In 1965, I moved to BBN’s New York office, where I was the Office Manager and consulted on a range of architectural acoustics and noise control projects in the U.S., Canada and the Philippines. In 1970, I returned to BBN’s Cambridge office, where my consulting included architectural acoustics, noise control and airport noise. From 1972 to 1981, I headed the Airport

Noise Group in BBN's Cambridge offices. In that role, I helped to develop a full-service airport noise consulting business.

6. Over the course of my career, I have handled projects for the U.S. Department of Transportation, the Federal Aviation Administration ("FAA"), the Environmental Protection Agency, the U.S. Department of Justice, the U.S. Navy and Air Force, and various state and local agencies and authorities. I have worked on projects at more than 60 civil and military airports in the United States, Canada, China and Israel. These airports range from the largest and busiest commercial airports in the world to small municipal and private airports. My projects have addressed all facets of airport-related noise, with a focus on assessment of community impacts and development of noise abatement methods. Nearly all of my work at airports in the United States has included on-site measurements, correlation of noise measurements with aircraft operations, and assessment of community exposure to aircraft noise environments.

7. I have also authored various reference documents in my field, including a guidance document for airport noise control (Report No. FAA-EE-80-37, "A Guidance Document on Airport Noise Control," Andrew S. Harris, Robert L. Miller, Joan M. Mahoney (Final Report, August 1980)), regulations for airport noise control (*e.g.*, Md. Code Regs. 11.03.03), and a memorandum describing a screening metric for potential noise exposure from airports that was adopted by the Civil Aeronautics Board.

8. In addition, I have taught courses in acoustics and noise control for agencies such as the FAA, the Maryland Aviation Administration and the Civil Aviation Administration of the People's Republic of China.

9. I have also provided expert testimony and support in litigation, deliberations of administrative bodies and deliberations of legislative bodies. I have been retained to provide expert testimony in more than 25 cases related to airport noise.

10. I am being paid at a rate of \$225 per hour for my time spent working on this matter.

ASSIGNMENT

11. I have been requested to render an opinion concerning certain noise studies published by the Town of East Hampton (the “Town”) that I understand have been offered as a basis for the Town’s enactment of Local Law Nos. 3, 4, and 5 of 2015 (the “Restrictions”), which were passed by the Town Board of East Hampton on April 16, 2015, restricting access to the East Hampton Airport (the “Airport” or “HTO”).

12. In developing my opinion, I have reviewed certain materials provided to me by Lankler Siffert & Wohl LLP, including the materials listed in Exhibit A attached to this declaration. Those materials include, among other things:

- a document entitled “Development of Proposed Access Restrictions at East Hampton Airport: A Staff Compilation for the Town Board,” dated April 2015 (the “Staff Compilation”), which purports to detail the basis upon which the Town enacted the Restrictions;
- a memorandum from HMMH to the Town Board, dated April 10, 2015, which purports to explain HMMH’s “roles in the process that led to” the Restrictions;
- various studies and memoranda prepared by the Town’s consultants, including HMMH, Young Environmental Sciences, and Noise Pollution Clearinghouse, including studies and memoranda cited in the Staff Compilation;
- transcripts of meetings of the Town’s Board;

- proposed and final legislation regarding use restrictions at East Hampton Airport;
- statements from Town Board members regarding the proposed legislation;
- FAA Advisory Circulars on noise levels of certain aircraft;
- fleet information on aircraft that use East Hampton Airport;
- U.S. Census data regarding the Town of East Hampton, Town of Southampton, Town of Shelter Island, Town of Riverhead, Town of Southold;
- noise abatement procedures and compliance reports issued by East Hampton Airport; and
- materials related to San Jose and Sacramento airports.

13. In addition to reviewing these documents, I have reviewed certain authoritative sources in my field related to airport noise, helicopter noise, and community noise problems, including those sources listed in Exhibit A.

OPINIONS

14. Based on my review and analysis of the above materials and others, and on my years of experience in the acoustics field, I have reached two primary conclusions regarding the Restrictions:

- a. *First*, for several reasons (explained below), the methodology reflected in various noise studies upon which the Town relied in enacting the Restrictions is flawed and is not generally accepted in the acoustics community. In fact, several earlier studies conducted by the Town that conform to generally accepted methodologies confirm that airport noise in the residential areas surrounding HTO is well within federally accepted guidelines.

b. *Second*, the Restrictions rely on an inappropriate metric—Effective Perceived Noise in Decibels (“EPNdB”)—to define which aircraft are “noisy” and therefore subject to the Restrictions.

A. The Town’s Noise Studies Are Flawed in Their Methodology

15. The methodology used in the noise studies upon which the Town has primarily relied in enacting the Restrictions is flawed for at least two reasons. *First*, those studies rely on solicited, self-reported complaints to a Town website or a telephone hotline, which is not a generally accepted method in the acoustics field for airports to conduct noise studies for purposes of imposing access restrictions. Indeed, FAA regulations mandate that airport noise studies be conducted under different procedures that were not followed here. *Second*, even if such complaints were a valid basis of determining community exposure to airport noise (which, in my experience, they are not), the complaints upon which the Town relied in this case are insufficient to support the existence of an airport noise problem under generally accepted criteria. To the contrary, past studies conducted by the Town in accordance with the procedures mandated by the FAA have confirmed that noise generated by aircraft using HTO is below acceptable thresholds defined in the FAA’s regulations.

16. I will explain these conclusions in further detail below. Before doing so, a brief explanation of the methodology used in conducting the Town’s noise studies is warranted.

1. The Noise Studies’ Methodology

17. It is my understanding that, in enacting the Restrictions, the Town hired a number of consultants to analyze certain data collected by the Town, primarily in 2013 and 2014, and to present their findings as a series of “noise studies,” styled as PowerPoint slide presentations, to

the Town Board at public meetings on October 30, 2014; December 2, 2014; February 4, 2015; February 10, 2015; and April 7, 2015.

18. In addition, I understand that the Town claims that it relied on various prior analyses, including: (i) a 2003 comprehensive noise measurement program; (ii) a 2005 update to the Town Comprehensive Plan; (iii) a 2007 updated Airport Master Plan; (iv) a 2010 Final Generic Environmental Impact Statement; and (v) various noise analyses conducted as part of environmental assessments in 2000 and 2013.

19. According to the consultants' presentations to the Town Board in 2014 and 2015, the data that the Town tasked them with analyzing and presenting consisted of 23,954 self-reported complaints collected by the Town from 633 households in the vicinity of the eastern end of Long Island from November 1, 2013 to October 31, 2014, as well as operational data from an aircraft monitoring system installed at the Airport. HMMH & KKR, East Hampton Airport Phase II Noise Analysis, Slide 5, December 2, 2014 ("Phase II Presentation"). It is my understanding that the complaints called in to the hotline were solicited.

20. The consultants' presentations contain an overview of the complaint data and certain operational data regarding flights to and from the Airport. *See, e.g.*, Phase II Presentation at Slides 5-11; Peter A. Wadsworth, Analysis of 2014 YTD Noise Complaints for East Hampton Airport, Slides 1-15, October 30, 2014 ("Wadsworth Presentation"). They conclude that the majority of the hotline complaints relate to the operation of helicopters at HTO. Wadsworth Presentation at Slide 2. They further conclude that noise from HTO "disturbs many residents of the East End of Long Island" and that "[d]isturbance caused by all types of aircraft is most significant when operations are (1) most frequent and (2) in the evening, night, and early

morning hours.” HMMH & KKR, Regulations to Address Noise and Disturbance from Operations at East Hampton Airport, Slide 5, Feb. 4, 2015 (“Phase III Presentation”).

21. The Town’s consultants recommended that the Town Board consider passing four access restrictions to combat the perceived noise “disturbance”:

- a. “[p]rohibit[ing] all aircraft operations year-round from 11 pm – 7 am”;
- b. “[p]rohibit[ing] noisy aircraft year-round during 8 pm – 9 am evening, night, and early morning hours”;
- c. “[p]rohibit[ing] helicopter operations on weekends and holidays during the summer season (May 1 – September 30)”;
- d. “[p]rohibit[ing] noisy aircraft from conducting more than one take-off and one landing in any calendar week during the summer season.” Phase III Presentation at Slide 6.

22. It is my understanding that, on April 16, 2015, the Town passed all of the above restrictions except the helicopter ban (subparagraph (c)), on which the Town Board has deferred consideration.

2. Reliance on Solicited Complaints from Local Residents Is Not a Generally Accepted Method of Identifying the Need for an Airport Access Restriction

23. In my experience, the Town’s methodology of using a telephone hotline to solicit complaints from residents about noise exposure is not a valid or generally accepted industry method for determining overall community attitudes about residential noise exposure, let alone for imposing airport access restrictions. By definition, complaints called in to such a hotline are not representative of a community’s sentiments regarding airport noise, in part because they do *not account* for the reasons that many people do *not* call in to the hotline. A complaint

represents an individual's response to annoyance, the causes of which can vary greatly based on the particular individual complaining. A person's annoyance with certain noise is not necessarily based on the loudness of the sound itself but can depend on other non-acoustical factors, such as the sense of potential danger from the noise source and subjective beliefs about the importance of the noise source. Moreover, voluntary complaints can come from a small but highly vocal fraction of households in a residential area.

24. To eliminate biased responses, a proper survey of individuals in a community to gauge community-wide attitudes must be deliberately crafted and collected through a combination of mail, telephone, and in-person surveys. At least one of the Town's consultants in this case has authored a memorandum confirming that "[s]urveyed reaction is a formal measure that is collected through mail, telephone, or in-person surveys which are carefully designed to produce unbiased responses." HMMH, Review of Studies that Address Effects of Helicopter Noise, dated Feb. 3, 2015, at 13. Survey complaints thus collected may be used as a tool to identify how some people *respond* to aircraft noise, but even properly conducted surveys are not considered by the industry to be an acceptable method for evaluating the *impact* of noise on a community-wide basis.

25. As a general matter, the accepted method for airport proprietors to evaluate community-wide impact of airport noise is the method that is required by the Federal Aviation Administration under Parts 150 and 161 of its regulations. Part 161.9 of the FAR requires that "[t]he sound level at an airport and surrounding areas, and the exposure of individuals to noise resulting from operations at an airport, must be established in accordance with the specifications and methods prescribed under appendix A of 14 CFR part 150." 14 C.F.R. § 161.9. Appendix A of Part 150, in turn, prescribes specific parameters for conducting such a noise study (commonly

known in the industry as a “Part 150 study”). A Part 150 study must follow the requirements enumerated in published FAA checklists and typically includes the following:

- a. The study must use the FAA’s Integrated Noise Model (the “INM”) (or an approved equivalent), which is a computer program developed for the FAA and frequently modified based on scientific data and available acoustics technology.
- b. The study must determine the cumulative dose of aircraft noise caused by aircraft in the vicinity of the subject airport using a metric referred to as the yearly day-night average sound level (DNL). The information leading to determination of noise exposure is derived from data on the operations at the airport, including the frequency of operations, arrival and departure paths, and types of aircraft that use the airport.
- c. Using these data, the study must produce “contour maps” showing which areas surrounding the airport are exposed to what dose of noise for several scenarios. For example, if the noise contours show that a certain area surrounding an airport has a DNL of 65 dB, that means that the average daily noise to which the area is exposed is 65 dB. Part 150 states that yearly DNL levels below 65 dB are generally considered compatible with residential land use.

26. In my experience, a Part 150 Study using the DNL metric is the appropriate way to analyze community-wide exposure to noise. It eliminates the potential biases and non-acoustical responses to noise that are present when annoyance based on complaints is calculated.

27. Based on the materials I have reviewed, I understand that the Town has conducted several studies over the past 12 years that have followed the methods prescribed by the FAA’s regulations. I have reviewed these studies, and none suggests that the residential areas surrounding HTO are exposed to noise levels greater than what are traditionally considered

compatible with residential land use under federal guidelines (*i.e.*, below 65 yearly DNL). In fact, some of the studies confirm the opposite—that all residential areas surrounding the Airport are within federally accepted limits.

28. For example, as noted above, the Town’s studies include a 2003 “comprehensive noise measurement program,” which culminated in a presentation to the East Hampton Town Board at a meeting on October 29, 2003 by Robert L. Miller of HMMH (the “R. Miller Report”) and another study entitled “East Hampton Airport Final Generic Environmental Impact Study” (the “GEIS”), which was presented in August 2010 by Young Environmental Sciences (“Young”). Young also prepared a memorandum (the “2014 Young Memorandum”) detailing other contour maps prepared in 2014 (based on 2013 data). Unlike the Town’s recently commissioned noise studies based on solicited, self-reported complaint data, the R. Miller Report, the GEIS, and the 2014 Young Memorandum applied generally accepted methods for evaluating noise impact on a community-wide basis. The Young Memorandum and GEIS confirm that the yearly DNL levels for residential communities surrounding HTO were all below 65 at the time of the studies.

29. In its preamble to Local Law No. 5 (the Restriction barring more than one flight per week by any aircraft that the Town categorizes as “noisy”), the Town asserts that the DNL metric, uniformly required by the FAA for Part 150 studies, “proved, after considerable study, not to be a useful tool for measuring the impact of noise from operations at East Hampton Airport because it averages noise data over 24 hours, and does not capture the demonstrated community annoyance and disruption from individual aircraft noise events (especially noise events associated with helicopters).” I understand that the Town also has expressed concern that the DNL metric does not reflect the peak noise events and specific times of day when East

Hampton residents are more disturbed by noise. These statements appear to have been made without input from the FAA, and were not based on accepted noise evaluation practices.

30. In fact, the DNL metric has for decades proven to be meaningful and helpful when evaluating noise at airports throughout the U.S., and it is the standard mandated by the FAA in determining the existence of airport noise problems under Part 150. The DNL metric considers noise from all aircraft operations, 24 hours per day, including the peak noise events and the lower noise operations. It also applies a 10-decibel penalty for all nighttime flights when residents are more disturbed.

31. The Town's contention that the DNL metric does not account for isolated loud events is incorrect. Using a concrete example from the Town's studies of HTO, the Town's 2010 GEIS states (at page 37) that a busy day in 2008 saw approximately four times as many operations as the average day. Due to the logarithmic properties of DNL, each doubling of aircraft operations at an airport will generate an increase in daily DNL of 3 dB (and two doublings will increase DNL by 6 dB). Consistent with this, a comparison of the contour maps presented in the GEIS for a busy day in 2008 and the annual average day in 2008, respectively, shows that the busy day's DNL value was approximately 6 dB larger than the annual average day's DNL value. The GEIS also confirms that both the busy-day and yearly DNL levels in residential areas outside the Airport were below the federally accepted guideline of 65 when the study was conducted.

32. DNL values are dominated by the loudest events because DNL is a logarithm-based metric and does not employ arithmetic averages (in which, for example, the arithmetic average of 60 and 50 is 55). Instead, the average of DNL 60 and DNL 50 is approximately DNL 57.

33. The notion that average annual DNL is “not a useful tool” because East Hampton is a unique seasonal environment, in which residents enjoy spending time outdoors and with the windows of their houses open, is also incorrect. Other municipally-owned airport proprietors in similar locales have developed noise abatement programs consistent with FAR Part 150 using yearly DNL.

34. Particularly relevant are the airports in Nantucket, Martha’s Vineyard and Hyannis, Massachusetts. Each of these locations, like East Hampton, is a summer-resort community where: (i) residents enjoy outdoor living; (ii) there are large swaths of quiet areas in the community; (iii) conservation lands are situated along roads to and from the airport; and (iv) aircraft operations are significantly higher during the summer season than at other times during the year. Neither Martha’s Vineyard nor Nantucket has any highways (making them quieter than East Hampton), and Nantucket has no major airports nearby. Yet Nantucket, Martha’s Vineyard and Hyannis airports all have noise abatement programs in place that have been developed in a manner consistent with FAR Part 150. Nantucket has an approved FAR Part 150 program in place, which includes noises analyses based on DNL, including a comparison of “busy day” DNL to yearly DNL.

3. The Complaints Relied on by the Town Are Unreliable

35. Even if solicited complaint data were an accepted measure of the impact of airport noise on surrounding communities, the data that the Town has collected in this case are unreliable and do not support the conclusion that there is excessive residential noise exposure, for several reasons.

36. *First*, all of the complaints about aircraft noise relied upon by the Town were generated by 1.2% of households in the covered area. As noted, the Town’s complaint data

cover the entire East End of Long Island—an area that, according to census data, includes at least 52,811 occupied households. Of those households, complaints were received from only 633 (1.2%). In my experience, this cannot be evidence of a widespread, excessive aircraft noise problem caused by traffic to and from HTO. To the contrary, that approximately 99% of households did not complain suggests the opposite.

37. *Second*, the complaint data indicate that approximately 50% of the 23,954 complaints received by the Town were generated by 10 households. One household submitted approximately 2,800 complaints in a 12-month period. Another submitted approximately 1,800. This further suggests that the complaints called in to the hotline came from a small but vocal minority of residents in the community.

38. *Third*, the complaints received by the Town came from locations as far as 23 miles away from HTO. I have seen no basis in the available data to conclude that complaints from such a distance related to air traffic that was associated with HTO. To the extent that there was aircraft noise in such locations, it could well have been generated from aircraft flying over the area to or from a different airport. Restrictions at HTO would not be expected to reduce these complaints. On the other hand, restrictions at East Hampton might well divert traffic to other nearby airports and increase aircraft operations in such locations.

B. The Restrictions' Reliance on EPNdB Approach Levels to Classify "Noisy" Aircraft Is Inappropriate

39. The Restrictions define "Noisy Aircraft" as those with an FAA-certified EPNdB approach level greater than or equal to 91.0. Using that definition, the Restrictions (i) limit "Noisy Aircraft" to one landing and takeoff per calendar week during the summer season and (ii) prohibit all "Noisy Aircraft" from using the Airport between 8 p.m. and 9 a.m. year round.

40. The Town's use of an aircraft's certified EPNdB approach level to determine whether the aircraft is "Noisy" and thus subject to the Restrictions is inappropriate.

41. Certified EPNdB levels are published by the FAA. Many, but not all, aircraft have them. They are used during an aircraft's manufacturing process, to determine if the aircraft can be certified for use within the United States.

42. Certified EPNdB levels are based on measurements taken in very specific flight conditions, in which the aircraft is operating in maximum-performance mode, for testing purposes. The conditions under which EPNdB levels are tested bear little resemblance to the conditions under which any particular aircraft would normally operate in flight. To measure the EPNdB levels of a particular aircraft, the FAA provides a detailed list of requirements that specify, among other things, how much weight the aircraft must carry, the angle at which it must fly, and the air temperature and humidity level at which noise should be measured. Once those conditions are met, EPNdB levels are measured by a meter placed at specific locations and elevations above the ground that measure the noise emitted from the aircraft. Three EPNdB certification measurements are taken for each aircraft that is certified, including during takeoff and landing. The FAA publishes EPNdB levels for each certified aircraft in FAR Part 36.

43. The EPNdB levels issued by the FAA do not represent the actual noise from an aircraft during typical operations at an airport and heard by neighbors. There are many factors that influence the noise heard by a person on the ground. These factors include the altitude of the aircraft, approach and departure procedures, flight path, an aircraft's weight, and modifications to the aircraft that are not permitted during EPNdB certification testing.

44. As noted, the Town uses EPNdB approach levels to define "Noisy Aircraft." The EPNdB approach level, which measures the maximum noise level when a plane is on approach

to landing, is not an appropriate metric. Among other reasons, the complaints in the Town's hotline database came from as far away as 23 miles from the Airport, indicating fly-over operations, not approach-to-landing operations.

45. The Town's stated goal of reducing complaints also cannot be assured by using FAR Part 36 EPNdB approach levels to limit access to the Airport. In addition to the fact that some aircraft with EPNdB approach certification levels below 91.0 may be objectively noisier than those with EPNdB levels greater than 91.0, many types of aircraft simply do not have published EPNdB levels. Some such aircraft are objectively noisier than aircraft with certified EPNdB levels greater than 91.0. Yet under the Town's Restrictions, these aircraft can continue to use the Airport without restriction. Because these aircraft may be as loud or louder than aircraft that are deemed "Noisy," the individual households that are complaining may continue to complain.

46. I note that, in its published justification for the Restrictions, the Town has referred to access restrictions adopted at Mineta San Jose International Airport ("SJC") and Sacramento Executive Airport ("SAC"), both of which involved the use of certified EPNdB levels to determine which aircraft were subject to the restrictions. I have reviewed these restrictions, including their regulatory history. In my view, they do not support the use of EPNdB levels as a basis for the Restrictions at HTO.

47. SJC had a weight-based curfew in place since 1983. The curfew had been developed according to the then-current California and FAA noise abatement procedures as part of an airport master plan. When the federal Airport Noise and Capacity Act ("ANCA") was passed in 1990, SJC's weight-based curfew was "grandfathered" as permissible under ANCA without further review. In 2003, San Jose sought to change the weight-based curfew to a noise-

based curfew, using EPNdB levels as a metric. A letter dated October 2, 2003 from the FAA to the Director of Aviation for the City of San Jose describes the benefits of the original curfew in terms of the reduction in people exposed to DNL greater than 65.0. The FAA letter also describes in detail the review that was undertaken by SJC and the steps taken to meet the requirements of ANCA. The letter also notes that SJC had proposed to use as a basis of its restriction the arithmetic average of each aircraft's arrival, sideline and departure EPNdB values, rather than approach levels only (as HTO proposes to use). SJC established that using such average EPNdB levels would not, in fact, result in a restriction of access to the airport and therefore was not required to meet the requirements of ANCA or Part 161.

48. By contrast, the Town of East Hampton has not complied with ANCA's requirements and has not completed any study showing that its proposed use of EPNdB levels would decrease the number of people exposed to yearly DNL levels greater than or equal to 65.0. To the contrary, DNL studies completed by the Town have consistently shown that nobody residing outside Airport property is exposed to such DNL levels. In addition, there is no grandfathered weight-based restriction in place at HTO that would justify the use of EPNdB as a replacement metric, as there was at SJC. The circumstances under which EPNdB levels were used at SJC were markedly different from those present in East Hampton.

49. In the case of Sacramento, SAC had a noise-based curfew in place since 1983—again, pre-dating ANCA. The curfew used a certified EPNdB level of 80.0 as a cut-off and applied only to jet aircraft. Like SJC's pre-ANCA weight-based curfew, SAC's EPNdB-based curfew was grandfathered under ANCA and thus did not have to be justified by a Part 150 study or put through the FAA's rigorous review process. Initially, the curfew applied to aircraft with FAR Part 36 certification take-off levels greater than or equal to 80.0 EPNdB. According to a

March 2010 draft final report on the SAC noise ordinance, this value was increased to 84.0 EPNdB in 1994, making the curfew *less* restrictive to allow larger, more technologically advanced aircraft with higher EPNdB certification levels to use the airport. *See* Sacramento Executive Airport, Executive Airport Master Plan, Draft Final Report, dated March 2010, at F.1-F.3, available at http://www.sacramento.aero/download.php?f=/sac_mp_ch6.pdf. A full environmental review, including review with the surrounding community and airport users, was completed. Again, these circumstances are far different from those present in East Hampton, where no DNL analysis shows unacceptable aircraft noise and no grandfathered restriction is currently in place.

50. In addition, the March 2010 report on SAC's website notes that the "FAA expressed concern" to SAC's governing agency that the use of an EPNdB-based noise ordinance "may be discriminatory as the Ordinance's base metric, EPNdB, applied to the certification of jet aircraft only" and that the "FAA requested [the governing agency] to undertake analysis of the SAC noise ordinance to explore what alternatives might be available to replace the EPNdB-based ordinance." *Id.* at F.1.

C. The Town's Claim that Voluntary Noise Abatement Procedures Have Not Worked

51. The Airport has published and strongly recommends Helicopter Noise Abatement Procedures developed in collaboration with the FAA's East Hampton Control Tower, the Eastern Region Helicopter Council, and East Hampton Airport Operations. They have been reviewed by the Noise Abatement Advocates and Aviation Users Airport Subcommittees of the East Hampton Airport Planning Committee. The noise abatement procedures define "fly neighborly" operations along specific flight tracks and altitudes during arrivals and departures.

52. Town consultants Young and Les Blomberg claim and reported during a Town meeting on 30 October 2014 that only 15.3% of the helicopter operations in and out of HTO during 2013 complied with the Noise Abatement Procedures. They also reported that during 2013 the altitudes of helicopter flights at four nautical miles from the Airport ranged from about 300 feet to more than 4,100 feet.

53. According to information I have reviewed, including the Town's Staff Compilation report, the Town has acknowledged that the claim of 15.3% compliance with voluntary abatement procedures is based on 2013 data and has further acknowledged that the report of low compliance was criticized for using an imprecise method to calculate compliance. Staff Compilation at 7 & n.40. The Town's abatement procedures were changed in 2014, so the 15.3% compliance rate is not representative of current conduct. In my experience, it is essential that any access restriction be preceded by a robust analysis of less restrictive measures, including voluntary noise abatement procedures, to determine whether the access restriction is indeed necessary. Here, that was not done.

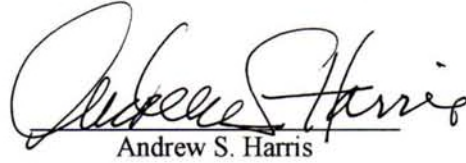
54. Importantly, twelve voluntary abatement route "Compliance Reports" have been prepared by HTO officials based on operations during the 2014 summer season. These reports document that compliance with Helicopter Noise Abatement Procedures has increased significantly in 2014. Compliance is still not 100%; however, it is my opinion that compliance with voluntary abatement procedures can further improve and reduce noise in nearby residential areas.

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

Executed on: April 29, 2015
Naples, FL



Andrew S. Harris

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EXHIBIT A

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- August 1-4, 2014
- August 8-11, 2014
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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 MICHAEL RENZ

I, Michael Renz, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am the President of Analar Corporation (“Analar”), one of the Plaintiffs in this action. I am a commercially rated pilot with over 16,000 hours of flight time and have spent over 34 years in the aviation business. I hold an Airframe & Powerplant License including an FAA Inspection Authorization issued by the Federal Aviation Administration (“FAA”) to conduct aircraft maintenance and inspections and to approve major alterations and repairs to aircraft.

2. I make this declaration, based on 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 Analar

3. Analar is a business corporation duly organized and existing under the laws of the State of New Jersey, with a principal office located at 41 Airpark Rd., Princeton, New Jersey 08540.

4. Analar has been in business for over 35 years. The company was founded in 1979. Analar provides “on demand” helicopter charter services to passengers to and from various destinations within the Northeast corridor, including Washington, D.C., Maryland, Pennsylvania, New York, New Jersey, Connecticut, Rhode Island, and Massachusetts. Analar operates seven helicopters as part of its charter service. Of those seven helicopters, Analar owns three, and the other four are owned by one or more individuals and managed by Analar. Analar flies the managed aircraft on demand for their owners, and uses the aircraft to transport other passengers when the aircraft are not otherwise in use by the aircraft’s owners, pursuant to Analar’s certificate under 14 C.F.R. Part 135. Part 135 allows Analar to conduct operations for compensation or hire. Analar also holds authorization from the Department of Transportation to engage in interstate air transportation. Pursuant to Part 135, Analar must comply with a number of FAA requirements and safety standards, including those related to flight operations, maintenance, and training.

5. Analar’s fleet is comprised of the following seven helicopters: two (2) Eurocopter AS 365N3 (Analar manages these two aircraft); four (4) Eurocopter AS 355F1 (Analar owns two and manages two); and one (1) Bell B206B3 (Analar owns this aircraft).

6. As part of its charter service, Analar offers clients the opportunity to prepay for a block of hours of flight time known as “Block Time.” These “Block Time” customers get

guaranteed seats on our helicopters going to and from their desired destinations, including East Hampton.

7. In addition to providing charter and managed services, Analar runs a maintenance operation through which we service aircraft outside of Analar's fleet. Analar conducts its maintenance operations at its Princeton, New Jersey facility and its Kearny, New Jersey location.

8. Analar has 15 employees.

Analar's Operations to and from HTO

9. Analar significantly utilizes HTO—especially between May and September. We fly more passengers to and from HTO than any other airport. Over 70% of Analar's passengers fly to and from HTO, and those flights have accounted for approximately half of Analar's flight operations. In 2014, for example, over 45% of Analar's 1,200 flights were to or from the Airport. Approximately 337 flights out of the 410 flights to HTO occurred during the months of May through September

10. Of the flights to and from HTO, approximately 80%—take place from May through September.

11. Flights to and from HTO account for over 55% of Analar's revenue.

East Hampton's Recently-Enacted Restrictions

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

13. 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 "Noisy Aircraft" banning flights 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.

14. Six of the seven helicopters in Analar’s fleet are subject to this definition. The Eurocopter AS 365N3 has an EPNdB AP level of 96.1 and the Eurocopter AS 355F1 has an EPNdB AP level of 93.4. The Bell B206B3 has an EPNdB AP level of 90.7, and is therefore not a “Noisy Aircraft.”

15. The Town’s “Noisy Aircraft” definition is an inaccurate indicator of the actual ground-level noise impact generated by Analar’s helicopters on the environs around the Airport. Analar’s pilots follow HTO’s voluntary noise abatement procedures, unless otherwise directed by air traffic control or responding to inclement weather. As part of those procedures, Analar’s helicopters (1) maintain high altitudes when approaching HTO; (2) climb quickly when departing HTO; and (3) avoid operating the rotors for more than five minutes while on the airport ramp. All of these procedures significantly reduce the actual noise impact of Analar’s helicopters. Analar monitors compliance with these procedures by maintaining “Deviation Forms” in the cockpit of each aircraft. Should a pilot deviate from the procedures or routes, he or she must fill out the form and explain why the procedures were not followed. I personally review each form.

16. I participated in the crafting of the noise abatement procedures at HTO. Several years ago, I used my aircraft and flew with HTO’s manager to demonstrate several different noise abatement procedures. With those flights, and in consultation with other pilots, organizations, and the Town’s airport and noise subcommittees, we determined appropriate approach altitudes that were both safe for the aircraft and passengers and that mitigated noise in

and around the environs of East Hampton.

17. If the Restrictions are put into effect, Analar immediately will be subject to all three of the Restrictions—the Mandatory Curfew, Extended Curfew and One-Trip Limit. Six of the seven helicopters in Analar’s fleet 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, these six helicopters will be barred under the One-Trip Limit from flying more than one trip per calendar week during its busiest season. All of Analar’s aircraft will be prohibited from flying into or out of HTO from 11:00 p.m. to 7:00 a.m., year-round.

The Restrictions’ Impact on Analar

18. The Restrictions will have a devastating impact on Analar’s charter business. I predict that Analar could lose up to 60% of its charter business as a result of the Restrictions. Indeed, Analar is already being financial harmed by the passage of the Restrictions.

19. The One-Trip Limit crushes charter operations like Analar’s, which rely upon the ability of its aircraft to make multiple trips to HTO per week, and even per day.

20. Six of Analar’s seven helicopters will be subject to the One-Trip Limit. In 2014, Analar made a total of 337 trips to HTO between May and September, with an average of 17 trips per week. Under the One-Trip Limit, I estimate that 65% of Analar’s flights will be prohibited. Six of our seven helicopters will be limited to just one trip per week, a total of 6 trips. The one helicopter in our fleet not designated as a “Noisy Aircraft,”—namely the Bell 206B3—cannot possibly make up for this severe trip reduction. Based on our current demand, the Bell 206B3 realistically could only perform 2 flights a day due to the slower speeds and the need to refuel at each destination. These limiting factors combined with the timing of our typical departures would require approximately 5 hours of time to perform just 2 flights. In addition, we

are limited to 2 to 3 passengers on the Bell which falls well short of our current customer demand.

21. The impact of the One-Trip Limit on Analar's charter operations and revenue is even more severe given that three of the helicopters Analar uses are owned by third-party individuals with personal travel needs to and from HTO. The One-Trip Limit will most likely prevent Analar from using those aircraft to transport any clients to HTO except for the owners, further reducing Analar's ability to provide charter services. Moreover, to the extent those three helicopters have multiple owners—all of whom want to travel to HTO—it is uncertain how Analar or the owners will resolve who gets to use the helicopter's sole trip during the calendar week. I fear that this predicament will lead to the owners selling their helicopters, which will result in Analar losing its managed business and the use of those helicopters to provide charter services to passengers.

22. The Extended Curfew will also cause financial loss to Analar. The extended curfew prohibits Analar from using HTO 13 hours of every day, banning flight from 8:00 p.m. to 9:00 a.m., year-round. Many of Analar's clients own homes in East Hampton and, during the summertime, they spend the weekends in East Hampton and work in Manhattan or elsewhere during the week. Accordingly, the greatest demand for Analar's charter services is on Thursday and Friday evenings between the hours of 8:00 p.m. and 10:00 p.m., and early mornings on Mondays and Tuesdays, between the hours of 6:00 a.m. and 8:00 a.m. Under the Restrictions, Analar will be prohibited from using HTO during all of those times.

23. The Restrictions will also negatively impact Analar's maintenance business. Every hour of flight time requires some maintenance. The Restrictions will reduce the total

hours of flight time for each helicopter, which in turn will reduce the maintenance required for each helicopter.

24. Analar has already been harmed due to the pendency of the Restrictions. Customers have held off on making reservations and owners have advised us that they will sell their helicopters if the Restrictions take effect. If the owners sell their helicopters, Analar will not have access to these helicopters to conduct charter flights to all destinations, including HTO.

25. There is uncertainty about whether Analar could continue under its current business structure if the Restrictions take effect. The projected decrease in flights to HTO will force Analar to lay off approximately 7 of its employees and reduce its fleet by as many as 4 helicopters. Moreover, with the loss in annual revenue, Analar would either have to shut down or restructure its business to being predominantly a consulting and maintenance company.

26. Analar anticipates that it will also lose significant market share to other companies that can provide flight operations to HTO without being subject to the Restrictions. Even if the Restrictions were later lifted, Analar will have been permanently harmed, as its customers might not return.

27. If the Restrictions take effect, the 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 alleviate the serious economic and operational harm that Analar will suffer. Montauk is more than 20 miles east of HTO and does not provide fuel services. Southampton consists of a single helipad and does not provide fueling services. In addition, helicopters can only remain on the helipad for five minutes. Because Southampton can only accommodate one aircraft at a time, it will easily become saturated if it has to accommodate additional traffic as a

result of the One-Trip Limit. Gabreski is more than 25 miles west of HTO. Analar'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. 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.


28. Furthermore, if the Restrictions go into effect, it is 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.

29. Finally, in addition to harming Analar 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, Analar 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.

30. If the Restrictions go into effect, Analar will be seriously and immediately harmed. The Restrictions will materially decrease Analar's revenues, forcing Analar to reduce its fleet size, downsize its staff, and reorganize its operations.

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

Executed: April 29, 2015
Princeton, NJ



Michael Renz

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 ERIC JUNGCK

I, Eric Jungck, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am the Director of Operations of Eleventh Street Aviation LLC (“Eleventh Street”), one of the Plaintiffs in this action. Prior to joining Eleventh Street, from 1987 to 1993, I served as a Naval Flight Officer in the United States Navy for which I flew the F-14 Tomcat fighter jet. I then served in the U.S. Navy Reserve and became a commercial pilot.

2. I make this declaration, based on 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 Eleventh Street

3. Eleventh Street is a limited liability company duly organized and existing under the laws of the State of Delaware, with its principal base of operations located at HTO, in

Wainscott, New York. Eleventh Street (formerly known as Cleveland Browns Transportation LLC) was founded in 2003.

4. Eleventh Street operates under Part 91 of the Federal Aviation Administration (“FAA”) regulations. Part 91 authorizes Eleventh Street to operate an aircraft for private use. Pursuant to Part 91, Eleventh Street must comply with various FAA requirements and safety standards. Eleventh Street is not an air charter business; it serves the business and personal travel needs of its principal and associates.

5. Eleventh Street operates one Dassault Falcon 7x and one Sikorsky S-76C+ helicopter. The Falcon 7x is a state-of-the-art jet that satisfies the requirements to be a Stage 4 aircraft under the FAA’s noise certifications. This means that the Falcon 7x is one of the quietest aircraft in operation today. Pilots sometimes refer to the Falcon 7x as a “whisper jet” because it is so quiet.

6. Eleventh Street flies the Falcon 7x between HTO and many destinations all over the world. It is not unusual for Eleventh Street to conduct several international flight operations in a given week. Eleventh Street also frequently flies the Falcon 7x to various destinations throughout the United States.

7. Eleventh Street operates the Sikorsky to facilitate the travel needs of its principal, particularly between East Hampton and Manhattan.

8. Eleventh Street has six employees, including two pilots for the Falcon 7x, two pilots for the Sikorsky, and two mechanics.

Eleventh Street’s Operations to and from HTO

9. Eleventh Street’s Falcon 7x is based at HTO due to the Airport’s close proximity to Eleventh Street’s principal, who resides in East Hampton. Eleventh Street’s Sikorsky S-76C+

is based at MacArthur Airport in Islip, New York (“MacArthur”), but nearly all of the Sikorsky’s flight operations involve picking up or dropping off passengers at HTO.

10. HTO does not have hangar space to house the Falcon 7x. As a result, when the Falcon 7x needs maintenance it must be moved to another airport—typically MacArthur or Francis S. Gabreski Airport in Westhampton (“Gabreski”). In addition, in the event of inclement weather—high winds, hail, severe snow or ice—the Falcon 7x must be moved to another airport that has a suitable hangar.

11. Each of Eleventh Street’s aircraft averages three trips per week at HTO (each trip includes one landing and one takeoff). Thus, in total, Eleventh Street’s aircraft make approximately 300 trips per year out of HTO.

12. Eleventh Street leases office space from one of the Airport’s fixed-base operators, Sound Aircraft Services, Inc. (“Sound”). In addition, Eleventh Street has a contract with Sound in which Sound is Eleventh Street’s preferred fixed-base operator. With this arrangement, Eleventh Street purchases its fuel from Sound, and in exchange, Sound waives its fee for several of its services, including parking. Because Eleventh Street is such a frequent user of HTO, at least two of Sound’s employees are essentially dedicated to servicing Eleventh Street. These services include, among others, de-icing the airplane and clearing the ramp of snow.

East Hampton’s Recently-Enacted Restrictions

13. I understand that on April 16, 2015, the East Hampton 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. I understand that the Town has issued a list of what it has defined as “Noisy Aircraft,” and that both the Falcon 7x and the Sikorsky S-76C+ are on the list.

The Restrictions’ Impact on Eleventh Street

16. If the Restrictions are put into effect, both aircraft in Eleventh Street’s fleet will be subject to all three of the Restrictions—the Mandatory Curfew, Extended Curfew and One-Trip Limit.

17. Because Eleventh Street’s Falcon 7x is based at HTO, the Restrictions will severely limit Eleventh Street’s operations out of HTO, and may force Eleventh Street to sell the Falcon 7x or change its base of operations to either Gabreski or MacArthur. The Falcon 7x was delivered to Eleventh Street in 2011. One of the primary reasons Eleventh Street purchased the Falcon 7x was because it is one of the quietest jets in operation. This would ensure that Eleventh Street could operate out of almost any airport around the world. However, the Town’s arbitrary selection of 91.0 EPNdB as the threshold for “Noisy Aircraft” has undermined this effort.

18. The Falcon 7x has a similar noise footprint to the Gulfstream 550 and 650, neither of which is considered “Noisy Aircraft.” This is an arbitrary distinction and unfair to Eleventh Street, which spent considerable money—approximately \$52 million—to purchase a Stage 4 aircraft.

19. If Eleventh Street is forced to move its operations to either Gabreski or MacArthur as a result of the Restrictions, this will cause Eleventh Street to incur significant costs—specifically, acquiring an additional aircraft that is not deemed to be a “Noisy Aircraft” to facilitate passenger movement from HTO to either Gabreski or MacArthur. It would cost approximately \$3 million to procure an additional aircraft to transport the principal from HTO to another airport, plus \$1 million per year in operating costs.

20. Alternatively, if the Restrictions are enforced and if Eleventh Street wants to continue operating out of HTO, it would be forced to sell its aircraft and purchase aircraft that are not deemed “Noisy Aircraft.” This would be time-consuming and expensive. In addition, if the Restrictions set a precedent implemented elsewhere, it may be difficult to sell the Falcon 7x to other owners who require access to many airports.

21. Of the three restrictions, Eleventh Street estimates that (1) the Mandatory Curfew will affect 1–2% of Eleventh Street’s flights to and from HTO; (2) the Extended Curfew will affect approximately 30–40% of Eleventh Street’s flights to and from HTO; and (3) the One-Trip Limit will affect 60% of Eleventh Street’s flights to and from HTO from May 1 through September 30 each year.

22. The Restrictions will seriously impact the business of Eleventh Street’s principal because it affects the agility and productivity of the principal’s wide range of business interests. The ability to travel freely from HTO is key to the viability of the principal’s businesses and the oversight of his various business interests.

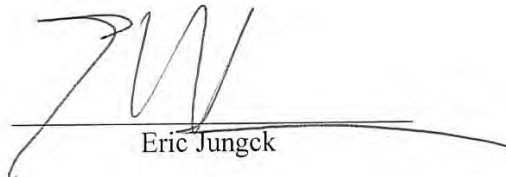
23. When flying to Europe, Eleventh Street typically departs at night so that it can land in Europe in the morning. The Extended Curfew will prohibit these flights.

24. The One-Trip Limit will cause particular hardship for Eleventh Street. As discussed above, there is no hangar space available for the Falcon 7x at HTO, so in the event of inclement weather or maintenance needs, the Falcon 7x must be moved. However, during the summer, Eleventh Street could be forced to use its one trip simply to service or protect the aircraft, thereby depriving Eleventh Street of the opportunity to transport passengers to or from HTO. Moreover, in the event inclement weather is fast approaching East Hampton in the evening, the Extended Curfew could prevent Eleventh Street from moving the Falcon 7x to safety.

25. In addition, when flying to and from HTO, Eleventh Street follows noise abatement procedures to further reduce the noise impact in and around East Hampton. These noise abatement procedures include early power reduction, steep angles of climb, and adjusted flight paths over ground. All of the noise abatement procedures are in accordance with Dassault's aircraft operating manual. To my knowledge, the Town has never measured or determined the actual noise impact of Eleventh Street's aircraft in operation—either the Falcon 7x or the Sikorsky S-76C+.

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

Executed: April 28, 2015
Wainscott, NY



Eric Jungck

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.

-----x

DECLARATION OF CHRIS VELLIOS

I, Chris Vellios, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am the Chief Operating Officer and Chief Financial Officer of Liberty Helicopters, Inc. (“Liberty”), one of the Plaintiffs in this action.

2. I make this declaration, based on 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 Liberty

3. Liberty is a business corporation duly organized and existing under the laws of the State of New York, with a principal office located at 165 Western Road, Kearny, New Jersey 07032. Liberty was founded in 1986. Liberty is a wholly-owned subsidiary of Sightseeing Tours of America, Inc. (“STA”).

4. Liberty provides “on demand” helicopter charter services, transporting passengers to and from various destination points in New York, New Jersey, Pennsylvania, Connecticut, Maryland and Massachusetts. Liberty operates 11 helicopters that it uses in its charter service, consisting of following helicopter models: Airbus AS350B2, Airbus AS355F1, and Airbus AS355F2. Liberty shares these same 11 helicopters with its sister company, Liberty Helicopters, Inc. (N.Y.), which offers sightseeing tours.

5. Liberty holds a Part 135 certification conferred by the Federal Aviation Administration (“FAA”). This Part 135 certification authorizes Liberty to provide operations for compensation or hire. Liberty also has authorization from the Department of Transportation to provide interstate air transportation. Pursuant to Part 135, Liberty complies with various FAA requirements and safety standards, including those related to flight operations, maintenance, and training.

6. STA has between 95 and 100 employees, depending on the season. STA’s employees work for both Liberty and Liberty’s sister company.

Liberty’s Operations to and from HTO

7. Flights to and from HTO are critical to Liberty’s business. Many of Liberty’s customers reside in East Hampton or have summer homes there, and rely on helicopter charter service for their transportation needs. Flights to and from HTO account for between 45% and 50% of Liberty’s annual revenue.

8. Moreover, 90% of Liberty’s revenue from flights to and from HTO is generated between the months of May and September. In 2014, Liberty made 1,326 trips to HTO, a substantial portion of which were between May and September. Operationally, during the

summertime it is common for Liberty to use the same helicopter aircraft to make multiple trips to and from the Airport in a single day, or in the same week.

East Hampton's Recently-Enacted Restrictions

9. 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.

10. 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.

11. All of the helicopters in Liberty's fleet are subject to the "Noisy Aircraft" definition. The Airbus AS350B2 has an EPNdB AP level of 91.4; the Airbus AS355F1 has an EPNdB AP level of 93.2; and the Airbus AS355F2 has an EPNdB AP level of 93.4.

12. The EPNdB AP levels for Liberty's fleet do not accurately indicate the actual noise impact generated by Liberty's helicopters during arrivals and takeoffs at HTO on the surrounding residential area. Liberty's pilots abide by the Airport's voluntary noise abatement procedures, unless otherwise directed by air traffic control or responding to inclement weather. As part of those procedures, Liberty's helicopters (1) maintain high altitudes when approaching HTO; (2) climb quickly when departing HTO; (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 airport ramp. All of these procedures significantly reduce the actual noise impact of Liberty's helicopters.

13. Liberty will be subject to all three of the Restrictions. It will immediately be subject to both the Mandatory Curfew and Extended Curfew, which will prohibit Liberty from accessing the Airport between 8:00 p.m. and 9:00 a.m., year-round. The One-Trip Limit will further bar Liberty from accessing HTO more than once per week during the summer—Liberty's busiest season.

The Restrictions' Impact on Liberty

14. The Restrictions will severely impact Liberty's business and force Liberty to reduce its staff and make other changes to try and maintain its viability.

15. The One-Trip Limit will severely harm Liberty, and effectively shut down Liberty's ability to provide charter flights to and from HTO during the summer—Liberty's busiest season.

16. Under the One-Trip Limit, the maximum number of trips Liberty could fly to or from the Airport during the summer will be reduced to at most 11 trips per week (one per each of Liberty's 11 helicopters). In all likelihood, under the One-Trip Limit, Liberty would be operationally unable to make even 11 per week. As indicated above, Liberty shares its fleet of 11 helicopters with a sister business that uses the helicopters for sightseeing tours in Manhattan. Because Liberty's helicopters are thus often booked for other flight services by that other company, it would be operationally difficult if not impossible for Liberty to use a different helicopter for each, single trip to HTO.

17. For a charter business like Liberty, the One-Trip Limit is nothing short of devastating. It will effectively curtail our ability to service customers who fly to and from HTO, many of whom are longtime customers.

18. The Extended Curfew will also have a significant negative impact on Liberty's business. Based upon when Liberty's customers fly to and from HTO, I estimate that the Extended Curfew alone will prohibit approximately 25% of Liberty's flights to and from the Airport.

19. If the Restrictions take effect, Liberty anticipates losing possibly as much as 50% of its revenue.

20. Currently, STA employs 25 full-time pilots and 7 part-time pilots, who fly both charter and sightseeing operations. Liberty projects that if the Restrictions take effect, STA will be forced to lay off as many as 5 full-time pilots and 5 part-time pilots. In addition, STA likely would need to reduce its administrative staff, including dispatch operators and members of its maintenance team.

21. If the Restrictions take effect, Liberty also anticipates losing significant market share, as customers traveling to and from HTO may elect to travel by aircraft and other means of transportation not subject to the Restrictions. Even if the Restrictions were later lifted, Liberty will have been permanently harmed, as its customers might not return.

22. The debate surrounding the Restrictions and the passage of the Restrictions by the Town have already harmed Liberty. Liberty offers its clients travelling to and from HTO the opportunity to prepay in May of each year for the upcoming summer season. Past customers have already indicated to me that they will delay in making prepayments until the accessibility of

HTO is resolved. If the Restrictions are enforced, Liberty will lose this revenue as well, which is projected to be between \$120,000–\$150,000 for the 2015 season.

23. If the Restrictions take effect, the other airports in Long Island, including Montauk Airport (“Montauk”), Francis S. Gabreski Airport in Westhampton (“Gabreski”), and the Southampton Heliport (“Southampton”) are inadequate alternatives to HTO, and will not alleviate the serious economic and operational harm that Liberty will suffer.

24. Montauk is more than 20 miles east of HTO and does not provide fueling services, which is a problem due to Montauk’s distance from Manhattan. If Liberty were to make a trip with six passengers to Montauk, Liberty would need to refuel before making another flight. However, to avoid being subject to the One-Trip Limit, Liberty’s only fueling option is Gabreski. Therefore, the Restrictions will cause Liberty to incur greater operational costs to fly to Montauk as well as additional landing fees at Gabreski for the sole purpose of refueling. Southampton consists of one helipad, does not have fueling services, and only allows helicopters to remain on the helipad for five minutes. Gabreski is more than 25 miles west of HTO. Liberty’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. 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.

25. Furthermore, if the Restrictions go into effect, it is 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.


26. Finally, in addition to harming Liberty 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, Liberty 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.

27. If the Restrictions take effect, Liberty will be seriously and immediately harmed. The threat of losing nearly half of its revenue will force Liberty and STA to make stark choices, including laying off employees and incurring significant expenses to acquire aircraft that comply with the Town's arbitrary "Noisy Aircraft" standard.

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

Executed: April 28, 2015
Kearny, NJ



Chris Vellios

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 CYNTHIA L. HERBST

I, Cynthia L. Herbst, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am a Principal of Sound Aircraft Services, Inc. (“Sound”), one of the Plaintiffs in this action.

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

Sound’s Operations at HTO

3. Founded in 1990, Sound is a New York business corporation based at HTO in Wainscott, New York. My partner and I are life-long local residents, East Hampton Town taxpayers and have built Sound from the ground up. Sound’s 25th anniversary in business is this year.

4. Sound is a fixed-base operator (“FBO”). An FBO is an airport service center that provides various on-site services to aircraft, passengers, and crewmembers at an airport. Sound is one of two FBOs at the Airport. Sound provides many services at the Airport, including aircraft fueling, aircraft booking, parking, hangar rentals, catering services, car rentals, and pilot lounges. Sound leases the premises at HTO from the Town of East Hampton pursuant to a long term lease.

5. Sound has 10 employees, and during the summer months, Sound typically adds six to seven additional employees. Of Sound’s 10 employees, more than 50 percent of the employees have been employed for more than 10 years. All of Sound’s year-round employees have been employed for at least 2 years.

6. Sound offers its services on a 24-hour basis. Services provided outside of Sound’s regular business hours are charged to the customer at a higher rate, and are referred to as “after-hour” services.

7. Sound’s primary business at the Airport—and primary source of revenue—is the provision of fuel services. Sound fuels all types of aircraft that use and land at the Airport. Fuel sales account for approximately 85% of Sound’s total revenue.

8. Sound sells the majority of its fuel, by volume, to jet aircraft. Fuel sales to helicopters account for approximately 27% of Sound’s revenue. A small percentage of Sound’s fuel sales is to turboprop planes.

9. Furthermore, the majority of Sound’s fuel services are provided during the summer months—between May and September each year—which is the peak season at HTO, and when Sound earns the majority of its annual revenue. In 2014, Sound sold a total of 750,938.3 gallons of fuel, 79% of which was sold between May and September. With regard to

Sound's fuel sales to helicopters, in 2014, 85% of such sales occurred between May and September.

10. Sound's largest clients are several private jet and charter companies that have entered into contractual agreements with Sound, designating Sound as their "preferred FBO." This means that the clients use Sound for their substantial fueling needs, and in return, those clients receive certain other services from Sound, such as parking, without charge.

11. Charter helicopters making repeat trips to and from East Hampton are also important clients of Sound. Summertime is the peak season for charter helicopters, and Sound fuels them. In my experience, most charter helicopters purchase fuel each time they land at HTO. In addition, because the nearby Montauk airport and Southampton heliport do not provide fuel services, helicopters often land at HTO to fuel before picking up passengers elsewhere.

12. In my experience, most jet and helicopter operators who fly into East Hampton fly in and drop their passengers off and return later in the week to pick up the passengers. This equates to more than one trip per week.

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.

The Restrictions' Impact on Sound

15. The Restrictions will immediately and severely impact Sound's business. The following are some specific examples of the significant impact the Restrictions will have on Sound's business:

- a. Sound's biggest clients will be precluded from landing at HTO with the frequency and at the times that they did prior to the restrictions, and therefore significantly reduce Sound's fuel sales;
- b. Sound's single largest client operates a Stage 4 jet aircraft—Stage 4 being the quietest aircraft designation given out by the Federal Aviation Administration—that is nevertheless deemed a “Noisy Aircraft” under the Town's definition. This Stage 4 jet is based with Sound at HTO. This Stage 4 jet makes several trips to and from HTO during the week, and sometimes several trips in a single day. The sale of jet fuel to this single jet operator sustains Sound's operations during the non-summer months. If the Restrictions go into effect, this operator likely will have to move its base of operations due primarily to the One-Trip Limit. The loss of this business alone would equate to a 16% loss of revenue annually. To the extent that the operator continued to base his aircraft at HTO, the One-Trip Limit during the summer would result in an immediate reduction of fuel sales to this client. Sound estimates that it will lose in excess of 19,000 gallons in fuel sales.
- c. The One-Trip Limit will also prohibit or discourage helicopters and other aircraft from stopping at HTO to refuel during the summer months because such a stop

would count as the aircraft's one trip per week. Accordingly, Sound will additionally lose those sales.

d. The Mandatory and Extended Curfews will also have an immediate, adverse impact on Sound's business. Both Curfews will apply year-round. Thus, all of Sound's clients will be prohibited from landing at the Airport between 11:00 p.m. and 7:00 a.m.—an eight-hour period during which Sound will no longer be able to provide fuel or other services. Moreover, Sound's largest clients—the jets and helicopters now classified as “Noisy Aircraft”—will be prohibited from landing at the Airport between 8:00 p.m. and 9:00 a.m.—a 13-hour period during when Sound will no longer be able to provide fuel or other services. This will result in a total loss of “after hour” fees. I estimate that Sound will lose close to \$100,000 in additional revenue on account of these Curfews annually.

e. The Restrictions could additionally harm Sound's business by causing Sound a loss of rentable ramp space. (Ramp space is the outdoor space at the Airport, leased by Sound from the Town, in which Sound provides fueling, parking, and other services.) As the preferred FBO for a number of private jet companies, Sound has agreed—and is now contractually obligated—to allow those private jet clients to park on Sound's ramp for free. It may be the case that in order to comply with the One-Trip Limit, these clients will need to leave their jets parked on Sound's ramp for longer periods of time. This would either prevent Sound from renting the parking spaces to other aircraft, or require Sound to renegotiate its agreements. In addition, Sound's ramp space easily will become saturated with aircraft grounded by the One-Trip Limit, to the point that it would be difficult for Sound to provide its services to other aircraft.

f. The Restrictions will also cause Sound to lose market share, as aircraft operators seek out fueling, preferred FBO arrangements, parking and hangar arrangements at other airports without the same access restrictions.

16. It is impossible to estimate the full impact that these restrictions will have on Sound's business because the impact will be determined by how Sound's clients/customers redefine their businesses to accommodate the Restrictions. In particular, it is impossible to know whether Sound's clients/customers will (1) discontinue operations into HTO altogether; (2) limit operations to the off-season; (3) abide by the restrictions and demand parking on Sound's ramp pursuant to their contracts with Sound; and/or (4) reposition other aircraft to avoid violating the one-trip restriction.

17. While it is impossible to gauge the magnitude of the total loss that Sound will sustain due to the variables associated with how each of Sound's clients/customers will adjust their businesses and operations to accommodate the Restrictions, it is evident that there will be a significant loss of Sound's business.

18. The Town's own press release issued on April 7, 2015 advises that the "one trip limit in conjunction with the two curfews will affect . . . 75% of helicopter operations. . . ." I believe that a 75% reduction in helicopter traffic is an underestimate. Notwithstanding that, the ramifications of such a reduction are significant. If Sound experienced a 75% reduction in helicopter traffic during the summer months, it would equate to a 17% loss in Sound's annual fuel sales and the loss of approximately \$29,812.50 in ramp fees.

19. The Town's press release further advised that the Restrictions would impact 23% of all aircraft operations. Based upon the unknown variables set forth above, this also seems like a gross underestimate. As set forth above, the Restrictions jeopardize Sound's continued

business relationship with its largest client. If Sound were to lose that single customer as a result of the Restrictions, that alone would cause a 16% loss of Sound's annual revenue. Additionally, a 75% reduction in helicopter traffic equates to a 17% loss in Sound's revenue. Considering those two losses alone, Sound would sustain a 33% revenue loss. That 33% loss does not include the loss of after-hours charges, catering, pilots' services, ramp fees associated with charter jets and the loss of fuel sales associated with jet operations (other than the single Stage 4 client)—all of which are more difficult to predict. Thus, Sound's anticipated losses as a result of the Restrictions far exceeds 23%. Notwithstanding the fact that the figures are underestimated, if Sound sustained a 23% loss in its business, then it would not be able to sustain itself in its current form.

20. If Sound's business was to be reduced by 23% as estimated by the Town, it is possible that, after 25 years of successful operation at HTO, Sound would need to close.

21. At a minimum, the Restrictions will cause Sound serious economic harm, which may require Sound to: (1) lay off members of Sound's staff; (2) renegotiate or breach the terms of its' customer agreements; and/or (3) renegotiate or breach the terms of its lease with the Town.

22. If Sound is forced to lay off its trained, long-term employees, they will likely immediately seek employment elsewhere. Thus, if the Restrictions are eventually repealed and Sound was able to re-hire employees, it is unlikely that Sound would be able to re-hire its former employees. As a result, Sound would lose its trained, long-term employees and would need to hire new employees who would need to be trained. Even with significant training, it is unlikely that Sound would be able to restore its workforce to its current state.


23. There is no guarantee that Sound will be able to renegotiate the terms of its customer agreements. In particular, many of Sound's customer agreements require that Sound provide services free of charge to clients in exchange for a client agreeing to fuel exclusively with Sound. The services that Sound is required to provide free of charge include parking. If Sound's clients/customers elect to accommodate the Restrictions by dropping passengers off at HTO and leaving the aircraft there until the passengers are ready to depart, Sound will be severely limited in its ability to service arriving aircraft. If Sound needs to start charging those clients/customers, it may result in breach of contract actions against Sound and/or a total loss of that client/customer's business.

24. As previously stated, Sound leases its premises from the Town of East Hampton. A reduction in business outlined herein may cause Sound to be unable to sustain itself. In such event, it is unlikely that the Town of East Hampton would offer Sound a reprieve from its rental payments and obligations pursuant to the long-term lease. Thus, if Sound is unable to continue its business, it will default on the lease and be exposed to inconvenience and costs associated with litigation and the damages associated with a default.

25. Ultimately, it is impossible to estimate the total magnitude of the loss that Sound will sustain as a result of the Restrictions because Sound cannot predict how each of its clients/customers are going to adjust their businesses to accommodate the Restrictions. Notwithstanding that, Sound requires sufficient ramp space, fuel sales, customers and manpower to be able to cover its overhead. The Restrictions will cause a reduction in each of those variables. Reducing just one of the aforesaid variables jeopardizes Sound's continued viability.

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

Executed: April 28, 2015
Wainscott, NY



Cynthia L. Herbst

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.

-----X

DECLARATION OF MATTHEW S. ZUCCARO

I, MATTHEW S. ZUCCARO, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am the President and Chief Executive Officer of Helicopter Association International, Inc. (“HAI”), one of the Plaintiffs in this action.
2. I am also an FAA certified pilot and flight instructor for airplanes and helicopters. I have logged over 12,000 flight hours. My prior experience includes being a pilot in command for charter and private helicopter operations to and from East Hampton Airport (“HTO” or “Airport”). In the past I have served as voluntary aviation safety counselor to the FAA, in which I mentored new pilots and made recommendations to the FAA about safety issues.
3. I make this declaration, based upon personal knowledge, in support of the Plaintiffs’ application for a temporary restraining order enjoining the Town of East Hampton’s recently-enacted restrictions on access to HTO.

Background on HAI and its Mission

4. Founded in 1948, HAI currently has over 4,000 members that operate across the globe. HAI's members operate approximately 6,000 helicopters and those helicopters log more than two million flight hours per year.

5. HAI's mission statement is to "provide its members with services that directly benefit their operations, and to advance the international helicopter community by providing programs that enhance safety, encourage professionalism and economic viability while promoting the unique contributions vertical flight offers society."

6. HAI provides products and services to the helicopter aviation community. Among other activities, HAI sponsors the world's largest helicopter aviation trade show and provides operational and safety guidance to its members.

7. HAI has developed and manages a program entitled "Fly Neighborly." Fly Neighborly aims to address community concerns about helicopter traffic and noise in the communities our members service and those along our flight paths. The goal of the Fly Neighborly program is to be responsive to community concerns about helicopter traffic and noise. Highlights of the Fly Neighborly program include counseling helicopter operators to fly at higher altitudes, fly over industrial areas and major roadways, identify noise sensitive routes and take steps to avoid them, and adhere to voluntary noise abatement procedures in place at local airports when possible.

HAI Member's Operations to and from HTO

8. HTO is an important destination for many of HAI's Members. Plaintiffs Liberty Helicopters, Inc., Analar Corporation, HeliFlite Shares LLC, and Associated Aircraft Group, Inc. are members of HAI. Many of HAI's members depend on current and future access to HTO.

9. Our members fly a significant number of flights to and from the HTO annually, and operation of these flights represents a significant portion of business for these members.

10. The vast majority of our members' flights to and from HTO occur from May through September. Many of our members' passengers reside in East Hampton or maintain second homes there. Many fly by helicopter from the greater New York City metropolitan area to East Hampton on Thursday or Friday evening, and fly out on Monday morning. Many of our members' flights also involve interstate transportation.

11. Many of our members follow Fly Neighborly guidelines at HTO, including following the voluntary noise abatement procedures in place at East Hampton Airport. In general, HAI's members operating at HTO (1) maintain high altitudes when approaching HTO; (2) climb quickly when departing HTO; (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 airport ramp. All of these procedures significantly reduce the actual noise impact of HAI's members.

East Hampton's Recently-Enacted Restrictions

12. On April 16, 2015, the Town Board adopted three new local laws restricting access to HTO ("the Restrictions"). 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 to HTO per week 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. Violations of the Restrictions are punishable by a range of monetary fines, injunctions, and/or a ban from using the Airport.

13. Most of our members’ helicopters that fly to and from East Hamptons all under the Town’s definition of “Noisy Aircraft.”

14. The Restrictions are severe, excessive and unreasonable and will harm many of HAI members. Moreover, the Restrictions are not based on sound data.

15. The Town proceeded to adopt the Restrictions on April 16, 2015, without evaluating in a meaningful way whether Fly Neighborly procedures and voluntary noise abatement procedures by helicopter operators (and HAI members) operating at HTO lessened the noise impact on residents of the East End of Long Island.

16. If the Restrictions are enforced, many of our members who fly to and from HTO will be subject to all three of the Restrictions—the Mandatory Curfew, Extended Curfew and One-Trip Limit.

The Restrictions’ Impact on Members

17. The Restrictions will severely harm Members who fly to and from East Hampton and threaten the viability of their business models by reducing or eliminating the frequency of flight operations needed to maintain their businesses. The Restrictions will also disrupt the efficient functioning of the national transportation system and raise safety concerns.

18. The Town's public statements in enacting the Restrictions have reflected a particular intention of targeting helicopter operations. The following helicopters, used by HAI's members operating at HTO, are among those included in the Town's definition of "Noisy Aircraft":

- Bell 430
- Sikorsky S-76
- Eurocopter AS 365N3
- Eurocopter AS 355F1

19. Restricting access to HTO for a significant number of hours per day, and for a significant number of aircraft models, will result in disruption to the National Airspace System, causing congestion at other airports and helipads, and delays in transiting the airspace over the Long Island area.

20. As an organization whose top priority is safety, I am deeply concerned about the Restrictions and the potential implications they have for helicopter safety. Helicopter pilots are trained to make operational decisions, including when to depart or plan to arrive at an airport, based on flying conditions, always maintaining the first priority of safety for passengers, pilots, and people on the ground. The severe fines and threat of an injunction that result from a violation of the Mandatory Curfew and Extended Curfew introduces new factors that put an additional burden on the pilot that is not part of the pilot's decision making. I fear that the Restrictions and the penalties have the potential to reduce safety at HTO.

21. Finally, in addition to harming HAI's members, the Restrictions will harm HTO itself, by significantly reducing Airport revenues, which will in turn deprive HTO of essential funds needed for Airport repair and maintenance. HAI is also a plaintiff in *Friends of the East*

Hampton Airport, Inc. et al. v. East Hampton Airport, FAA Docket No. 16-15-02 (2015), a pending administrative complaint filed with the FAA regarding the Town's failure to properly maintain the Airport even before enactment of the Restrictions. If the Restrictions are enforced, then the Airports revenues—which are currently the only source of funding for Airport maintenance—will causing the Airport to fall further into disrepair.

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

Executed on April 29, 2015
Coeur d'Alene, Idaho



Matthew S. Zuccaro
President, HAI

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., No. 15 Civ. 2246 (SJF) (ARL)
HELIFLITE SHARES LLC, LIBERTY HELICOPTERS,
INC., SOUND AIRCRAFT SERVICES, INC., and
NATIONAL BUSINESS AVIATION ASSOCIATION, INC.,

Plaintiffs,

-against-

THE TOWN OF EAST HAMPTON,

Defendant.

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DECLARATION OF STEVE BROWN

I, Steve Brown, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am the Chief Operating Officer of the National Business Aviation Association (“NBAA”). NBAA is one of the Plaintiffs in this action and a member of the Friends of the East Hampton Airport, Inc., one of the Plaintiffs in this action.

2. I am a former employee of the Federal Aviation Administration (“FAA”), where I served as the Associate Administrator for Air Traffic Services and the Vice President of Operations Planning before joining NBAA in 2004.

3. 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 (“HTO”).

Background on NBAA and its Mission

4. Founded in 1947, NBAA's mission statement is to foster an environment that allows business aviation to thrive in the United States and around the world. NBAA is the leading organization for companies that rely on general aviation aircraft to help make their businesses more efficient, productive and successful. Such aircraft include jet aircraft, helicopter aircraft, piston engine aircraft and turbo prop aircraft. NBAA is based in Washington, DC, and has more than 10,000 member companies worldwide. NBAA member companies own, operate or support over 11,000 general aviation aircraft, of all kinds.

5. NBAA also provides more than 100 products and services to the business aviation community; sponsors the world's largest civil aviation trade show; and collects, interprets and disseminates operational and managerial data related to the safe, efficient and cost-effective use of business aircraft. Throughout its history, NBAA has also been integrally involved in identifying and understanding advances in aviation technology and procedures important to the business aviation community.

6. Fulfillment of NBAA's mission requires fair and reasonable access to the thousands of general aviation airports serving the business locations and destinations of our member companies. Just as our interstate highway system is an essential element of our national way of life and economic health, so too is our national system of airports. Without reasonable access to well-managed and safe airports, the business aviation industry cannot function efficiently or safely.

7. Accordingly, NBAA has been at the forefront of efforts aimed at fairly settling problems related to air space access, airports, and aircraft noise and is focused on issues such as

aviation safety, operational efficiency, fair and equal access, FAA reform, noise and compatible land use, and business aviation advocacy.

8. Reasonable airport access, in a manner supportive of business aviation, is also critical to the economy. Business aviation is responsible for the creation of thousands of jobs – from the aircraft and component manufacturers, airplane mechanics and repair shops, fuel companies, hangar operators, caterers and the providers of ground transportation, to the employees at the hundreds of general aviation airports throughout the country, and including a vast array of secondary tier services such as air transportation charter brokerage, fleet insurance, marketing, and other necessary services.

9. Moreover, a key to a well-functioning, national system of air transportation is national uniformity. For obvious reasons, the business aviation industry cannot function efficiently or effectively if local governments and airports impose differing requirements and standards for aircraft and airport use. In that regard, the federal laws and regulations governing noise and access restrictions – including those codified in the Airport Noise and Capacity Act of 1990 (“ANCA”; 49 U.S.C. § 47524), 14 C.F.R. Part 161, and other FAA statutes and regulations – preempt local standards and are critical to NBAA’s members. ANCA and its implementing regulations in Part 161 in particular exist in order to prevent local airport proprietors from imposing noise access restrictions on Stage 2, Stage 3 and Stage 4 aircraft without first complying with the federal government’s uniform, national requirements.

NBAA Members’ Operations to and from HTO

10. HTO is an important destination and base of operations for many of NBAA’s members. Three NBAA members are based at HTO, and numerous NBAA members use HTO. At least one NBAA member conducts more than 1,000 operations annually at HTO; at least two

additional NBAA members conduct 200 or more operations annually at HTO; at least three additional members conduct 30 or more operations annually at HTO; and at least ten additional members conduct four or more operations annually at HTO. Additionally, many other members can and do use HTO on a transient basis. Thus, NBAA's members depend on current and future access to HTO.

11. HTO figures prominently into the regional and national economy, as recognized by the FAA, which for decades has designated HTO as a regional airport of national interest in its *National Plan of Integrated Airport Systems* ("NPIAS") report, as updated and provided by the FAA to Congress every two years.

12. East Hampton is an important destination for many people, including many of the nation's business and political leaders. Our members fly a significant number of flights to and from the HTO annually, and operation of these flights represents a significant portion of business for many of these members.

13. A significant percentage if not the vast majority of our members' flights to and from HTO occur during the summer months. Many of our members' passengers reside in East Hampton or maintain homes there. Many fly from the greater New York City metropolitan area to East Hampton, by helicopter, on Thursday or Friday evening, and fly out on Monday morning. Many of our members' flights also involve interstate transportation.

East Hampton's Recently-Enacted Restrictions

14. On April 16, 2015, the Town Board adopted three new local laws restricting access to East Hampton Airport ("the Restrictions"). I understand that the Restrictions include (1) a mandatory curfew, prohibiting use of East Hampton Airport 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 prohibition on “Noisy Aircraft” flying more than one trip per week during the “summer” – the latter term is not defined in the Restrictions, but apparently intended to mean between May and September (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” based upon noise data published by the FAA. The Restrictions deem violations to be criminal misdemeanor offenses, punishable by a range of monetary fines, injunctions, and/or a ban from using the airport.

15. The Town has not explained the basis for its selection of the 91.0 EPNdB AP level as the basis of its definition of “Noisy Aircraft” other than that most helicopters would fall within that definition. The studies and other work relied upon by the Town include no noise evaluation metrics, no noise reference measurement points, and no provisions for trade-offs by the aircraft operator – nor did the Town consider or recommend other alternatives, such as the involvement of the FAA to modify approach paths to the Airport.

16. Many of the aircraft operated by NBAA members – including both fixed wing aircraft and helicopters which fly to and from East Hampton – fall under the Town’s definition of “Noisy Aircraft.”

17. The Restrictions are severe, excessive and unreasonable and will harm many of NBAA members. Moreover, the Restrictions are not based on complete and accurate data, and fail to comply with ANCA, Part 161, and other federal laws and regulations that preempt local standards.

18. Prior to the Town’s enactment of the Restrictions, NBAA requested a meeting with Town officials in an effort to find a reasonable way to address the Town’s noise concerns

without harming users of HTO. Such a meeting was held on February 27, 2015 and attended by representatives of NBAA and the Town, as well as representatives from the National Air Transportation Association (“NATA”) and the Aircraft Owners and Pilots Association (“AOPA”). At that meeting, NBAA voiced its concerns with the Town’s proposed Restrictions, including that:

(a) The Town’s comparison of the number of aircraft using HTO in 2014 to 2013, rather than over a longer period of time, made it appear that there was a significant increase in usage in 2014, without accounting for the fact that traffic in 2013 was unusually low due to poor weather;

(b) The Town’s reliance on the total number of noise complaints as the basis for the Restrictions failed to incorporate a more nuanced evaluation of which complaints were genuine and how many were filed by a small minority of East Hampton residents and/or were the product of outreach efforts intended to generate noise complaints;

(c) The Town lacked authority under its federal statutory, regulatory, and contractual obligations – and the so-called “proprietor’s exception” thereto – to impose the proposed Restrictions;

(d) Long overdue maintenance obligations at HTO would be jeopardized by reduced revenues due to the Restrictions and the Town’s own budget committee had not been able to reconcile the funding shortfall; and

(e) Even if the Town re-evaluates the Restrictions in the fall of 2015, real and permanent damage to NBAA members’ businesses would occur, in many cases with no hope of re-establishing those businesses.

19. While the Town listened to our concerns at that meeting, it was unwilling to engage in real dialogue about less severe restrictions that would mitigate noise without severely impacting our members. The Town proceeded to adopt the Restrictions on April 16, 2015, without responding to NBAA's expressed concerns, without complying with ANCA, Part 161, and other federal laws and requirements that preempt local standards, and without preparing or publishing any analysis of the economic impact of the Restrictions on businesses, aircraft operators, and HTO's long-term maintenance and sustainability.

20. If the Restrictions are enforced, many of our members who are based at or otherwise fly to and from HTO will be subject to all three of the Restrictions—the Mandatory Curfew, Extended Curfew and One-Trip Limit.

The Restrictions' Impact on Members

21. The Restrictions will severely harm Members who fly to and from East Hampton and threaten the viability of their business models by reducing or eliminating the frequency of flight operations needed to maintain their businesses. The Restrictions will also disrupt the efficient functioning of the national transportation system and raise safety concerns.

22. The Town's public statements in enacting the Restrictions have reflected a particular intention of targeting helicopter operations. But business aviation jet aircraft will likewise be subject to the Restrictions. Examples of jet aircraft that routinely are operated by NBAA members and are included in the Town's definition of "Noisy Aircraft" because at least certain configurations have an AP level of 91.0 EPNdB or more are:

- Bombardier CL-600
- Cessna 550; Citation 560 XL Excel
- Learjet 31A, 35A, 36A, and 45

- Gulfstream G-200
- Dassault Falcon 50, 200, and 7X
- Raytheon Hawker 125-700A

To the extent that the above aircraft have an AP level of 91.0 EPNdB or more, they will be subject to the Restrictions even though they also may be certified as “Stage 3” or “Stage 4” under U.S. and international noise standards – i.e., they are generally recognized as quiet and any restrictions on operations at any U.S. airport (irrespective of whether it has accepted and the status of federal grant monies) require affirmative FAA approval pursuant to ANCA and Part 161.

23. Restricting access to HTO for a significant number of hours per day, and for a significant number of aircraft models, will result in disruption to the National Airspace System, causing congestion at other airports, and delays in transiting the airspace over the Long Island area.

24. The Restrictions put pilots in the untenable position of having to decide between safety and operational factors versus possible criminal misdemeanor charges and substantial monetary fines when deciding when and where to land. For instance, a cross-country flight that is planned to arrive prior to the curfew may be delayed due to weather or air traffic control factors. Under the Restrictions, the pilot must now monitor the aircraft’s progress against the mandatory curfew time and anticipate whether the arrival will occur after the curfew, resulting in a last minute decision either to alter the flight plan and divert the flight to an unplanned airport, or incur a criminal charge and monetary fine. Pilots are trained to make inflight operating decisions on the basis of safety and should not have to weigh non-operational non-safety factors

such as criminal or financial penalties in operating decisions. Putting the additional burden of such decisions on pilots jeopardizes safety of flight.

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

Executed on April 28, 2015



Steve Brown

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 KURT CARLSON

I, Kurt Carlson, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am the Chief Executive Officer of HeliFlite Shares LLC (“HeliFlite”), one of the Plaintiffs in this action.

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 HeliFlite

3. HeliFlite is a limited liability company duly organized and existing under the laws of the State of Delaware, with a principal office located at 15 Brewster Road, Newark, New Jersey 07114.

4. Founded in 1998, HeliFlite provides “on-demand” helicopter charter services to passengers to and from various destination points throughout the Northeast, including New York,

New Jersey, Pennsylvania, Connecticut, and Rhode Island. HeliFlite's fleet is comprised of the following helicopters: four (4) Bell 430 and three (3) Sikorsky S-76.

5. HeliFlite offers its customers the option to purchase a HeliCard, which provides for 25 hours of flight time at a discounted price.

6. HeliFlite also operates a fractional ownership program for its customers. Catered toward frequent users, fractional ownership allows several owners to share in the ownership and maintenance costs of a helicopter. Many of HeliFlite's fractional owners frequently travel to and from HTO.

7. In addition, one of the Bell 430 helicopters in HeliFlite's fleet is a managed helicopter. This means that the helicopter is wholly owned by two customers, but HeliFlite provides maintenance, storage, and the pilots. If the helicopter is unavailable, the owners are entitled to use one of the other helicopters in HeliFlite's fleet. Similarly, if the owners are not using the helicopter, HeliFlite is permitted to use the helicopter to charter other customers. The owners of the managed helicopter travel to and from HTO.

8. HeliFlite holds a Part 135 certification conferred by the Federal Aviation Administration ("FAA"). Part 135 certification authorizes HeliFlite to provide operations for compensation or hire. HeliFlite also has authorization from the Department of Transportation to engage in interstate air transportation. Pursuant to Part 135, HeliFlite complies with various FAA requirements and safety standards, including those related to flight operations, maintenance, and training.

9. HeliFlite has 35 employees.

HeliFlite's Operations to and from HTO

10. HTO is one of HeliFlite's most important destinations. In 2014, HeliFlite flew a total of 1,356 flights (including landing and take-offs) to or from HTO. Many of our customers own homes in East Hampton but work in New York City or elsewhere, and use our charter and fractional ownership helicopter services as the primary means of traveling to and from their East Hampton homes.

11. Flights to and from HTO account for between 20% and 25% of HeliFlite's total annual revenue.

12. Moreover, the majority of HeliFlite's flights to and from HTO—approximately 85%—take place during the summer, from May through September. In 2014, 1,148 of HeliFlite's flights to and from the Airport—out of a total of 1,356—occurred between May and September.

13. While most HeliFlite operations involving HTO transport passengers between Manhattan and East Hampton, HeliFlite also frequently transports passengers between HTO and points outside of New York State. In 2013 and 2014, HeliFlite conducted 87 interstate flights involving HTO.

East Hampton's Recently-Enacted Restrictions

14. Over the past year, HeliFlite has tried, on multiple occasions and in numerous ways, to work with the Town to find a balanced, reasonable way of addressing noise concerns. Much to HeliFlite's disappointment and chagrin, the Town has been unwilling to engage in any meaningful dialogue.

15. 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.

16. 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.

17. The Town has issued a list of aircraft that have EPNdB AP levels above 91.0. All of HeliFlite’s helicopters are on this list and thus are deemed to be “Noisy Aircraft” by the Town.

18. If the Restrictions are put into effect, HeliFlite’s entire fleet 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, our helicopters will be barred under the One-Trip Limit from flying more than one trip per calendar week from May through September—HeliFlite’s busiest season.

19. The EPNdB AP level for HeliFlite’s helicopters does not measure, and is not a fair or accurate indicator of, the noise impact HeliFlite’s helicopters on people at ground-level, outside HTO’s boundaries. That is so for many reasons, including that HeliFlite’s pilots adhere to HTO’s noise abatement procedures, which include (1) maintaining high altitude approaches to HTO; (2) climbing quickly to high altitude when departing HTO; and (3) avoiding operating the rotors for more than five minutes while on the ramp. HeliFlite demands that its pilots follow the

noise abatement procedures, except where the pilot is directed otherwise by the air traffic controller, or where the pilot cannot comply due to safety conditions caused by the weather. HeliFlite has policies and procedures in place to monitor compliance with the noise abatement procedures, and I personally perform that monitoring.

The Restrictions' Impact on HeliFlite

20. The Restrictions will have an immediate and serious adverse effect on HeliFlite's business.

21. The One-Trip Limit will result in an 80–90% reduction in HeliFlite's operations to and from HTO. The Extended Curfew will result in a 20% decrease in its operations to HTO.

22. The Restrictions will decrease HeliFlite's projected revenue for 2015 by an estimated 20–25%.

23. A loss of approximately one-quarter of revenue is a severe hardship to HeliFlite that will significantly impact our operations. HeliFlite will likely be forced to reduce its fleet by at least 25% (two helicopters) and to lay off between 8 and 10 full-time employees. Many of HeliFlite's employees have worked for HeliFlite for more than 8 years. Moreover, even if the Restrictions were later lifted, HeliFlite will have been irreparably harmed because it will have already lost its highly skilled employees, who will be hard to replace. In addition, were HeliFlite forced to reduce its fleet, it would be very difficult to replace the helicopters if the Restrictions were later lifted because HeliFlite only purchases used single-owner, high quality helicopters, which are hard to find.

24. If the Restrictions take effect, HeliFlite also anticipates losing significant market share, as customers traveling to and from HTO may elect to travel by aircraft and other means of transportation not subject to the Restrictions.

25. Because of the recent political developments in East Hampton, a number of HeliFlite's clients included a contingency in their HeliCard purchase agreement, requiring a refund should access to HTO become difficult. Moreover, several HeliCard customers have refrained from renewing their purchase of a HeliCard until the accessibility of HTO is determined. As a result, HeliFlite has already lost revenue due to the pendency of the Restrictions.

26. If the Restrictions are enforced, HeliFlite anticipates that most fractional owners will attempt to put their shares back to the company and/or eventually leave the program.

27. In addition, if the One-Trip Limit is enforced, the owners of the managed helicopter likely would insist that the helicopter's one trip be used to transport them to and from HTO. HeliFlite would fly the customers to HTO on Thursday or Friday, park the helicopter at HTO for the weekend, and return on Monday. Therefore, HeliFlite would lose the ability to use this helicopter for additional charter services during weekends from May through September.

28. If the Restrictions take effect, the 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 mitigate the serious economic and operational harm that HeliFlite will suffer. Montauk is more than 20 miles east of HTO and does not provide fueling services. Southampton consists of one helipad, does not provide fueling services, does not allow helicopters to remain on the helipad for more than five minutes, and is only open from sunrise to sunset. Gabreski is more than 25 miles west of HTO. HeliFlite'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.

Many 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.

29. Furthermore, if the Restrictions go into effect, it is 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. In my opinion, Southampton will become the primary destination for many and will be overwhelmed. Multiple helicopters will be holding over the bay waiting their turn to land on the helipad, which only accommodates one ship at a time which will increase the noise level in the surrounding area and will increase the risk of collisions.

30. Finally, in addition to harming HeliFlite 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, HeliFlite 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.

31. If the Restrictions take effect, HeliFlite will be irreparably harmed. The Restrictions will materially decrease HeliFlite's revenues, thereby forcing HeliFlite to downsize its fleet, lay off employees and restructure its business operations. Even if the Restrictions were later lifted, HeliFlite will have been permanently harmed, as its customers might not return.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed: April 28, 2015
Newark, NJ


Kurt Carlson

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

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.

-----x

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 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.

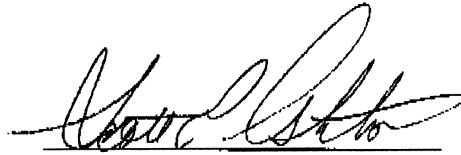
35. Finally, in addition to harming AAG and other HTO users, the Restrictions will harm HTO itself. The Restrictions will have the effect of significantly reducing HTO's revenues, which will in turn deprive HTO of funds desperately needed to maintain the Airport in good repair. Even prior to its enactment 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.

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

Executed: April 28, 2015
Wappingers Falls, NY

A handwritten signature in black ink, appearing to read "Scott E. Ashton", written over a horizontal line.

Scott E. Ashton

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., No. 15 Civ. 2246 (SJF) (ARL)
HELIFLITE SHARES LLC, LIBERTY HELICOPTERS,
INC., SOUND AIRCRAFT SERVICES, INC., and
NATIONAL BUSINESS AVIATION ASSOCIATION, INC.,

Plaintiffs,

-against-

THE TOWN OF EAST HAMPTON,

Defendant.

-----x

DECLARATION OF ANDREW SABIN

I, Andrew Sabin, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am a member of Friends of the East Hampton Airport, Inc., one of the Plaintiffs in this action.

2. Both my home and business are located in the Town of East Hampton. I am the owner and Chief Executive Officer of Sabin Metal Corporation (“Sabin Metal”), which is headquartered in East Hampton. I have owned a home in East Hampton since 1978 and East Hampton has been my primary residence since 1991. I own nine properties in East Hampton. I am deeply committed to many environmental and philanthropic causes in East Hampton and the East End of Long Island.

3. I make this declaration based upon personal knowledge in support of Plaintiffs’ application for injunctive relief enjoining the Town of East Hampton’s recently-enacted restrictions on access to the East Hampton Airport (the “Restrictions”). I understand that those

Restrictions, adopted on April 16, 2015, include: a mandatory curfew, prohibiting use of East Hampton Airport between 11:00 p.m. and 7:00 a.m. (the “Mandatory Curfew”); (2) an extended curfew for “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 during the summer season (the “One-Trip Limit”).

4. The continued vitality and safety of East Hampton Airport are critical to Sabin Metal’s business, to me personally, and to the East Hampton community. The Restrictions place the Airport’s continued vitality and safety in jeopardy.

5. My company, Sabin Metal, is the largest private recycler of precious metals in North America. Sabin Metal’s headquarters are in East Hampton, and it has offices all over the world. Sabin Metal has over 300 employees worldwide, 20 of whom work in the East Hampton office. Our business requires extensive travel, both domestically and internationally.

6. The easy access to air transportation provided by East Hampton Airport was a significant reason why I purchased a home in East Hampton and moved my business’s headquarters to East Hampton in 1991. My employees and I are extensive users of the Airport for national and international flights. Indeed, we use the Airport one to two times per week, and once a month our management staff flies into East Hampton Airport, from other States and from outside the United States, for our management meetings.

7. I have been flying on commercial and private jets and turboprop planes in and out of East Hampton Airport since 1972. For years, I utilized the scheduled, commercial airline services that used to fly in and out of East Hampton Airport. I use helicopter services to or from the Airport on rare occasions.

8. Currently, Sabin Metal is a client of Flight Options LLC, through which Sabin Metal is a fractional owner of two different Phenom 300s. Sabin Metal is also a fractional owner, through PlaneSense, Inc., of one Pilatus. As a fractional owner, Sabin Metal is entitled to a certain amount of flight time. Neither the Pilatus nor the Phenom 300 is deemed a “Noisy Aircraft” under the Restrictions. However, several aircraft in the Flight Options fleet or charter aircraft they use are deemed “Noisy Aircraft,” including the Hawker 400, Hawker 800, Learjet 40, and Learjet 45—all of which Sabin Metal utilizes in its travel. As a fractional owner, Sabin Metal has the option to exchange flight credits on its aircraft for flight credit on another aircraft. So, for example, if Sabin Metal needed a Learjet 45 to pick up employees in East Hampton, fly the employees to another location, and then return the employees to East Hampton, Sabin Metal could trade time on its Phenom 300 for time on the Learjet 45. Under the One-Trip Limit, however, Sabin Metal would be prohibited from using the larger aircraft in that manner, from May through September. Because those larger aircraft are not based at East Hampton Airport, they could not land at the Airport, pick up passengers, and return the passengers to the Airport—as this would exceed one trip. Likewise, the Extended Curfew will prohibit Sabin Metal from using those aircraft to fly in and out of the Airport at times of day that are convenient and fairly typical for business travelers. Thus, the Restrictions have devalued Sabin Metal’s fractional ownership interests because Sabin Metal is now limited in the type of aircraft it may use out of East Hampton Airport.

9. I further believe that the most severe of the three Restrictions—the Extended Curfew and One-Trip Limit—will place the Airport’s viability and safety in jeopardy, which will have serious consequences for my business and many other people and businesses.

10. The Town, even before adopting the Restrictions, has been allowing the Airport to fall into a concerning state of disrepair, including inattention to tree removal, runway maintenance and fencing issues that pose serious aviation safety concerns. Instead of focusing on maintaining the Airport—a jewel of the community—the Town has instead been focused on substantially reducing use of the Airport through these Restrictions. Revenues generated by the use of the Airport—in particular, landing fees and fuel fees—fund the Airport’s maintenance. By significantly reducing airport operations, the Restrictions will also significantly reduce Airport revenue and the Town’s ability to finance Airport maintenance. I believe that, whether intended or not, the Restrictions will lead to the Airport’s further degradation and possible closure.

11. The Town adopted the Restrictions without undertaking any competent analysis of the economic consequences the Restrictions will have on the Airport’s sustainability. The Town Board promised that, before voting on the Restrictions, it would have its Budget and Finance Advisory Committee (BFAC) issue analysis and findings with respect to the economic viability of the Airport if the Restrictions were passed. No such analysis or findings were ever issued. Tellingly, the BFAC could not come to a consensus. Thus, the Town has passed Restrictions that will—by the Town’s own admission—reduce helicopter operations by 75% and overall operations by 23%, but has no plan in place to make up for the lost revenue.

12. The Town has acted in an unreasonable manner and passed severe restrictions on the use of East Hampton Airport that will result in reduced revenues to the Airport, which in turn will lead to further deterioration of the Airport. Should the Airport deteriorate to such an extent that it is not safe to use, it will harm my business by forcing me to incur additional costs by

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having to use airports that are farther away, which increases the travel time for both me and my employees.

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

Executed on April 22, 2015
New York, NY

A handwritten signature in cursive script, appearing to read "Andrew Sabin", written in black ink.

Andrew Sabin



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

*610 Federal Plaza
Central Islip, New York 11722*

May 4, 2015

By ECF

The Honorable Sandra J. Feuerstein
United States District Judge
Eastern District of New York
100 Federal Plaza
Central Islip, NY 11722

Re: *Friends of the East Hampton Airport, Inc., et al. v. Town of East Hampton*, 2:15 Civ. 02246 (SJF)(ARL)

Dear Judge Feuerstein:

This office represents the Federal Aviation Administration (the "FAA"). On January 29, 2015, the Friends of the East Hampton Airport, Inc., among others ("Plaintiffs"), commenced an action against the FAA in connection with various noise and access restrictions for East Hampton Airport ("EHA") which have recently been adopted into local law by the Town of East Hampton (the "Town"). See *Friends of East Hampton Airport, Inc., et al. v. FAA*, 9:15-cv-0041 (the "FAA Action"). Specifically, in the FAA Action, Plaintiffs seek to compel the FAA to take action to ensure that the Town's restrictions comply with applicable federal laws and FAA regulations. The deadline for the FAA to respond to Plaintiffs' complaint is June 8, 2015.

As the Court is aware, on April 21, 2015, Plaintiffs commenced the above-referenced matter against the Town, challenging the same EHA restrictions at issue in the FAA Action (the "Town Action"). Plaintiffs have sought to consolidate the FAA and Town Actions and currently before the Court is Plaintiffs' application for a temporary restraining order seeking to enjoin the Town from enforcing the proposed EHA restrictions during the pendency of the FAA and Town Actions.

The FAA is currently reviewing Plaintiffs' claims and the Town's restrictions and, therefore, is not expressing any view on the merits of either the FAA or Town Action at this time. Notwithstanding, please be advised that the FAA believes that Plaintiffs' application to enjoin the Town from enforcing the EHA restrictions should be granted. Indeed, an injunction is necessary so that the FAA can properly consider Plaintiffs' claims and the Town restrictions, develop its position on the issues, and, should the FAA determine that the Town restrictions are

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contrary to federal law(s) and/or FAA regulation(s)—and/or the Court rule in favor of Plaintiffs in the FAA Action— commence appropriate enforcement action.

Thank you for your consideration.

Respectfully submitted,

KELLY T. CURRIE
ACTING UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

BY: /s/ Robert W. Schumacher
Robert W. Schumacher
(631) 715-7871

cc: parties of record

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.

15 Civ. 2246 (SJF) (ARL)

Plaintiffs,

-against-

THE TOWN OF EAST HAMPTON,

Defendant.
-----X

CORRECTED DECLARATION OF LISA ZORNBERG

I, Lisa Zornberg, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am a partner in the law firm Lankler Siffert & Wohl LLP, counsel to Plaintiffs in this action. I am an attorney admitted to practice law in this Court and the courts of the State of New York.

2. I submit this declaration in support of Plaintiffs' Motion for a Temporary Restraining Order.


3. Attached as Exhibit A is a true and correct copy of a document prepared by Special Counsel to the Town of East Hampton entitled, "Town of East Hampton Relations with FAA at the East Hampton Airport," dated September 27, 2011. The Town has published this document on <http://www.htoplanning.com/> under the file name "Questions and Answers re grant obligations.DOCX."

4. Attached as Exhibit B is a true and correct copy of a presentation by Peter J.

Kirsch entitled, "Town of East Hampton – Airport Obligations," dated October 11, 2011. The Town has published this document on <http://www.htoplanning.com/> under the filename "Town of East Hampton – Airport Obligations.PPT."

5. Attached as Exhibit C is a true and correct copy of a presentation by Peter J. Kirsch entitled, "East Hampton Airport Safety, Noise and Operational Management Plan," dated December 1, 2011. The Town has published this document on <http://www.htoplanning.com/> under the filename "Town of East Hampton – Safety and Noise Program.PPT."

Executed: April 29, 2015
New York, New York



Lisa Zornberg

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Case 2:15-cv-02246-SJF-ARL Document 36 Filed 05/05/15 Page 3 of 54 PageID #: 452

EXHIBIT A

Town of East Hampton Relations with FAA at the East Hampton Airport

*Prepared for Councilman Stanziome by
Special Counsel to the Town of East Hampton*

1. Is the East Hampton Airport currently subject to federal regulation?

Yes. The Town is subject to obligations known as “grant assurances” which are contractual commitments to the Federal Aviation Administration (FAA). Most grant assurances last for twenty (20) years, meaning that the airport owner is contractually obligated to the FAA for 20 years from the date of its last grant. The Town last took an FAA grant in 2001, which means that it is contractually obligated until 2021. There is no legally acceptable way for the owner of an airport to pay back grants and thereby speed up that timetable.

The grant assurances contain many obligations, including requirements relating to non-discrimination, to protecting nearby land uses from encroaching onto the airport, to preventing erection of hazards to air navigation. There are also obligations related to operating the airport, such as an obligation not to grant an exclusive right to anyone to operate at the airport, a requirement to make the airport available to the public on reasonable terms and conditions, an obligation to allow fixed base operators to run businesses at the airport, and many more.

2. Is it true that all the Town’s grant assurances expire in 2014?

No. The Town is subject to a total of 39 grant assurances. Four of those grant assurances expire on January 1, 2015 but the remainder do not expire until 2021.

In 2005, the FAA signed a Settlement Agreement in litigation brought by several Town residents and a community group. In that Agreement, the FAA agreed not to enforce four of the 39 grant assurances after December 31, 2014. The Town is not a party to the Settlement Agreement.

3. Is the operation of the airport subject to US Constitution, federal and state law?

Yes. Whether or not the airport is subject to grant assurances, the Town must still comply with federal and state law and ultimately the U.S. Constitution. Aviation-related laws impose comprehensive requirements on how airports operate, and whether the Town can restrict use or access to the airport. These laws and the U.S. Constitution are often enforced by the FAA in court but can also be enforced through litigation brought by any person who would be adversely affected.

4. Once the grant assurances no longer apply to the Airport, will the Town acquire complete control over the Airport?

No. There is a common misperception that, when grant assurance obligations no longer exist, an airport is free to operate as it wishes. That is not true. When the grant assurances expire in 2021, the Town would gain only slightly greater control over the Airport than it has today.

All public airports are subject to the requirements of federal law, state law and the U.S. Constitution. These laws and the Constitution limit the ability of an airport owner to restrict access to its airport unless it can meet a fairly high threshold of demonstrating that it has acted reasonably, that the restrictions are necessary to achieve legitimate local needs and that its restrictions are no more stringent than necessary. There has been a lot of litigation over the years about whether airport use restrictions comply with these requirements.

The major distinction between airports that are, and are not, subject to grant assurances and is who enforces the airport's legal obligations: grant assurance obligations are enforced by the FAA, while other legal obligations can be challenged and enforced in federal court by the FAA or by anyone who is affected.

5. So long as the Town is federally obligated, can it impose a curfew or restriction on aircraft or helicopters?

No, not without substantial legal expense, litigation exposure, and costly technical analysis. If an airport is federally obligated, before its proprietor can restrict the use of the airport, it must comply both with the grant assurances and with the Part 161 requirements (named after the section of the Federal Aviation Regulations where these requirements appear). The Part 161 requirements are extensive, time consuming and costly.

The Town cannot restrict operations by the current generation of aircraft (known as stage 3 or 4 aircraft) without FAA approval. If the Town wanted to restrict only the older generation of aircraft or any helicopters (known as stage 1 or 2 aircraft), it could do so without FAA approval but it would first have to satisfy the exhaustive Part 161 study requirements.

Only one airport (Bob Hope Airport in Burbank, California) has ever applied for FAA approval for a restriction on stage 3 or 4 aircraft. The FAA rejected that application. The FAA action was not a surprise given the agency's position in vigorous opposition to *any* airport use restrictions. That airport spent almost \$7 million and took almost a decade in its unsuccessful effort to secure a nighttime curfew.

Only one airport (Naples Municipal in Naples, Florida) has successfully imposed a restriction on stage 1 or 2 aircraft. That effort was also costly and time-consuming. After several years of effort, spending almost \$5 million and defending against several lawsuits (including one brought by the FAA itself), that airport was able to ban the noisiest stage 1 and 2 aircraft.

Since only two airports have ever completed a Part 161 study, it is hard to estimate the time and cost, but the limited past experience suggests that the process would take several years and (even without litigation) could cost millions of dollars.

6. Once the Town is *no longer* federally obligated, can the Town automatically impose a mandatory curfew or similar restriction on aircraft using the airport?

No. The East Hampton Airport must be accessible to the public. Over the course of the last half-century, courts have consistently concluded that the U.S. Constitution imposes significant limitations on the ability of an airport owner to restrict access to its airport.

Constitutional limitations apply regardless of whether an airport is subject to grant assurances. Any restriction on use of an airport must be carefully tailored to a demonstrated need in a particular community; the restriction must be no more restrictive than necessary to achieve that need; the restriction must be applied in a rational manner; and the airport owner needs to have a solid factual basis for its restriction. These constitutional requirements are very similar to the Part 161 requirements. Therefore, a non-federally obligated airport would need to go through many of the same hurdles as a federally obligated airport before it can lawfully impose any restriction. Since the Part 161 requirements were imposed in 1990, no airport has successfully imposed a new use restriction outside the Part 161 process.

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EXHIBIT B

Town of East Hampton – Airport Obligations



KAPLAN KIRSCH ROCKWELL

Peter J. Kirsch, Partner

October 11, 2011

Kaplan Kirsch & Rockwell, Peter Kirsch, Partner

- Legal practice dedicated to airport law issues
 - Nation’s largest legal practice dedicated to airport law (www.airportattorneys.com)
- Practicing in this area for 25 years
- Firm’s lawyers involved in most of the major airport operational disputes in the last two decades, including –
 - Naples, FL
 - Santa Monica, CA
 - Burbank, CA
- Been advising East Hampton since 2007

Purpose of today's presentation

- How federal requirements impact operation of public airports like East Hampton Airport
- Practical effects of taking federal aviation grants (other than money)
- Practical effects of *not* taking federal money on Town's ability to restrict use of Airport
- Effect of taking federal money on the Town's ability to achieve its objectives for this airport

Introduction

- I. Grant Assurances
 - What are Grant Assurances?
 - How long do they last?
 - How do they affect operation of the Airport?
- II. Other federal laws that control airport operations
- III. Effect on the Town of not taking FAA grant money
- IV. Ways the Town can gain greater control over Airport access

Common misperceptions

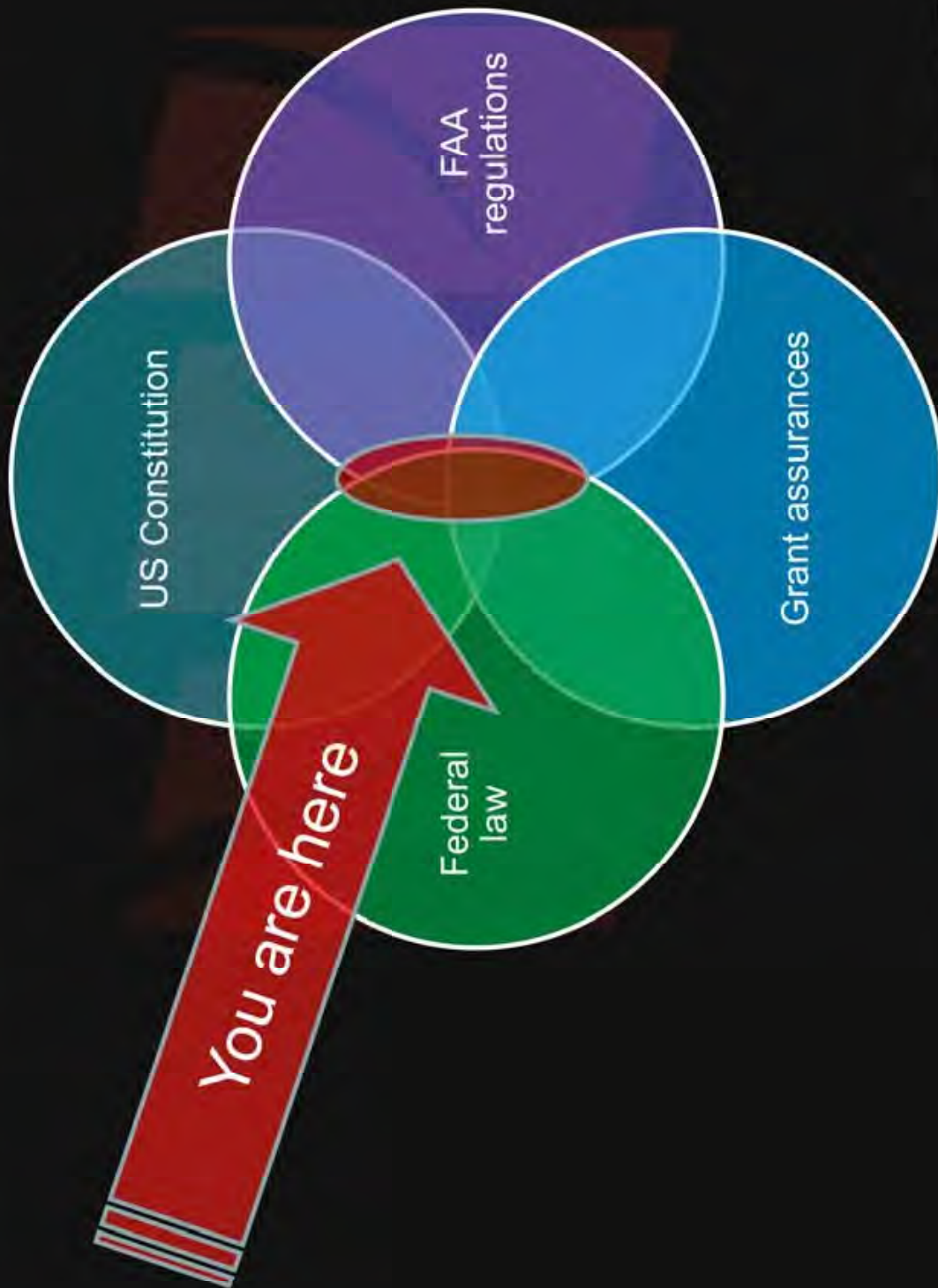
- ✘ The Town's grant assurances will expire at end of 2014
- ✘ Once grant assurances expire, the Town will be free to restrict aviation access to the airport
- ✘ Many other airports have successfully imposed restrictions on their airports in recent years
- ✘ The Town can regulate helicopter routes

Source of obligations - one view



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A holistic view of the law



Four key sources

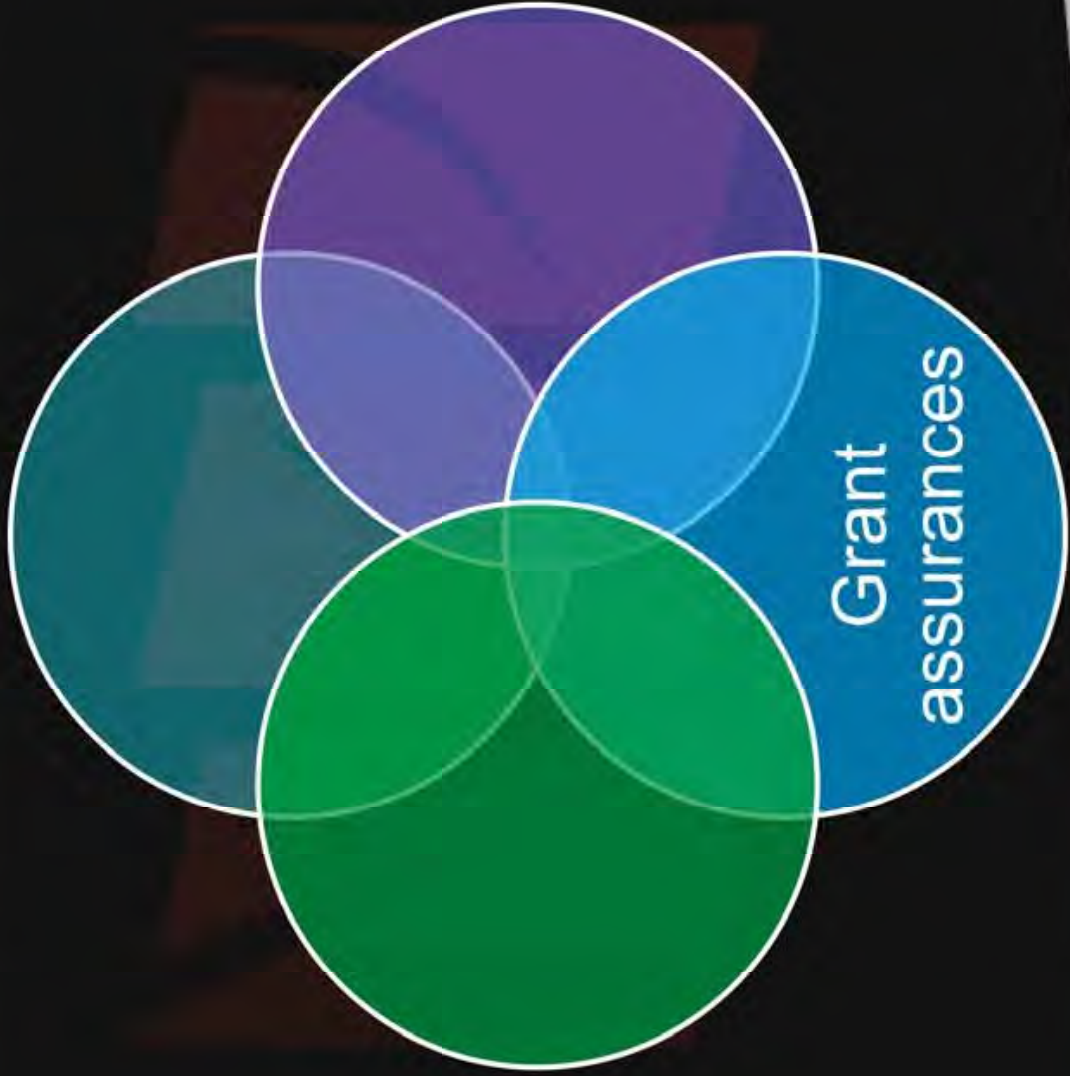
Commerce Clause

Airport Noise and
Capacity Act

Part 161
regulations

Grant Assurances
5, 19, 22, 23

Part I – Grant Assurances



Who is grant obligated

Total US airports – 19,734

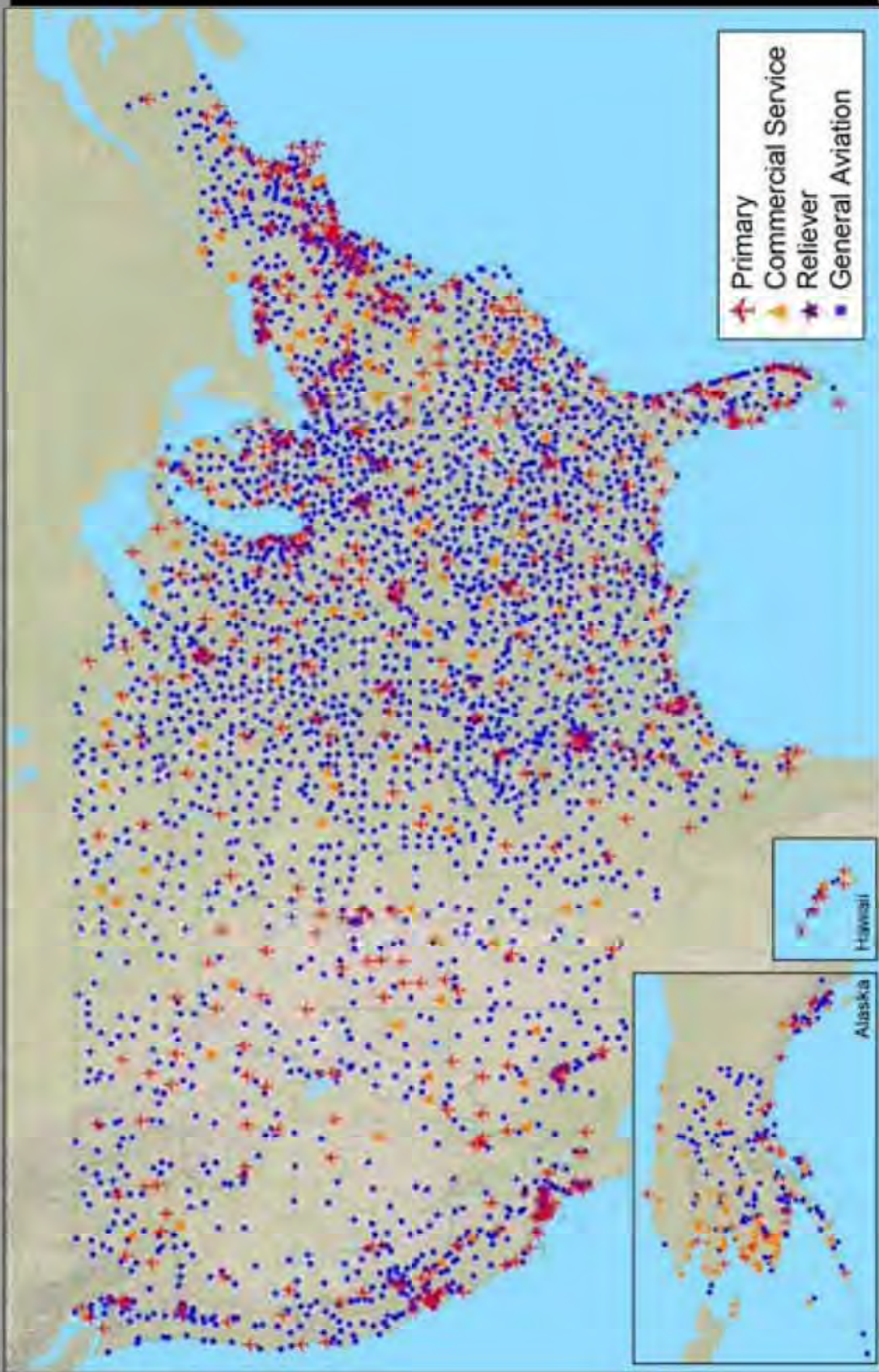
Public use airports – 5,179

Grant-eligible airports (NPIAS) – 3,380

Grant-eligible general aviation airports (like East Hampton) – 2,560

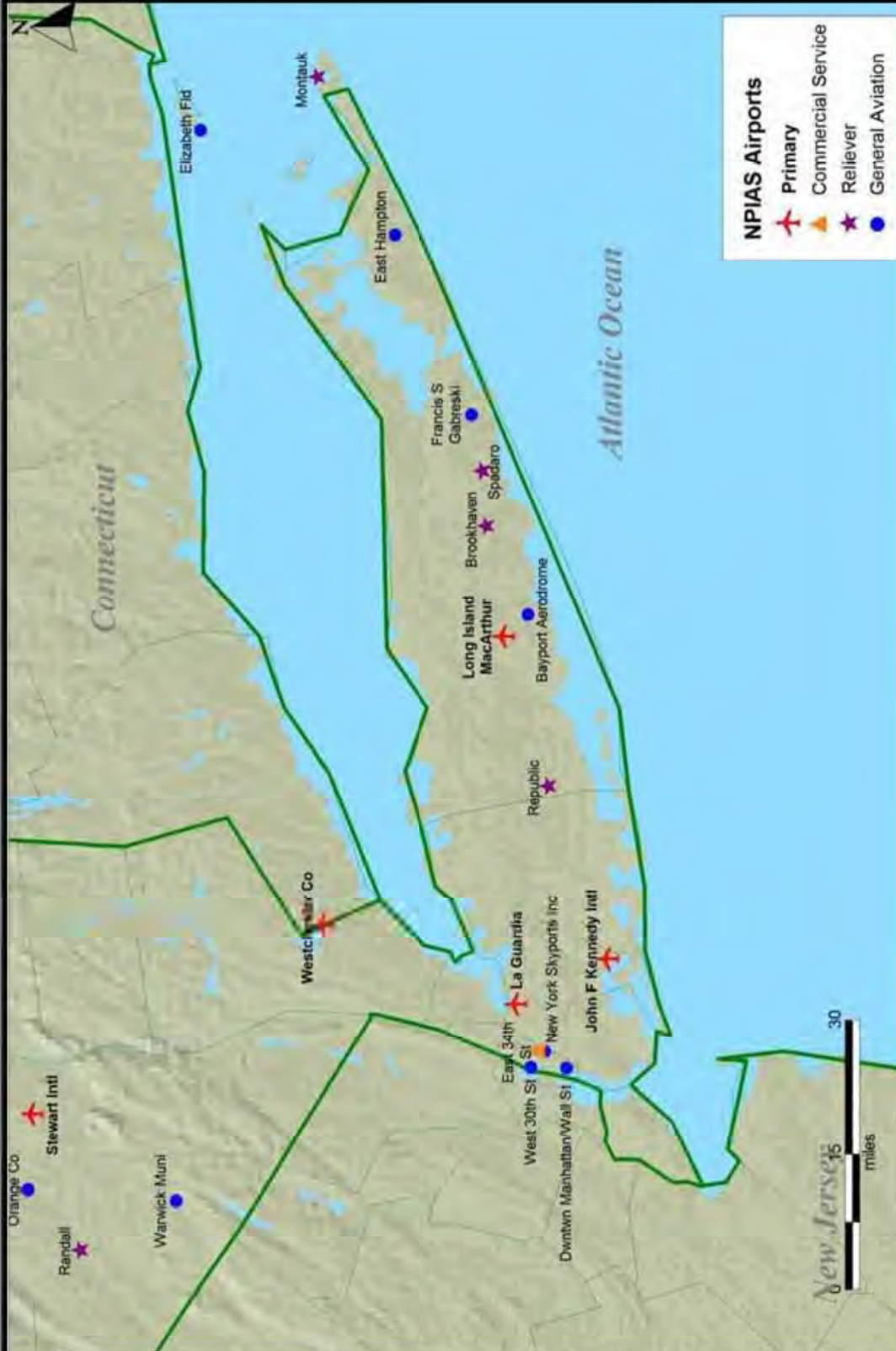
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Federally funded airports



NY- area grant obligated airports

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What are Grant Assurances?

- Contractual commitment by airport proprietor to the U.S. government in exchange for grant funds
- Basic structure in effect for decades
 - Since Federal Airport Act of 1946
- Required by, and implement, federal law (49 U.S.C. § 40103, 47107)
- Grant assurances allow FAA to enforce *contractually* many of the obligations of federal law
 - Reduces expense of litigation for FAA
 - Simplifies enforcement for FAA

General Conditions

- Apply to all property and facilities on the Airport Property Map
 - Not just the facilities improved with grants
- Apply for 20 years (except planning grants – 10 years)
- No expiration of assurances for property acquired with federal funds or #23 (exclusive rights)
- Mirror requirements of federal law
 - Also add contracting and financial matters

Uniform Grant Assurances

- 39 contractual commitments, including
 - Preserving rights and powers (No. 5)
 - Operation and maintenance (No. 19)
 - Hazards (No. 20)
 - Preserving compatible land use (No. 21)
 - Economic nondiscrimination (No. 22)
 - Exclusive rights (No. 23)
 - Self-sustaining finances (No. 24)
 - Prohibition on revenue diversion (No. 25)
 - Airport Layout Plan (No. 29)
 - Disposal of land (No. 31)
 - DBE (No. 37)
- Key grant assurances mirror federal law

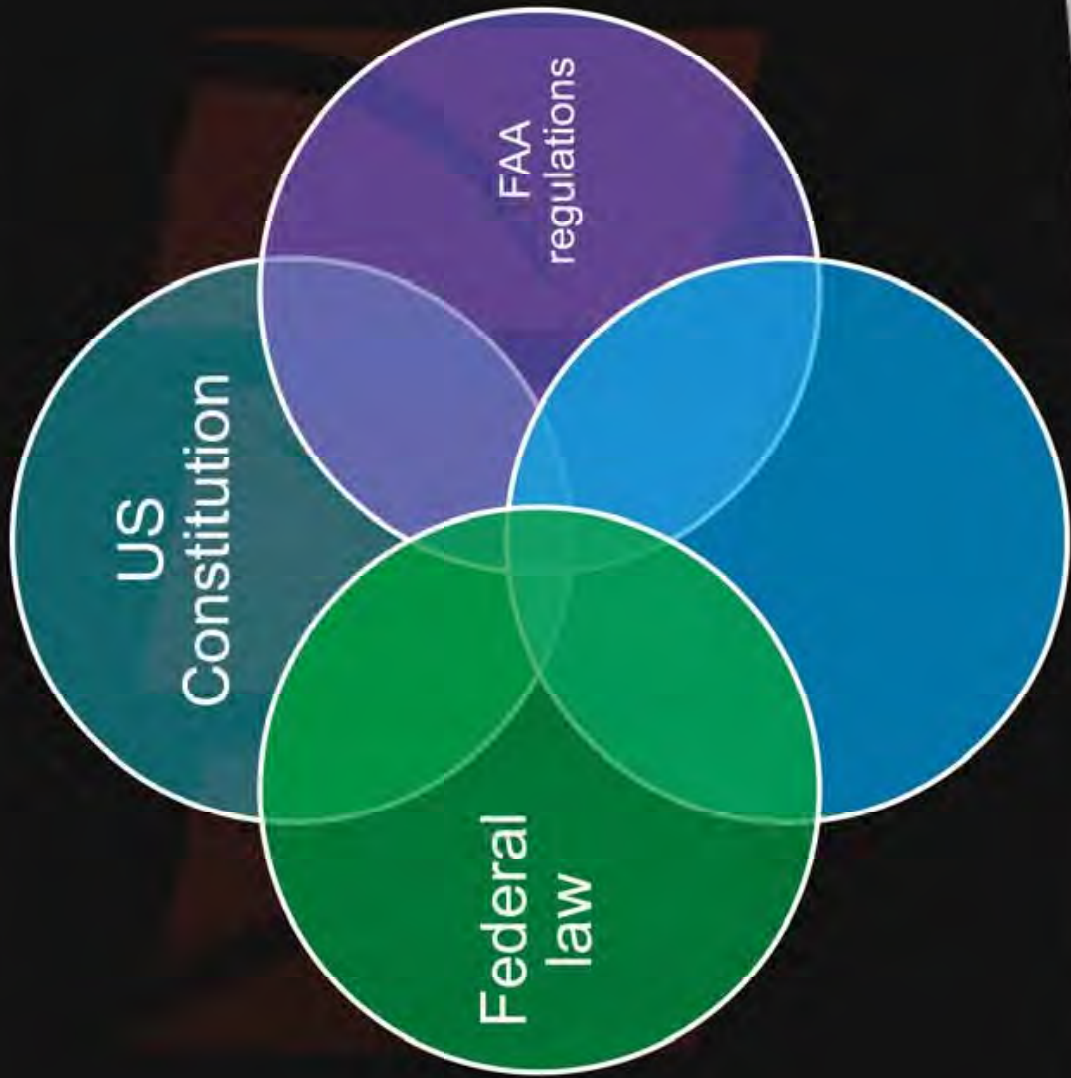
Grant Assurances at East Hampton Airport

- Last federal grant: 2001
 - Normally, grant assurances would expire in 2021
- In settlement of private litigation, FAA agreed that *four* grant assurances would expire at end of 2014:
 - Grant Assurances 22a and 22h
 - Grant Assurance 29a and 29b

Enforcement of obligations

- Violation of grant assurances is enforced *only* by FAA
 - Though administrative adjudication
 - In federal court if necessary
- FAA is aggressive and consistent in enforcing both grant assurances and federal law
 - Santa Monica and Naples litigation

Part II – Other federal laws/regulations



Application of other federal laws

- Federal law applies to all public use airports
- Independent of grant assurances
- Can be enforced in federal court litigation by
 - FAA
 - User
 - Affected landowner
 - Interest group
- Enforced in court through litigation

Constitutional requirements

- Federal law and constitutional requirements apply to every public use airport
 - Public use airports must be available to the public
- Proprietor cannot restrict access unless –
 - Reasonable in the circumstances of the particular airport
 - Carefully tailored to the local needs and community expectations
 - Based upon data which support the need and rationale for the restriction
 - Not unduly restrictive of interstate commerce

Other federal laws

- Laws implement federal control over airports
- Since 1990 – Airport Noise and Capacity Act (ANCA)
 - For restrictions on stage 2 aircraft, airport must complete study and public review procedures (Part 161 regulations)
 - Includes helicopters
 - For restrictions on stage 3 aircraft, airport must complete study *and* secure FAA approval
 - Not clear whether ANCA applies *only* to federally obligated airports

History of airport use restrictions

- **Many airports have use restrictions (e.g.: curfews, noise limits)**
 - *With only one exception, every one of these restrictions was enacted before ANCA became law in 1990*
 - The one exception is Naples Municipal Airport (FL) which prohibits stage 2 (noisier) fixed wing aircraft.
- **Since 1990, very, very few airports have even tried to adopt use restrictions**
 - Only one airport has completed the process needed for FAA approval to restrict current generation of aircraft (Burbank, CA). They were unsuccessful

Uncertainties

- Efforts to impose use restrictions since 1990 often result in litigation
 - By FAA (Naples, Santa Monica)
 - By user groups (Naples, New York City)
- Lessons from Naples, Burbank, Santa Monica and New York City: Hurdles are –
 - Practical (Part 161 study)
 - Legal (litigation exposure)
 - Financial (cost of compliance; litigation costs)

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Part III – Effect of not taking grants



Obligated vs. non-obligated airports

Federally obligated airports	Non-obligated airports
Financial obligations to FAA	No financial obligations to FAA
Eligible to receive grants	No federal money
Use restrictions must comply with grant assurances, Constitution, ANCA	Use restrictions must comply with Constitution and maybe ANCA
Grant assurances for 20 years	No grant assurances
Airport Layout Plan	No ALP required
Most disputes start with FAA administrative process	Litigation starts in trial courts (state or federal)

Restricting airport access

Item	Obligated airport	Non-obligated airport
Technical Study	Required	Required
Must prove need	Required	Required
Public review process	Required	Desirable
Prove benefits outweigh costs	Required	Required
FAA approval	Only for stage 3 (not stage 2 or helicopters)	No
Safe harbor	Yes for stage 3 No for stage 2	No Litigation necessary
Litigation risk	Medium	High
Likely litigants	FAA, users	FAA, users

Helicopter restrictions at E.H.

Before 2021

Comply with grant assurances

Complete Part 161 study

Follow procedural requirements of ANCA

Safe harbor

After 2021

Complete analytical study

Follow procedural requirements of ANCA (?)

? Litigation ?

Part IV – Increasing control over *this* Airport

- Focus on strategic objectives
 - Town Board intent (statements) can be critical
- Close coordination with FAA
- Voluntary measures
 - Better monitoring to improve compliance
- Improved enforcement of existing rules, regulations and procedures
- Improved flight track compliance
- Collaboration with federal elected officials (Sen. Schumer, Cong. Bishop) on helicopter routes

Questions



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www.airportattorneys.com

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EXHIBIT C

East Hampton Airport Safety, Noise and Operational Management Plan



KAPLAN KIRSCH ROCKWELL

Peter J. Kirsch

December 1, 2011

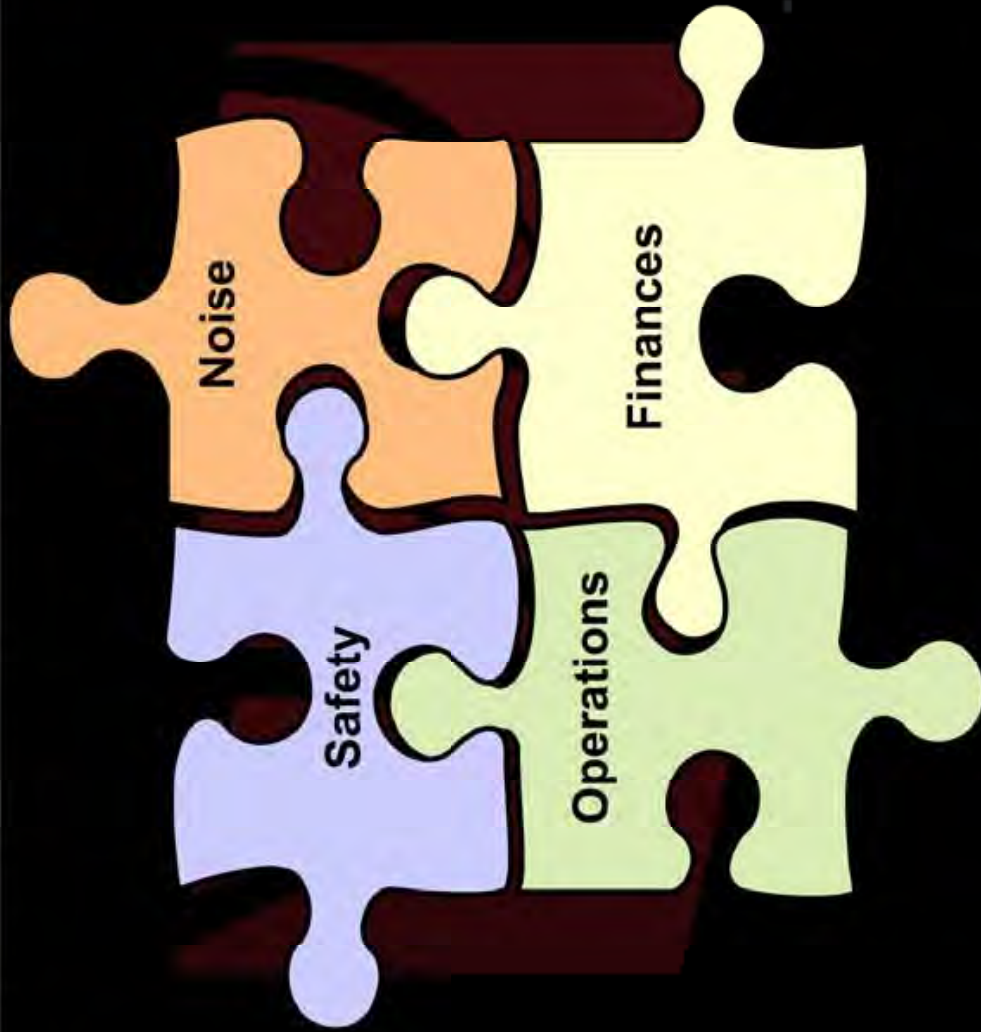
October presentation summary

- **Town is currently 'grant obligated' to FAA**
 - Most obligations (37) expire in 2021; a few (2) will not be enforced by FAA after 2014
- **Status of FAA grants does not significantly affect ability to address noise and safety issues**
- **Town does not now have 'local control' and seeking FAA grants does not fundamentally change that legal reality**
 - **Only way to achieve local control is to close airport!**

Since October

- Councilman Stanzione has been working with staff, consultants, and counsel to draft a management plan to address safety, noise and airport operations
 - Directive to staff: comprehensive and aggressive
- Some measures can be implemented by Town, some by FAA and many require cooperation between the Town and FAA

Gaining More Control over the Airport



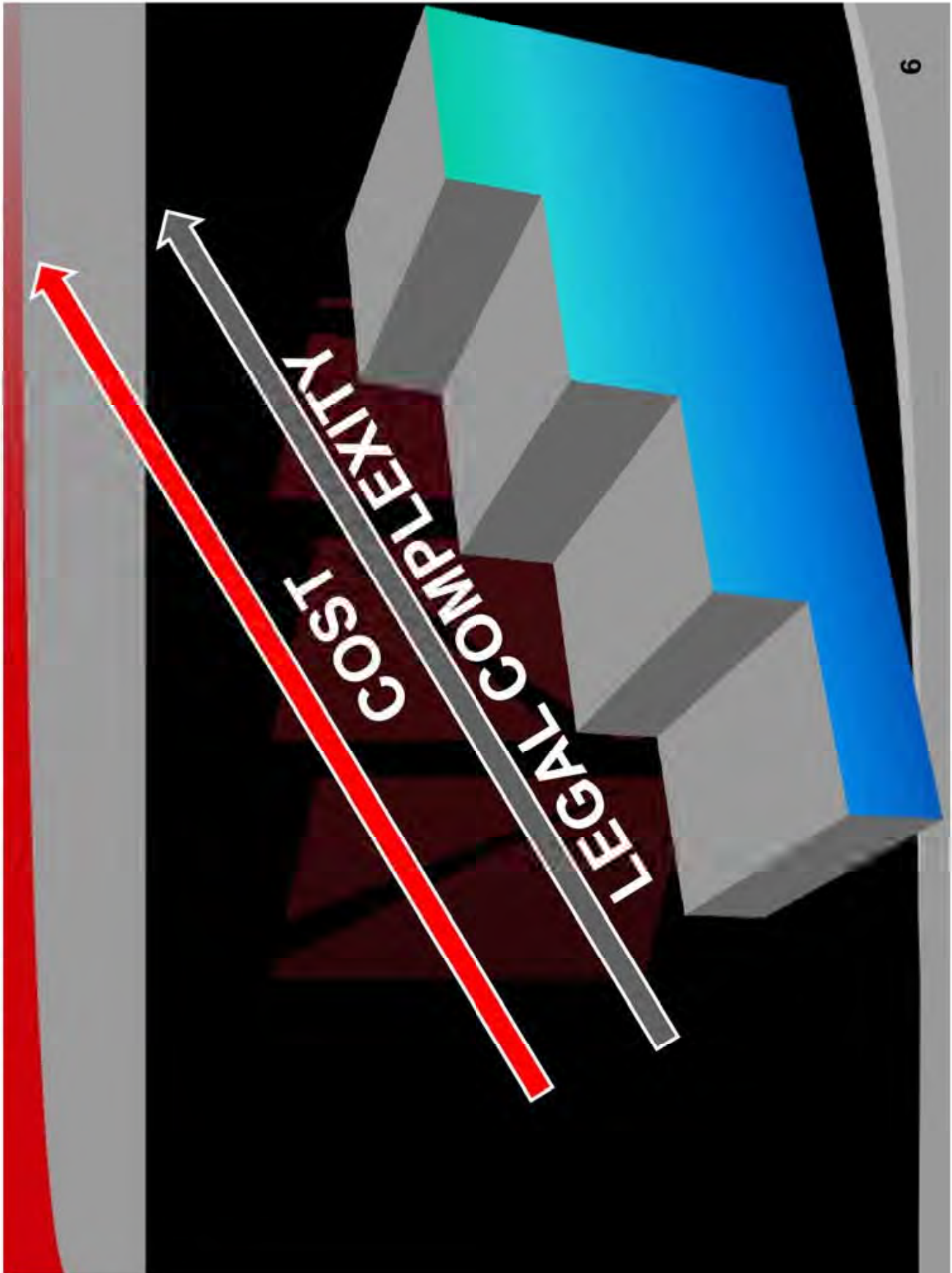
“Stair Step” Implementation

For each initiative, evaluate:

- What is the cost?
- How easy is it to implement?
- How effective is it, using established metrics?
- Should we take the next step?



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Management Plan Assumptions

Mr. Stanzione suggested the following assumptions:

1. All reasonable measures should be considered
2. Plan should be "comprehensive," dealing with airport management in broad terms, across professional disciplines including noise.
3. Individual measures should each be *cost effective* (recommend the most effective and least costly measures first)
4. Program should be evaluated regularly to determine whether to proceed to next step using established metrics to evaluate each measure
5. Program should be *financially sustainable*
6. No physical expansion of the airport

Categories of measures

- Group I – Rules and regulations (12 measures)
- **Group II – Voluntary measures (11 measures)**
- Group III – Capital improvements and modifications (7 measures) – **1 already implemented**
- **Group IV – Noise mitigation measures (3 measures)**
- Group V – Flight tracks and procedures (4 measures)
- **Group VI – Mandatory operational rules (5 measures)**

Group I – Rules and regulations

1. Adopt revised Town policy on mission of airport, and on safety and community impact objectives
2. Conduct inventory of existing rules, regulations and minimum standards
3. Research best practices for similar airports
4. Revise rules and regulations to accord with best practices
5. Enforce rules and regulations in accord with best practices

Group I

6. Revise minimum standards as appropriate
7. Revise rates and charges as appropriate
8. Assess availability of services at night
9. Adopt ground movement rules
10. Evaluate engine run-up rules
11. Reassess revenue scheme
12. Reevaluate landing fees

Group II – Voluntary measures

1. Research similar airports' best practices: voluntary measures, rates and charges, operational rules
2. Evaluate success of voluntary curfew
3. Increase hours of curfew
4. Develop 'fly quiet' good-neighbor program
5. Create web-based noise reporting
6. Develop communications program to discourage night operations

Group II

7. Adopt 'carrot-and-stick' program about night operators
8. Design temporary or permanent noise monitoring systems
9. Enhance noise event reporting
10. Implement monetary reward system for compliant operators
11. Establish oversight or advisory committees on management issues (including noise)

Group III – Capital Projects

1. Establish permanent air traffic control tower
2. Work with FAA to permanently (not seasonally) commit facilities for protected HTO airspace
3. Review facilities that increase Town control over terminal and ground operations
4. Improve airfield lighting
5. Modify airfield geometry
6. Install noise barriers
7. Establish dedicated helipads

Group IV – Noise Mitigation

1. Land acquisition
2. Sound attenuation/ insulation
3. Prepare FAA-funded Part 150 Noise Compatibility Program

Group V – Flight Procedures

1. Adopt preferential runway use program
2. Adopt mandatory flight tracks
3. Establish noise abatement departure profile
4. Create, communicate and enforce new South Shore helicopter route

Group VI – Mandatory Operational Rules

1. Restrict Stage I aircraft
2. Restrict Stage II aircraft and helicopters
3. Restrict Stage III aircraft
4. Adopt mandatory nighttime curfew
5. Time of day restrictions

Next Steps: Prepare Plan

- Seek Town Board input on plan (overall priorities in Town's best interest, measures, metrics, funding and cost thresholds)
- Refine initial list of tactics into an effective management program
- Seek direction on implementation

Questions



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