

AVIGATION EASEMENT AND RELEASE

This AVIGATION EASEMENT AND RELEASE is executed and delivered by _____, ("Grantor"), whose mailing address is _____ Humble, Harris County, Texas, for the benefit of the CITY OF HOUSTON, TEXAS, a municipal corporation situated in Harris, Fort Bend and Montgomery Counties ("Grantee"), whose mailing address is P.O. Box 60106, Houston, Harris County, Texas 77205-0106, Attn: Director, Houston Airport System.

Recitals

WHEREAS, Grantee is the owner and operator of a public airport in Harris County, Texas, presently known as George Bush Intercontinental Airport/Houston (together with any future configuration or modification thereof, being hereinafter referred to as the "Airport"); and

WHEREAS, Grantor is the owner in fee of a tract or parcel of land (herein, the "Servient Tract") being designated as:

(See Exhibit A Attached)

WHEREAS, Grantee is administering a noise mitigation program (hereinafter "Program" providing for the acquisition of easements in properties located in the North Hollow Subdivision and which are inside certain noise exposure contours on file in the Office of the City Secretary of Grantee; and

WHEREAS, Grantor for itself, heirs, successors and assigns desires to grant and convey to Grantee a perpetual, nonexclusive avigation easement for the use and benefit of Grantee, the Airport, its tenants, invitees and licensees, including any and all persons, firms, or corporations operating Aircraft to or from the Airport, allowing the free and unobstructed passage of aircraft in the airspace on, upon, over, across, adjacent to, above and in the vicinity of the Servient Tract as more specifically described herein.

A. Avigation Easement

NOW, THEREFORE, Grantor, for itself, and its grantees, heirs, successors and assigns, in consideration of the sound attenuation to be provided by the Grantee on Grantor's Servient Tract under the Program and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby grant, bargain, sell, and convey unto Grantee, its successors and assigns, for the use and benefit of the Grantee, its tenants, invitees and licensees, including any and all persons, firms, or corporations operating Aircraft (as defined in paragraph 1, below) to or from the Airport, a non-exclusive avigation easement and right of way (hereinafter "Avigation Easement") for (i) the Passage of Aircraft, and (ii) Noise and Other Effects of Aircraft Operation (each as defined in paragraphs 1 and 2, below).

1. **Aircraft**. As used herein, the term "Aircraft" shall mean any and all types of aircraft, whether now in existence or hereafter manufactured and

developed, to include, but not limited to, jet aircraft, propeller driven aircraft, civil aircraft, military aircraft, commercial aircraft, helicopters and all types of aircraft or vehicles now in existence or hereafter developed, regardless of existing or future noise levels, for the purpose of transporting persons or property through the air, by whoever owned or operated.

2. **Passage of Aircraft.** This Avigation Easement includes the free and unobstructed rights of use and passage by Aircraft in and through the airspace above the Servient Tract, with such rights of use and passage by Aircraft to be unlimited as to frequency, time of passage, and type of Aircraft so long as the exercise of such rights is not in violation of then applicable federal laws governing Aircraft flight operations (the "Passage of Aircraft").

3. **Noise and Other Effects of Aircraft Operation.** This Avigation Easement includes the right to cause within, and to enter or penetrate into or transmit through, any improved or unimproved portion of the Servient Tract, or any air space above the ground surface of the Servient Tract, such noise, sounds, vibrations, fumes, deposits of dust or other particulate matter, fuel particles (which are incidental to the normal operation of Aircraft), fear, interference with sleep and communication, air currents, electronic interference, Aircraft engine exhaust and emissions, and any and all other effects that may be alleged to result from or be related to the taking-off, landing or flight of Aircraft to, from or over the Airport, the flight of Aircraft over the Servient Tract, or the testing of Aircraft within the Airport (the "Noise and Other Effects of Aircraft Operation").

4. **No Interference with Aircraft.** Grantor, for itself, its heirs, successors, and assigns covenants and agrees that Grantor will not use or permit or suffer the use of the Servient Tract in violation of Part 77 of the Federal Aviation Regulations or in such a manner as to:

- a. Create electrical interference with radio communication to or from any aircraft;
- b. Make it difficult for aircraft pilots to distinguish between airport lights and other lights;
- c. Impair visibility in the vicinity of the Airport;
- d. Otherwise endanger the landing, taking-off, or maneuvering or flight of aircraft.

Mitigation of Height Hazards. This Avigation Easement includes the rights of Grantee to (i) prevent, (ii) remove, and (iii) mark and light as an obstruction to navigation, the erection or growth of any building, structure, tree, or other object now upon or which in the future may be upon the Servient Tract and protruding higher than **one-hundred feet (100')** above the ground level, and Grantor provides Grantee a perpetual right of ingress and egress to the Servient Tract for such purposes. In the event the Grantee determines that any proposed construction on the Servient Tract requires notice and/or application to the FAA, Grantor agrees, prior to construction, to submit an application and/or such other form as may be created and/or required by the FAA or any other agency or department, including ordinances of Grantee.

Intended Application and Release. It is expressly intended by Grantee and Grantor that this Avigation Easement shall apply to the Passage of Aircraft and to Noise and Other Effects of Aircraft Operation that may otherwise be objectionable or constitute a trespass, a permanent or continuing nuisance, personal injury, a taking, or damage to the Servient Tract. Grantor, for itself and its heirs, successors and assigns, does hereby expressly waive and release Grantee, its successors and assigns, legal representatives, officers, employees and agents from any and all rights or claims of liability of the Grantor or of any other person or entity entitled to the benefits of this Avigation Easement for damage to property or physical or emotional injury to persons, animals, or any other living thing, the diminution in value of any personal or real property, and discomfort or interference with the audio portion of television and/or radio by, from or arising from the operation of aircraft, as well as any claim or cause of action for inverse condemnation.

Changes. The rights, easements benefits, waivers, releases, covenants and agreements granted hereunder, including the Avigation Easement, shall continue notwithstanding any increase or other change in the boundaries, volume of operations, noise or pattern of air traffic at the Airport, and no conduct by Grantee or increase, diminution or change in use of the Avigation Easement shall constitute either an overburdening of the Avigation Easement or a termination or abandonment of the Avigation Easement.

Term. The Term of this Avigation Easement and Release begins upon the date of its execution by Grantor and extends until after the Airport has ceased for two (2) years to be used for any aviation related purposes. Upon the expiration of the Term, this Avigation Easement and Release shall terminate and be of no further force or effect, save and except that the right of the Grantee, and its successors and assigns, to sue for monetary damages for breach of this Avigation Easement and Release during the Term shall expressly survive the Term until otherwise terminated by operation of law.

Covenants Binding On and Benefitting Successive Owners and Assigns. Grantor and Grantee intend that all waivers, releases, covenants and agreements set forth herein related to use or improvement of the Servient Tract, or any part thereof, shall *RUN WITH THE LAND* (the Servient Tract), and Grantor, and any grantee, heir, successor or assign of Grantor who acquires any estate or interest in or right to use the Servient Tract shall be bound hereby. Grantor binds itself and its grantees, heirs, successors and assigns to warrant and forever defend all and singular this Avigation Easement and Release in and to the Servient Tract to Grantee and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise, subject to all prior matters of record to the extent the same are validly existing and affect the Servient Tract or this Avigation Easement and Release.

Preservation of Existing Rights. It is understood and agreed that this is not a conveyance of the fee estate of the Servient Tract, nor of any interest in the oil, gas and other minerals in, on, or under the Servient Tract, but is a grant solely of the Avigation Easement and Release described herein. Grantor retains for itself and its grantees, heirs, successors and assigns, the right to use and enjoy the Servient Tract so long as such use and enjoyment does not interfere with the Avigation Easement and Release rights herein granted.

Notice of Land Use Regulations. Grantor acknowledges that the Servient Tract is (i) subject to the Airport Land Use Regulations set out in Chapter 9, Article VI, of the Code of Ordinances, City of Houston, Texas, as same may be amended from time to time, (ii) situated in the Airport Land Use Tier I for the above Airport, and (iii) subject to use restrictions or increased noise or hazard levels associated with air traffic operations.

IN WITNESS WHEREOF, these presents have been executed and delivered this as of this _____ day of _____, 20__.

(execution on next page)

"Grantor"

By: _____

Name: _____

By: _____

Name: _____

"Grantee"

By: _____

Name: _____

Title: _____

Houston Airport System

THE STATE OF TEXAS §

COUNTY OF HARRIS §

Before me, the undersigned, a Notary Public, in and for the State of Texas, County of Harris, on this ____ day of _____, 20__, personally appeared _____, to me known to be the identical person who subscribed his/her name to this Avigation Easement as his/her free and voluntary act.

___ Personally known or ___ Produced _____ as identification.

Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF HARRIS §

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