



HOUSTON AIRPORT SYSTEM

Noise Mitigation Program Participant Authorization Agreement

Homeowner Information

Name: _____ (“Homeowner”)

Street Address: _____

City: Humble State: TX Zip code: _____

Mailing Address: _____

City: _____ State: _____ Zip code: _____

<u>Circle one:</u>	Sound Insulation	Sales Assurance	Transaction Assistance
	Easement Acquisition	Purchase of Development Rights	

The parties to this Agreement are the Homeowner(s) described above ("Homeowner") and the Houston Airport System ("the Airport") a department of the City of Houston, Texas ("City"). Homeowner has legal title to real property and improvements listed above ("Premises"). The Airport administers the Noise Mitigation Program ("Program").

WHEREAS, the Airport is administering a Noise Mitigation Program ("Program"); and

WHEREAS, the Homeowner has requested that it be allowed to participate in the Program;

WHEREAS, the City has determined that Homeowner is eligible to participate in the Program;
and

WHEREAS, Homeowner is agreeable to executing an avigation easement and release in a form provided by the City in exchange for the benefits accruing to it under the Program;

NOW, THEREFORE, in consideration of the mutual benefits, covenants, and promises made and other valuable consideration recited herein, the parties agree as follows:

1. **Airport Access.** (Sound Insulation only) Homeowner shall permit the Airport, its officers, employees, agents, consultants, representatives, and contractors access to all rooms on and in the Premises for purposes of inspecting, measuring, and otherwise undertaking any actions necessary for the Program. The Airport, its officers, employees, agents, consultants, representatives, and contractors shall provide reasonable notice to Homeowner prior to entering the Premises to conduct any Program related activities. Homeowner shall make best efforts to make all portions of the Premises accessible to the Airport, its officers, employees, agents, consultants, representatives and contractors from the preliminary design phase all the way through the post-construction acoustical testing phase of the Program, which may occur many months after the construction has been completed.

2. **Review and Meeting Attendance.** (Sound Insulation only) Homeowner shall review all written materials regarding the Program prepared by the Airport for the Homeowner and shall attend all meetings requested by the Airport relating to the Program.

3. **Homeowner Program Participation Payment.** (Sound Insulation only) The Airport, in consideration for the Homeowner's conveyance to it of a permanent avigation easement and release, agrees to allow Homeowner to participate in the Program and pay all of the Airport-approved costs of sound-insulating the Premises, subject to any limitations or conditions described in this Agreement.

4. **Avigation Easement and Subordination Agreement.** In consideration for participating in and receiving the benefits of the Program, the Homeowner agrees to convey to the City within two days of receipt, a full and unrestricted permanent avigation easement and release for avigation purposes, including a waiver of any noise-related costs or damages on a form provided by Airport, which avigation easement and release will be recorded in the deed records of the County. Failure of the Homeowner to execute the avigation easement and release shall render this Agreement void and Homeowner will not be allowed to participate in the Program. Homeowner shall, at the Airport's request, obtain a subordination agreement of any lien holders who hold a lien on the Premises to subordinate their interests to the avigation easement and release.

5. **Federal Grant Requirements.** (Sound Insulation only) The following terms are required under the Federal Aviation Administration ("FAA") grant which provides funding for the Program:

- a. Homeowner shall subject the construction work on the project to such inspection and approval during and after the construction and installation of the sound attenuation materials and equipment as the Airport or the FAA may reasonably request.
- b. The Homeowner will forfeit any claim against the Airport and the FAA relating to the effectiveness of the noise compatibility measures, including any warranties or guarantees, if

the Homeowner deliberately or willfully acts to reduce or destroy the effectiveness of the noise attenuation materials or equipment during their useful life. The term "claim" as used in this Agreement means the right to file a claim or complaint against the City. Nothing in this Agreement implies that the Homeowner is or may be entitled to any relief from the City, nor does this Agreement imply a waiver of any defense that might be raised by the City in response to such claim.

1. HOLD HARMLESS. AS PART OF THE CONSIDERATION FOR THE AIRPORT'S PAYMENT OF PROGRAM COSTS ON THE HOMEOWNER'S BEHALF, THE HOMEOWNER AGREES THAT THE CITY, ITS OFFICERS, EMPLOYEES, AGENTS, CONSULTANTS, AND REPRESENTATIVES (COLLECTIVELY, FOR PURPOSES OF THIS PARAGRAPH, THE "CITY") SHALL NOT BE LIABLE, AND FURTHER WAIVES AND RELEASES THE CITY FROM ANY AND ALL CLAIMS FOR EXPENSES AND DAMAGES, FOR ANY INJURY (INCLUDING DEATH) TO ANY PERSON OR FOR DAMAGE TO ANY PROPERTY SUSTAINED, OR ALLEGED TO HAVE BEEN SUSTAINED, AS A RESULT OF, ARISING FROM, OR IN CONNECTION WITH THE PROGRAM. THE HOMEOWNER SHALL HOLD THE CITY HARMLESS AND HEREBY RELEASES THE CITY FROM ALL LIABILITY AND EXPENSE IN CONNECTION WITH ALL CLAIMS, SUITS, AND ACTIONS BROUGHT AGAINST THE CITY BY ANY PERSON OR ENTITY AS A RESULT OF OR ON ACCOUNT OF ACTUAL OR ALLEGED INJURIES (INCLUDING DEATH), OR DAMAGES TO ANY PERSONS, ENTITIES, AND/OR PROPERTY RECEIVED OR SUSTAINED ARISING FROM OR RELATIVE TO THE PROGRAM, EVEN IF THE INJURY, DEATH, DAMAGE OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY. THE HOMEOWNER'S OBLIGATIONS UNDER THIS PARAGRAPH SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT AND THE COMPLETION OF ANY PART OF THE PROGRAM.

7. No Warranties. (Sound Insulation only) The Airport will make all reasonable efforts to reduce the noise levels in the home within the parameters of the Federal Aviation Administration guidelines. However, the Airport does not represent or warrant that the Homeowner will experience any improvement in the noise levels within the Premises as a result of any work undertaken as part of the Program. The Airport further makes no warranties, express or implied, and disclaims any responsibility or liability for the manner or quality of the work undertaken or materials supplied.

8. Moving Out of or Vacation of Premises. (Sound Insulation only) The Airport is

administering a costly program, the success of which depends upon the commitment and cooperation of the participants. The Homeowner acknowledges that moving out of the Premises during the term of this Agreement could cause a disruption of the noise remedy measures designed for the Premises. The Homeowner therefore agrees to use best efforts to avoid moving out until the Program is completed. If the Homeowner must move out of the Premises before completion of the Program, the Homeowner shall notify the Airport in writing sufficiently in advance so that the Airport may take necessary action to either complete the Program or terminate it, as circumstances warrant.

9. Special Power of Attorney. If more than one person holds a share of the title to the Premises, a Special Power of Attorney may be signed by one or more title holders which shall designate one person to act on behalf of those titleholders signing the Special Power of Attorney during all phases of the Program.

10. Term. (Sound Insulation only) This Agreement shall begin as of the date indicated below and shall terminate upon the earlier of the date the work is accepted by the Airport or withdrawal of the Homeowner from the Program. If the Homeowner withdraws from the Program after the Airport's contractor has taken the necessary field measurements to order doors and windows for the Program, the Homeowner shall reimburse the Airport for the design and product costs.

11. Responsibility of Homeowners. (Sound Insulation only)

A. Homeowner understands that part of the sound attenuation design for the Premises, include changes or additions to the existing heating, air-conditioning and/or ventilation system ("HVAC"). Homeowner assumes any increase (or decrease) in operating and maintenance expenses of the HVAC as a result of the Program. Neither the Federal Aviation Administration, the City, or C&S are or shall be responsible for payment of expenses associated with the operation and maintenance of the HVAC.

B. Homeowner understands that the construction, modification and installation of work performed for the purpose of interior noise reduction and ventilation may increase the assessed value of the Premises for ad valorem tax purposes. Neither the Federal Aviation Administration, the City, or C&S is or shall be responsible for payment of any increased taxes or assessments.

12. This Agreement is subject to all laws of the State of Texas, the City Charter and Ordinances of the City, the laws of the Federal Government of the United States and all rules and regulations of any regulatory body or officer having jurisdiction. Venue for any litigation relating to this Agreement shall be Harris County, Texas.

13. This Agreement is made for the benefit of the parties hereto, and nothing herein shall be

construed to create any right or benefit enforceable by any third party.

14. Any funds contemplated herein to be expended by the City must be first appropriated by City Council.

15. **Entire Agreement.** This Agreement is the entire agreement between the Airport and the Homeowner with respect to its subject matter and shall not be changed or modified without a written agreement signed by the parties hereto.

DATED this _____ day of _____, _____

By _____
Homeowner

Houston Airport System

By _____
Homeowner