

**DRAFT 1-14-09  
REVISED FORM  
AGREEMENT  
FOR  
HOMEOWNER PARTICIPATION IN  
VOLUNTARY RESIDENTIAL SOUND INSULATION PILOT PROGRAM  
FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT**

This AGREEMENT FOR HOMEOWNER PARTICIPATION IN VOLUNTARY RESIDENTIAL SOUND INSULATION PILOT PROGRAM ("Agreement") is made by and between \_\_\_\_\_ (hereinafter referred to as "Homeowner") and BROWARD COUNTY, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners (hereinafter referred to as "County").

WHEREAS, County is the owner and operator of the Fort Lauderdale-Hollywood International Airport ("Airport"); and

WHEREAS, the Broward County Aviation Department has the function and responsibility to manage, operate, and maintain the Airport on behalf of the County; and

WHEREAS, County approved a Voluntary Residential Sound Insulation Pilot Program to assist in the development of a foundation for a Noise Mitigation Program; and

WHEREAS, Homeowner has volunteered and has been selected as the owner of one of a number of residences eligible to be sound insulated under the Voluntary Residential Sound Insulation Pilot Program;

NOW, THEREFORE, IN CONSIDERATION of the mutual terms and conditions, promises, covenants and payments hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged the parties, County and Homeowner agree as follows:

**ARTICLE 1**  
**RECITATIONS, DEFINITIONS AND IDENTIFICATIONS**

The parties hereby acknowledge and agree that the recitations set forth above are true and correct and are hereby incorporated herein by this reference. For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the definitions and identifications set forth below are assumed to be true and correct and are agreed upon by the parties.

- 1.1 Agreement: means this document, Articles 1 through 11, inclusive, and the other terms and conditions that are included in the exhibits and documents that are expressly incorporated by reference.
- 1.2 Airport: means the Fort Lauderdale-Hollywood International Airport, Broward County, Florida.
- 1.3 Airport Representative: means the Director of Aviation of the Broward County Aviation Department, or such person's designee pursuant to written delegation by said Director of Aviation, or some other person expressly designated as Airport Representative in writing by the Broward County Administrator. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Airport Representative.
- 1.4 Aviation Department: means the Broward County Aviation Department, or any successor agency.
- 1.5 Avigation Easement: means an Avigation Easement to be delivered by the Homeowner to the County in accordance with the provisions hereof, which shall be substantially in the form of **Exhibit C**, attached hereto and made a part hereof.
- 1.6 Board or Commission: means the Board of County Commissioners of Broward County, Florida, which is the governing body of the Broward County government created by the Broward County Charter.
- 1.7 Consultants: means any company engaged by the County to assist in the oversight, design and implementation of the Program
- 1.8 Contractors: means the general construction contractors and other contractors selected by the County to perform the construction and installation work called for by the Program, together with their subcontractors and suppliers.
- 1.9 County: means Broward County, a body corporate and politic and a political subdivision of the State of Florida.
- 1.10 County Attorney: means the chief legal counsel for County who directs and supervises the Office of the County Attorney pursuant to Section 2.10 of the Broward County Charter.
- 1.11 Effective Date: is the date upon which this Agreement is last executed by the parties hereto.

- 1.12 Final Completion Date: is the date on which construction and installation of all Program treatments are completed at the Property and have passed a final inspection by the County representatives. The Airport Representative shall give the Homeowner written notification as to the Final Completion Date.
- 1.13 Homeowner: whenever the term Homeowner is used herein, it shall mean the entity or person owning fee simple title to the Property and any agent or designee to whom Homeowner has delegated authority to negotiate or administer the terms and conditions of this Agreement.
- 1.14 Program: means the County's Voluntary Residential Sound Insulation Pilot Program.
- 1.15 Program Participation Date: is the date Homeowner agrees to participate in the Voluntary Residential Sound Insulation Pilot Program as evidenced by the date Homeowner executes this Agreement.
- 1.16 Property: shall mean as described in Article 3 below and in **Exhibit A**, attached hereto and made a part hereof.
- 1.17 Scope of Work or Project: means the project (i.e., work and services) described in Article 4, and in **Exhibit B**, attached hereto and made a part hereof and such other applicable exhibits hereto.

## **ARTICLE 2** **PURPOSE**

The purpose of the Voluntary Residential Sound Insulation Pilot Program ("Program") is to grant certain relief regarding aviation noise to property owners residing near the Airport and whose property lies within certain noise zones, who elect to participate in the Program. This document sets forth the Agreement between the County and Homeowner and the obligations, duties and responsibilities of the County and the Homeowner, including without limitation provisions regarding work to be done, access to the Property by the County's Program staff, its Consultants and Contractors, the granting of an Avigation Easement by the Homeowner, and provisions required by the Federal Aviation Administration ("FAA").

## **ARTICLE 3** **PROPERTY**

The Homeowner has legal title to the real property and improvements as described in **Exhibit A**, attached hereto and made a part of this Agreement, together with all tenements, hereditaments, privileges, rights-of-reverter, servitudes, and other rights appurtenant to such Property, all buildings, fixtures, and other improvements existing

thereon, all fill and top soil thereon, all oil, gas, and mineral rights possessed by Homeowner, all right, title and interest of Homeowner in and to any and all streets, roads, highways, easements, drainage rights, or rights of way appurtenant to such Property and all right, title and interest of Homeowner in and to any and all covenants, restrictions, agreements and riparian rights benefiting such Property (all of the foregoing being referred to collectively as, the "Property").

#### **ARTICLE 4** **SOUND INSULATION PROGRAM-SCOPE OF WORK**

##### **4.1 PROGRAM HOMEOWNERS HANDBOOK**

- 4.1.1 Homeowner acknowledges and agrees that Homeowner has received and read the Voluntary Residential Sound Insulation Pilot Program Homeowner's Handbook ("Handbook") and that Homeowner understands the nature of the work and Homeowner's obligations and responsibilities as set forth in the Handbook.
- 4.1.2 Homeowner's failure to comply with the obligations and responsibilities contained in the Handbook shall be grounds for the County to terminate this Agreement and Homeowner's participation in the Program, and discontinue any further work. Any such termination shall be a termination for cause, pursuant to Section 9.3, below. The Handbook and all of its terms and provisions are hereby incorporated into this Agreement and made a part hereof by this reference.

##### **4.2 SCOPE OF WORK**

- 4.2.1 The Homeowner has carefully reviewed the Scope of Work set forth in **Exhibit B**, attached hereto and made a part hereof, concerning the specific sound insulation work to be completed for the Property. The Homeowner agrees to accept the work as described and agrees to abide by the Program requirements and policies identified in this Agreement.
- 4.2.2 The work will be performed by qualified Contractors under contract to the County based on a public bidding process. All work will conform to standard industry practices and quality workmanship, and the County will be responsible for overseeing the work of the Contractors. All sound insulation materials shall become the property of the Homeowner upon the Final Completion Date. General maintenance of doors and windows is the responsibility of the Homeowner and shall be in conformity with the Contractors' and manufacturers' warranties.

4.2.3 The County will make all reasonable efforts to reduce the noise levels in the home within the parameters of the Federal Aviation Administration guidelines. ~~However, the Homeowner understands and agrees that the County does not represent or warrant that the Homeowner will experience any improvement in the noise level within the Property as a result of any work undertaken as part of the Program.~~

~~4.2.4 THE COUNTY DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO QUALITY OR SUITABILITY OF THE MATERIALS USED OR THE WORK PERFORMED BY THE CONTRACTOR(S) OR CONSULTANT(S) OR WITH REGARD TO THE CONDITION OF THE HOMEOWNER'S PROPERTY EITHER PRIOR TO, DURING OR UPON COMPLETION OF THE IMPROVEMENTS UNDERTAKEN PURSUANT TO THIS AGREEMENT. THE WARRANTIES PROVIDED BY THE CONTRACTOR(S) AND THE MANUFACTURER(S) CONSTITUTE THE HOMEOWNER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THE COUNTY AND THIS AGREEMENT. HOMEOWNER ACKNOWLEDGES AND AGREES THAT THE HOMEOWNER'S AGREEMENT TO LIMIT THE REMEDIES AS PROVIDED HEREIN CONSTITUTES SPECIAL CONSIDERATION TO AND IS A MATERIAL INDUCEMENT TO COUNTY TO ENTER INTO AND PERFORM THIS AGREEMENT AND TO PAY FOR THE IMPROVEMENTS TO BE UNDERTAKEN BY THE CONTRACTOR(S) AND CONSULTANT(S). THE PROVISIONS HEREOF SHALL SURVIVE THE DELIVERY AND RECORDATION OF THE AVIGATION EASEMENT AND ANY TERMINATION OF THIS AGREEMENT. [This item moved to Section 8.3]~~

4.2.4 Structural repairs, maintenance items, rehabilitation work and weatherization needs which are not directly related to noise reduction are not part of this Program.

4.2.5 If County's Consultants or Contractors identify any pre-existing city, County or state code violations and any other existing defects in the Property which relate to or affect the proposed noise insulation treatment improvements including, but not limited to, code violations and any other existing defects in the architectural, structural, mechanical or electrical systems located on the Property, the Homeowner will be responsible for correcting, through licensed contractors, such code violations or defects that may prevent sound treatments from being installed. The cost of correcting these violations and defects shall be the Homeowner's responsibility. The Homeowner shall promptly notify the Airport Representative upon the completion of all required repairs. County shall cease work on Homeowner's Property until such time as the code violations or other defects have been corrected to the County's satisfaction. If Homeowner fails to correct such violations or other defects in a timely manner, as determined by the County, County shall have the right to terminate this Agreement for cause pursuant to Section 9.3, below.

- 4.2.6 Homeowner agrees to perform any and all "pre-work" necessary to prepare the Property for construction, such as removing all draperies, blinds or shades and associated hardware and dressings, moving furniture, and protecting valuables. Homeowner further agrees to cover all furniture, appliances, and electronic equipment such as televisions, entertainment systems, or computers to protect them from dust and debris. All valuables should be stored in a safe, secure location.
- 4.2.7 Time is of the essence in completing all homes participating in the Program. The completion of the sound insulation construction in each individual home is dependent on efficient scheduling. Therefore, Homeowner agrees to cooperate with the Airport Representative, the Consultants and the Contractors in developing an acceptable work schedule and will help the Contractors meet the agreed upon schedule. Failure by Homeowner to adhere to the established work schedule shall be grounds for the County to terminate this Agreement for cause pursuant to Section 9.3, below.
- 4.2.8 Homeowner must inform the Airport Representative and the Consultants and Contractors of any problems, deficiencies, or damage as soon as possible and in any event prior to the Final Completion Date. After the initial notification of any problems, deficiencies or damage, the Homeowner must provide documentation regarding the problem in writing to the Airport Representative and the County's Consultants and Contractors. The Contractors and Consultants shall respond to all reported problems and exercise all reasonable measures to resolve problems in a timely and satisfactory manner.
- 4.2.9 The Homeowner shall permit the County's Contractors to use, at no cost to the Contractors or the County, existing utilities such as light, heat, power and water necessary to carry out the Scope of Work.
- 4.2.10 Any dispute of the Homeowner regarding the Scope of Work to be provided by the County (including without limitation the work being performed by the County Contractors or materials being installed) shall first be presented to the Airport Representative for resolution. In the event the Homeowner does not agree with the Airport Representative's determination, the Homeowner may ~~file a written complaint with the Director of Aviation of the Aviation Department within ten (10) calendar days following the Airport Representative's determination. The Director of Aviation will serve as arbitrator and any decision of the Director of Aviation will be final.~~ present such dispute in writing to an independent hearing officer established by the County for such purpose. The Homeowner's appeal must be made

within fifteen (15) calendar days following the Airport Representative's decision. Any decision of the independent hearing officer shall be final.

4.2.11 County or its Contractors may record in the Public Records of Broward County, Florida, Notice(s) of Commencement with respect to the work and improvements to be delivered, installed and constructed at the Property by the County and its Contractors.

4.2.12 The parties recognize that the Property is located in the City of Dania Beach, Florida and that permits and other governmental approvals to proceed with the Project will be required from the City of Dania and its agencies. In addition, other governmental approvals may be required. In the event there are delays in completing the Project due to failure to issue, or untimely issuance, of any permits, or untimely or failure to review by the City of Dania Beach or other governmental authorities having jurisdiction over the Project, the County will provide reasonable notice to the Homeowner regarding same and the Project completion date shall be extended accordingly without any liability to the County, its contractors and agents.

#### 4.3 ACCESS TO THE PROPERTY

4.3.1 Until the period for County assistance with warranty issues is ended pursuant to Section 8.1, the Homeowner agrees to allow the County, its officers, employees, agents, representatives, Consultants, and Contractors access to the Property and the residence on the Property to: (i) conduct surveys, evaluate existing conditions, perform acoustical tests, and the like, in order to determine appropriate sound insulation methods for the Property, (ii) conduct post-construction acoustical tests and conditions surveys; and (iii) to undertake any actions necessary for the Program. The Homeowner further agrees to allow contractors who are considering submitting bids to access the Property and the residence on the Property in order to review the Scope of Work and to prepare a construction bid. The Homeowner will be informed about the overall Project schedule and any changes, so that disruptions to the Homeowner's routines will be kept to a minimum. The Homeowner will be contacted in advance of any visit to the Property. The Homeowner (or another adult pursuant to Section 4.3.2, below) agrees to be present at all times when the County's Program staff, Consultants, and Contractors visit the Property, as well as when contractors who may submit bids visit the Property. The Homeowner agrees to cooperate fully with the County's Consultants and Contractors in providing access to the Property and home until the Scope of Work is completed and ~~all requirements of this Agreement are satisfied.~~ until the period for County assistance with

warranty issues is ended pursuant to Section 8.1. Any failure by Homeowner to provide such access shall entitle the County to terminate this Agreement for cause pursuant to Section 9.3, below.

4.3.2 If a Homeowner wishes to designate an agent to be present at the home visit, inspections, or during construction, the Homeowner must file a signed release form naming the designee with the Airport Representative twenty four (24) hours prior to the scheduled date of a meeting or construction start, which release must be in form satisfactory to the County. Homeowners will be notified in advance of the date of commencement of construction work in the home. The County will attempt to accommodate Homeowner's schedules within the estimated construction period. The County will require that the Contractors confine their work schedules within the hours of 8 a.m. to 5 p.m., Monday through Friday, excluding holidays. During the construction period, the Homeowner agrees to be responsible for moving and/or removing household effects such as furniture, items in storage, in attic or basement areas, curtains, draperies, furnishings, etc. in order to provide the Contractors reasonable access to work areas.

4.3.3 If more than one person holds title to the Property, all titleholders shall be required to execute this Agreement. By signing this Agreement all titleholders hereby acknowledge and agree that each such titleholder individually may authorize and approve any changes to the time schedule or plans and specifications and to provide any other authorization or approval as may be needed in connection with this Agreement and the Program.

#### 4.4 ADDITIONAL WORK OUTSIDE THE SCOPE AND CHANGES TO THE SCOPE OF WORK

4.4.1 In the event that deletions or additions to the Scope of Work as set forth in **Exhibit B** are required, it will be necessary to modify the work by written change order. The Airport Representative will present the Homeowner with the request for change for approval. Upon approval by the Homeowner, the Contractors will be notified to delete the work or to proceed with the additional work. Any failure by Homeowner to approve a County request for change shall entitle the County to terminate this Agreement for cause pursuant to Section 9.3, below.

4.4.2 Homeowner agrees not to hire the County's Contractors, Consultants or any other contractor, to perform any supplementary work on the Property outside the scope of this Agreement while the sound insulation modifications are in progress and until the Final Completion Date.

~~Routine repair and maintenance activities shall not be restricted, but the Homeowner must inform the Airport Representative and the Contractor(s) in writing, of any routine work which may affect the County's sound insulation work.~~

~~4.4.3 Homeowner also agrees that any work performed by Homeowner or by anyone else, which affect the sound insulation of the home, may invalidate any warranties that are provided by the County's Contractor(s) and may also invalidate manufacturers' warranties. Paneling and wall papering shall be the Homeowner's responsibility.~~

4.4.3 A reasonable effort will be made by the Contractors to remove and replace casings, moldings, paneling, etc., if possible. If casings, moldings or paneling are damaged they will be replaced by matching replacements if commercially available, or closest matching substitute that is available. Adjacent paneling will not be replaced for the purpose of matching. Homeowner acknowledges that any work performed by Homeowner or by anyone else, which affect the sound insulation of the home, could invalidate any warranties that are provided by the County's Contractors and could also invalidate manufacturers' warranties.

~~4.4.4 Until the Final Completion Date, the Homeowner shall not to conduct any work at the Property (such as paneling or wall papering, or any other modifications at the Property) unless the Airport Representative has given the Homeowner prior written approval for such work.~~

4.4.4 After this Agreement is entered into and until the Final Completion Date, the Homeowner shall not enter into any contract for improvements to the Property, except for emergency conditions that are consented to in writing by the Airport Representative before any such emergency work is commenced by Homeowner. Routine repair and maintenance activities by Homeowner shall not be restricted, but the Homeowner must inform the Airport Representative and the Contractors in writing of any routine work which may affect the County's sound insulation work.

4.4.5 County may as to any work area, change or delete any work set forth in the Scope of Work, **Exhibit B**, if its Contractors encounter any situation that poses a health or safety concern to any party. Any failure by Homeowner to approve such a County request for change shall entitle the County to terminate this Agreement for cause pursuant to Section 9.3, below. In addition, the County may determine that any such health or safety concern requires the removal of the Homeowner's Property from the Program, and in such event the County may elect to terminate this Agreement pursuant to Article 9, after performing any work and taking any

precautions as are considered by the County, in its sole discretion, to be reasonably necessary considering the health or safety situation.

#### 4.5 NO REMOVAL OF SOUND INSULATION MATERIALS

The County and the Homeowner agree that the purpose of this Program is to sound insulate residential properties. Accordingly, the Homeowner shall not intentionally remove any of the sound insulation materials and equipment installed as part of the Program. Unauthorized modifications by the Homeowner to work performed under the Program may result in a degradation in the noise resistance of the subject Property, may invalidate any warranties, and shall entitle the County to terminate this Agreement for cause pursuant to Section 9.3, below. The provisions hereof shall survive the delivery and recordation of the Avigation Easement and any termination of this Agreement.

#### 4.6 SOUND INSULATION PROGRAM POLICIES

4.6.1 Homeowner agrees not to enter into any agreements with the County's Contractors regarding changes to the Scope of Work or for additional work without the express written consent of the County.

4.6.2 Buildings listed on the National Register of Historic Properties ("Register"), and those eligible for election to the Register, will be rehabilitated in compliance with the Secretary of the Interior's Standards for Rehabilitation.

4.6.3 Employees of the Program, including without limitation County employees, and employees of County's Contractors and Consultants or officials who exercise ~~any~~ authority, function, or responsibility for administration of the Program, are ~~not~~ eligible for participation in the Program, unless the County Attorney determines that a conflict exists under Section 112.313, Florida Statutes, or other applicable law, rule or regulation.

### **ARTICLE 5** **GRANT OF AVIGATION EASEMENT**

#### 5.1 EXECUTION AND RECORDING OF AVIGATION EASEMENT

5.1.1 Execution of Avigation Easement and Other Documents. It is agreed that simultaneously with the execution of this Agreement, Homeowner shall execute and deliver to the County the Avigation Easement and, if required, the public disclosure required by Section 286.23, Florida Statutes. Homeowner shall execute and deliver to County all other papers and documents necessary to be executed by Homeowner under the terms of

this Agreement at such date, time and place as may be designated by the Airport Representative. ~~and at the following address: \_\_\_\_\_ or at such other place as the Airport Representative may designate.~~

5.1.2 Recording of Avigation Easement. In consideration for participating in and receiving the sound insulation benefits of the Program, and simultaneously with the execution of this Agreement, the Homeowner shall convey to the County a full and unrestricted Avigation Easement, including waiver of noise related damages and prohibition against intrusion into the airspace above the Property, in form attached hereto and made a part hereof as **Exhibit C.**

- (a) The Avigation Easement shall not be recorded until the County is satisfied that no material adverse documents of record affect title to the Property.
- (b) The County shall not commence performance of the Scope of Work until the Avigation Easement is recorded.

5.1.3 Homeowner Responsible to Obtain Lien Releases/Consents. A title search as provided in Section 5.2, below, shall be conducted by the County to determine if any liens or other interests of record are filed against the Property.

- (a) Homeowner shall be required to obtain ~~the signed a recordable~~ consent agreement, subordination agreement, or release ~~of from~~ the holder of any ~~mortgage or other~~ encumbrance against the Property ~~(including without limitation, tenants and lenders)~~ or other recordable agreement acceptable to the County.
- (b) ~~If County consents to any lease, which consent shall be in County's sole discretion, then as a condition of any such consent County will require~~ The Homeowner ~~shall to~~ obtain and provide to County, a release and consent to entry from ~~the any~~ tenant of the Property that is satisfactory to County.
- (c) A failure by Homeowner to satisfy the requirements of this Section 5.1.3 may result in Homeowner's termination from the Program for cause pursuant to Section 9.3, below.

## 5.2 TITLE SEARCH AND MATTERS AFFECTING TITLE

5.2.1 The determination as to whether title to the Property is satisfactory to the County shall be made by County, in its sole discretion.

- 5.2.2 Permitted Exceptions. The following are the only "Permitted Exceptions" to title:
- (a) Zoning regulations and prohibitions imposed by governmental authority.
  - (b) Taxes for the current year and subsequent years.
  - (c) Such other matters affecting title as consented to by the County in its sole and exclusive discretion.
- 5.2.3 The County shall obtain an initial examination of the Public Records of Broward County, Florida (hereinafter "Public Records"), for any matters affecting title to the Property, and a copy of this title report ("Title Report") shall be provided to the Homeowner. This initial examination may occur prior to the execution of this Agreement or shortly after its execution.
- (a) Following execution of this Agreement and prior to commencing any work under the Scope of Work, the County shall conduct an updated examination of the Public Records ("Updated Title Search") for any matters affecting title to the Property that were recorded subsequent to the effective date of the Title Report described above.
  - (b) The Homeowner shall be required to provide a No-Lien Affidavit substantially in the form of **Exhibit D**, attached hereto and made a part hereof, which covers the period of time between the Updated Title Search and the date of recording the Avigation Easement.
- 5.2.4 Once the County determines that no material adverse documents of record affect title to said Property, County shall record the Avigation Easement and proceed with performance of the Scope of Work.
- 5.2.5 If there is a material title defect, County shall so inform Homeowner and Homeowner shall have a period of ninety (90) calendar days from the receipt of notice to cure or remove such defect, and Homeowner agrees to use its best efforts including the expenditure of reasonable sums of money to cure same. If, at the end of such time, Homeowner has been unable to cure or remove the defect, County, through its Airport Representative, shall have the right and option to give written notice to the Homeowner either that: (1) County shall accept title as it then is; (2) County shall extend the amount of time for Homeowner to cure said defects; or (3)

County elects to terminate this Agreement and Homeowner's participation in the Program pursuant to Article 9, below.

5.2.6 Disclosure of Mortgages, Leases, etc. Homeowner shall furnish to County copies of all mortgages, written leases and any options and contracts of sale, together with estoppel letters from each mortgagee, lessee, optionee, contract vendee and all others having an interest in the Property, describing in such detail as requested by County the nature of their respective interests. Homeowner represents and warrants to County that there are not part(ies) in possession (other than Homeowner), options to purchase, or contracts for sale covering all or any part of the Property, other than those disclosed pursuant to the immediately preceding sentence. In the event Homeowner is unable to obtain said estoppel letters, Homeowner represents and warrants that Homeowner shall furnish the same information, true and correct, to County in the form of a Homeowner's Affidavit.

5.2.7 ~~No Further~~ Encumbrances Following Execution of this Agreement. From the date of execution of this Agreement and until the Final Completion Date, Homeowner represents and warrants that:

(a) Homeowner shall not ~~enter into or modify any lease (oral or written), option to purchase, contract for sale or grant to any person(s) (natural or artificial) any interest in the Property or any part thereof or any improvement thereon~~ or encumber or suffer the Property or any part thereof to be encumbered by any mortgage or other lien, without the prior written consent of County, which consent may be granted or withheld by County in County's sole discretion.

(b) Homeowner shall not enter any option to purchase the Property or contract for sale of any interest in the Property, unless the County is first presented with a written assumption of this Agreement signed by the party seeking to obtain such interest in the Property, which shall be in form and substance satisfactory to the Office of County Attorney.

(c) Homeowner shall not enter into any lease of the Property or any portion thereof, unless Homeowner has provided County with a release and consent to entry of the Property from the tenant that is satisfactory to the County.

5.2.8 No Construction/Mechanics Liens. Homeowner hereby further represents that as of the date of execution of this Agreement there are, and shall be,

no claims or potential claims for construction liens either statutory or at common law, and that Homeowner has not caused to be made on the Property within ninety (90) calendar days immediately preceding the date of this Agreement any improvement which could give rise to any construction lien.

~~(a) In addition, Homeowner represents that Homeowner shall not cause any improvements to be made on the Property during term of this Agreement which could give rise to any construction lien.~~

(a) Homeowner shall furnish to County, an affidavit in the form attached hereto as **Exhibit D** prior to the recording of the Avigation Easement. After this Agreement is entered into by the parties, Homeowner shall not enter into any contract for improvements to the Property until the Scope of Work is completed, except for emergency conditions that are consented to in writing by the Airport Representative, before any such emergency work is commenced by Homeowner.

(b) If any improvements have been made or a Notice of Commencement filed against the Property prior to the date of recording the Avigation Easement (except for a Notice(s) of Commencement filed by County's Contractors), Homeowner shall deliver releases or waivers of all construction liens, executed by general contractors, subcontractors, suppliers or material-providers in addition to Homeowner's affidavit setting forth the names of all such general contractors, subcontractors, suppliers and material-providers and further reciting that, in fact, all bills for work to the Property which could serve as the basis for a lien have been paid.

### 5.3 EVENTS SUBSEQUENT TO EXECUTION OF THIS AGREEMENT

In the event Homeowner, during the period following execution and delivery of this Agreement and continuing until the Final Completion Date: (a) sells, transfers, or encumbers, or attempts to sell, transfer, or encumber, the Property; (b) files for or declares bankruptcy or otherwise becomes insolvent; (c) fails to make timely payment with respect to any outstanding loan secured by the Property, regardless of whether or not the lender thereunder initiates foreclosure proceedings; or (d) dies, divorces, or changes his, her, or its name, then the County's obligation under this Agreement shall immediately cease until Homeowner (or any successor owner of the Property) provides to the County evidence satisfactory to the County in its sole discretion that all persons having or acquiring in the future any right, title, or interest in or to the Property shall have assumed in writing or shall otherwise have agreed to be bound by the provisions

of this Agreement. If any of the events described in subsections (a)-(d) above, occurs following commencement of performance of the Scope of Work, the Avigation Easement shall continue in full force and effect notwithstanding such occurrence, however the County shall not be required to continue with the Scope of Work until the County is provided with satisfactory evidence, in its sole discretion, that all persons having (or acquiring in the future) any right, title, or interest in or to the Property shall have assumed in writing or shall otherwise have agreed to be bound by the provisions of this Agreement and the Avigation Easement. A failure to provide such evidence to the County within thirty (30) calendar days following written demand by County in accordance with Section 10 hereof, shall entitle the County to terminate this Agreement for cause pursuant to Section 9.3.

5.4 RECORDING COSTS, CERTIFIED LIENS, ETC.

5.4.1 County shall cause to be placed upon the Avigation Easement instrument, property state surtax and documentary stamps as required by law. Homeowner shall pay all property taxes for 20\_\_ and all preceding years and the cost of recording any corrective instruments which County deems necessary to assure good and marketable title. County shall pay for the cost of recording the Avigation Easement instrument.

5.4.2 County may require that Homeowner discharge a certified lien prior to the recording of the Avigation Easement, and in such event, Homeowner shall provide County with appropriate receipts, satisfactions or releases proving such payment. A "certified lien" is defined as a lien which has been certified, confirmed or ratified by a governmental body pursuant to the statute, special act, ordinance, or resolution creating same and for which the exact amount of same has been determined. If Homeowner shall fail to discharge a certified lien by the date provided in a written notice from the Airport Representative to the Homeowner, this Agreement may be terminated by the Airport Representative giving written notice of termination to Homeowner, and thereafter County will record a release of the Avigation Easement if it has been previously recorded, and the parties shall be released of all further obligations to each other.

5.5 PUBLIC DISCLOSURE

Homeowner hereby represents and warrants that the names and addresses of all persons or firms having a beneficial interest in the Property are as follows:

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Homeowner further agrees that, if required, Homeowner shall deliver to County simultaneously with the execution of this Agreement, the disclosure required in accordance with Section 286.23, Florida Statutes pursuant to which Homeowner shall make a public disclosure in writing, under oath and subject to the penalties prescribed for perjury, which shall state the name and address of Homeowner and the name and address of every person having any beneficial interest in the Property. Homeowner, by execution hereof, acknowledges receipt of notice in compliance with Section 286.23(2), Florida Statutes, or waives same.

**ARTICLE 6**  
**COMPLIANCE WITH FAA REQUIREMENTS**  
**AND GRANT AGREEMENTS**

- 6.1 The Homeowner shall subject the construction work on the Project to such inspection and approval during the construction or installation of the noise compatibility measures and after completion of the measures as may reasonably be requested by the Secretary of the U.S. Department of Transportation or the County.
- 6.2 The Homeowner shall assume the responsibility for maintenance and operation of the items installed, purchased or constructed under the Agreement. Neither the FAA nor the County bears any responsibility for the maintenance and operation of these items.
- ~~6.3 If Federal funds for the noise compatibility measures are transferred by the County to the owner of the private property, or the owner's agent, the Homeowner shall agree to maintain and make available to the Secretary of the U.S. Department of Transportation or the County, upon reasonable request, records disclosing the amount of funds received and the disposition of those funds.~~
- 6.3 The provisions hereof shall survive the delivery and recordation of the Avigation Easement and any termination of this Agreement.

**ARTICLE 7**  
**TERM**

This Agreement shall commence on the Effective Date and shall continue in full force and effect until the first to occur of the Final Completion Date, or termination hereof pursuant to Article 9, below.

**ARTICLE 8**  
**WARRANTIES; NON-RECOURSE AND INDEMNITY PROVISIONS**

- 8.1 **Warranties.** The contracts between the Contractors and the County for the performance of the Scope of Work ("County's Contracts") will contain the following provisions: (1) all warranties provided by the Contractor will run in favor of both the County and the Homeowner, (2) the insurance policies provided by the Contractor will be required to identify each Homeowner included in the scope of work of the construction contract as a "named insured," and (3) the construction contract will specifically name each Homeowner included in the contract's scope of work as an "intended third party beneficiary" of the construction contract. Following the completion of the Scope of Work, any subsequent repairs or adjustments to the work will remain under warranty to the County and the Homeowner for the warranty period(s) set forth in the contracts between the Contractors and the County. Such warranty shall be for a period of one (1) year following the Final Completion Date, after which time the work will be the sole responsibility of the Homeowner. The Homeowner recognizes that if a fault is detected within any applicable warranty period, it is the Homeowner's responsibility to inform the Contractor and the Airport Representative in writing at once. The County will provide copies of all manufacturer's warranties and guarantees to the Homeowner. A separate copy will be maintained on file by the Aviation Department. Designated County representative(s) will be available to assist the Homeowner with warranty issues for a period of one year following the Final Completion Date. For any remaining warranty period after the one-year period, the Homeowner should make direct contact with the product manufacturer or other provider of a warranty.
- 8.2 The Homeowner understands that any claims arising from the manner in which the work was performed under the contract between the County and its Contractors, which causes injury or damages to persons or property, shall be the responsibility of the Contractors, and the County shall not be held liable.
- 8.3 THE COUNTY DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO QUALITY OR SUITABILITY OF THE MATERIALS USED OR THE WORK PERFORMED BY THE CONTRACTORS OR CONSULTANTS OR WITH REGARD TO THE CONDITION OF THE HOMEOWNER'S PROPERTY EITHER PRIOR TO, DURING OR UPON COMPLETION OF THE IMPROVEMENTS UNDERTAKEN PURSUANT TO THIS AGREEMENT. THE WARRANTIES PROVIDED BY THE CONTRACTORS AND THE MANUFACTURERS CONSTITUTE THE HOMEOWNER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THE WORK PERFORMED PURSUANT TO THIS AGREEMENT. HOMEOWNER ACKNOWLEDGES AND AGREES THAT THE HOMEOWNER'S AGREEMENT TO LIMIT THE REMEDIES AS PROVIDED HEREIN CONSTITUTES SPECIAL

CONSIDERATION TO AND IS A MATERIAL INDUCEMENT TO COUNTY TO ENTER INTO AND PERFORM THIS AGREEMENT AND TO PAY FOR THE IMPROVEMENTS TO BE UNDERTAKEN BY THE CONTRACTORS AND CONSULTANTS. THE PROVISIONS HEREOF SHALL SURVIVE THE DELIVERY AND RECORDATION OF THE AVIGATION EASEMENT AND ANY TERMINATION OF THIS AGREEMENT. [This item moved from Section 4.2.4]

~~8.3 Homeowner hereby indemnifies, defends and holds harmless the County, its officers, officials, employees, agents, representatives, successors and assigns from and against any and all causes, demands, claims, actions, suits, liabilities, losses, settlements, judgments, damages, costs, expenses and fees (including without limitation, reasonable attorney's fees) of every kind brought by any person or entity arising as a result of or on account of actual or alleged injuries (including death) or damages to Homeowner or any other person, entities, and/or property sustained as a result of or in connection with this Agreement, the Program, performance of the Scope of Work or otherwise relating to the contracts between the County and its Consultant(s) and Contractor(s) including, but not limited to, those relating to environmental conditions or releases including, but not limited to, mold, mildew, Zonolite (vermiculite), asbestos or other environmental conditions or releases.~~

8.4 Homeowner shall indemnify and hold harmless County, its officers, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, and expenses, caused by negligent act or omission of Homeowner, its agents, invitees, contractors, consultants, servants, employees or officers accruing, resulting from, or related to the subject matter of this Agreement including without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property.

8.5 Homeowner agrees that the County, its officers, officials, employees, agents, representatives, successors and assigns shall not be liable for, and Homeowner hereby waives and releases any and all claims against the County, its officers, officials, employees, agents, representatives, successors and assigns for expenses and damages for any injury (including death) to Homeowner or any other person, or for damages to Homeowner's Property or any other property, sustained, or alleged to have been sustained, as a result of or in connection with any work undertaken as part of the Program, and the work performed by the Consultants and Contractors including, but not limited to, those relating to environmental conditions or releases including, but not limited to, mold, mildew, Zonolite (vermiculite), asbestos or other environmental condition or releases. This provision is not intended to waive any rights the Homeowner may have directly against the County's Consultants and Contractors.

- 8.6** Homeowner hereby agrees to reimburse County for any claims against the County related to the work that arise from the Homeowner's fault or negligence. For example, but not limited to, claims such as Contractors' claims arising out of Homeowner's failure to provide access to the home.
- 8.7** The provisions of this Article 8 shall survive the delivery and recordation of the Avigation Easement and any termination of this Agreement.

**ARTICLE 9**  
**HOMEOWNER WITHDRAWAL FROM PROGRAM;**  
**TERMINATION OF AGREEMENT**

- 9.1 County or Homeowner may terminate this Agreement for any reason and withdraw from the Program at any time prior to the County's recording of the Avigation Easement, by providing forty-five (45) calendar days prior written notice to the other party. Upon the giving of a notice of termination pursuant hereto, this Agreement shall terminate.
- 9.2 If Homeowner chooses to withdraw from the Program at any time after County has recorded the Avigation Easement, then the Homeowner must provide prior written notice to the Aviation Department and Homeowner must reimburse the County for all direct expenditures made on behalf of the Homeowner including, but not limited to, costs of Consultants services directly attributable to work performed at Homeowner's Property, costs of County's administration services directly attributable to work performed at Homeowner's Property, and expenses and Contractors' labor, supplies, equipment and materials costs directly attributable to work performed at Homeowner's Property. Following payment of all such costs to the County, a release of the Avigation Easement will be recorded, if one has been previously recorded, and thereupon this Agreement shall terminate.
- 9.3 If Homeowner fails or refuses to carry out the terms and conditions of this Agreement, then this Agreement may be terminated for cause by the Director of Aviation, acting on behalf of the County, upon thirty (30) calendar days' written notice to Homeowner. Upon any termination for cause, the Avigation Easement shall not be released and shall remain in full force and effect unless and until the Homeowner shall reimburse the County for all direct expenditures made on behalf of the Homeowner including, but not limited to, costs of Consultants services directly attributable to work performed at Homeowner's Property, costs of County's administration services directly attributable to work performed at Homeowner's Property, and expenses and Contractors' labor, supplies, equipment and materials costs directly attributable to work performed at Homeowner's Property. Following payment of all such costs to the County, a

release of the Avigation Easement will be recorded, if one has been previously recorded, and thereupon this Agreement shall terminate.

- 9.4 This Agreement may also be terminated at any time prior to the commencement of construction, for convenience by the Director of Aviation, acting on behalf of the County upon not less than thirty (30) calendar days' written notice to the Homeowner. ~~or upon such notice as is deemed appropriate under the circumstances in the event the Director of Aviation determines that termination is necessary to protect the public health, safety, or welfare.~~ Upon the giving of a notice of termination pursuant hereto, the County will record a release of the Avigation Easement if one has been previously recorded, and thereupon this Agreement shall terminate.
- 9.5 All notices of termination pursuant hereto shall be given as provided in Article 10, below. Upon any termination of this Agreement, the Homeowner's right to participation in the Program shall terminate and County shall discontinue any further work.
- 9.6 The Director of Aviation is authorized, on behalf of the County, to make determinations to terminate this Agreement, to send notices of termination, to execute and record a release of the Avigation Easement, and to execute and record (as necessary) such other documents as may be required pursuant hereto or pursuant to the other provisions of this Agreement.

#### **ARTICLE 10** **NOTICES**

- 10.1 Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, as the place for giving of notice in compliance with the provisions of this paragraph. Either party may change the address at which notice is to be given by notice given as provided in this Article. Notices shall be deemed given when mailed properly addressed with postage prepaid. The place designated for notice as of the Effective Date, for each party is as follows:

#### **FOR BROWARD COUNTY:**

Director of Aviation  
Aviation Department  
~~320 Terminal Drive~~ 100 Aviation Blvd.  
Fort Lauderdale, Florida 33315

WITH A COPY TO:

Program Office

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

FOR HOMEOWNER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ARTICLE 11**  
**MISCELLANEOUS**

11.1 **ASSIGNMENT**

This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered under any circumstances by Homeowner without the prior written consent of the Airport Representative on behalf of the County.

11.2 **ALL PRIOR AGREEMENTS SUPERSEDED; AMENDMENTS**

This document incorporates and includes and supersedes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and represent the final and complete understanding of the parties. The parties agree that there is no commitment, agreement or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement whether oral or written.

It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless set forth in a written document prepared with the same or similar formality as this Agreement and executed by the parties hereto.

11.3 **PERSONS BOUND**

The benefits and obligations of the covenants herein shall inure to and bind the respective heirs, personal representatives, successors and assigns (where assignment is permitted) of the parties hereto. Whenever used, the singular

number shall include the plural, the plural, the singular, and the use of any gender shall include all genders.

#### 11.4 WAIVER

Failure of either party to insist upon strict performance of any covenant or condition of this Agreement or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right; but the same shall remain in full force and effect.

#### 11.5 REMEDIES CUMULATIVE

All rights and remedies of either party under this Agreement, at law or in equity are cumulative, and the exercise of any right or remedy shall not be taken to exclude or waive the right to the exercise of any other. No waiver of any failure to perform any of the terms, covenants, and conditions of this Agreement shall operate as a waiver of any other prior or subsequent failure to perform any of the terms, covenants, or conditions of this Agreement.

#### 11.6 RADON GAS

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State Guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your County public health unit.

#### 11.7 FURTHER UNDERTAKINGS

The parties agree that each shall cooperate with the other in good faith and shall correct any mathematical errors, execute such further documents and perform such further acts as may be reasonably necessary or appropriate to carry out the purpose and intent of this Agreement. Preparation of this Agreement has been a joint effort of County and Homeowner and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

#### 11.8 ~~SUBSEQUENT~~ COUNTY-ADOPTED NOISE MITIGATION OPTIONS; CHANGES TO COUNTY APPROVED FORM OF AVIGATION EASEMENT

##### ~~11.8.1 Election to Participate in County-Adopted Noise Mitigation Options.~~

~~The execution of this Agreement by Homeowner shall not preclude the Homeowner from participating in subsequent~~ The Homeowner may

participate in noise mitigation options that may in the future be adopted by the County for residential properties within a designated geographic area that includes the Property's location. The Homeowner shall be entitled to participate in any such County-adopted noise mitigation components for which the Property is eligible as established by the Commission for a period of time up to one year after the completion of the expansion of runway 9R/27L, or within such greater period of time as established by the Commission for such program.

**11.8.2 Election to Modify Avigation Easement.** If subsequent to the effective date of this Agreement, the County-approved form of Avigation Easement is changed by the County for a designated geographic area that includes the Property's location, then upon the written request of ~~either party~~ the Homeowner, the Avigation Easement that was recorded against the Property shall be revised and re-recorded to be consistent with the revised County-approved form of Avigation Easement. The County shall provide written notice to the Homeowner of any such change to the form Avigation Easement.

#### 11.9 INTERPRETATION

The language of this Agreement has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

#### 11.10 JURISDICTION, APPLICABLE LAW, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the state courts of the Seventeenth Judicial Circuit of Broward County, Florida. Venue for litigation arising out of this Agreement shall be in such state courts. To encourage prompt and equitable resolution of any litigation that may arise

hereunder, each party hereby expressly waives any rights it may have to a trial by jury of any civil litigation related to this Agreement.

#### 11.11 GOVERNMENTAL IMMUNITY - LIABILITY

Nothing herein is intended to serve as a waiver of sovereign immunity by County nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. County is a political subdivision of the State of Florida, as defined in Chapter 768.28, Florida Statutes. No commissioner, director, officer, agent or employee of the County shall be charged personally or held contractually liable under any provision of this Agreement or of any supplement, modification or amendment to this Agreement or because of any breach thereof, or because of its or their execution or attempted execution.

#### 11.12 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. Attachments to this Agreement include the following, which are incorporated into and made a part of this Agreement by this reference:

- Exhibit A: Legal Description of Property
- Exhibit B: Scope of Work
- Exhibit C: Avigation Easement
- Exhibit D: No-Lien Affidavit

In the event of conflict between the terms contained in this Agreement and the terms contained in any of the documents attached or incorporated herein, the terms of this Agreement shall control and shall be given full effect.

#### 11.13 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 11 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 11 of this Agreement shall prevail and be given effect.

#### 11.14 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be fully executed by all parties, each of which bearing original signatures shall be deemed to be an original.

**AGREEMENT FOR HOMEOWNER PARTICIPATION IN VOLUNTARY  
RESIDENTIAL SOUND INSULATION PILOT PROGRAM**

IN WITNESS WHEREOF, the parties have made and executed this AGREEMENT FOR HOMEOWNER PARTICIPATION IN VOLUNTARY RESIDENTIAL SOUND INSULATION PILOT PROGRAM on the respective dates under each signature: \_\_\_\_\_ as HOMEOWNER, duly authorized to execute same, and BROWARD COUNTY, through its Director of Aviation, authorized to execute same by Board action on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

COUNTY

BROWARD COUNTY, through its  
DIRECTOR OF AVIATION

By \_\_\_\_\_

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Approved as to form by  
Office of County Attorney  
Broward County, Florida  
JEFFREY J. NEWTON, County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

By \_\_\_\_\_  
Assistant County Attorney

**AGREEMENT FOR HOMEOWNER PARTICIPATION IN VOLUNTARY RESIDENTIAL  
SOUND INSULATION PILOT PROGRAM**

HOMEOWNER

WITNESSES: \_\_\_\_\_, as Homeowner(s)

\_\_\_\_\_  
Signature Witness 1

\_\_\_\_\_  
Homeowner Signature

\_\_\_\_\_  
Print/Type Name Witness 1

\_\_\_\_\_  
Print/Type Homeowner Name

\_\_\_\_\_  
Signature Witness 2

\_\_\_\_\_  
Print/Type Name Witness 2

WITNESSES:

\_\_\_\_\_  
Signature Witness 1

\_\_\_\_\_  
Homeowner Signature

\_\_\_\_\_  
Print/Type Name Witness 1

\_\_\_\_\_  
Print/Type Homeowner Name

\_\_\_\_\_  
Signature Witness 2

\_\_\_\_\_  
Print/Type Name Witness 2

**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF PROPERTY**

DRAFT

**EXHIBIT "B"**  
**SCOPE OF WORK**

DRAFT

**EXHIBIT "C"**  
**AVIGATION EASEMENT**

THIS AVIGATION EASEMENT DEED ("Avigation Easement") is executed this \_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ with a mailing address of \_\_\_\_\_, as the Grantor, in favor of BROWARD COUNTY, a political subdivision of the State of Florida with its mailing address at 115 South Andrews Avenue, Suite 409, Fort Lauderdale, Florida 33301, hereinafter referred to as the Grantee. (Wherever used in this document, the terms "Grantor" and "Grantee" shall mean both singular and plural, as the context requires, and shall include all the parties to this instrument and their heirs, personal representatives, successors, agents and assigns).

WITNESSETH:

WHEREAS, Grantee is the owner of the Fort Lauderdale-Hollywood International Airport located in Broward County, Florida (the "Airport"); and

WHEREAS, Grantor is the owner of certain property located in Broward County, Florida, as described more fully below; and

WHEREAS, Grantee is undertaking a Voluntary Residential Sound Insulation Pilot Program ("Program") to grant certain relief regarding aviation noise to property owners residing near the Airport and whose property lies within certain noise zones, in return for which the Grantor must convey to Grantee this Avigation Easement, as hereinafter described; and

WHEREAS, Grantee has agreed to provide Grantor sound insulation and Grantor has elected to participate in this Program;

NOW, THEREFORE, the Grantor, in consideration for Grantee's agreement to assist with certain modifications and installation in Grantor's property for noise-impact reduction purposes and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby grant and convey to the Grantee, for its use and benefit as owner and operator of the Airport, an assignable ~~and perpetual~~ easement on, over, across and upon Grantor's property, described as: **[insert legal description or attach exhibit]** together with all ~~tenements, hereditaments, privileges, rights-of-reverter, servitudes, and other rights appurtenant to such property, and all~~ of Grantor's rights, title and interest in and to any and all streets, ~~roads, highways, easements,~~ rights-of-way, drainage rights, privileges, rights of reverter, riparian rights, covenants, restrictions, agreements and other rights appurtenant to or benefiting such property, hereinafter referred to collectively herein as the "Property" for uses described below, and identified as an Avigation Easement over all of the Property.

TO HAVE AND TO HOLD said easement ~~in perpetuity~~ unto the Grantee, and its successors and assigns, until said Airport shall ~~be abandoned and shall~~ cease to be used for

airport purposes by Grantee, its successors, and assigns, or until the Termination Date (as hereinafter defined), which ever shall first occur.

AND

That the Grantor, for and in further consideration of the Grantee's agreement to assist with certain modifications and installation on the Property for noise-impact reduction purposes, as set forth above, hereby grants, covenants, and agrees as an appurtenance to the foregoing easement, as follows:

A. Said easement shall have a continuing public right of free, unrestricted, and unobstructed flight over, through, and across the airspace over the Property by aircraft (as hereinafter defined) of any and all kinds as may, now or in the future during the term hereof, use the Airport, together with the right to cause such effects upon the Property as may normally result from the overflight of aircraft and the taking off and landing of aircraft at the Airport during the term hereof. ~~Said easement shall run over, across, and upon the above described real property and shall encompass the air space above the surface of Grantor's Property having the same boundaries as the above-described Property and extending from the surface of the Property upwards to the limits of the atmosphere of the earth.~~ The Grantor shall have no right to damages on account of noise, vibrations, aircraft lights, fumes, dust or other particulate matter, fuel particles, fear, interference with sleep, enjoyment and communication and any and all other effects that may be alleged to be incident to or resulting from any aircraft flying over the Property, or from the operation of aircraft landing or taking off or operating lawfully from the Airport. Grantor does hereby release the Grantee, its commissioners, officers, agents, servants, employees, successors and assigns, of and from any and all claims, demands or causes of action of every kind or nature which Grantee now has, has ever had, or may have in the future including, but not limited to, damages to the Property due to any of the effects, activities, and incidents described above that may occur during the term hereof.

B. Grantor further agrees that said easement shall further have as its purpose the prohibition of intrusion into, encroachments upon and obstructions into the airspace that exceeds sixty (60) feet elevation above the ground surface of the Property. Grantor agrees that no buildings, structures, improvements or vegetation exceeding sixty (60) feet elevation shall be permitted to be located, constructed or remain on the Property, now or in the future. The easement and right-of-way hereby grants to the Grantee the continuing right to prevent the erection or growth upon the Property of any building or other structure, tree or other vegetation, or any other object, whether natural or man-made that might now or in the future, extend into the airspace over Grantor's Property that is above sixty (60) feet in elevation from the ground surface of the Property. Grantee may remove from said air space, or at the sole option of the Grantee, as an alternative, to mark and light as obstructions to air navigation, any such building, structure, tree, vegetation, or other objects now upon, or which in the future may be upon Grantor's Property. Grantor further grants the Grantee the right to enter upon the Property to trim any trees and any other vegetation which exceed the above elevation, or to remove, mark or light as obstructions any such building, structure, tree, vegetation or other

such objects, all at Grantee's sole expense. Any such entry by the Grantee shall be at reasonable hours and with reasonable notice to Grantor and the Grantee shall remove any limbs, wood or other debris generated by its entry so as not to interfere with Grantor's continuing use of the Property.

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

C. 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 be 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.

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

D. That it is further understood and agreed by and between the Grantor and the Grantee that the covenants, rights, privileges and easements granted and conveyed herein shall run with the land, and that, for the purposes of this instrument, the Property described above shall be the servient estate and the Airport shall be the dominant estate. No waiver, modification, amendment, or termination of this instrument shall be effective unless contained in a written document executed by both Grantee and Grantor, with the same formality and of equal dignity as this instrument. If any covenant, condition or provision contained in this document is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other covenant, condition or provision herein contained. This document shall be construed in accordance with the laws of the State of Florida and venue shall be Broward County, Florida. The remedies of injunction and specific enforcement shall be available to the parties to enforce this Avigation Easement, as well as all other remedies that may be available at law and in equity.

E. And that the Grantor does hereby covenant to and with the Grantee that the Grantor is the owner in fee simple of the Property described above and that Grantor has a

legal and valid right to execute this instrument, which shall be binding upon said execution by Grantor.

F. Termination Date. The "Baseline Contour" for this Avigation Easement is the Federal Aviation Administration ("FAA") preferred alternative/long term ultimate 2020 noise exposure contour. The term of this Avigation Easement shall commence upon recordation hereof, and shall terminate on the earlier to occur of: (1) the date upon which the Airport shall cease to be used for airport purposes; or (2) the date that a subsequent FAA approved noise contour shows an increase of five decibels of noise over the Baseline Contour at the location of the Property.

IN WITNESS WHEREOF, the Grantor has set its hand and seal on the day and year first above written.

Signed, sealed and delivered  
in the presence of:

GRANTOR:

\_\_\_\_\_

\_\_\_\_\_

Name typed or printed

\_\_\_\_\_

\_\_\_\_\_

Name typed or printed

**AVIGATION EASEMENT DEED**

STATE OF FLORIDA            )  
COUNTY OF BROWARD        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification.

**NOTARY PUBLIC:**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

State of Florida At Large

My Commission Expires:

Commission Number: \_\_\_\_\_

(SEAL)

STATE OF FLORIDA            )  
COUNTY OF BROWARD        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification.

**NOTARY PUBLIC:**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

State of Florida At Large

My Commission Expires:

Commission Number: \_\_\_\_\_

(SEAL)

**EXHIBIT "D"**  
**NO LIEN AFFIDAVIT AND INDEMNITY**

STATE OF FLORIDA                    )  
  )  
COUNTY OF BROWARD                )

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_  
\_\_\_\_\_, who, being by me first duly sworn on oath, deposes and  
says, collectively as the "Affiant":

1. That \_\_\_\_\_ is the owner of and has fee simple title to the  
following described property (the "Property") situate, lying and being in the County of  
Broward, State of Florida, to-wit: SEE ATTACHED EXHIBIT "A"

2. That the Affiant (s) has not sold, transferred, assigned or conveyed title to  
the Property prior to the transfer to Broward County, a political subdivision of the State  
of Florida.

3. That the Property and all improvements thereon are free and clear of all  
mortgages, liens, taxes, waste, water and sewer charges, encumbrances, judgments  
and claims of every nature whatsoever except for real estate taxes for 20\_\_ and the  
Permitted Exceptions identified as follows: \_\_\_\_\_.

4. That no legal actions, Internal Revenue Service claims or State tax claims  
are pending or threatened that could ripen into a lien or encumbrance on the Property or  
the improvements thereon.

5. This Affidavit is made for the purpose of inducing the County to part with  
valuable consideration and consummate the purchase of an Avigation Easement upon  
and over the Property, and County is materially relying on the veracity of the contents  
hereof. The title insurance company, if one has been selected by the County, is relying  
upon the representations herein made in issuing its title insurance. In this regard, the  
Affiant(s) represents and warrants that the statements contained herein are true and  
correct in all respects.

6. That for at least ninety (90) calendar days prior to the date hereof, no  
material, labor or services have been furnished, performed or supplied in connection  
with the Property, including the improvements located thereon, for which payment has  
not been made in full; no material, labor or services have been contracted to be  
furnished, performed or supplied at a future date in connection with the Property,  
including the improvements located thereon, for which payment has not been made in  
full; and there are no unpaid mechanic's, material provider's or other liens affecting the  
Property or actual or potential claims on account of any such material, labor or services.

7. That to the best of Affiant's knowledge, no violations of municipal ordinances or other laws, statutes, rules or regulations pertaining to the Property exist, and no orders or notices concerning any violations have been given to \_\_\_\_\_ or made against the Property.

8. That \_\_\_\_\_ alone and no other person(s), firm(s) corporation(s), or individual(s) are in control and possession of the Property.

9. That there are no existing contracts for sale, options to purchase or unrecorded deeds, or mortgages or leases existing against the Property.

10. That there are no unrecorded easements on the Property.

11. That \_\_\_\_\_ is not the subject of any bankruptcy proceeding (whether liquidation, reorganization or other arrangement), nor is the subject of any other insolvency proceeding of any kind and none of the foregoing types of proceedings are pending, contemplated or threatened.

12. Affiant represents and warrants that between the date of title search set forth in the Title Report dated \_\_\_\_\_, 20\_\_, at \_\_\_\_\_ prepared by \_\_\_\_\_ ("Company") and the date on which the Avigation Easement respecting the Property is placed of record, Affiant has not and will not execute any instruments or take any actions that could adversely affect the title or interest to be acquired by the County and insured by \_\_\_\_\_ (if County decides to obtain insurance). Affiant further represents and warrants that Affiant is not aware of any matter that could adversely affect the title or interest to be acquired by the County and insured by the aforesaid title company, if County decides to acquire title insurance.

13. Affiant represents and warrants the truth and accuracy of all matters herein above set forth and agree to and shall defend, indemnify and hold harmless County and the aforesaid title company, and their respective heirs, successors and assigns from all causes, claims, demands, actions, losses, liabilities, settlements, judgments, damages, costs, expenses and fees (including, without limitation, reasonable attorneys' and appellate attorneys' fees) that arise as a result of, or in connection with, the falsity or inaccuracy of any statement made in the above Affidavit or the breach of any representation or warranty herein made.

FURTHER AFFIANT SAYETH NAUGHT

**EXHIBIT "D"**  
**NO LIEN AFFIDAVIT AND INDEMNITY (CONTINUED)**

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
WITNESS By \_\_\_\_\_

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
WITNESS By \_\_\_\_\_

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
WITNESS By \_\_\_\_\_

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
WITNESS By \_\_\_\_\_

\_\_\_\_\_  
WITNESS

**EXHIBIT "D"**  
**NO LIEN AFFIDAVIT AND INDEMNITY (CONTINUED)**

STATE OF FLORIDA            )  
COUNTY OF BROWARD        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification.

**NOTARY PUBLIC:**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

State of Florida At Large

My Commission Expires:

Commission Number: \_\_\_\_\_

(SEAL)

STATE OF FLORIDA            )  
COUNTY OF BROWARD        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification.

**NOTARY PUBLIC:**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

State of Florida At Large

My Commission Expires:

Commission Number: \_\_\_\_\_

(SEAL)

**EXHIBIT "D"**  
**NO LIEN AFFIDAVIT AND INDEMNITY (CONTINUED)**

STATE OF FLORIDA            )  
COUNTY OF BROWARD        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification.

**NOTARY PUBLIC:**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

State of Florida At Large

My Commission Expires:

Commission Number: \_\_\_\_\_

(SEAL)

STATE OF FLORIDA            )  
COUNTY OF BROWARD        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification.

**NOTARY PUBLIC:**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

State of Florida At Large

My Commission Expires:

Commission Number: \_\_\_\_\_

(SEAL)