

P.P.N. «PPN»

Group «CONTRACT»

AGREEMENT

between

THE CITY OF CLEVELAND

and

«OWNER_FULLNAME» and «CO_OWNER_FULLNAME»

THIS AGREEMENT is made as of the _____ day of _____, 20__, (the “effective date”) between the CITY OF CLEVELAND (“City”), a municipal corporation of the State of Ohio, through its Director of Port Control (“Director”), pursuant to the authority of Ordinance No. 930-095, passed by the Council of the City on June 28, 1995, and «OWNER_FULLNAME», owner(s) of the property (hereinafter “Owner”), located at «HOME_STREET_NUM_ADDR», «HOME_CITY», «HOME_STATE», «HOME_ZIP» as specifically described in the legal description in Exhibit “A”, attached hereto and fully incorporated herein.

RECITALS

1. The Cleveland Hopkins International Airport (“Airport”) Acoustical Insulation project is, in part, comprised of a Phase 2 Residential Sound Insulation Project designed to reduce noise in eligible residences located near the Airport.
2. The City has allocated airport revenues, including but not limited to passenger facility charge (PFC) revenues for the purpose of making acoustical modifications to such eligible private residences. The goal of this Sound Insulation Project is to reduce aircraft related noise levels within each participant’s residence or property (“Property”).
3. The Owner of the residence located as described in Exhibit “A” has been selected by the City as a participant in the Phase 2 Residential Sound Insulation Project.
4. The Owner is willing to grant an Avigation Easement to the City in return for the City providing funds to make specified improvements and acoustical modifications to the Owner's residence.

In consideration of the foregoing, the covenants and conditions contained herein, the parties agree as follows.

ARTICLE I. DESCRIPTION OF PROJECT

A. The Sound Insulation Project shall be divided into four phases:

Phase I Pre-design and Preliminary design

Phase II Final Design

Phase III Construction

Phase IV Evaluation

B. The Pre-Design and Preliminary Design Phase shall generally consist of the measurements of noise levels within selected eligible residences and the preparation of preliminary specifications.

C. The Final Design Phase shall generally consist of the preparation of the final, detailed specifications and plans.

D. The Construction Phase shall generally consist of the installation of the specified improvements and acoustical modifications as set forth in the detailed specifications, plans and invitation to bid prepared for the work to be performed in accordance with this Agreement.

E. The Evaluation Phase shall generally consist of monitoring the results of the construction performed in accordance with this Agreement.

ARTICLE II. CONSULTANTS AND CONTRACTORS

A. As part of the Sound Insulation Project, the City, at not cost to the Owner, shall have the right to procure the following consultants and contractors to analyze and evaluate the impact of aircraft noise on Owner's Property and construct the acoustical modifications.

1. An Acoustical Consultant to undertake noise measurements and analyses and recommend acoustical modification to Owner's Property with the goal of reducing interior noise levels.

2. A Design Architect to prepare detailed plans, drawings and work specifications for the Property.

3. A General Contractor or Contractors to perform the specified work;

4. A Project Manager to coordinate the work activities of all the consultants and Contractors, monitor the progress of the Project, schedule the access to Owner's Property by the Consultants and Contractors, and act as liaison between the Department of Port Control and the Owner; and

5. A Construction Inspection Consultant to inspect work in progress and/or completed by the General Contractor.

B. All Consultants and Contractors shall be selected by the City in its sole discretion.

C. All Consultants and Contractors shall be solely responsible for their actions, and nothing in the Agreement shall be construed to create the relationship of agent, servant, employee, partnership, joint venture or association, or any relationship whatsoever other than that of independent contractor between City and said Consultants and Contractors.

D. The Agreement with the Acoustical Consultant shall provide that said Consultant shall perform a post-construction acoustical evaluation of selected residences at a time mutually agreeable to the City and the Owner, but in no event later than one (1) calendar year after the completion of construction work to determine the actual degree of any reduction of aircraft-related noise within the residence.

E. The Agreement with the Architectural Consultant and/or the Construction Inspection Consultant shall provide that said Consultant will perform a final inspection of the acoustical modifications prior to the expiration of the one year construction warranty period, if necessary, as determined by the City, to evaluate the workmanship of the construction contractor.

ARTICLE III. AVIGATION EASEMENT

In consideration of the funds provided and work performed to Owner's Property as part of this Sound Insulation Project, the Owner shall execute an original copy of the Avigation Easement, as prepared by the City. The Avigation Easement shall be attached hereto as Exhibit "B" and fully incorporated herein.

ARTICLE IV. ELIGIBILITY OF PROPERTY

A. As stated in Article V below, the City shall be the sole determiner whether Owner's Property is eligible for acoustical modifications as contemplated under this Sound Insulation Project/Agreement. All Property shall pass City inspection to ensure the structural integrity of the Property for the purpose of meeting City codes and that such Property is otherwise eligible for said acoustical modifications.

B. The City and its Contractor shall not be responsible for providing any improvements necessary to effectively construct the noise-reduction improvements, including, without limitation:

1. bringing electrical wiring in the Property up to code requirements;
2. with the exception of lead paint around windows, the removal of hazardous materials present in or about the Property;

3. brining the Property's structure up to code requirements; or
4. making the Property's structure suitable for acoustical modifications.

C. The presence of any one of the problems set forth in B (1-4) above, or any other condition that calls into question the suitability of the Property for the acoustical modifications contemplated under the Sound Insulation Project, may cause the City to disqualify the Property from the Sound Insulation Project.

ARTICLE V. AUTHORIZATION TO PROCEED

A. Following the Consultant's analysis, said Consultant will make recommendations to the City for the modification of the interior of Owner's Property to attenuate aircraft noise and reduce interior noise levels in designated areas within the residence. Consultant's recommendations will be reviewed by the City to determine whether the structure can be effectively and efficiently modified within the parameters of this Sound Insulation Project. The City also shall inspect the Property to determine the structural integrity of such Property to withstand the recommended modifications. If, in City's sole judgement, it determines that the structure cannot be effectively and efficiently modified, or if, in the City's sold judgment, it determines that the Property is structurally unsound so as to be unable to withstand the recommended acoustical modifications, City will notify Owner that Owner's Property is not eligible for the recommended acoustical modifications, and this Agreement will terminate and be of no further force and effect.

B. If City, in its sole judgement, determines the structure can be effectively and efficiently modified, and if the structure passes City inspection ensuring structural integrity as indicated above, the City will assign a Design architect to prepare design plans and specifications. The Project Manager shall present to the Owner the final design plans and the detailed work specifications.

C. Owner shall indicate his/her approval of the plans and specifications by signing such plans and specifications at the bottom of each page at the place so designated. The signed and approved plans and specifications shall be attached to this Agreement and fully incorporated herein.

Within seven (7) calendar days of presentation of the plans and specifications, Owner shall notify City of Owner's consent to the making of the recommended modifications, by signing the specifications as indicated above and by executing the Authorization to Proceed as provided in Exhibit "C", attached hereto and fully incorporated herein.

If, after seven (7) days, Owner has failed to sign the specifications and execute the Authorization to Proceed or, if in such time Owner ahs notified the City that Owner does not with to participate in the Sound Insulation Project, this Agreement will terminate and the Avigation Easement executed by Owner will be returned to the Owner. If the Owner signs the specifications and executes the Authorization to Proceed, the City will advertise for bids and proceed with the construction project. The City shall record an executed copy of the Avigation Easement in the

Cuyahoga County Recorders' Office within seven (7) days of the executing of the Authorization to Proceed.

ARTICLE VI.

OWNER'S RESPONSIBILITY

The Owner shall:

A. Neither willfully nor deliberately act to reduce or destroy the effectiveness of the acoustical modifications installed pursuant to this Agreement.

B. Allow the construction work on the Sound Insulation Project to be inspected and approved, as may reasonably be requested, by the Director, the Consultants and Contractors during the construction of installation of the acoustical modifications, and for a period of one (1) calendar year after the completion of construction for evaluation purposes and acceptance of work by the City;

C. Allow the City and/or its Consultants to document, videotape or take photographs of conditions of the Property both before and after completion of acoustical modifications, for the purpose of documenting existing conditions and conditions subsequent to completion of the work;

D. Not move out of the residence during the predesign, preliminary design, final design and construction phases, and for one (1) calendar year after the final installation of any noise-reducing materials and equipment. In the event that circumstances arise which require the Owner to move out of the Property either temporarily or permanently prior to one year after the final installation of any noise reducing materials and equipment, then Owner shall notify the Director immediately to arrange for the satisfactory completion of Project. Notwithstanding the above, this Agreement, including the plans and specifications attached hereto, shall remain in full force and effect as against Owner's successors and assigns.

E. Not make any modifications to the Property after the assessment by Acoustical Consultant is completed. The City shall not sound proof any modifications made to Owner's residence after the Acoustical Consultant's assessment is complete. Any structure not currently in existence and standing at the time of the Acoustical Consultant's assessment, including any structure contemplated to be constructed by Owner, whether or not plans are in existence for such construction, shall **not be eligible** for acoustical modifications.

F. Not cause or permit any change in the current land use that will reduce the effectiveness of the noise compatibility program measures upon which sound insulation funds have been expended;

G. Inform all existing lien holders of the Property of the Avigation Easement attached hereto and incorporated herein as Exhibit "B", and obtain the lien holder's consent to the encumbrance of the Property; and

H. Contractors such that said parties may undertake and complete the tasks required by the Sound Insulation Project. Said access shall be in accordance with the requirements of Article VII.

ARTICLE VII. ACCESS

A. The Director, his authorized representative, the Consultants and Contractors, shall have access to Owner's Property at all reasonable times after the Effective Date of this agreement in order to plan, design, construct and monitor the acoustical improvements and modifications.

B. Owner agrees that access shall continue, by appointment, for one (1) calendar year after completion of the work for the purposes of evaluating and inspecting the acoustical improvements and modifications.

C. In granting the access referred to herein, Owner acknowledges that there will be some disruption and inconvenience to Owner during the planning, designing, construction and monitoring of the acoustical improvements. Therefore, Owner waives any right he or she may have to deny reasonable access to either the City, the Consultants and Contractors.

D. To ensure minimal disruption of the Owner's property, the type and frequency of said access shall be scheduled by the Owner and the Project Manager at least forty-eight (48) hours in advance of needed access. Owner shall not frustrate any attempts of the Project Manager to schedule reasonable times for access. Owner or his duly authorized representative agree to be present at all times when access is required to design, construct or monitor the acoustical modifications.

E. Owner shall not allow children, pets and/or unauthorized third parties to disrupt the design, testing, construction or evaluation processes. Upon any such disruption, the City may stop work immediately and shall not continue work until such disruptions cease to the satisfaction of the City. If disruptions by the owner, children, pets and/or unauthorized third parties are constant or consistent during performance of this agreement, then the City shall have the right, in its sole discretion, to stop work and immediately terminate this agreement, except that the avigation easement shall remain in full force and effect. Upon termination, pursuant to this paragraph, the City shall be released from all further obligations and liabilities under this agreement.

ARTICLE VIII. FORBEARANCE FROM SUIT

A. Owner shall not make any claim or bring any cause of action against the City, its employees, agents, officers, boards and commissions, in connection with or arising out of the work contemplated by this Agreement.

B. In addition to the limitations resulting from the terms and conditions of the "Avigation Easement", Owner understands and agrees not to bring any actions against the City, its employees, officers or agents, including inverse condemnation suites or any claim for damages arising from noise or other nuisances connected in any way with the existence or operation of the Airport.

Moreover, Owner agrees that this Agreement may not be used as an admission of liability or recognition or responsibility by the City for aircraft noise.

ARTICLE IX. SPECIAL PROVISIONS

A. The term “Director”, as used in this Agreement, unless otherwise qualified, shall mean and include the City of Cleveland’s Director of the Department of Port Control or such Director’s duly authorized representative(s) as may be designated from time to time.

B. The City in no way warrants that the improvements offered pursuant to this Agreement will effectively reduce noise within the structure(s) located on the Property. Further, the City makes no warranties, express or implied, with respect tot he work to be accomplished, the product(s) to be installed or the design of the improvements; this exclusion includes, but is not limited to, warranties or merchantability.

ARTICLE X. SEPARABILITY

Each provision of this Agreement shall be deemed independent of all other provisions herein, and should any provision of this Agreement be declared invalid, all other provisions hereof shall remain valid and enforceable.

ARTICLE XI. MISCELLANEOUS

A. This Agreement contains the entire Agreement of the parties, and no change in or modification, termination or discharge of this Agreement in any form whatsoever shall be valid or enforceable unless it is in writing and signed by both parties to be charged therewith.

B. The City may make changes to Owner-approved plans and specifications as deemed necessary by the City due to unforeseen conditions causing a change in the scope of work or a substitution of materials or methods. Any such changes in the plans and specifications are subject to the approval of the Owner, which approval shall not be unreasonably withheld, conditioned or delayed. Changed or modified plans and specifications shall e attached hereto and incorporated herein, and shall supersede any and all previous plans and specifications.

C. The Owner represents to the City that there are no other title-holders to the Property described in Exhibit “A”.

D. Written acceptance by the City of the work associated with the acoustical modifications and improvements will constitute final completion of the Project.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above written.

Signed and acknowledged in
The presence of:

CITY OF CLEVELAND

Director's Witness

By: _____
Director of Port Control

Director's Witness

Date: _____

Owner's Witness

By: _____
Owner

Social Security Number

Owner's Witness

By: _____
Owner

Social Security Number

Date: _____

The legal form and correctness of the
Within instrument are hereby approved.

Cornell P. Carter
Director of Law

By: _____
Assistant Director of Law

Date: _____

EXHIBIT "A"

**CLEVELAND HOPKINS INTERNATIONAL
PHASE 2 RESIDENTIAL SOUND INSULATION PROJECT**

Owner: «OWNER_FULLNAME» & «CO_OWNER_FULLNAME»

Mailing Address: «OWNER_MAIL_STREET_NUM_ADDR»
«OWNER_MAIL_CITY», «OWNER_MAIL_STATE» «OWNER_MAIL_ZIP»

Residence: «HOME_STREET_NUM_ADDR»
«HOME_CITY», «HOME_STATE» «HOME_ZIP»

PPN: «PPN»

LEGAL DESCRIPTION

«DEED_TEXT»

EXHIBIT “B”

EASEMENT AND COVENANTS RUNNING WITH THE LAND

P.P.N. : «PPN»

1. This easement is conveyed from the undersigned (hereinafter “Grantor”) to the City of Cleveland (hereinafter “City”), a municipal corporation in the State of Ohio, acting by and through its Department of Port Control, division of Cleveland Hopkins International Airport (hereinafter “Grantee”).
2. Grantor is the owner in fee of the land and improvements thereto located at «HOME_STREET_NUM_ADDR» in the City/Township of «HOME_CITY», County of Cuyahoga, State of Ohio and described as follows:

«DEED_TEXT»

3. The City is the proprietor of the Cleveland Hopkins International Airport.
4. Grantor, Grantor’s heirs, executors, administrators, successors, and assigns, in consideration of the City’s agreement to assist with certain modifications and installations on the Premises for noise-impact reduction purposes, conveys and warrants to the City, its successors and assigns, a permanent, non-exclusive and perpetual easement for the free and unobstructed use, passage, operations and effects thereof of all types of aircraft (as hereinafter defined) through the airspace over or in the vicinity of the Premises, with such use and passage to be unlimited as to frequency, type of aircraft, and proximity. Said easement shall be appurtenant to and for the benefit of the real property now commonly known as Cleveland Hopkins International Airport (“Airport”), including any additions thereto wherever located, hereafter made by the City or its successors and assigns and for the benefit of the City, its successors, assigns, guests and invitees, including any and all persons, firms or corporation operating aircraft to or from Airport. As further provided in Paragraph 5 below, said easement and burden, together with the Easement level for day/night average sound level at the parcel (as defined in Paragraph 5 below) and noise associated conditions, which may be alleged to be incident to or to result from flights of aircraft over or in the vicinity of the Premises or in landing at or taking off from the Airport, shall constitute permanent burdens on the Premises. The burdens and conditions described within this easement shall run with the land and be binding upon and enforceable against all successors in right, title or interest to said real property. Grantor furthermore waives all damages and claims for damages caused or alleged to be caused by or incidental to such activities.
5. The Easement Level for day/night average sound level as that term is used in Paragraph 4 shall be determined by reference to the City’s current Federal

Aviation Administration (hereinafter "FAA") accepted noise contour map showing noise contours at intervals of five decibels day/night average sound level (DNL), between 65 DNL and 75 DNL, with each five decibel increase constituting a new range. The base range for this parcel has been determined from the contour to be 65 DNL to 75 DNL. The Easement Level shall not be deemed to be exceeded unless Grantor, their assigns or successors, so claiming, establishes that the DNL as defined herein has increased by a DNL which causes a higher DNL range for the property. The provisions of this Easement shall not apply during any period of time in which the Easement Level exceeds 75 DNL. Any change in the DNL, as reported on a contour map, which reflects a change in DNL which results from the temporary increased use of certain runways, due to construction or repair of other runways, or due to any other cause or causes beyond the control of the City (e.g. weather or wind conditions, but not flight pattern shifts authorized by the FAA) shall not be used to compute the DNL imposed on Grantor's property for the purposes of Paragraph 4, above.

6. Grantor releases and forever discharges all claims, suits and actions against the City regarding aircraft noise and vibrations which interfere with use and enjoyment, and any consequent reduction in market value, all due to the operation of aircraft to and from the Airport upon Grantor's property.
7. As used herein, the term "aircraft" shall mean any and all types of aircraft, whether now in existence or hereafter manufactured and developed, and shall include, but is not limited to, jet aircraft, propeller-driven aircraft, civil aircraft or vehicles now in existence or hereafter developed for the purpose of transporting persons or property through the air.
8. Grantor covenants that Grantor is the owner in fee simple of the Premises, and that at the time of signing this Avigation Easement, Grantor has full ownership rights and powers to convey this easement free and clear from all other grants, bargains, sales, liens, taxes, assessments and encumbrances of whatever kind or nature, and Grantor covenants with the City, its successors, and assigns, to warrant and forever defend against all and every persons claiming any right or title adverse to the easement herein granted.
9. Except as provided in this easement, this easement shall neither enlarge nor diminish any rights of either party existing prior to the date of this easement as provided by law.
10. In the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, 2001.

Signed and acknowledged
In the presence of:

Witness 1

Homeowner

Witness 2

Homeowner

STATE OF OHIO)
) SS
COUNTY OF CUYAHOGA)

On this ____ day of _____, _____, before me, the undersigned Notary Public, in and for said County and State personally appeared

_____ known to me to be the person or persons whose names are subscribed to the foregoing instrument, and acknowledged that the same was executed and delivered as their free and voluntary act for the purposes herein set forth. Who being duly sworn, did say that he/she/they is the owner of the premises described in this instrument and the individual(s) acknowledged to me that he/she/they has read the Avigation Easement and fully understand its content.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first written in this certificate above.

Notary Public

My commission expires:

Exhibit “C”

AUTHORIZATION TO PROCEED

I, «OWNER_FULLNAME» and «CO_OWNER_FULLNAME», referred to as “Owner” herein, have reviewed and approved the final design plans and detailed specifications (which approval is indicated by my signature thereto) as prepared at the request of the Department of Port Control, City of Cleveland and hereby agree to participate in the Phase 2 Residential Sound Insulation Project and authorize the City to proceed with all work necessary to complete the Sound Insulation Project as related to my Property. My property is hereby available for the City to proceed with the modifications recommended in the plans and detailed specifications to be constructed, installed and implemented in accordance with the terms and conditions of the Agreement entered into the City.

OWNER(S)

STATE OF OHIO)
) **SS:**
COUNTY OF CUYAHOGA)

On this ____ day of _____, 20__ before me the undersigned Notary Public in and for said County and State, personally appeared

Known to be to be the person or persons whose names are subscribed to the foregoing instrument, and acknowledged that the same was executed and delivered as their free and voluntary act for the purposes herein set forth.

In witness whereof I hereunto set my hand and official seal as of the date herein above stated.

Notary Public

