



## Homeowner Participation Agreement

This Quieter Home Program Homeowner Participation Agreement (this "Agreement") is made and entered into as of \_\_\_\_\_, **2020** (the "Effective Date"), by and between the San Diego County Regional Airport Authority (the "Authority"), and the person(s) described in Exhibit "1" attached hereto ("Homeowner"), with reference to the following facts:

- A. The Authority is the owner and operator of San Diego International Airport (the "Airport") and administers a residential sound attenuation program known as the Quieter Home Program (the "Program").
- B. Pursuant to the Authority's Federal Aviation Regulation Part 150 Noise Compatibility Study, approved by the Federal Aviation Administration ("FAA"), and the 9th Variance to Section 5012 of the Noise Standards (21 Cal.Code Regs., §§ 5000 *et seq.*), the Authority has developed the Program to construct in certain homes described in the Part 150 Study acoustical treatment improvements for the purpose of attempting to reduce interior noise levels in the Eligible Homes to Community Noise Equivalent Level ("CNEL") to 45 decibels or less in all Eligible Habitable Areas.
- C. The Authority has engaged Jones Payne Group (JPG) to develop an architectural design for the attenuation of your home. JPG or any other consultant engaged by the Authority to design the Program shall be referred to as "Consultant."
- D. Homeowner is the holder of legal title to real property and improvements located at: \_\_\_\_\_ and more particularly described in Exhibit "2" attached hereto (the "Premises"). The Premises constitute one of the Eligible Homes (as defined below).
- E. In order to participate in the Program, Homeowner is required to enter into this Agreement, execute the Quieter Home Program Grant of Avigation Easement and allow the Grant of Avigation Easement to be recorded against the Premises.
- F. Pursuant to the Program, the Authority desires to attempt to decrease aircraft-generated noise levels in Eligible Homes in the immediate Airport vicinity.
- G. Pursuant to the Program, Homeowner desires to reduce aircraft-generated noise levels within the Premises. Homeowner acknowledges that the Program is a genuine effort by the Authority to acoustically treat residences for purpose of reducing aircraft-generated noise levels within the Premises, consistent with Section 5014 of the Noise Standards (21 Cal.Code Regs. 5000, *et seq.*).

**NOW, THEREFORE**, in consideration of the mutual promises made and other consideration recited in this Agreement, the parties agree as follows:

**1. Definitions.** In addition to other terms defined throughout this Agreement, the following terms shall have the respective meanings:

- 1.1 “Acoustical Monitoring”** shall mean the pre- and post-acoustical testing which verifies and documents the aircraft noise levels present inside the home before and after Program Treatments have been completed to determine whether the specified acoustical criteria are met or exceeded.
- 1.2 “Alterations/Remodeling”** shall mean a construction project, or portion of a project or remodel, instigated solely by the Homeowner aside and separate from Program Treatments under the Quieter Home Program, comprising revisions within or to prescribed elements of an existing structure, as distinct from additions to an existing structure; remodeling.
- 1.3 “Avigation”** shall mean the airborne operation and navigation of aircraft.
- 1.4 “Code Deficiencies”** shall mean one or more conditions in the Premises that are in violation of the building code of the City of San Diego (the "City"), the existence of which could prevent issuance of permits by the City for construction of the Program Treatments.
- 1.5 “Community Noise Equivalent Level” or “CNEL”** shall mean the noise metric adopted by the State of California for evaluating airport noise. CNEL represents the average daytime noise level during a 24-hour day, adjusted to an equivalent level to account for the lower tolerance of people to noise during evening and nighttime periods relative to the daytime period.
- 1.6 “Consultant”** shall mean any company engaged by the Authority to assist in the design of the Program.
- 1.7 “Contractor(s)”** shall mean the general construction contractor and subcontractors selected by the Authority through the public procurement process to perform the construction work called for by the Program Treatments.
- 1.8 “Contractor Measurement Walkthrough”** shall mean the field inspection by the Contractor to measure the Premises for Program Treatments to order supplies, equipment, and materials for the Program.
- 1.9 “Design Approval Period”** shall mean the fourteen (14) - calendar day period immediately following the date of delivery to the Homeowner of the

Design Package.

- 1.10 **“Design Package”** shall mean a technical description of the work to construct or install the Program Treatments. The Design Package shall consist of the scope of work, window and door schedules, mechanical and electrical improvements, and reduced size architectural drawings of the Premises.
- 1.11 **“Eligible Habitable Room”** shall mean any living, sleeping, eating, or cooking area per FAA Advisory Circular 150/5000-9, entitled “Guidelines for the Sound Insulation of Residences Exposed to Aircraft Operations”, as may be amended. Examples include the living room, dining room, kitchen, den or recreation room, and all bedrooms.
- The following are not Eligible Habitable Areas: bathrooms; closets; halls; hallways; vestibules; foyers; stairways; unfinished basements; storage or utility spaces; or areas that are not allowed under the California State Building Code, California Health and Safety Code, or other applicable local building codes.
- 1.12 **“Eligible Homes”** shall mean those homes that are eligible for participation in the Quieter Home Program as defined in the 2008 Variance Decision for the Airport that was issued by the California Department of Transportation, Division of Aeronautics (“Department”) on June 11, 2008.
- 1.13 **“Final Completion Date”** shall mean the date on which written notification is issued to the Homeowner that the construction of the Program Treatments has been completed.
- 1.14 **“Final Completion of the Homeowner’s Code Deficiency Repairs”** shall mean the date on which the construction plans and specifications have been completed and all necessary approvals for the Homeowner’s Code Deficiency Repairs have been obtained from the applicable governmental agencies.
- 1.15 **“Homeowner”** shall have the meaning given to such term in the first paragraph of this Agreement.
- 1.16 **“Homeowner’s Code Deficiency Repairs”** shall mean work performed, or caused to be performed, by Homeowner at its sole expense to correct *Code Deficiencies*.
- 1.17 **“Life/Safety Violations”** shall mean any condition in or around the Premises that in the opinion of the Authority, City of San Diego, or Consultant renders the Premises unsafe for construction of the Program Treatments including, but not limited to, termite, mold or fungus damage or infestation. Upon discovery of a Life/Safety Violation all Program work will immediately cease until the condition has been corrected by the Homeowner to the satisfaction of the Authority or Consultant.

- 1.18 **“Premises”** shall have the meaning given to such term in Exhibit 2 of this Agreement.
- 1.19 **“Program Treatments”** shall mean acoustical treatment improvements identified to be provided to Eligible Home(s) for purposes of attempting to reduce the interior noise level in the eligible home(s) to Community Noise Equivalent Level (“CNEL”) of 45 decibels (“dB”) or less in all Eligible Habitable Areas.
- 1.20 **“Quieter Home Program”** or “the Program” shall mean the work to design, construct and test Program Treatments to the Premises for purposes of attempting to reduce interior noise levels to CNEL 45 decibels or less in all habitable rooms, including, as may be required for permitting purposes, the removal and/or remediation of asbestos or lead-based paint materials in the Premises to the extent required to construct or install the Program Treatments.
2. **Program.** Homeowner agrees to participate in the Program, upon the terms and subject to the conditions set forth in this Agreement.
3. **Authority Access.** Homeowner shall permit the Authority and its officers, employees, agents, representatives, designees, Consultant, and Contractors (collectively, “Representatives”), access to all interior and exterior areas of the Premises for purposes of inspecting, measuring, and otherwise undertaking any actions necessary for the Program. Homeowner shall grant the Authority or its Representatives access to the Premises both prior to and after completion of construction for the purpose of conducting Acoustical Monitoring. The Authority or its Representatives shall provide reasonable notice to Homeowner prior to entering the Premises to conduct any preliminary work and construction. The Homeowner shall make reasonable efforts to cooperate with the Authority or its Representatives to make all portions of the Premises accessible to fully complete the goals of the Program, including pre- and post construction Acoustical Monitoring as defined in paragraph 1.1. The Homeowner agrees not to interfere with the Authority or its Representatives during its activities at the Premises and shall not engage in any activities that are unlawful under state or federal law, or that harass, annoy, or hinder the ability of the Authority or its Representatives from performing actions necessary for the Program. Access to the Premises by the Authority or its Representatives is limited to the time frame necessary to complete the applicable Program Treatments and Acoustical Monitoring. Before the construction called for by the Program is commenced, Homeowner shall remove from the construction areas all valuables and fragile personal property such as figurines, jewelry, pictures, and other like items, and, window coverings or treatments such as blinds, shutters, drapes and associated hardware. The Authority and its Representatives shall have no liability or responsibility for any such aforementioned items not removed from the construction areas.

- 4. Existing Conditions Inspections, Surveys and Tests.** The Consultant and the Contractors, at the Authority's sole expense, may conduct inspections, surveys, and tests, as necessary, of the existing conditions of the Premises to identify the following: (i) Program Treatments that will be provided to the Premises in an attempt to provide an interior noise level in the Premises that satisfies the interior noise level CNEL requirement of 45 dB or less in all Eligible Habitable Areas, including, as may be required for permitting purposes, the removal and/or remediation of asbestos or lead-based paint materials in the Premises to the extent required to construct and install the Program Treatments; and (ii) Code Deficiencies. The Consultant shall notify Homeowner in writing within approximately four (4) weeks of the completion of the above-referenced inspections, surveys, and tests if any Code Deficiencies were discovered as a result thereof. If no Code Deficiencies are discovered during such inspections, surveys, and tests, the Consultant shall, within approximately sixty (60) days of the completion of the above-referenced inspections, surveys, and tests, prepare and deliver the Design Package to the Authority and Homeowner. If Code Deficiencies are discovered during, or as a result, of such inspections, surveys, and tests, the Consultant shall not prepare the Design Package until after final completion of the Homeowner's Code Deficiency Repairs. Upon final completion of the Homeowner's Code Deficiency Repairs, the Consultant shall, as soon as practicable thereafter, prepare and deliver the Design Package to the Authority and Homeowner, at which time the Eligible Home shall be added to the Program.
- 5. Review and Meeting Attendance.** Homeowner shall review all written materials prepared by the Authority for the Homeowner, including, without limitation, the Authority's Homeowner Handbook (the "Homeowner Handbook"), and shall attend all meetings requested by the Authority relating to the Program. By entering into this Agreement, Homeowner acknowledges receipt, review and agreement with the Homeowner Handbook.
- 6. Program Costs.** In consideration for the Homeowner's grant to the Authority of a perpetual avigation easement, as described below in paragraph 8, the Authority agrees to pay one hundred percent (100%) of the FAA-eligible costs of the Program Treatments to the Premises, and to allow Homeowner to participate in the Program, subject to any limitations or conditions described in this Agreement. Homeowner agrees and acknowledges it will comply with and follow all procedures of the Program.
- 7. Right to Terminate.** The Authority and Homeowner each shall have the right to terminate this Agreement at any time before or during the Design Approval Period, in which event the provisions of Section 16.1 shall apply. Termination by the Authority or Homeowner may be for any reason whatsoever, including, in the case of termination by Homeowner, Homeowner's decision not to construct Homeowner's Code Deficiency Repairs as required pursuant to Section 9.1 of this Agreement. Termination shall be effected by delivering to the other party written notice of termination. If neither party elects to terminate this Agreement, both parties shall be deemed to have approved: (i) the Design

Package; (ii) the Program Treatments; (iii) the costs of the Program Treatments as they may apply; and (iv) the milestones required for construction of the Program Treatments.

8. **Avigation Easement and Subordination Agreement.** Concurrently with the execution and delivery of this Agreement, and in consideration for participating in and receiving the benefits of the Program, the Homeowner agrees to grant to the Authority a full and unrestricted perpetual easement for avigation purposes, including a waiver of any noise-related costs or damages (the "Avigation Easement"), and shall execute and deliver to the Authority the Grant of Avigation Easement (the executed Avigation Easement is incorporated herein by this reference). The Authority shall be entitled to record the Grant of Avigation Easement against the Premises in the Official Records of San Diego County, California, at any time from and after the execution and delivery of this Agreement and Design Package to the Authority by Homeowner. Both the Authority and Homeowner acknowledge that the work performed under the Program is to be undertaken in consideration of the Avigation Easement. If this Agreement is terminated for any reason prior to the Contractor measurement walk-through of the Premises, the Authority shall take all actions (including execution of a quitclaim deed to Homeowner) necessary to terminate the recorded Grant of Avigation Easement. If this Agreement is terminated at any time thereafter, then the Grant of Avigation Easement shall continue in full force and effect, notwithstanding termination of this Agreement.

9. **Construction of Program Treatments.**

9.1 **Homeowner Obligations.**

- 9.1.1 **Code Deficiencies and Life/Safety Violations.** In the event Code Deficiencies are found in the Premises, Homeowner, at Homeowner's sole expense, shall: (i) within sixty (60) days after the date of the Consultant's letter advising Homeowner of the existence of Code Deficiencies, prepare or cause to be prepared construction plans and specifications and apply for and obtain building permits from the applicable governmental agency for the Homeowner's Code Deficiency Repairs; and (ii) within six (6) months after the date of such Consultant's letter, construct the Homeowner's Code Deficiency Repairs and obtain all necessary approvals from the applicable governmental agency to evidence said completion. All costs of the Homeowner's Code Deficiency Repairs shall be the sole responsibility of Homeowner. In the event Life/Safety Violations are found in or around the Premises, Contractor shall immediately cease work and Homeowner, at Homeowner's sole expense, shall (i) within sixty (60) days after the date of the Consultant's written notice advising Homeowner of the existence of Life/ Safety Violations, advise the Consultant in writing of its course of action to correct the Life/Safety Violation

or correct the Life/ Safety Violation and (ii) within six (6) months after the date of such Consultant's letter, repair the Life/Safety Violation. If the construction plans and specifications for the Homeowner's Code Deficiency Repairs are not completed or building permits are not obtained or Life/Safety Violations are not repaired within sixty (60) days after the date of such Consultant's letter, this Agreement shall terminate automatically, in which event the provisions of Section 16.1 shall apply, unless both parties mutually agree in writing to continue this Agreement in effect, in which event this Agreement shall continue in full force and effect. If final completion of the Homeowner's Code Deficiency Repairs or completion of the repairs of the Life/Safety Violations does not occur within six (6) months after the date of such Consultant's letter, the Authority shall have the right to terminate this Agreement, in which event the provisions of Section 16.1 shall apply. In the event that this Agreement is terminated under this Section 9.1.1, Homeowner acknowledges that California Department of Transportation Noise Standards (21 Cal.Code Regs. §5014) provide that the Premises shall be deemed to be a compatible use with the Airport.

**9.1.2 No Program Treatment Alterations.** Homeowner accepts all work itemized in the Design Package and shall not request the Consultant, the Contractors, or any other contractor to alter, modify, or make changes to any of the plans or specifications for any of the Program Treatments, nor shall any requested change, alteration, or modification be made without the prior written approval of the Authority and, in some instances, reimbursement by Homeowner. Following execution and delivery of this Agreement by Homeowner and continuing until the Final Completion Date, Homeowner shall not make any material alterations, modifications, or changes to the Program Treatments without the prior written approval of the Authority. In the event Homeowner makes any such alterations, modifications, or changes without the prior written approval of the Authority, the Authority's obligations under this Agreement shall immediately cease until such approval is given by the Authority. If the Authority disapproves such alteration, modification, or change, then the Authority shall have the right to terminate this Agreement immediately.

**9.1.3 No Alterations/Remodeling.** Homeowner agrees to not cause or schedule a private contractor or contractors to begin any type of alterations or remodel to the premises during the course of Program Treatments. Alterations or remodel shall include interior and/or exterior painting; carpet cleaning and/or replacement; wood, linoleum, tile and/or other floor cleaning or replacement; driveway, patio, deck or other outdoor work; and,

any miscellaneous projects not directly related to the Program Treatments that may affect the Program Contractors' work flow or schedule.

## **9.2 Authority's Obligations**

**9.2.1 Work.** After expiration of the Design Approval Period (unless either party has terminated this Agreement before or during the Design Approval Period), the Consultant, the Contractors, or any other contractor, as the case may be and at the Authority's expense, shall: (i) prepare construction plans and specifications and construction bid documents and apply for and obtain building permits from the applicable governmental agency for the Program Treatments; (ii) construct the Program Treatments; and (iii) upon completion of construction of the Program Treatments, obtain all necessary approvals from the applicable governmental agency to evidence said completion. Homeowner hereby appoints the Authority as Homeowner's agent with authority to obtain such approvals and to execute and record a notice of completion or similar document with respect to the Program Treatments. The Contractors shall engage and enter into subcontracts with subcontractors as necessary in connection with the construction of the Program Treatments. Nothing in this Agreement shall obligate the Authority or the Contractors to inspect or fumigate the Premises, or otherwise remediate, any known or unknown termite, fungus or mold infestation in or around the Premises, which shall be the sole responsibility and cost of Homeowner. Furthermore, the Program Treatments shall not include painting of the interior or exterior of the Premises, except such incidental painting as may be necessary in areas where construction was performed. Additional painting beyond these limits, if desired by Homeowner, shall be the sole responsibility and cost of Homeowner.

**9.2.2 Termination.** If the building permits for the Program Treatments are not obtained for any reason other than a default by the Authority, the Consultant, or the Contractors, the Authority May terminate this Agreement, in which event the provisions of Section 16.1 shall apply, unless the parties mutually agree in writing to continue this Agreement in effect, in which event this Agreement shall continue in full force and effect.



**9.2.3 Ownership.** The Authority shall notify Homeowner in writing when construction of the Program Treatments has been completed. All Program Treatments shall become the property of Homeowner on the Final Completion Date and shall be deemed accepted by the Homeowner on that date.

**9.2.4 Change Orders.** If the Authority, the Consultant, or the Contractors determines in good faith that the schedule or the specifications set forth in the Design Package should be modified (including, without limitation, with respect to materials, design, location of equipment, schedule of work, or estimated time of completion of the Program Treatments), then Homeowner shall not unreasonably withhold its consent to such modification(s), and shall execute and deliver all documents reasonably necessary to evidence such consent.

**10. Partial Release/Insurance.** In consideration of the Authority's payment of Program costs on the Homeowner's behalf, the Homeowner agrees that the Authority and its Representatives shall not be liable for, and further waives and releases the Authority and its Representatives from, all claims for losses, costs, expenses, and damages of any kind, for any injury (including death) to any person or for damage to any property sustained, or alleged to have been sustained, as a result of, arising from, or in connection with the Program including, but not limited to termite, mold, or fungus damage or infestation in or around the Premises. The Homeowner warrants that it has obtained and will maintain and, upon request, shall furnish satisfactory proof of personal liability insurance covering the Premises, in order to defend the Homeowner from liability. The insurance obtained and maintained by Homeowner shall also be provided for physical damage to the Premises in an all-risk format. The Homeowner's release and its obligations under this paragraph shall survive any termination of this Agreement and completion of any part of the Program. Nothing in this paragraph shall be construed to waive Homeowner's right to proceed against independent contractors and their officers, consultants, representatives, employees or agents.

**11. Hours of Work, Children and Pets.** The inspections, surveys, tests and construction work required to be performed by the Consultant, or the Contractors as described in this Agreement shall be performed between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding federal holidays, and may be performed at the sole discretion of the Contractor, on Saturday, Sunday and federal holidays between the hours of 8:00 a.m. and 5:00 p.m. Homeowner or his or her designated adult representative shall be present when any construction work is being performed, and Homeowner's pets, if any, shall be removed and isolated away from the construction areas by Homeowner. The Consultant and the Contractors will attempt to keep Homeowner reasonably informed about the progress of construction of the Program Treatments but the Authority and its Representatives shall not be responsible to the Homeowner for any expenses, costs, or damages incurred

or alleged to have been incurred by the Homeowner due to delays in the progress of construction. Homeowner shall not permit any minor children to be present in the Premises without the supervision of Homeowner or another adult when any employees, agents, representatives, or subcontractors of the Authority, the Consultant, or the Contractors are in or on the Premises.

- 12. Maintenance and Alterations.** From and after the Final Completion Date, Homeowner, at Homeowner's sole expense, shall maintain the Program Treatments, the Homeowner's Code Deficiency Repairs, if any, and Life/Safety Violation repairs, if any, in good condition and repair, ordinary wear and tear excepted, subject to the warranties described in Section 13. Homeowner shall not deliberately or willfully take any action to reduce or destroy the effectiveness of the Program Treatments during the useful life of the Program Treatments, including, but not limited to, the removal of any Program Treatments. In addition, the Homeowner shall not make any repairs, alterations, or improvements to any of the Program Treatments, including removal of any of the Program Treatments that would result in the interior noise level of the Premises exceeding the Program described level reduction criteria requirement, or the violation of any provision of the building code of the City. In the event the Homeowner deliberately or willfully acts to reduce or destroy the effectiveness of the Program Treatments during the useful life of such Program Treatments, Homeowner waives and releases any claims against the Authority for adverse noise impacts. This obligation shall remain in effect throughout the useful life of the Program Treatments, but not to exceed twenty years from the date the Authority accepted federal aid for the Quieter Home Program.
- 13. Warranties.** The contract between the Authority and the Contractors shall include a provision obligating the Contractors to repair or replace any and all defects in the Program Treatments for one (1) year after the Final Completion Date. In addition, the contract between the Authority and the Contractors shall require the Contractors to assign to Homeowner any and all warranties of manufacturers and suppliers applicable to the Program Treatments. At Homeowner's sole expense, Homeowner shall repair or replace any and all defects in the Program Treatments after the expiration of the applicable warranty period described above. Contractor warranties shall terminate automatically if Homeowner makes any repairs, alterations, or improvements to the Program Treatments, including removal of any of the program Treatments, during the applicable warranty period.
- 14. Title.** Homeowner represents and warrants to the Authority that: (i) Homeowner holds legal and equitable fee simple title to the Premises and the real property upon which the Premises are located; (ii) Homeowner has all necessary power and authority to execute and deliver the Grant of Avigation Easement and to convey the interest described therein; (iii) no consent or signature of any third party is necessary to convey the interest described in

the Grant of Avigation Easement; and (iv) there are no other owners of the Premises or the real property upon which the Premises are located. 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 upon which the Premises are located; (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 Premises or the real property upon which the Premises are located, regardless of whether or not the lender thereunder initiates foreclosure proceedings; or (d) dies, divorces, or changes his, her, or its name, then the Authority's obligations under this Agreement shall immediately cease until Homeowner (or any successor owner of the Premises or the real property upon which the Premises are located) provides to the Authority evidence satisfactory to the Authority in its sole discretion that all persons having or acquiring in the future any right, title, or interest in or to the Premises or in or to the real property upon which the Premises is located shall have assumed in writing or shall otherwise have agreed to be bound by the provisions of this Agreement and the Grant of Avigation Easement. If any of the events described in subsections (a)-(d) above, occurs following commencement of construction of the Program Treatments, the Grant of Avigation Easement shall continue in full force and effect notwithstanding such occurrence. Homeowner hereby consents to, and agrees to take all necessary actions to facilitate the recording by the Authority of a request for notice of default by the Homeowner.

- 15. Damage and Destruction.** If all or any part of the Premises is destroyed or damaged by fire, earthquake, or other casualty prior to commencement, or during construction, of the Program Treatments, then the Authority and Homeowner each shall have the right to terminate this Agreement by delivering to the other party written notice thereof within thirty (30) days following the occurrence of such damage. If either party elects to terminate this Agreement pursuant to this Section 15, then the provisions of Section 16.1 shall apply. If neither party elects to terminate this Agreement pursuant to this Section 15, then Homeowner shall, at Homeowner's sole expense, promptly repair such damage, and this Agreement shall continue in full force and effect, provided, however, that any time periods required for the performance of any obligation shall be extended during the period required for Homeowner to repair such damage. Notwithstanding the foregoing provisions of this Section 15, if Homeowner fails to commence the repair of said damage within forty-five (45) days from the occurrence of said damage or, in the Authority's reasonable opinion, thereafter fails diligently to perform and complete said repair, the Authority shall have the right to terminate this Agreement by delivering to Homeowner written notice of termination and in such event the provisions of Section 16.1 shall apply.

## **16. Termination.**

**16.1 Termination Without Cause.** If this Agreement is terminated in accordance with the terms and conditions of Sections 7, 9.1.1, 9.2.2 or 15, then: (i) the Authority, the Consultant, and the Contractors shall have no further obligation to perform any inspections, surveys, tests or construction work described in this Agreement; (ii) Homeowner shall have no rights or interest under this Agreement or in the Program; and (iii) neither party shall have any further obligation or liability under this Agreement or with respect to the inspections, surveys, or tests described in this Agreement. Notwithstanding the previous sentence, if this Agreement is terminated by Homeowner pursuant to Section 7 solely as a result of Homeowner's decision not to make the Homeowner's Code Deficiency Repairs, or if this Agreement is terminated by the Authority pursuant to Section 9.1 as a result of Homeowner's failure to obtain timely building permits for the Homeowner's Code Deficiency Repairs or to complete timely the Homeowner's Code Deficiency Repairs, and Homeowner subsequently completes the Homeowner's Code Deficiency Repairs and satisfies all other eligibility requirements, Homeowner shall again be eligible for participation in the Program. The Grant of Avigation Easement shall remain in full force and effect following any termination of this Agreement pursuant to this Section 16.1, except as provided above in Section 8.

**16.2 Termination For Cause.** If Homeowner fails to comply with any of the terms and conditions of this Agreement, then the Authority may terminate this Agreement. Authority shall notify Homeowner in writing of its intent to terminate this Agreement pursuant to this Section 16.2 and allow the Homeowner forty-eight (48) hours to cure or correct the items outlined in the notice. If the Homeowner fails to cure or correct the items within that time period, then the Authority may immediately terminate this Agreement and Homeowner shall reimburse the Authority for all costs incurred by the Contractors and Authority with respect to the Premises, including, but not limited to, the costs of supplies, equipment, labor and materials. The Grant of Avigation Easement shall remain in full force and effect following any termination of this Agreement pursuant to this Section 16.2.

**17. Moving Out of or Vacation of Premises.** The Authority is administering a costly program, the success of which depends upon the commitment and cooperation of the participants. The Homeowner acknowledges that moving out of the Premises prior to the Final Completion Date could cause a disruption to the construction work on the Premises and to the Program. Therefore, the Homeowner agrees to use best efforts to avoid moving out until the work is completed. If the Homeowner must move out of the Premises before the Final Completion Date, then Homeowner shall immediately notify the Authority in order to arrange for completion of the Program Treatments. If the Homeowner enters

then Homeowner shall disclose to the prospective purchaser the Avigation Easement. If Homeowner conveys the Premises prior to recordation of the Avigation Easement, this Agreement shall terminate pursuant to Section 16.2 and Homeowner shall reimburse the Authority for all costs incurred by the Contractors and Authority with respect to the Premises, including, but not limited to, the costs of supplies, equipment, labor and materials.

- 18. Arbitration of Disputes.** The parties agree to resolve any claims, disputes, or controversy that the parties cannot resolve themselves arising from the Program or this Agreement of any kind or nature regardless of when the dispute first arose or the nature of the relief sought exclusively through binding arbitration. The arbitration shall be administered by and conducted at the San Diego Office of the Judicial Arbitration and Mediation Services ("JAMS") in accordance with JAMS Streamlined Arbitration Rules ("JAMS Rules"), unless otherwise agreed by both parties, and the laws of the State of California. The arbitrator shall apply the same substantive law, with the same statutes of limitations and same remedies that would apply if the claims were brought in a court of law.

**18.1** The following supplemental rules shall apply to all arbitration proceedings and shall govern in the event of a conflict between the rules set forth below and the JAMS Rules: (a) The arbitrator shall be a retired judge of the California Superior Court, a California Court of Appeal, or the California Supreme Court; (b) If state or federal law requires the Homeowner to take steps or procedures before commencing an action in court, then the Homeowner shall be required to take such steps or follow such procedures, as the case may be, before commencing the arbitration including, but not limited to, requirements of the California Tort Claims Act; (c) The Authority and Homeowner, to the extent either such party is defending a claim in the arbitration, may have any necessary and appropriate parties included as parties to the arbitration; (d) All parties must be represented by counsel; (e) The parties have a right to conduct an inspection, examination, and/or test of any Premises defect, personal injury, or property damage relevant to any claim in arbitration; (f) The California Evidence Code shall apply to the arbitration; (g) Judgment on the award may be entered by any court having jurisdiction; (h) The arbitration may allocate all of the costs of the arbitration including the fees of the arbitrator against the party who did not prevail.

**18.2** NOTICE: BY INITIALING IN THE SPACE BELOW, YOU (HOMEOWNER AND THE AUTHORITY) AGREE TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY

INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION AGREEMENT IS VOLUNTARY.

I/WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION.

**AUTHORITY'S INITIALS:** X \_\_\_\_\_

**HOMEOWNERS' INITIALS:** X \_\_\_\_\_X\_\_\_\_\_

#### **19. Miscellaneous.**

- 19.1 Integration.** This Agreement, including the Exhibits attached hereto and made a part hereof, constitutes the entire agreement of the parties and supersedes all prior and contemporaneous negotiations, understandings, and agreements of the parties with respect to the Program.
- 19.2 Severability.** If any term, condition, or provision of this Agreement is declared illegal or invalid for any reason by a court of competent jurisdiction, the remaining terms, conditions and provisions nevertheless shall remain in full force and effect.
- 19.3 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective grantees and permitted agents, heirs, successors, and assigns. Homeowner shall not have the right to assign this Agreement or any right or interest herein to any other person or entity, except to a purchaser of Homeowner's fee simple title to the Premises, including any lender that acquires title pursuant to a foreclosure of the Premises, as to which this Agreement shall be deemed an appurtenance. Any and all successors to Homeowner's fee simple title to the Premises, including any lender that acquires fee simple title pursuant to a foreclosure of the Premises, shall be bound by and obligated to perform all of the obligations of Homeowner under this Agreement that arise during the period said successor holds fee simple title to the Premises, which obligations shall be deemed to be covenants that run with the land for the benefit of the Authority, as owner of the Airport, or binding equitable servitudes that are part of a common plan of development of the Eligible Homes. In addition, any and all successors to Homeowner's fee simple title to the Premises, including any lender that acquires fee simple title pursuant to a foreclosure of the Premises, shall have any and all rights of Homeowner under this Agreement during the period said successor holds fee simple title to the Premises.

**19.4 Governing Law.** This Agreement shall be construed, interpreted, and applied in accordance with the internal laws of the State of California, without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the parties.

**20. Notices.** All notices required by this Agreement shall be in writing, and delivered in person or sent by certified mail, postage prepaid, return receipt requested, or via next-day package service. Notices required to be given to Authority shall be addressed as follows:

Quieter Home Program  
San Diego County Regional Airport Authority  
Airport Noise Mitigation Department  
2417 Winship Lane, San Diego, CA 92101  
Contact Person: Sjohnna Knack, Manager, Quieter Home Program

Notices required to be given to Homeowner shall be addressed to the person described in Exhibit "1" to this Agreement and sent to the Premises address, unless otherwise agreed in writing by the Parties. Notices required by this Agreement and the Design Package shall be deemed to have been received three (3) days after the date on which it was deposited in the United States Mail, or the day following the day on which the notice was delivered to a next-day package service for delivery.

**21. No Warranties.** The Authority will make all reasonable efforts to reduce the noise levels in the Premises that are part of the Program within the parameters of the Federal Aviation Administration's noise reduction goals (45 decibels CNEL or less in all Eligible Habitable Areas). However, the Authority does not represent or warrant that the Homeowner will experience any improvement in the noise levels within the Premises as a result of any work undertaken as part of the Program. The Authority will generally monitor progress for substantial compliance with plans and specifications; however, it makes no warranties as to, and disclaims any responsibility or liability for, the manner or quality of the work undertaken or materials supplied as part of the Program. In addition, the Authority makes no warranties, express or implied, with respect to the work to be performed, the product(s) to be installed, or the design of the Program Treatments. The Authority also makes no warranties of fitness for a particular purpose, quality or use or warranties of merchantability with respect to the Program Treatments, or any components, fixtures or personal property installed with such Program Treatments.

**22. Potentially Historic Homes.** Homeowner understands and agrees that properties designated by the Quieter Home Program as "Potentially Historic" are done so for purposes of the Quieter Home Program only. A designation of "Potentially Historic" does not indicate nor ensure eligibility as a historically designated property on the local, state or national levels at a later date. Homeowner further understands and agrees that any improvements to the Premises, including, but not limited to Program Treatments, may impact its

eligibility for historical designation. The Parties agree that it is the responsibility of the Homeowner to contact the entity or entities responsible for respective historical designations prior to a decision to participate in the Quieter Home Program and that the Authority shall not be liable for any impact on the eligibility of the Premises as a result of participation in the Quieter Home Program.

23. **Special Power of Attorney.** If more than one person holds a share of the title to the Premises, a Special Power of Attorney may be signed by one or more title holders which shall designate one person to act on behalf of those titleholders signing the Special Power of Attorney during all phases of the Program.
24. **Modifications.** This Agreement shall not be changed or modified without prior written consent and agreement executed by all of the parties.
25. **Cost Reimbursement.** In the event that Homeowner withdraws from the Program after Design Review, Homeowner shall reimburse the Authority for all costs incurred by the Authority and Contractors with respect to the Premises, including, but not limited to, all labor costs incurred, and all costs of such supplies, equipment, and materials.
26. **Attorneys' Fees and Costs.** Each party shall bear its own attorneys' fees and costs (including, but not limited to, all expert/consultant investigative costs, witness fees, and other costs) in the event of any dispute arising from this Agreement.



IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date written on Page One of this Agreement.

**HOMEOWNER(S)**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

**SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY**

By: \_\_\_\_\_

Title: Brendan J. Reed,  
Director, Planning & Environmental Affairs

## **EXHIBIT "1": HOMEOWNER**

The following person(s) own/hold legal title to the Premises described in Exhibit "2" to this Quieter Home Program Homeowner Participation Agreement:

## **EXHIBIT "2": PREMISES**

The following described Premises, owned by or legal title held by the person(s) referenced in Exhibit "1" to this Quieter Home Program Homeowner Participation Agreement, constitutes an "Eligible Home," as defined by the Program:

and more particularly described as:

APN #