

Recording requested by: )  
)  
)  
SAN DIEGO COUNTY REGIONAL )  
AIRPORT AUTHORITY )  
)  
and when recorded mail to: )  
)  
)  
Office of Airport Authority Clerk )  
San Diego County )  
Regional Airport Authority )  
PO Box 82776 )  
San Diego, CA 92138-2776 )

) Space above this line for Recorder's use

ASSESSOR PARCEL #

**GRANT OF AVIGATION EASEMENT  
QUIETER HOME PROGRAM  
DOCUMENT TRANSFER TAX \$0**

**RECITALS:**

1. \_\_\_\_\_  
(provide complete legal name of all owners of record of subject property)

\_\_\_\_\_  
(state identity of property owner - e.g., single man/woman, husband and wife, a corporation)

"Grantor(s)", is (are) the owner(s), as \_\_\_\_\_  
(designate how title to property is held - e.g., joint tenants, community property)

of the fee simple estate in and to that certain real property situated in the County of San Diego,  
State of California, commonly described as

\_\_\_\_\_  
(provide street address and zip code of subject property)

and more particularly described as follows: (the "Subject Property");

2. It is the desire of Grantor(s), for itself, its heirs, administrators, executors, successors,  
assigns, tenants, guests, and other persons in or using the Subject Property with the implied or  
express consent of Grantor(s), to grant to the San Diego County Regional

Airport Authority, a local governmental entity of regional government (the "Authority"), an air and avigation easement, also known as a perpetual air, flight or noise easement, on, upon, over, across, above, or in the vicinity of the Subject Property, and to all of the airspace (as hereinafter defined) above the Subject Property, whereby Grantor(s) relinquishes certain rights relative to the Subject Property, as described in this Grant of Avigation Easement ("Avigation Easement");

3. The purpose of this Avigation Easement, and its acceptance by the Authority, includes granting the Authority an Avigation Easement permitting the unencumbered and unrestricted flight of aircraft to or from San Diego International Airport ("SDIA"), owned and operated by the Authority, without liability to the Authority, to the aircraft operator, or to any other person lawfully operating aircraft to or from SDIA in the navigable airspace of the United States (as defined at 49 U.S.C.S. §40102(a)(30), and as that section of the United States Code (and the referenced regulations) existed on the effective date of this Avigation Easement), and in accordance with relevant regulations of the United States of America and the State of California, pursuant to the authority granted to the Authority by the people and the State of California. As agreed upon by the parties, this Avigation Easement is calculated by reference to the SDIA Year 2000 noise contours plus 1.5 decibels ("dB") Community Noise Equivalent Level ("CNEL");

4. The Grantor(s) has entered into a Homeowner Participation Agreement with the Authority whereby the Authority has agreed to participate in, and provide specified financial support for, a residential sound attenuation program known as the Quieter Home Program (the "Program") for SDIA. The Authority's implementation of the Program will benefit Grantor(s) and the Subject Property by providing certain remedial sound attenuation construction on structures on the Subject Property as of the date of this Avigation Easement.

5. It is an express condition of participation in the Program that Grantor(s) execute and deliver to the Authority this Avigation Easement, which is intended to benefit Grantor(s), the Subject Property, the Authority, and all users of SDIA; and which shall be binding on Grantor(s) and all future owners, tenants, guests, occupants, and other persons in or using the Subject Property with the implied or express consent of Grantor(s).

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged:

#### **WARRANTIES AND COVENANTS**

Grantor(s) warrants and covenants to the Authority that as of the date hereof:

1. Grantor(s) holds the entire fee simple interest in the Subject Property;
2. Grantor(s) shall not convey (his/her/their/its) interest in the Subject Property, or execute, deliver, comply, or permit recordation of any interest in the Subject Property, or any lien or encumbrance against the Subject Property (or any interest therein), until the earlier of the following events: (i) this Avigation Easement has been properly executed by Grantor(s), accepted by the Airport Authority, and recorded by the San Diego County Recorder; or (ii) thirty (30) days have elapsed after Grantor(s) has delivered this Avigation Easement to the Authority, properly and fully executed and notarized.
3. If the person executing this Avigation Easement is other than the Grantor(s), the

person executing this Avigation Easement has represented to the Authority, in documentation separate from this grant, that he/she has been duly and lawfully authorized by Grantor(s) to execute this Avigation Easement on behalf of Grantor(s).

## **GRANT OF AVIGATION EASEMENT**

4. In consideration of the improvements to be made to the Subject Property through the Program, receipt of which is hereby acknowledged, and in consideration and incorporation into this Avigation Easement of the recitals set forth above, Grantor(s), individually and for the heirs, administrators, executors, tenants, guests, agents, successors, assigns, and other persons in or using the subject property with the implied or express consent of Grantor(s), hereby grants, conveys and assigns to the Authority, its successors, and assigns, a perpetual non-exclusive Avigation Easement and the right to enter or penetrate into or transmit through any airspace above, on or in the vicinity of the Subject Property for the unobstructed use, passage or operation of all types of aircraft and the right to create or generate all things and consequences to the Subject Property that may be, or may be alleged to be, incident to or resulting from the use and enjoyment of said airspace and any and all related aircraft and airport operations, including, but not limited to, those impacts and effects described in Section 5.

5. This Avigation Easement shall be for air navigation, airport operations, aircraft sound and noise, aircraft avigation and flight, hazard and air space in, to, over and through all air space above the Subject Property, as well as the imposition in, on, over, upon or in the vicinity of the Subject Property of noise, sound, vibration, fumes, fuel particles, dust, discomfort or other environmental effects incident to such aircraft operations and any and all resulting annoyance, inconvenience, or other interference with the use and enjoyment of the Subject Property and any consequent reduction in market value, all due to the operation of aircraft to and/or from SDIA, including landing at, taking off from, taxiing, maintenance, or other aircraft or related facility operations at or on SDIA.

6. This Avigation Easement is for the use of such airspace by any aircraft, present or future, in whatever form or type, during operations at, on, to, or from SDIA, including any future change to or increase in SDIA's boundaries and/or in the volume or pattern of aircraft traffic or aircraft noise, by all existing or future types of aircraft, up to and including the SDIA Year 2000 noise contours plus 1.5 dB CNEL, including the imposition on the surface of the Subject Property and on any and all structures on the Subject Property of such noise, vibration, fumes, fuel particles, dust, discomfort or other environmental effects incident to such aircraft operations and any and all resulting annoyance, nuisance, inconvenience, taking of or damage to the Subject Property, or any portion of the Subject Property, or other interference with the use and enjoyment of the Subject Property and any consequent reduction in market value. This Avigation Easement shall continue notwithstanding any future changes or increases in the type, volume, frequency, duration, or location of operations to, from or at SDIA.

7. This Avigation Easement also includes all things that may be alleged to be incident to or resulting from the use and enjoyment of this Easement, including, but not limited to, the Authority's continuing right to prevent, prohibit, clear, and keep clear from the airspace above the Subject Property any buildings, portions of buildings, structures or improvements of any kind, and of trees, vegetation, or other objects that may cause interference with aircraft navigation and/or operations at SDIA, including the right to remove or demolish those portions of such buildings, structures, improvements, trees, vegetation, or other objects

which extend into the airspace and, in the judgment of the Authority, may cause interference with aircraft navigation and/or operations at SDIA, and, at the discretion of the Authority, the right to mark and light, or cause or require to be marked and lighted, as obstructions or hazards to air navigation or aircraft operations, any and all buildings, structures, or other improvements, and trees, vegetation, or other objects, which extend into the airspace above the Subject Property. This Avigation Easement also includes the Authority's right of ingress to, passage within, and egress from the Subject Property to inspect the Subject Property, improvements or vegetation of any type on the Subject Property and, to remove any building, structure, other improvement, tree or vegetation (or portion thereof) which extends into the airspace in violation of this Section 7, or to install such lighting, or marking of any such improvement or vegetation as permitted by this Section 7; and for all other purposes described in this Section 7 at reasonable times and after reasonable notice.

8. As used in this Avigation Easement, 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 drawn aircraft, aircraft powered by other means, civil aircraft, military aircraft, commercial aircraft, helicopters and all types of aircraft or vehicles now in existence or hereafter developed for the purpose of transporting persons or property through the air, by whomever owned or operated.

9. As used in this Avigation Easement, the term "airspace" shall mean the entire area above those certain imaginary planes over the ground surface of the Property that are within the Federal Aviation Regulations (FAR) Part 77, ) and any and all successor revisions or regulations by the Federal Aviation Administration, any successor agency, or any other agency of the federal, state or local government of the United States exercising comparable authority.

10. It is expressly intended by Grantor(s) and the Authority that this Avigation Easement shall not supersede or impair any existing prescriptive, avigation, or other easements, rights, or interests of the Authority, or its predecessor in interest, in or applicable to the Subject Property, all of which easements, rights, interests, and any remedies related thereto are expressly reserved by the Authority.

11. In furtherance of this Avigation Easement, and rights herein granted, Grantor(s), and the heirs, administrators, executors, lessees, tenants, guests, permittees, agents, successors, and assigns of Grantor(s), hereby covenants at all times hereafter, that it/they will not take any action, cause or allow any electronic or other transmissions or emissions, construct or grow any obstruction, or discharge any fumes, dust or smoke on the Subject Property which would conflict or interfere with or infringe on the Authority's rights herein granted, or to otherwise impair the usability or function of SDIA.

12. The rights, easements, benefits, restrictions, covenants and agreements granted herein, including this Avigation Easement, shall continue notwithstanding any increase or other change in the type, boundaries, volume of operations, frequency, duration, noise, or pattern, location of air traffic to, from or at SDIA. This Avigation Easement may not be modified, amended, terminated, or abandoned except by execution and delivery of an instrument executed and acknowledged by the Authority, or its agents, successors, and assigns, and Grantor(s) agrees that, in the absence of such an instrument, no conduct or use of the Subject Property by Grantor(s) for any period of time shall be construed to establish prescriptive rights in Grantor(s) or its successors or assigns, nor shall any conduct by the Authority, or its agents, successors and assigns, or increase, diminution, or change in use of this Avigation Easement, or the operation or use of SDIA by Authority constitute an overburdening of this Avigation Easement or a termination or abandonment of this Avigation

Easement.

13. Grantor(s), and the heirs, agents, successors and assigns of Grantor(s), acknowledges and agrees that the certain Homeowner Participation Agreement between Grantor(s) and the Authority is hereby incorporated by this reference. A copy of the Homeowner Participation Agreement may be obtained from the Facilities Development Department of the Authority.

14. The parties to this Avigation Easement acknowledge and agree that the easement, and all the rights, easements, benefits, restrictions, covenants and agreements set forth herein shall run with the land of the Grantor(s) and the Authority, and any grantee, heir, agent, successor or assign of the Grantor(s) who acquires any estate or interest in or right to use the Subject Property shall be bound by this Avigation Easement for the benefit of SDIA and the Authority, and its agents, successors and assigns, including, without limitation, the tenants and licensees of the Authority, and all users of SDIA. This Avigation Easement and all rights pertaining hereto is hereby vested in the Authority, its successors and assigns, forever and without limit in time, and shall be binding upon the successors and assigns of Grantor(s).

15. Grantor(s), and the grantees, heirs, agents, successors, and assigns of Grantor(s), hereby fully waives and forever releases, and covenants not to assert or bring any right or cause of action, which it or they might now have, or which it or they may have in the future, against the Authority, its agents, successors, and assigns, or against the tenants, licensees, permittees, or users of SDIA, caused by or relating to the use of this Avigation Easement or the exercise of rights under this Avigation Easement.

16. In the event that any one or more covenant, condition, right or other provision contained in this Avigation Easement is held to be invalid, void, or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Avigation Easement and shall in no way affect, impair, or invalidate any other covenant, condition, right or other provision contained in this Avigation Easement.

17. This Avigation Easement constitutes an enforceable restriction pursuant to the provisions of California law, including, but not limited to, Section 21652 of the California Public Utilities Code, and shall bind Grantor(s) and the grantees, heirs, administrators, executors, lessees, tenants, permittees, agents, successors, and assigns of Grantor(s), and each and all of them, and shall be appurtenant to, and for the benefit of, the real property commonly known as SDIA, which is more particularly described in Exhibit "A" attached hereto.

Dated: \_\_\_\_\_ 20\_\_

GRANTOR (S):

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(print name)

(Grantor Acknowledgement)

State of California  
County of San Diego

On \_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_, Notary

Public, personally appeared:

\_\_\_\_\_  
who, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

CERTIFICATE OF ACCEPTANCE

In accordance with Section 27281 of the California Government Code, this is to certify that the interest in real property conveyed by this Grant of Avigation Easement, dated \_\_\_\_\_, 20\_\_, from:

\_\_\_\_\_

to the SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, a local governmental entity of regional government, is hereby accepted by the undersigned officer on behalf of the Board of the San Diego County Regional Airport Authority pursuant to authority conferred by Resolution No. 03-011 of said Airport Authority Board adopted March 6, 2003, and the Grantee consents to recordation thereof by its duly authorized officer.

DATED: \_\_\_\_\_

SAN DIEGO COUNTY REGIONAL  
AIRPORT AUTHORITY

By \_\_\_\_\_

Thella F. Bowens, President/CEO

EXHIBIT "A"  
SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY  
SAN DIEGO INTERNATIONAL AIRPORT  
LEGAL DESCRIPTION

That land described in Parcels "1", "2", and "3" as follows:

Parcel "1":

Those portions of those lands conveyed to the San Diego Unified Port District by that certain Act of Legislature of the State of California pursuant to Chapter 67, Statutes of 1962, First Extraordinary Session, as amended, and delineated on that certain Miscellaneous Map No. 564, filed in the Office of the San Diego County Recorder May 28, 1976 as File No. 76-164686 in the City of San Diego, County of San Diego, State of California, more particularly described as follows:

That land described in "Abstract of Lease San Diego Port District to San Diego County Regional Airport Authority of Property Located at 3225-3707 North Harbor Drive San Diego California," per Document filed in the Office of the San Diego County Recorder January 6, 2003 as File No. 2003-0011593 of Official Records;

TOGETHER WITH:

Parcel "2":

Those portions of those lands conveyed to the San Diego Unified Port District by that certain Act of Legislature of the State of California pursuant to Chapter 67, Statutes of 1962, First Extraordinary Session, as amended, and delineated on that certain Miscellaneous Map No. 564, filed in the Office of the San Diego County Recorder May 28, 1976 as File No. 76-164686 in the City of San Diego, County of San Diego, State of California, more particularly described as follows:

That land described in "Abstract of Lease San Diego Port District to San Diego County Regional Airport Authority of Property Located on the Westerly Side of Pacific Highway Between the Prolongation of Washington Street and the Prolongation of Quince Street San Diego, California," per Document filed in the Office of the San Diego County Recorder January 6, 2003 as File No. 2003-0011736 of Official Records;

TOGETHER WITH:

Parcel "3":

That portion of that 231.21 acre tract of land in Warranty Deed from San Diego Securities Company dated June 4, 1917 filed in the Office of the San Diego County Recorder June 9, 1917 in Book 740 at Page 61 of Deeds, and that portion of that 180.34 acre tract of land acquired by Deed from the City of San Diego dated December 1, 1916 filed in the Office of the San Diego County Recorder September 5, 1917 in Book 739 at page 307 of Deeds in the City of San Diego, County of San Diego, State of California, more particularly described as follows:

That land described in "Lease with United States of America Commander, Naval Facilities Engineering Command Document No. 6060," per Document filed in the Office of the San Diego County Recorder July 18, 2002 as File No. 2002-0605027 of Official Records.

Prepared By:

Nolte Associates, Inc.

*Paul G. Robotta* 4/9/03  
Paul G. Robotta, L.S. 5334 Date

