

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

City and County of San Francisco  
Real Estate Department  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102

### **GRANT OF AVIGATION EASEMENT**

This Grant of Avigation Easement is executed and delivered as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by SHAC ADRIAN COURT APARTMENTS LLC, a Delaware limited liability company ("GRANTOR"), and the City and County of San Francisco, a political subdivision of the State of California ("CITY" or "GRANTEE"), with reference to the following facts:

#### **Recitals**

A. GRANTOR is the owner of that certain property ("Real Property"), legally described in Exhibit "A," attached hereto and incorporated herein by reference, the street address of which is: 1 and 45 Adrian Court, Burlingame, California.

B. CITY is the owner and operator of the San Francisco International Airport (SFO).

C. Pursuant to the relevant content in the Comprehensive Airport Land Use Compatibility Plan (ALUCP) for the environs of SFO, as amended, as a condition of, and prior to, approval of a permit by the relevant land use authority (city or county) for the development or improvement of property within the 65 decibel (dB) Community Noise Equivalent Level (CNEL) boundary and higher as shown on the most recent quarterly noise contour map submitted to the State of California, Department of Transportation, Division of Aeronautics by SFO staff, in accordance with Section 5025 of Title 21 of the California Code of Regulations the grant by GRANTOR of a permanent non-exclusive easement for the purposes set forth in Section 1 below, and rights and servitudes pertaining thereto (the "Avigation Easement") shall be required in favor of CITY. A copy of the most recent quarterly noise contour map referenced herein that illustrates the location of the GRANTOR's Real Property is attached hereto as Exhibit "B." The Avigation Easement shall be recorded in the chain of title in the County of San Mateo Assessor-Clerk-Recorder's Office prior to issuance of the permit.

D. All relevant CNEL noise contour maps and grid data needed to identify the aircraft noise levels for all properties located within the 65 dB CNEL aircraft noise contour and higher, to determine the

application of this Avigation Easement as stated in Section 3.2 herein, are available from the [www.flysfo.com](http://www.flysfo.com) website or from the Noise Abatement Office staff at San Francisco International Airport.

### **Grant of Avigation Easement**

**1. Grant.** GRANTOR, individually and for the heirs, successors and assigns of GRANTOR, hereby grants, conveys and assigns to CITY and its successors, a perpetual and assignable Avigation Easement in and over the Real Property for the purposes described herein below.

**1.1 Passage of Aircraft.** The Avigation Easement shall include for the use and benefit of the public, the easement and continuing right to fly, or cause or permit the flight by any and all persons, of any aircraft, of any and all kinds now or hereafter known, in, through, across or about any portion of the airspace above and within the vicinity of the Real Property, with such rights of use and passage by aircraft without restriction as to frequency, type of aircraft and proximity to the surface of the Real Property, so long as the exercise of such rights is not in violation of then applicable federal laws governing flight operations.

**1.2 Noise and Other Incidental Effects.** The Avigation Easement shall include the right to cause within, and to enter or penetrate into or transmit through, any improved or unimproved portion of Real Property, and within all airspace above Real Property, such noise, sounds, vibrations, air currents, illumination, electronic interference and aircraft engine exhaust and emissions, dust, discomfort or other environmental effects incident to aircraft operations, and any and all resulting interference with use and enjoyment, and any consequent reduction in market value, all due to the operation of aircraft to and from SFO upon GRANTOR's Real Property.

**1.3 Interference with Air Navigation/Communications.** In furtherance of this Avigation Easement, GRANTOR covenants that it will not construct, install, permit or allow any building, structure, improvement, tree, or other object on the Real Property to constitute an obstruction to air navigation, or to use or permit the use of Real Property in such a manner as to create electrical or electronic interference with aircraft communications systems, aircraft navigation equipment, or with Federal Aviation Administration, airline, or airport personnel communication with any aircraft.

**2. Baseline.** The 65 dB Community Noise Equivalent Level (CNEL) noise contour shown on the most recent quarterly noise map filed with the State of California, Department of Transportation, Division of Aeronautics, in accordance with Section 5025 of Title 21 of the California Code of Regulations, shall be the basis for determining the baseline level for the GRANTOR's Real Property.

**3. Waiver of Legal Actions and Exceptions.** GRANTOR, together with its successors in interest and assigns, hereby waives its right to legal action against CITY, its successors or assigns, for monetary damages or other redress due to impacts, as described in Section 1.2 of the granted rights of easement, associated with aircraft operations in the air or on the ground at SFO, including future increases

in the volume or changes in location of said operations. However, this waiver shall not apply under the circumstances specified below.

**3.1**     For Property Located Outside the 65 dB CNEL Boundary. The waiver shall not be in effect for property located outside the 65 dB CNEL noise contour boundary as shown on the most recent quarterly noise map, if three (3) of any four (4) quarterly noise report maps, as reported to the State of California, for any calendar year show that the noise level imposed on GRANTOR's Real Property exceeds 68 dB CNEL or higher, and the waiver shall remain not in effect until two (2) consecutive subsequent quarterly noise maps show the level of noise to be at or lower than 68 dB CNEL.

**3.2**     For Property Located Within the 65 dB CNEL Boundary and Higher. The waiver shall not be in effect for property located within the 65 dB CNEL noise contour boundary and higher, as shown on the most recent quarterly noise map, if three (3) of any four (4) quarterly noise report maps, as reported to the State of California, for any calendar year show that the noise level imposed on GRANTOR's Real Property exceeds the baseline CNEL level as stated in Section 2 by more than 3 dB CNEL (68 dB CNEL and higher), and the waiver shall remain not in effect until two (2) consecutive subsequent quarterly noise maps show the level of noise to have been no more than 3 dB CNEL greater than the baseline.

**3.3.**     Exceptions. Any change in the noise level, as reported on a quarterly noise map for SFO filed with the State of California, Department of Transportation, Division of Aeronautics, in accordance with Section 5025 of Title 21 of the California Code of Regulations, which reflects a change in noise level 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 CITY (e.g., weather or wind conditions, but not flight pattern shifts authorized by the Federal Aviation Administration) shall not be used to compute the noise level imposed on GRANTOR's Real Property for the purposes of this Section 3.

**4.**       Negligent or Unlawful Acts Excepted. This grant of Avigation Easement shall not operate to deprive the GRANTOR, its successors or assigns, of any rights which it may from time to time have against any air carrier or private operator for negligent and/or unlawful operation of aircraft to, from, or in or about SFO, nor does this Avigation Easement include or authorize aircraft landing, explosion, crash, falling objects causing direct physical injury to persons or direct physical damage to property.

**5.**       Easement Benefit. The Avigation Easement shall be deemed both appurtenant to and for the direct benefit of that real property which constitutes the San Francisco International Airport, and shall be deemed in gross, being conveyed to CITY for the benefit of the CITY and any and all members of the general public who may use said easement, taking off from, landing upon, or operating such aircraft in or about the said SFO, or otherwise flying through the airspace above or in the vicinity of Real Property.

6. Covenants Run with the Land. These covenants and agreements run with the land (Real Property) in perpetuity and any grantee, heir, agent, successor, assign of the GRANTOR who acquires any estate or interest in or right to use Real Property shall be bound by this Avigation Easement for the benefit of CITY, and its agents, successors and assigns.

7. Termination. This Avigation Easement shall terminate and have no further force and effect if the project for which the easement was granted is not built and the permit and any permit extensions authorizing the construction of the use have expired or been revoked. Upon notification by the city or county granting the permit, CITY shall record a Notice of Termination in the chain of title in the County of San Mateo Recorder's Office.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed this \_\_\_\_ day of \_\_\_\_\_, 2020.


**GRANTOR**

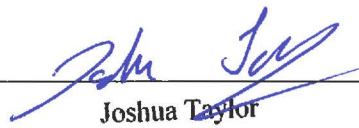
SHAC ADRIAN COURT APARTMENTS LLC,  
a Delaware limited liability company

By: SHAC Adrian Court Apartments Venture LLC,  
a Delaware limited liability company, its manager

By: SHAC Adrian Court Apartments Manager LLC,  
a Delaware limited liability company, its manager

By: SummerHill Apartment Communities,  
a California corporation, its managing member

By:   
Name: MONICA WONG  
Title: CONTROLLER

By:   
Name: Joshua Taylor  
Title: Assistant Secretary



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of ~~San Mateo~~ Contra Costa )

On July 2, 2020, before me, Veronica Judd, a Notary Public, personally appeared Monica Wong and Joshua Taylor 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 Veronica Judd



## CERTIFICATE OF ACCEPTANCE

As required under Government Code Section 27281, this is to certify that the interest in real property conveyed by the Grant of Avigation Easement dated \_\_\_\_\_, from the SHAC ADRIAN COURT APARTMENTS LLC, a Delaware limited liability company, to the City and County of San Francisco, a municipal corporation ("Grantee"), is hereby accepted by order of its Board of Supervisors' Resolution No. \_\_\_\_\_, adopted on \_\_\_\_\_, and Grantee consents to recordation thereof by its duly authorized officer.

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

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
Andrico Penick  
Director of Property

### APPROVED LEGAL DESCRIPTION

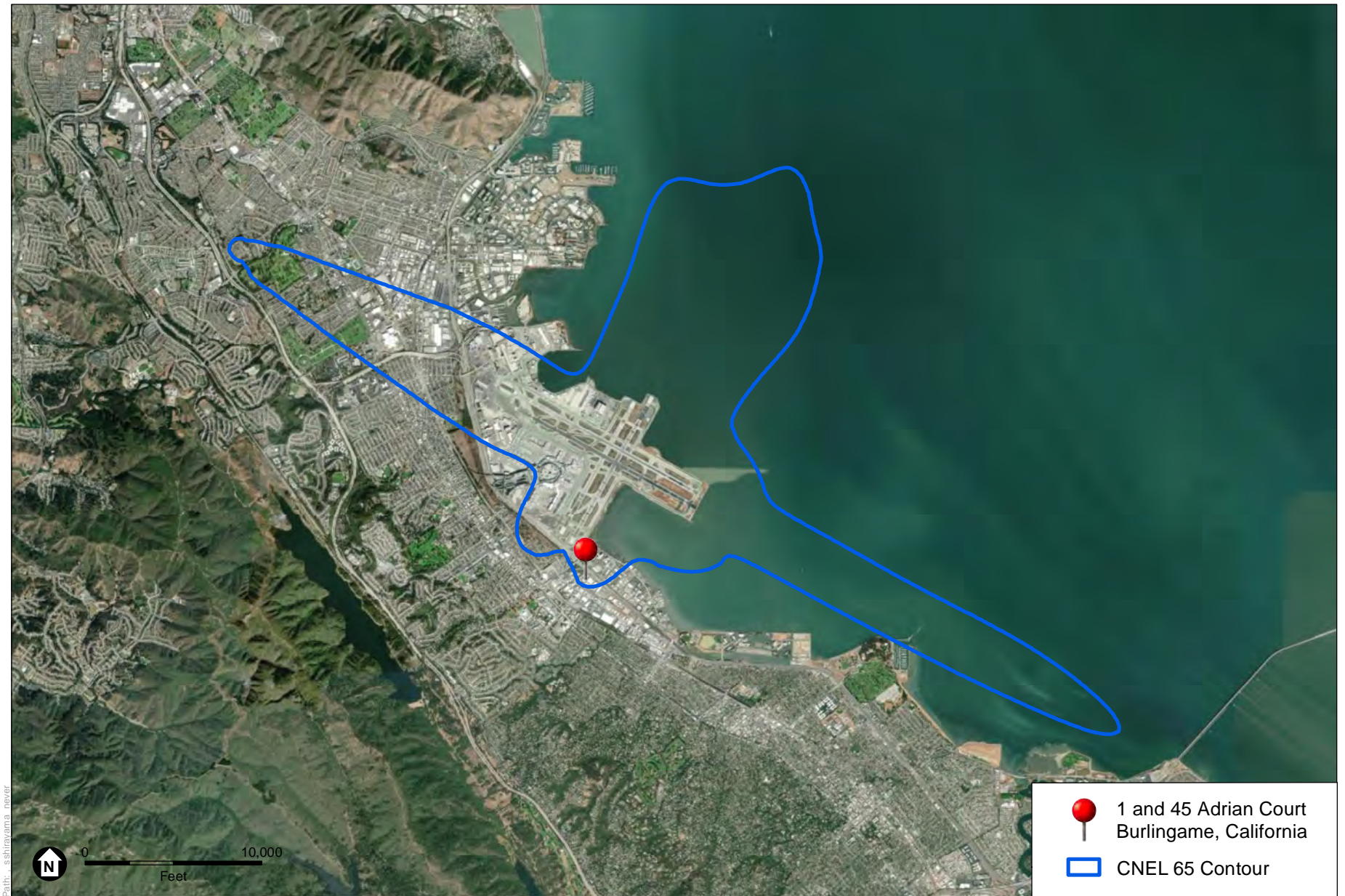
By: \_\_\_\_\_  
James M. Ryan  
Acting City and County Surveyor

Attachment: Exhibit "A" – Legal Description of Real Property  
Exhibit "B" – Quarterly Noise Map Depicting Location of Real Property

EXHIBIT A  
LEGAL DESCRIPTION OF PROPERTY

ALL OF PARCEL A, AS SHOWN UPON THAT CERTAIN MAP ENTITLED "PARCEL MAP NO. 18-08", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, ON NOVEMBER 19, 2020 IN VOLUME 85 OF PARCEL MAPS, AT PAGES 68-69.

**Exhibit “B” – Quarterly Noise Map Depicting Location of Real Property**



SOURCE: ESRI Aerial

SFO 2019 Fourth Quarter CNEL Contour