

**STATE OF MINNESOTA**  
**COUNTY OF HENNEPIN**

**DISTRICT COURT**  
**FOURTH JUDICIAL DISTRICT**

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**STATE OF MINNESOTA BY THE**  
**CITY OF MINNEAPOLIS, et al.,**

**Plaintiffs,**

**Case No. 27-CV-05-5474**

**v.**

**METROPOLITAN AIRPORTS**  
**COMMISSION,**

**CONSENT DECREE**

**Defendant, and**

**NORTHWEST AIRLINES,**

**Defendant-Intervenor.**

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**I. PRELIMINARY STATEMENT**

A. Plaintiffs City of Minneapolis, City of Richfield, City of Eagan and the Minneapolis Public Housing Authority in and for the City of Minneapolis (collectively, “Plaintiffs”) filed their complaint in this action (“Complaint”) against Defendant Metropolitan Airports Commission (“MAC”) on April 5, 2005, pursuant to the Minnesota Environmental Rights Act (“MERA”), Minn. Stat. §§ 116B.01, *et seq.*, and the Minnesota mandamus statute, Minn. Stat. §§ 586.01, *et seq.*

B. Count I of Plaintiffs’ Complaint alleged that noise from aircraft operations at Minneapolis-St. Paul International Airport materially adversely affected the environment by impairing the natural resource of quietude in Minneapolis, Richfield and Eagan neighborhoods, in violation of MERA.

C. Count II of Plaintiffs' Complaint alleged that, contrary to MERA, the MAC's operation and expansion of Minneapolis-St. Paul International Airport without providing noise mitigation designed to achieve an average noise level reduction between outdoor and indoor levels of five decibels to homes in the Day-Night Level ("DNL") 60-64 contours of MSP violated an environmental standard.

D. MERA provides that "[t]he court may grant declaratory relief, temporary and permanent equitable relief, or may impose such conditions upon a party as are necessary or appropriate to protect the air, water, land or other natural resources located within the state from pollution, impairment, or destruction." Minn. Stat. § 116B.07.

E. Count III of Plaintiffs' Complaint alleged that MAC's failure to provide noise mitigation designed to achieve an average noise level reduction between outdoor and indoor noise levels of five decibels to homes in the DNL 60-64 contours violated mandatory, nondiscretionary obligations pursuant to the Minnesota mandamus statute, Minn. Stat. §§ 586.01, *et seq.*

F. In response to Plaintiffs' Complaint, Defendant MAC denied Plaintiffs' claims and asserted a number of defenses. In particular, MAC denies that it created an environmental quality standard, denies that it violated any environmental quality standard allegedly created, and denies that the mitigation it has proposed for homes in the DNL 60-64 contours violated MERA or any mandatory, nondiscretionary obligations pursuant to the Minnesota mandamus statute, Minn. Stat. §§ 586.01, *et seq.*

G. In a January 25, 2007, Order, this Court granted partial summary judgment to Plaintiffs on Count II of their Complaint, finding *inter alia* that the "MAC is in violation of the [environmental] standard it set in exchange for approval of the airport

expansion project in 1996 and 1998.” The Court found that the mandamus claim was premature and reserved ruling on Count III.

H. The Court held a five-day trial from February 20 to 26, 2007, on the appropriate remedy under Count II and on liability under Count I of the Complaint. However, the Court has not yet issued an order regarding the appropriate remedy under Count II or regarding liability under Count I of the Complaint.

I. The Plaintiffs and MAC (collectively “Parties”) have disputed whether various noise contours generated for MSP in 2001, 2004, and 2007 best represent current noise conditions.

J. MAC does not admit any liability to Plaintiffs arising out of the allegations in Plaintiffs’ Complaint, nor does it acknowledge that it engaged in any conduct that caused pollution, impairment, or destruction of the State’s natural resources under MERA. Similarly, MAC does not acknowledge that it failed to comply with any mandatory, nondiscretionary obligations pursuant to the Minnesota mandamus statute, Minn. Stat. §§ 586.01, *et seq.*

K. The action *David B. Wiencke, et al. v. Metropolitan Airports Commission*, Civ-05-1297, brought in September 2005 and pending before this Court, arises from the same nucleus of fact as Plaintiffs’ action. The legal claims in the *Wiencke* case involve alleged breach of express contract, breach of implied contract, and breach of quasi-contract on the grounds of promissory estoppel. The plaintiffs in the *Wiencke* case seek similar relief as Plaintiffs in this action.

L. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and that

implementation of this Consent Decree will avoid prolonged and complicated litigation between the Parties without further adjudication of fact or law, and that this Consent Decree is fair, reasonable, and in the public interest.

M. The Parties agree that the noise mitigation contained in this Consent Decree will provide meaningful noise relief for residents of the homes mitigated.

**PURSUANT TO AGREEMENT OF THE PARTIES AND UNDER THE AUTHORITY GRANTED TO THE COURT BY THE MINNESOTA ENVIRONMENTAL RIGHTS ACT, MINN. STAT §§ 116B.01, ET SEQ., IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

## **II. JURISDICTION AND VENUE**

This Court has jurisdiction over the subject matter of this Complaint pursuant to MERA, Minn. Stat. § 116B.03(1). This Court also has personal jurisdiction over the MAC. Solely for the purposes of this Consent Decree and the underlying Complaint, MAC waives all objections and defenses that it may have to the jurisdiction of the Court or to venue in the District Court. MAC and the Plaintiffs shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

This Consent Decree applies to and is binding upon the Plaintiffs and upon MAC, as well as the Parties' respective successors and assigns.

## **IV. DEFINITIONS**

Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto, the following definitions shall apply:

**4.1 "Approved Contractor"** shall mean an individual, partnership, or corporation that MAC has prequalified to undertake any mitigation program required by Sections 5.1,

5.2, 5.3 and 5.4 of this Consent Decree and that satisfies MAC's minimum requirements for contractors. The initial criteria for satisfying MAC's minimum requirements for contractors will include, but are not limited to, maintaining appropriate licenses, bonding, and insurance to perform construction activities in the State of Minnesota and in the cities in which the mitigation will take place. As MAC implements the mitigation programs set forth in Sections 5.1, 5.2, 5.3 and 5.4 of this Consent Decree, the criteria for satisfying MAC's minimum requirements for contractors will also include, but will not be limited to, adhering to time of completion requirements, adhering to construction quality requirements, return of any payments from contractors for Ineligible Costs under Section 5.2(e)(4), and management and prompt payment of subcontractors. MAC's minimum requirements for contractors shall be consistent with the policies and practices (including MAC's right to make reasonable modifications, consistent with this Decree, in response to changed conditions or new issues) for contractors that MAC employed in implementing the Part 150 noise mitigation program for the projected 1996 DNL 65-75 contours.

**4.2** "Cities" shall mean the Cities of Minneapolis, Richfield, and Eagan, collectively.

**4.3** "Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

**4.4** "Construction Phase" for the mitigation of Single-Family Homes Within the 2007 DNL 63-64 Contours shall mean all project steps (based on the project steps in MAC's Part 150 noise mitigation program for the 1996 projected DNL 65-75 contours, including but not limited to bid opening, contract approval and award, material

production and procurement, construction period, final inspection, post-construction indoor air quality testing, completion of construction, and contract close-out documentation) beginning with a bid opening for construction of the mitigation for an individual home.

**4.5 “Consumer Price Index” or “CPI”** shall mean the index of prices paid by urban consumers in the Minneapolis metropolitan area for a representative basket of goods and services, as determined by the United States Bureau of Labor Statistics.

**4.6 “Court”** shall mean the District Judge for the District Court for Hennepin County who is assigned responsibility for the above-captioned case.

**4.7 “Day”** shall mean a calendar day unless expressly stated to be a working day.

“Working day” shall mean a day other than a Saturday, Sunday, or State or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or State or Federal holiday, the period shall run until the close of business of the next working day.

**4.8 “Day-night average sound level,” “Ldn” or “DNL”** shall mean the 24-hour average sound level, in decibels, for the period from midnight to midnight, obtained after the addition of ten decibels to sound levels for the periods between midnight and 7 a.m., and between 10 p.m., and midnight, local time.

**4.9 “DNL 60-62 Opt-In Home”** shall mean, for purposes of this Consent Decree, any Single-Family home located on city blocks in the City of Minneapolis, City of Richfield or City of Eagan that are within or touched by the DNL 60, 61 or 62 contours of the 2007 Mitigated Contours, attached and made a part of this Consent Decree as Appendix A, whose earlier owner(s) opted out of MAC’s Part 150 noise mitigation

program for the projected 1996 DNL 65-75 contours, but which had a new owner or owners on September 1, 2007.

**4.10 “DNL 63 and Higher Opt-In Home”** shall mean, for purposes of this Consent Decree, any Single-Family home located on city blocks in the City of Minneapolis, City of Richfield or City of Eagan that are within or touched by the DNL 63 and higher contours of the 2007 Mitigated Contours, attached and made a part of this Consent Decree as Appendix A, whose earlier owner(s) opted out of MAC’s Part 150 noise mitigation program for the projected 1996 DNL 65-75 contours, but which had a new owner or owners on September 1, 2007.

**4.11 “Five-Decibel Reduction Package”** shall mean the same package of physical improvements designed to achieve an average Noise Level Reduction goal of five decibels that the MAC provided to homeowners within the Part 150 noise mitigation program for the 1996 projected 65-75 DNL noise contours of MSP. The Five-Decibel Reduction Package shall be designed to reduce interior noise levels by an average of five decibels and shall be achieved by application of a combination of some or all of the following, depending solely upon the characteristics of each home:

1. Repair/replacement of exterior windows;
2. Addition, repair and/or replacement of exterior acoustic storm windows;
3. Repair/replacement of existing prime doors;
4. Addition, repair and/or replacement of exterior acoustic storm doors;
5. Addition of wall and attic insulation;
6. Baffling of roof vents and chimney treatment; and/or
7. Addition of central air conditioning.

No home shall be guaranteed to receive all or any particular combination of the above measures. MAC has the sole discretion to determine which of the above measures are necessary to achieve an average Noise Level Reduction goal of five decibels in a particular home, so long as the Five-Decibel Reduction Package for the particular home allows MAC to reduce interior noise levels for Single-Family Homes Within the 2007 DNL 63-64 Contours by an average of five decibels.

**4.12 “Force Majeure”** shall mean any event arising from causes beyond the control of MAC or its officers or employees that delays the performance of any obligation under this Consent Decree despite MAC’s best efforts to fulfill the obligation, including but not limited to: (a) war; (b) terrorist attacks; (c) prolonged strikes; (d) events that result in a year-over-year reduction of airport operations at MSP by fifty (50) percent or more; (e) the unavailability of a sufficient number of Approved Contractors to implement the schedule in Section 5.5 of this Consent Decree; (f) the unavailability of materials necessary to implement the requirements of this Consent Decree; (g) delays in responses or actions by owners of Single-Family homes or Multi-Family homes; and (h) failure of a building permit authority to issue a permit in a timely fashion where MAC has made best efforts to obtain the permit. The requirement that MAC exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate and avoid any potential Force Majeure event and best efforts to address the effects of any potential Force Majeure event (1) as it is occurring and (2) following the potential Force Majeure event, such that the delay is minimized to the greatest extent possible. The following shall not constitute causes beyond the control of MAC, its contractors or any entity controlled thereby, or serve as the basis for an extension of time under this Consent Decree: (i) unanticipated or

increased costs or expenses associated with the performance of MAC's obligations under this Consent Decree; and (ii) failure of MAC to timely budget or allocate funds for performance of Defendant's obligations under this Consent Decree.

**4.13** "MAC" shall mean the Metropolitan Airports Commission or any successor.

**4.14** "Mitigation Menu" shall mean the detailed set of noise insulation and mitigation products from which a homeowner may select using the mitigation budgets identified in Section 5.2(a) of this Consent Decree. The Mitigation Menu shall contain a range of choices within each of the following categories that is adequate to cover the range of homes included in the mitigation program contained in Section 5.2 of this Decree, including a similar range of products, STC reductions, styles, sizes, materials, and colors as MAC provided in the Five-Decibel Reduction Package:

1. Repair/replacement of exterior windows;
2. Addition, repair and/or replacement of exterior acoustic storm windows;
3. Repair/replacement of existing prime doors;
4. Addition, repair and/or replacement of exterior acoustic storm doors;
5. Addition of wall and attic insulation; and
6. Baffling of roof vents and chimney treatment.

As part of the Mitigation Menu, MAC shall not be required to provide air conditioning, product upgrades, or more than one supplier for a particular type of product. MAC shall develop the detailed Mitigation Menu using the process set forth in Section 5.2 of this Decree.

**4.15** "MSP" shall mean the Minneapolis-St. Paul International Airport.

**4.16 “Multi-Family”** homes shall mean homes in a single structure with more than three dwelling units.

**4.17 “Multi-Family Home Mitigation Package”** shall mean the installation of through-the-wall or equivalent permanently installed air conditioning for each dwelling unit in the Multi-Family Homes Within the 2007 DNL 60-64 Contours that does not have functional and adequate air conditioning and the installation of a single acoustical air conditioner cover for each air conditioner in Multi-Family Homes Within the 2007 DNL 60-64 Contours. MAC shall apply the same policies and practices (including MAC’s right to make reasonable modifications, consistent with this Decree, in response to changed conditions or new issues) relating to the size and number of through-the-wall or equivalent permanently installed air conditioners that MAC used for the air conditioning component of MAC’s noise mitigation program for mitigation of Multi-Family homes within the projected 1996 DNL 65-75 contours. Installation shall include, without limitation, any necessary changes to walls or windows, removal of materials, and changes to electrical systems necessary to accommodate air conditioning.

**4.18 “Multi-Family Homes Within the 2007 DNL 60-64 Contours”** shall mean all Multi-Family homes located on city blocks within or touched by the DNL 60 to 64 decibel contours of the 2007 Mitigated Contours, based on the November 2004, Minneapolis-St. Paul International Airport, 14 CFR Part 150 Update. The 2007 Mitigated Contours, depicting city blocks with homes that are within or touched by the DNL 60 to 64 decibel contours of the 2007 Mitigated Contours, are attached and made a part of this Consent Decree as Appendix A. Multi-Family Homes Within the 2007 DNL 60-64 Contours shall not include: (a) Multi-Family homes that have already received

mitigation from MAC under its Part 150 noise mitigation program; and (b) Multi-Family homes whose owners opted out of MAC's Part 150 noise mitigation program for the projected 1996 65-75 DNL noise contours and still owned their homes on September 1, 2007.

**4.19 “Noise Level Reduction” or “NLR”** shall mean the amount of noise level reduction in decibels achieved through incorporation of noise attenuation (between outdoor and indoor levels) in the design and construction of a structure.

**4.20 “Noise Mitigation Reimbursement List”** shall mean a list of noise mitigation products and services that would improve the noise reduction capabilities of a home and for which certain homeowners may be reimbursed for costs of installation pursuant to Section 5.3. The Noise Mitigation Reimbursement List shall include at least those mitigation products and services included in the Five-Decibel Reduction Package and Mitigation Menu. The Noise Reimbursement List shall also identify a range of reasonable and customary prices for the installation or performance of the mitigation products and services listed. The information in the Noise Mitigation Reimbursement List shall be updated at least annually, including on April 1 of each year, starting in 2010.

**4.21 “Noise Sensitive Locations”** shall mean all locations that are principally used or zoned for residential, church, school, park, open space, golf course, recreational facility, hospital, daycare or nursing home purposes.

**4.22 “Opt-In Home Mitigation Cost”** shall mean, for purposes of this Consent Decree, the total amount paid to Approved Contractors for providing the Five-Decibel Reduction Package to the DNL 63 and Higher Opt-In Homes pursuant to Section 5.3(b),

plus the total amount paid to Approved Contractors for mitigation for the DNL 60-62 Opt-In Homes pursuant to Section 5.3(c).

**4.23 “Parties”** shall mean, for purposes of this Consent Decree, the City of Minneapolis, the City of Richfield, the City of Eagan, the Minneapolis Public Housing Authority in and for the City of Minneapolis, and the Metropolitan Airports Commission.

**4.24 “Party”** shall mean, for purposes of this Consent Decree, any one of the City of Minneapolis, the City of Richfield, the City of Eagan, the Minneapolis Public Housing Authority in and for the City of Minneapolis, or the Metropolitan Airports Commission.

**4.25 “Plaintiffs”** shall mean the City of Minneapolis, City of Richfield, City of Eagan, and Minneapolis Public Housing Authority in and for the City of Minneapolis, collectively.

**4.26 “Preconstruction Phase”** for the mitigation of Single-Family Homes Within the 2007 DNL 63-64 Contours shall mean all project steps (based on the project steps in MAC’s noise mitigation program for the projected 1996 DNL 65-75 contours, including but not limited to preliminary indoor air quality testing, homeowner indoor air quality repairs, design visit, contractor selection, development of acoustic design, design review meeting, pre-bid homeowner orientation meeting, and signing of the homeowner agreement) before the bid opening for construction of the mitigation for an individual home.

**4.27 “Single-Family”** homes shall mean homes in a single structure with three or fewer dwelling units.

**4.28 “Single-Family Homes Within the 2007 DNL 60-64 Contours”** shall mean all Single-Family homes located on city blocks within or touched by the DNL 60 to 64

decibel contours of the 2007 Mitigated Contours based on the November 2004, Minneapolis-St. Paul International Airport, 14 CFR Part 150 Update. The 2007 Mitigated Contours, depicting city blocks with homes that are within or touched by the DNL 60 to 64 decibel contours of the 2007 Mitigated Contours, are attached and made a part of this Consent Decree as Appendix A. Single-Family Homes Within the 2007 DNL 60-64 Contours shall not include: (a) Single-Family homes that have already received mitigation from MAC under its Part 150 noise mitigation program; and (b) Single-Family homes whose owners opted out of MAC's Part 150 noise mitigation program for the projected 1996 DNL 65-75 noise contours and still own their homes on September 1, 2007.

**4.29 “Single-Family Homes Within the 2007 DNL 63-64 Contours”** shall mean all Single-Family homes located on city blocks within or touched by the DNL 63 or 64 decibel contours of the 2007 Mitigated Contour based upon the November 2004, Minneapolis-St. Paul International Airport, 14 CFR Part 150 Update. The 2007 Mitigated Contours, depicting city blocks with homes that are within or touched by the DNL 63 and 64 decibel contours of the 2007 Mitigated Contours, are attached and made a part of this Consent Decree as Appendix A. Single-Family Homes Within the 2007 DNL 63-64 Contours shall not include: (a) Single-Family homes on blocks that have already received mitigation from MAC under its Part 150 noise mitigation program; and (b) Single-Family homes whose owners opted out of MAC's Part 150 noise mitigation program for the projected 1996 DNL 65-75 noise contours.

**4.30 “Single-Family Homes Within the 2007 DNL 60-62 Contours”** shall mean all Single-Family homes located on city blocks within or touched by the DNL 60, 61, or 62

decibel contours of the 2007 Mitigated Contours based on the November 2004, Minneapolis-St. Paul International Airport, 14 CFR Part 150 Update. The 2007 Mitigated Contours, depicting city blocks with homes that are within or touched by the DNL 60, 61, and 62 decibel contours of the 2007 Mitigated Contours, are attached and made a part of this Consent Decree as Appendix A. Single-Family Homes Within the 2007 DNL 60-62 Contours shall not include: (a) Single-Family homes on blocks that have already received mitigation from MAC under its Part 150 noise mitigation program; (b) Single-Family Homes Within the 2007 DNL 63-64 Contours; and (c) Single-Family homes whose owners opted out of MAC's Part 150 noise mitigation program for the projected 1996 DNL 65-75 noise contours.

**4.31 “Single-Family Homes Within the 2005 DNL 60-64 Contours”** shall mean all Single-Family homes located on city blocks within or touched by the DNL 60 to 64 decibel contours of the 2005 DNL Mitigated Contours, based on the August 2001, Minneapolis-St. Paul International Airport, 14 CFR Part 150 Update. The 2005 Mitigated Contours, depicting city blocks with homes that are within or touched by the DNL 60 to 64 decibel contours of the 2005 Mitigated Contours, are attached and made a part of this Consent Decree as Appendix B. Single-Family Homes Within the 2005 DNL 60-64 Contours shall not include: (a) Single-Family homes on blocks that have already received mitigation from MAC under its Part 150 noise mitigation program; (b) Single-Family Homes Within the 2007 DNL 60-64 Contours; (c) DNL 63 and Higher Opt-In Homes; (d) DNL 60-62 Opt-In Homes; and (e) Single-Family homes whose owners opted out of MAC's Part 150 noise mitigation program for the projected 1996 DNL 65-75 noise contours and still owned their homes on September 1, 2007.

**4.32** “Sound Transmission Class” or “STC” shall mean the quantifier assigned as a result of STC testing to rate partitions, doors and windows for their effectiveness in blocking the transfer of airborne sound.

## **V. NOISE MITIGATION**

### **5.1 Provisions for Single-Family Homes Within the 2007 DNL 63-64 Contours.**

(a) MAC shall provide the Five Decibel Reduction Package for all Single-Family Homes Within the 2007 DNL 63-64 Contours in accordance with the provisions of this Section 5.1.

(b) MAC shall apply the same policies and practices (including MAC’s right to make reasonable modifications, consistent with this Decree, in response to changed conditions or new issues) relating to the content of the Five Decibel Reduction Package and the process for undertaking such noise mitigation that were in place during the year 2005 for MAC’s Part 150 noise mitigation program for Single-Family Homes within the projected 1996 DNL 65-75 noise contours, subject to the timing provisions in Section 5.5 of this Consent Decree.

(c)(1) MAC shall provide by regular mail to each owner of a Single-Family Home Within the 2007 DNL 63-64 Contours a formal written notification that the owner may participate in the mitigation program for Single-Family Homes Within the 2007 DNL 63-64 Contours. MAC shall mail the formal written notification to the homeowner at the address shown in tax records for the property as of the date of the notification and to the street address for the property. The formal written notification will request that the homeowner notify MAC within fifteen (15) days of the homeowner’s interest in

participating in the mitigation program for Single-Family Homes Within the 2007 DNL 63-64 Contours.

(2) If the owner of a Single-Family Home Within the 2007 DNL 63-64 Contours fails to respond to the formal written notification within the time specified in Section 5.1(c)(1) above, MAC shall send a second formal written notification to the owner stating that the owner may participate in the mitigation program for Single-Family Homes Within the 2007 DNL 63-64 Contours and requesting that the owner notify MAC of the homeowner's interest in participating in the mitigation program.

(3) If the owner of a Single-Family Home Within the 2007 DNL 63-64 Contours fails to respond to the formal written notifications required by Section 5.1(c)(1) and (2) above, MAC shall, no sooner than forty-five (45) days after the second written notification and at least ninety (90) days before the final homeowner orientation meeting for the mitigation program for Single-Family Homes Within the 2007 DNL 63-64 Contours, send the owner by certified mail, return receipt requested, a third and final formal written notification stating that the owner may participate in the mitigation program for the Single-Family Homes Within the 2007 DNL 63-64 Contours and requesting that the owner notify MAC of the homeowner's interest in participating in the mitigation program.

(4) If the owner does not attend any of the homeowner orientation meetings for the mitigation program for Single-Family Homes Within the 2007 DNL 63-64 Contours and if the owner fails to make other arrangements with MAC to receive the information provided at any of the homeowner orientation meetings, the homeowner shall not participate in the mitigation program.

(d) MAC shall not have to provide the Five Decibel Reduction Package for Single-Family Homes Within the 2007 DNL 63-64 Contours if the owner(s) of such homes decline(s) to participate in the program. An owner will be deemed to have declined to participate if: (1) the owner informs MAC in writing after September 1, 2007, that he or she declines to participate; (2) the owner fails to comply with the requirements of Section 5.1(c)(4) above; or (3) the owner fails to execute a homeowner agreement with MAC for implementation of the Five Decibel Reduction Package within thirty (30) days after the final homeowner orientation meeting for mitigation of Single-Family Homes Within the 2007 DNL 63-64 Contours. MAC may, for good cause shown, extend the deadline for signing the homeowner agreement for implementation of the Five-Decibel Reduction Package.

**5.2 Provisions for Single-Family Homes Within the 2007 DNL 60-62 Contours.**

(a) In accordance with the provisions of this Section 5.2, for all Single-Family Homes Within the 2007 DNL 60-62 Contours, MAC shall provide one of the following options, to be selected by the owner of each eligible home:

- (i) If no central air conditioning exists in the home as of September 1, 2007, installation of central air conditioning and a total not to exceed \$4,000 (in 2007 dollars) of noise mitigation products and services from the Mitigation Menu, including reasonable and customary installation costs; or
- (ii) If central air conditioning exists in the home as of September 1, 2007, or if central air conditioning does not exist in the home as of September 1, 2007, and the homeowner chooses not to receive central air conditioning, a total not to exceed \$14,000 (in 2007 dollars) of noise mitigation products and services from

the Mitigation Menu, including reasonable and customary installation costs. The Mitigation Menu will not include air conditioning.

The \$4,000 and \$14,000 mitigation budgets for mitigation products and services from the Mitigation Menu shall be adjusted every year on January 1 to account for inflation, using the Consumer Price Index.

(b) Installation of central air conditioning as provided in Section 5.2(a)(i) shall include all products and services necessary to provide central air conditioning regardless of cost or existing heating systems. Such installation shall include, without limitation, any necessary ductwork, changes to heating systems, removal of materials necessary for air conditioning installation, air conditioning compressors, and changes to electrical systems necessary to accommodate air conditioning.

(c) By July 1, 2008, MAC shall identify: (1) an initial list of Approved Contractors with whom it will have a contractual relationship to install the items from the Mitigation Menu; (2) an initial Mitigation Menu that includes the specific products that MAC will make available to owners of Single-Family Homes Within the 2007 60-62 DNL Contours; and (3) a form contract that shall be used by MAC, homeowners and Approved Contractors for work conducted pursuant to Section 5.2 of this Consent Decree. MAC may, in its reasonable judgment and consistent with the terms of this Consent Decree, modify the list of Approved Contractors. In addition, MAC may, in its reasonable judgment and consistent with the terms of this Consent Decree, modify the specific products available on the Mitigation Menu so long as the modified Mitigation Menu meets the criteria identified in Section 4.14. MAC shall exercise best efforts to provide that the list of Approved Contractors shall contain a sufficient number of Approved

Contractors to allow mitigation to meet the schedule identified in Section 5.5. The form contract shall address the payment of the Approved Contractor by MAC, applicable warranties by the Approved Contractor, the Approved Contractor's liability for defects, schedules for completion of work, inspection of work, and related matters. The standard provisions of the contract shall be substantially the same as those included in the homeowners' contracts for the mitigation provided under the MAC's Part 150 noise mitigation program for Single-Family homes within the projected 1996 DNL 65-75 contours, except that MAC shall have the right to make reasonable modifications, consistent with this Decree, to the form contract in response to changed conditions or new issues. MAC's contracts with Approved Contractors shall contain provisions regarding warranties, performance bonds, licensure, insurance, completion timeframes, and access that are substantially the same as those contained in contracts for contractors for the mitigation provided under MAC's Part 150 noise mitigation program for Single-Family homes within the projected 1996 DNL 65-75 contours, except that MAC shall have the right to make reasonable modifications to the form contract in response to changed conditions or new issues.

(d) MAC will provide adequate information resources to all owners of Single-Family Homes Within the 2007 DNL 60-62 Contours to assist in their selection of measures that will provide a noticeable acoustical improvement in those portions of their home in greatest need of noise relief. Such information resources shall include Web site materials, booklets regarding noise mitigation, a product showroom displaying available noise mitigation products, and open houses for homeowners. Notice of the availability of information resources required by Section 5.2 of this Consent Decree shall be mailed to

each eligible home, posted on MAC's Web site, and provided to Plaintiffs. The information resources required by Section 5.2 of this Consent Decree shall be available until the termination of this Consent Decree pursuant to Section 8.9.

(e)(1) Homeowners are responsible for selecting mitigation measures from the Mitigation Menu and for identifying contractors from the list of Approved Contractors to install the mitigation measures. Homeowners shall first select which noise mitigation products to purchase and have installed in their homes from the Mitigation Menu. Homeowners shall then obtain a quote for installation costs from a minimum of two contractors on the list of Approved Contractors, and shall submit those quotes to MAC for approval.

(2) A homeowner may submit quotes for work whose costs will exceed the mitigation budgets in Section 5.2(a) if selection of a single item or combination of items from the Mitigation Menu will cause the cost of the work to exceed the mitigation budget in Section 5.2(a) by \$1,000 or less. The cost of the work exceeding the mitigation budget in Section 5.2(a) by \$1,000 or less shall be known as an "Ineligible Cost."

(3) MAC shall approve quotes submitted under Section 5.2(e)(1) or (2) unless MAC determines that: (a) the quote includes products not specified on the Mitigation Menu; (b) the quote contains mathematical errors; (c) the quote includes installation costs that are not reasonable or customary; (d) the quote is not from an Approved Contractor; or (e) the quote is inconsistent with the requirements of this Consent Decree. MAC will not approve upgrades to the approved products specified on the Mitigation Menu, including but not limited to any upgrades associated with door or window hardware.

(4) If MAC staff recommends approval and MAC approves one of the quotes submitted by the homeowner, MAC will enter into a contract for installation of the mitigation measures identified by the homeowner with the Approved Contractor whose quote MAC approved. If the quote was submitted under Section 5.2(e)(2) and includes an Ineligible Cost, MAC staff shall notify the homeowner in writing that MAC staff intends to recommend approval of the quote. Within seven (7) days of receiving notice that MAC staff intends to recommend approval of a quote that includes an Ineligible Cost, the homeowner shall submit payment for the Ineligible Cost to the Approved Contractor. MAC shall also include provisions in its contracts with Approved Contractors that would allow the MAC to withhold payments to Approved Contractors who fail to return (within 30 days) payments made by any homeowners for Ineligible Costs if bids submitted by homeowners are not approved or the contractor fails to conduct the quoted work. MAC shall enter into a contract with an Approved Contractor within forty-five (45) days of MAC staff recommending approval of a quote submitted by a homeowner, unless MAC disapproves the quote.

(5) If, after applying the criteria in Section 5.2(e)(3) above, MAC staff does not recommend approval of one of the quotes submitted by the homeowner under Section 5.2(e)(1) or (2), or MAC does not approve one of the quotes submitted by the homeowner under Section 5.2(e)(1) or (2), MAC staff shall notify the homeowner of the disapproval in writing and explain the reason for disapproval. After receiving a notice disapproving the quotes submitted under Section 5.2(e)(1) or (2), a homeowner may resubmit quotes from a minimum of two contractors on the list of Approved Contractors to MAC for approval.

(f) When MAC enters into a contract as provided in Section 5.2(e) for installation of the mitigation measures, MAC shall pay the selected contractor the costs of mitigation measures that the homeowner has selected from the Mitigation Menu. If a homeowner elects to submit quotes under the provisions of Section 5.2(e)(2), a homeowner shall be responsible for an Ineligible Cost, as provided in Section 5.2(e)(2). Homeowners shall also be responsible for other costs or expenses, or both, as provided in Section 5.7 and Section 5.8 of this Consent Decree.

(g)(1) MAC shall provide by regular mail to each owner of a Single-Family Home Within the 2007 DNL 60-62 Contours a formal written notification that the owner may participate in the mitigation program for Single-Family Homes Within the 2007 DNL 60-62 Contours. MAC shall mail the formal written notification to the homeowner at the address shown in tax records for the property as of the date of notification and to the street address for the property. The formal written notification will request that the homeowner notify MAC within fifteen (15) days of the homeowner's interest in participating in the mitigation program for Single-Family Homes Within the 2007 DNL 60-62 Contours.

(2) If the owner of a Single-Family Home Within the 2007 DNL 60-62 Contours fails to respond to the formal written notification within the time specified in Section 5.2(g)(1) above, MAC shall send a second formal written notification to the owner stating that the owner may participate in the mitigation program for Single-Family Homes Within the 2007 DNL 60-62 Contours and requesting that the owner notify MAC of the homeowner's interest in participating in the mitigation program.

(3) If the owner of a Single-Family Home Within the 2007 DNL 60-62 Contours fails to respond to the formal written notifications required by Section 5.2(g)(1) and 5.2(g)(2) above, MAC shall, no sooner than forty-five (45) days after the second written notification and at least ninety (90) days before the final homeowner orientation meeting for the mitigation program for Single-Family Homes Within the DNL 2007 60-62 Contours, send the owner by certified mail, return receipt requested, a third and final formal written notification stating that the owner may participate in the mitigation program for the Single-Family Homes Within the 2007 DNL 60-62 Contours and requesting that the owner notify MAC of the homeowner's interest in participating in the mitigation program.

(4) If the owner does not attend any of the homeowner orientation meetings for the mitigation program for Single-Family Homes Within the 2007 DNL 60-62 Contours and if the owner fails to make other arrangements with MAC to receive the information provided at any of the homeowner orientation meetings, the homeowner shall not participate in the mitigation program.

(h) MAC shall not have to provide the mitigation required by Section 5.2 for Single-Family Homes Within the 2007 DNL 60-62 Contours if the owner(s) of such homes decline to participate in the program. An owner will be deemed to have declined to participate if: (1) the owner informs MAC in writing after September 1, 2007, that he or she declines to participate; (2) the owner fails to comply with the requirements of Section 5.2(g)(4) above; or (3) the owner fails to execute a homeowner agreement with MAC for implementation of the mitigation program for Single-Family Homes Within the 2007 DNL 60-62 Contours within thirty (30) days after the final homeowner orientation

meeting for the mitigation program for Single-Family Homes Within the 2007 DNL 60-62 Contours. MAC may, for good cause shown, extend the deadline for signing the homeowner agreement for implementation of the mitigation program for Single-Family Homes Within the 2007 DNL 60-62 Contours.

**5.3 Provisions for Noise Mitigation Program for DNL 63 and Higher Opt-In Homes, DNL 60-62 Opt-In Homes and Single-Family Homes Within the 2005 DNL 60-64 Contours.**

(a) Within ninety (90) days of the entry of this Decree, MAC shall budget seven million dollars (\$7,000,000) to be used in the manner provided in this Section 5.3 for DNL 63 and Higher Opt-In Homes, DNL 60-62 Opt-In Homes and Single-Family Homes Within the 2005 DNL 60-64 Contours.

(b) MAC shall provide the Five Decibel Reduction Package for all DNL 63 and Higher Opt-In Homes, in accordance with the provisions in Section 5.1.

(c) MAC shall provide the relief specified in Section 5.2(a) for all DNL 60-62 Opt-In Homes, in accordance with the provisions in Section 5.2.

(d)(1) On December 31, 2009, MAC shall calculate the per-home Noise Mitigation Reimbursement Budget, as provided in this Paragraph. First, MAC shall calculate the “Total Available January 2009 Reimbursement Budget,” which shall be the difference between seven million dollars (as adjusted for annual inflation on January 1, 2008, using the Consumer Price Index) and the Opt-In Home Mitigation Cost as of December 31, 2008, such difference adjusted for annual inflation as of January 1, 2009. Second, MAC shall calculate the “Total Available December 2009 Budget,” which shall be the difference between the Total Available January 2009 Reimbursement Budget and the

Opt-In Home Mitigation Cost paid during the calendar year 2009, such difference adjusted for annual inflation as of December 31, 2009. Third, MAC shall determine the Noise Mitigation Reimbursement Budget by dividing the Total Available December 2009 Reimbursement Budget by the total number of Single-Family Homes within the 2005 DNL 60-64 Contours.

(2) The Noise Mitigation Reimbursement Budget shall be adjusted on January 1, 2013, as provided in this paragraph. MAC shall first calculate the “Remaining Budget” as follows: subtract from the Total Available December 2009 Reimbursement Budget (as adjusted for annual inflation up to January 1, 2013, using the Consumer Price Index) the total of reimbursements that have been paid under Section 5.3(e) as of January 1, 2013, and any Opt-In Home Mitigation Cost paid after December 31, 2009. The MAC shall then calculate the adjusted Noise Mitigation Reimbursement Budget by dividing the Remaining Budget by the total number of Single-Family Homes within the 2005 DNL 60-64 Contours for which no reimbursement has been paid under Section 5.3(e) as of January 1, 2013.

(3) The Noise Mitigation Reimbursement Budget shall also be adjusted on January 1, 2011, January 1, 2012, and January 1, 2014, to account for annual inflation, using the Consumer Price Index.

(e) Starting on March 1, 2010, MAC shall reimburse any homeowner of Single-Family Homes Within the 2005 DNL 60-64 Contours for expenses for work the homeowner has undertaken if the homeowner provides itemized receipts by July 31, 2014, for noise mitigation products and installation meeting the following criteria:

- (i) The total reimbursement shall not exceed the Noise Mitigation Reimbursement Budget;
- (ii) All products and services shall be from the Noise Mitigation Reimbursement List;
- (iii) The installation of the noise mitigation products and services shall have been performed by a contractor who holds any and all licenses necessary for the work in the jurisdiction in which it is performed;
- (iv) The amounts expended for particular noise mitigation installation services shall be no more than those reasonable and customary for similar installation services in the Minneapolis-St. Paul metropolitan area; and
- (v) The installation of the mitigation products shall have taken place after the date of entry of this Decree.

MAC shall reimburse any homeowner for all expenses that meet the criteria above, up to the total of the Noise Mitigation Reimbursement Budget, within 30 days of the homeowner's application to MAC for reimbursement. MAC shall have the right to inspect any work for which reimbursement is sought and to require other reasonable assurance that the noise mitigation work was undertaken, including but not limited to, photographs of the completed work. For any noise mitigation work that homeowners undertake prior to December 31, 2008, only products and services that will be on the Noise Mitigation Reimbursement List on or after December 31, 2008, shall be reimbursable.

- (f) No later than December 31, 2008, MAC will provide adequate information resources to all owners of Single-Family Homes Within the 2005 DNL 60-64 Contours to

assist in their selection of reimbursable measures that will provide a noticeable acoustical improvement in those portions of their home in greatest need of noise relief. Such information resources shall include the Noise Mitigation Reimbursement List, Web site materials, booklets regarding noise mitigation, a product showroom displaying representative noise mitigation products, and open houses for homeowners. Notice of the availability of information resources required by Section 5.3(f) of this Consent Decree shall be mailed to each eligible home, posted on MAC's Web site, and provided to the Plaintiffs. MAC may, in its discretion, use the same information resources required by Section 5.2(d) to meet the requirements of this Section 5.3(f). In addition, the MAC shall provide an adequate mechanism through which homeowners may determine whether prospective purchases of noise mitigation products will qualify for reimbursement under this Section. The information resources required by this Section 5.3(f) shall be available until the termination of this Consent Decree pursuant to Section 8.9.

(g)(1) By February 1, 2010, MAC shall provide by regular mail to each owner of a Single-Family Home Within the 2005 DNL 60-64 Contours a formal written notification that the owner may participate in the mitigation reimbursement program for Single-Family Homes Within the 2005 DNL 60-64 Contours. Such written notification shall include a copy of any forms MAC may require homeowners to file for reimbursement. MAC shall mail the formal written notification to the homeowner at the address shown in tax records for the property as of the date of notification and to the street address for the property.

(2) By July 1, 2010, MAC shall send a second written notification to all owners of eligible homes that have not applied for the full amount of the Noise

Mitigation Reimbursement Budget stating that the owner may participate in the mitigation reimbursement program for Single-Family Homes Within the 2005 DNL 60-64 Contours. Such written notification shall include a copy of any forms MAC may require homeowners to file for reimbursement.

(3) If the owner of any Single-Family Home Within the 2005 DNL 60-64 Contours has not sought reimbursement pursuant to Sections 5.3(e) by November 1, 2010, MAC shall send a third formal written notification no sooner than January 1, 2013, and no later than July 1, 2013, stating that the owner may participate in the mitigation reimbursement program for the Single-Family Homes Within the 2005 DNL 60-64 Contours. Such written notification shall include a copy of any forms MAC may require homeowners to file for reimbursement.

#### **5.4 Provisions for Multi-Family Homes Within the 2007 DNL 60-64 Contours.**

(a) MAC shall provide and install the Multi-Family Home Mitigation Package to all Multi-Family Homes Within the 2007 DNL 60-64 Contours in accordance with the provisions of this Section 5.4.

(b) To the extent consistent with this Consent Decree, MAC shall apply the same policies and practices relating to the process for undertaking the air conditioning portion of mitigation that were in place for MAC's Part 150 noise mitigation program for Multi-Family homes within the projected 1996 DNL 65-75 contours, subject to the schedule provisions in Section 5.5 of this Consent Decree. MAC may, in its discretion, structure the program for the Multi-Family Home Mitigation Package to provide for fewer contractors (or one contractor) that would handle a larger number of homes under a single contract or a series of contracts, and may make changes to performance bond, insurance

and other provisions in contracts with its contractors, consistent with this Consent Decree.

(c)(1) MAC shall provide by regular mail to each owner of a Multi-Family Home Within the 2007 DNL 60-64 Contours a formal written notification that the owner may participate in the mitigation program for Multi-Family Homes Within the 2007 DNL 60-64 Contours. MAC shall mail the formal written notification to the owner at the address shown in tax records for the property as of the date of notification and to the street address for the property. The formal written notification will request that the owner notify MAC within fifteen (15) days of the homeowner's interest in participating in the mitigation program for Multi-Family Homes Within the 2007 DNL 60-64 Contours.

(2) If the owner of a Multi-Family Home Within the 2007 DNL 60-64 Contours fails to respond to the formal written notification within the time specified in Section 5.4(c)(1) above, MAC shall send a second formal written notification to the owner stating that the owner may participate in the mitigation program for Multi-Family Homes Within the 2007 DNL 60-64 Contours and requesting that the owner notify MAC of the owner's interest in participating in the mitigation program.

(3) If the owner of a Multi-Family Home Within the 2007 DNL 60-64 Contours fails to respond to the formal written notifications required by Section 5.4(c)(1) and 5.4(c)(2) above, MAC shall, no sooner than forty-five (45) days after the second written notification and at least ninety (90) days before the bid opening of the final contract for the mitigation program for Multi-Family Homes Within the DNL 2007 60-64 Contours, send the owner by certified mail, return receipt requested, a third and final formal written notification stating that the owner may participate in the mitigation

program for Multi-Family Homes Within the 2007 DNL 60-64 Contours and requesting that the owner notify MAC of the owner's interest in participating in the mitigation program.

(4) If the owner does not respond to the notification in Section 5.4(c)(3) in writing of his or her intent to participate in the mitigation program within thirty (30) days after receiving the final formal written notification, and if the owner fails to make other arrangements with MAC, the owner shall not participate in the mitigation program.

(d) MAC shall not have to provide the mitigation in this Section for units in Multi-Family Homes Within the 2007 DNL 60-64 Contours if the owner(s) of such Multi-Family homes decline to participate in the program. An owner will be deemed to have declined to participate if: (1) the owner informs MAC in writing after September 1, 2007, that it, he or she declines to participate; or (2) the owner fails to comply with the requirements of Section 5.4(c)(4) above. MAC may, for good cause shown, extend the deadline for owner response set forth in this Section 5.4.

**5.5 Timing of Mitigation Measures.** The Parties agree that the noise mitigation required by this Consent Decree will provide meaningful noise relief for residents of Single-Family and Multi-Family homes mitigated under this Decree, that time is of the essence in providing noise relief, and that MAC must move aggressively to implement the noise mitigation set forth in Sections 5.1, 5.2, 5.3 and 5.4. The Parties further agree it is in their best interest, as well as the best interest of the residents of Single-Family and Multi-Family homes receiving noise mitigation, that MAC makes available effective noise mitigation products and skilled construction contractors to install those products. Consistent with these goals, the Parties agree upon the following schedule for

implementing the noise mitigation set forth in Sections 5.1, 5.2, 5.3 and 5.4 of this Consent Decree. MAC must implement the noise mitigation as expeditiously as possible, and shall consult with Plaintiffs on a regular basis to discuss ways in which MAC may further expedite implementation of the noise mitigation required under Sections 5.1, 5.2, 5.3 and 5.4. Accordingly, MAC shall initiate and complete the mitigation in Sections 5.1, 5.2, 5.3 and 5.4 on the following schedule, subject to Force Majeure:

- (a) MAC shall start reassembling its residential noise mitigation program within thirty (30) days after the District Court Judge's signing of this Consent Decree.
- (b) MAC shall begin the Preconstruction Phase of the mitigation program for Single-Family Homes Within the 2007 DNL 63-64 Contours and the DNL 63 and Higher Opt-In Homes by May 1, 2008.
- (c) MAC shall develop and make available the Noise Mitigation Reimbursement List by December 31, 2008.
- (d) MAC shall begin the Construction Phase of the mitigation program for Single-Family Homes Within the 2007 DNL 63-64 Contours and the DNL 63 and Higher Opt-In Homes by November 1, 2008.
- (e) MAC shall have provided formal written notification to all eligible homeowners that they may participate in the Preconstruction Phase of the mitigation program for Single-Family Homes Within the 2007 DNL 63-64 Contours and the DNL 63 and Higher Opt-In Homes by July 1, 2009.
- (f) MAC shall complete the Construction Phase for an aggregate total of at least 250 Single-Family Homes Within the 2007 DNL 63-64 Contours by July 1, 2009.

- (g) MAC shall complete the Construction Phase for an aggregate total of at least 320 Single-Family Homes Within the 2007 DNL 63-64 Contours by September 1, 2009.
- (h) MAC shall complete the Construction Phase of the mitigation program for all Single-Family Homes Within the 2007 DNL 63-64 Contours and DNL 63 and Higher Opt-In Homes by December 31, 2009.
- (i) MAC shall begin mitigation pursuant to Sections 5.2 and 5.3(c) by December 1, 2008, to allow for completion of the mitigation program for all Single-Family Homes Within the 2007 DNL 60-62 Contours and DNL 60-62 Opt-In Homes by December 1, 2012.
- (j) MAC shall begin mitigation pursuant to Section 5.4 of this Consent Decree by December 1, 2008, to allow for completion of the mitigation program for all Multi-Family Homes Within the 2007 DNL 60-64 Contours by December 1, 2010.
- (k) MAC shall complete the reimbursement process for all eligible expenses submitted by homeowners under Section 5.3(e) no later than September 1, 2014.
- (l) The schedule in this Section 5.5 assumes that the Court enters this Consent Decree on or before October 19, 2007. If the Court enters this Consent Decree after October 19, 2007, the number of days elapsed between October 19, 2007 and the date that the Court enters the Consent Decree shall be added to the deadlines for compliance set forth in this Section 5.5. However, the provisions of Sections 8.8 and 8.14 shall not modify the schedule in this Section 5.5 unless this Decree is rendered null and void under Sections 8.8 or 8.14.

**5.6 Force Majeure.**

- (a) The completion dates in Section 5.5 may be delayed in the event of Force Majeure.
- (b) If any of the Plaintiffs or MAC determine that any of the completion dates in Section 5.5 will not be or have not been met, the provisions of Section 8.4 shall apply.
- (c) In any arbitration proceeding pursuant to Section 8.4 regarding whether MAC's compliance or non-compliance with the schedule in Section 5.5 is due to a Force Majeure event, MAC shall have the burden of demonstrating by a preponderance of the evidence that a Force Majeure event occurred, the delay or anticipated delay has been or will be caused by such Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, and that best efforts were exercised to anticipate, avoid and mitigate the effects of the delay.

**5.7 Reimbursement of MAC Expenses.** MAC may require owners of Single-Family homes receiving mitigation pursuant to Sections 5.1, 5.2, or 5.3 of this Consent Decree to sign an agreement regarding reimbursement of certain expenses as a condition for receiving mitigation. The agreement will provide that such owners who sell their Single-Family homes within two years of receiving relief under this Consent Decree shall reimburse MAC for twenty-five (25) percent of the cost of providing relief to their Single-Family home, up to a maximum of \$3,500 for Single-Family Homes. The following categories of Single-Family homeowners shall be exempt from this reimbursement requirement:

- (a) Homeowners who purchased their homes prior to September 1, 2007;
- (b) Homeowners who used their homes as their primary residence prior to the sale;

(c) Homeowners conveying their interests in their homes as a result of death, divorce, loss of job, job relocation, medical conditions, transfer to family member, birth, or adoption; or

(d) Homeowners whose sale price for their home was lower than the price for which they purchased their homes.

**5.8 Homeowner/Owner Responsibility for Costs.** Homeowners and owners receiving mitigation under this Consent Decree shall not be required to pay any co-payments or other costs for the noise mitigation provided under this Consent Decree, except for any expenses associated with work necessary to bring a Single-Family home or Multi-Family home receiving benefits under this Consent Decree into compliance with applicable building codes and except as provided in Sections 5.2(f) and 5.7.

**5.9 MAC Responsibility for Costs and Administration.** MAC shall be responsible for all the costs and administration of the requirements in Sections 5.1 to 5.11 unless explicitly provided otherwise in this Consent Decree.

**5.10 Use of Airport Revenue and Grant Assurances.**

(a) MAC agrees that mitigation provided under this Consent Decree is an appropriate use of airport revenue, is consistent with MAC's obligations to operate a self-sustaining airport system, and is consistent with its obligations pursuant to grant agreements with the federal government. MAC will use its best efforts to defend against any administrative or other claims to the contrary, including taking all available appeals. MAC shall consent to the intervention or participation by the Plaintiffs in defense of any such claim.

(b) Included among MAC's obligations under Section 5.10(a) shall be the obligation to promptly enforce the terms of any agreement between MAC and any airline operating at MSP regarding any objection or challenge to MAC's use of airport funds to pay for the costs associated with this Decree.

(c) Any disputes arising under this Section may be taken to the Court directly. The provisions of Section 8.5 shall not apply.

**5.11 Releases from Homeowners.** MAC may require owners of Single-Family and Multi-Family homes receiving noise mitigation under Sections 5.1, 5.2, 5.3, and 5.4 of this Consent Decree to sign a release in a form substantially similar to the release used previously by MAC in its Part 150 noise mitigation program. However, MAC shall revise the provisions in such releases regarding the "Base Case DNL Noise Level" to provide that the base case noise level shall be determined by the location of each home within the one-decibel contour bands in the following noise contour maps: (1) for Single-Family or Multi-Family homes receiving noise mitigation under Sections 5.1, 5.2, 5.3(b), 5.3(c), and 5.4 of this Decree, the 2007 DNL 60 to 64 Mitigated Contours attached and made a part of this Consent Decree as Appendix A; and (2) for Single-Family homes receiving noise mitigation reimbursement under Section 5.3(e) of this Decree, the DNL 60 to 64 decibel contours of the 2005 DNL Mitigated Contours attached and made a part of this Consent Decree as Appendix B. In addition, MAC shall revise the provisions in such releases regarding cancellation of the release as it relates to increased noise levels at a mitigated Single-Family or Multi-Family home to provide that the release may be cancelled if the aircraft noise level, in DNL, at the mitigated Single-Family or Multi-Family home premises for a calendar year increases by two (2) DNL or more above the

“Base Case DNL Noise Level,” as determined by comparing the applicable “Base Case DNL Noise Level” with a DNL noise contour generated under Section 8.1(d) of this Decree. MAC may also update the use of the term “Ldn” to “DNL”.

## **VI. DUTIES OF PLAINTIFFS**

### **6.1 Consideration of Ordinances Regarding New Homes and Additions.**

(a) Each staff of the Cities of Minneapolis, Richfield and Eagan shall develop draft ordinances, and present them by September 1, 2008, to their city councils for their consideration, that would require: (1) new Single-Family Homes Within the 2007 DNL 63-64 Contours and new Single-Family homes within the projected 1996 DNL 65-75 contours to use materials meeting a Sound Transmission Class rating of 40 or higher and the installation of central air conditioning or mechanical ventilation; (2) new additions to existing Single-Family Homes Within the 2007 DNL 63-64 Contours and new additions to existing Single-Family homes within the projected 1996 DNL 65-75 contours to use materials meeting a Sound Transmission Class rating of 40 or higher; (3) new Single-Family Homes Within the 2007 DNL 60-62 Contours to provide central air conditioning or mechanical ventilation; and (4) new Multi-Family Homes Within the 2007 DNL 60-64 Contours to provide central air conditioning or mechanical ventilation.

(b) The schedule in this Section 6.1 assumes that the Court enters this Consent Decree on or before October 19, 2007. If the Court enters this Consent Decree after October 19, 2007, the number of days elapsed between October 19, 2007, and the date that the Court enters the Consent Decree shall be added to the deadline for compliance set forth in this Section 6.1. However, the provisions of Sections 8.8 and 8.14 shall not

modify the schedule in this Section 6.1 unless this Decree is rendered null and void under Sections 8.8 or 8.14.

**6.2 Encouragement for Sound Insulation Standards for the Remodeling and Rehabilitation Homes in the 2005 DNL 60-64 Contours.** The Cities of Minneapolis, Richfield and Eagan shall encourage home owners who remodel or rehabilitate existing homes within the 2005 DNL 60-64 Contours, as shown in Appendix B to this Consent Decree, to provide central air conditioning or mechanical ventilation and to use materials meeting a Sound Transmission Class rating of 40 or higher in the remodeled or rehabilitated portion of the home.

## **VII. ATTORNEYS' FEES**

**7.1 Plaintiffs' Attorneys' Fees and Costs.** Within thirty (30) days of the Court's entry of this Consent Decree, MAC shall pay the City of Minneapolis \$2.25 million for the Plaintiffs' attorneys' fees and costs in this matter. The Parties agree that the \$2.25 million represents attorneys' fees and costs reasonably expended by the Plaintiffs in this matter.

**7.2 Allocation of Attorneys' Fees and Costs among Plaintiffs.** Plaintiffs shall be responsible for any allocation of the attorneys' fees and costs payment among the Plaintiffs.

## **VIII. GENERAL PROVISIONS**

### **8.1 Effect of This Consent Decree; Release of Claims.**

(a) Satisfaction of all of the requirements of this Consent Decree constitutes full settlement of and shall resolve all liability of the Defendant MAC to the Plaintiffs for the violations alleged in Plaintiffs' Complaint.

(b) In addition, in consideration of the actions that MAC will perform under this Consent Decree, Plaintiffs agree to release all claims that they have had in the past and those claims they may now have against MAC or Northwest Airlines, Inc. (including its successors and assigns) ("Northwest") relating to noise from MSP under any legal theory, including but not limited to violations of the Minnesota Environmental Rights Act, failure to comply with any mandatory nondiscretionary obligations pursuant to the Minnesota mandamus statute, breach of express contract, breach of implied contract, and/or promissory estoppel.

(c) This release shall cease to be effective for those Noise Sensitive Locations at which the average annual aircraft noise level, in DNL, is at or above DNL 60 decibels and at least two (2) decibels, in DNL, higher than the 2007 DNL level. The 2007 DNL level shall be determined by the 2007 Mitigated Contours attached and made a part of this Consent Decree as Appendix A. The future DNL value shall be determined through the use of FAA's Integrated Noise Model using actual MSP operations data, including the contours developed pursuant to Section 8.1(d) of this Decree.

(d) By March 1 of each year, MAC shall develop and make available to the public a noise contour report using the FAA's Integrated Noise Model to reflect noise conditions from the prior calendar year, using actual MSP operations data derived from the Airport

Noise and Operations Monitoring System or a functionally equivalent flight tracking and noise monitoring system (“Monitoring System”). This noise contour report shall contain, at a minimum: (1) the noise contour for the previous calendar year; (2) a grid point analysis of noise levels associated with that contour; (3) comparisons in grid point and graphic form of the differences in noise levels between the previous calendar year’s contour and the 2007 DNL level; and (4) comparisons to actual and monitored noise levels from MAC’s Monitoring System, consistent with previous validation analyses. MAC shall consult with the Plaintiffs during the development of the previous year contour report.

(e) This release shall cease to be effective for the following newly impacted Noise Sensitive Locations if MAC builds a runway not in existence at MSP on the date of entry of this Decree or extends the length of any runway that is in existence at MSP on the date of entry of this Decree: (1) any area at which noise levels are or are predicted to be at or above DNL 60 decibels and overflowed by aircraft using any runway at MSP built after the date of entry of this Decree; and (2) any area at which noise levels are at or above DNL 60 decibels and overflowed by aircraft departing from or arriving at the end of any runway in existence at MSP on the date of entry of this Decree, which runway’s length is extended by MAC after the date on which this Decree is entered. The Parties also agree that this Section 8.1 shall have no effect on any contract between MAC and any of the Plaintiffs pertaining to limits on construction of a third parallel runway at MSP.

(f) This release shall cease to be effective for any claims associated with low frequency noise that may exist in the Cities of Minneapolis, Richfield and Eagan if the Federal Aviation Administration establishes any standard or guidelines for land use

compatibility or mitigation associated with low frequency noise. For purposes of this paragraph, the FAA will be deemed to have established a standard or guideline if such is set forth in an FAA Order, regulation, Advisory Circular, Handbook or Program Guidance Letter.

(g) This release shall cease to be effective if (1) MAC no longer operates its Monitoring System; (2) MAC no longer operates any of its Monitoring System monitors in the City of Minneapolis, City of Richfield or the City of Eagan; (3) MAC no longer makes available noise and operations data from its Monitoring System; or (4) MAC fails to develop annual noise contour maps pursuant to Section 8.1(d) by June 1 of any year.

(h) This release shall cease to be effective with regard to Northwest if Northwest takes any step to interfere with MAC's implementation of this Consent Decree, including but not limited to objecting to or challenging the Federal Aviation Administration's provision of the advice addressed in Section 8.8 or otherwise objecting to or challenging MAC's use of airport funds to pay for the costs associated with this Decree.

(i) Plaintiffs' release under this Consent Decree shall survive termination of this Consent Decree under Section 8.9 of this Consent Decree, but shall not survive if this Decree is rendered null and void pursuant to Sections 8.8, 8.10, 8.13, and 8.14 of this Consent Decree.

(j) The Parties, by mutual agreement, may modify or waive all or any portion of the provisions of this Section 8.1. Any such modification or waiver shall be made in writing under the procedure in Section 8.7 of the Consent Decree.

(k) The Parties do not intend anything in this Consent Decree to create or constitute any environmental standard, limitation, rule, order, license, stipulation agreement, or

permit within the meaning of the Minnesota Environmental Rights Act, Minn. Stat. § 116B.02, Subd. 5.

**8.2 Continuing Jurisdiction.** This Court shall maintain jurisdiction over this matter to enforce the terms of this consent decree.

**8.3 Reporting and Records.** MAC shall provide to the Parties monthly summaries of the number of homes that have been completed, the homes in construction, the homes in preconstruction and the amount expended for each mitigation program in Sections 5.1, 5.2, 5.3 and 5.4 of this Consent Decree. In addition, except for attorney-client communications, MAC shall provide representatives of the Plaintiffs access to all records and data relating to the implementation of this Consent Decree, in accordance with Minn. Stat. § 13.05, subdivision 6. MAC shall inform the Plaintiffs' representatives of the data classification of any data that is classified as not public, and the Plaintiffs' representatives shall handle the data in conformance with the requirements of the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13.

#### **8.4 Arbitration**

(a) Any controversy or claim arising out of this Consent Decree regarding the following subjects shall be settled by binding arbitration pursuant to the rules established in the Uniform Arbitration Act, Minn. Stat. §§ 572.08, *et. seq.*:

- (i) MAC's compliance with the schedule pursuant to Section 5.5 due to a Force Majeure event;
- (ii) MAC's implementation of the provisions of Section 5.1 relating to Single-Family Homes Within the 2007 DNL 63-64 Contours;

- (iii) Any dispute between Parties relating to an individual home or building;
- and
- (iv) Any dispute regarding the provisions of Section 5.3(e).

All other disputes, claims, or controversies among the Parties stemming from this Consent Decree shall be resolved pursuant to Section 8.5 of this Consent Decree.

(b) The arbitration will be conducted in Minneapolis, Minnesota, and in accordance with the substantive laws of the State of Minnesota. The judgment rendered by the arbitrator shall be final as provided in the Uniform Arbitration Act and may be entered in this Court.

(c) A dispute under this Section shall be considered to have arisen when one Party to this Decree sends the other Parties a written notice of dispute. The notice shall describe the nature of the dispute, and shall state the noticing Party's position with regard to such dispute. The Parties shall expeditiously schedule a meeting to discuss the dispute informally in accordance with this Section.

(d) Any dispute covered in this Section shall in the first instance be subject to informal negotiations between the Parties. The period for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it is modified by written agreement of the Parties involved in the dispute. In the event that the Parties involved in the dispute are unable to reach agreement during the informal negotiation period on any dispute arising under this Consent Decree that is subject to arbitration in this Section, the Parties involved in the dispute must submit the dispute under the procedures set forth in Section 8.4(e)(4) to the Technical Advisory Committee established in Section 8.4(e)(1) before the Parties involved in the dispute may invoke arbitration.

(e)(1) Within sixty (60) days of entry of this Consent Decree, the Parties shall establish a three-member Technical Advisory Committee (“TAC”). MAC shall appoint one member and the Plaintiffs shall appoint one member. The MAC’s appointed member and the Plaintiffs’ appointed member shall then appoint the third member, who will become the Chair of the TAC. The MAC’s appointed member and the Plaintiffs’ appointed member shall attempt to select the third member of the TAC by mutual agreement. If they cannot select the third member of the TAC by mutual agreement, the MAC’s appointed member and the Plaintiffs’ appointed member shall submit to one another a list containing five names of persons whom they would accept as the third member of the TAC. The MAC’s appointed member and the Plaintiffs’ appointed member will then attempt to choose the third member of the TAC from the lists by striking from the respective lists those candidates who they do not find acceptable. If the MAC’s appointed member and the Plaintiffs’ appointed member cannot select the third member of the TAC by exchanging lists and striking unacceptable candidates, the Parties shall request that the Chief Judge of the Hennepin County District Court appoint the third member of the TAC.

(2) All members of the TAC shall have relevant professional experience for service on the TAC. Appointments to the TAC shall be at-will. If all of the Parties agree, the Parties may remove the third member of the TAC and appoint a new third member pursuant to Section 8.4(e)(1). The Plaintiffs and MAC may in their discretion substitute a member of the TAC for particular disputes under Section 8.4 or 8.5. If after being appointed to the TAC any MAC-appointed member or any Plaintiffs’ appointed member is unable to continue to serve, MAC may replace any MAC’s appointed member

who is unable to continue to serve and the Plaintiffs may replace any Plaintiffs' appointed member who is unable to continue to serve. If after being appointed to the TAC any third member is unable to continue to serve, the MAC-appointed member and the Plaintiffs' appointed member shall replace the third member using the appointment process in Section 8.4(e)(1).

(3) If a member of the TAC is a public employee, that member shall receive no additional compensation for service on the TAC except to the extent that such public employee is using vacation or compensatory time for service on the TAC. If the third member of the TAC is not a public employee or is a public employee using vacation or compensatory time for service on the TAC, that member shall receive a per-diem allowance for service on the TAC. Such per diem allowance shall not exceed five-hundred dollars (\$500) per day. The costs of the TAC, including any compensation to any third member who is not a public employee or is a public employee using vacation or compensatory time for service on the TAC, shall be split, with the Plaintiffs responsible for fifty (50) percent of the costs and MAC responsible for fifty (50) percent of the costs. Any costs associated with the MAC's appointed member of the TAC shall be borne by the MAC. Any costs associated with the Plaintiffs' appointed member of the TAC shall be borne by the Plaintiffs.

(4) The TAC shall consider any dispute arising under this Consent Decree that is subject to arbitration in this Section if the Parties involved in the dispute cannot resolve the dispute during the informal negotiation period in Section 8.4(d). If the Parties involved in the dispute have not resolved the dispute informally, the Parties involved in the dispute within fifteen (15) days of the end of the informal negotiation period shall

each submit to the TAC a Statement of Position on the matter in dispute, including but not limited to any factual data, analysis, opinion, or documentation supporting the Parties' respective positions. In addition, the TAC may request that the Parties make oral presentations to explain their respective positions regarding the dispute and to answer questions.

(5) The TAC shall make a recommendation regarding the dispute within thirty (30) days of receiving Statements of Position. Any of the Parties may accept the TAC's recommendation or reject the TAC's recommendation by invoking the arbitration procedure set forth in Section 8.4(f). A Party rejecting the TAC's recommendation may invoke the arbitration procedure set forth in Section 8.4(f) by sending a notice of intent to invoke arbitration to all other Parties within thirty (30) days of receiving the TAC's recommendation. The TAC's recommendation shall be admissible in any arbitration proceeding under Section 8.4(f).

(f) In any arbitration proceeding pursuant to this Section, the arbitration shall be conducted by a single arbitrator. The Parties involved in the dispute shall attempt to agree upon an arbitrator for the arbitration. If the Parties involved in the dispute cannot agree upon an arbitrator within fifteen (15) days of service of a notice of intent to invoke arbitration, the Parties shall submit a petition to the Chief Judge of the Hennepin County District Court for the Chief Judge to name a neutral arbitrator. The MAC and the Plaintiffs shall each include in the petition to the Chief Judge four recommended arbitrators. Prior to the commencement of any arbitration hearing, the arbitrator shall provide an oath or undertaking of impartiality. Each Party shall bear its own attorney fees, expenses, and costs with respect to any arbitration. The cost of the arbitrator shall

be split, with the Plaintiffs responsible for fifty (50) percent of the costs and MAC responsible for fifty (50) percent of the costs.

**8.5 Dispute Resolution.**

(a) The dispute resolution procedures provided by this Section shall be available to resolve all disputes arising under this Consent Decree except for issues covered by Sections 5.10 and 8.4(a), provided that the Party making such application has made a good faith attempt to resolve the matter with the other Parties.

(b) The dispute resolution procedure required herein is invoked upon written notice by one of the Parties to this Consent Decree to another advising of a dispute pursuant to this Section. The notice shall describe the nature of the dispute, and shall state the noticing Party's position with regard to such dispute. The Party or Parties receiving such a notice shall expeditiously schedule a meeting to discuss the dispute informally in accordance with this Section.

(c) Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between the Parties involved in the dispute. Such period of informal negotiations shall not extend beyond thirty (30) days from the date of the first meeting between the Parties' representatives, unless the Parties involved in the dispute agree to extend this period. In the event that the Parties involved in the dispute are unable to reach agreement during the informal negotiation period on any dispute submitted to dispute resolution under this Section, the Parties involved in the dispute must submit the dispute under the procedures set forth in Section 8.5(d) to the Technical Advisory Committee (TAC) established in Section 8.4(e)(1).

(d) If the Parties involved in the dispute cannot resolve the dispute during the informal negotiation period in Section 8.5(c), such Parties within fifteen days of the end of the informal negotiation period shall each submit to the TAC a Statement of Position on the matter in dispute. The Statement of Position shall include but not be limited to any factual data, analysis, opinion, or documentation supporting the Parties' respective positions. In addition, the TAC may request that the Parties make oral presentations to explain their respective positions regarding the dispute and to answer questions. The TAC shall make a recommendation regarding the dispute within thirty (30) days of receiving Statements of Position. The Parties may accept the TAC's recommendation, or any of the Parties may reject the TAC's recommendation by invoking the additional dispute resolution procedures set forth in Section 8.5(e). A Party rejecting the TAC's recommendation may invoke the additional dispute resolution procedures set forth in Section 8.5(e) by filing with the Court and serving upon all other Parties a petition to invoke additional dispute resolution within thirty (30) days of receiving the TAC's decision. The TAC's recommendation shall be admissible in any additional dispute resolution proceeding under Section 8.5(e).

(e) A petition to invoke dispute resolution filed with the Court shall describe the nature of the dispute. The other Parties to the dispute shall respond to the petition within fourteen (14) days of filing. Upon receipt of the petition and response identified in this Section, the Court shall hold a status conference with the Parties to determine what process would be necessary and advisable to resolve the dispute, including whether any evidentiary hearings are necessary to resolve disputed questions of fact.

**8.6 Third Parties.** This Consent Decree does not limit, enlarge, or affect the rights of any Party to the Consent Decree as to third parties. Nothing in this Consent Decree should be construed to create any rights, or grant any cause of action, to any person not a Party to this Consent Decree, including but not limited to any current or former resident of the Cities. The Parties agree to use best efforts, including but not limited to consenting to the intervention or participation by any of the Parties and taking all available appeals, to defend against any assertions of third-party beneficiary rights from, appeals of, or collateral challenges to this Consent Decree that may be made or taken by any third party.

**8.7 Modification.** Any portion of this Consent Decree, including but not limited to the schedule in Section 5.5, may be modified by agreement of the Parties. All such modifications shall be made in writing.

**8.8 Condition Precedent.** This Consent Decree shall become effective only if the Office of the Chief Counsel for the Federal Aviation Administration (“FAA”) advises the MAC in writing by November 15, 2007, that the elements of this Consent Decree are: (1) an appropriate use of airport revenue; (2) consistent with MAC’s obligations to operate a self-sustaining airport system; and (3) consistent with MAC’s obligations pursuant to grant agreements with the federal government. If the FAA does not provide such advice by November 30, 2007, this Consent Decree shall be null and void. The provisions of this Section shall not modify the schedule obligations under Section 5.5 of this Consent Decree unless the Consent Decree is rendered null and void pursuant to this subsection. This Consent Decree does not constitute a contract or any other type of binding instrument if rendered null and void pursuant to this Section.

**8.9 Termination.** This Court shall terminate this Consent Decree when it determines that all of the required elements of this Consent Decree have been fulfilled. MAC may file a motion with this Court to terminate this Consent Decree, accompanied by supporting documentation demonstrating completion of the elements of the Consent Decree, when MAC deems that it has completed its obligations under this Consent Decree. The provisions of Section 8.1 shall survive termination if the Court determines that MAC has fulfilled all of the required elements for which it is responsible under this Consent Decree.

**8.10 Effect of Determination Regarding Certain MAC Obligations.** If, after the exhaustion of all possible appeals, a court of competent jurisdiction makes a final determination that MAC has no source of revenue legally available to it to implement this Consent Decree and/or that MAC cannot implement the requirements of this Consent Decree without violating its obligations pursuant to grant agreements with the federal government, either MAC or the Plaintiffs may annul this Consent Decree, including the provisions of Section 8.1, by providing notice of the annulment to the other Parties and to the Court. In the event that this Consent Decree is annulled pursuant to this Section 8.10, the Plaintiffs' claims are reinstated and the Court shall determine what further proceedings are necessary to address these claims. This Consent Decree does not constitute a contract or any other type of binding instrument if rendered null and void pursuant to this Section.

**8.11 Notice and Submissions.** Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified

below, unless those individuals or their successors give notice of a change to the other Parties in writing. In addition, whenever practicable, the Parties shall provide a copy of any notice, report or other document pursuant to this Decree to the other Parties by means of electronic mail. All notices and submissions shall be considered effective upon mailing, delivery to an overnight mail service or hand delivery to the addresses below, unless otherwise provided.

As to the City of Minneapolis:

Jay M. Heffern, Esq.  
City Attorney  
Corey M. Conover, Esq.  
Assistant City Attorney  
City of Minneapolis  
City Attorney's Office  
Metropolitan Center  
333 S 7th St Rm 300  
Minneapolis, MN 55402

John E. Putnam, Esq.  
Lori Potter, Esq.  
Kaplan Kirsch & Rockwell LLP  
1675 Broadway, #2300  
Denver, CO 80202

As to the City of Richfield:

Corrine Thomson, Esq.  
City Attorney  
Kennedy & Graven, Chartered  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402

As to the City of Eagan:

Michael Dougherty, Esq.  
City Attorney  
Severson, Sheldon, Dougherty & Molenda,  
P.A.  
300 West 147<sup>th</sup> Street, Suite 600  
Apple Valley MN 55124-7580

As to the Minneapolis Public Housing Authority in and for the City of Minneapolis:

Carol Kubic, Esq.  
Director of Legal Services  
Minneapolis Public Housing Authority in  
and for the City of Minneapolis  
1001 Washington Avenue North,  
Minneapolis MN 55401-1043

As to the Metropolitan Airports Commission:

Thomas Anderson, Esq.  
General Counsel  
Metropolitan Airports Commission  
6040 28th Avenue South  
Minneapolis, MN 55450  
612-726-8100

Thaddeus R. Lightfoot, Esq.  
The Environmental Law Group, Ltd.  
East Bridge at Riverplace  
10 Second Street, NE, Suite 114  
Minneapolis, MN 55413  
612-623-2363

**8.12 Authority to Enter into Agreement.** Each undersigned representative of a Party to this Consent Decree certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

**8.13 Failure of Court to Enter this Consent Decree.** This Consent Decree is not effective until the Court enters it. If the Court does not enter this Consent Decree, this Decree and all of the obligations hereunder are null and void. This Consent Decree does not constitute a contract or any other type of binding instrument until and unless it is entered by the Court.

**8.14 Effect of Failure to Approve Class Settlement in *David B. Wiencke, et al v. Metropolitan Airports Commission*.** This Consent Decree presumes that the Court will approve a settlement in *David B. Wiencke, et al. v. Metropolitan Airports Commission*, Civ-05-1297, that is consistent with this Decree and as required by Rule 23.05 of the Minnesota Rules of Civil Procedure. If the Court does not approve a settlement in *David B. Wiencke, et al. v. Metropolitan Airports Commission* within ninety (90) days of the entry of this Consent Decree, this Decree and all of the obligations hereunder are null and void. This Consent Decree does not constitute a contract or any other type of binding instrument if rendered null and void pursuant to this Section. The provisions of this subsection shall not modify the schedule obligations under Section 5.5 of this Consent Decree unless the Consent Decree is rendered null and void pursuant to this subsection.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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Stephen C. Aldrich, District Judge

**THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of State v. MAC.**

**FOR THE CITY OF MINNEAPOLIS**

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

Jay M. Heffern, Esq.

Its: City Attorney

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

**THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of State v. MAC.**

**FOR THE CITY OF RICHFIELD**

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

Debbie Goettel

Its: Mayor

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

Steven L. Devich

Its: City Manager

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

**THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of State v. MAC.**

**FOR THE CITY OF EAGAN, a Minnesota  
municipal corporation**

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By: Mike Maguire  
Its: Mayor

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By: Maria Petersen  
Its: City Clerk

**THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of State v. MAC.**

**FOR THE MINNEAPOLIS PUBLIC HOUSING AUTHORITY IN AND FOR THE CITY OF MINNEAPOLIS**

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

Carol Kubic, Esq.

Its: Director of Legal Services  
Minneapolis Public Housing  
Authority in and for the City of  
Minneapolis

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

**THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of  
State v. MAC.**

**FOR THE METROPOLITAN AIRPORTS COMMISSION**

By: \_\_\_\_\_  
Jeffrey W. Hamiel

Its: Executive Director

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

**APPENDIX A:  
2007 Mitigated Contours**

**APPENDIX B:  
2005 DNL Mitigated Contours**

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

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STATE OF MINNESOTA BY THE  
CITY OF MINNEAPOLIS, et al.,

Plaintiffs,

Case No. 27-CV-OS-S474

v.

METROPOLITAN AIRPORTS COMMISSION,

Defendant, and

NORTHWEST AIRLINES,

Defendant-Intervenor.

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**FIRST AMENDMENT TO CONSENT DECREE**

WHEREAS, the City of Minneapolis, City of Richfield, City of Eagan, Minneapolis Public Housing Authority (collectively, the “Cities”), and the Metropolitan Airports Commission (the “MAC”) are parties to a Consent Decree entered by this Court on October 19, 2007 (the “Consent Decree”);

WHEREAS, The MAC will complete all noise mitigation requirements established in the October 19, 2007 Consent Decree no later than September 1, 2014;

WHEREAS, the MAC intends to implement the proposed Minneapolis St.-Paul International Airport (MSP) 2020 Improvements Project to accommodate the expected demand such that the level of service is acceptable throughout MSP’s facilities under both existing and 2020 conditions, and that regional roadways provide an acceptable level of service under both existing and 2030 conditions;

WHEREAS, the Cities allege that the Metropolitan Council has formally adopted 60 DNL as a local noise mitigation standard for MSP, whether or not the interior noise level in a residence is below 45 DNL;

WHEREAS, the Cities allege that the final MSP 2020 Improvements Project Environmental Assessment/Environmental Assessment Worksheet is inadequate under the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370h, and the Minnesota Environmental Policy Act (MEPA), Minn. Stat. §§ 116D.01-116D.10;

WHEREAS, the Cities allege that failure to provide noise mitigation for existing homes that are newly within the 60 DNL for exterior noise surrounding MSP, whether or not the interior noise level in a residence is below 45 DNL, violates the Minnesota Environmental Rights Act (MERA), Minn. Stat. §§ 116B.01-116B.13;

WHEREAS, the MAC contends that the MSP 2020 Improvements Project Environmental Assessment/Environmental Assessment Worksheet is adequate under NEPA and MEPA;

WHEREAS, the MAC contests the Cities' allegations under NEPA, MEPA, and MERA and does not admit any liability to the Cities arising out of the allegations;

WHEREAS, the Cities allege that they have adopted ordinances requiring new residential construction and additions to include noise attenuation within the 60 DNL for exterior noise surrounding MSP, whether or not the interior noise level in a residence is below 45 DNL;

WHEREAS, the MAC and the Cities desire to resolve the issues arising out of the MSP 2020 Improvements Project Environmental Assessment/Environmental Assessment Worksheet and the Cities' allegations under NEPA, MEPA, and MERA, and avoid litigation with respect to those issues and allegations; and

WHEREAS, Section 8.1(j) and Section 8.7 of the Consent Decree allow the Cities and the MAC to modify the Consent Decree by mutual agreement and in writing;

NOW THEREFORE, upon approval of this Amendment by the Court, the Consent Decree shall be amended as follows:

1. The Consent Decree is hereby modified to insert the following language after Section 8.14:

**IX. NOISE MITIGATION PROGRAM TO BE IMPLEMENTED FOLLOWING FAA APPROVAL OF THE MSP 2020 IMPROVEMENTS PROJECT ENVIRONMENTAL ASSESSMENT/ENVIRONMENTAL ASSESSMENT WORKSHEET**

**9.1 Goal of the Program.** The MAC's goal in adopting the noise mitigation program in Section IX of this Consent Decree is to minimize the environmental impacts on residents in communities adjacent to MSP, consistent with the unique noise characteristics associated with air carrier aircraft operations.

**9.2 Duration of the Program.** The noise mitigation program in Section IX of this Consent Decree will commence in the year in which the FAA issues a Record of Decision, if any, approving the MSP 2020 Improvements Environmental Project Assessment/Environmental Assessment Worksheet. The program will terminate on December 31, 2024.

**9.3 Noise Contours and Program Eligibility Assessment.** The MAC will determine eligibility for the program based upon actual noise contours that MAC develops under Section 8.1(d) of this Consent Decree. The MAC will assess eligibility for noise mitigation under the program annually based upon the Section 8.1(d) actual noise contours prepared for the previous calendar year.

**9.4 Eligibility Criteria.** The owners of Single-Family homes and Multi-Family homes, as those terms are defined in Section 4.27 and Section 4.16 of this Consent Decree, shall be eligible

for the noise mitigation program in Section IX of this Consent Decree. There is no requirement that the interior noise level in any Single-Family or Multi-Family home receiving mitigation under Section IX of this Consent Decree be above 45 DNL. The owner of a Single-Family or Multi-Family home will be considered eligible for mitigation under the noise mitigation program in Section IX of this Consent Decree if the following criteria are met: (a) the community in which the home is located has adopted local land use controls and building performance standards that prohibit new residential construction or remodeling on the block in which the home is located, unless the construction or remodeling materials and practices are consistent with the noise impact levels and consistent with noise mitigation provided by this program, and (b) the home is located, for a period of three consecutive years, with the first of the three years beginning no later than calendar year 2020 (i) in the actual 60-64 DNL noise contour prepared by the MAC under Section 8.1(d) of this Consent Decree and (ii) within a higher noise impact mitigation area when compared to the Single-Family home's status under the noise mitigation programs for Single-Family homes provided in Sections 5.1 through 5.3 of this Consent Decree or when compared to the Multi-Family home's status under the noise mitigation programs for Multi-Family homes provided in Section 5.4 of this Consent Decree. The noise contour boundary will be based on the block intersect methodology. The MAC will offer noise mitigation under Section IX of this Consent Decree to owners of eligible Single-Family homes and Multi-Family homes in the year following the MAC's determination that a Single-Family or Multi-Family home is eligible for noise mitigation under this Section.

**9.5 Single-Family Home Mitigation Package.** If a Single-Family home is in the 63 or higher DNL annual noise contour prepared by the MAC under Section 8.1(d) of this Consent Decree for three consecutive years, the Single-Family home will be eligible for the Five-Decibel

Reduction Package, as that term is defined in Section 4.11 of this Consent Decree. If a Single-Family home is in the 60-62 DNL annual noise contour prepared by the MAC under Section 8.1(d) of this Consent Decree for three consecutive years, the Single-Family home will be eligible for one of two mitigation options, to be selected by the owner of the home. The two mitigation options are: (1) if no central air conditioning exists in the home as of January 1, 2013, the MAC will install central air conditioning and provide a total not to exceed \$4,000 (in 2007 dollars) of noise mitigation products and services from the Mitigation Menu, as that term is defined in Section 4.14 of this Consent Decree, including reasonable and customary installation costs; or (2) if central air conditioning exists in the home as of January 1, 2013, or if central air conditioning does not exist in the home as of January 1, 2013, but the homeowner chooses not to receive central air conditioning, the MAC will provide a total not to exceed \$14,000 (in 2007 dollars) of noise products and services from the mitigation services from the Mitigation Menu, including reasonable and customary installation costs. Any reimbursement or mitigation improvements previously provided by the MAC under this Consent Decree or under any other noise mitigation program will be deducted from the above-listed options.

**9.6 Multi-Family Home Mitigation Package.** Multi-Family homes in the 60-64 DNL annual noise contours prepared by the MAC under Section 8.1(d) of this Consent Decree will be eligible for the Multi-Family Home Mitigation Package as defined in Section 4.17 of this Consent Decree.

**9.7 Opt-Out Eligibility.** Owners of Single-Family and Multi-Family homes that have previously opted out of mitigation under this Consent Decree mitigation are not eligible to participate in the mitigation program provided under this Section.

**9.8 Releases from Homeowners.** The MAC may require owners of Single-Family and Multi-Family homes receiving noise mitigation under Section IX of this Consent Decree to sign a release in the form substantially similar to the release used previously by the MAC in its Part 150 noise mitigation program.

**9.9 Release and Waiver.** The Cities and any other communities participating in the mitigation program under Section IX of this Consent Decree hereby waive any and all past, present, and future claims arising out of or with respect to the projects evaluated in the MSP 2020 Improvements Projects Environmental Assessment/Environmental Assessment Worksheet arising under any legal theory, including but not limited to the National Environmental Policy Act, the Minnesota Environmental Policy Act, and the Minnesota Environmental Rights Act. By adopting the noise mitigation program under Section IX of this Consent Decree, the MAC is not conceding that it has created an environmental quality standard, limitation, rule, order, license, stipulation agreement or permit.

Entered this \_\_\_\_\_ day of \_\_\_\_\_, 2013

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District Court Judge

**FOR THE CITY OF MINNEAPOLIS**

By: \_\_\_\_\_  
Susan L. Segal

Its: City Attorney

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

**FOR THE CITY OF RICHFIELD**

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

Its: \_\_\_\_\_

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

**FOR THE CITY OF EAGAN**

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

Its: \_\_\_\_\_

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

**FOR THE MINNEAPOLIS PUBLIC HOUSING AUTHORITY IN AND FOR THE  
CITY OF MINNEAPOLIS**

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

Its: \_\_\_\_\_

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

**FOR THE METROPOLITAN AIRPORTS COMMISSION**

By: \_\_\_\_\_  
Jeffrey W. Hamiel

Its: Executive Director

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

