

2010

Grassy Meadows Sky Ranch Landowners
Association v. Grassy Meadows Airport, Inc., Sky
Ranch Development, Inc., Michael O. Longley :
Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

GRASSY MEADOWS SKY RANCH
LANDOWNERS ASSOCIATION,

Plaintiff/Appellee,

v.

GRASSY MEADOWS AIRPORT, INC.;
SKY RANCH DEVELOPMENT, INC.;
and MICHAEL O. LONGLEY,

Defendants/Appellants.

Case No. 20100925-CA

Dist. Ct. Case No. 030501171

BRIEF OF APPELLANT

Appeal from a Final Judgment of the
Fifth Judicial District Court in and for Washington County,
The Honorable G. Rand Beacham Presiding

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ORAL ARGUMENT REQUESTED

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JURISDICTIONAL STATEMENT

The Supreme Court has original jurisdiction of this appeal pursuant to Utah Code Ann. § 78A-3-102(3)(j). Pursuant to Rule 42(a) of the Utah Rules of Appellate Procedure, the Supreme Court transferred this appeal to the Utah Court of Appeals, which has jurisdiction pursuant to Utah Code Ann. § 78A-4-103(2)(j).

ISSUES AND STANDARDS OF REVIEW

Issue One. Whether the trial court erred when it concluded that the 2002 Amended Declaration of Covenants, Conditions and Restrictions governing the Development was void *ab initio*. (Issue preserved: R. at 741/18.)¹

Standard of Review. Questions of interpretation of a restrictive covenant not requiring resort to extrinsic evidence is a matter of law, reviewed for correctness. *View Condominium Owners Ass'n v. MSICO, L.L.C.*, 2005 UT 91, ¶ 17, 127 P.3d 697. Whether a trial court correctly defined and interpreted Utah common law is a question of law, reviewed for correctness. *Jones v. Barlow*, 2007 UT 20, ¶ 11, 154 P.3d 808. Whether a provision of a restrictive covenant is severable is a question of intent, which is a question of law if the intent can be derived from the written contract. *Management Services Corp. v. Development Associates*, 617 P.2d 406, 408 (Utah 1980).

Issue Two. Whether the trial court erred when it dismissed Sky Ranch's claim for

1. In reviewing the record index, it has come to Sky Ranch's attention that several record documents are only indexed on their first pages. In order to provide pinpoint record citations and to avoid confusion with page spans and line numbers, Sky Ranch will use a slash ("/") between the index number of the first page of the document and the pinpoint page of that document. For example, "R. at 741/18" refers to page 18 of the Findings of Fact and Conclusions of Law, which are listed in the document index as beginning on page 741 of the record.

tortious interference with business advantage, notwithstanding the fact that the claim was never submitted for decision and the trial court had agreed to hear more evidence on the issue. (Issue preserved: R. at 742/2-3.)

Standard of Review. Whether a trial court erred in granting summary judgment without a hearing is a question of law reviewed for correctness. *Price v. Armour*, 949 P.2d 1251, 1254 (Utah 1997). A trial court's grant of summary judgment is reviewed for correctness. *Bingham v. Roosevelt City Corp.*, 2010 UT 37, ¶ 10, 235 P.3d 730.

Issue Three. Whether the trial court erred in concluding that Sky Ranch was not entitled to termination of the lease or damages. (Issue preserved: R. at 741/16.)

Standard of Review. Whether a party is required to comply strictly or merely substantially with a contractual provision is a question of law reviewed for correctness. *Geisdorf v. Doughty*, 972 P.2d 67, 70 (Utah 1998). Whether a party complied with a contractual provision is a question of fact, reviewed for clear error. *Saunders v. Sharp*, 793 P.2d 927, 931 (Utah App. 1990). Whether the trial court correctly interpreted a contract is a question of law. *Richardson v. Hart*, 2009 UT App 387, ¶ 6, 223 P.3d 484. Whether the trial court correctly applied the equitable estoppel doctrine is a mixed question of law and fact. *Whitaker v. Utah State Retirement Board*, 2008 UT App 282, ¶ 11, 191 P.3d 814.

Issue Four. Whether the trial court erred when it held that the amounts held in escrow constituted "payment in full under the lease through December 31, 2010," notwithstanding the fact that the issue was never raised in either party's pleadings and no evidence was ever presented at trial that would allow the court to make that finding. (Issue preserved: R. at 742/3-4.)

Standard of Review. Whether an issue was properly before the trial court presents a question of law, which is reviewed for correctness. *Lee v. Sanders*, 2002 UT App 281, ¶ 7, 55 P.3d 1127.

RELEVANT STATUTORY PROVISIONS

There are no statutory provisions whose interpretation is central to this appeal.

STATEMENT OF THE CASE

Plaintiff Grassy Meadows Sky Ranch Landowners Association (hereinafter “Association”) filed suit on June 11, 2003, asking, *inter alia*, for a declaratory judgment against Defendants Grassy Meadows Airport Inc., Sky Ranch Development Inc., and Michael Longley (collectively “Sky Ranch”). (R. at 1.) Sky Ranch filed a counterclaim, seeking damages and injunctive relief for breach of lease and unlawful interference with economic relations. (R. at 7.) After a long period of litigation, motions and preparation, a trial was held in this matter on April 19-20, 2010 before Judge G. Rand Beacham. (R. at 754-755.)

After hearing the trial evidence, the trial court issued written Findings of Fact and Conclusions of Law on August 6, 2010. (R. at 741.) The Association submitted a proposed final judgment on August 30 2010, granting declaratory judgment for the Association, denying Sky Ranch’s claims of breach of lease and unlawful interference with economic relations to the trial court, and ordering that the amounts held in the court’s escrow account should be released to Sky Ranch as payment in full under the lease. (R. at 746.) Sky Ranch filed a written objection to the proposed judgment on September 3, 2010, arguing that the unlawful interference claim had never been submitted for decision, and that there was no evidence taken to determine that the amount

in escrow represented the full amount owed to Sky Ranch under the lease agreement. (R. at 742.) The Association filed a written response to Sky Ranch's objection on September 7, 2010. (R. at 743.) Without addressing Sky Ranch's objections, the trial court entered the final judgment as submitted by the Association on October 20, 2010. (R. at 746.) Sky Ranch filed a Notice of Appeal on November 17, 2010. (R. at 747.)

STATEMENT OF THE FACTS

Beginning in the early 1980s, Sky Ranch began to develop Grassy Meadows Sky Ranch (Development or Community), a planned community in Hurricane, Utah. (R. at 741/2.) The premise behind the Development was to create a community of private aviators who could enjoy their love of flying from their homes. (*Id.*) To that end, Sky Ranch constructed Grassy Meadows Airport next to the Development. (*Id.*)

I. THE 2002 CC&Rs

In 1984, Sky Ranch created and recorded CC&Rs to govern the Development. These CC&Rs were superseded by an Amended Declaration of CC&Rs in 1990 ("1990 CC&Rs"). (R. at 741/4.) The 1990 CC&Rs provided that Sky Ranch had the authority to unilaterally amend the CC&Rs until 2005, or until the Community was fully developed and 80% of the total lots were sold. (Ex. 5 §§ XI.2 & .4, XII.3.)² The 1990 CC&Rs specified that the Development was limited to 150 lots. (*Id.*) The 1990 CC&Rs also stated that the developer could unilaterally amend to more accurately express the intent of any provision in the 1990 CC&Rs, to better insure the workability of the arrangement contemplated in the 1990 CC&Rs, and to facilitate the integration of additional tracts into

2. For ease of reference, the trial exhibit binder (R. at 375a) will be cited to as Ex. (with a capital E) followed by the number on the tab of the exhibit.

the Development. (*Id.*)

In approximately June 2002, 75 of the 92 lots platted in the Community had been sold, bringing the number of lots sold in the Community to 81.5 percent. (R. at 741/4.) In September 2002, the Association alleged in a letter to Sky Ranch that its right to unilaterally amend the 1990 CC&Rs had terminated. (*Id.*) However, Sky Ranch disagreed with the Association's interpretation of the amendment provisions of the 1990 CC&Rs and filed amended CC&Rs in October 2002 ("2002 CC&Rs"). (R. at 741/5; Ex. 6.)

The Association disagreed with several of the amendments set forth in the 2002 CC&Rs, and so sued to nullify them. The trial court determined that the 1990 CC&Rs were ambiguous as to when Sky Ranch's power to unilaterally amend terminated, and so construed them against Sky Ranch as the drafter, nullifying the CC&Rs. (R. at 741/18-19.) The trial court also ruled that the 2002 CC&Rs impermissibly went beyond the purposes allowed for in the 1990 CC&Rs and in Utah common law. (*Id.*)

II. THE FBO

When Sky Ranch platted Phase I of Sky Ranch, it left an eight-acre parcel of land to the west of the runway. (Tr.1 41:11-24; Ex. 8.)³ The 1990 CC&Rs reserved to Sky Ranch the authority to use that eight acres of land

to conduct collateral, commercial business activity on the Project, including, but not limited to, conducting fixed base operations for the fueling and maintenance of aircraft and purposes incident thereto, construction and maintenance of aircraft and purposes incident thereto, construction and sale or leasing of aircraft hangar space, scenic air tour services and light manufacturing.

3. For ease of reference, the trial transcripts of April 19th (R. at 754) and 20th (R. at 755) will be referred to as Tr.1 and Tr.2 respectively.

(Ex. 5 at 20.) At trial, Mr. Longley testified that in 1994, pursuant to the provisions of the 1990 CC&Rs, the Association signed an agreement regarding developing the Fixed Base of Operations (“FBO”) and other commercial operations at the Development that provided for related commercial activities such as food service, lodging, and a gas station. (Tr.1 103:19-104:12, 105:10-107:15, 109:4-110:25, 122:24-126:3.) Three water shares were given to the Association in consideration of this agreement. (Ex. 22 at 1.) This evidence was not contradicted at trial.

Notwithstanding this agreement and the 1990 CC&Rs, in 2001, Ray Batson and Gary Jubber appeared before the Washington County Planning Commission on behalf of the Association for the purpose of persuading the Commission to reject Sky Ranch’s request for a zone change that would have allowed it to develop the FBO. (Dep. Batson 30-36.)⁴ Washington County denied Sky Ranch’s zoning change request. (R. at 489/14.) Based on these facts, Sky Ranch brought a claim against the Association for breach of contract and tortious interference with business relations in its counterclaim. (R. at 489/12-16.)⁵

The matter was set for a four-day trial beginning April 19, 2010. (R. at 692; 699.) One week before the trial was to begin, the trial was shortened to two days. (Docket entry

4. For ease of reference, Sky Ranch will refer to the testimony submitted into evidence by means of deposition (R. at 702, 734, 736, 737) as “Dep.” followed by the person’s last name and the page number of the deposition transcript. Any references to exhibits appended to these depositions will be designated by a lowercase “ex.”

5. Despite the characterization of the cause of action as “tortious interference,” Sky Ranch’s counterclaim alleged that the Association’s duty not to interfere was established by contract. (R. at 489/12-16.) While the cause of action may be more appropriately classified as breach of the implied covenant of good faith and fair dealing, Longley will continue to refer to the claim as “tortious interference” for the sake of consistency.

of 4/12/2010; Tr.1 20:24-21:2.) As the trial progressed, it became obvious to Sky Ranch's counsel that they would not be able to fully cover the tortious interference claim. Sky Ranch's counsel requested that the court hear evidence on this issue on a later date, which the Court agreed to do. (Tr.2 at 170:6-171:10.)

Notwithstanding this agreement, and without giving Sky Ranch notice or an opportunity to respond, the trial court ruled upon the issue of tortious interference in its Findings of Fact and Conclusions of Law, holding that the Association "had no contractual obligation not to oppose Mr. Longley's effort not to oppose zoning changes . . . and because they are immune from liability for petitioning the government in any event, there is no basis to hold the Association liable for tortious interference in this case." (R. at 741/22.) The trial court further held that any agreement "not to resist zoning changes adverse to the Association" would be "void as being inconsistent with the board member's fiduciary duties." (R. at 741/22 n.5.)

The Association later submitted a proposed judgment in its favor with respect to the issue of tortious interference, which included a footnote stating that

prior to adjourning the trial, Defendants had been unable to establish any contractual obligation on behalf of Plaintiff that could form the basis of a tortious interference claim. Specifically, the only evidence Defendants had introduced was an unsigned contract with proposed modifications handwritten on it.[] After further reviewing the tortious interference claim, however, the Court is persuaded that Plaintiff cannot be held liable regardless of what additional evidence may be presented because of Plaintiff's constitutional right to petition the government

(R. at 746/2 n.1.) Sky Ranch objected to the proposed judgment, stating that (1) the tortious interference claim was never submitted for the decision of the trial court, (2) the statement in the judgment that "the only evidence Defendants had introduced was an

unsigned contract with proposed modifications handwritten on it” was a new finding that was never made by the trial court, and one that should not have been made considering that Sky Ranch had not had the opportunity to present all of its evidence, and (3) Sky Ranch never had an opportunity to brief or argue against the conclusion that the Association’s right to petition superseded any contractual obligations that it may have had. (R. at 742/2-3.) The trial court entered the judgment as submitted by the Association without addressing Sky Ranch’s objections. (R. at 746.)

III. THE AIRPORT LEASE

The Airport is privately owned by Defendant Grassy Meadows Airport Inc. and was leased to Grassy Meadows Sky Ranch Owners Association pursuant to a lease agreement dated November 25, 1990. (Ex. 1.) The Lease required the Association to

maintain the airstrip and its facilities in the same or better condition, normal wear and tear excepted, as when received from Lessor, including but not limited to performing the following duties in connection therewith: paint, level, compact, remove weeds, repair and oil the surface covering the airstrip . . . maintain, replace and repair any runway lighting system, beacon, and equipment associated therewith.

(*Id.* ¶ 8.) The Airport Lease also required the Association to

provide all risk liability insurance as is commonly provided for private airports, which shall show Lessor and Sky Ranch Development, Inc. as additional insureds. The limit of liability coverage shall be set by mutual agreement, and the policy shall be subject to the reasonable approval of lessor.

(*Id.* ¶ 10.) The Lease provided that Sky Ranch could terminate the lease if the Association did not comply with a written notice to cure within 30 days. (*Id.* ¶ 4.)

After a long battle to try to get the Association to maintain the runway and associated facilities as per the Lease, Sky Ranch caused a written notice of default to be

delivered to the Association on March 31, 2003, which identified the Association's breaches. (Ex. 2.)

The Association replied in a letter, denying that they were in breach of the Lease and sending an insurance declaration showing that Grassy Meadows Airport was an additional insured on their policy. (Ex. 3.) The Association did some weed cleanup and replaced burned-out light bulbs on the runway, but did nothing else to cure their default. (Dep. Batson 25-27.) Sky Ranch sent a final notice of termination on May 5, 2003. Sky Ranch took possession of the airstrip and did inspections and maintenance work in the amount of \$12,000.00. (Tr.2 21:16-22:20.) Thereafter, Sky Ranch allowed the Association to resume use of the airstrip pending resolution of the dispute. (Ex. 40.)

At trial, the following evidence was presented regarding breaches of the lease agreement:⁶

The Runway. An inspection done was done by Wayne Rogers of Applied Geotechnical Engineering Consultants on May 2, 2003 and May 19, 2003. Mr. Rogers testified at trial as an expert witness. (Tr.2 69:14-16.)⁷ He found significant cracking of the runway asphalt and weeds growing in the cracks. (Tr.2 71:2-25.) Because of the age of the asphalt, sealing cracks and oiling the runway was not sufficient maintenance at this time—the runway required repaving soon, or it would start to deteriorate rapidly. (Tr.2 71:23-72:7.) Mr. Rogers also found that the crack sealant put on the runway was quite

6. The following evidence is in favor of Sky Ranch's position. Evidence supporting the trial court's decision will be discussed in the argument portion as required by Utah R. App. P. 24(a)(9).

7. A summary of Mr. Rogers' inspection is in the record as Exhibit 35.

thick, to the point where he could feel bumps as he drove down the runway in a car.⁸ (Tr.2 72:8-73:3.) He concluded that this was a safety concern for light airplanes, and was urgent enough that it should be addressed as soon as possible. (Tr.2 73:4-13; *see also* Dep. Dubusschere 39-42, 98-99.) Mr. Rogers observed that there were drainage problems on and around the runway, including culverts that had not been properly maintained and so not draining, and a depression that had allowed water to pool on the runway. (Tr.2 73:25-74:8.) He recommended that the culverts be cleaned and that the depression needed to be patched at a minimum. (Tr.2 74:9-20.) He could not tell how long it had been since the drainage system had been taken care of but it was not recent. (Tr.2 74:25-75:6.)

Also, Mr. Longley testified that he had sent a letter to a member of the Association on February 27, 2003, asking them to maintain the runway, and specifically to “develop a runway maintenance program that includes short term and long term maintenance, overlay, and other pertinent details for [the] runway/taxiway.” (Tr.1 212:13-213:3; Ex. 39.) In the letter, Mr. Longley offered to waive lease payments if the runway was repaved by 2006. (Tr.1 214:22-25.) The Association did not accept this offer. (Tr.1 215:2-4.)

The Airport Lighting System. Ryan Christensen inspected the runway lighting system on September 19, 2003. (Tr.1 179:10-17.) He observed that the runway light system was in poor condition. (Tr.1 186:16-22.) The clear lenses of the runway lights had been sandblasted and looked like frosted glass, and the inside of the lenses and the bulbs were covered with dust and spiderwebs. (Tr.1 189:1-190:4.) This was a problem, as it obstructed the light and dimmed the runway lights. (Tr.1 190:5-8.) Several of the fixtures were broken off at the base plate, the transformers were generally buried in the dirt, and

8. The effect would have been worse for an airplane, as it lacks a suspension.

the insulation of the wires was brittle and would come off if the wires were moved. (Tr.1 181:13-25; Ex. 34.) There were rodent nests, dead mice and massive amounts of dirt in the voltage control panels, and evidence of mice chewing on the wires. (Tr.1 182:1-10.) The taxiway lights did not work at all, and many were broken and lying on the ground. (Tr.1 182:12, 183:1-5, 188:15-22; Ex. 34.) This was dangerous, as without taxiway lights there was a good probability of taxiing off the runway. (Tr.1 193:22-194:8.) The lighting control building was covered in an inch of dirt and mud, and the spare parts inside were not maintained. (Tr.1 182:13-21, 186:23-187:14; Ex. 34.) Further, because the antenna was put on the outside of the lighting control building, and its wire threaded through a hole in the roof, rainwater could leak through the roof and follow the wire right into the voltage control box. (Ex. 34.) Because the lighting control building houses the controls of the lighting system, it was important that it be maintained. (Tr.1 187:15-188:14.) Mr. Christensen testified that he saw no signs of recent maintenance done on the lights or the control building. (Tr.1 at 191:8-10.)

Mr. Longley testified that the lighting system was unchanged from May 3, 2003 to the date that Mr. Christensen did his inspection. (Tr.1 219:2-21.) The records of the Association do not indicate any expenditures for the maintenance of lights between 1998 and the end of the cure period. (Dep. Habberfield 21 & ex. 2).

Weed control and Fencing. On June 11, shortly after the cure period had ended, Michael Longley went onto the property and took pictures of the weeds around the runway. (Tr.2 14-20; Ex. 25-33.) He noted that it looked like someone had attempted to scrape some weeds out with a tractor, but a lot of weeds were left, and that was generally the condition of the property during the cure period. (Tr.2 16:20-17:21.) He was

concerned about the weeds for aesthetic reasons, and testified that the weeds made it harder for him to sell properties in the Development. (Tr.2 13:21-14:10.) He was also concerned at the lack of maintenance of the wooden fence surrounding the airstrip—the Association would not oil or seal it, and often let broken fences just sit. (Tr.2 21:10-14; Ex. 41.) Other evidence introduced at trial indicated that the weeds were not well maintained and were a continual problem in the time leading up to the termination of the lease. (Dep. W. Rieck 17-19; Dep. F. Rieck 15, 28-29; Dep. Debusschere 19-20; Dep. Berg 23.) Further, William Rieck testified that lodgepole pine must be oiled to extend its life and preserve it, (Dep. W. Rieck 26-29) and Jesse Debusschere testified that maintenance of the fencing had been a problem in the past. (Dep. Debusschere 30.)

Insurance. The evidence at trial was that Sky Ranch had not received any notice of insurance for the five or six years previous to the notice of default, and the Association had never consulted with Sky Ranch as they were required to under the lease. (Tr.2 28:23-29:23.) While the Association's attorney had sent Sky Ranch a proof of insurance for Grassy Meadows Airport, Inc., it did not send a copy of the policy or proof of insurance for Sky Ranch Development. (Ex. 3.) Sky Ranch later learned that the Association had allowed the Airport Liability policy to lapse from December 1, 2000 to May 3, 2002. (Dep. ATP 61-62.) While Grassy Meadows Airport was named an additional insured from May 3, 2002, Sky Ranch Development was not added as an additional insured until February 11, 2004. (*Id.* at 107-08; Tr.2 32:21-23.) Apparently, the naming of additional insured was backdated to May 3, 2003 by the insurance company. (Ex. 15.)

Trial Court's Ruling. In its Findings of Fact and Conclusions of Law, the trial

court held that the Association was entitled to take advantage of the doctrine of substantial compliance, (R. at 741/23) and found that the Association substantially complied with the terms of the Airport Lease, stating that

although maintenance issues arose from time to time, including at the time the Notice of Termination was sent, such maintenance items fall within what would reasonably be expected as normal wear and tear of improvements on real property of this type. Nevertheless, the Airport was always in reasonably good working order and condition.

(*Id.* at 9-10.) The trial court further held that because Sky Ranch did not present evidence that it had complied with the notice requirements of the lease, and the notice of default was not specific enough about the breaches that needed curing, Sky Ranch could not seek termination as a remedy. (*Id.* at 22.) Finally, the trial court held that Sky Ranch was equitably estopped from terminating the lease. (*Id.* at 24.)

IV. MONEY HELD IN ESCROW

The Airport Lease Agreement provided that rent would be paid to Sky Ranch semi-annually, and that the amount of rent would be \$7.50 per month for each residential lot in the Development, and \$30.00 for each commercial lot, excepting lots owned by Sky Ranch. (Ex. 1 at 3.) As the lease was for 99 years, the amounts adjusted annually for inflation based on the Consumer Price Index for southwestern Utah. (Ex. 1 at 4.)

After Sky Ranch terminated the Airport Lease, it refused to take lease payments from the Association; leading the Association to seek an order establishing an interest-bearing escrow account for the funds. (R. at 88/2.) Sky Ranch stipulated to the Association's motion, and the trial court ordered "that Plaintiff be allowed to deposit the amounts owed and that Plaintiff alleges will become due under the lease directly to the Fifth District Court." (R. at 154/2.) Thereafter, notwithstanding the provisions of the

Lease agreement that the funds should be paid semi-annually, the Association submitted funds to the Court at various times and in varying amounts. (*See, e.g.*, Docket entries of 7/20/2004; 12/15/2004; 9/26/2005; 10/26/2006; 5/21/2007; 5/15/2008; 8/18/2009.)

Neither party requested an accounting or determination of what amounts were owing under the lease in their pleadings. (R. at 211; 219; 489.) Also, there was no evidence put on at any time as to whether the amounts deposited with the court were full and complete.

When the Association submitted its proposed judgment, it included a provision saying that “all monies currently held by the Court in escrow shall be released to Defendant All monies so released shall be applied as *rent paid in full* under the lease through December 31, 2010.” (R. at 746/3 (emphasis added).) Sky Ranch objected to this provision, stating that there had never been an accounting of the amounts owed under the lease or any other evidentiary foundation for the trial court to make such a decision. (R. at 742/4.) The trial court entered the judgment as submitted by the Association without addressing Sky Ranch’s objections. (R. at 746.)

SUMMARY OF ARGUMENT

This Court should overturn the trial court’s rulings in this matter because (I) the 1990 CC&Rs unambiguously gave Sky Ranch the ability to make amendments to the CC&Rs, and those amendments were within the scope of Sky Ranch’s power to amend; (II) an individual’s First Amendment right to petition the government can be restricted by entering into private contracts; (III) the trial court’s conclusion that there was no material breach of the Airport Lease was against the great weight of the evidence; and (IV) the trial court had no authority to rule on an issue that was never pleaded by either party.

ARGUMENT

The primary concern in this case is whether Sky Ranch's claims and defenses were fairly adjudicated in this matter. As will be shown, the trial court's decision to adjudicate one of Sky Ranch's claims without hearing the evidence on the issue (*see* Point II), and its decision to rule on an issue never brought before it by the parties (*see* Point IV), were both clear violations of Sky Ranch's right to due process. The trial court's method of making findings should also give this Court pause. The trial court prefaced its Findings of Fact and Conclusions of Law with this statement:

Due to case load and scheduling demands, the Court's findings are overdue and I simply do not have the time necessary to complete independent findings. Since I am largely persuaded by Plaintiff's evidence and arguments, I am adopting most of Plaintiff's proposed findings and conclusions.

(R. at 741/1.) This statement casts doubt on whether the findings and conclusions represent the considered independent opinion of the trial court, and this Court should scrutinize those findings closely. *See Pennsylvania Environmental Defense Foundation v. Canon-McMillan School Dist.*, 152 F.3d 228, 233 (3rd Cir. 1998) (holding that a statement by the trial court that it would adopt whichever party's proposed findings that were more reasonable was evidence that the findings may not have represented the trial court's independent judgment and undermined their legitimacy). The fact that the trial court made adopted findings regarding the interpretation of a written instrument (*see* Point I) and referred in one of its findings about evidence that was never actually presented (R. at 741/8 (§ 27)) makes the trial court's statement even more troublesome. Because every litigant deserves a full and fair hearing on the issues it brings before a trial court, as well as having any judgment be the considered result of the court's own

reasoning, this Court should reverse and remand the trial court's decision in this case.

I. THE 2002 CC&RS ARE VALID.

The trial court erred in declaring the 2002 CC&Rs void *ab initio*. The 2002 CC&Rs were executed within the timeframe contemplated by the 1990 CC&Rs, and the amendments were within the scope of permitted amendment. Therefore, this Court should reverse the trial court's decision. Further, the court should award Sky Ranch with its attorney fees incurred in appealing this issue as per § XII.4 of the 2002 CC&Rs. (Ex. 6.)

A. *The 1990 CC&Rs unambiguously allowed Sky Ranch to amend the CC&Rs until either July 16, 2005, or until 120 residential units were sold.*

The trial court erred in holding that, under the provisions of the 1990 CC&Rs, Sky Ranch's authority to amend the CC&Rs was extinguished before the filing of the 2002 CC&Rs. The source of the trial court's error is focusing on just one provision of the 1990 CC&Rs, rather than construing the document as a whole. In its Findings of Fact and Conclusions of Law, the trial court found that the language allowing unilateral amendment was in force until "80% of the lots in the community (including additional phases as may be added) have been sold to purchasers." (R. at 741/18 (quoting Ex. 5 § XII.3).) The trial court held that

the phrase, "as may be added," could be interpreted to include lots (1) "as are permitted to be added in the future, no matter how many have already been added at any point in time," or (2) "as may have been added at any point in time, no matter how many may be permitted in the future."

(R. at 741/19.) The trial court concluded that because the provision was ambiguous, it should be construed against Sky Ranch. (*Id.*)

However, before declaring that a provision in a contract is ambiguous, the trial court must first attempt to harmonize all of the contract's provisions by "examin[ing] the

entire contract and all of its parts in relation to each other [to] give a reasonable construction of the contract as a whole, to determine the parties' intent." *Gillmor v. Macey*, 2005 UT App 351, ¶ 19, 121 P.3d 57. In the section of the 1990 CC&Rs entitled "Annexation of Additional Land," it states that Sky Ranch has the right to unilaterally amend the CC&Rs "until the right to enlarge the Development through the addition of tracts or subdivisions terminates." (Ex. 5 § XI.4.) Sky Ranch's right to annex the land is limited to fifteen years, and to 150 total residential lots. (*Id.* § XI.2). At first blush, the "eighty percent" provision and the "termination of annexation rights" provision seem to conflict. "Provisions which are apparently conflicting are to be reconciled and harmonized, if possible, by reasonable interpretation so that the entire agreement can be given effect." *Munford v. Lee Servicing Co.*, 2000 UT App 108, ¶ 18, 999 P.2d 23. The two provisions can easily be read together to conclude that Sky Ranch's power to amend terminates when it has finished developing *and* 80% of the lots are sold.

This interpretation is supported by the text of the 1990 CC&Rs. The "termination of annexation rights" provision is contained in the section of the 1990 CC&Rs dealing with annexation. This section contemplates that Sky Ranch will continue to annex land to the Development "for common areas or for subdivision into additional residential or commercial lots." (Ex. 5 § XI.1.) This section also gives Sky Ranch the authority to modify the 1990 CC&Rs through a supplementary declaration filed upon annexation of additional property. (*Id.* § XI.3.) There is a clear intent in this section that Sky Ranch should retain the power to amend the CC&Rs until it is finished developing. On the other hand, the "eighty percent" provision is contained within a section entitled "Miscellaneous," and inside of a provision that outlines the procedure for membership

amendment. After explaining the procedure, it then states that Sky Ranch has the unilateral right to amend until 80% of lots are sold “notwithstanding anything herein contained to the contrary.” (Ex. 5 § XII.3.) It is clear from the placement of the provision that it was intended to be a separate condition that occurred after the Development was finished.

This interpretation is also consistent with common sense and the intent of the parties. The 1990 CC&Rs evince a clear intent to “annex additional phases to the Development,” (Ex. 5 at 2 (Recital D)) and gives Sky Ranch fifteen years to finish developing. (*Id.* § XI.2.) The purpose behind developing in phases is so that the developer can use the profits of property sold in the first phases to develop later phases. However, under the trial court’s interpretation, Sky Ranch could not sell too many of those properties at once, or it would lose its control over the project. This defeats the purpose of developing in phases. Further, the trial court’s interpretation would terminate Sky Ranch’s right to amend, but not its right to continue annexation. This is an absurd result, as it puts Sky Ranch’s control over the Development into a gray zone that was certainly not intended, and it would nullify the “termination of annexation rights” provision and conflict with Sky Ranch’s power to modify the CC&Rs through supplemental declarations. It also leads to the question of whether Sky Ranch’s right to amend is restored when it annexes land that takes the threshold of lots back below 80%. Because the trial court’s interpretation defeats the intent of the 1990 CC&Rs and makes them unworkable, this Court should adopt Sky Ranch’s interpretation of the amendment provisions of the 1990 CC&Rs.

B. The trial court erred in nullifying the entirety of the 2002 CC&Rs, as the

amendments were reasonable clarifications of the 1990 CC&Rs and other agreements.

Besides holding that the 2002 CC&Rs were void because Sky Ranch lacked authority, the Court also held that they were void because they were not within the scope of amendment permitted by the 1990 CC&Rs and would have materially changed the character of the Development. (R. at 741/20.) However, as this conclusion is not supported by the texts of the two documents, this Court should reverse the trial court's conclusion.

In determining the scope of permissible amendment, the trial court held that the 1990 CC&Rs restricted Sky Ranch to amending the CC&Rs to the following purposes:

(i) to more accurately express the intent of any provision of this Declaration in light of then existing circumstances or information; (ii) to better insure, in light of then existing circumstances or information, workability of the arrangement which is contemplated by the Declaration; or (iii) to facilitate the practical, technical, administrative or functional integration of any additional tract or subdivision into the Development.

(R. at 741/4.) The trial court also concluded that Utah Law forbids a developer from amending CC&Rs “in a way that would materially change the character of the development” (R. at 741/20 (citing Restatement (Third) of Property: Servitudes § 6.21 (2000).)⁹ In its Findings of Fact, the trial court found that several terms in the 2002

9. The full Restatement section is as follows: “A developer may not exercise a power to amend or modify the declaration in a way that would materially change the character of the development or the burdens on the existing community members unless the declaration fairly appraises purchasers that the power could be used for the kind of change proposed.” While this proposition has never been adopted by the Utah appellate courts, it does not appear to burden Sky Ranch's right to amend any further than the provisions of the 1990 CC&Rs, and neither the trial court nor the Association relied on it below. Sky Ranch therefore does not address the issue at this time, while reserving the

CC&Rs “were dramatically different from key provisions” of the 1990 CC&Rs, and were not “mentioned, contemplated, or addressed in any manner in the 1990 Declaration.” (R. at 741/5-8.) The trial court concluded that these differences were adequate grounds to declare the 2002 CC&Rs void.

However, the trial court’s interpretation of these provisions is in error—as will be shown, none of the amendments in the 2002 CC&Rs went beyond clarifications of, or amendments designed to ensure the workability of the 1990 CC&Rs. Below is a list of each of the provisions that the trial court found objectionable and Sky Ranch’s response.¹⁰

- The 2002 CC&Rs greatly expanded the limited property that was designated for the Community (which was limited to 150 lots) described in the 1990 Declaration, and therefore those having access to the Airport, to include “those portions of land set forth in Exhibit B” to the 2002 Declaration, which included “any and all property that may be annexed into the Community.” (§ 25a.)

This is not true. The provision in the 1990 CC&Rs¹¹ was slightly ambiguous on this point, as it used “lot” “living unit” and “unit” interchangeably. (Ex. 5 § XI.2(a).) The 2002 CC&Rs clarified that the limitation was to “150 total residential lots,” but that this

right to argue it in its reply brief if the Association argues that it is sufficiently different in scope than the CC&R restrictions.

10. While the trial court’s statement was listed as a finding, the question of whether the 2002 CC&Rs were dramatically different from and were not contemplated in the 1990 CC&Rs can be decided by looking at the four corners of the documents, and hence is a question of law entitled to no deference regardless of the trial court’s characterization. *See 50 West Broadway Assoc. v. Redevelopment Agency of Salt Lake City*, 784 P.2d 1162, 1171 (Utah 1989). Also, to the extent that any provisions that required the consideration of extraneous evidence, no such supporting findings were ever made.

11. “Declarant shall not effectuate any annexation of land which would cause the total number of living units existing on, or planned for, the Property to exceed 150 total Lots, or 106 units in the additional property after Phase I and II.”

did not restrict hangar or commercial units. (Ex. 6 § XI.2(a)).

- The 2002 CC&Rs modified the definition of “lots” within the Community to include hangars and the definition of “members” of the Association to include owners of hangars, which would significantly alter and dilute the Association member’s voting rights vis-a-vis Mr. Longley's voting rights. (¶ 25c.)

This is not true; the 2002 CC&Rs merely clarified the voting rights of owners of hangar lots as was outlined in the Phase 5C Declaration. (Ex. 36.)¹² Phase 5C consisted of 320 ten-foot wide airplane hangar lots and three commercial lots. (*Id.* ¶ 2.) The Phase 5C Declaration explained that the hangar lots were subdivided in ten-foot amounts to accommodate various sizes of hangars, and that Sky Ranch intended to sell them in blocks. (*Id.* ¶ 5.) The Declaration designated “each block of units intended to form a hangar space” as one Class C lot for voting purposes. (*Id.* ¶ 5.) The 2002 CC&Rs simply clarified how the hangar lots owned by Sky Ranch or held in trust for it were to be counted in terms of Class C votes. (Ex. 6 §II.2 (Class C).) This was not a substantial change from the 1990 CC&Rs as amended.

- The 2002 CC&Rs greatly expanded the commercial fixed base operation area (“FBO”) to be constructed adjacent to the Airport to “include, but [not be] limited to, facilities for the sale of airplane fuel, a convenience store, lodging units (“casitas”), airplane repair facilities, airplane washing facilities, and any other related facilities deemed appropriate or desirable by the Declarant.” (¶ 25b.)

There was no great expansion of the right of commercial development between the 1990 CC&Rs and the 2002 CC&Rs. The 1990 CC&Rs reserved the right of Sky Ranch to

12. The Phase 5C Declaration amended and supplemented the 1990 Declaration and was binding on the Development and Association. (See Ex. 5 §§ I.1 (Declaration includes “amendments or supplements . . . which are to occur in conjunction with the expansion of the Development.”), XI.3 (Supplementary Declarations “may contain such complimentary additions and modifications of the covenants, conditions and restrictions . . . as may be necessary to reflect the different character, if any, of the added property and as are not inconsistent with the plan of the Declaration.”).)

conduct certain commercial operations on lands owned by it adjacent to the airstrip, *including, but not limited to*, fixed base operations for refueling aircraft and purposes incident thereto, construction and sale or leasing of aircraft storage and hangar space, scenic tour flights *and such other business operations as it may deem necessary and appropriate*.

(Ex. 5 § VII.6 (emphasis added); *see also* § VII.16.) It is clear from the language of the provision that the list of commercial operations were not limited by the listed items, and the commercial operations added to the list in 2002 were not of such a type that would seem grossly out of place in that list or create a new or special burden to residents that was not presented by the operations already on the list. These operations were meant to be small and primarily serve the residents and their guests. (Tr.1 94:14-95:2.) As the Development is five miles south of SR-9 in Hurricane and there is nothing between the Development and the Arizona border, a small restaurant, a convenience store and a few lodging units would not have drawn much traffic from outside. Furthermore, the uncontested evidence was that the Association approved these uses in an agreement signed in 1994. (Tr.1 103:19-104:12, 105:10-107:15, 109:4-110:25, 122:24-126:3; Ex. 22 at 3.) The Phase 5C Declaration also stated commercial uses in its commercial lots including “an airplane washing and service area” and “a pilot cafe and/or lounge.” (Ex. 36 ¶ 9.) Finally, both the 1990 CC&Rs and the 2002 CC&Rs provide that the commercial operations shall not unreasonably interfere or restrict the Owner’s beneficial use and enjoyment of their Lots or the Property. This provision is a safeguard and enforceable right to make sure that the scope of the commercial development will be reasonably limited based on the character of the neighborhood and would allow a resident or the Association to seek injunctive relief or damages when a specific development proposal is

in place.¹³ There was no substantial change as to the allowed commercial uses of the Development between the 1990 CC&Rs and the 2002 CC&Rs.

- The 2002 CC&Rs imposed a burden upon the Association to “maintain the taxiways to meet all applicable safety standards” despite the fact that the taxiways are not common property of the Association, but owned by private individuals, including Mr. Longley. (¶ 25d.)

This is neither a significant nor unreasonable amendment. As the taxiway was for the common benefit of the Association members and had been used by the members for the taxiing of their airplanes since it was built, it seems obvious that the Association has an implied easement on the taxiway, regardless of the private ownership of the land. The fact that the taxiway lighting system was built in conjunction with the runway lighting system and the controls were housed in the same place, (Tr.1 186:3-188:22) and that the taxiway connected several residential units with the airstrip (Tr.1 209:20-210:7) further suggests that the Association had an equitable easement over the taxiway. Requiring the Association to maintain property upon which it has an easement is an unremarkable and well-accepted point of law. *See, e.g.*, Restatement (Third) of Property; Servitudes § 4.13. Further, this amendment merely incorporates what had been the course of conduct of the Association—it has maintained the taxiway in the past and has admitted that it was their continuing responsibility to do so. (Tr.1 209:20-210:7; Tr.2 144:23-145:12, 165:6-20; Ex. 21; Ex. 22 at 2.) However, even if this section were entirely new, it would not be an unreasonable amendment that would fundamentally change the character of the

13. Notwithstanding the language in the 2002 CC&Rs that the commercial uses shall not interfere “in the view of the Declarant,” the right is enforceable. *See Resource Management Co. v. Weston Ranch and Livestock Co., Inc.*, 706 P.2d 1028, 1038 (Utah 1985) (holding that even though a party could exercise the right to cancel “in its sole discretion,” that it could not do so unreasonably or in bad faith).

Development, and, given the purpose of the taxiway, the provision is surely one that be one that better ensured the workability of the declaration and more accurately expressed the intent of the 1990 CC&Rs.

- The 2002 CC&Rs further diluted the Association members' voting rights by . . . (2) attempting to resurrect Class B voting rights (the Declarant's voting rights) which had previously been extinguished . . . ; and (4) extending the period of developer's control for 7 years from 2005 to 2012.¹⁴ (§ 25e.)

Reestablishing Class B voting rights was appropriate because the 1990 CC&Rs show an intent to protect the developer's rights, which is consistent with the amendment, and clarifies an ambiguity in the 1990 CC&Rs. The 1990 CC&Rs provide that Class B voting rights were to cease "when the total number of votes held by all Class A and C Members equals the total number of votes held by the Class B Member." (Ex. 5 § III.2 (Class B).) As the addition of lots was to proceed in phases and comprise 150 total residential lots, Sky Ranch would have more Class B votes after each phase was incorporated. This raises the question of what would happen if Sky Ranch's class B rights ceased, then it added more lots to the Development. The 1990 CC&Rs were silent on that question. However, it was clearly the intent of Sky Ranch to continue to have control over the Development until all phases were completed. The amendment stating that those rights would come back into being answers that question consistently with the intent of the 1990 CC&Rs, and so is a legitimate amendment.

Extending the period of control was also appropriate. The intent behind the 1990 Declaration was to annex land into the Community until there were 150 residential units. This has taken substantially more time to do this than Sky Ranch originally contemplated,

14. Items 1 and 3 in this list were addressed *supra*.

due in part to the Association's failure to properly keep up the airport, (*see* Point III, *infra*) and the Association opposing its proposals before the Washington County Planning Commission, (*see* Point II, *infra*). There was no evidence presented at trial or otherwise that Sky Ranch unreasonably delayed its course of development. Given these facts, allowing Sky Ranch more time to develop the property to its conclusion is a reasonable provision that both provides for the workability of the arrangement contemplated by the Declaration and facilitates the integration of additional tracts into the Development.

- The 2002 CC&Rs imposed a prohibition to challenge Sky Ranch Development, Inc.'s voting rights by stating: "It shall be cause for automatic dismissal from membership on the Board of Trustees of the Association for board members to fail to recognize Declarant's votes, including those held in trust for Declarant." (§ 25f.)

This is not an unreasonable condition, but one that was justified to better ensure workability of the agreement. Mr. Longley testified that some board members of the Association had refused to recognize voting rights for Owners of hangar lots. (Tr.1 97:9-17.) An *in terrorem* clause like this would have been a reasonable and appropriate way to ensure that any further challenges of voting rights would be in good faith and not arbitrary.

- The 2002 CC&Rs allowed for the first time the "airport owner" (i.e., Grassy Meadows Airport, Inc.), not the Association only, to adopt rules and regulations burdening all the members of the Association. (§ 25g.)

This is false. The Airport Lease stated that "Lessee, its members, invitees, their guests and invitees shall, at all times, abide by and be bound by . . . any and all rules and regulations adopted by *Lessor* or the Lessee, as the case may be, for the operation of the Airport." (Ex. 1 ¶ 2.) The 2002 CC&Rs made no change to that agreement.

- The 2002 CC&Rs removed the Board of Trustees' ability to promulgate rules or

regulations limiting “the allowable number of guests or invitees” that can be granted access to the Airport despite the fact that the Airport was intended to be used exclusively by Association members and their own guests. (§ 25h.)

The sections complained of explicitly do not limit the Board of Trustees’ ability to make rules limiting the allowable number of guests or invitees than can be granted access to the airport. The section of the 2002 CC&Rs cited by the trial court is § IV.2, which states that guests and invitees may be granted the right to use and enjoy common areas by Members, subject to the rules and regulations made by the Association. It later states that “the Board of Trustees may not limit the allowable number of guests or invitees under this paragraph.” (Ex. 6 § IV.2.) The 2002 CC&Rs explicitly note that “the airstrip and taxiways are not common areas,” (*id.* §§ I.7, IV.1.) meaning that the rulemaking restriction does not apply to the airport. Excluding the airport from the common area is consistent with the 1990 CC&Rs, which note that notwithstanding the Airport Lease to the Association, “as presently constituted, no common areas are included” in the Development. (Ex. 5 § IV.1.)

- The 2002 CC&Rs allowed for the first time “jet or large aircraft” to land on the Airport despite the fact that the Airport was not designed for jets in terms of length or structural integrity (the Airport was designed to handle only aircraft that weigh less than 12,500 pounds) and despite the Declaration’s prior prohibition of annoyances and nuisances, including the substantially greater noise generated by jet engines as opposed to propellers. (§ 25i.)

There are two different ways in which the 2002 CC&Rs mention jets and large aircraft. First, the 2002 CC&Rs make clear that as the Development is an airplane community, Members’ right to quiet enjoyment does not exclude aircraft of any type or size from using the airstrip, and waive claims resulting from use of the airstrip, including jets and large aircraft. (Ex. 6 §§ IV.2; IV.4(k); VII.22.) The second provision states that

“the Declarant or any subsequent owner of the airstrip shall not be restricted from using the airstrip for marketing purposes including inviting guests to use the runway (which may include jet aircraft, subject to FARs) without needing to gain any approval from the Association or its members.” (*Id.* § IV.4(e).)

These provisions do not change the Association’s rights under the 1990 CC&Rs and the Airport Lease. The Airport Lease allowed Sky Ranch to use the airport “for marketing purposes, including guests to use the runway.” (Ex. 1 ¶ 1.) The Airport Lease never had any provision that would have allowed it to restrict or regulate Sky Ranch’s use of the runway, and allowed Lessor to adopt rules for the operation of the airport. (*Id.* ¶ 2.) Finally, Sky Ranch’s right to use the airstrip was subject to the applicable Federal Aviation Regulations (FARs), which would keep unreasonably large aircraft from landing at the airstrip.

- The 2002 CC&Rs allowed the Declarant to charge an admission fee and other fees to Association members for use of the Airport contrary to prior representations and agreements. (¶ 25j.)

The language of this provision allows the Declarant or Association to charge “reasonable admission and other fees of Association Members for the use of the airstrip or any recreational facilities situated upon the Common Area.” (Ex. 6 § IV.4(d).) While this language is vague, it seems unlikely that it would give Sky Ranch a right to charge fees for the use of the airstrip, as Sky Ranch is not the same entity as the Lessor under the Airport Lease. (*Id.* § I.9; Ex. 1 at 1.) Rather, it seems to contemplate the possible addition of recreational facilities that may remain in the control of Sky Ranch.

C. Any unreasonable amendments in the 2002 CC&Rs can be severed without nullifying the entire document.

Finally, if any of these provisions were invalid as a matter of law, they could simply be severed from the 2002 CC&Rs rather than nullifying the entire document. *See Management Services Corp.*, 617 P.2d at 408 (a contractual provision is severable depending on the intention of the parties). In determining whether a provision of a restrictive covenant is severable, the Court should look at whether the remainder of the covenant is operable and still furthers the intended purpose. *Cf. Gallivan v. Walker*, 2002 UT 89, ¶ 88, 54 P.3d 1069 (discussing the standard for severance of unconstitutional portions of statutes). The 2002 CC&Rs expressly a severance clause. (Ex. 6 § XII.9.) Also, as shown above, it is clear from the document and contemporaneous documents that the intention of these amendments was not to make a whole and undivided revision of the structure of the Development, but to make several different amendments that would clarify and summarize past agreements and declarations. Further, none of these amendments are interdependent and can operate independently from each other. As a matter of law, therefore, if this Court believes that any provisions of the 2002 CC&Rs are unlawful, it can sever them without invalidating the entire document.

II. THE TRIAL COURT IMPROPERLY DISMISSED SKY RANCH'S CLAIM FOR TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS.

The trial court dismissed Sky Ranch's claim for tortious interference notwithstanding its agreement to hear further evidence on the issue. Procedurally, the trial court's act constituted summary judgment upon the trial court's motion. As the trial court did not give Sky Ranch notice of its intent to consider summary judgment or an opportunity to respond, the ruling was a violation of Sky Ranch's due process rights. The dismissal was also based on an error of law, which should be reversed by this Court.

A. The trial court's dismissal of Sky Ranch's claim for tortious interference was a violation of its right to due process of law; any findings of fact made with respect to this issue were improper and void.

Fundamental to our system of justice is the concept of procedural due process, which is protected in the state and federal constitutions as well as in statutes and the rules of procedure. At its core, due process requires adequate notice and a meaningful opportunity to be heard before a court deprives a person of a property interest. *United States v. James Daniel Good Real Property*, 510 U.S. 43, 48 (1993). Specifically, procedural due process requires that a court allow a party the opportunity to fully present its evidence on a matter before making any factual findings. *B&O R. Co. v. United States*, 298 U.S. 349, 368-69 (1936). Procedural due process also requires that the court provide notice and opportunity for a hearing before the court *sua sponte* makes a dispositive ruling on an issue of law. *Moore v. California Minerals Products Corp.*, 252 P.2d 1005, 1109 (Cal. App. 1953).

This last point is not only guaranteed by the state and federal constitutions, but also by the Utah Rules of Civil Procedure. A trial court is required by the rules to “grant a request for hearing on a motion . . . that would dispose of the action or any claim or defense in the action unless the court finds that the motion or opposition to the motion is frivolous or the issue has been authoritatively decided.” Utah R. Civ. P. 7(e). The failure of a trial court to hold such a hearing is reversible error. *Price*, 949 P.2d at 1255.

While Rule 7(e) contemplates a situation where a formal motion is brought by a party, the same due process requirements for notice and an opportunity for hearing embodied in Rule 7(e) must apply to dispositive motions brought *sua sponte* by the trial court. While it does not appear that the Utah appellate courts have squarely addressed the

procedure regarding a trial court considering summary judgment on its own motion, courts interpreting the federal version of the rule have concluded that a trial court that raises such a motion must provide proper notice and opportunity to respond to the party who would be adversely affected by the ruling. *Ramsey v. Coughlin*, 94 F.3d 71, 73-74 (2d Cir. 1996); 10A Charles Alan Wright et al., *Federal Practice and Procedure* § 2720 (3d ed. 2011); *see also Fountain v. Filson*, 336 U.S. 681, 683 (1949) (holding that a court of appeals could not grant summary judgment in favor of a nonmoving party on appeal, as it deprived the other party “of an opportunity to dispute the facts material to that claim” in the appeals court).¹⁵

In this case, the trial court summarily dismissed Sky Ranch’s claim for tortious interference without providing it the opportunity to present all of its evidence and without giving it notice of the decision or an opportunity to respond by briefing the issue and requesting a hearing. The court’s act constituted a violation of Sky Ranch’s due process rights, and this Court should reverse the trial court’s decision.

B. The trial court’s error was harmful, as there was evidence in the record that the Association had a contractual obligation not to interfere with the development of the FBO and commercial area, and the Noerr-Pennington Doctrine does not apply to persons who are restricted from interference by contract.

The trial court’s dismissal of Sky Ranch’s claim for tortious interference should also be reversed, as there were genuine issues as to material facts, and the decision was

15. The decision in *Ramsey* was later adopted by the drafters of the Federal Rules in 2010. Fed. R. Civ. P. 56 now explicitly allows for a trial court to “consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute,” so long as the court gives “notice and a reasonable time to respond.” Fed. R. Civ. P. 56(f).

based on an error of law. Although there had been a trial in this matter, the trial court indicated that it would take further evidence with regard to the tortious interference claim, making any finding of fact on this issue premature and void. *See Kirkpatrick v. Wiley, Rein & Fielding*, 909 P.2d 1283, 1292 (Utah App. 1996). As stated in the Statement of Facts, the 1990 CC&Rs reserved to Sky Ranch's the right to develop an FBO and commercial area, and Michael Longley's testimony that the parties had signed an agreement as to the FBO and commercial area constitutes sufficient evidence to create a genuine issue of fact as to the Association's contractual duties that should have been resolved by giving Sky Ranch a full and fair opportunity to present its evidence before any factual finding was made. Therefore, any finding that the Association was not under a contractual obligation not to interfere with the development of the FBO was in error.¹⁶

However, even if we assume that the trial court did not rely upon the existence or non-existence of a contract in making its decision to dismiss and instead relied solely on the fact that the interference in question was speaking against the zoning change at the Washington County Planning Commission,¹⁷ the decision is still in error. While the *Noerr-Pennington* doctrine protects those who petition government boards and agencies from immunity for tortious interference, *Anderson Development Co. v. Tobias*, 2005 UT 36, ¶ 26, 116 P.3d 323, this doctrine does not extend to circumstances where the party's duty not to interfere is based on contract. Contracting parties voluntarily give up

16. While the Court's determination that the Association "had no contractual obligation not to oppose Mr. Longley's effort to change the zoning ordinances applicable to the Airport and community," (R. at 741/21) because there was a dispute as to whether the 1994 contract was actually entered into by the parties, (Tr.1 108:24-25) the existence of a contract is a question of fact. *See O'Hara v. Hall*, 628 P.2d 1289, 1291 (Utah 1981).

17. The trial court seems to suggest this in its judgment. (R. at 746/2 n.1.)

constitutional rights all the time—for example, non-compete agreements are a restriction on the right to ply a trade, and confidentiality agreements are a restriction on the freedom of speech. Judicial enforcement of these types of agreements is constitutional. *See, e.g., Snepp v. United States*, 444 U.S. 507 (1980) (holding that an injunction preventing publication of information protected by a confidentiality agreement was not unconstitutional prior restraint); *Spear Pharmaceuticals, Inc. v. William Blair & Co., LLC*, 610 F.Supp.2d 278, 288 (D. Del. 2009) (holding discussed below); *Ford Motor Co. v. Lane*, 67 F.Supp.2d 745, 750 n.6 (E.D. Mich. 1999) (holding that use of trade secrets in violation of a confidentiality agreement is not protected by the First Amendment); *Cherne Indus., Inc. v. Grounds & Associates, Inc.*, 278 N.W.2d 81, 94 (Minn. 1979) (holding that an injunction based on a non-compete agreement was not an unconstitutional restraint on free expression). The U.S. District Court for the District of Delaware specifically rejected an attempt to use the *Noerr-Pennington* doctrine to avoid a claim for breach of a confidentiality agreement:

The cases cited by [Defendant] all involve situations where all that was alleged was that plaintiffs by various acts induced or sought to induce a department of the federal government to take certain actions. In these cases, the courts rejected the plaintiffs' attempts to merely repackage such lawful attempts to influence government as claims for, among other things, tortious interference with prospective business advantage, abuse of process, and violation of antitrust laws. Here, however, Plaintiffs state bona fide claims for trade secret misappropriation, breach of contract, and unjust enrichment. . . . [Defendant] is not relieved from liability for these claims merely because they then used a petition to a government agency as the mechanism for allegedly harming Plaintiffs.

Spear Pharmaceuticals, 610 F.Supp.2d at 288.

Just like the defendant in *Spear Pharmaceuticals*, the Association is attempting to avoid liability for breaching its contractual obligation by invoking the First Amendment.

Utah law holds that a party who has entered into a contract cannot thereafter act in such a way that would deny the other party the expected benefit of its bargain. *Olympus Hills Shopping Center, Ltd. v. Smith's Food & Drug Centers, Inc.*, 889 P.2d 445, 450-51 (Utah App. 1994). Allowing a party to a contract to defeat the other party's expected benefit under the contract in the name of petitioning the government would cut a wide swath in contract law and would be a public policy disaster. Sky Ranch therefore urges this Court to reverse the trial court's decision.

III. SKY RANCH WAS ENTITLED TO TERMINATE THE AIRPORT LEASE AND IS ENTITLED TO DAMAGES FOR THE ASSOCIATION'S BREACHES OF THE LEASE.

As shown below, because the Association materially breached the terms of the Airport Lease, Sky Ranch is entitled to termination of the lease and to recover its damages incurred. *See Bair v. Axiom Design*, 2001 UT 20, ¶ 14, 20 P.3d 388 (outlining elements for a case for breach of contract). Further, even if this Court determines that termination is not an appropriate remedy, Sky Ranch is still entitled to recover its damages caused by the breach.

A. The trial court's finding that the Association substantially complied with the provisions of the Airport Lease was clearly erroneous.

The Association failed to maintain the airport and failed to maintain insurance as required by the Airport Lease, which constituted material breaches and precluded a finding of substantial compliance. *See Cache County v. Beus*, 978 P.2d 1043, 1050 (Utah App. 1999). The Airport Lease required the Association to "maintain the airstrip and its facilities in the same or better condition, normal wear and tear excepted, as when received." (Ex. 1 ¶ 8.) Specifically, the lease required the Association to "paint, level,

compact, remove weeds, repair and oil the surface covering of the airstrip . . . and replace or repair any runway lighting system, beacon, and equipment associated therewith.” (*Id.*)

The Association materially breached these responsibilities.

1. The Association did not properly maintain the runway.

The evidence presented at trial clearly demonstrated that the Association was not properly maintaining the runway. There was significant cracking on the runway, and while sealing the cracks had been proposed, it was not carried out during the cure period. There were visible marks of where water had been allowed to pool on the surface of the runway, and the culverts that drained the runway area were in dire need of maintenance. The crackseal on the runway posed a potential safety risk to light aircraft as they landed at high speeds.

Further, the evidence stated in the Statement of Facts shows clearly that the runway had to be repaved soon. Sky Ranch made a generous offer with regard the repaving, offering to waive lease fees so that it would be done. This offer was never accepted, and there was no plan in place to deal with the short-term or long-term maintenance of the runway. This failure to accept Sky Ranch’s offer within a reasonable time constituted an unequivocal manifestation of the Association’s intent not to repave the runway by 2006, which was a breach of the lease agreement. *See Breuer-Harrison, Inc. v. Combe*, 799 P.2d 716, 724 (Utah App. 1990) (outlining legal standard for anticipatory breach of a contract); *Rappaport v. Savitz*, 220 A.2d 401, (Pa. Super. 1966) (where the owner of property sought permission from the tenant to make necessary repairs to the premises, and the tenant refused that permission and did not take any action herself, there was a claim for breach of contract and waste.).

As the entity in charge of maintenance, repair, and operations of the runway, the Association had a responsibility to have a long-term plan for maintenance, including periodic inspections and seeking advice about what issues would constitute safety problems. This was not a parking lot—the Association had the duty to know about these issues and get in front of them without poking and prodding by Sky Ranch. Claiming that they did not know about these issues was no excuse.

Marshaling. Pursuant to Utah R. App. P. 24(a)(9), the following are the trial court's findings in support of its decision that the runway was properly maintained, along with citations to the record evidence and further explanations of that evidence where necessary.

- The Association paid to have portions of the Airport needing attention crack sealed almost every year, including in 2000, 2001, 2002, and 2003. (R. at 741/11.)

While the Association did crack seal in 2000, 2001, and 2002, (Dep. Habberfield 21 & ex. 2) the record evidence does not support that the Association crack sealed in 2003. The records produced by Lynne Habberfield do not show that the Association crack sealed in 2003, and the last coat of slurry seal on the runway was done in 1998.

(*Id.*) Mimi Murdock testified that while the Association had considered doing crack sealing in response to Sky Ranch's February letter, it was not done before or during the cure period. (Tr.2 144:23-145:12, 149:21-150:2.) Moreover, the crack sealing was building up and becoming a safety problem, and in any event would not be adequate to maintain the runway for much longer, as it needed overlaying with new pavement.

- Wayne Rogers, one of Mr. Longley's experts, testified that the Airport had definitely been maintained. Mr. Rogers also testified that asphalt inevitably shrinks and cracks due to environmental conditions, the cracking he observed at grassy meadows was consistent with an airport of its age, shrinkage and cracks by themselves do not

indicate a lack of maintenance but are just a result of natural aging, he had no reason to believe that the weeds or drainage issues he observed posed any kind of hazard, and the airport was in fairly good condition compared to the other runways he has inspected. (R. at 741/12.)

This accurately states the testimony of Wayne Rogers. (Tr.2 78:5-85:21.) The trial court's finding also reflects the testimony of Steven Brewer, who stated that the hot days and cold nights cause cracks in asphalt, and the cracks were to be expected. (Tr.2 156:6-23.) However, it indicates a fundamental misinterpretation of the concept of "normal wear and tear" with respect to the Airport Lease. Unlike a short-term residential lease, this lease was for 99 years. (Ex. 1.) The Association paved the runway and took it in as-is condition. (*Id.* ¶ 1.) The Lease did not provide for Sky Ranch to repave the runway—all maintenance responsibilities were in the hands of the Association. (*Id.* ¶ 8 ("It is the intent of this Lease that it shall be a 'triple-net lease' with no costs payable by Lessor.")) As the life of asphalt is about 20 years, (Tr.2 72:4) the Lease would have contemplated that the Association's maintenance responsibilities included repaving several times before the end of the lease. In the case of the runway, "normal wear and tear" is consistent with the principles of waste: the Association had to ensure that the value of the asset did not deteriorate. *See Eleopulos v. McFarland and Hullinger, LLC*, 2006 UT App 352, ¶ 11, 145 P.3d 1157.

The unrefuted testimony was that the asphalt, while presently in fair to good condition, (Tr.2 79:15-25) was nearing the end of its useful life and starting to have significant maintenance issues. (Tr.2 85:15-21.) If an overlay was not done soon, the cost to restore would skyrocket, as the previous pavement would have to be torn up. (Tr.2 24:6-22.) The Association refused to adopt a plan to deal with the maintenance issues and

refused Sky Ranch's offer to waive lease fees in exchange for dealing with the problem. Allowing the runway to deteriorate to a state where restoration costs would be much higher, even though that deterioration is natural and expected, goes beyond normal wear and tear, and refusing to deal with the problem constitutes breach of the Airport Lease.

Further, while Mr. Rogers testified that the drainage issue did not constitute a safety hazard itself, he further stated that the inappropriately maintained culverts were definitely a maintenance issue that would pose a hazard if the airplane went off the runway. (Tr.2 81:22-83:1). He further stated that the weeds that he saw growing in the asphalt would cause deterioration and degradation as they grew. (Tr.2 83:2-16.) At any rate, he testified that it was a maintenance issue that had not been addressed by the Association during the cure period.

- Craig Ide, one of the Association's experts . . . , testified that the airport rated a 69 or "good" on the Pavement Condition Index, and that the average score for municipal airports in 2003 was 59.

This accurately states the affidavit of Craig Ide. (Ex. 20.) The trial court's finding also reflects the testimony of Steven Brewer, who stated that the airstrip was not unsafe. (Tr.2 156:24-157:1, 167:18-21.) As mentioned previously, this conclusion does not conflict with the fact that the pavement was nearing the end of its useful life, and the runway needed to be repaved. In fact, after inspecting the runway, Mr. Ide recommended that the Association develop a plan to maintain the runway, including an overlay of the existing asphalt. (Dep. F. Rieck, 26.)

2. The Association did not properly maintain the runway lighting system.

Again, as the Association was in charge of running an airport, it had the responsibility to know about the proper maintenance issues involved with the runway

lighting system and develop a maintenance plan without having to be told about the maintenance issues from Sky Ranch. The Lease required more than just replacing light bulbs and repairing fixtures—it required that the system itself be maintained, including keeping the lenses polished and free of dirt, ensuring that rodents and the weather did not interfere with the lighting system, and otherwise maintaining the wiring and other parts of the entire system, including the lighting control building. The Association’s failure to do this and to allow the lighting system to get into such a condition was an unacceptable breach of the Lease.

Marshaling. Pursuant to Utah R. App. P. 24(a)(9), the following are the trial court’s findings in support of its decision that the lighting system was properly maintained, along with citations to the record evidence and further explanations of that evidence where necessary.

- The Association Kept most of the airport lights in good working condition, including repairing lights on taxiways, even though not required to do so by the lease. (R. at 741/11).

“Good working condition” is a matter of opinion, given the significant maintenance problems shown by Mr. Christensen’s report. This finding is explained in further detail in other findings, and will be addressed below. However, it is important to point out that the lights on the taxiways were not functional from 1996 until after the cure period had expired, (Tr.1 182:12; Tr.2 40:8-12) and the Association made no attempt to fix the taxiway lights during the cure period. (Tr.2 136:6-9.)

- The lighting system was a military surplus system which [Mr. Longley] bought and installed himself. (R. at 741/13.)

This is true. (Tr.2 4:3-9.) However, Mr. Longley put in new lenses and wiring

when he installed it. (Tr.2 4:3-15.) This also doesn't account for the dirt, rodents and other maintenance problems.

- All the evidence introduced established that, while the lighting system was showing its age, it was generally in good working order—at least in the same condition as when it was installed, normal wear and tear excepted, as permitted by the lease. (R. at 741/13.)

Sky Ranch identifies the evidence for this proposition elsewhere in this section. As explained *supra*, the trial court's finding is based on a misunderstanding of the concept of "normal wear and tear." Because the Association had the job to maintain the lighting system, including repairing or replacing it, they are required to keep the system in good repair, and not just do the minimum to keep the lights on.

- Ryan Christensen testified that although there were some lights on the airport that needed replacing and others that needed cleaning and polishing, the lighting system worked when tested and performed the function it was designed to perform. Mr. Christensen acknowledged that when he was deposed shortly after inspecting the runway in late 2003 he testified that he "wouldn't be concerned about" landing on the airport at night. (R. at 741/13.)

Mr. Christensen did state that the lights did come on and were adequate for night landings in Visual Flight Rules (VFR) weather. (Tr.1 204:15-205:12.) This was also supported by the testimony of Jennifer McCarroll, who testified that she had no difficulty spotting the lights while doing a night flight in August of 2003. (Tr.2 92:10-22.) At the trial, Mr. Christensen clarified and stated that he would do so in case of an emergency, but would prefer to go to St. George or Hurricane, as their airports were in better condition. (Tr.1 190:17-191:7.) He also stated that if the weather were marginal VFR, such as dusty or foggy weather, he would not do it. (Tr.1 204:23-205:4; 205:19-206:1.) Also, the trial court's finding is based on the assumption that unless there is an immediate threat to safety, there would be no breach of the contract. This is not supported by the text

of the contract or by normal definitions of maintain, repair, or wear and tear.

- Any lights on the airport that were broken in March 2003 were subsequently and timely repaired by the Association. (R. at 741/13.)

There was evidence that the Association did fix lights during the cure period.

(Dep. Batson 25-27; Dep. Santuosso ex. 1; Dep. Assoc. 14; Tr.2 106:15-19.) As mentioned before, replacing burned out light bulbs and fixing broken pedestals was not enough to constitute proper maintenance of the lighting system.

The following is further record evidence that would support the trial court's verdict:

- Ryan Christensen did not inspect all of the lights, just the broken ones, did not look at the lights at night to determine what their brightness was, and had no way of knowing if the maintenance problems were in place during the cure period. (Tr.1 200:16-201:2, 203:15-23.)

He later testified that he doubted that the maintenance problems he saw happened in a short period of time, and that he could see clearly that lenses themselves were opaque. (Tr.1 206:2-207:4.) He further testified that the cause for the lenses being opaque was sandblasting, (Tr.1 189:1-7) so there is no reason to believe that the lenses he inspected were not representative of the whole, especially as the Association testified that they did not clean the fixtures or check the wiring, and did not spend any money on maintenance of the lights. (Dep. Habberfield 21 & ex. 2); Dep. Assoc. 16.)

- The Association testified that it had no duty to maintain the Lighting Control Building, as it belonged to Sky Ranch. (Dep. Assoc. 17-19.)

The lighting control building is where the voltage control boxes and the spare parts are housed. There is no question that it is part of the lighting control system that the Association has a duty to maintain under the Lease. This was never done, including

during the cure period. (Dep. Santosuosso 18.)

- The lighting control system was not built watertight or animal-proof by Sky Ranch; it was not built to code. (Tr.2 38:18-39:5, 160:10-161:8.)

This is not an excuse. The Association took the property as-is. (Ex.1.) They had control over the building for 13 years at that point, and had the responsibility to weatherproof and animal-proof the system or to regularly inspect it. Further, Mr. Longley testified that the Association put the antenna where it was, including cutting the hole in the roof of the building without sealing it. (Tr.1 212:5-12.)

- There was no duty to maintain the taxiway lights, as they were not specifically mentioned under the lease and they were on Sky Ranch's Property. (Tr.2 37:1-10; Dep. Assoc. 16.)

This is not a reasonable reading of the lease. The Airport Lease states that the Association is to be the exclusive occupant of the airport for "taxiing, take-off, and landing of aircraft." (Ex. 1 ¶ 1.) They are responsible for paying "the electric bills associated with the operation of any runway lighting and beacon systems," (*id.* ¶ 8) and since the taxiway lights and the runway lights are controlled in the lighting control building, both are hooked to the same electric meter. There is no question that the taxiway lights were intended to be part of the lighting control system that was part of the facilities of the airport. Indeed, the Association acknowledges that the taxiways are under their control, when it stated in 2002, "Board Decisions going back to 1993 acknowledge the responsibility of [the association] to maintain not only the airport runway, but all taxiways." (Ex 21.)

3. The Association did not properly maintain the fences and keep the property free of weeds.

The Association had a duty to keep the airstrip and the area surrounding free from

weeds, and to maintain the facilities, including the fence surrounding the airstrip. The pictures are enough proof that they did not do so. While this may seem to be a minor issue, it is a bargained-for provision of the contract and was important to Sky Ranch as an untidy and poorly maintained airstrip made it harder for it to sell lots. The Court should respect the contract by declaring the breach material. *See Howe v. Professional Manivest, Inc.*, 829 P.2d 160, 164 (Utah App. 1992).

Marshaling. Pursuant to Utah R. App. P. 24(a)(9), the following are the trial court's findings in support of its decision that the weeds, fences, and general maintenance of the airport was properly maintained, along with citations to the record evidence and further explanations of that evidence where necessary.

- The Association took measures to abate and remove weeds, including spraying and cleaning the Airport in March, July, August and September of 2003. (R. at 741/11.)

Even granting the truth of this, three of these measures occurred after the cure period. Michael Longley testified that the weeds needed to be worked on once or twice a month to keep them down, and if they started to get large, spraying would no longer work—you had to pull them. (Tr.2 9:24-10:9.) The pictures speak for themselves.

- The Association kept the rail fences surrounding the Airport in good repair. (R. at 741/11.)

While the Association did repair the fences, (Tr.2 105:19-24) there is no question that the Association did not oil the fences. While Ray Batson testified that oiling the fence did not help its appearance or its lifetime, he did not make that statement from personal knowledge, and the trial court was wrong to give it any weight. (Dep. Batson 18-19.) The only competent testimony on the matter was William Rieck, as he had experience building fences, including wood fences.

- Danny Holt testified that he inspected the Airport at the very time that Mr. Longley alleged it was in disarray and concluded that the Airport was in good condition and decided to purchase a lot in the community based thereon. Another witness testified that he inspected the airport around this same time and found it to be in very good condition. (R. at 741/14.)

Danny Holt's testimony with respect to the airstrip was that there was nothing that caused him concern; he limited his statement to the appearance of the asphalt, saying that it "was possibly grayed out, but it was not an issue for me to not buy because of the runway." (Tr.1 72:24-73:10.) He did not comment on any other items. Steven Brewer testified that the condition of the airport was not a concern for him, but that there were weeds, which he started to clean up. (Tr.2 156:6-157:1, 163:19-165:5.) Again, the pictures prove that the Association was not cleaning up weeds.

- The Association added paint markings as an improvement to the Airport. (R. at 741/11.)

This is true (Ex. 3), but not relevant for determining other breaches as to maintenance.

- The Association funded an apron composed of crushed stone and sterilant pellets to be placed on each side of the airstrip to repair undercutting to the airstrip that occurred. (R. at 741/11.)

This was done, but not done at any time near the termination or cure period. (Dep. Santosuosso ex. 1.)

- At no time have maintenance issues affected flight operations or compromised the safety of those using the Airport in any way. (R. at 741/14.)

While this is debatable, as explained earlier, present safety was not the only consideration in lease. Maintenance of valuable assets and aesthetics were both considerations of the lease that would have rendered the breach material regardless of safety concerns.

4. The Association did not comply with the insurance requirements of the Airport Lease.

Paragraph 10 of the Lease between the parties provides that the Association would provide risk liability insurance for the airport, “which shall show Lessor and Sky Ranch Development, Inc. as additional insureds.” (Ex. 1 ¶ 10.) The policy limits were to be set by mutual consent, and the policy is subject to the approval of Sky Ranch. (*Id.*) This agreement clearly contemplated not only coverage, but also disclosure of the policy chosen and its terms, and consultation as to the limits. This was never done. In fact, Sky Ranch Development was not even added as an additional insured until well after the expiration of the cure period. This was a material breach of the lease.

Marshaling. Pursuant to Utah R. App. P. 24(a)(9), the following are the trial court’s findings in support of its decision that the insurance provisions of the lease were substantially complied with, along with citations to the record evidence and further explanations of that evidence where necessary.

- Once the Association was apprised of Mr. Longley’s concerns, it immediately made arrangements to have a copy of the insurance policy forwarded to Mr. Longley. (R. at 741/15.)

This does not appear to be true. The evidence shows that the Association made an attempt to show that proof of insurance was sent to Mr. Longley, but not the policy itself. (Ex. 3; Tr.2 32:12-15.) This is significant, as proof of insurance does not allow Sky Ranch to look at any of the terms and conditions of the policy that it has a reasonable right to object to.

- There is no evidence in the record that the Association failed to [seek Mr. Longley’s approval of the policy] after being put on notice by Mr. Longley. (R. at 741/16.)

Again, this is not true. Mr. Longley states that he was never consulted about the

insurance policy. (Tr.2 29:15-17.)

- The Association exercised good faith efforts to name Mr. Longley's development entity, Sky Ranch Development, Inc., as an additional insured in a timely fashion after being notified of the fact that the entity, for whatever reason, had been omitted as an additional insured. (R. at 741/16.)

The testimony regarding the efforts to put insurance in place was information that Lynne Habberfield had taken some action regarding putting the insurance in place, but there was no testimony as to the time of those efforts. (Dep. Assn. 47.) The only evidence as to when the Association tried to get insurance was a memo from ATP to the Association dated May 5, 2003, the day after the cure period, asking for information on the additional insureds. (Ex. 14.) This does not tell us anything about, given the timeframe for curing deficiencies, whether the initial request was made in a timely manner, and making such a request in the final days of the cure period would not have been "a timely fashion."

- No evidence was presented to indicate why the certificate of additional insureds was not issued until February 11, 2004, however the certificate clearly indicates that insurance coverage existed for the development entity from May 3, 2003. This evidence indicates that the Association acted in a timely manner to secure the required additional insured certificate, as it is unreasonable to conclude that an insurance company would provide insurance coverage it was not obligated to provide. (R. at 741/16.)

The evidence from the insurance company was that Sky Ranch Development was not an additional insured until February 11, 2004, but that the naming was retrodated to the beginning of that year's policy. (Dep. ATP 107-08.) This does not constitute compliance under the lease agreement.

- The Association maintained continual and adequate insurance coverage at all times following the date the notice was first sent. (R. at 741/17.)

Sky Ranch assumes this refers to the fact that the policy was backdated, as discussed

earlier. Even if one accepts that the backdating of Sky Ranch's proof of insurance meant that it was covered under the policy, Sky Ranch was not covered until May 3, 2003. (Tr.2 32:21-23.)

- No claims were brought against Mr. Longley or any of his entities during the period in which the development entity was not named as an additional insured. (R. at 741/17.)

This is true, (Tr.2 137:29-24) but irrelevant to the question of breach of contract.

Sky Ranch was not timely named as additional insured, never consulted as to the policy limits, and never given a policy so that it could be informed as to the terms of the policy.

B. Sky Ranch adequately notified the Association of its breaches as required by the Airport Lease and is entitled to termination.

The first reason the trial court gives for its decision denying termination of the Airport Lease is that Sky Ranch "failed to put on any evidence showing they satisfied the contractual requirement to give written notice of termination to each member of the Association's board of trustees." (R. at 741/22.) However, this is a misstatement of the respective burdens of the parties. The claim being adjudicated in this respect was The Association's claim for Declaratory Relief, declaring the Airport Lease in full force and effect. Because the Association never raised this issue or alleged failure to properly serve in its complaint, Defendant did not need to provide evidence to refute it. Further, the issue of adequate service of notice was never brought up in Plaintiff's trial brief, and the Association admitted it had received both notices in its reply to Sky Ranch's counterclaim and at trial.¹⁸ (Tr.2 104:4-13; Ex. 3.) Because the trial court cannot raise an issue *sua sponte* without giving notice to the party and then base its ruling on that issue,

18. Presently it appears that the court record does not contain the Association's reply to Sky Ranch's third amended complaint. Sky Ranch will move to amend the record to provide this pleading shortly.

see *In re Behm's Estate*, 213 P.2d 657, 663 (Utah 1950), the trial court's ruling was improper. Moreover, as the Association admits that it received notice, and the notice provisions in no way protect any other interest of the Association, there is no need to require strict compliance. *Cache County v. Beus*, 978 P.2d 1043, 1049 (Utah App. 1999).

Further, the notice was adequate to inform the Association of the breaches. In addition to the letter provided that identified the issues, Sky Ranch also sent out a letter a month earlier making the same complaints. (Ex. 39.) Between these two items and the duty that the Association itself has to take care of the property, the notice was adequate. There did not need to be a recounting of every light bulb that was out and every weed that was pulled; the Association was sophisticated and knew or should have known its responsibilities under the lease. Finally, even if this Court does not believe that Sky Ranch qualifies for strict compliance, this would not halt its claims for money damages.

C. *Sky Ranch was not equitably estopped from terminating the lease.*

The trial court also concluded that Sky Ranch could not terminate the Airport Lease because it was equitably estopped from doing so. Specifically, the trial court found that "Mr. Longley represented to potential buyers that they would always have access to the Airport if they purchased a lot," and "most, if not all of the members of the Association purchased their lots in reliance upon Mr. Longley's representations regarding the Airport, including that they would always have access to the Airport."¹⁹ (R. at 741/3.) This conclusion does not comport with Utah law.

First, there was no claim for equitable estoppel, because there was no

19. Sky Ranch notes that this finding was inappropriate, as neither "most" nor "all" of the Association's members appeared or gave evidence before the trial court. The finding is therefore appropriate only as to the individuals who testified.

representation about a presently existing fact. The Utah Supreme Court explained the difference between equitable and promissory estoppel:

Equitable estoppel reflects circumstances where it is not fair for a party to represent facts to be one way to get the other to agree, and then change positions later to the other's detriment Promissory estoppel, on the other hand, contemplates circumstances where a party promises that things will be a given way in the future, knowing at the time of the promise all of the material facts, but is ultimately wrong, and where the other relied on that promise in acting (or withholding action).

Youngblood v. Auto-Owners Ins. Co., 2007 UT 28, ¶¶ 15-16, 158 P.3d 1088. Any claim in this case would be about promissory estoppel, not equitable estoppel. As there was an actual contract between Sky Ranch and the Association regarding this subject matter, promissory estoppel does not apply. Second, as every lot owner was apprised of the Airport Lease and the termination clause contained therein before buying a lot in the Development, it does not appear that there could have been reasonable reliance upon Mr. Longley's representation. *See id.* at ¶ 16 (promissory estoppel requires that the Plaintiff acted reasonably in relying upon the promise). But most importantly, the Association cannot assert an estoppel claim based on promises made to individual members. There was no evidence put on that would state that there were promises made to the Association, and since there was an actual contract between the Association and Sky Ranch, the doctrine of promissory estoppel would not apply at any rate.

IV. THE TRIAL COURT'S RULING THAT THE ESCROW MONIES CONSTITUTED FULL PAYMENT OF THE AIRPORT LEASE THROUGH 2010 WAS IN ERROR, AS THIS ISSUE WAS NEVER RAISED BY THE PLEADINGS NOR WAS ANY EVIDENCE PRESENTED TO JUSTIFY A RULING ON THE ISSUE.

The trial court erred in making any ruling as to the sufficiency of the amount of

money held in escrow, as it was not properly before the court. As the question of whether an issue is properly before the court is a question of law, this Court reviews the question without deference to the trial court's conclusion. *Lee*, 2002 UT App 281 at ¶ 6. In order for a trial court to make findings and award judgment on an issue, that issue must have been raised by the pleadings or tried by the express or implied consent of the parties, and the findings must be supported by the evidence presented. *Id.* at ¶ 7; *see also In re Behm's Estate*, 213 P.2d 657, 663 (Utah 1950); *Fisher v. Bylund*, 93 P.2d 737, 739 (Utah 1939); *Garrett v. Ellison*, 72 P.2d 449, 454 (Utah 1937). An issue is tried by the implied consent of the parties when "one party raises an issue material to the other party's case or where evidence is introduced without objection, and where it appears that the parties understood the evidence was to be aimed at the unpleaded issue." *Lee*, 2002 UT App 281 at ¶ 7. Where the evidence presented to the trial court is not adequate to form a basis to resolve an issue, there is no implied consent to try that issue. *Id.* at ¶¶ 10, 12.

As previously mentioned in the Statement of Facts, there was no request by either party for an accounting of the funds held in escrow contained in the pleadings. Indeed, it would have been strange for Sky Ranch to request such an accounting, since its position was that the Airport Lease had been terminated in 2003 and was of no further force and effect, including the provision that determined the rental amount. The trial court's order did not bring the issue before the court either, as its order was permissive, stating that the Association "be allowed" to deposit the funds with the trial court, and in such amounts as it "alleged were due."

Further, there was no evidence presented at trial as to the sufficiency of the

amounts held in escrow. As mentioned in the Statement of Facts, the Airport Lease determined the proper rental amount using the amount of residential and commercial lots that were not owned by Sky Ranch and the CPI for southwestern Utah, and was due semi-annually. There was no evidence as to the rate of inflation under the CPI, no evidence as to the amounts paid and the date of payment, and no evidence as to the number of residential and commercial lots that had been sold. Without such evidence, there was no way that the trial court could have made a determination of the issue, the issue was not tried with the implied consent of the parties, and any finding or order made would have been improper.²⁰ This Court should therefore reverse the trial court's judgment with respect to this issue.

CONCLUSION

For the foregoing reasons, Sky Ranch respectfully asks this Court to reverse the trial court's decision and remand for a new trial in this matter.

RESPECTFULLY SUBMITTED this 12th day of August, 2011.

/S/ Nathan Whittaker

Nathan Whittaker

DAY SHELL & LILJENQUIST, L.C.

Attorney for Defendant/Appellant

20. It appears that no such finding was made until the trial court signed its judgment. While the Association asserts in its response to Sky Ranch's objection (R. at 743/3-4) that the trial court's finding that Sky Ranch had claimed that the Association's "current lease payment" was past due but provided no evidence to that fact, (R. at 741/17) it would appear from the surrounding findings that this finding was made with respect to justifying termination of the lease in 2003. At any rate, a finding with respect to the adequacy of the lease payments as of December of 2010 would have been improper, since there was never any claim made by Sky Ranch for terminating the lease at a later date, and such a claim could not be made since he continued to refuse lease payments.

PROOF OF SERVICE

I hereby certify that I caused two copies of the foregoing brief to be placed in the United States Mail, first class, postage prepaid, to the following:

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DATED this 12th day of August, 2011.

/S/ Nathan Whittaker

A-1: Findings of Fact and Conclusions of Law

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WASHINGTON COUNTY

IN THE FIFTH DISTRICT COURT FOR
WASHINGTON COUNTY, STATE OF UTAH

GRASSY MEADOWS SKY RANCH
LANDOWNERS ASSOCIATION,

Plaintiff,

vs.

GRASSY MEADOW AIRPORT, INC., et al.,

Defendants.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Civil No. 030501171
Judge G. Rand Beacham

This matter came before the Court for trial after several years of diligent litigation. The volume of paperwork generated, filed and presented in evidence is staggering. The Court has received and studied the parties' post-trial papers, including proposed findings of fact and conclusions of law from both parties. I have spent numerous hours reviewing the evidence and the proposed findings, with the goal to produce the Court's independent findings. Due to case load and scheduling demands, the Court's findings are overdue and I simply do not have the time necessary to complete independent findings. Since I am largely persuaded by Plaintiff's evidence and arguments, I am adopting most of Plaintiff's proposed findings and conclusions.

FINDINGS OF FACT

From the evidence presented at trial, the Court finds that the following facts are established by a preponderance of the evidence:

1. Plaintiff/Counterclaim Defendant Grassy Meadows Sky Ranch Land Owners Association (the "Association") is a Utah nonprofit Corporation with its principal place of business in Washington County, Utah. [See Michael O. Longley testimony ("Longley Testimony").]

2. Defendant/Counterclaimant Grassy Meadows Airport, Inc. is a Utah corporation with its principal place of business in Washington County, Utah. [*See id.*]

3. Defendant/Counterclaimant Sky Ranch Development, Inc. is a Utah corporation with its principal place of business in Washington County, Utah. [*See id.*]

4. Defendant/Counterclaimant Michael O. Longley is an individual residing in Washington County, Utah, and the principal owner and agent of Grassy Meadows Airport, Inc. and Sky Ranch Development, Inc. [*See id.*]

5. The Grassy Meadows Sky Ranch Planned Development is a planned residential development near Hurricane, Utah, consisting of lots with access to a private, restricted airstrip (the “Community” or “Grassy Meadows Community”). [*See id.*; Danny Holt testimony (“Holt Testimony”); Jennifer McCarroll testimony (“McCarroll Testimony”); Lynne Habberfield Affidavit (“Habberfield Affidavit”), attached as Exhibit 1 to her designated deposition, at ¶ 4; Marilyn Murdock testimony (“Murdock Testimony”); Ray Batson Affidavit (“Batson Affidavit”), attached as Exhibit 1 to his designated deposition, at ¶ 25; Ronald Santosuosso Affidavit (“Santosuosso Affidavit”), attached as Exhibit 1 to his designated deposition, at ¶ 10.]

6. The airport (“Airport”) is the centerpiece of the Community and the primary purpose for which the Community was built. [*See id.*]

7. The Association is made up of lot owners in the Community, many of whom are private pilots and/or airplane owners, and Mr. Longley’s company, Sky Ranch Development, Inc. as the developer. [*See Longley Testimony; Holt Testimony; McCarroll Testimony; Habberfield*

Affidavit at ¶ 39; Murdock Testimony; Batson Affidavit at ¶ 6; Santosuosso Affidavit at ¶ 5; Steve Brewer testimony (“Brewer Testimony”).]

8. Mr. Longley used the existence of the Airport in his marketing efforts to sell lots within the Community. Mr. Longley represented to potential buyers that they would always have access to the Airport if they purchased a lot. [See Longley Testimony; Exhibit 5 (1990 Declaration).]

9. Mr. Longley further represented that access to the Airport would be restricted to small, non-commercial aircraft flown by other lot owners and their invitees only. [See *id.*]

10. Most, if not all, of the members of the Association purchased their lot(s) in reliance upon Mr. Longley’s representations regarding the Airport, including that they would always have access to the Airport. [See Holt Testimony; McCarroll Testimony; Habberfield Affidavit at ¶ 4; Murdock Testimony; Batson Affidavit at ¶ 25; Santosuosso Affidavit at ¶ 10.]

11. Consistent with Mr. Longley’s representations to potential buyers, Grassy Meadows Airport, Inc. entered into a 99-year lease with the Association on November 25, 1990, pursuant to which the Association became the “exclusive occupant” of the Airport (the “Lease”). [See Exhibit 1 (Lease) at 2; Longley Testimony.]

12. The Lease contains a provision requiring the lessor to provide the lessee notice of the lessor’s intention to terminate the Lease for any alleged breach of the Lease and to allow 30 days for the lessee to cure the same. [See Exhibit 1 (Lease) at 4, ¶ 4.]

13. Such notice must be in writing and sent via “certified letter, return receipt requested,” to each member of the Association’s Board of Trustees. [See *id.* at 4–5, ¶ 4.]

14. Such notice is deemed given two days after “posting.” [See *id.* at 5, ¶ 4.]

15. Also consistent with Mr. Longley's representations to potential buyers, Sky Ranch Development, Inc. drafted and recorded a declaration of covenants, conditions and restrictions for the Association on July 16, 1990 (the "1990 Declaration"), which replaced a similar declaration he had previously drafted and recorded. [See Exhibit 5 (1990 Declaration).]

16. The Declaration contains a two provisions allowing the declarant, Sky Ranch Development, Inc. to amend the Declaration unilaterally; read together, these provisions allow unilateral amendment in order to accomplish three specifically enumerated purposes: (I) to more accurately express the intent of any provision of this Declaration in light of then existing circumstances, information or mortgagee requirements, (ii) to better insure, in light of then existing circumstances or information, workability of the arrangement which is contemplated by this Declaration; or (iii) to facilitate the practical, technical, administrative or functional integration of any additional tract of subdivision into the Community. [See Exhibit 5 (1990 Declaration) at Article XI, §4 (p. 26) and Article XII, §3 (pp. 27-28).]

17. The declarant's right unilaterally to amend the Declaration terminates once 80 percent of the lots in the Community have been sold. [See *id.* at Article XII, § 3.]

18. In approximately June 2002, 75 of the 92 lots platted in the Community had been sold, bringing the number of lots sold in the Community to 81.5 percent. [See Stipulation as to factual accuracy of Exhibit 265 (Association letter to Mr. Longley dated Sep. 7, 2002).]

19. Subsequent to this event, the Association mailed a letter to Mr. Longley on September 7, 2002 notifying him that his company's right unilaterally to amend the 1990 Declaration had terminated. [See *id.*]

20. Soon thereafter, Sky Ranch Development, Inc. unilaterally amended and restated the 1990 Declaration and filed the same with the Washington County Recorder on October 25, 2002. [See Exhibit 6 (2002 Declaration).]

21. During this same time period, Mr. Longley had been laying the groundwork for a new development (“Copper Rock”) located adjacent to the Grassy Meadows Community. [See Longley Testimony.]

22. Copper Rock had more than 1,600 planned lots and a 27-hole golf course. [See *id.*]

23. Mr. Longley wanted to provide access to the Grassy Meadows Airport to the future residents of Copper Rock, despite the 99-year lease that Grassy Meadows Airport, Inc. had entered into with the Association providing that the Association members would have exclusive access to the Airport and despite the 1990 Declaration, which restricted access to the Airport to the owners of the 150 designated lots of the Grassy Meadows Community. [Longley Testimony; Exhibit 129 (Grassy Meadows Ranch LLC Memo).]

24. To accomplish these development objectives, Mr. Longley included terms in the 2002 Declaration that were dramatically different from key provisions of the 1990 Declaration and added new provisions, none of which were mentioned, contemplated or addressed in any manner in the 1990 Declaration. [See Exhibits 5 and 6 (1990 and 2002 Declarations).]

25. For example, the 2002 Declaration:

a. greatly expanded the limited property that was designated for the Community (which was limited to 150 lots) described in the 1990 Declaration, and therefore those having access to the Airport, to include “those portions of land set forth in Exhibit B” to the 2002

Declaration, which included “[a]ny and all property that may be annexed into the [Community,]” [see Exhibit 6 (2002 Declaration) at Article I, § 12 (p. 4) and Exhibit B thereto (emphasis added)];

b. greatly expanded the commercial fixed base operation area (“FBO”) to be constructed adjacent to the Airport to “include, but [not be] limited to, facilities for the sale of airplane fuel, a convenience store, lodging units (“casitas”), airplane repair facilities, airplane washing facilities, *and any other related facilities deemed appropriate or desirable by the Declarant*,” [id. at Article I, § 13 (p. 4) (emphasis added)];¹

c. modified the definition of “lots” within the Community to include hangars and the definition of “members” of the Association to include owners of hangars, which would significantly alter and dilute the Association member’s voting rights vis-a-vis Mr. Longley’s voting rights, [see id. at Article I, §§ 16–17 (p. 5)];

d. imposed a burden upon the Association to “maintain the taxiways to meet all applicable safety standards” despite the fact that the taxiways are not common property of the association, but owned by private individuals, including Mr. Longley, [id. at Article I, § 23 (p. 5)];

e. further diluted the Association members’ voting rights by (1) altering the formula by which such rights are calculated, particularly by including hangar lots as described above; (2) attempting to resurrect Class B voting rights (the Declarant’s voting

¹ Testimony at trial made it clear that the Association did not object to Mr. Longley developing a limited FBO area as contemplated in the 1990 Declaration. The Association’s objection is to the greatly expanded FBO area, including the unlimited right to add “any other related facilities deemed appropriate or desirable by the Declarant.”

rights) which had previously been extinguished; (3) altering the definition of Class C members; and (4) extending the period of developer's control for 7 years from 2005 to 2012, [*id.* at Article III, § 2 (p. 7)];

f. imposed a prohibition to challenge Sky Ranch Development, Inc.'s voting rights by stating: "It shall be cause for automatic dismissal from membership on the Board of Trustees of the Association for board members to fail to recognize Declarant's votes, including those held in trust for Declarant," [*id.* at Article III, § 2(a) (pp. 7–8)];

g. allowed for the first time the "airport owner" (*i.e.*, Grassy Meadows Airport, Inc.), not the Association only, to adopt rules and regulations burdening all the members of the Association,² [*id.* at Article IV, § 2 (p. 9)];

h. removed the Board of Trustees' ability to promulgate rules or regulations limiting "the allowable number of guests or invitees" that can be granted access to the Airport despite the fact that the Airport was intended to be used exclusively by Association members and their own guests,[*id.* at Article IV, §§ 2 and 4(i) (pp. 9 and 11)];

i. allowed for the first time "jet or large aircraft" to land on the Airport despite the fact that the Airport was not designed for jets in terms of length or structural integrity (the Airport was designed to handle only aircraft that weigh less than 12,500 pounds) and despite the Declaration's prior prohibition of annoyances and nuisances, including the substantially greater noise generated by jet engines as opposed to propellers; [*id.* at art. IV, §§ 2 and 4(k)

² This change also has the potential to allow Mr. Longley unilaterally to amend the Lease.

(pp. 9 and 11); Declaration at Article VII, § 8 (p. 18); Exhibit 122 (Creamer & Noble Expert Report)]; and

j. allowed the declarant to charge an admission fee and other fees to Association members for use of the Airport contrary to prior representations and agreements, [2002 Declaration at Article IV, § 4(d) (p. 10)].

26. Mr. Longley also sought to change the county zoning ordinances governing the Grassy Meadows Community to allow larger aircraft to land and takeoff from the Airport. [See Longley Testimony.]

27. Concerned about the radical changes the 2002 Declaration would cause to the nature of their quiet community, and believing Mr. Longley's company no longer had the authority to amend unilaterally the community's Declaration, the Association rejected the 2002 Declaration and challenged its validity. [See Murdock Testimony.]

28. Many Association members also exercised their First Amendment rights of free speech and to petition the government by resisting Mr. Longley's efforts to change the zoning ordinances governing the Grassy Meadows Community at the Washington County Planning Commission. [See Longley Testimony; Murdock Testimony.]

29. Almost immediately upon the heels of the Association's and its members' resistance to Mr. Longley's effort unilaterally to amend the Declaration and to change zoning ordinances, Mr. Longley's attorney sent a Notice of Termination of Lease dated March 31, 2003 alleging various breaches of the Lease ("Notice of Termination" or "Notice"). [See Exhibit 2 (Notice); Longley Testimony.]

30. Mr. Longley did not offer any evidence showing he mailed a copy of this notice via certified mail, return receipt requested, to each member of the Association's Board of Trustees, as required by the Lease.

31. Nor did Mr. Longley offer any evidence showing the date on which the letter was posted in order to establish when the applicable cure period would have begun.

32. The Notice of Termination alleged the following four breaches:

a. "Lessee has failed to maintain the Airport and runway lights anywhere near the same condition they were in when they were received, normal wear and tear excepted." [Exhibit 2 (Notice) at 1, ¶ 1.]

b. "Lessee has repeatedly ignored and failed to subject itself to the CC&RS [sic]. Examples include, but are not limited to, improper Trustee agendas, failure to collect multiple lot assessments, failure to maintain fencing and lot weed control, failure to fix broken runway lights, failure to deliver the insurance policy to the Declarant, protesting before the Washington County Commission the Declarant's Community activities that are specifically allowed by the CC&Rs, and denial of Class B voting rights and the voting rights of the owners of lots in Phase 5C." [*Id.* at 1, ¶ 2.]

c. "Lessee has failed to meet the necessary insurance requirements as outlined in section 10, and has failed to seek the approval of Lessor of the limit of liability coverage of said insurance, and has otherwise failed to seek the approval of Lessor before obtaining said insurance as required by section 10. Indeed, for some time Lessee has failed to even provide Lessor a copy of the insurance policy." [*Id.* at 2, ¶ 3.]

d. “The lease fee specified in section 3 has frequently been overdue over the years, and is currently past due.” [*Id.* at 2, ¶ 4.]

33. The Notice of Termination was the first such notice Mr. Longley sent to the Association during the approximately 12 years that had passed since the parties entered in the Lease. [see Longley Testimony]

34. The only other letter Mr. Longley sent to the Association outlining alleged deficiencies regarding the Airport came one month prior to the Notice of Termination. [Longley Testimony; Exhibit 273.]

35. It was only after the Association resisted Mr. Longley’s efforts to amend the covenants, conditions and restrictions and zoning ordinances applicable to the community to facilitate his Copper Rock Development that Mr. Longley sent the Association any kind of written complaint about the Airport’s maintenance or any other issue pertaining to the Airport. [Longley Testimony; Murdock Testimony.]

36. The Association denied any breach of the Lease as alleged by Mr. Longley, but nevertheless made concerted efforts to address the issues Mr. Longley brought to its attention in order to attempt to appease Mr. Longley, including replacing all broken lights, removing weeds growing next to the Airport and addressing other minor maintenance issues. [Murdock Testimony.]

37. Mr. Longley described the Association’s efforts in this regard as “frenzied.” [See Exhibit 2 (Notice).]

38. Evidence presented at trial shows that the Association substantially complied with all the terms of the Lease.

39. Although maintenance issues arose from time to time, including at the time the Notice of Termination was sent, such maintenance items fall within what would reasonably be expected as normal wear and tear of improvements on real property of this type.

40. Nevertheless, the Airport was always in reasonably good working order and condition. [See Holt Testimony; McCarroll Testimony; Habberfield Affidavit; Murdock Testimony; Batson Affidavit; Santosuosso Affidavit.]

41. The Association engaged in regular and frequent maintenance, and even improvements, of the Airport throughout the lease period, including the following, among other things:

- a. added paint markings as an improvement to the Airport;
- b. funded an apron composed of crushed stone and sterilant pellets to be placed on each side of the airstrip for the length of the airstrip to repair undercutting to the airstrip that had occurred;
- c. took measures to abate and remove weeds, including spraying and cleaning the Airport in March, July, August and September of 2003;
- d. kept the rail fences surrounding the Airport in good repair, including repairing them after they were damaged due to a lightning strike and automobile accident;
- e. kept most of the airport lights in good working condition, including repairing lights on taxiways, even though not required to do so by the Lease; and
- f. paid to have portions of the Airport needing attention crack-sealed almost every year, including in 2000, 2001, 2002 and 2003.

[See Habberfield Affidavit at ¶¶ 13, 14, 16–25, 33–35 and 38; Batson Affidavit at ¶¶ 10–18 and 21; Santosuosso Affidavit at ¶¶ 6, 9 and 18; McCarroll Testimony; Murdock Testimony.]

42. Wayne Rogers, one of Mr. Longley’s experts, testified that the Airport had “definitely” been maintained. [See Wayne Rogers testimony.]

43. Mr. Rogers also testified that:

- a. asphalt inevitably shrinks and cracks due to environmental conditions;
- b. the cracking he observed at Grassy Meadows was consistent with an airport of its age;
- c. shrinkage and cracks by themselves do not indicate a lack of maintenance but are just a result of natural aging;
- d. he had no reason to believe that the weeds or drainage issues he observed posed any kind of hazard;
- e. the Airport was in fairly good condition compared to the other runways he has inspected.

[See *id.*]

44. Craig Ide, one of the Association’s experts and the person in charge of inspecting the pavement at municipal airports across the state on behalf of the aeronautical division of the Utah Department of Transportation, testified that the Airport rated a 69 or “good” on the Pavement Condition Index. [See Exhibit 161 (Craig Ide Affidavit) at ¶ 7.]

45. Mr. Ide testified that the average score for municipal airports in 2003 was 59. [*Id.*]

46. With respect to the lighting on the Airport, Mr. Longley conceded that the lighting system was a military surplus system, which he bought and installed himself. [See Longley Testimony.]

47. All the evidence introduced established that, while the lighting system was showing its age, it was generally kept in good working order—at least in the same condition as when it was installed, “normal wear and tear excepted,”³ as permitted by the Lease. [See Exhibit 1 (Lease) at ¶ 8; Holt Testimony; Batson Affidavit; McCarroll Testimony.]

48. In addition to witnesses for the Association, another one of Mr. Longley’s experts, Ryan Christensen, testified that, although there were some lights on the airport that needed replacing and others that needed cleaning and polishing, the lighting system worked when tested and performed the function it was designed to perform. [See Ryan Christensen testimony.]

49. Mr. Christensen acknowledged that when he was deposed shortly after inspecting the runway in late 2003 he testified that he “wouldn’t be concerned about” landing on the Airport at night. [See *id.*]

50. There are no lights on any of the taxiways, except for those in the FBO area owned and controlled by Mr. Longley. [see Brewer Testimony.]

51. Any lights on the Airport that were broken in March 2003, were subsequently and timely repaired by the Association. [See Murdock Testimony.]

³ Normal wear and tear is a significant factor to be kept in mind as it relates to the Airport and the lighting system in particular given the testimony of the harsh desert conditions that plagued the Airport. [See Longley Testimony; Christensen Testimony; Brewer Testimony.]

52. At least one witness, a pilot and real estate expert who no longer has ties to any party in this matter, testified that he inspected the Airport at the very time Mr. Longley alleged it was in disarray and concluded that the Airport was in good condition and decided to purchase a lot in the community based thereon. [See Holt Testimony.]

53. Another witness, a pilot with no continuing ties to any party, testified that he also inspected the Airport around this same time and found it to be in “very good condition.” [See Brewer Testimony.]

54. At no time have maintenance issues affected flight operations or compromised the safety of those using the Airport in any way. [See Longley Testimony; Murdock Testimony; Brewer Testimony; Holt Testimony, McCarroll Testimony; Habberfield Affidavit; Batson Affidavit and Santosuosso Affidavit.]

55. Mr. Longley also alleged that the Association breached the Lease by failing to abide by all the conditions, covenants and restrictions of the Declaration.

56. The Court has previously ruled that “the provision in the Lease stating that the Lease is ‘[s]ubject to all the terms, covenants and conditions’ constitutes an acknowledgment that the Declaration exists and encumbers the property rights that the Association was obtaining from Mr. Longley; however, it cannot be interpreted to allow Mr. Longley to terminate the Lease for a breach of the provisions of the Declaration.” [Memorandum Decision on Defendants’ Motion for Partial Summary Judgment (Plaintiff’s Third, Fourth, and Fifth Causes of Action) dated July 17, 2007 at 4.]

57. In addition, the Court finds that the lessor's notice with respect to this issue was again deficient.

58. Mr. Longley did not reference any specific provision of the Declaration he alleged the Association had breached.

59. Moreover, Mr. Longley's references to "improper Trustee agendas" and "failure to collect multiple lot assessments" do not identify a specific ongoing breach that needs curing. [Notice at 1, ¶ 2.]

60. Mr. Longley also alleged that the Association had denied him his "Class B voting rights and the voting rights of the owners of lots in Phase 5C."

61. With respect to Class B voting rights, Mr. Longley himself affirmed that "Class B membership automatically ceased on or about June 16, 1994"). [See Longley Testimony.]

62. Mr. Longley also asserted that the Association had failed to meet the "necessary insurance requirements" outlined in the Lease. Once again, however, Mr. Longley did not specify what insurance requirements were not met other than to assert that the Association failed to seek his approval and provide him a copy of the policy. [See Exhibit 2 (Notice) at 2.]

63. Once the Association was apprised of Mr. Longley's concerns, it immediately made arrangements to have a copy of the insurance policy forwarded to Mr. Longley. [See Murdock Testimony.]

64. In fact, in his Final Notice, Mr. Longley states: "A mere statement in Lessee's counsel's letter of April 15, 2003 that the required insurance has been maintained and that a copy of the same is now belatedly being provided, is not enough." [See Exhibit 4 (Final Notice) at 2, ¶ 3.]

65. Contrary to Mr. Longley's statement, providing a copy of the insurance policy after being given notice of the outstanding need to do so is precisely what is contemplated in the Lease's notice and cure provision. Moreover, the Association had little ability to cure its alleged failure to seek Mr. Longley's prior approval of the policy until it was time to renew the policy.

66. There is no evidence in the record that the Association failed to do this after being put on notice by Mr. Longley.

67. The Court also finds that the Association exercised good faith efforts to name Mr. Longley's development entity, Sky Ranch Development, Inc., as an additional insured in a timely fashion after being notified of the fact that the entity, for whatever reason, had been omitted as an additional insured. [See Exhibit 102 (Airport Liability Additional Insured Certificates of Insurance).]

68. No evidence was presented to indicate why the certificate of additional insureds was not issued until February 11, 2004; however, the certificate clearly indicates that insurance coverage existed for the development entity from May 3, 2003, no more than one day after the 30-day cure period expired, assuming without finding that the Notice of Termination was posted on the same day reflected on the letter.⁴ [*Id.*]

69. This evidence indicates that the Association acted in a timely manner to secure the required additional insured certificate, as it is unreasonable to conclude that an insurance company would provide insurance coverage it was not obligated to provide.

⁴ As indicated above, no evidence was presented as to when the letter was posted, and the Court, therefore, cannot make any finding in that regard. Nevertheless, assuming for the sake of argument that it was posted on March 31, 2003, the 30-day cure period would begin to run on April 2 (two days after the letter was posted pursuant to paragraph 4 of the Lease) and expire on May 2, 2003.

70. The Association maintained continual and adequate insurance coverage at all times following the date the Notice was first sent. [See Longley Testimony; Murdock Testimony.]

71. No claims were brought against Mr. Longley or any of this entities during the period in which the development entity was not named as an additional insured. [See Longley Testimony.]

72. Finally, Mr. Longley asserted that the Association's current lease payment was past due, but no evidence was presented at trial and no mention of any outstanding or delinquent lease payments was even made at trial.

73. Despite the deficiencies in Mr. Longley's allegations about the Airport, Mr. Longley sent a letter to the Association shortly after purportedly terminating the lease, stating: "Grassy Meadows Airport, Inc. [the lessor] has no desire to prohibit lot owners [the Association] from use of the runway" [See Exhibit 283 (Duane Ostler Letter of June 6, 2003).]

74. The Association thus continued to use the Airport virtually uninterrupted and has continued to use the Airport over the past seven-plus years without accident or undesirable incident of any kind. [See Longley Testimony.]

75. Mr. Longley has made no further assertions of breach by the Association during this time. [See Longley Testimony.]

76. To this day, there are virtually no common areas within the Community other than the private Airport, which, although technically not a common area, functions for all intents and purposes as a common area for the benefit and use of the Association and its members. [See Longley Testimony.]

77. Access to the Airport is the foundation on which the entire Community was built and the primary benefit represented to potential buyers of lots within the Community. As such the Airport provides a central and irreplaceable benefit to the Association and its members. [See Longley Testimony; Holt testimony; McCarroll Testimony; Habberfield Affidavit at ¶ 4; Murdock Testimony; Batson Affidavit at ¶ 25; Santosuosso Affidavit at ¶ 10.]

CONCLUSIONS OF LAW

There are three issues before the court: (1) whether Mr. Longley's company, Sky Ranch Development, Inc. had the right in 2002 unilaterally to amend the covenants, conditions and restrictions governing the Association; (2) whether the Association and its members had the right to oppose Mr. Longley's efforts to change the zoning ordinances governing the Community; and (3) whether Mr. Longley may terminate the Lease he entered into with the Association. Based upon the above findings of fact, the Court makes the following conclusions of law with respect to each of these issues.

1. The Declaration allows the declarant to amend the Declaration "until eighty percent (80%) of the lots in the Community (including additional phases as may be added) have been sold to purchasers." [Declaration at Article XII, § 3 (p. 28).]

2. As the Court previously noted in its Memorandum Decision on Defendants' Motion for Partial Summary Judgment (Plaintiff's Ninth Cause of Action) dated July 17, 2007 ("Memorandum Decision"), it is not clear whether the number of lots, from which the 80 percent calculation would be made, includes only then-existing lots or all future lots.

3. The phrase, "as may be added," could be interpreted to include lots (1) "as are permitted to be added in the future, no matter how many have already been added at any point in time," or (2) "as may have been added at any point in time, no matter how many may be permitted in the future."

4. Because this language is susceptible to two different interpretations, it creates an ambiguity in the contract that must be construed against the drafter, in this case Mr. Longley. [See *U.S. Fid. and Guar. Cov. v. Sandt*, 854 P.2d 519, 525 (Utah 1993); *Culbertson v. Board of Ctv. Comm'rs*, 2001 UT 108, ¶ 15, 44 P.3d 642 (noting ambiguous legal documents are construed against the party that drafted them).]

5. Consistent with these fundamental rules of construction, the Court concludes that this threshold was passed on or about June 11, 2002, some months prior to the declarant's filing of the amended and restated Declaration in 2002.

6. Thus, as of June 11, 2002, Sky Ranch Development, Inc. no longer had the authority to amend unilaterally the Declaration and the 2002 Declaration is thus void.

7. The Court further concludes that the 2002 Declaration did not advance any of the three specifically enumerated purposes justifying unilateral amendment.

8. The 2002 Declaration would have materially altered the terms and substance of the 1990 Declaration and thereby would have impermissibly altered the nature of the Association in a number of significant respects as detailed in the findings of fact.

9. Far from more accurately expressing the intent of the original Declaration, the 2002 Declaration would have given Sky Ranch Development, Inc. the right to transform a quiet

community, in which a limited number of lot owners had access to a private airport restricted to small aircraft, into a hub of commercial activity including greatly multiplying the number of hangars and commercial lots originally contemplated.

10. The 2002 Declaration also would have allowed refueling stations, stores, maintenance facilities and even hotels catering to larger aircraft and jets flown by an unlimited number of people who may or may not own an unlimited number of lots beyond the original 150 lots plotted for the community.

11. In addition, the 2002 Declaration would have given Sky Ranch Development, Inc. unlimited power to expand these already greatly expanded commercial operations as it alone “*deemed appropriate or desirable.*” [See Exhibit 6 (2002 Declaration) at Article I, § 13 (p. 4)]

12. The 2002 Declaration also would have impermissibly diluted the Association members’ existing voting rights. [*Levanger v. Vincent*, 2000 UT App 103, ¶ 19, 3 P.3d 187.]

13. Because the 2002 Declaration did not further any of the three limited purposes enumerated in the 1990 Declaration justifying unilateral amendment but rather materially changed the character and nature of the Association, the 2002 Declaration would be void even if 80 percent of the lots had not been sold at the time of the amendment. [See Restatement (Third) of Property, § 6.21 (2000) (“A developer may not exercise a power to amend or modify the declaration in a way that would materially change the character of the development . . .”); *Moore v. Megginson*, 416 So. 2d 993 (Ala. 1982) (striking down unilateral amendment that expanded commercial uses within a fundamentally private homeowners association).]

14. There is no evidence showing that the Association interfered with any legitimate business interest of Mr. Longley or his companies for “an improper purpose or by improper means.”

[*Leigh Furniture and Carpet Co. v. Isom*, 657 P.2d 293, 304 (Utah 1982).]

15. The Association had no contractual obligation not to oppose Mr. Longley’s effort to change the zoning ordinances applicable to the Airport and community, which the Association felt far exceeded the limited commercial uses originally planned for the community.

16. Moreover, the Association had a constitutional right to oppose Mr. Longley’s effort to change the zoning. [See *Anderson Dev. Co. v. Tobias*, 2005 UT 36, ¶ 25, 116 P.3d 323 (holding developer’s tortious interference claim brought against individuals resisting zoning changes barred by *Noerr-Pennington* immunity).]

17. The constitutional right to petition the government—and to be immune from liability for doing so—is enjoyed by individuals and legal entities, such as incorporated associations, alike. [*Id.* (“In recognition of this right, the United States Supreme Court has held that individuals *and organizations* are immune from liability under antitrust laws for actions constituting petitions to the government.”) (emphasis added); *Kovac v. Crooked River Ranch Club and Maintenance Ass’n*, 63 P.3d 1197, 1200–01 (Or. Ct. App. 2003) (holding homeowner association’s actions in opposing homeowner’s application for a conditional use permit amounted to nothing more than constitutionally protected participation in the political process and were therefore immune from antitrust liability under the *Noerr-Pennington* doctrine.”).]

18. Because the Association had no contractual obligation not to oppose zoning changes they perceived to be adverse to the Association's interests,⁵ and because they are immune from liability for petitioning the government in any event, there is no basis to hold the Association liable for tortious interference in this case.

19. Mr. Longley and Grassy Meadows Airport, Inc. failed to provide sufficient notice to the Association to justify termination of the lease.

20. Mr. Longley and Grassy Meadows Airport, Inc. failed to put on any evidence showing they satisfied the contractual requirement to give written notice of termination to each member of the Association's board of trustees.

21. This alone prohibits the Court from considering termination as a remedy in this case. [*Commercial Inv. Corp. v. Siggard*, 936 P.2d 1105, 1109 (Utah Ct. App. 1997) (holding where forfeiture is a possible remedy, person seeking forfeiture “‘must comply strictly with the notice provisions of the contract.’”) (emphasis in *Siggard*) (citations omitted).]

22. Moreover, the Notice of Termination itself lacks the requisite specificity to apprise the Association of the alleged lease breaches that needed curing.

23. A cure period is meaningless and of no effect if the lessee is not apprised specifically of the alleged problems that need curing.

24. In any event, the Court concludes that the Association substantially complied with the terms of the Lease. [*See Cache County v. Beus*, 1999 UT App 134, ¶ 36, 978 P.2d 1043 (holding

⁵ Indeed, had any board member agreed not to resist zoning ordinance changes adverse to the Association, such an agreement would be void as being inconsistent with the board member's fiduciary duties.

“a trial court should determine the materiality of the breach, and then decide whether the breaching party had substantially complied with the [lease].”).]

25. First, Mr. Longley and Grassy Meadows Airport, Inc. have not been deprived of any benefit to which they are entitled under the Lease, including receiving regular lease payments. *Id.* at ¶ 37 (quoting Restatement (Second) of Contracts, § 241 (1981)).

26. On the other hand, the Association would suffer greatly if the lease were terminated.

27. The very purpose for the Community was to have access to a private airport. If access to the airport were now denied, the sole purpose for the Community’s existence would be eliminated, airplane hangars built by the Association’s members would have no use, transportation to and from the Community would be restricted and property values would decrease significantly. *Id.*

28. The evidence presented established that any alleged breaches have been cured.

29. Mr. Longley’s admission that the Association reacted to his Notice of Termination with “frenzied efforts” to cure the alleged deficiencies also evinces good faith on the part of the Association to comply with all its obligations under the Lease.

30. The Association’s good faith efforts to meet all its obligations under the Lease is further supported by the fact that the Association has continued to use the Airport for the past seven-plus years since the alleged breach occurred without further complaint from Mr. Longley and without any accident or adverse incident of any kind.

31. Consequently, any breach of the Lease that may have occurred was immaterial and termination of the Lease would be inappropriate in light of the substantial performance doctrine.

32. In addition, the Court concludes that Mr. Longley and Grassy Meadows Airport, Inc. are equitably estopped from seeking termination as a remedy for any minor breach that may have occurred. [*Whitaker v. Utah State Ret. Bd.*, 2008 UT App 2008, ¶ 22, 191 P.3d 814.]

33. The evidence in this case reveals that Mr. Longley represented to the persons to whom he sold lots in the community (the members of the Association) that the Community was a residential airport community where people could purchase lots adjacent, or in close proximity, to the Airport, build homes on those lots, and come and go in their own small, non-commercial aircraft.

34. Members of the Association testified that they relied on these representations in deciding to buy and build homes and other improvements on lots in the Community.

35. Such action by the members was reasonable in light of Mr. Longley's representations, which were confirmed both in the Grassy Meadows Airport, Inc. Lease and the Sky Ranch Development, Inc. Declaration.

36. If Mr. Longley were allowed now to act contrary to his representations on which the Association members reasonably relied and terminate the lease granting them access to the Airport, the fundamental reason that induced members to buy lots from Mr. Longley would be eliminated.

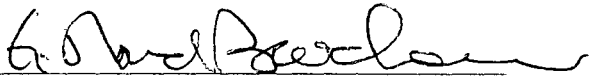
37. Mr. Longley is thus equitably estopped from seeking termination as a remedy, even were this Court to find that there had been a material breach of the lease.⁶

38. The Court concludes, therefore, that Mr. Longley is not entitled to terminate the Lease but instead continues to be bound by its provision, as is the Association.

⁶ This is not to say that Mr. Longley would be without any remedy in the event this Court had found a material breach of the Lease. In such a case, the appropriate remedy would be specific performance of the Lease terms and damages, if applicable.

39. Plaintiff's counsel should submit a judgment which is consistent with the foregoing findings of fact and conclusions of law.

DATED this 6 day of August, 2010.

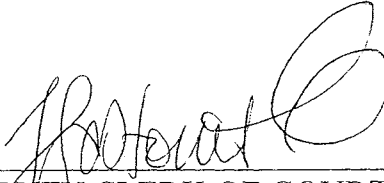

G. RAND BEACHAM
District Court Judge

CERTIFICATE OF MAILING OR HAND DELIVERY

I hereby certify that on this 11 day of Aug, 2010, I provided true and correct copies of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW to each of the attorneys/parties named below by placing a copy in such attorney's file in the Clerk's Office at the Fifth District Courthouse in St. George, Utah and/or by placing a copy in the United States Mail, first-class postage prepaid, and addressed as follows:

Gregory N. Hoole
Attorney for Plaintiff
4276 South Highland Drive
Salt Lake City, Utah 84124

J. Craig Smith
Attorney for Defendants
175 South Main Street
Salt Lake City, Utah 84111



DEPUTY CLERK OF COURT

A-2: Judgment

5

FILED
Date 10/20/10
FIFTH DISTRICT COURT
WASHINGTON COUNTY
By 18

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Attorneys for Plaintiff

IN THE FIFTH JUDICIAL DISTRICT COURT
WASHINGTON COUNTY, STATE OF UTAH

GRASSY MEADOWS SKY RANCH LAND
OWNERS ASSOCIATION, a Utah nonprofit
corporation,

Plaintiff,

vs.

GRASSY MEADOWS AIRPORT, INC., a
Utah corporation; MICHAEL O. LONGLEY,
an individual; and SKY RANCH
DEVELOPMENT, INC., a Utah Corporation,

Defendants.

JUDGMENT

Civil No. 030501171

Judge G. Rand Beacham

A bench trial was held before the Court, commencing on April 19, 2010 and concluding on April 20, 2010. Plaintiff Grassy Meadows Sky Ranch Land Owners Association was represented by John D. Richards and Gregory N. Hoole. Defendants Grassy Meadows Airport, Inc., Michael O. Longley and Sky Ranch Development, Inc. were represented by J. Craig Smith and R. Christopher Preston. At the trial the parties offered testimony and other evidence in support of the three issues remaining in this case: (1) whether Defendant Sky Ranch Development, Inc. had the authority to record the Second Restated Supplementary and Amended Declaration of Covenants, Conditions & Restrictions for Grassy Meadows Sky Ranch recorded by Defendant Sky Ranch Development, Inc. on October 25, 2002 (the "Purported Declaration") or whether the Purported Declaration is void; (2); whether Plaintiff tortiously interfered with the legitimate business interests of Defendants by opposing proposed zoning ordinance changes affecting Plaintiff¹ and (3) whether the 99-year lease entered into by Plaintiff and Defendant Grassy Meadows Airport, Inc. on November 25, 1990 (the "Lease") was breached and then properly terminated by Defendant or whether the lease remains in full force and effect. On August 6, 2010 the Court entered its Findings of Fact and Conclusions of Law regarding these issues.

Based on evidence received at trial as outlined in these findings and conclusions, it is hereby
ORDERED, ADJUDGED AND DECREED that:

¹ Because of a scheduling conflict, the Court adjourned the trial earlier than expected, anticipating that the Court would reconvene the trial to hear additional evidence on this second issue. (Prior to adjourning the trial, Defendants had been unable to establish any contractual obligation on behalf of Plaintiff that could form the basis of a tortious interference claim. Specifically, the only evidence Defendants had introduced was an unsigned contract with proposed modifications handwritten on it.) After further reviewing the tortious interference claim, however, the Court is persuaded that Plaintiff cannot be held liable regardless of what additional evidence may be presented because of Plaintiff's constitutional right to petition the government as set forth more fully in the Court's Findings of Facts and Conclusions of Law. In light of this ruling, it is unnecessary to reconvene the trial to receive more evidence on this issue.

1. Defendant Sky ranch Development, Inc. did not have the authority to record the Purported Declaration and, therefore, such declaration is void *ab initio*. The declarations of covenants, conditions and restrictions governing the Plaintiff association prior to the October 25, 2002 filing of the Purported Declaration continue in full force and effect.

2. Plaintiff did not tortiously interfere with any legitimate business interest of the Defendants.

3. Plaintiff did not materially breach the Lease, and Defendant Grassy Meadows Airport, Inc. did not properly terminate the Lease. Therefore, the Lease remains in full force and effect.

4. Judgement is hereby entered in Plaintiff's favor consistent with these rulings on all claims and counterclaims related to these issues. All other claims and counterclaims not previously dismissed are hereby dismissed with prejudice.


5. All monies currently held by the Court in escrow shall be released to Defendant Grassy Meadows Airport, Inc. upon the expiration of thirty days from the date of this Judgment, assuming no appeal is taken with respect to the breach of contract issue. All monies so released shall be applied as rent paid in full under the Lease through December 31, 2010. If an appeal is taken, the monies will continue to be held in escrow and Plaintiff will continue to make lease payments to the Court pending final resolution of this issue.

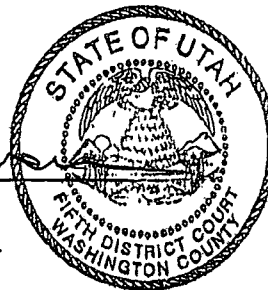
6. Pursuant to Rule 54(d) of the Utah Rules of Civil Procedure, Plaintiff is entitled to the costs it incurred relating to the claims on which it prevailed at trial.

/

DATED this 20 day of September, 2010.

BY THE COURT:


Hon. G. Rand Beacham
District Court Judge

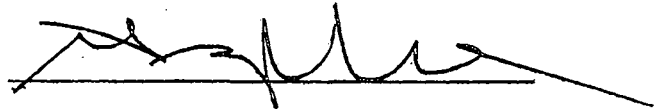


CERTIFICATE OF SERVICE

I hereby certify that on the 30 day of August, 2010, a true and correct copy of the foregoing was served upon the following via email as indicated below:

John D. Richards
RICHARDS, KIMBLE & WINN, P.C.
john@rkw-law.com
patsy@rkw-law.com

J. Craig Smith
R. Christopher Preston
SMITH HARTVIGSEN, PLLC
jcsmith@smithlawonline.com
chris@smithlawonline.com

A handwritten signature in black ink, appearing to be "J. Craig Smith", written over a horizontal line.

A-3: Airport Lease

GRASSY MEADOWS SKY RANCH
AIRPORT LEASE AGREEMENT

This Airport Lease Agreement is made and entered into this 25th day of NOVEMBER, 1990, between GRASSY MEADOWS AIRPORT, INC., a Utah corporation of St. George, County of Washington, State of Utah, (hereinafter referred to as "Lessor") and the GRASSY MEADOWS SKY RANCH LAND OWNERS ASSOCIATION, a non-profit Utah corporation of Hurricane, County of Washington, State of Utah, (hereinafter referred to as "Lessee").

R E C I T A L S:

WHEREAS, Lessor's predecessor in interest, WASCO, a Utah general partnership, and its individual general partners, have constructed the Grassy Meadows Sky Ranch Airport as a private restricted airport in the general vicinity of Grassy Meadows Sky Ranch Planned Development near Hurricane, Utah, consisting of a 160-foot wide strip of land 4491 feet long, hereinafter called "Airport", more particularly described in Exhibit "A" hereto, and expressly excludes that eight-acre parcel of land known as the future FBO and pond area; and

WHEREAS, the general intent of Lessor's predecessor in interest constructing said Airport was to make it available for the use of residents and owners of lots in Grassy Meadows Sky Ranch Planned Development Subdivision, their guests and invitees, and other individuals living or doing business in the same general area; and

WHEREAS, Lessor's predecessor in interest and certain owners of lots in the Grassy Meadows Planned Development, on May 30, 1987,

entered into an Airport Lease Agreement, and the parties as successors in interest, desire to supersede, modify, supplement and amend the same as provided herein, for the purpose of granting the Association and its members, guests and invitees the exclusive right of use of the said Airport.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, Lessor grants to Lessee for the period of ninety-nine (99) years from the date first written above, this exclusive Airport Lease Agreement for the purposes and use of Grassy Meadows Sky Ranch Airport for landing and take-off of Lessee's members, licensees, their guests and invitees aircraft subject to the following terms and conditions:

1. Lessee the Exclusive Occupant. Subject to all terms, ~~covenants and conditions of the Declaration of Covenants, Conditions and Restrictions of Grassy Meadows Sky Ranch Planned Development, and any supplements and amendments thereto,~~ Lessee shall be the exclusive occupant of the airport for the purpose of taxiing, take-off, and landing of aircraft, except as otherwise provided hereafter. As the exclusive occupant, Lessee may grant to others the right to use the airport and may adopt rules and regulations governing the procedure for granting such rights and for the operation and use of the airport. The parties acknowledge that the runway is now paved, and Lessee has had the opportunity to inspect and accept the premises, in "as is" condition. ~~Notwithstanding the above reserved to Sky Ranch Development, Inc. and its assigns as Developer of the Grassy Meadows Sky Ranch Planned~~

Development, is the right to use the Airport for the use of up to 150 Lot Owners, and to use the same for marketing purposes, including inviting guests to use the runway.

2. Limitation to Described Purpose. The Airport may be used by Lessee's members licensees, their guests and invitees solely for the purpose of taxiing, take-off and landing of aircraft and for ~~incidental purposes related thereto.~~ Under no circumstances shall Lessee allow aircraft to park or be tied down on the runway area, taxiways or any part thereof. Lessee further agrees to require its members and their guests or invitees to provide private aircraft parking areas equipped with tie-down facilities for all aircraft operated by Lessee, its members, licensees, their guests and invitees. Lessee, its members, invitees, their guests and invitees shall, at all times, ~~abide by and be bound by all applicable FAA~~ ~~rules and regulations governing the use of the airstrip and by any~~ and all rules and regulations adopted by Lessor or the Lessee, as ~~the case may be,~~ for the operation of the Airport.

3. Lease Fees. Lessee agrees to remit to Lessor a monthly lease charge of \$7.50 per residential lot and \$30.00 per commercial lot, expressly excluding all land or lots owned or held by Lessor in the Grassy Meadows Sky Ranch Planned Development Subdivision, except for those lots owned by Lessor which are a part and member of the Grassy Meadows Sky Ranch Landowners Association. Lease payments shall commence January 1, 1990, and shall be paid semi-annually to Lessor each six months thereafter without prior notice. Adjustment to the Lease charge will be made on an annual basis based on the

Published National Consumer Price Index for Southwestern Utah. The adjustment is to be effective on the anniversary of rent commencement based upon the annual CPI change for September to September. The base CPI is to be September 1989.

The monthly lease payments shall be mailed to Lessor at P. O. Box 51, Hurricane, Utah 84771, or at such other place designated in writing by Lessor. Any rental payments forty-five (45) days past due shall be deemed to be in default.

Amounts which are past due and remaining unpaid that are owed the Lessor by the Lessee shall, without notice to Lessee, become a lien upon each lot, other than the land or lots owned or held by Lessor, in the Grassy Meadows Sky Ranch Planned Development and the leased airport property and any common areas owned or administered by Lessee, ninety-one (91) days after said amount becomes due and payable to Lessor. The lien provided herein, shall continue until the past due rental assessment is paid in full. ~~If the past due rental assessment continues in default for a period of six months or more, Lessor shall have the right to initiate suit or prosecute proceeding in law or equity, as may be necessary to enforce the lien provided for herein and payment thereof, together with interest thereon, at the maximum legal rate per annum from said due date. Lessee shall pay all of Lessor's court costs, reasonable attorney's fees and any other costs associated with any such action.~~

4. Termination. Should Lessee be in default of the terms and conditions provided herein, this Airport Lease Agreement shall terminate thirty (30) days after Lessor has notified Lessee in writing of Lessor's intent to terminate this Lease Agreement, unless

tenant remedies default prior to the expiration of the 30-day period. Such notice shall be given by notifying each member of the Board of Lessee by certified mail, return receipt requested. Notice shall be deemed given two (2) days after posting.

5. Notices. Any notice by Lessee to Lessor must be served by a recognized overnight messenger service, certified or registered mail, postage prepaid, addressed to Lessor, at P. O. Box 51, Hurricane, Utah 84771, or at such other address as Lessor may designate by written notice.

Any notice by Lessor to Lessee must be served by a recognized overnight messenger service, certified or registered mail, postage prepaid, addressed to Lessor, at P. O. Box 225, Hurricane, Utah 84771, or at such other address as Lessor may designate by written notice.

6. Lessee's Right to Make Improvements. Lessee may make improvements to the common areas, such as resurfacing the runway, or as the need or purpose of the Lessee arises, upon approval of the Lessor, which approval will not be unreasonably withheld.

7. Lessor's Reservations. Lessor or assignee reserves the right to sell, assign or otherwise convey the Airport and its facilities, subject to Lessee's rights and obligations under this Airport Lease Agreement.

8. Maintenance. Lessee agrees to maintain the airstrip and its facilities in the same or better condition, normal wear and tear excepted, as when received from Lessor, including but not limited to performing the following duties in connection therewith: paint,

level, compact, remove weeds, repair and oil the surface covering the airstrip, be responsible for the payment of water charges incurred in providing for sufficient irrigation of any landscaping, maintain, replace and repair any sprinkler system utilized in the irrigation of the airport safety areas, maintain, replace and repair any runway lighting system, beacon, and equipment associated therewith, and be responsible for the payment of all electric bills associated with the operation of any runway lighting and beacon systems.

Lessee further agrees to install and maintain in at least two (2) appropriate locations, signs informing all users of the airstrip of the following information: the existence of the Hurricane Airport approximately two (2) miles away; that all takeoffs and landings, when weather and winds permit, should be made in a southerly direction. Lessee agrees to pay all costs of maintenance ~~of the airport, including~~, but not limited to: taxes, insurance, and the maintenance contemplated above. It is the intent of this Lease that it shall be a "triple-net lease" with no costs payable by Lessor.

9. Use of Airport at Own Risk. It is further agreed that in consideration of the granting of this Airport Lease Agreement and its facilities, Lessee, its members, licensees, their guests and invitees shall use the airport and its facilities strictly at their own risk, and Lessor shall not be responsible to Lessee or any other user, ~~their guests or invitees~~ for any damages to property or claims ~~on account of damage or death~~ to persons arising from any act, ~~omission, negligence of Lessor, its agent, representatives, or~~

employees in the operation of the airport, including, but not limited to, the manner of storage or parking of aircraft, the condition of the airstrip or facilities or operation or storage of equipment thereon, fire from any source, lighting on runways, operation of weather or wind devices and indicators, or quality or condition of any gasoline, oil, supplies, goods services, or parts furnished to Lessee, its members, licensees, their guests or invitees. Lessor shall not be held responsible or liable in any manner, including damages, for any action taken by Federal, State, County or Local governing bodies or agencies or other divisions of such governments, which action prevents Lessor now or in the future from using or operating the land as an airport. Lessor agrees to take reasonable care in keeping the airport lands subject to this Airport Lease Agreement continuously qualified under all Federal, State, County and Local laws. Lessee shall have the duty to inform its members, licensees, their guests and invitees who use the airport or its facilities of all of the terms of this covenant and that the use of the airport is strictly at their own risk. The Lessee or user, as the case may be, hereby agrees that they will indemnify and hold harmless the Lessor, its agents, employees, representatives, successors, or assignees from all actions or proceedings to recover damages for any injuries to persons or property whether such action is instituted and commenced by the Lessee, user, or their guests or invitees or any third parties, including all of Lessor's costs and reasonable attorney's fees.

10. Insurance. Lessee agrees to provide all risk liability insurance as is commonly provided for private airports, which shall

~~show Lessor and Sky Ranch Development, Inc. as additional insureds.~~
~~The limit of liability coverage shall be set by mutual agreement,~~
~~and the policy shall be subject to the reasonable approval of~~
~~Lessor.~~

11. Amendments. This Airport Lease Agreement may be amended from time to time upon such terms and conditions as may be determined by Lessor and Lessee any time prior to the expiration of this Lease. In making such a decision, any vote of Lessor, or Sky Ranch Development, Inc., as an owner of any lot(s) shall not be counted.

12. Severability. In the event that any one of these agreements, conditions, covenants or restrictions or any part of each one thereof is declared to be invalid, or void, the remaining agreements, conditions, restrictions and covenants, or parts thereof, not invalid or void, shall remain in full force and effect and shall be binding upon the parties and person mentioned therein.

This Airport Lease Agreement shall inure to the benefit of and be binding on the parties hereto, their respective representatives, heirs, administrators, executor, successors or assignees. This Lease shall supercede any previous Lease on the subject premises whether written or oral.

DATED this 25th day of November 1990.

LESSOR:

GRASSY MEADOWS AIRPORT, INC.

By: 

Michael O. Langley
Its President

LESSEE:

GRASSY MEADOWS SKY RANCH LAND
OWNERS ASSOCIATION

By: 

Paul Matthias, Trustee

By: 

Leroy Eckert, Trustee

By: 

Elizabeth Burris, Trustee

DEVELOPER:

SKY RANCH DEVELOPMENT, INC.

By: 

Its President

(as to covenants applicable to it)

DESCRIPTION OF RUNWAY FOR EYERANCH

Beginning at a point S 0°10'05.4" W 290.00 feet along the Section Line and N 89°51'44" W 563.01 feet from the East 1/4 Corner of Section 28, Township 42 South, Range 13 West, Salt Lake Base and Meridian; and running thence S 0°10'05" W 4496.11 feet; thence N 89°51'27" W 160.00 feet; thence N 0°10'05" E 4496.10 feet; thence S 89°51'44" E 160.00 feet to the point of beginning.

Containing 16.515 acres

A-4: 1990 CC&Rs

RESTATED SUPPLEMENTARY
AND
AMENDED DECLARATION
OF
COVENANTS, CONDITIONS & RESTRICTIONS
FOR
GRASSY MEADOWS SKY RANCH
A
PLANNED DEVELOPMENT
IN
WASHINGTON COUNTY, UTAH
PHASE I & PHASE II

July, 1990

0368243 BR 0567 Pg 000

RUSSELL SHIRTS * WASHINGTON CO RECORDER
1990 JUL 16 13:07 PM FEE \$37.00 BY K
REQUEST: SKY RANCH DEVELOPMENT



(21)

RESTATED, SUPPLEMENTARY AND AMENDED
DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR
GRASSY MEADOWS SKY RANCH PLANNED DEVELOPMENT

(Phase I and Phase II)

This declaration is made and executed this fourth day of July, 1990 by Sky Ranch Development, Inc., a Utah corporation, as successor in interest to Michael O. Longley, Laura Ellen Longley, William F. Longley, Helene M. Longley, and Larry G. Watts, and to Wasco, a Utah general partnership, (Hereinafter referred to as "Declarant".)

RECITALS

A. Declarant is the record owner (legal or equitable) of those certain parcels of real property (the Property) described in Exhibits "A" and "B" of this Restated Supplementary Amended Declaration. Declarant has created on the Property a planned development with certain Common Areas that may be added in the future for the benefit of the Development and the Owners of Lots therein.

B. Declarant desires to provide for the preservation and enhancement of the property values and amenities of the Property for the maintenance of the future Common Areas. ~~For~~ this end and for the benefit of the Property and of the Owners thereof, the Declarant desires to subject the Property described in Exhibits "A" and "B," Grassy Meadows Sky Ranch Subdivision and Grassy Meadows Sky Ranch Phase II respectively, of this Declaration to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which are for the benefit of the Property and each Owner thereof.

C. Declarant deems it desirable, for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose Declarant has, in conjunction with recordation of this Declaration, caused or will cause to be incorporated under the laws of the State of Utah, as a non profit corporation, GRASSY MEADOWS SKY RANCH LANDOWNERS ASSOCIATION.

D. Declarant reserves the right to annex additional phases to the development whose Owners will become Members of the Association and will be entitled and subject to all rights, powers privileges, covenants, restrictions, easements charges, and liens hereinafter set forth.

E. This Restated Supplementary and Amended Declaration shall supplement, amend and supercede that certain Declaration of Covenants, Conditions, and Restrictions of Grassy Meadows Sky Ranch Planned Development, recorded in the office of the County Recorder of Washington County, State of Utah on August 23, 1984, in Book 357, pages 64-92, Document 265521, Official Records of Washington County, State of Utah.

NOW, THEREFORE, for the foregoing purposes, Declarant declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth in the plats recorded heretofore and concurrently herewith.

I. DEFINITIONS

When used in this Declaration (including in that portion hereof under "RECITALS") the following terms shall have the meaning indicated.

1. Declaration shall mean and refer to this instrument as the same may hereafter be modified, amended, supplemented, or expanded in accordance with the provisions hereof (and in particular in accordance with the provisions of Article XI) concerning amendments or supplements to this Declaration which are to occur in conjunction with the expansion of the Development.

2. Plat shall mean and refer to the Phase I portion of the plat of the "GRASSY MEADOWS SKY RANCH PLANNED DEVELOPMENT" consisting of 1 page, executed and acknowledged by Declarant, prepared and certified by Reid Pope, a registered Utah Land Surveyor, and recorded in the Office of the County Recorder of Washington County, Utah on the 23rd day of August, 1984, in Book 357 at page 63 as Entry No. 265520, and to the Phase II portion of the plat of "GRASSY MEADOWS SKY RANCH PLANNED DEVELOPMENT" consisting of 1 page, executed and acknowledged by the Declarant, prepared and certified by Lloyd Reid Pope, a registered Utah land Surveyor, and recorded in the office of the County Recorder of Washington County, State of Utah, on the 16th day of July, 1990, in Book 567, at Page 1 as Entry No. 368242, as the same will hereafter be modified, amended, supplemented or expanded in accordance with the provisions of Article XI concerning amendments or supplements to this Declaration which are to occur in conjunction with the expansion of the Development as herein provided.

3. Property shall mean and refer to all of the real property which is covered by the Phase I Plat, a description of which is stated in Exhibit "A", of this Declaration, and by all of the real property which is covered by the Phase II Plat, a description of which is stated in Exhibit "b" of this

Declaration, and such portions of additional land which may be annexed to the Development as provided herein.

4. Lot shall mean and refer to any of the separately numbered and individually described plots of land shown as Phase I of the Plat. Upon recordation of this Restated, Supplementary, and Amended Declaration for additional land, Lot shall include the separately numbered and individually described plots of land shown on the Plats of the additional lands.

5. Common Areas Shall mean and refer to those portions of property which are not included within the Lots, including all improvements other than utility lines now or hereafter constructed or located thereon and includes facilities leased by the Association for the benefit and use of the members and may include an airstrip and/or adjacent pond area.

6. Living Unit shall mean and refer to a structure which is designed and intended for use and occupancy as a residence, together with all improvements located on the Lot concerned which are used in conjunction with such residence.

7. Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Washington County, Utah) of a fee or an undivided fee interest in the Lot. Notwithstanding any applicable theory relating to a mortgage, deed or trust, or like instrument, the term Owner shall not mean or include a Mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

8. Association shall mean and refer to GRASSY MEADOWS SKY RANCH LANDOWNERS ASSOCIATION, a Utah nonprofit corporation.

9. Articles and Bylaws shall mean and refer to the Articles of Incorporation and the Bylaws of the Association.

10. Board of Trustees and the Board shall mean and refer to the Board of Trustees of the Grassy Meadows Landowners Association.

11. Member shall mean and refer to every person who holds membership in the Association.

12. Mortgagee shall mean any person named as a first mortgagee or beneficiary under or holder of a first deed of trust.

13. Development shall mean and refer to the Grassy Meadows Sky Ranch Planned Development created by this Restated,

Supplementary and Amended Declaration as it exists at any given time, including future addition as allowed by this Declaration.

14. Declarant shall mean and refer to Sky Ranch Development, Inc., a Utah corporation, as successor in interest to Michael O. Longley, Laura Ellen Longley, William F. Longley, Helene M. Longley and Larry G. Watts, and to Wasco, A Utah general partnership, its successors and assigns, or to any ~~successor or assign of all or substantially all of its interest~~ in the development of the Property.

15. Front Yard Area shall mean and refer to the yard area of each Lot extending from the street to the fence line which shall be located fifteen feet (15') inside the owner's property line.

16. Supplementary Declaration shall mean and refer to any supplementary declaration of covenants, conditions and restrictions, or similar instrument, which extends the provisions of the Declaration to all or any portion of additional lands and contain such complementary or amended provisions for such additional land as are herein required by the Declaration.

II. DESCRIPTION OF PROPERTY

The property which is initially associated with the Development and which is and shall be held, transferred, sold, conveyed and occupied subject to the provisions of this Restated, Supplementary and Amended Declaration consists of the real property situated in Washington County, State of Utah, and more particularly described in Exhibits "A" and "B", attached hereto and incorporated herein by this reference.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities, all Patent reservations and exclusions; any mineral or oil reservations of record and rights incident thereto; all instruments of record which affect the above-described land or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments or discrepancies otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described land at such time as construction of all Project improvements is complete; and all easements necessary for ingress to, egress from, maintenance

of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the above described land and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or for any assignee or successor of Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) To construct and complete improvements as Declarant deems to be appropriate, and to do all things reasonable, necessary or proper in connection therewith; (ii) To improve portions of the Property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners of Declarant or said assignee or successor shall determine to building its sole discretion; (iii) To improve portions of the Property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners or Declarant or as such assignee or successor may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the above described land or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby affected shall, unless sooner terminated in accordance with their terms, and Restated, Supplementary and Amended Declaration is filed for record in the Office of the County Recorder of Washington County, Utah.

III. MEMBERSHIP AND VOTING RIGHTS

1. Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains.

2. Voting Rights. The Association shall have the following described three classes of voting membership:

Class A. Class A Members shall be all the Owners whose Lots abut and are adjacent by taxiway access to the Grassy Meadows Sky Ranch Airstrip, other than the Declarant. Class A Members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Lot. Owners of commercial and/or light manufacturing Lots are Class A members.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to five (5) votes for each Lot in which it holds the interest required for membership in the Association. The Class B. membership shall automatically cease and be converted to Class A membership on the first to occur of the following events:

(a) When the total number of votes held by all Class A and C Members equals the total number of votes held by the Class B Member.

(b) The expiration of fifteen (15) years after the date on which this Restated, Supplementary, and Amended Declaration is filed for record in the office of the County Recorder of Washington County, Utah.

Class C. ~~Class C Members shall be all the Owners whose~~ Lots do not abut and are not adjacent to the Grassy Meadows Sky Ranch Airstrip, other than the Declarant. Class C Members shall be entitled to one-half vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one-half Class C vote exist with respect to any such Lot. Provided however, that any Class C Lot Owner, upon payment to the Association of the sum of two thousand dollars, (\$2,000.00) may elect to become a Class A Member and shall automatically thereafter be treated as a Class A Member for all purposes as set forth herein, including voting rights, regular use of the airstrip and shall be subject to the assessments provided for in Part V hereof infra.

3. Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

IV PROPERTY RIGHTS IN COMMON AREAS

1. Acquisition. As presently constituted, no common areas are included within Grassy Meadows Sky Ranch Planned Development. The Association may however, purchase, lease or otherwise acquire parcels of land, amenities or other facilities for inclusion as Common Areas in the planned development and assess the value given to the individual owners as provided for in Article V (4)-Special Assessments, of these covenants.

2. Easement of Enjoyment. Each member shall have a right and easement of use and enjoyment including, but not limited to, the right of ingress and egress to and from his Lot and in and

to, the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may permit any person ~~to the use and enjoyment described herein to any tenant, lessee, or contract purchaser who resides on such Member's Lot.~~

3. Form For Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot No. _____ contained within the Grassy Meadows Sky Ranch Planned Development, Phases I or II, as the case may be, as the same is identified in the Plats recorded in the office of the Washington County Recorder, and in the Restated Supplementary, and Amended Declaration of Covenants, Conditions and Restrictions of the Grassy Meadows Sky Ranch Planned Development, Phase I and Phase II, (the Declaration) recorded in Book _____ at Page _____ as Entry No. ____ of the official records of Washington County, Utah; TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in the Declaration. SUBJECT TO all of the provisions of the Declaration, and subject, also, to liens for current taxes.

Whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

4. Limitation on Easement. A member's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

(a) The right of the Association to suspend a Member's right to the use of any amenities included in the Common Areas for any period during which an assessment on such Member's Lot remains unpaid and for a period not exceeding ninety (90) days for any infraction by such member or his guest or invitee of the provisions of this Declaration or of any rule or regulation promulgated by the Association;

(b) The right of the Association to impose reasonable limitations on the number of guests per Member who at any ~~given time are permitted to use the Common Areas;~~

(c) The right of the County of Washington and any other governmental or quasi-governmental body having jurisdiction over the property to access and rights of ingress and egress over and across any street, parking area, walkway, or open spaces contained within the Property for purposes of

providing police and fire protection and providing any other governmental or municipal service;

(d) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the vote of each class of membership which Members present in person or by proxy are entitled to cast at a meeting duly called for the purpose. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Members at least ten (10) days, but not more than thirty (30) days prior to the meeting date.

5. Encroachments. If any portion of an improvement constructed by Declarant, his successors or assigns, encroaches upon the Common Areas or other Lots, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the development, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

V. ASSESSMENTS

1. Personal Obligation and Lien. Each Owner expressly excluding the Declarant for each Lot owned by it, shall, by acquiring in any way becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the Association the monthly and the special assessments described in this Article, together with the hereinafter provided for interest and costs of collection. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made; and (b) the personal obligation of the person who is the owner of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. Any such liens, however, shall be subordinate to the lien or equivalent security interest of any first Mortgage on the unit recorded prior to the date any such common expense assessments become due. Provided however, that any such assessments as to Class C Members shall be one-half of the amount of such assessments as are made upon Class A. Members. The Declarant shall pay assessments on only the lots owned by Declarant in Phase I. The lots in additional phases for development will be assessed upon the sale to an owner.

2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the maintenance, health, safety, and welfare of

residents of the Property. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Common Areas; lease of off-property facilities for use of the Common Areas; management and supervision of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligation, functions, or purposes under Declaration or its Articles of Incorporation.

3. Base for Assessment. Each lot, whether improved with a Living Unit or unimproved, which has been conveyed to an Owner shall be assessed at a same and equal rate, provided that the amount of assessments due from Class C Members shall be one-half of the amounts assessed against Class A. Members. For the purpose of assessment, the term "Owner" shall expressly exclude the Declarant only. Commercial lots and/or light manufacturing lots that the Declarant intends to annex into the Development will be assessed upon conveyance to an owner and are considered Class A lots. These lots will be assessed the same rate as a Class A lot plus a percentage of sales to compensate for the additional maintenance of the runway or other Common Areas that may be needed as a result of the Owner's business activity. These additional assessments shall be charged for the additional maintenance costs only and are not intended to subsidize any other membership classes.

4. Special Assessments. In addition to the monthly assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repair or replacement in connection with the Common Areas. Any such special assessment must be assented to by more than fifty percent (50 %) of all votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for the purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) days but not more than thirty (30) days prior to the meeting date.

5. Quorum Requirements. The quorum required for any action authorized by Section 4 above shall be as follows: at the first meeting called the presence of Members or of proxies entitled to cast fifty percent (50 %) of all outstanding votes shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 4) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting

shall be held more than forty-five (45) days following the immediately preceding meeting.

6. Equal Rate of Assessment. Both monthly and special assessments shall be fixed at a uniform (equal) rate for all Lots, subject to the provision of paragraph 3 above regarding the Declarant, or its assigns and subject to the provision for differing assessment rates as between Class A and Class C Members. However, unequal assessments may be assessed against the Lots as provided for in Article VII paragraphs 5, 11, and 12.

7. Monthly Assessment Due Dates. The monthly assessments, or periods set by the Board of Trustees, provided for herein shall commence as to all Lots on the date a deed is delivered to the first purchaser of a Lot, contract of sale, or agreement as stated in Earnest Money Agreement prorations. The first monthly assessment shall be adjusted according to the number of days remaining in the month of conveyance. At least 15 prior to the effective date of any change in amount of the monthly assessment the Association shall give each Owner written notice of the amount and the first due date of the assessment concerned.

8. Certificate Regarding Payment. Upon the request of any Owner or Prospective purchaser or encumbrancer of a Lot the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

9. Effect of Non-payment -- Remedies. Any assessment not paid when due shall, together with the hereinafter provided for interest and costs of collection, be, constitute and remain a continuing lien on the Lot, provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any first mortgage on the Lot recorded prior to the date any such assessments become due. The person who is the Owner of the Lot at the time the assessment falls due shall be personally liable for payments. However such liability shall not pass to the Owner's successors in title. If the assessment is not paid within thirty (30) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of eighteen percent (18 %) per annum plus late payment service charge equal to twenty-five percent (25 %) of each delinquent amount due and the Association may, in its discretion, bring an action either against the Owner who is personally liable or to foreclose the lien against the Lot. Any judgment obtained by the Association shall include reasonable attorney's fees, court costs, and each and every other expense incurred by the Association in enforcing its rights.

10. Tax Collection from Lot Owners by Washington County Authorized. It is recognized that under the Declaration the

Association will own the Common Areas and that it will be obligated to pay property taxes to Washington County. If is further recognized that each Owner of a Lot as a Member of the Association and as part of his monthly common assessment will be required to pay to the Association his pro rata share of such taxes. Notwithstanding anything to the contrary contained in the Declaration, or otherwise, Washington County shall be, and is, authorized to collect such pro rata share (on equal basis) of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot. To the extent allowable, Washington County is hereby directed so to do. In the event that the assessor shall separately assess Common Areas to the Association, the Board of Trustees may require the unit owners, including the Declarant to pay a special assessment, on a pro rata basis, for property taxes.

11. Special Service District for Paving Roads. Declarant, for each Lot owned by it, and each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant and agree to accept, belong to any pay those proportionate amounts of money and assessments due when and if a Special Service District may be organized for paving the roads in and around the property.

VI. OPERATION AND MAINTENANCE

1. Maintenance of Lots and Living Units. Each Lot and Living Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Lot or Living Unit. The Association shall have no obligation regarding maintenance or care of Lots or Living Units except as provided in Paragraph 2 of this Article VI.

2. Operation and Maintenance by Association. The Association, by its duly delegated representative, shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Lots and to keep them clean, functional, attractive and generally in good condition and repair. The Association shall maintain the Front Yard Areas of each Lot including, but not by way of limitation, grass, fences, landscaping, shrubs, watering and the sprinkling system. In addition, the Association shall maintain, any and all Common Areas acquired.

Twice annually, or at times to be decided by the Board of Trustees, spraying to control weeds along and in the roadways and fence lines will occur. The costs associated with this spraying shall be added and become part of the assessment to which each Lot is subject.

Notwithstanding the provisions regarding Lot and Living Unit maintenance by Owners, in the event an Owner of any Lot in the Property shall fail to maintain his Lot and the exterior of his Living Unit situated thereon in a manner satisfactory to the Architectural Control Committee or the Board, the Association, after approval by 2/3 vote of the Board, shall have the right, through its agents, employees, or through an independent contractor to enter upon his Lot and repair, maintain, and restore the portion of the Lot maintainable by the Owner and the exterior of his Living Unit and any other improvements erected thereon (but not the interior of his Living Unit). The cost of such exterior maintenance shall be added to and become part of the assessment to which Lot is subject.

3. Water. Culinary and irrigation water is available through the purchase of shares of stock in the Hurricane Valley Mutual Water Company. The purchase of shares of stock in the company and the payment for water usage are the responsibility of the individual lot owners.

4. Insurance. The Association shall secure and at all times maintain the following insurance coverages:

(a) A policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements comprising a part of the Common Areas. The name of the insured under each such policy shall be in form and substance similar to: "Grassy Meadows Sky Ranch Land Owners Association for the use and benefit of the individual Lot Owners and Mortgagees, as their interests may appear".

(b) A comprehensive policy or policies insuring the Owners, the Association, and its directors, officers, agents and employees against any liability incident to the ownership use or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall not be less than \$1,000,000.00 for all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage, liability for non-owned or hired automobile, liability for property of others, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use. Such policies shall be issued on a comprehensive liability basis, shall provide a cross liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced, and shall contain "a severability of interest" clause or endorsement to preclude the insurer from denying the claim of an Owner in the Development because of negligent acts of the Association or other Owners.

(c) A comprehensive policy or policies as required by Sky Ranch Airport, Inc. in its lease with the Association to cover any and all liabilities for operating the airstrip.

The following additional provisions shall apply with respect to insurance:

(1) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature, and use.

(2) All policies shall be written by a company holding a rating of Class IV or better from Best's Insurance Reports or other similar standard yielding this minimum quality of insurer. Each insurer must be specifically licensed in the State of Utah.

(3) The Association shall have the authority to adjust losses.

(4) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their Mortgagees.

(5) Each policy of insurance obtained by the Association shall, if reasonable possible, provide, a waiver of the insurer's subrogation rights with respect to the Association, the Owners, and their respective directors, officers, agents, employees, invitees, and tenants; that it cannot be cancelled, suspended, or invalidated due to the conduct of any particular Owner or Owners; that it cannot be cancelled, suspended, or invalidated due to the conduct of the Association or of any director, officer, agent or employee of the Association without a prior written demand that the defect be cured; that any "on other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.

(6) Notwithstanding any provisions to the contrary herein; so long as the Mortgagee or its designed holds a mortgage or beneficial interest in a trust deed on a Lot in the Development or owns a Lot, insurance policies shall meet all requirements and contain such other coverage and endorsements as may be required from time to time by the Mortgagee or its designee.

(7) Fidelity Coverage. The Association shall maintain fidelity coverage to protect against dishonest acts on the part of trustees, officers, manager, employees of the Association and all others (including volunteers) who handle, or are responsible for handling, funds of the Association. Such fidelity bonds shall:

(a) name the Association as an obligee as the name insured:

(b) be written in an amount sufficient to provide protection which is in no event less than one and one-half (1-1/2) times the Association's estimated annual operating expenses and reserves;

(c) contain waivers of any defense based upon the exclusion of volunteers or persons who serve without compensation from any definition of "employee" or similar expression; and

(d) provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to all first Mortgagees of Lots.

(8) Mortgagee Clause. All policies of hazard insurance must contain or have attached the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the mortgaged premises are located. The mortgagee clause must provide that the insurance carrier shall notify the first Mortgagee (or trustee) named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

(9) Review of Insurance. The Board shall periodically, and whenever requested by twenty percent (20%) or more of the Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusion reached action taken on such review to the Owner of each Lot and to the holder of any mortgage on any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by the Owner.

(10) Lots Not Insured by Association. The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Lot, any Living Unit thereon or acts and events thereon. Accordingly, each Owner shall secure and keep in force at all times fire and extended coverage insurance which shall be equal to or greater than that commonly required by private institutional mortgage investors in the area in which the Mortgaged premises are located. The policy shall provide, as a minimum, fire and extended coverage insurance on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the policy. The amount of coverage shall be sufficient so that in the event of any damage or loss to the Mortgaged premises of a type covered by the insurance, the insurance proceeds shall provide at least the lesser of: (i) compensation equal to the full amount of damage or loss, or (ii) compensation to the first Mortgagee under the

Mortgage equal to the full amount of the unpaid principal balance of the Mortgage Loan.

(11) Unacceptable Policies. Policies are unacceptable where: (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Lot Owner or Mortgagee or Mortgagee's designee; or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by carrier's board of directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent Lot Owner, Mortgage or Mortgagee's Designee from collecting insurance proceeds.

(12) The Development is not located in an area identified by the Housing and Urban Development as an area having special flood hazards. In the event that at some future time the Development should be declared to be in such flood area, a blanket policy of flood insurance on the Project shall be maintained in the amount of the aggregate of the outstanding principal balances of the mortgage loans on the Living Units comprising the Development or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less. The name of the insured under each required policy must be in form and substance as that required by the Federal Home Loan Mortgage Corporation at any given time.

5. Airstrip. Grassy Meadows Land Owners Association has entered into or will enter into an exclusive lease agreement with Grassy Meadows Airport, Inc. for the use of the airstrip by the Lot Owners, their guests and invitees and other persons wishing to use the airport facility. Charges made to the Association through this lease agreement shall be passed along to the members through proration and shall become part of the assessment described in Article V of these covenants.

6. Manager. The Association may carry out through a Manager any of its functions which are properly the subject of delegation. Any manager so engaged may be an independent contractor or an agent or employee of the Association. The manager shall be responsible for managing the Property for the benefit of the Association and the Owners, and shall, to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

7. Terms of Management Agreement. Any agreement for professional management of the Development, or any other contract providing for services of the Declarant, sponsor, or builder, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

VII. USE RESTRICTIONS

1. Use of Common Areas. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Living Units. No admission fees, charges for use, leases, or other income-generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas unless voted upon and approved according to the procedures adapted for the approval of special assessments in Article V paragraph 5 and 6.

2. Use of Lots and Living Units. All Lots are to be improved with Living Units and are restricted to such use. Each Lot shall be improved with a Living Unit, each to be used only as a residence. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to create a nuisance or interfere with the rights of any Owner or in a way which would result in an increase in the cost of any insurance covering the Common Areas. Notwithstanding this paragraph, Declarant, its successors and assigns have planned for and it is their intent to develop certain portions of lands to be annexed in the future as commercial Lots.

3. Building Setbacks. The set back for buildings located in the development shall be: Front 50', Side 25", backyard 120" when located on airstrip, otherwise 25'. Where the back lot line fronts on the airplane landing strip, no foliage may be planted or maintained whose height is in excess of 3 feet within the 120' safety zone. This paragraph shall not affect the power delegated to the Architectural Control Committee to grant variance to the set back requirements in appropriate circumstances.

4. Minimum Square Footage. The minimum square footage requirements for any Living Unit shall be 1,500 square feet of finished interior feet on the ground level exclusive of garages, patios, balconies, decks or other semi-external space. Each Living Unit shall be improved with an attached or detached garage with a minimum square footage requirement of 400 square feet of finished interior feet.

5. Fences. All fences throughout the community shall be three (3) rail double lodge pole pine fencing, at least 4' high or other fencing approved by the Architectural Control Committee. All fences shall be installed within 6 (six) months of purchase at the expense of the owner. Thereafter, all fences shall be maintained by the Association. In the event the Owner fails to complete all or part of the fencing required by this paragraph, the Association may in its discretion, construct or cause to be constructed the fences required. The costs of said construction

shall be assessed to the owner of the Lot as provided for in Article V of these covenants.

6. Non-Residential Use. Except as to the Declarant, no part of the Property shall be used for any commercial, manufacturing, mercantile, storing, vending, or other such non-residential purposes, with the exception that an owner may store, buy and sell operational aircraft on his Lot. Declarant, its successors or assigns, may use the Property for a model home site display, and as a sales office during the construction and sales period, ~~conduct certain commercial operations on lands owned by it~~ adjacent to the airstrip, including, but not limited to, fixed base operations for refueling aircraft and purposes incident thereto, construction and sale or leasing of aircraft storage and hanger space, scenic tour flights and such other business operations as it may deem necessary and appropriate; ~~provided,~~ however, that any such commercial operations or activities conducted by the Declarant, its successors or assigns, shall be consistent with, and shall not unreasonably interfere or restrict the Owner's beneficial use and enjoyment of their Lots or the Property, as set forth in this Declaration. Notwithstanding this paragraph, Declarant, its successors or assigns, have planned and it is their intent to develop certain portions of land to be annexed into the property as Commercial Lots.

7. Sign. No sign or billboard of any kind shall be displayed to the public view on any portion of the Property or any Lot advertising the property for sale or rent except signs used by Declarant, its successor or assigns, to advertise the property during the construction and sales period, provided that each unit owner shall be allowed to display no more than 2 "for sale", or "for rent" signs in the unit windows and said signs shall be no more than 12" x 14" in size.

8. Quiet Enjoyment. No noxious or offensive trade or activity shall be carried on upon any Lot or any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective Living Unit or which shall in any way increase the rate of insurance.

9. Temporary Structures, Equipment, Motor Vehicles, Etc. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out building shall be used on Lot at any time as a residence, either temporarily or permanently. No mobile home, trailer, camper, boat, truck larger than 3/4 ton flat bed truck, aircraft or similar equipment or vehicle not in running condition shall be permitted to be parked upon any Lot, except the Owner may park and occupy a mobile home or trailer on his Lot for the maximum period of one year while his Living Unit is under construction. The equipment and vehicles previously

described may be parked within a garage, hangar or facility properly screened from the view of others and approved by the Architectural Control Committee. No motor vehicle whatsoever may be parked on any common street or driveways, but shall be kept in the parking area. An Owner may construct a hangar guest house subject to approval of the Architectural Control Committee, providing a main house pad is set aside for the future permanent residence.

10. Animals. Horses or similar animals may be bred and/or raised on the individual lots subject to approval of the Architectural Control Committee. However, the allowable number of the foregoing animals shall not exceed three (3) animals per acre. Dogs, cats and other household pets may also be kept on the Lots. All large animals must be kept within a sturdy enclosure and are not allowed on the common areas except they be under a means of adequate control. All household pets must be leashed while in the Common Areas.

11. Weeds. Weeds are those noxious plants allowed to grow by the Owner and do not include those native plants now growing on the Lots and Property. The Owner is responsible for controlling and removing weeds growing on his Lot. Twice annually or at additional times determined by the Association or Board of Trustees, weeds growing in the Front Yard Areas, Common Areas, and other areas will be mowed or disked by the Association. At these times the Owner may, by giving notice to the Association, arrange for the removal of his weeds, and the Association shall add the costs of removal or mowing to the Owner's monthly assessment. Any weeds not controlled or removed by the Owner prior to the dates of removal as set by the Association, shall be mowed or removed by the Association and the costs and at the Boards' option, a penalty fee, to be determined by the Association, shall be added to the monthly assessment of the Owner.

12. Garbage Removal and Animal Wastes. All rubbish, trash, garbage and animal wastes shall be regularly removed from the Property by the owner, and shall not be allowed to accumulate thereon. In the event that the Owner fails to comply with this provision, the Association may remove or cause to be removed, the garbage and animal wastes and include the costs in the Owner's monthly assessments.

13. Utilities. All utilities, including electrical service to the Living Units, shall be installed and constructed underground. In addition, any utility service to any out building shall also be installed and constructed below the ground.

14. Electronic Antennas and Stove or Chimney Flues. No television, radio, or other electronic antenna or device of any

type shall be erected, constructed, placed or permitted to remain on any of the Living Units or structures on the Lots in said tract unless and until the same shall have been approved in writing by the Architectural Committee of the Association. No stove flue, chimney or other similar venting system shall be installed to the exterior of the Unit, nor shall any heating device be installed other than that provided with the unit without the written approval of the Architectural Control Committee.

15. Airstrip. The airstrip may be used by the Owner, his guests and invitees solely for the non-commercial, i.e. scheduled airline service, taxiing, take-off and landing of aircraft and for incidental purposes, including the buying and selling of operational aircraft, related thereto. Under no circumstances shall anyone cause any aircraft or other vehicle to be parked or tied down on any part of the airstrip or safety area. The Owner shall provide sufficient parking and tie down facilities on his Lot for all aircraft operated or used by Owner, his guests or invitees. Furthermore, any use of the airstrip shall be at the user's own risk.

16. Exception for Declarant. Notwithstanding the restrictions contained in this Article VII, for the fifteen-year period following the date of which this Restated, Supplementary and Amended Declaration is filed for record in the office of the County Recorder of Washington County, Utah, Declarant, or its assigns or successor, shall have the right to use any Lot or Living Unit owned by it any part of the Common Areas reasonably necessary or appropriate, including, but not limited to, a model or other temporary structure as a sales office, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Common Areas or improvement and/or sale of all Lots owned by Declarant. Declarant may also conduct collateral, commercial business activity on the Project, including, but not limited to, conducting fixed base operations for the fueling and maintenance of aircraft and purposes incident thereto, construction and sale or leasing of aircraft hanger space, scenic air tour services and light manufacturing.

VIII. ARCHITECTURAL CONTROL

1. Architectural Control Committee. The Board of Trustees of the Association shall appoint a committee the function of which shall be to insure that all exteriors of Living Units and landscaping within the Property harmonize with existing surroundings and structures. The Committee need not be composed of Owners. If such a Committee is not appointed the Board itself shall perform the duties required of the Committee.

2. Submission to Committee. No Living Unit, accessory or addition to a Living Unit, landscaping or other improvement of a Lot shall be constructed, maintained, or accomplished and no alteration, repainting, or refurbishing of the exterior of any Living Unit shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Architectural Control Committee.

3. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to insure that all improvements, construction, landscaping, and alterations on Lots within the Property conform to and harmonize with existing surroundings and structures. The Board may formulate general guidelines and procedures. The adopted guide lines and procedures shall be incorporated in the Book of Resolutions of the Association and the Architectural Control Committee, or the Board, as the case may be, shall act in accordance with such guidelines and procedures.

4. Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after submission. In the event the committee fails to take any action within such period it shall be deemed to have approved the material submitted.

5. Construction. Once begun, any improvements, construction, landscaping or alterations approved by the Committee shall be diligently prosecuted to completion. If reasonably necessary to enable such improvements, construction, landscaping or alteration, the person or persons carrying out the same shall be entitled to temporary use and occupy unimproved portions of the Common Areas in the vicinity of the activity.

6. Disclaimer of Liability. Neither the Architectural Committee, nor any member thereof acting in good faith shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of (a) the approval or rejection of, or the failure to approve or reject, any plans, drawings and specification, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development or manner of development of any of the Property, or (d) any engineering or other defect in approved plans and specifications.

7. Nonwaiver. The approval by the Architectural Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Architectural Committee to disapprove any similar plans and specifications.

8. Completion of Construction. Once begun, any improvements, construction, landscaping or alterations approved by the Architectural Committee shall be diligently prosecuted to

completion in strict accordance with the plans and specifications approved by the Architectural Committee.

9. Exception for Declarant. The foregoing provisions of this Article VIII shall not apply to any improvements, construction, landscaping or alteration which is carried out by Declarant on any Lot or on any part of the Common Areas and which occurs at any time during the fifteen year period following the date on which this Restated, Supplementary Amended Declaration is filed for the record in the office of the County Recorder of Washington County, Utah. Declarant shall further have the right to designate the location and design of any Common Area amenities including recreational amenities or green areas, provided that the Declarant shall not be required to provide any such amenities by virtue of this paragraph.

10. Declarant's Obligation. Declarant hereby covenants in favor of each Owner that all improvement of the Common Areas accomplished by it shall be architecturally compatible with respect to one another.

IX. CONDEMNATION

If at any time or times the Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Association and shall be used promptly by Association to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas. Upon completion of such work and payment in full therefor, any proceeds of condemnation then or thereafter in the hands of the Association which are proceeds for the taking of any portion of the Common Areas shall be disposed of in such manner as the Association shall reasonably determine; provided, however, that in the event of a taking in which any Lot is eliminated, the Association shall disburse the portion of the proceeds of the condemnation award allocable to the interest of the Owner of such Lot to such Owner and any first Mortgagee of such Lot, as their interests shall appear, after deducting the proportionate share of said Lot in the cost of debris removal.

X. RIGHTS OF FIRST MORTGAGEES

Notwithstanding any other provisions of this Declaration, the following provisions concerning the rights of first Mortgagee shall be in effect:

1. Preservation of Regulatory Structure and Insurance. Unless the holders of 100 % of all first Mortgagees and 75 % each of Classes A and C of the Lot Owners shall have given their prior written approval, the Association shall not be entitled:

(a) by act or omission to change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the Architectural design of the exterior appearance of Living Units, the exterior maintenance of Living Units under certain conditions provided in Section 2 of Article VI, or the upkeep of the Common Areas of the Property;

(b) to fail to maintain fire and extended coverage on insurable portions of the Common Areas on a current replacement cost basis in an amount not less than one hundred percent (100 %) of the insurable value (based on current replacement costs); or

(c) to use hazard insurance proceeds for losses to the Common Areas for other than the repair, replacement or reconstruction of improvements on the Common Areas.

2. Preservation of Common Area; Change in Method of Assessment. Unless the Association shall receive the prior written approval of (1) at least 100% of all first mortgagees (based on one vote for each Mortgagee) of the Lots and (2) the Owners of at least seventy-five percent (75 %) of the Lots in each of Classes A and C (not including Lots owned by Declarant) the Association shall not be entitled:

(a) by act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas, except to grant easements for utilities and similar or related purposes, as herein elsewhere reserved; or

(b) to change the ration or method of determining the obligations, assessments, due or other charges which may be levied against a Lot or the Owner thereof.

Neither this Article X nor the insurance provision contained in Article VI may be amended without the prior approval of all first Mortgagees.

3. Notice of Matters Affecting Security. The Association shall give written notice to any first Mortgagee of a Lot requesting such notice wherever:

(a) there is any default by the Owner of the Lot subject to the first mortgage in performance of any obligation under this Declaration or the Articles or Bylaws of the Association which is not cured within thirty (30) days after default occurs; or

(b) there occurs any substantial damage to or destruction of any Living Unit or any part of the Common Areas involving an amount in excess of, or reasonable estimated to be in excess of \$15,000.00. Said notice shall be given within ten (10) days after the Association learns of such damage or destruction; or

(c) there is any condemnation proceedings or proposed acquisitions of a Living Unit or of any portion of the Common Areas within ten (10) days after the Association learns of the same; or

(d) any of the following matters come up for consideration or effectuation by the Association:

(i) abandonment or termination of the Planned Unit Development established by this Declaration;

(ii) material amendment of the Declaration or the Articles or Bylaws of the Association; or

(iii) any decision to terminate professional management of the Common Areas and assume self-management by the Owners.

4. Notice of Meetings. The Association shall give to any first Mortgagee of a Lot requesting the same, notice of all meetings of the Association; and such first Mortgagee shall have the right to designate in writing a representative to attend all such meetings.

5. Right to Examine Association Records. Any first Mortgagee shall have the right to examine the books, records and audit financial statements of the Association.

6. Right to Pay Taxes and Charges. First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas; and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Declarant, for the Association as owner of the common Areas, hereby covenants and the Association by acceptance of the conveyance of the Common Areas, whether or not it shall be so expressed in such conveyance, is deemed to covenant and agree to make such reimbursement.

7. Exemption from any First Right of Refusal. Any first mortgagee any purchaser therefrom who obtains title to the Lot pursuant to the remedies provided in the first Mortgage, or by foreclosure of the first Mortgage, or by deed or assignment in lieu of foreclosure, or by sale pursuant to any power of sale or otherwise shall be exempt from any "right of first refusal" which would otherwise affect the Lot.

8. Rights Upon Foreclosure of Mortgage. Each holder of a first Mortgage (or deed of trust) on a Lot and any purchaser from it who comes into possession of the Lot by virtue of foreclosures

of the Mortgage, or by deed or assignment in lieu of foreclosure, or pursuant to power of sale or otherwise will take the Lot free of and shall not be liable for, any claims for unpaid assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot.

9. Restrictions Without Approval of Mortgagees. Except as to the Association's right to grant easements for utilities and similar or related purposes, the Development's common Areas may not be alienated, released transferred, hypothecated, or otherwise encumbered without the approval of all holders of first Mortgage liens on the lots.

10. Mortgagees Rights Concerning Amendments. Except as concerns the right of Declarant to amend the Declaration and related documents as contained in Article XII of the Declaration, no material amendment to the Declaration, Bylaws or the Articles of Incorporation of the Association shall be accomplished or effective unless at least 100% of the Mortgagees (based on one vote for each Mortgagee) of the individual Lots have given their prior written approval to such amendment.

XI. ANNEXATION OF ADDITIONAL LAND

1. Annexation By Declarant. Declarant may expand the Property subject to this Declaration by the annexation of additional land for common areas or for subdivision into additional residential and commercial lots. The annexation of such land shall become effective upon the recordation in the office of the County Recorder of Washington County, Utah, of a Supplementary Declaration which (i) describes the land to be annexed or incorporated by reference the description of the additional land, (ii) declares that annexed land is to be held, sold, conveyed, encumbered, leased, occupied and improved as part of the Property subject to the Declaration, (iii) sets forth such additional limitations, restrictions, covenants and conditions as are applicable to the annexed land, and (iv) states when such annexation becomes applicable to the annexed land. When such annexation becomes effective, the annexed land shall become part of the Property. Such annexation may be accomplished in one or more annexations without limitations as to size or location.

2. Limitation on Annexation. Declarant's right to annex said land to the Property shall be subject to the following limitations, conditions and right granted to the Declarant:

(a) Declarant shall not effectuate any annexation of land which would cause the total number of living units existing on, or planned for, the Property to exceed 150 total Lots, or 106 units in the additional property after Phase I and II.

(b) Declarant's right to annex land to the Property shall expire fifteen (15) years after this Declaration is filed for record in the office of the County Recorder of Washington County, Utah.

(c) Additional Living Units when constructed shall be compatible with existing structures on the Property, provided that such determination shall be made in the discretion of Declarant (with respect to Living Units or Common Area improvements built by Declarant or their assigns), or as approved by the Architectural Control Committee.

(d) The configuration of annexed land as to lot size, common areas and the nature, quantity or quality of improvements shall be in discretion of the Declarant or its assigns. No assurances can therefore be given.

(e) Declarant reserves unto itself and its assigns the right to create limited Common Areas and facilities within any portion of the annexed land. No assurances can therefore be made with respect to such items.

3. Supplementary Declaration. The annexation authorized under the foregoing section shall be made by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions or similar instrument, with respect to the additional property which shall extend the plan of this Declaration to such property.

Such Supplementary Declaration contemplated above may contain such complimentary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property and as are not inconsistent with the plan of the Declaration.

The recordation of such Supplementary Declaration shall constitute and effectuate the annexation of the said real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association and thereafter all of the Owners of Lots in said real property shall be automatically be members of the Association.

4. Declarant's Right to Amend. Until the right to enlarge the Development through the addition of tracts or subdivisions terminates, Declarant shall have, and is hereby vested with, the right to unilaterally amend the Declaration as may be reasonably necessary or desirable: (i) to more accurately express the intent of any provisions of the Declaration in the light of then existing circumstances or information; (ii) to better insure, in

light of then existing circumstances or information, workability of the arrangement which is contemplated by the Declaration; or (iii) to facilitate the practical, technical, administrative or functional integration of any additional tract of subdivision into the Development.

5. Expansion of Definitions. In the event the Property is expanded the definition used in this Declaration automatically shall be expanded to encompass and refer to the Property as so expanded. E.g., "Property" shall mean the real property described in Article II of this Declaration plus any additional real property added by a Supplementary Declaration or by Supplementary Declarations, and reference to this Declaration shall mean this Declaration as so supplemented.

XII. MISCELLANEOUS

1. Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall have deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner, at the latest address for such person as reflected in the records of the Association at the time of delivery or mailing the same to the Managing Agent or President of the Association. Any notice required or permitted to be given to the Architectural Control Committee may be given by delivering or mailing the same to the Chairman or any member of such committee.

2. Rules and Regulation. The Association shall have authority to promulgate and enforce such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Property is maintained and used in a manner consistent with the interests of the Owners.

3. Amendment. Any amendment to this Declaration shall require: (a) the affirmative vote of at least two-thirds (2/3) of all Class A and C membership votes which Members cast at a meeting duly called for such purpose; and, (b) so long as the Class B membership exists the written consent of Declarant. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten (10) days but not more than thirty (30) days prior to the meeting date. The quorum required for any such meeting shall be as follows: At the first meeting called the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the class A and C membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting be called (subject to the notice requirement set forth in the foregoing portion of this Section 3) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No

subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting. Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by the Association (and by the Declarant if the Class B membership then exists). In such instrument an officer or director of the Association shall certify that the vote required by this Section for amendment has occurred. Notwithstanding anything herein contained to the contrary, until eighty percent (80%) of the lots in the Development (including additional phases as may be added) have been sold to purchasers, Declarant shall have, and is hereby vested with, the right to unilaterally amend this Declaration as may be reasonably necessary or desirable; (a) to more accurately express the intent of any provision of this Declaration in light of then existing circumstances, information or mortgagee requirements, or (b) to better insure, in light of then existing circumstances or information, workability of the arrangement which is contemplated by this Declaration.

4. Consent in Lieu of Vote. In any case which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the class of membership concerned. The following additional provisions shall govern any application of this Section 4:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.

(b) The total number of votes required for authorization or approval under this Section 4 shall be determined as of the date on which the last consent is signed.

(c) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owners thereof shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of class A and C votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.

(d) Unless the consent of all Members whose memberships are appurtenant to the same Lot are secured the consent of none of such Members shall be effective.

5. Reserve Fund. The Association shall establish adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacements of the Common Areas and exterior maintenance and shall cause such reserve to be funded by regular monthly or other periodic assessments against the Lot Owners rather than by special assessments.

6. Lease Provisions. Any Owner may lease his lot or Living Unit, provided, however, that any lease agreement between a Lot Owner and the Lessee must be in writing and must provide, interalia, that:

(a) The terms of the Lease shall in all respects be subject to the provisions of the Declaration, Articles of Incorporation of the Association and the Bylaws; and

(b) Any failure of the Lessee to comply with the terms of such documents shall constitute a default under the lease.

7. Purchase of Airstrip. The Association expressly reserves the right of purchase or otherwise accept fee ownership of the airstrip from Grassy Meadows Airport, Inc., its successors or assigns at some future date.

8. Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property may be assigned.

9. Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

10. Covenants to Run With Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant and all parties who hereafter acquire any interest in a Lot or in the Common Areas. all parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration and failure to comply with any of the foregoing shall be ground for an action by the Association or any aggrieved Owner for the recovery of damages, or for injunctive relief, or both. By acquiring any interest in a lot or in the common areas, the

party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

11. Effective Date. This Restated, Supplementary, and Amended Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Washington County, Utah.

EXECUTED the day and year first above written.

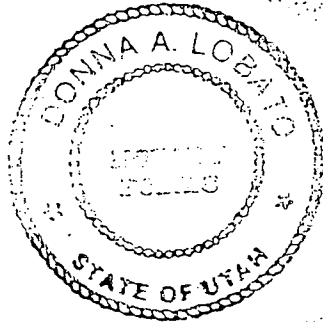
SKY RANCH DEVELOPMENT, INC.

By: 

Michael O. Longley, President

STATE OF UTAH)
 : ss.
COUNTY OF WASHINGTON)

On the 9th day of July, 1990, personally appeared before me Michael O. Longley, who duly acknowledged to me that he is the President of Sky Ranch Development, Inc., a Utah corporation, and that he executed the same on behalf of the said corporation, pursuant to authorization of its Board of Directors or a resolution of the said Board of Directors authorizing the same.



Donna A. Lobato

Notary Public

Residing in: H. George, Utah

My Commission expires: 10-24-91

Exhibit A
Grassy Meadows Sky Ranch Subdivision

All of the Lots located in the Grassy Meadows Sky Ranch Subdivision, Washington County, Utah, include Lots 1 through 12, 14 through 16, and 17 through 25.

Exhibit B
Grassy Meadows Sky Ranch Phase II

Grassy Meadows Sky Ranch Phase II, more particularly described as:
Beginning at the southeast corner of Grassy Meadows Sky Ranch Subdivision said point being S 0 10'05" W 1875.00 feet along the section line from the east 1/4 corner of Section 28, township 42 south, range 13 west, SLB&M; and running thence S 0 10'05" W 767.45 feet to the southeast corner of said Section 28; thence S 0 11'13" W 1484.04 feet along the section line; thence S 26 23'13" W 221.28 feet; thence N 89 49'55" W 466.75 feet; thence N 0 10'05" E 2450.00 feet; thence S 89 49'55" E 565.00 feet to the point of beginning.

A-5: 2002 CC&Rs

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RUSSELL SHIRTS * WASHINGTON CO RECORDER
2002 OCT 25 15:20 R. FEE \$54.00 BY L
FOR: SKY RANCH DEVELOPMENT

SECOND RESTATED SUPPLEMENTARY
AND
AMENDED DECLARATION
OF
COVENANTS, CONDITIONS & RESTRICTIONS
FOR
GRASSY MEADOWS SKY RANCH
A PLANNED DEVELOPMENT
IN
WASHINGTON COUNTY, UTAH

October, 2002



SECOND RESTATED, SUPPLEMENTARY AND AMENDED
DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR
GRASSY MEADOWS SKY RANCH PLANNED DEVELOPMENT

This Second Restated, Supplementary and Amended Declaration for Grassy Meadows Sky Ranch Planned Development is made and executed this 25th day of October, 2002 by SKY RANCH DEVELOPMENT, INC., a Utah corporation, and successor Declarant of said development.

RECITALS

A. Declarant and/or its predecessors were and are the record owners (legal or equitable) of those certain parcels of real property (the Property) described in Exhibits "A" and "B" of this Second Restated Supplementary and Amended Declaration. In 1984, the original Declarant commenced on the Property Phase 1 of a planned development, with the potential addition of additional phases and certain Common Areas that could be (and many of which have been) added in the future for the benefit of the Development and the Owners of Lots therein. As of the execution of this document, Phases 1, 2, 3, 4, 5A and 5C have been incorporated within the development (See Exhibit "A"), and several additional phases are contemplated (See Exhibit "B").

B. Declarant desires to provide for the preservation and enhancement of the Property values and amenities of the Property and for the maintenance of the future Common Areas. To this end and for the benefit of the Property and of the Owners thereof, the Declarant desires to subject the Property described in Exhibit "A" Grassy Meadows Sky Ranch Subdivision and all subsequent Phases that may be annexed thereto as described in Exhibit "B," to this Second Restated, Supplementary and Amended Declaration, including all of the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which are for the benefit of the Property and each Owner thereof.

C. Declarant deems it desirable, for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose Declarant has, at the time of the recordation of the original Declaration on August 23, 1984, caused to be incorporated under the laws of the State of Utah, as a nonprofit corporation, GRASSY MEADOWS SKY RANCH LANDOWNERS ASSOCIATION.

D. ~~Declarant reserves the right to annex additional phases to the development (See Exhibit "B"), whose Owners will become Members of the Association and who will be entitled and subject to all of the rights, powers, privileges, covenants, restrictions, easements, charges and liens hereinafter set forth.~~

E. This Second Restated Supplementary and Amended Declaration shall supplement, amend and supercede that certain Declaration of Covenants, Conditions, and Restrictions of Grassy Meadows Sky Ranch Planned Development, recorded in the Office of the County Recorder of Washington County, State of Utah on August 23, 1984, in Book 357, pages 64-92, Document 265521, Official Records of Washington County, State of Utah, and the Restated, Supplementary and Amended Declaration of Covenants, Conditions, and Restrictions for Grassy Meadows Sky Ranch Planned Development recorded in the office of the Washington County Recorder on July 16, 1990, in Book 567, pages 2-33, Document 368243, Official Records of Washington County, State of Utah.

NOW, THEREFORE, for the foregoing purposes, Declarant declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth and on the plats recorded heretofore and concurrently herewith and that may be recorded hereafter.

I. DEFINITIONS

When used in this Second Restated, Supplementary and Amended Declaration (including in that portion hereof under "RECITALS") the following terms shall have the meaning indicated.

1. Airstrip shall mean and refer to the airport landing strip identified on the Phase 1 plat, and any potential extensions thereto. The Association and its members have obtained a right to use the airstrip pursuant to the terms of a lease with the airstrip owner, dated November 25, 1990. The airstrip is not common area. Pursuant to the terms of the lease, the Association bears the responsibility for upkeep and maintenance of the airstrip so that it meets all applicable safety standards.
2. Articles and Bylaws shall mean and refer to the Articles of Incorporation and the Bylaws of the Association.
3. Association shall mean and refer to GRASSY MEADOWS SKY RANCH LANDOWNERS ASSOCIATION, a Utah nonprofit corporation.
4. Board of Trustees and the Board shall mean and refer to the Board of Trustees of the GRASSY MEADOWS SKY RANCH LANDOWNERS ASSOCIATION.
5. Commercial shall mean the nonresidential uses intended for the area adjacent to the airstrip and in other areas in the project, including but not limited to the following: lodging units, a restaurant, gas sales for both automobiles and aircraft; an aircraft washing facility, aircraft repair, convenience store, and any other related commercial use.
6. Commercial Unit shall mean and refer to a structure or unit which is designed and intended for sales or any other commercial use, together with all improvements located on the Lot used in conjunction with the commercial use.
7. Common Areas shall mean and refer to those portions of Property which are intended for common use of all the members and are not included within the Lots, including all

improvements other than utility lines now or hereafter constructed or located thereon and may include facilities leased by the Association for the benefit and use of the members and may also include an adjacent pond area, but shall not include the airstrip, taxiways or any commercial areas. The common areas included within Grassy Meadows Sky Ranch Planned Development are those identified on the plats of the various phases of the project.

8. Conveyance shall mean actual conveyance of fee title to any Lot to any Owner by a warranty deed or other document of title, including entering into an installment sales contract.

9. Declarant shall mean and refer to SKY RANCH DEVELOPMENT, INC., a Utah corporation, as successor in interest to Michael O. Longley, Laura Ellen Longley, William F. Longley, Helene M. Longley and Larry G. Watts, and to Wasco, a Utah general partnership, its successors and assigns, or to any successor or assign of all or substantially all of its interest in the development of the Property.

10. Declaration shall mean and refer to this instrument, the Second Restated, Supplementary and Amended Declaration of Covenants, Conditions and Restrictions for Grassy Meadows Sky Ranch a Planned Development in Washington County, Utah, as the same may hereafter be modified, amended, supplemented, or expanded in accordance with the provisions hereof (and in particular in accordance with the provisions of Article XI) concerning amendments or supplements to this Declaration which are to occur in conjunction with the expansion of the development.

11. Development shall mean and refer to the Grassy Meadows Sky Ranch Planned Development created by this Second Restated, Supplementary and Amended Declaration as it exists at any given time, including any future additions thereto as allowed by this Declaration.

12. Expandable Land shall mean and refer to those portions of land set forth in Exhibit B attached hereto and made a part hereof, which sets forth property in which Declarant has an interest and upon which Declarant may expand the Project in one or more phases.

13. FBO shall mean and refer to any Fixed Base Operation that may be installed on that portion of the property shown on the Phase I Plat between the airstrip and the individual lots, or any other area within the development near the airstrip. Said FBO may include, but is not limited to, facilities for the sale of airplane fuel, a convenience store, lodging units ("casitas"), airplane repair facilities, airplane washing facilities, and any other related facilities deemed appropriate or desirable by the Declarant.

14. Front Yard Area shall mean and refer to the yard area of each Lot extending from the street to the fence line, which fence shall be located fifteen feet (15') from the street inside the Owner's Property line.

15. Living Unit shall mean and refer to a structure which is designed and intended for use and occupancy as a residence, together with all improvements located on the Lot used in conjunction with such residence.

16. Lot shall mean and refer to any of the separately numbered and individually described plots of land shown on any of the Plat maps for the development, and may include both residential and commercial lots and hangar units.

17. Member shall ~~mean~~ and refer to every owner of property located within the development, including owners of any lot (commercial or residential) or hangar unit(s).

18. Mortgagee shall mean any person or entity named as a first Mortgagee or beneficiary under or holder of a first deed of trust.

19. Owner shall ~~mean and refer to the person or entity~~ who is the owner of record (in the Office of the County Recorder of Washington County, Utah) of a fee or an undivided fee interest in any Lot (commercial, residential or hangar unit) or property in the development. Notwithstanding any applicable theory relating to a mortgage, deed or trust, or like instrument, the term Owner shall not mean or include a Mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

20. Plat shall mean and refer to the various plats of the "GRASSY MEADOWS SKY RANCH PLANNED DEVELOPMENT," including the plat for Phase 1 recorded in the Office of the County Recorder of Washington County, Utah on the 23rd day of August, 1984, in Book 357 at page 63 as Entry No. 265520, the plat for Phase 2 recorded in the Office of the County Recorder of Washington County, State of Utah, on the 16th day of July, 1990, in Book 567, at page 1 as Entry No. 368242, the plat for Phase 3 recorded in the Office of the County Recorder of Washington County, Utah on the 3rd day of May 1991, in Book 600 at page 353 as Entry No. 383163, the plat for Phase 4 recorded in the Office of the County Recorder of Washington County, State of Utah, on the 27th day of July 1992, in Book 671, at page 509 as Entry No. 411684, the plat for Phase 5A recorded in the Office of the County Recorder of Washington County, State of Utah, on the 10th day of April 1996, in Book 991, at page 504 as Entry No. 529113, and the plat for Phase 5C recorded in the Office of the County Recorder of Washington County, State of Utah, on the 10th day of April 1996, in Book 991, at page 517 as Entry No. 529117, and to the plats of subsequent phases that may be recorded and as any and all of the same will hereafter be modified, amended, supplemented or expanded in accordance with the provisions of Article XI concerning amendments or supplements to this Declaration which are to occur in conjunction with the expansion of the Development as herein provided.

21. Property shall mean and refer to all of the real property which is covered by the Phases and Plats that have been recorded as of the date of execution of this Declaration, including phases 1, 2, 3, 4, 5A and 5C, the legal description of which property is given in Exhibit "A," of this Declaration, and all of the real property which is covered by the expandable land which may be annexed to the development as provided herein, a description of which is given in Exhibit "B" of this Declaration.

22. Supplementary Declaration shall mean and refer to any supplementary declaration of covenants, conditions and restrictions, or similar instrument, which extends the provisions of this Second, Restated, Supplementary and Amended Declaration to all or any portion of the

additional lands and which may contain such complementary or amended provisions for such additional land as may be considered necessary or as are herein required by this Declaration.

23. ~~Taxiways shall mean and refer to the thoroughfare areas that are designed to allow airplane access to the airstrip from individual lots, many of which are identified on the various plats in the development. Taxiways exist as overlay access ways over the top of the property of owners in the development. Hence, taxiways are not common areas. Notwithstanding this, the Association has the duty to maintain the taxiways to meet all applicable safety standards.~~

II. DESCRIPTION OF PROPERTY

The Property which is associated with the Development and which is and shall be held, transferred, sold, conveyed and occupied subject to the provisions of this Second Restated, Supplementary and Amended Declaration consists of the real property situated in Washington County, State of Utah, and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, and whatever additional land is incorporated into the project as a result of the declarant's right to expand to include the expandable land described in Exhibit B attached hereto and incorporated herein by this reference.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; any mineral or oil reservations of record and rights incident thereto; all instruments of record which affect the above-described land or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments or discrepancies otherwise existing; an easement for each and every pipe, line, cable, wire, utility line or similar facility which traverses or partially occupies the above-described land at such time as construction of all Project improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wire, utility lines, and similar facilities.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the above described land and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or for any assignee or successor of Declarant, including the right to construct and operate on an ongoing basis such improvements (including commercial improvements) as Declarant in its sole discretion deems to be appropriate, and to do all things reasonable, necessary or proper in connection therewith.

IF THE PROPERTY or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist.

III. MEMBERSHIP AND VOTING RIGHTS

1. Membership. Every Owner shall be a member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains.

2. Voting Rights. The Association shall have the following described three classes of voting membership:

Class A. ~~Class A Members shall be all the Owners whose Lots abut and/or who have taxiway access to the Grassy Meadows Sky Ranch Airstrip, other than the Declarant.~~ Class A Members shall be entitled to one (1) vote for each Lot in which the interest required for membership in the Association is held. When more than one (1) person owns an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event, however, shall more than one Class A vote exist with respect to any Lot. Owners of commercial and/or light manufacturing Lots are also Class A members.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to five (5) votes for each Lot in which it holds the interest required for membership in the Association. Each group of 5 hangar units/lots in Phase 5C that is owned by Declarant, or titled in another party but held in trust by that party in favor of Declarant, shall be considered a single Class B or Class C Lot, whichever the Declarant elects. At each election, the Declarant shall make this determination. For each group, which the Declarant elects to be a Class B Lot, the Declarant shall be entitled to 2 ½ votes. Where the number of hangar units at issue is not divisible by 5, any residual group of hangar units less than 5 in number shall also be considered the equivalent of a single Class B lot, entitling the Declarant to 2 ½ votes for that residual group. (For example, if the Declarant owned 8 hangar units, he would be entitled to 2 ½ votes for the first 5, and 2 ½ votes for the remaining 3, thereby giving him a total of 5 votes) Declarant shall have the option of either exercising his Class B voting rights for all or any portion of such hangar unit lots, or allowing the party holding title in trust for Declarant of these hangar units to vote all or any portion of these lots as if they were Class C lots, with every 5 hangar units (and any residual group less than 5) being considered one Class C vote. The Class B membership shall automatically cease and be converted to Class A membership on the first to occur of the following events:

(a) When the total number of votes held by all Class A and C Members (not including votes of Class C Members holding property in trust for the Declarant, which votes shall be numbered among the Declarant's Class B votes for the sake of the determination of cessation of Class B voting rights discussed in this paragraph) equals the total number of votes held by the Class B Member. As of the execution of this Declaration, the total number of votes held by Class A and Class C members in all phases is 77, and the total number of votes held by the Declarant (including those held in trust for the Declarant) in all phases is 203. Therefore, notwithstanding any statement the Board of Trustees may have inserted in the Bylaws to the contrary, Declarant has Class B votes as of the date of execution of this Declaration. It shall be cause for automatic

dismissal from membership on the Board of Trustees of the Association for board members to fail to recognize Declarant's votes, including those held in trust for Declarant.

(b) ~~The expiration of ten (10) years after the date on which this Second Restated, Supplementary and Amended Declaration is filed for record in the Office of the County Recorder of Washington County, Utah.~~

Class C. Class C Members shall be all the Owners (other than the Declarant or his assigns) whose Lots do not abut and are not adjacent to the airstrip, as well as owners of a group of hangar units in Phase 5C. Class C members shall be entitled to one-half (1/2) vote for each Lot in which the interest required for membership in the Association is held. For voting purposes, every group of hangar units in Phase 5C owned by a person or entity other than Declarant shall be considered to be one Class C Lot. In addition, every five hangar units titled in another party but held in trust for Declarant, shall be entitled to one vote the same as any other Class C lot; however, the Declarant shall have the discretion of either voting all or any portion of such lots as Class B votes, or allowing the party holding the hangar units in trust for Declarant to vote all or any portion of them as Class C votes. Where the number of hangar units held in trust for Declarant is not divisible by 5, any residual group of hangar units less than 5 in number shall also be considered the equivalent of a single Class C lot. (For example, if the party holding hangar units in favor of Declarant owned 8 hangar units, the first 5 would be considered one Class C Lot, and the remaining 3 would also be considered to be one Class C Lot) ~~it should be noted that any commercial lots in Phase 5C are not Class C Lots, but are Class A Lots.~~ It shall be cause for automatic dismissal from membership on the Board of Trustees of the Association for board members to fail to recognize the votes of any Class C member, including those held in trust for Declarant.

3. Conversion from Class C to Class A Lots in Phase 1 Upon payment by the Lot owner of a Class C Lot (in Phase 1 only) to the Association of the sum of Two Thousand Dollars (\$2,000.00) in satisfaction of the airstrip paving agreement, such Lot owner may elect to become a Class A Member. The owner thereof shall automatically thereafter be treated as a Class A Member for all purposes as set forth herein, including voting rights, regular use of the airstrip and shall be subject to the assessments for a Class A member provided for in part V hereof ~~infra~~. If such member also purchases hangar units in Phase 5C, he shall not be required to pay an additional \$2,000.00 in satisfaction of the airstrip paving agreement for said hangar units. ~~Class C lots in other phases may not be converted to Class A lots.~~

4. Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

5. Reinstatement of Class B Voting Rights. If the Declarant shall exercise his option to expand and add additional Lots as provided in Article XI of this Declaration, then at such time as additional subdivision plats are recorded, the voting shall be adjusted accordingly. When this occurs, the Declarant may regain his Class B voting status for all Units owned (including hangar units), even if previously converted to Class A or Class C status in prior phases.

IV. PROPERTY RIGHTS IN COMMON AREAS

1. Acquisition. Common areas included within Grassy Meadows Sky Ranch Planned Development are those identified on the plats for the various phases of the project. The Association may, purchase, lease or otherwise acquire additional parcels of land, amenities or other facilities for inclusion as Common Areas in the planned development. The assessed value given to the individual Owners for such common areas shall be as provided for in Article V (4) - Special Assessments of these covenants. The airstrip and taxiways are not common areas. The airstrip is privately owned, and is leased to the Association. Adjacent property owners own the land underlying the taxiways. Notwithstanding this, the Association bears the responsibility to maintain the airstrip and taxiways.

2. Easement of Enjoyment. Each member shall have a right and easement of use and enjoyment including, but not limited to, the right of ingress and egress to and from his Lot and in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may permit to any tenant, guest, invitee, lessee or contract purchaser who resides or comes upon such Member's Lot, the right to the use and enjoyment described herein; however, all such persons shall be subject to the provisions of this Declaration, the Bylaws and any rules and regulations promulgated by the Association and the airstrip owner, and in case of a breach thereof by such person, the member initially granting the right of use shall be held responsible. Consequently, in the case of any damage or costs resulting from such breach by a guest or invitee, the damage or cost shall be added to that Member's assessment. The Board of Trustees may not limit the allowable number of guests or invitees under this paragraph. This paragraph does not prevent jet or large aircraft operated by invitees from using the airstrip. By purchasing property in this development, each member acknowledges that he/she has chosen to be part of an airport community, and that he/she does not possess an ease of enjoyment that would exclude aircraft of any type or size from using the airstrip or FBO area.

3. Form For Conveyancing. Any deed, lease, mortgage, deed of trust or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot No. _____ contained within the Grassy Meadows Sky Ranch Planned Development, Phases _____, as the case may be, as the same is identified in the Plats recorded in the Office of the Washington County Recorder, and in the Second Restated Supplementary and Amended Declaration of Covenants, Conditions and Restrictions of the Grassy Meadows Sky Ranch Planned Development, (the Declaration), recorded in Book _____ at page _____ as Entry No. _____ of the official records of Washington County, Utah, TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas

described, and as provided for, in the Declaration. SUBJECT TO all of the provisions of the Declaration, and subject, also, to liens for current taxes.

Whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

4. Limitation on Easement. ~~A Member's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:~~

(a) The right of the Association to suspend a Member's right to the use of any amenities included in the Common Areas for any period during which an assessment on such Member's Lot remains unpaid and for a period not exceeding ninety (90) days for any infraction by such Member or his guest or invitee of the provisions of this Declaration or of any rule or regulation promulgated by the Association;

(b) The right of the County of Washington and any other governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway or open spaces contained within the Property for purposes of providing police and fire protection and providing any other governmental or municipal service;

(c) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Except to grant easements for utilities and similar or related purposes, any such dedication or transfer must, however, be assented to in writing by at least 100% of all first Mortgagees (based on one vote for each Mortgagee) and in writing by the Owners of at least seventy-five percent (75%) of the Lots in each of Classes A and C (not including Lots owned by Declarant) at a meeting duly called for the purpose. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Members and mortgagees at least ten (10) days, but not more than thirty (30) days prior to the meeting date.

(d) ~~The right of the Declarant or Association to charge reasonable admission and other fees of Association Members for the use of the airstrip or any recreational facilities situated upon the Common Area, provided that such fees charged by the Association shall in no way affect its nonprofit corporation status, and such fees are approved according to the procedures adapted for the approval of special assessments in Article V, sections 4 and 5.~~

(e) The right of the Association, upon the affirmative vote of 50% of the membership, to enter into leases or agreements for outside entities or persons to use the airstrip or the common areas or facilities, and to charge a reasonable admission or other fee therefor. However, the Declarant or any subsequent owner of the airstrip shall not be restricted from using the airstrip for marketing purposes including inviting guests to use the runway (which may include jet aircraft, subject to FAR's) without needing to gain any approval from the Association or its members.

(f) The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure.

(g) The right of Declarant or successors to grant and reserve easements and rights-of-way through, under, over and across the Common Area, for installation, maintenance and inspection of lines and appurtenances for public or private utilities and construction of additional units.

(h) The right of Washington County or any other governmental entity having jurisdiction over the property to levy taxes and issue bonds.

(i) The right of the Board of Trustees and airstrip owner to publish and enforce rules and regulations as provided elsewhere in this Declaration.

(j) The right of the Association to levy assessments against each Owner for the maintenance, protection and preservation of the development in compliance with this Declaration.

(k) Inasmuch as this is an airplane community, the right of the Declarant and any member, or any guests and invitees of the Declarant or any member, to land jets and large aircraft on the airstrip and park the same in the FBO area or on other property in the project.

5. Encroachments. If any portion of an improvement constructed by Declarant, his successors or assigns encroaches upon the Common Areas or other Lots, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the development, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

6. Declarant reserves unto itself an easement over and to the streets, taxiways, underground utilities (including sewer and water lines), common areas and all unimproved lot areas for access necessary and incidental to the construction of additional residential, commercial and hangar units and of common facilities, including drainage facilities, which the Declarant believes may be reasonably necessary, and for the granting of utility easements to third parties as may be necessary or desirable for the project in the discretion of the Declarant. In connection therewith, Declarant may without charge connect to any utility line or use any street or access in the project that Declarant deems necessary as part of his development of subsequent phases of the project or development of adjacent projects.

V. ASSESSMENTS

1. Personal Obligation and Lien. Each Owner, expressly excluding the Declarant for each Lot owned by it or held in trust by another entity for it, shall, by acquiring in any way or becoming vested with an interest in a Lot, be deemed to covenant and agree to pay to the Association the monthly and the special assessments described in this Article, together with the hereinafter provided for interest and costs of collection. All assessments shall be, constitute and

remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made and (b) the personal obligation of the person who is the Owner of such Lot at the time the assessment falls due. The personal obligation for delinquent assessments shall not pass to an owner's successors in title unless expressly assumed by them. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. Any such liens, however, shall be subordinate to the lien or equivalent security interest of any first Mortgage on the Unit recorded prior to the date any such common expense assessments become due. Provided, however, that any such assessments as to Class C Members shall be one-half (1/2) of the amount of such assessments as are made upon Class A Members. For assessment purposes, every group of hangar units in Phase 5C owned by a person or entity other than Declarant (or by a party holding hangar units in trust for Declarant) shall be considered to be one Class C lot, and the owner(s) thereof shall be assessed the same as all other Class C members. The Declarant shall pay assessments on only the Lots owned by Declarant in Phase I. The Lots in all other phases that Declarant owns, as well as those Lots (which includes groups of 5 hangar units) which are titled in another party but held in trust for Declarant, will be assessed only upon the sale to an Owner.

2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the maintenance, health, safety and welfare of residents of the Property. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurances on the Common Areas; lease of off-property facilities for use of the Common Areas; management and supervision of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligation, functions or purposes under the Declaration or its Articles of Incorporation. Other than to defend lawsuits filed in District Court against the Association or for the Association to pursue simple actions to collect a delinquent payment of dues, no part of any assessment (including special and additional assessments) may be paid to any attorney or law firm to pursue any claim, assert any point of view or fund any lawsuit unless 2/3s of the members consent to the same in writing. Each dollar spent on attorneys shall be accounted for and made part of the annual budget, which budget shall be made available to individual members upon request. It shall be cause for automatic dismissal from membership on the Board of Trustees of the Association for board members to fail to fulfill the requirements of this section.

3. Base for Assessment. Each lot, whether improved with a Living Unit or unimproved, which has been conveyed to an Owner shall be assessed at a same and equal rate, provided that the amount of assessments due from Class C Members shall be one-half (1/2) of the amounts assessed against Class A Members. For the purpose of assessment, the term "Owner" shall expressly exclude the Declarant only. Commercial Lots and/or light manufacturing Lots that the Declarant intends to annex into the Development will be assessed upon conveyance to an Owner and are considered Class A Lots. These Lots will be assessed the same rate as a Class A Lot plus a percentage of sales to compensate for the additional maintenance of the airstrip or other Common Areas that may be needed as a result of the Owner's business activity. These additional assessments shall be charged for the additional maintenance costs only and are not intended to subsidize any other membership classes.

(a) Until December 31, 2002, the maximum annual base general assessment shall continue to be \$500.00 per Unit (or \$41.66 per month) as it has been since 1984.

(b) Inasmuch as runway and fence upkeep has not occurred in the manner that was contemplated in 1984 when the first CC&Rs were executed, as of December 31, 2002 the assessment shall undergo a one-time increase of \$200 for all units (or in other words, shall be \$700 per unit), and in addition, from and after December 31, 2002, the general assessment shall be automatically increased at least in an amount that corresponds with the increase (from December to December) in the Published National Consumer Price Index for southwestern Utah, with the base CPI to be December 31, 1990. The Board of Trustees of the Association may in its discretion increase the assessment beyond this amount; however, no such increase may be more than fifteen percent (15%) above the maximum assessment for the previous year without approval of two-thirds (2/3) of the Members of each Class. Any such vote must be taken at a meeting to be called for this purpose.

Special Assessments. In addition to the monthly assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments or the reserve fund, or (b) the cost of any construction, reconstruction, or unexpectedly required repair or replacement in connection with the Common Areas. Any such special assessment must be assented to by more than fifty percent (50%) of all votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for the purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) days but not more than thirty (30) days prior to the meeting date. Special assessments for the purpose of defraying, in whole or in part, the cost of any construction (including new construction), reconstruction, repair or replacement of any capital improvement upon the Common Area, including fixtures and personal property related thereto on any phase of the Project, will be allowed only after the reserve fund has been expended and not replenished. All special assessments are subject to the limitation on funding of lawsuits/legal activities by the Association without the approval of 2/3s of the members as described in paragraph 2 above.

4. Quorum Requirements. The quorum required for any action authorized by Section 4 above shall be as follows: at the first meeting called the presence of members or of proxies entitled to cast fifty percent (50%) of all outstanding votes shall constitute a quorum. If a quorum is not present at the first meeting, another meeting may be called (subject to the notice requirements set forth in Section 4) at which a quorum shall be one-half (1/2) of the quorum which was required at the immediately preceding meeting. No further reduction in the number to achieve a quorum shall occur by the calling of subsequent meetings. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

5. Equal Rate of Assessment. Both monthly and special assessments shall be fixed at a uniform (equal) rate for all Lots, subject to the provision of Paragraph 3 above regarding the exemption for the Declarant, or its assigns and subject to the provision for differing assessment rates as between Class A and Class C Members. However, unequal assessments may be assessed against the Lots as provided for in Article VII, paragraphs 5, 11 and 12.

6. Monthly Assessment Due Dates. The monthly assessments or periods, set by the Board of Trustees, provided for herein shall commence as to all Lots on the date a deed is delivered to the first purchaser of a Lot, contract of sale or agreement as stated in Earnest Money Agreement prorations. The first monthly assessment shall be adjusted according to the number of days remaining in the month of conveyance. At least fifteen (15) days prior to the effective date of any change in amount of the monthly assessment, the Association shall give each Owner written notice of the amount and the first due date of the assessment concerned.

7. Certificate Regarding Payment. Upon the request of any Owner or Prospective Purchaser or encumbrancer of a Lot, the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

8. Effect of Non-payment—Remedies. Any assessment not paid when due shall, together with the hereinafter provided for interest and costs of collection, be, constitute and remain a continuing lien on the Lot, provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any first Mortgage on the Lot recorded prior to the date any such assessments become due. The person who is the Owner of the Lot at the time the assessment falls due shall be personally liable for payments. However, such liability shall not pass to the Owner's successors in title unless expressly assumed by said successor. If the assessment is not paid within thirty (30) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum plus a late payment service charge equal to twenty-five percent (25%) of each delinquent amount due and the Association may, in its discretion, bring an action either against the Owner who is personally liable or to foreclose the lien against the Lot. Any judgment obtained by the Association shall include reasonable attorney's fees, court costs, and each and every other expense incurred by the Association in enforcing its rights.

9. Right to Bring Action. Each Owner, by his acceptance of a deed to a Unit, hereby expressly grants to the Association, its successors, assigns or agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Unit Owners. The Association, acting on behalf of the Unit Owners, shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

11. Non-use and Abandonment; Combining of Lots. No Owner may waive or escape personal liability for the assessments provided for herein, nor release the Unit owned by him from the liens and charges hereof, by non-use of any Common Area or abandonment of his Unit. Owners who combine lots which are shown as distinct lots on the plat must continue to pay a separate and distinct assessment for each lot as if they were not combined. If owners who have combined lots in the past have not paid for both lots, they must immediately pay all prior

assessments, which they should have paid but did not. Failure to do so will result in a lien being placed on their property, as described elsewhere in this article.

12. Tax Collection from Lot Owners by Washington County Authorized. It is recognized that under the Declaration the Association will own the Common Areas and that it will be obligated to pay property taxes to Washington County. It is further recognized that each Owner of a Lot as a Member of the Association and as part of his monthly common assessment will be required to pay to the Association his pro rata share of such taxes. Notwithstanding anything to the contrary contained in the Declaration, or otherwise, Washington County shall be, and is, authorized to collect such pro rata share (on equal basis) of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot. To the extent allowable, Washington County is hereby directed so to do. In the event the assessor shall separately assess Common Areas to the Association, the Board of Trustees may require the Unit Owners, including the Declarant, to pay a special assessment, on a pro rata basis, for property taxes.

13. Special Service District for Paving Roads. Declarant, for each Lot owned by it, and each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant and agree to accept and pay proportionate amounts of money and assessments due when and if a Special Service District may be organized for paving the roads in and around the Property.

14. Optional Declarant Subsidy. For ten (10) years after the date on which this Second Restated, Supplementary and Amended Declaration is filed for record in the Office of the County Recorder of Washington County, Utah, or during such time as Declarant has Class B voting rights, whichever is longer, Declarant or its assigns may in its discretion subsidize the Association. Notwithstanding this right, Declarant is under no obligation to do so. Subsidization shall be defined as the payment of any or all of the reasonable cost needs of the Association for ordinary and necessary maintenance expenses of the Association, including maintenance of the airstrip, taxiways and Common Areas. Declarant may seek reimbursement from the Association for all reasonable amounts expended for any such subsidization and the Association hereby covenants and agrees to make such reimbursement.

15. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein:

- (a) All Properties dedicated to and accepted by any local public authority;
- (b) The Common Area; and
- (c) All property owned by Declarant other than Lots in Phase 1, unless a Dwelling owned by Declarant is constructed on a Lot in another phase and is occupied as a residence.

16. Additional Assessments. In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such assessments as may be necessary from time to time in case of emergency, or for the purpose of repairing and restoring any damage or disruption to the airstrip, taxiways or streets or other Common Areas, including damage from the activities of any governmental entity or utility in maintaining, repairing or replacing utility lines and facilities thereon. All additional assessments are subject to the limitation on funding of lawsuits/legal activities by the Association without the approval of 2/3s of the members as described in paragraph 2 above.

VI. OPERATION AND MAINTENANCE

1. Maintenance of Lots and Living Units. Each Lot and Living Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Lot or Living Unit. The Association shall have no obligation regarding maintenance or care of Lots or Living Units except as provided in Paragraph 2 of this Article VI.

2. Operation and Maintenance by Association. The Association, by its duly delegated representative, shall provide for such maintenance ~~and operation of the Common Areas and taxways as may be necessary~~ or desirable to make them appropriately usable in conjunction with the Lots and to keep them clean, functional, attractive and generally in good condition and repair. ~~The Association shall maintain the Front Yard Areas of each Lot including, but not by way of limitation, grass, fences, landscaping, shrubs, watering and the sprinkling system. In addition, the Association shall maintain any and all Common Areas acquired.~~

Twice annually, or at times to be decided by the Board of Trustees, spraying to control weeds along and in the roadways and fence lines will occur. The costs associated with this spraying shall be added and become part of the assessment to which each Lot is subject.

Notwithstanding the provisions regarding Lot and Living Unit maintenance by Owners, in the event an Owner of any Lot in the Property shall fail to maintain his Lot and the exterior of his Living Unit situated thereon in a manner satisfactory to the Architectural Control Committee of the Board, the Association, after approval by two-thirds (2/3) vote of the Board, shall have the right, through its agents, employees or through an independent contractor to enter upon his Lot and repair, maintain and restore the portion of the Lot maintainable by the Owner and the exterior of his Living Unit and any other improvements erected thereon (but not the interior of his Living Unit). The cost of such exterior maintenance shall be added to and become part of the assessment to which Lot is subject.

~~It shall be cause for automatic dismissal from membership on the Board of Trustees of the Association for board members to fail to maintain the quality and condition of the areas to be maintained as identified in this section, including maintenance of taxways and weatherproofing and maintaining fences.~~

3. Water. Culinary and irrigation water is available through the purchase of water connections from the Washington County Water Conservancy District. Purchase of such connections is the responsibility of the individual Lot Owners.

4. Insurance. The Association shall secure and at all times maintain the following insurance coverages:

(a) A policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements comprising a part of the Common Areas. The name of the insured under each such policy shall be in form and substance similar to: "GRASSY MEADOWS SKY RANCH LANDOWNERS ASSOCIATION for the use and benefit of the individual Lot Owners and Mortgagees, as their interests may appear."

(b) A comprehensive policy or policies insuring the Owners, the Association, and its directors, officers, agents, and employees against any liability incident to the ownership use or operation of the Common Areas, which may arise among themselves, to the public and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall not be less than \$1,000,000.00, for all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage, liability for non-owned or hired automobile, liability for property of others, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use and maybe subject to periodical adjustments, if the amount and scope of coverage is deemed insufficient by the airport owner or board, based upon recommendations from the insurance carrier or other aviation oriented agencies. Such policies shall be issued on a comprehensive liability basis, shall provide a cross liability endorsement pursuant to which the rights of the named insured as between themselves are not prejudiced, and shall contain "a severability of interest" clause or endorsement to preclude the insurer from denying the claim of an Owner in the Development because of negligent acts of the Association or other Owners.

(c) A comprehensive policy or policies as required by Sky Ranch Airport, Inc., in its lease with the Association to cover any and all liabilities for operating the airstrip. Such policy shall name Grassy Meadows Airport, Inc., Sky Ranch Development, and Michael O. Longley or, their successors and assigns as an insured and shall be subject annually to the reasonable approval of Grassy Meadows Airport, Inc. or its successors and assigns. Copies of all such policies must be delivered to Grassy Meadows Airport, Inc. or its successors or assigns at each renewal period.

The following additional provisions shall apply with respect to insurance:

(1) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature and use.

(2) All policies shall be written by a company holding a rating of Class IV or better from Best's Insurance Reports or other similar standard yielding this minimum quality of insurer. Each insurer must be specifically licensed in the State of Utah.

(3) The Association shall have the authority to adjust losses.

(4) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their Mortgagees.

(5) Each policy of insurance obtained by the Association shall, if reasonably possible, provide a waiver of the insurer's subrogation rights with respect to the Association, the Owners and their respective directors, officers, agents, employees, invitees and tenants; that it cannot be cancelled, suspended or invalidated due to the conduct of any particular Owner or Owners; that it cannot be cancelled, suspended or invalidated due to the conduct of the Association or of any director, officer, agent or

employee of the Association without a prior written demand that the defect be cured; that any "on other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.

(6) Notwithstanding any provisions to the contrary herein; so long as the Mortgagee or its designee holds a mortgage or beneficial interest in a trust deed on a Lot in the Development or owns a Lot, insurance policies shall meet all requirements and contain such other coverage and endorsements as may be required from time to time by the Mortgagee or its designee.

(7) Fidelity Coverage. The Association shall maintain fidelity coverage to protect against dishonest acts on the part of trustees, officers, manager, employees of the Association and all others (including volunteers) who handle, or are responsible for handling, funds of the Association. Such fidelity bonds shall:

- (a) name the Association as an obligee as the named insured;
- (b) be written in an amount sufficient to provide protection which is in no event less than one and one-half (1½) times the Association's estimated annual operating expenses and reserves;
- (c) contain waivers of any defense based upon the exclusion of volunteers or persons who serve without compensation from any definition of "employee" or similar expression;
- (d) provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to all first Mortgagees of Lots; and
- (e) provide that there will be no coverage of members of the Board of Trustees for any action they may take which is contrary to or not supported by these CC&Rs.

(8) Mortgagee Clause. All policies of hazard insurance must contain or have attached the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the mortgaged premises are located. The mortgagee clause must provide that the insurance carrier shall notify the first Mortgagee (or trustee) named at least ten (10) days in advance of the effective date of any reduction or in cancellation of the policy.

(9) Review of Insurance. The Board shall periodically, and whenever requested by twenty percent (20%) or more of the Owners or the Airport owner, review the adequacy of the Association's insurance program and shall report in writing the conclusion reached and any action taken on such review to the Owner of each Lot and to the holder of any mortgage on any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by the Owner.

(10) Lots Not Insured by Association. The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Lot, any Living Unit thereon or acts and events thereon. Accordingly, each Owner shall secure and keep in force at all times fire and extended coverage insurance which shall be equal to or greater than that commonly required by private institutional mortgage investors in the area in which the Mortgaged premises are located. The policy shall provide, as a minimum, fire and extended coverage insurance on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the policy. The amount of coverage shall be sufficient so that in the event of any damage or loss to the Mortgaged premises of a type covered by the insurance, the insurance proceeds shall provide at least the lesser of: (i) compensation equal to the full amount of damage or loss; or (ii) compensation to the first Mortgagee under the Mortgage equal to the full amount of the unpaid principal balance of the Mortgage Loan.

(11) Unacceptable Policies. Policies are unacceptable where: (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Lot Owner or Mortgagee or Mortgagee's designee; or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by carrier's board of directors, policyholders or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent Lot Owner, Mortgage or Mortgagee's Designee from collecting insurance proceeds.

(12) The Development is not located in an area identified by the Housing and Urban Development as an area having special flood hazards. In the event that at some future time the Development should be declared to be in such flood area, a blanket policy of flood insurance on the Project shall be maintained in the amount of the aggregate of the outstanding principal balances of the Mortgage loans on the Living Units comprising the Development or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less. The name of the insured under each required policy must be in form and substance as that required by the Federal Home Loan Mortgage Corporation at any given time.

5. Airstrip. GRASSY MEADOWS LANDOWNERS ASSOCIATION has entered into an exclusive lease agreement with Grassy Meadows Airport, Inc. for the use of the airstrip by the Lot Owners, their guests and invitees and other persons wishing to use the airport facility. Charges made to the Association through this lease agreement shall be passed along to the Members through proration and shall become part of the assessment described in Article V of these covenants. It shall be cause for automatic dismissal from membership on the Board of Trustees of the Association for board members to fail to maintain the quality and condition of the airstrip as required by the lease agreement, or to fail to make the necessary lease payments for the Association's continued use of the airstrip, or to fail to sign the addendum to the lease agreement which provides to the Association use of a strip of land that connects the airstrip to Phase 4, which access is vital to the continued use of the airstrip by all lot owners in Phases 4, 5A, 5B and

6. Manager. The Association may carry out through a Manager any of its functions which are properly the subject of delegation. Any Manager so engaged may be an independent contractor or an agent or employee of the Association. The Manager shall be responsible for managing the Property for the benefit of the Association and the Owners, and shall, to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

7. Terms of Management Agreement. Any agreement for professional management of the Development, or any other contract providing for services of the Declarant, sponsor or builder, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

8. Repair of Damage Caused by an Owner, his Tenants, Guests, Invitees and Pets. Any damage caused to the Common Area and facilities, airstrip, taxiways, and/or personal property owned by the Association, by any Owner, his tenant, guest, invitee, minor child or any animal or pet under the control of or owned by any such person or a combination of the foregoing, shall create an assessable debt owed by such Owner to the Association. If the Owner does not adequately repair the damage, the Association shall, after approval by a majority vote of the Board of Trustees, have the right, through its agents, employees, or through an independent contractor, to repair the damage. The reasonable costs incurred by the Association in repairing the damage shall be added to and become an assessment against the Unit as described elsewhere in this Declaration. Any Owner or agent of an Owner who intends to undertake repair work of such damage pursuant to this Section must first submit plans to the ACC and obtain the approvals required as provided herein.

VII. USE RESTRICTIONS

1. Use of Common Areas. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Living Units. No admission fees, charges for use, leases, or other income-generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas unless approved by the Declarant or voted upon and approved according to the procedures adapted for the approval of special assessments in Article V paragraph 4 and 5.

2. Use of Lots and Living Units. All Lots other than commercial lots are to be improved with Living Units and are restricted to such use. Each residential Lot shall be improved with a Living Unit, each to be used only as a residence. Notwithstanding this, Owners are permitted to operate a home office/business as long as the same is not a retail business and is confined within the residence and does not create noise that could be heard by adjacent Owners. Bed and Breakfasts are also allowed. No residential Lot or Living Unit may be subdivided or used, occupied or altered in violation of law, so as to create a nuisance or interfere with the rights of any Owner or in a way which would result in an increase in the cost of any insurance covering the Common Areas. Notwithstanding this, the restrictions in this paragraph shall not apply to Declarant, its successors and assigns in respect to the Declarant's planned development of certain portions of lands as Commercial Lots, as is more fully described in paragraph 6 below.

3. Building Setbacks. The setback for buildings located in the development shall be: Front 50', Side 25', Backyard 120' when located on airstrip, otherwise 25'. Where the back lot line fronts on the airplane landing strip, no foliage may be planted or maintained whose height is in excess of 3 feet within the 120' safety zone. This paragraph shall not affect the power delegated to the Architectural Control Committee to grant variance to the setback requirements in appropriate circumstances.

4. Minimum Square Footage. The minimum square footage requirements for any Living Unit shall be 1,500 square feet of finished interior feet on the ground level exclusive of garages, patios, balconies, decks or other semi-external space. Each Living Unit shall be improved with an attached or detached garage with a minimum square footage requirement of 400 square feet of finished interior space.

5. Fences. All fences throughout the community shall be three (3) rail double lodge pole pine fencing, at least 4' high or other fencing approved by the Architectural Control Committee. All fences shall be installed within six (6) months of purchase at the expense of the Owner. Thereafter, all fences shall be maintained (including weatherproofing) by the Association. Such maintenance includes annually oiling all posts and rails. It shall be cause for automatic dismissal from membership on the Board of Trustees of the Association for board members to fail to maintain the quality and condition of the fences as required by this paragraph. In the event the Owner fails to complete all or part of the fencing required by this paragraph, the Association may in its discretion, construct or cause to be constructed the fences required. The costs of said construction shall be assessed to the Owner of the Lot as provided for in Article V of these covenants.

6. Non-Residential Lots. ~~Except as to the Declarant or as otherwise allowed in this Declaration, no part of the Property shall be used for any commercial, manufacturing, mercantile, storing, vending or other such non-residential purposes, with the exception that an Owner may store, buy and sell operational aircraft on his Lot or may operate a home based business or bed and breakfast in conformance with paragraph 2 above. Declarant, its successors or assigns may use the Property for a model home site display, and as a sales office during the construction and sales period, and conduct certain commercial operations on lands owned by it adjacent to the airstrip and in other locations in the development, including, but not limited to, fixed base operations for gas sales and refueling aircraft and purposes incident thereto, construction and sale or leasing of aircraft storage and hangar space, scenic tour flights, lodging units, a convenience store and such other business operations as it may deem necessary and appropriate; provided, however, that any such commercial operations or activities conducted by the Declarant, its successors or assigns, shall in the view of the Declarant be consistent with, and shall not unreasonably interfere or restrict the Owners' beneficial use and enjoyment of their Lots or the Property, as set forth in this Declaration. Declarant, its successors or assigns have planned, and it is their intent to also develop, certain portions of land to be annexed into the Property as Commercial Lots.~~

7. Sign. Other than signs the Declarant determines are necessary in the commercial areas, or signs permitted in this paragraph, no sign or billboard of any kind shall be displayed to the public view on any portion of the Property or any Lot. This prohibition includes signs advertising the Property for sale or rent except signs used by Declarant, its successor or assigns,

to advertise the Property during the construction and sales period, provided that each Unit Owner shall be allowed to display no more than two (2) "for sale," or "for rent" signs (which may include signs by the Owner's realtor) which may only be displayed in the unit windows or on the Owner's fence (or where there is no fence, on the owner's property) and said signs shall be no more than 24" x 36" in size.

8. Quiet Enjoyment. No noxious or offensive trade or activity shall be carried on upon any Lot or any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective Living Unit or which shall in any way increase the rate of insurance. Notwithstanding this, this paragraph shall not in any way limit or restrict the Declarant or its successors or assigns from constructing, developing and operating whatever commercial operations it deems desirable and appropriate in the FBO area and any other commercial areas, nor shall it restrict the use of the airstrip by jet or large aircraft, nor shall it restrict the use of fireworks.

9. Temporary Structures, Equipment, Motor Vehicles, Etc. No structure of a temporary character, trailer, tent, shack, garage, barn or other out building shall be used on any Lot at any time as a residence, either temporarily or permanently, and no mobile home, trailer, camper, boat, truck larger than $\frac{3}{4}$ tone, flat bed truck, aircraft or similar equipment or vehicle not in running condition shall be permitted to be parked upon any Lot, except the Owner may park and occupy a mobile home or trailer on his Lot for the maximum period of one year while his Living Unit is under construction. The equipment and vehicles previously described may be parked within a garage, hangar or facility properly screened from the view of others and approved by the Architectural Control Committee. No motor vehicle whatsoever may be parked on any common street or driveways, but shall be kept in the parking area. An Owner may construct a hangar guest house subject to approval of the Architectural Control Committee, providing a main house pad is set aside for the future permanent residence.

10. Animals. Horses or similar animals may be bred and/or raised on the individual Lots subject to approval of the Architectural Control Committee. Pigs are strictly prohibited. The allowable number of the foregoing animals shall not exceed three (3) animals per acre. Dogs, cats and other household pets may also be kept on the Lots. All large animals must be kept within a sturdy enclosure and are not allowed on the Common Areas unless they are under a means of adequate control. All household pets must be leashed while in the Common Areas, and Owners are responsible to clean up any waste deposits by their pets on the common areas or on the property of others. The reasonable cost to repair any damage caused by a pet of an Owner, his guest, or invitee, shall be an additional assessment upon the Unit pursuant to Article V of this Declaration. This paragraph shall not apply to excluded lots as identified in any Supplemental Declaration or plat for any phase, where all animals other than household pets are excluded.

11. Weeds. Weeds are those noxious plants allowed to grow by the Owner and do not include those native plants now growing on the Lots and Property. Excessive weeds in the project decreases the property value of all Lots. The Owner is responsible for controlling and removing weeds growing on his Lot and removing tumbleweeds that accumulate on the inside of his fence. Tumbleweeds along fence lines in the front yard areas shall be removed by the Association at least once per month. Every quarter, and at any additional times determined by

the Association or Board of Trustees, weeds growing in the Front Yard Areas, Common Areas and other areas will be mowed or disked by the Association. At these times the Owner may, by giving notice to the Association, arrange for the removal of his weeds on his Lot, and the Association shall add the costs of removal or mowing to the Owner's monthly assessment. Any weeds not controlled or removed by the Owner prior to the dates of removal as set by the Association, shall be mowed or removed by the Association and the costs of such removal and, at the Boards' option, a penalty fee to be determined by the Association, shall be added to the monthly assessment of the Owner. It shall be cause for automatic dismissal from membership on the Board of Trustees of the Association for board members to fail to fulfill the weed removal requirements of this paragraph.

12. Garbage Removal and Animal Wastes. All rubbish, trash, garbage and animal wastes shall be regularly removed from the Property by the Owner, and shall not be allowed to accumulate thereon. In the event that the Owner fails to comply with this provision, the Association may remove or cause to be removed, the garbage and animal wastes and include the costs in the Owner's monthly assessments.

13. Utilities. All utilities, including electrical service to the Living Units, shall be installed and constructed underground. In addition, any utility service to any out building shall also be installed and constructed below the ground.

14. Electronic Antennas and Stove or Chimney Flues. No television, radio or other electronic antenna or device of any type (other than satellite dishes) shall be erected, constructed, placed or permitted to remain on any of the Living Units or structures on the Lots in said tract unless and until the same shall have been approved in writing by the Architectural Committee of the Association. No stove flue, chimney or other similar venting system shall be installed to the exterior of the Unit, nor shall any heating device be installed other than that provided with the Unit without the written approval of the Architectural Control Committee.

15. Airstrip. The airstrip may be used by the Owner, his guests and invitees solely for the taxiing, take-off and landing of aircraft and for incidental purposes, including the buying and selling of operational aircraft, related thereto. Scheduled airline service is prohibited. Under no circumstances shall anyone cause any aircraft or other vehicle to be parked or tied down on any part of the airstrip or safety area. The Owner shall provide sufficient parking and tie down facilities on his Lot for all aircraft operated or used by Owner, his guests or invitees. Furthermore, any use of the airstrip shall be at the user's own risk and, each Owner, by his acceptance of a deed to a Unit, acknowledges and agrees that, Grassy Meadows Airport, Inc. and its successors and assigns, shall not be responsible for and shall be indemnified and held harmless from any damages to person or property that are in any way connected with or result from use of the airstrip by the Owner or his invitee, including any damages or claims related to any act, omission or negligence of Grassy Meadows Airport, Inc., its agents, successors or assigns.

16. Exception for Declarant. Notwithstanding the restrictions contained in this Article VII, for the ten-year period following the date of which this Second Restated, Supplementary and Amended Declaration is filed for record in the Office of the County Recorder of Washington County, Utah, Declarant or its assigns or successor, shall have the right to use any Lot or Living

Unit owned by it and any part of the Common Areas reasonably necessary or appropriate, including, but not limited to, a model or other temporary structure as a sales office, in furtherance of any construction, marketing, sales, management, promotional or other activities designed to accomplish or facilitate improvement of the Common Areas or improvement and/or sale of all Lots owned by Declarant. In addition, without being subject to any time limit, Declarant may also conduct collateral, commercial business activity in the Project, including, but not limited to, ~~conducting fixed base operations for gas sales and the fueling and maintenance of aircraft and purposes incident thereto, construction and sale or leasing of aircraft hangar space, scenic air tour services, lodging units, a convenience store and light manufacturing.~~

17. Obstruction of the Common Area. There shall be no obstruction of the Common Area. Nothing shall be stored, altered or constructed, or removed from the Common Area, except with the prior written consent of the Board of Trustees.

18. Swimming Pools, Hot Tubs and Tennis Courts. No above-ground or ground level swimming pools, lap pools, therapy pools, hot tubs, whirlpools, jacuzzis or tennis courts shall be erected, constructed, placed or permitted to remain on any Unit without construction and erection of proper landscaping and privacy screening as determined by the Architectural Design Guidelines and approved by the ACC.

19. Items Stored on Lots. No lumber, appliances, nonfunctional vehicles or other items, materials or supplies may be stored in the open on any lot except for the temporary storage of building or landscaping materials related to construction or installation of a home or landscaping.

20. Landscaping to not Block Visibility. No landscaping or other item shall be located on any lot in such manner that it blocks the visibility necessary for safe operation of vehicles or airplanes at the intersection of roads or taxiways, or along said roads or taxiways.

21. Use of Water. No Owner may make any use of water on his property that would affect the drainage or the flow of water or cause flooding across any adjacent properties.

22. Waiver Incident to Proximity to Airstrip. Upon an Owner's purchase of a Lot adjacent to or near the airstrip, said Owner expressly waives any claim against the Declarant, the owner of the airstrip or the Association related to any harm to person or property resulting from the Owner's proximity to said airstrip, including but not limited to any claim related to noise, noxious fumes, or any other damage or harm to said Owner or his invitees. Furthermore, said Owners acknowledge that they have chosen to be part of an airport community, and as such, they have waived any claim they otherwise may have had against use of the airstrip by aircraft, including jet and large aircraft.

VIII. ARCHITECTURAL CONTROL

1. Architectural Control Committee. The Board of Trustees of the Association shall appoint a committee the function of which shall be to insure that all exteriors of Living Units and landscaping within the Property harmonize with existing surroundings and structures. The

Committee need not be composed of Owners. If such a Committee is not appointed the Board itself shall perform the duties required of the Committee.

2. Submission to Committee. No Living Unit, accessory or addition to a Living Unit, landscaping or other improvement of a Lot shall be constructed, maintained or accomplished and no alteration, repainting or refurbishing of the exterior of any Living Unit shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Architectural Control Committee. Potential purchasers of Lots may submit plans and specifications for proposed improvements on a lot to the Committee. All of the provisions of this Article VIII shall apply to such a submission by a potential purchaser of a Lot. It shall be cause for automatic dismissal from membership on the Committee for Committee members to refuse consider such plans and specifications.

3. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to insure that all improvements, construction, landscaping and alterations on Lots within the Property conform to and harmonize with existing surroundings and structures. The Board may formulate general guidelines and procedures. The adopted guidelines and procedures shall be incorporated in the Book of Resolutions of the Association and the Architectural Control Committee, or the Board, as the case may be, shall act in accordance with such guidelines and procedures.

4. Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after submission. In the event the Committee fails to take any action within such period it shall be deemed to have approved the material submitted.

5. Request for Reconsideration. An applicant may request reconsideration of a ruling of the ACC by submitting to the ACC written arguments for such reconsideration within thirty (30) days of the date of receipt of the ACC's ruling. The ACC will give its final ruling by answering the arguments and by confirming or modifying its ruling within thirty (30) days of receipt of the applicant's written arguments. No fee is required to be submitted for reconsideration. Failure of the ACC to notify the applicant regarding the reconsideration within thirty (30) days of the date of submittal of the written arguments to the ACC shall be deemed approval of the submittal. Final approvals by the ACC shall be valid for one (1) year from the date of final approval and must be obtained prior to formal submission to Washington County for a building permit. If a building permit is not issued within one (1) year after an Owner obtains an approval, the approval shall be void and an application for the proposed improvement(s) shall be resubmitted to and re-approved by the ACC. Verbal approvals shall not be effective approvals, and the ACC shall not be bound thereby.

6. Appeal to Board of Trustees. An applicant may appeal the final ruling of the ACC by filing a petition of appeal, together with a written statement as to the ruling from which the appeal is taken, and the reasons in support of the applicant's appeal, with the Board of Trustees of the Association. The Board of Trustees shall solicit a response from the ACC, which response shall be filed by the ACC within twenty (20) days after notification reaches the ACC of the need for such a response. The Board of Trustees may request such other and additional information as it deems to be relevant, and shall thereupon make a final decision on the matter.

The Board shall make its decision within thirty (30) days of the filing of the petition of appeal, and their failure to do so shall be deemed an approval.

7. Disclaimer of Liability. Neither the Architectural Committee, nor any member thereof acting in good faith shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claims on account of (a) the approval or rejection of, or the failure to approve or reject, any plans, drawings and specifications, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development or manner of development of any of the Property, or (d) any engineering or other defect in approved plans and specifications.

8. Nonwaiver. The approval by the Architectural Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Architectural Committee to disapprove any similar plans and specifications.

9. Completion of Construction. Once begun, any improvements, construction, landscaping or alterations approved by the Architectural Committee shall be diligently prosecuted to completion in strict accordance with the plans and specifications approved by the Architectural Committee. If reasonably necessary to enable such improvements, construction, landscaping or alternation, the person or persons carrying out the same shall be entitled to temporarily use and occupy unimproved portions of the Common Areas in the vicinity of the activity.

10. Indemnification by Owner. Each Owner, as a condition of obtaining any approval under the Development Guidelines, agrees to fully indemnify, protect, defend and hold harmless the Declarant, the owner of the airstrip, the Board of Trustees, the Association, the ACC, and any Member or designated representatives thereof, against and from any and all claims, liabilities, lawsuits and disputes related in any way to any approval and/or approved or disapproved improvement.

11. Exception for Declarant. The foregoing provisions of this Article VIII shall not apply to any improvements, construction, landscaping or alteration which is carried out by Declarant on any Lot or on any part of the Common Areas and which occurs at any time during the ten year period following the date on which this Second Restated, Supplementary Amended Declaration is filed for record in the Office of the County Recorder of Washington County, Utah or during such time as the Declarant has Class B voting rights, whichever is longer. Declarant shall further have the right without being subject to any time limit to designate the location and design of any Common Area amenities including recreational amenities or green areas, provided that the Declarant shall not be required to provide any such amenities by virtue of this paragraph.

12. Declarant's Obligation. ~~Declarant hereby covenants in favor of each Owner that all improvement~~ of the Common Areas accomplished by it shall be architecturally compatible with respect to one another.

13. Declarant's Attendance at ACC and Board Meetings. The Architectural Control Committee and the Board of Trustees shall provide the Declarant with timely notice (the same notice as that given to members of their respective bodies) of all of their meetings, and the

Declarant and any member who desires to do so shall be entitled to attend and participate and make comments in said meetings. The Architectural Control Committee and the Board of Trustees shall also provide the Declarant with copies of all minutes of their meetings and shall make such minutes available to all members upon request.

IX. CONDEMNATION

If at any time or times the Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Association and shall be used promptly by the Association to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas. Upon completion of such work and payment in full therefor, any proceeds of condemnation then or thereafter in the hands of the Association which are proceeds for the taking of any portion of the Common Areas shall be disposed of in such manner as the members by majority vote and (during the 15 year period following the date on which this Second Restated, Supplementary Amended Declaration is filed for the record in the Office of the County Recorder of Washington County, Utah) the Declarant shall reasonably determine; provided, however, that in the event of a taking in which any Lot is eliminated, the Association shall disburse the portion of the proceeds of the condemnation award allocable to the interest of the Owner of such Lot to such Owner and any first Mortgagee of such Lot, as their interests shall appear, after deducting the proportionate share of said Lot for the cost of debris removal.

X. RIGHTS OF FIRST MORTGAGEES

Notwithstanding any other provisions of this Declaration, the following provisions concerning the rights of first Mortgagees shall be in effect:

1. Preservation of Regulatory Structure and Insurance. Unless the holders of 100% of all first Mortgagees and 75% each of Classes A and C of the Lot Owners shall have given their prior written approval, the Association shall not be entitled:

(a) by act or omission to change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the Architectural design of the exterior appearance of Living Units, the exterior maintenance of Living Units under those certain conditions provided in Section 2 of Article VI, or the upkeep of the Common Areas of the Property;

(b) to fail to maintain fire and extended coverage on insurable portions of the Common Areas on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs); or

(c) to use hazard insurance proceeds for losses to the Common Areas for other than the repair, replacement or reconstruction of improvements on the Common Areas.

2. Preservation of Common Areas; Change in Method of Assessment. Unless the Association shall receive the prior written approval of (1) at least 100% of all first Mortgagees (based on one vote for each Mortgagee) of the Lots and (2) the Owners of at least seventy-five

percent (75%) of the Lots in each of Classes A and C (not including Lots owned by Declarant) the Association shall not be entitled:

(a) by act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas, except to grant easements for utilities and similar or related purposes, as herein elsewhere reserved; or

(b) to change the ratio or method of determining the obligations, assessments, due or other charges which may be levied against a Lot or the Owner thereof.

3. Notice of Matters Affecting Security. The Association shall give written notice to any first Mortgagee of a Lot requesting such notice wherever:

(a) there is any default by the Owner of the Lot subject to the first Mortgage in performance of any obligation under this Declaration or the Articles or Bylaws of the Association which is not cured within thirty (30) days after default occurs; or

(b) there occurs any substantial damage to or destruction of any Living Unit or any part of the Common Areas involving an amount in excess of, or reasonably estimated to be in excess of \$15,000.00. Said notice shall be given within ten (10) days after the Association learns of such damage or destruction; or

(c) there is any condemnation proceedings or proposed acquisitions of a Living Unit or of any portion of the Common Areas within ten (10) days after the Association learns of the same; or

(d) any of the following matters come up for consideration or effectuation by the Association:

(i) abandonment or termination of the Planned Unit Development established by this Declaration;

(ii) material amendment of the Declaration or the Articles or Bylaws of the Association; or

(iii) any decision to terminate professional management of the Common Areas and assume self-management by the Owners.

4. Notice of Meetings. The Association shall give to any first Mortgagee of a Lot requesting the same, notice of all meetings of the Association; and such first Mortgagee shall have the right to designate in writing a representative to attend all such meetings.

5. Right to Examine Association Records. The Declarant, each individual member and any first Mortgagee shall have the right to examine the books, records and audit financial statements of the Association, and to obtain copies of any documents they wish. The Association may charge a fee of from 10¢ to 25¢ for the copies. Requests for copies shall be fully responded to by the Association no later than two weeks after the request is made.

6. Right to Pay Taxes and Charges. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas; and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Declarant, for the Association as owner of the Common Areas, hereby covenants and the Association by acceptance of the conveyance of the Common Areas, whether or not it shall be so expressed in such conveyance, is deemed to covenant and agree to make such reimbursement.

7. Exemption from any First Right of Refusal. Any first Mortgagee and any purchaser therefrom who obtains title to the Lot pursuant to the remedies provided in the first Mortgage, or by foreclosure of the first Mortgage, or by deed or assignment in lieu of foreclosure, or by sale pursuant to any power of sale or otherwise, shall be exempt from any "right of first refusal" which would otherwise affect the Lot.

8. Rights Upon Foreclosure of Mortgage. Each holder of a first Mortgage (or deed of trust) on a Lot and any purchaser from it who comes into possession of the Lot by virtue of foreclosures of the Mortgage, or by deed or assignment in lieu of foreclosure, or pursuant to power of sale or otherwise will take the Lot free of and shall not be liable for, any claims for unpaid assessment and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot.

9. Restrictions Without Approval of Mortgagees. Except as to the Association's right to grant easements for utilities and similar or related purposes, the Development's Common Areas may not be alienated, released, transferred, hypothecated or otherwise encumbered without the approval of all holders of first Mortgage liens on the Lots.

10. Mortgagees Rights Concerning Amendments. Except as concerns the right of Declarant to amend the Declaration and related documents as contained in Article XII of the Declaration, no material amendment to the Declaration, Bylaws or the Articles of Incorporation of the Association shall be accomplished or effective unless at least 100% of the Mortgagees (based on one vote for each Mortgagee) of the individual Lots have given their prior written approval to such amendment.

11. Exception for Declarant. None of the provisions in this article shall in any way restrict the Declarant from pursuing any act which he has the power to do under this Declaration.

XI. ANNEXATION OF ADDITIONAL LAND

1. Annexation by Declarant. Declarant may expand the Property subject to this Declaration by the annexation of additional land for Common Areas or for subdivision into additional residential, hangar and commercial Lots. The annexation of such land shall become effective upon the recordation in the Office of the County Recorder of Washington County, Utah, of a Supplementary Declaration which (i) describes the land to be annexed or incorporated by reference to the description of the additional land, (ii) declares that the annexed land is to be

held, sold, conveyed, encumbered, leased, occupied and improved as part of the Property subject to the Declaration, (iii) sets forth such additional limitations, restrictions, covenants and conditions as are applicable to the annexed land, and (iv) states when such annexation becomes applicable to the annexed land. When such annexation becomes effective, the annexed land shall become part of the Property. Such annexation may be accomplished in one or more annexations without limitations as to size or location.

2. Limitation on Annexation. Declarant's right to annex said land to the Property shall be subject to the following limitations, conditions and right granted to the Declarant:

(a) ~~Declarant shall not effectuate any annexation of land which would cause the total number of Living Units existing on, or planned for, the Property to exceed 150 total residential Lots, or 106 residential Units in the additional Property after Phase I and II. However, there is no restriction regarding the number of hangar and commercial units allowed.~~

(b) Declarant's right to annex land to the Property shall expire ten (10) years after this Second Restated Supplementary and Amended Declaration is filed for record in the Office of the County Recorder of Washington County, Utah.

(c) Additional Living Units when constructed shall be compatible with existing structures on the Property, provided that such determination shall be made in the discretion of Declarant (with respect to Living Units or Common Area improvements built by Declarant or their assigns), or as approved by the Architectural Control Committee for those units and common areas not built by Declarant.

(d) The configuration of annexed land as to Lot size, Common Areas and the nature, quantity or quality of improvements shall be in discretion of the Declarant or its assigns. No assurances can therefore be given.

(e) Declarant reserves unto itself and its assigns the right to create limited Common Areas and facilities within any portion of the annexed land. No assurances can therefore be made with respect to such items.

3. Supplementary Declaration. The annexation authorized under the foregoing section shall be made by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions or similar instrument, with respect to the additional Property which shall extend the plan of this Declaration to such Property.

Such Supplementary Declaration contemplated above may contain such complimentary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added Property and as are not inconsistent with the plan of the Declaration.

The recordation of such Supplementary Declaration shall constitute and effectuate the annexation of the said real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association and

thereafter all of the Owners of Lots in said real property shall automatically be Members of the Association. Such owners of Lots in additional phases shall be entitled to vote and to exercise all of the privileges and assume all of the responsibilities as other members of the Association.

4. Declarant's Right to Amend. Until the right to enlarge the Development through the addition of tracts or subdivisions terminates, Declarant shall have, and is hereby vested with, the right to unilaterally amend the Declaration as may be reasonably necessary or desirable: (i) to adjust the boundaries of the Units, including adding or deleting Common Areas (by filing an appropriate amended plat) to accommodate design changes or changes in type of Dwellings or adjustments to Unit configuration; (ii) to more accurately express the intent of any provisions of the Declaration in the light of then existing circumstances or information; (iii) to better insure, in light of then existing circumstances or information, workability of the arrangement which is contemplated by the Declaration; or (iv) to facilitate the practical, technical, administrative or functional integration of any additional tract or subdivision into the Development.

5. Expansion of Definitions. In the event the Property is expanded, the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Property as so expanded. E.g., "Property" shall mean the real property described in Article II of this Declaration plus any additional real property added by a Supplementary Declaration or by Supplementary Declarations, and reference to this Declaration shall mean this Declaration as so supplemented.

XII. MISCELLANEOUS

1. Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall have deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner, at the latest address for such person as reflected in the records of the Association at the time of delivery or at an address where it is known that the Owner will be reached. The Association shall annually update its records of Owner addresses, and provide a list of the same to each member. In addition, the Association shall bear the responsibility of diligently updating its records of Owner addresses whenever it receives changes in address from owners, or when it otherwise learns that an Owner has undergone a change of address and the new address is known or readily ascertainable. Notwithstanding any provision in this Declaration to the contrary, lack of any required notice by the Association shall not be excused where the correct address of the owner is readily ascertainable. Any notice required or permitted to be given to the Architectural Control Committee may be given by delivering or mailing the same to the Chairman or any member of such committee.

2. Rules and Regulation. The Association shall have authority to promulgate and enforce such reasonable rules, regulations and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Property is maintained and used in a manner consistent with the interests of the Owners. During the 15 year period following the date on which this Second Restated, Supplementary Amended Declaration is filed for the record in the Office of the County Recorder of Washington County, Utah, or during the time that the Declarant continues to possess Class B voting rights, whichever is longer, the Declarant shall have the right to unconditionally veto any such rules or regulations promulgated

by the Association. Irrespective of any time period, no rules promulgated by the Association shall be inconsistent with these CC&Rs, or any airstrip rules promulgated by the airstrip owner. If any Association rules conflict with any rules of the airstrip owner, the rules of the airstrip owner shall prevail.

3. Amendment. Any amendment to this Declaration other than Declarant's unilateral right to amend which is discussed below shall require: (a) the affirmative written vote of at least two-thirds (2/3) of all Class A and C membership votes which Members are entitled to cast at a meeting duly called for such purpose; (b) so long as the Class B membership exists the written consent of Declarant; and (c) for material amendments, the written approval of 100% of the mortgagees as required by Article X, section 10 of this Declaration. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members, and to mortgagees in the case of material amendments, at least ten (10) days but not more than thirty (30) days prior to the meeting date. The quorum required for any such meeting shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the Class A and C membership shall constitute a quorum. If a quorum is not present at the first meeting, another meeting shall be called (subject to the notice requirement set forth in the foregoing portion of this Section 3), at which a quorum shall be one-half (1/2) of the quorum which was required at the immediately preceding meeting. No further reduction in the number to achieve a quorum shall occur by the calling of subsequent meetings. No subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting. Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by the Association (and by the Declarant if the Class B membership then exists). In such instrument an officer or director of the Association shall certify that the vote required by this Section for amendment has occurred. Notwithstanding anything herein contained to the contrary, until eighty percent (80%) of the Lots in the Development (including proposed lots in additional phases, or in other words, 80% of the contemplated 150 lots in the development) have been sold to purchasers, Declarant shall have, and is hereby vested with the right to unilaterally amend this Declaration as may be reasonably necessary or desirable; (a) to adjust the boundaries of the Units, including adding or deleting Common Areas (by filing an appropriate amended plat) to accommodate design changes or changes in type of Dwellings or adjustments to Unit configuration, (b) to more accurately express the intent of any provision of this Declaration, in light of then existing circumstances, information or Mortgagee requirements, (c) to better insure, in light of then existing circumstances or information, workability of the arrangement which is contemplated by this Declaration or (d) to facilitate the practical, technical, administrative or functional integration of any additional tract or subdivision into the Development.

4. Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the class of membership concerned. The following additional provisions shall govern any application of this Section 4:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.

(b) The total number of votes required for authorization or approval under this Section 4 shall be determined as of the date on which the last consent is signed.

(c) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owners thereof shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of Class A and C votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.

(d) Unless the consent of all Members whose memberships are appurtenant to the same Lot are secured, the consent of none of such Members shall be effective.

5. Reserve Fund. The Association shall establish adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacements of the Common Areas and exterior maintenance and shall cause such reserve to be funded by regular monthly or other periodic assessments against the Lot Owners rather than by special assessments. Special assessments for the purpose of defraying, in whole or in part, the cost of any construction (including new construction), reconstruction, repair or replacement of any capital improvement upon the Common Area, including fixtures and personal property related thereto on any phase of the Project, will be allowed only after the reserve fund has been expended and not replenished.

6. Lease Provisions. Any Owner may lease his Lot or Living Unit, provided, however, that any lease agreement between a Lot Owner and the Lessee must be in writing. Short term vacation rentals are allowed. Any damage to the Common Area and exteriors of the buildings caused by the lessee or guests of the lessee shall be the responsibility of the Owner and said Owner shall be subject to an additional assessment upon the Unit pursuant to Article V of this Declaration. All leases must provide inter alia, that:

(a) The terms of the Lease shall in all respects be subject to the provisions of the Declaration, Articles of Incorporation of the Association and the Bylaws; and

(b) Any failure of the Lessee to comply with the terms of such documents shall constitute a default under the Lease.

7. Purchase of Airstrip. The Association expressly reserves the right to purchase or otherwise accept fee ownership of the airstrip from Grassy Meadows Airport, Inc., its successors or assigns at some future date.

8. Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property may be assigned.

9. Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any

provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

10. Covenants to Run With Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant and all parties who hereafter acquire any interest in a Lot or in the Common Areas. All parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments and determinations contemplated by this Declaration. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

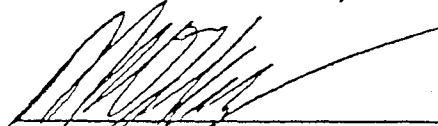
11. Enforcement. The Association, or the Declarant or its successors in interest, or any Owner, shall have the right to sue for damages, or to enforce by any proceeding injunctive or otherwise, at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed or contemplated by the provisions of this Second Restated Supplementary and Amended Declaration. Specifically, the aggrieved party may seek to recover damages and/or injunctive relief. Failure by the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party to any action brought to enforce the terms of this Declaration or any supplements or amendments thereto shall be entitled to costs and reasonable attorney fees.

12. Effective Date and Duration. This Second Restated, Supplementary and Amended Declaration and any amendment hereof shall take effect upon its being filed for record in the Office of the County Recorder of Washington County, Utah and shall continue for a term of thirty (30) years thereafter, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

13. Conflicts. In case of any conflict between this Second Restated Supplementary and Amended Declaration, as the same may be amended from time to time, and the Articles of Incorporation and the Bylaws of the Association, as they may be amended from time to time, the provisions of this Second Restated Supplementary and Amended Declaration shall be controlling.

EXECUTED the day and year first above written.

SKY RANCH DEVELOPMENT, INC.


By: Michael O. Longley, President

STATE OF UTAH)

: ss.

COUNTY OF WASHINGTON)

On the 25th day of October 2002, personally appeared before me MICHAEL O. LONGLEY, who being by me duly sworn did say that he is the President of SKY RANCH DEVELOPMENT, INC., and that he executed the foregoing SECOND RESTATED SUPPLEMENTARY AND AMENDED DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS on behalf of said corporation by authority of a resolution of its board of directors and he did acknowledge to me that the corporation executed the same for the uses and purposes stated therein.



Sarita Whittington
Notary Public

EXHIBIT A

The following properties and the legal descriptions as described on the Subdivision Plats recorded in the Office of the Washington County Recorder, State of Utah:

GRASSY MEADOWS SKY RANCH

GRASSY MEADOWS SKY RANCH PHASE 2

GRASSY MEADOWS SKY RANCH PHASE 3

GRASSY MEADOWS SKY RANCH PHASE 4

GRASSY MEADOWS SKY RANCH PHASE 5A

GRASSY MEADOWS SKY RANCH PHASE 5C and the amended supplemental declaration recorded May 17, 2002, in Book 1466, at Page 227, as Entry No. 765422

EXHIBIT B

Any and all property that may be annexed into the Grassy Meadows Sky Ranch, a
Planned Development, located within Sections 28 and 33, Township 42 South, Range 13
West, Salt Lake Base and Meridian.

Grassy Meadows Sky Ranch

Total Votes

The Sky Ranch Airport votes are tallied as follows according to the Official County Records in Washington County, State of Utah October 24, 2002.

Phase I	17 Class A		4 Class C
Phase II	22 Class A		
Phase III	8 Class A		
Phase IV	14 Class A		
Phase VA	5 Class A	45 Class B	3.5 Class C
Phase VC		143 Class B	3.5 Class C
CU 1-3		15 Class B	
Total	66 Class A	203 Class B	11 Class C

The declarant gets 2.5 votes for every non-taxiway residential lot in Phase VA. The declarant also receives 5 votes for every taxiway access residential lot. The declarant received 5 votes for every commercial hangar unit in Phase VC. The declarant receives 2.5 votes for every 5 units in Phase VC other than those subject by purchase contract. These votes are as Class B votes.