
EXHIBIT K

29.00

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 Date: 22-APR-2003 14:29pm
 Fee: 29.00 Chuck
 LOUISE C JONES, Recorder
 Filed By: LCJ
 For: ANDERSON-OLIVER TITLE INSURANCE
 SAN JUAN COUNTY CORPORATION

CROSS EASEMENT AGREEMENT

THIS CROSS EASEMENT AGREEMENT is entered into by and between KARL K. SPIELMAN and MELINDA G. ELKIN, Trustees of the Spielman and Elkin Revocable Trust dated 6/14/99 ("SPIELMAN-ELKIN"), whose address is 10630 Culpepper Court, N.W., Seattle, Washington 98177, and TIMOTHY O'NIELL and BEVERLY B. O'NIELL ("O'NIELLS"), whose address is 3213 West Wheeler Street, #268, Seattle, Washington 98199.

WHEREAS, SPIELMAN-ELKIN are the owners of the following described real property (the "SPIELMAN-ELKIN TRACT") located in San Juan County, State of Utah, to-wit:

Beginning at a corner which bears with the center 1/4 line South 89 degrees 55' East 391.9 feet, thence North 767.4 feet from the West 1/4 corner of Section 6, Township 27 South, Range 23 East, SLM, and proceeding thence North 552.7 feet to a corner, thence South 89 degrees 57' East 788.1 feet to a corner, thence South 552.7 feet to a corner, thence North 89 degrees 57' West 788.1 feet to the point of beginning and containing 10.00 acres, more or less. (Part Parcel No. 27S23E063000)

and,

WHEREAS, O'NIELLS are the owners of the following described real property (the "O'NIELL TRACT") located in San Juan County, State of Utah, to-wit:

Beginning at a corner on the center 1/4 line, said corner bears South 89 degrees 55' East 391.9 feet from the West 1/4 corner of Section 6, Township 27 South, Range 23 East, SLM, and proceeding thence North 767.4 feet to a corner, thence South 89 degrees 57' East 788.1 feet to a corner, thence South 767.7 feet to a corner, thence North 89 degrees 55' West 788.1 feet to the point of beginning and containing 13.89 acres, more or less. (Part of Parcel No. 27S23E063600)

and,

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("TANGREN"), for the use and benefit of the public an easement and right-of-way pertinent to the following described real property located in San Juan County, State of Utah:

Parcel 1: Township 27 South, Range 23 East, SLBM
Section 6: Lot 2 27523E063001

Parcel 2: SPIELMAN-ELKIN TRACT 27523E063000

Parcel 3: (the "TANGREN TRACT") Beginning at a point which is the Southeast corner of Section 36, Township 26 South, Range 22 East, SLBM, and proceeding thence North 89 degrees 58' West 588.4 feet, thence North 46 degrees 39'13" West 2821.6 feet along the northeasterly boundary of the Lenore Estates subdivision and Velear subdivision, thence North 0 degrees 04'05" East 710.71 feet, thence South 46 degrees 39'13" East 3629.63 feet, thence South 0 degrees 0'16" West 156.26 feet to the point of beginning 27523E367801, 000640000010, 000640000020, 000640000030, 000640000040, 000640000050

for the unobstructed use and passage of all types of aircraft (as hereinafter defined), in the vicinity of and through the airspace to an infinite height above the O'NEILL TRACT, hereafter known as the "Runway Protection Zone". Said easement shall be appurtenant to and for the benefit of Parcels 1-3 listed above (hereinafter known as the "GRANTEES' PROPERTIES"), including any additions thereto wherever located, hereafter made by SPEILMAN-ELKIN, or TANGREN, or their administrators, successors and assigns, guests, and invitees, including any and all persons operating aircraft to or from the properties.

Said easement, together with all things which may be alleged to be incident to, or result from the use of said easement, including, but not limited to noise, vibrations, fumes, deposits of dust or other particulate matter, fuel particles (which are incidental to the normal operation of aircraft), fear, interference with sleep and any and all other effects that may be alleged to be caused by the operation of aircraft over or in the vicinity of the O'NEILL TRACT, or operating at or on said GRANTEES' PROPERTIES is hereby granted. O'NEILL hereby fully waives,

remises, and releases any right or cause of action against SPIELMAN-ELKING or TANGREN, their successors and assigns, due to any such effects that may be caused by aircraft landing at, taking off from, or operating on said GRANTEES' PROPERTIES.

As used herein, the term "aircraft" shall mean any and all types of aircraft, whether now in existence or hereafter manufactured and developed, to include, but not limited to, gliders, balloons, ultralights, parachutes, propeller driven aircraft, civil aircraft, commercial aircraft, and helicopters, for the purpose of transporting persons or property through the air, by whoever owned or operated.

The easement and right-of-way hereby grants to SPIELMAN-ELKING or TANGREN the continuing right to restrict the erection or growth upon the O'NIELL TRACT of any obstruction to air navigation deemed hazardous by the SPIELMAN-ELKINS, such as a building, structure, tree, or other object extending into the airspace of the "No Hazard Zone" of the "Runway Protection Zone" within 150 feet southwest and parallel to the centerline of the runway, and to remove from said air space, or at the sole option of SPIELMAN-ELKING, as an alternative, to mark or light any such obstruction upon, or which in the future may be upon the O'NIELL TRACT, together with the right of ingress to, and egress from, the O'NIELL TRACT for this purpose.

O'NIELLS for themselves, their heirs, administrators, executors, successors, and assigns, does hereby agree that for and during the life of said aviation easement, it will not hereafter permit the erection or growth of, any structure or tree in that part of the "No Hazard Zone" that would create a hazard to aircraft landing and or taking off from the GRANTEES' PROPERTIES

and the O'NIELL's, for themselves, their heirs, administrators, executors, successors, and assigns, further agree they will not permit places of public assembly upon the O'NIELL TRACT, such as, churches, schools, office buildings, restaurants, theaters, or child care facilities.


TO HAVE AND TO HOLD said easement and right of way, and all rights appertaining thereto unto SPIELMAN-ELKIN and TANGREN, their successors, and assigns, until said aircraft operations shall be permanently discontinued upon GRANTEE'S PROPERTIES.


It being understood and agreed that the aforesaid covenants and agreements shall run with the land and shall be binding upon the heirs, administrators, executors, successors and assigns of the O'NIELLS until said aircraft operations shall be permanently discontinued upon GRANTEE'S PROPERTIES.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year first above set forth.


Timothy O'Neill


Beverly B. O'Neill


Karl K. Spielman, Trustee of the
Spielman and Elkin Revocable Trust
dated 6/14/99


Melinda G. Elkin, Trustee of the
Spielman and Elkin Revocable Trust

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dated 6/14/99

STATE OF WA)
 County of King) : ss.

The foregoing Cross Easement Agreement was acknowledged before me this 18 day of April, 2003, by Timothy O'Niell and Beverly B. O'Niell.

Jennine M. West
 Notary Public
 Residing at Seattle

My Commission Expires:

11/7/05

STATE OF WA)
 County of King) : ss.

The foregoing Cross Easement Agreement was acknowledged before me this 18 day of April, 2003, by Karl K. Spielman and Melinda G. Elkin, Trustees of the Spielman and Elkin Revocable Trust dated 6/14/99.

Jennine M. West
 Notary Public
 Residing at Seattle

My Commission Expires:

11/7/05

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EXHIBIT L

Curriculum Vitae of Larry Williams

Larry Williams has over 34 years as an FAA Aviation Safety Inspector conducting FAA Air Carrier Certification, enforcing the Federal Aviation Regulations, auditing Air Carriers, Air Agencies, FAA Approved schools, developing Safety Management Systems, providing expert witness testimony and technical assistance to a wide variety of aviation entities. During his FAA career Larry served as an Instructor for International Civil Aviation Organization (ICAO) teaching the following courses: Aviation Safety Inspector-Operations; Approved Training Organization Certification; and Flight Crew Licensing as part of ICAO's TRAINAIR Program. He taught courses to international students at the Department of Transportation's Transportation Safety Institute and at various worldwide locations including Europe, Indonesia, Central America, Italy, Panama, Mexico, Africa, and Turkey. He served as an auditor with FAA Flight Standards Quality Assurance Staff (AFS-40) conducting ISO-9000 audits of FAA field offices. Larry also served as Team Leader for FAA's Technical Assistance Team to aid the Nigeria Civil Aviation Authority in obtaining FAA's Category One Status for aviation safety oversight. Category One status was granted in 2010 as the first African nation to receive such status in decades. He taught management and technical courses at FAA's Center for Management and Executive Leadership, and the Department of Transportation's Transportation Safety Institute. Larry was appointed as FAA's National Resource Inspector for Westwind and Short 360 Aircraft, serving as a subject matter expert for those aircraft and conducted flight checks worldwide. He has completed more than a thousand flight evaluations, issued hundreds of pilot certificates and has over 40 years' experience investigating aircraft accidents and incidents. He worked in FAA's Air Transportation Oversight Office (ATOS-CMO) where he was responsible for writing and revising Safety Attribute Inspections (SAIs) and Element Performance Inspections (EPIs) and served in FAA's Washington's Headquarters writing regulations and exemptions to regulations. He has investigated hundreds of aircraft accidents, administered over 1,000 flight checks and appeared on numerous television and newspaper interviews concerning his aviation expertise. He was appointed FAA designated pilot examiner upon retirement from FAA in March 2010.

Since his retirement from the FAA he has worked as a consultant in regulatory compliance and safety audits, accident and incident investigation, technical assistance to airlines and Civil Aviation Authorities and other aviation entities as an expert witness in FAA enforcement and civil proceedings. He presently serves as a contract instructor at the FAA Academy teaching various courses to FAA inspectors including Professionalism, Crew Resource Management, Safety and Compliance, Enforcement Procedures and others. He has consulted with domestic and foreign air carriers, foreign Civil Aviation Authorities, and other aviation organizations in Mexico, Azerbaijan, U.A.E., Ukraine, Bahrain, Nigeria, Kenya, Ghana, Tanzania and others. Larry is an IOSA auditor (Operations, Cabin, and Dispatch), an IS-BAO auditor (Airplanes and Helicopter), and an ASCF auditor. Larry recently completed courses at the University of Tennessee and was awarded a Paralegal certificate.

He has served on the adjunct faculty in the Aerospace department at Middle Tennessee State University teaching undergraduate courses and is presently serving as an instructor in the University's CRJ-700 Flight Training Device.

He is the author of two books, *The Unruly Skies*, and *Surviving an FAA Ramp Inspection*.

EDUCATION & CREDENTIALS

Specialist in Education, Curriculum & Instruction
 Middle Tennessee State University, Murfreesboro, TN
 Master of Education in Aerospace Education
 Middle Tennessee State University, Murfreesboro, TN
 Bachelor of Science in Psychology
 Middle Tennessee State University, Murfreesboro, TN
 Aviation Safety Certificate Program
 University of Southern California Institute of Safety and Systems Management
 Over 8,000 hours of formal training with the FAA, Airlines, Aviation Schools, and other organizations (complete list available on request)

CERTIFICATIONS/LICENSURE

Certified Fraud Examiner (Association of Certified Fraud Examiners)
 Tennessee Supreme Court Rule 31 listed General/Civil Family Mediator
 IS-BAO auditor
 IOSA auditor
 Air Charter Safety Foundation (ACSF) auditor
 Paralegal

Federal Aviation Administration Certificates

Airline Transport Pilot – Airplane Single & Multi-Engine Land, Rotorcraft: Helicopter & Gyroplane, Lear Jet, Hawker Jet, Cessna Citation, Jet Commander, Sabreliner, Short 360, EMB-100, R-22, AS-360; Commercial Privileges: Airplane Single & Multi-Engine Sea, Glider. Over 12,000 hours flight time, 1200 hours Rotorcraft (including 200 hours gyroplane) and 300 hours seaplane.

Flight Instructor – Airplane Single & Multi-Engine, Rotorcraft - Helicopter & Gyroplane, Instrument-Airplane and Helicopter, Glider
 Ground Instructor – Advanced and Instrument
 Air Traffic Control Specialist Certificate

Professional Organizations and Awards:

International Society of Air Safety Investigators
 System Safety Society
 International Institute of Aeronautics and Astronautics
 FAA National award, "Excellence in Public Awareness," 1993
 FAA Washington Headquarters award, "Commitment to People," 2003
 Tennessee Aeronautics Commission "Outstanding Contribution to Aviation," 2003
 FAA Wright Brothers Master Pilot award, 2014

BEFORE THE SAN JUAN COUNTY (UTAH) ADMINISTRATIVE LAW JUDGE

Karl Spielman, Tim O'Niell,
Beverly O'Niell,
Petitioners,

v.

San Juan County, Utah,
Respondent.

Mike Bynum,
Owner

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Unofficial Transcript of
Relevant Portions of Meeting
of Planning & Zoning
Commission on November 18,
2021

Begin –

(Timestamps based on recording available at www.utah.gov/pmn/files/785127.MP3)

Time	Participant	
9:40		Any other public comment that is not on the agenda? Okay, hearing none, we'll move on to #3, Sky Ranch Estates presentation.
10:00	J. Matkin	Good evening, my name is Justin Matkin. I am an attorney with the law firm of Parr, Brown, Gee & Loveless. I represent the developer Business Resolutions LLC for the Sky Ranch Estates. The purpose of our informational presentation this evening, um, is to provide the County and the Planning Commission, with a presentation and an update on the work and safety protocols the developers put in place with respect to the safe and efficient operation of the Sky Ranch, ah, subdivision. I know this is not necessarily a new thing for you all, back in February of this year, this phase II subdivision application was brought in front of the Planning Commission and it was approved or recommended for approval to the Board of Commissioners and staff in addition concluded as did the Planning Commission who concluded that the, ah, the subdivision application met the Spanish Valley Subordinance. And, subsequently the phase II Subdivision Application went to the Board of Commissioners, and that was approved on February 16, 2021. So, about eight months ago. But the condition for approval was that we come back to the Planning Commission and make a safety presentation, ah,

Time	Participant	
		<p>informational presentation. So that's the purpose of why we're here this evening. Um, as you may recall from this, from your prior work on this subdivision this is, ah, for the Phase II of this project. Phase I was a, ah, was done previously, but then amended in 2018, um, and Scott, could you put up the Phase I plat? That's going to be, it's yes, there it is, right there. So the Phase I plat was amended and approved and recorded in May of 2018. The Phase I plat was essentially a six-lot subdivision that, that identified a 250 foot easement down the center of the property for the operation of a private runway. And so the Phase I plat essentially established in 2018 what the boundaries of the runway and the orientation of the runway would be, and the orientation and the extent of the development on either side of the runway. By way of background, this is a private runway that existed for decades, ah, has been on the FAA charts since 1980s, has been used as a private runway since that period of time, and started out as a dirt strip. In the early 2000s it was paved as a 50-foot runway, and then Phase I obviously was approved or amended and in 2018 with the approval of the County. So this is Phase II. Phase II essentially develops the rest of the property in the same orientation down the rest of the runway. There are two different classes of lots. Um, there's lots that exist on, um, that have access to and frontage along the runway, and those are 45 lots there. And then there's lots that are to the west kind of in a flag section of the property, there that don't have access to, direct access to the runway. So there's two different classes of lots. The smaller lots; these are the smaller lots, these are quarter-acre to a third-acre lots. They don't have specific aviation privileges on the subdivision only the lots that have direct frontage on the runway will have the ability to have their own hanger on their own lot with their residence. Um, the lots that exist have that, that are adjacent on the runway are between 0.55 and 0.6 acres. But a good portion of that is taken up by the easement for the, ah, for the runway itself, which is 125 feet on either side of the center line and then the runway is oriented in the middle of that. But the total extent of the protection zone, for the easement is 250 feet. So, essentially what, what we've, what we've done is, is go to, um, is develop safety procedures. Ah, we've got an expert analysis from an aviation expert who's reviewed the plat. He's reviewed the safety regulations we've come up with, ah, and he has, he's made an analysis and um, concluded that the, that the community can be operated in a safe and efficient manner.</p>

Time	Participant	
		<p>There's been quite a bit of – one of the reasons I'm here, just to be upfront, is after the Board of Commissioners approved the, approved the subdivision application, there was an appeal. So, we're in the process of that appeal, but that appeal is currently stayed while we complete the, complete our report, to this body. So the aviation expert is a fellow named Larry Williams. Larry worked with the FAA for 34 years as a safety inspector. Since he retired about 10 years ago, he has, ah, worked as a consultant in the aviation industry providing regulatory compliance safety audits, technical assistance to airlines and civil aviation authorities. How we came in contact with Larry was he did some, a safety audit for Redtail Aviation which flies, tourist flights and other operations out of the Canyonlands Airport. So, he did a safety audit of Redtail and so we asked him, since he's already kind of familiar with the area, that he do a safety analysis for us. We've provided that report to you all. It's dense, kind of lengthy. It provides – it's a lot of attachments to it, and that, but we believe it's very thorough, well reasoned, and you're welcome to look through that at your leisure. But the conclusions, I'd like to just kind of briefly summarize.</p> <p>The first is the 250-foot wide protection easement for the runway – is that wide enough? And, he concluded that it was, that it's consistent with other flying communities that are across the country. There are some huge flying communities in Texas and Florida with thousands of homes and hundreds and hundreds of planes associated with those. And, he concluded the 250 feet is a sufficiently wide runway to be able to operate safely. He looked at the length of the runway. The runway is 3700 feet long which is 7/10ths of a mile. He concluded that the, that the length of the runway is sufficient to operate the types of airplanes that will come in and out of here, which is essentially propeller aircraft. And on either side of the runway, there are displaced thresholds, which means you can't land at the very edge of the runway. You have to fly into a certain portion farther down for 300 feet before you land, which creates buffers for neighboring properties and so you don't have people landing right on the boundaries.</p> <p>Ah, the other thing that the developer did here was develop some regulations and operating procedures that, that essentially govern how planes are going to come in and out of here, who can use the, who can use the runway. The runway now could be</p>

Time	Participant	
		<p>used by anybody that the private owner gave permission to. So, if somebody, um, called and said we want to fly into Moab, can we land at your runway, we could give them permission to do that. The developer's not done that so far. Um, but this, um, the rules say that only, ah, people who own lots at the subdivision will be able to use, use the runway for their own private use. So, there won't be any public usage of it. Um, and, and there's some concerns and, I guess, some issues raised by some of the neighbors, and he kind of reviewed those concerns and, about how many flights there would be and that type of thing, and found those concerns to be overstated and essentially unfounded.</p> <p>The other thing the developer did was establish CC&Rs, declarations and covenants, and restrictions which, adopted formally the safety regulations and gave the Board the ability to enforce those safety regulations. So if somebody's not operating safely, then the Board can take away their privileges or impose fines or, or those type of things to make sure that it is safely operated.</p> <p>And, and the other thing they've come up with a flight arrival and departure procedures to make sure that everyone kind of does it in an orderly fashion and that there's specific rules and, about how to approach, how to land, how to take off, that type of thing.</p> <p>So, um, so that's kind of the, the, the summary. Um, I'm going to, if you don't mind, I'm going to give, um, there's another gentleman here I'd like to, ah, give a few minutes to. This is John Ramsey. John Ramsey is the president of Redtail Aviation, um, the aforementioned. And, ah, Mr. Ramsey has the distinction of also being a lot owner, ah, in Phase I and has built a residence on Phase I. So, he's particularly interested in the safe operation of this, and he is a pilot and aviation person, so I'm going to let him address you with the specifics of some of the safety, protocols that have been put in place with respect to the subdivision. I'm happy to address any questions, if you have any. But otherwise, I'll turn the time over to Mr. Ramsey.</p> <p>Yes sir?</p>
		<p>Bill Love sent an email about the danger posed to children by, at the ends of the runway. Have you seen it?</p>

Time	Participant	
	J. Matkin	I have not seen any emails like that. So, I think Mr. Ramsey would address any safety issues with that. Um, I'm not sure there are any particular issue about children, ah, on the runway. There shouldn't, shouldn't be any children on the runway, ah, but. . .
		No.
	J. Matkin	. . .but Mr. Ramsey can address that.
21:28	J. Ramsey	Well, thank you. Um, just by way of introduction, I, I have no financial interest in the project. I'm a homeowner so I guess by definition I'm the closest one to the runway at the moment, anyway. So I'm very interested in what the regulations would be, how we conduct the operation safely, ah, was given the opportunity to put a lot of input into that by the developer. So, ah, I'm very satisfied with what's on paper looking at it as a homeowner. I'll go through real quick the things that are important. There's two issues generally in terms of safe operations at an airport. One is the arrival and departure patterns and procedures, and then, um, ah, what type of operations can be done at the airport specifically and what cannot be done. So, we've addressed those, I think pretty well. Um, the, um, Justin mentioned the displaced threshold. What that does it that it basically moves the usable end of the runway down 300 feet from the pavement end so that the airplane will have to land a little further down the runway, and it's mostly appropriate for landing. And, um, it just puts a buffer, on the runway between the threshold, the touchdown point, and the actual end of the runway which is closer to the property line. So that's an important safety feature. Um, it's a VFR daylight operation only, 7 am to 1 hour past sunset. Ah, there's no lights on the runway so it cannot be used at night. Um, and won't be allowed to be used at night. Some specifics about operations, there'd be no touch-and-go landings allowed, which are basically touch down, take off. You touch down you stop. You're landed. You're, ah, there's no low passes allowed. No aerobatic maneuvers or anything like that. It's purely an arrival and departure point for homeowners. It's a private airport runway. Um, property owners may have up to two guests arriving by aircraft with prior approval by the Board or the Board's representative. All pets are required to be on leashes. Ah, no bicycles or motorized vehicles are allowed on the runway. No student flight training will be allowed at the airport. Um, those are very specific dos and don'ts that are in place, and I think very important. Ah, you know, because it's a private airport, the

Time	Participant	
		<p>property owners have a vested interest to make sure that it's a good neighbor and that they preserve their privilege to operate there safely. So it's sort of a self-policing, ah, ah, system in that the value of not having it open to the public is – it's owned by the property owners and they respect the rules and they know the rules and so forth. So, that's a very important piece. I don't know – oh there it is. Yeah.</p> <p>Have you got your little pointer that tested? This is the flight pattern for arrival and departure, and um, the, um, oops. Wrong button. The runway (inaudible 25:17) interesting. Anyway. Ah, the runway is kind of a green there. The, ah, the parallel down – it's called the downwind leg which parallels the runway to the left of the screen there – is called the downwind leg. And, we designed that so it's actually on the west side of the rim. And, so, that is over, ah, basically undeveloped land, and it puts the aircraft on the outside of the rim to minimize any noise that you get from kind of a canyon effect. And so the downwind leg would be flown, on the west side of the rim. That rim tails off, ah, tot eh south, and you'd make your left turn or base leg there. That's all over open land, and ah, pretty much the same way the other way, ah, ah, for the other end of the runway. The, ah, we recommend to the pilots or will recommend that they depart to the south and arrive from the south when winds allow it. That's pretty much undeveloped land to the south so that's the preferable way to arrive and depart without affecting any neighbors. So, ah, if you depart from the south – to the south – then you just, it's, that departure line that kind of goes down is, is to the south. Um, if you're departing to the north, um, you'd make a left turn and then depart actually over 191, highway 191, and um, then climb out and go on your way. So, it's – we gave a lot of thought to it as to what, both what's safe and what, um, will have a minimum impact on neighbors. So, um, I actually went out and flew that pattern today, ah, and, um, on the downwind leg, you're about 7500 feet above sea level which is about, which would be about 2500 feet above the ground at that point. So, that's higher than the typical downwind leg would be, but you're also further out so you have plenty of time to descend and land. So, it's a pretty safe, and it, ah, should really totally minimize any noise impact to neighbors.</p> <p>So, um, a few other little things that we've, we've put in the restrictions, no fuel storage will be allowed on individual lots.</p>

Time	Participant	
		That would be a question I would anticipate might come up, but it will not be allowed. So the intent is to make it as neighbor-friendly as it could be, and ah, I don't know, you would expect that most of the property owners would be airplane owners, but not necessarily. I built my home on the south end of it. I put a hanger on it because it's on a runway, but I'm not going to put an airplane in it so, so far, none of the property owners have an airplane, of which there's only one. But, we'll see. But, I think, obviously, that's one of the interests in the, in the runway is for people who would like to build theirs. They have, and typically, it will be a small single engine sport-type airplane. It's not going to be a jet or a, you know, high performance airplane. The runway's not long enough. So that – it's almost self-limiting for that reason.
		So, I don't know if there's any questions, but that's. . .yes sir.
29:17		Um, you've answered a few, but I do have one. So, and maybe you can't answer it, maybe the attorney needs to. So you said there's 45 lots that are adjacent to the runway, is that correct?
	Ramsey	I guess, I don't know the number.
	Matkin	Yeah.
30:00		Okay, and so, say I buy the, number 55. I don't have a hanger on my lot, but can I fly in and tie on the ramp? Can those other homeowners access – do they have access and permission to use the runway, as well?
30:25	Matkin	So, there is a hanger lot which is going to be identified for if somebody buys a lot and does not want to have their own hanger or they would just rather lease hanger space, there's going to be limited hanger space, so if you, for instance, owned a lot on lot 55. Um, you could then rent space in the hanger and use your plane out of the hanger.
		Sure.
30:50	Matkin	Um, if you have a lot that faces the runway, then you could have a hanger on your lot. What we anticipate happening and what the early interest from the developer has been, my guess and interest has been in people buying more than one lot along the runway. So, so they would probably buy two or three lots and allow one lot to be a home, another lot to be a hanger, and so you have 45 lots along the runway. Some of those lots are probably undevelopable. If you look at the plot, there's actually a drainage or sewer easement that goes through four or five of those lots. So, some of those lots are probably not going to be

Time	Participant	
		stand-alone developable. Others are going to be probably combined. The safety expert, um, anticipated that there would be, well, we did, John did an analysis from looking at the records from Canyonlands. There's about 30 airplanes, private airplanes, at Canyonlands right now, and he went back and looked at the fuel records and saw that of those private airplanes that are currently hangered at or kept at Canyonlands, there was, over a 30-day period, there's an average of two flights a day for those 30 airplanes. So, it's like a boat. Like, if you have a boat, you don't use the boat every day. You use it on the weekends. Or, if you have a Ferrari, you know, you don't drive your Ferrari every day. Like, you know, you drive it once every – I don't have a Ferrari, but I, I anticipate that if I had a Ferrari, I wouldn't drive it every day. Um, but it's kind of one of those things where if you have a plane, you're not going to fly it every day, or many of these homes, I assume, are going to be recreational second homes, and so, they're going to be used at various times of the year. So, I anticipate some of the major concerns that we've heard from the neighbors was, you know, there's going to be 20 or 30 flights a day. It's just, you know, it's just not going to be the case. It self-limits itself with the number of houses that are actually probably going to have planes, active planes, that are going to be flying at any given time the people are going to be there, and the combination of lots and the limited hanger space, I think it's fair to say that we're probably going to have between 20 and 30 active aircraft in there once it's fully built out. And, those 20 to 30 aircraft will probably see similar use to the aircraft at Canyonlands. You're probably going to have between zero and five flights a day on average, which is, which is not the type of aggressive use that, some of the neighbors were concerned about. Does that help?
33:25		Um, yeah. I just was wondering if, if you sold it, didn't have a frontage lot, you still have access to the runway. That was. .
	Matkin	Yeah, through the hangar space.
		Yeah.
33:39	Matkin	Thank you. Thank you for your time.
		All righty.
33:48		It looks like Ann Austin has raised her hand and asks to make a comment.
33:54		Okay. Ah, we'll take public comment and then we'll come back to the Commission, so, um, go ahead and click on.
34:01		I think she has to unmute herself. I can't from here.

Time	Participant	
		Okay. (Quiet mumbling)
		So, I, she, if you want her to go, she just needs to unmute and she can go ahead.
		Okay.
34:28		Ann, can you unmute and make your comment?
		In the meantime. . .
		Could I speak for a second, Trent?
		Please.
34:46	T. O'Niell	My name's Tim O'Niell. My wife and I own the property just south, not directly south, but south of the airport, directly south. The planes come right over our place. Um, and, ah, I'm one of the appellants. We are part of the lawsuit that's trying to see what can happen with this, with this runway. Um, understanding this was informational only, we're not here to argue or make our point or anything, but we did want to correct Section K. Could you scroll to that? It shows an avigation easement that we put in in 2003 when we bought our property, and ah, we gave, ah, the avigation easement to Bud Tangren who was still alive at the time, for his one airplane, occasional use. What they've pulled out and put in your, your document, your file there, is a 2003 and 2017 when this group bought the land from Bud's estate, probably, we refiled that. So, there's a more current version of that where we revoked the right for avigation easement over our property. So, mostly, I just want to set the record straight on that point there. And, we have sent the County a, ah, copy of the current avigation easement. And, that's really all I had to say. We'll fight the battle later on or at another time.
		Okay. Thanks.
36:18		Ann, did you unmute?
36:22	A. Austin	Hi, yes. Thanks. Um, my name's Ann Austin. I live in the flight zone of the Sky Ranch property. And, ah, I just had a couple comments to make about concerns still around this. Generally, I don't have any issues with it other than, ah, the impossibility to enforce any regulations around their self-policing plan. Um, we know that's kind of the theme in our area – whatever ordinances or zoning gets put in place, we don't have any way to really regulate it. There's probably not going to be any kind of flight record. As a neighbor, how do I know the people that are flying in actually live there? How do I know whether or not, um, a resident is renting out a room to a tourist and they're allowing the use of their plane for scenic flights at a, you know, profit?

Time	Participant	
		So, it's in a residential area. I know it's not supposed to be used as commercial, but there's no way to really police that, so in that light, I think some of the concern for me is that, can we not limit the number of flights, especially because, residential travel, you know if you're in a plane versus a car, a plane is more intrusive than a car, coming and going. So I think the times of day, how many days a week, the max number of flights should all be looked at and limited for this, you know, unique residential situation. I feel like if you can afford to live under these conditions, you might be able to also afford to, um, design your travel in a way that's less intrusive to the land owners. Thanks.
		Okay. Any other public comment?
38:37	K. Spielman	Ah, can you guys hear me?
		Yupe.
38:43	K. Spielman	Ah, high. My name's Karl Spielman. And, my property adjoins Sky Ranch along the airport's immediate southern border. So, I'm between the O'Neills and John Ramsey's house. I only have three minutes according to Scott, to say a few things, so, um, I'd like to urge this body to hear my full presentation at the next P&Z cycle on December 16th if that's possible. I have a knowledgeable aviation expert. You guys probably, some of you remember I brought in another one a couple of years ago, with answers and observations on the Sky Ranch issues. He's bringing important perspectives free of charge to you guys, and I think it would be wise to listen. After all, if you think back where we were a few years ago, it is this process that has made Mike Bynum forthcoming with the safety improvements that we're hearing tonight. And, it's also because you expected him to do so. This is a positive move for San Juan County. Spanish Valley residents, too, and Mr. Bynum, whether he knows it or not, is going to get a better facility out of this. So, there's more information of a safety nature to consider, and now I'm officially requesting that my expert and I be placed on the December agenda, if that's possible. Um, I applaud some of Mr. Bynum's improvements, such as displaced thresholds and the 250-foot wide runway object-free area, but there are other things he can easily do, and I have a list of those that we can look at in December. The number one improvement to safety for properties at the end of the runway would be barrier restraints. These are simple fences made out of webbing at the ends of the runway to safely stop an aircraft that is out of control and keep it from shooting out, let's say, onto East Montpelier Drive and hitting

Time	Participant	
		a school bus, for instance. Um, you guys remember that picture, and no little painted white line of a displaced threshold can restrain an out-of-control airport, so – out-of-control airplane – so, um, this could easily happen at Sky Ranch because it's 3700 feet long and that's woefully shorter than the 6300 feet that most conservative FAA guidelines require for airport use in the summers with high density altitude considerations at our elevation. And, I can, Mr. Bynum's expert remarks on these issues in that thing that Justin provided you. But, he neglected to do the calculations. And, we're prepared to do that just as an eyeopener, but you should see it. The FAA theory is to look at all common types of general aviation fleet aircraft that might be in use at a particular airport, like Sky Ranch, and calculate from those performance figures whether an airplane can leave the ground on a hot, thin-air summer day when it's fully loaded. A real-world Cessna 182, the most common aircraft, calculates at between 4200 and 5600 feet. Now, this is not absolute leaving the ground, but it is with FAA safety margins. And, according to John's arrival and departure corridor, if that airplane were taking off to the south on a 98 degree day, um, it wouldn't be able to miss the fence at the end because there's a 2% incline in that runway. So, I'm not saying that you can't land a plane safely at Sky Ranch. I do, on my side of the fence all the time. But, I don't find. . .
		Wrap it up, Karl.
42:43	K. Spielman	. . .okay. So, um, the airport people are going to have to be apprised of the circumstances. Um, you should all care about a few calculations because you're planners yourselves. Whether you think that the airport is grandfathered or not, or if you think that Mike Bynum is obligated or not to follow FAA guidelines, you can't repeal the laws of physics. Because the nature and level is changing at Sky Ranch. You're going to have different owners, they're going to have different levels of expertise.
		Thanks, Karl.
	K. Spielman	You guys. . .
		Thank you. Thank you.
43:00	K. Spielman	. . .are the evaluators of the last resort. You must consider the public safety.
		Thank you. Okay, any other public comment?
		It looks like Monette wants to make. . .
		Two minutes.
	M. Clark	I have a comment. This is Monette Clark.

Time	Participant	
		Okay. Two minutes. Go ahead.
43:49	M. Clark	Hello? Oh, thanks very much. Um, I just would, ah, like to say that I have many concerns that Ann has I live right across the street from her. And, um, about a mile, maybe less from the airstrip. Um, it was my uncle who built the original airstrip and Bud Tangren, and back then when he did it, it was a great idea because nobody lived here, and, ah, but he failed to go ahead and go full speed with it. Now, the ideas just have so many complications, so I'm truly worried about safety because, um, ah, I could have my house crashed into, and so the time of day for flights to avoid that school bus would be, would be a really good idea – to prohibit flights during the times the school bus, in the morning and afternoon. And, then, um, I, too, and concerned about just how many flights really might be happening. The estimated three a day seems a little – no, that seems like, it's just a guess. It's just – I don't think, it could go up, and, um, and so I'm concerned about regulation of the airport. It doesn't seem to be, you know, there needs to be somebody regulating it, watching planes, and so forth. I think because if so many people live here now, it just can't really ignore the public safety. I appreciate everything you're doing with this, and thank you.
45:49		Thanks, Monette. Any other public comment? Okay, commission. In my opinion, really thorough. . .
		Trent, just one second. SITLA's deciding if it has a comment on this or not.
		Anyway. . .
46:19	SITLA	We don't have a comment on this. I mean, it was just informational, um. . .
		I appreciate that. Okay. RV Resort Conditional Use Permit. front and center . . .



PLANNING COMMISSION MEETING

117 South Main Street, Monticello, Utah 84535. Commission Chambers
November 18, 2021 at 6:00 PM

MINUTES

GENERAL BUSINESS

Welcome / Roll Call

Planning Commission Chair Trent Schafer called the meeting to order at a little after 6:00 pm

PRESENT

Chairman Trent Schafer
Commissioner Lloyd Wilson
Commissioner Cole Cloward
Commissioner William Johnston
Commissioner Melvin Nelson
Commissioner Cody Nielson

ABSENT

Commissioner Leah Shrenk

Approval of Minutes

1. Approval of Minutes for October 14 2021 PC Meeting ACTION

Motion to approve the minutes was made by Commissioner Nelson, Seconded by Commissioner Wilson.

Voting Yea: Chairman Schafer, Commissioner Wilson, Commissioner Cloward, Commissioner Johnston, Commissioner Nelson, Commissioner Nielson

2. Approval of Minutes for October 21 2021 PC Work Meeting ACTION

Motion to approve the minutes was made by Commissioner Cloward, Seconded by Commissioner Nielson.

Voting Yea: Chairman Schafer, Commissioner Wilson, Commissioner Cloward, Commissioner Johnston, Commissioner Nelson, Commissioner Nielson

PUBLIC COMMENT - Time reserved for public comment on items or issues not listed on the agenda. Written comments on any agenda item can be email prior to the start of meeting to sburton@sanjuancounty.org

Katherine Lemus: Katherine Lemus expressed frustration about the Spanish Valley Residential ordinance which restricts nightly rentals, and said she wants to be able to use her home as a nightly rental so she can sell it to a nightly rental operator and move. Staff will work through what options she can pursue.

INFORMATIONAL ITEMS

3. Sky Ranch Estates Presentation **INFORMATIONAL**

Time stamp 9:40 (audio)

Justin Matkin with Parr Brown Gee and Loveless made the informational presentation about the safety protocols for Sky Ranch Subdivision Phase 2. Justin Williams and Associates performed the analysis of the Sky Ranch Airport, and Justin presented his report and discussed the findings. Justin also discussed and presented the CC&R's that will govern the property owners in the subdivision.

John Ramsay, a home owner in the subdivision also made comment about the arrival and departure flight patterns and flight restrictions in and out of the airport that are established in the CC&R's.

Time stamp 33:52 (audio)

The following public comment was made on this item:

Tim O'Neil an adjoining property owner provided information that an avigation easement originally granted in 2003, was refiled and revoked in 2017.

Ann Austin a resident of Spanish Valley expressed concerns about the inability to enforce the Sky Ranch regulations, and know who is actually flying in an out. She also asked for a restriction on the number of flights each day.

Karl Spielman, an adjoining property owner requested that he be able to bring his own aviation expert to present to the Planning Commission. Karl also expressed support for the safety improvements that are proposed with the subdivision, and mentioned some additional safety features that he would like to see.

Monette Clark, a resident of Spanish Valley and niece of Bud Tangren, the original owner of the airport, expressed concern about the operations of the airport.

ADMINISTRATIVE ITEMS

4. RV Resort Condition Use Permit Application, Jared Barrett, Blanding Utah

Time stamp 46:31 (audio)

Jared Barrett presented his plan for his RV resort north of Blanding. The Planning Commission discussed the resort plan and determined that the conditions described in his proposal were sufficient and referenced them in the motion to approve the CUP.

Motion to approve the conditional use permit referencing the conditions in the RV resort document was made by Commissioner Nielson, Seconded by Commissioner Wilson.

Voting Yea: Chairman Schafer, Commissioner Wilson, Commissioner Cloward, Commissioner Johnston, Commissioner Nelson, Commissioner Nielson

LEGISLATIVE ITEMS

5. Overnight Accommodations Overlay Application, Tom Balsley

Time stamp 1:09:49 (audio)

Tom Balsley presented his application for the Overnight Accommodations Overlay for his plan for RV spots in the Spanish Valley Highway Commercial District. The Planning Commission discussed the utility requirements that he will need to look into before final approval. Tom will come back with a more detailed plan after his application has been before the Board of County Commissioners.

Motion to recommend the application of the Spanish Valley Overnight Accommodations Overlay to this property to the Board of County Commissioners was made by Commissioner Wilson, Seconded by Commissioner Nielson.

Voting Yea: Chairman Schafer, Commissioner Wilson, Commissioner Cloward, Commissioner Johnston, Commissioner Nelson, Commissioner Nielson

6. Spanish Valley Overnight Accommodations Overlay Application, Jeff Burgess ACTION

Time stamp 1:21:15 (audio)

Dallas Buckner and Jim Burgess presented this application for the Spanish Valley Overnight Accommodations Overlay. The PC discussed water and sewer requirements that will need to be met, and expressed support for the location.

Motion to recommend the application of the Spanish Valley Overnight Accommodations Overlay to this property to the Board of County Commissioners was made by Commissioner Cloward, Seconded by Commissioner Wilson.

Voting Yea: Chairman Schafer, Commissioner Wilson, Commissioner Cloward, Commissioner Johnston, Commissioner Nelson, Commissioner Nielson

7. Request for rezone, Monticello Development Company LLC ACTION

Time stamp 1:25:38 (audio)

Bryant Black joined over the phone and discussed the rezone application. Deputy County Attorney Alex Goble explained that the land area is large enough to not be considered spot zoning.

Motion to recommend the rezone application to the Board of County Commissioners was made by Commissioner Wilson, Seconded by Commissioner Cloward.

Voting Yea: Commissioner Wilson, Commissioner Cloward, Commissioner Johnston, Commissioner Nelson, Commissioner Nielson

Voting Nay: Chairman Schafer

8. SITLA PC Zone Plan Application ACTION

Time stamp 1:29:48 (audio)

Planning and Zoning Administrator Scott Burton read the proposed conditions for the SITLA PC Zone Application. The Planning Commission proposed a few minor changes to the conditions as follows:

Remove condition #12

The new condition #12 will state: The primary goal of the residential development in the Spanish Valley area is for long term permanent primary residents. This should be the primary goal of any residential development; residential uses and development agreements will be reviewed under that primary goal.

The new #13 will state: In accordance with the PC Zone ordinance, County Commission approval of zoning the Plan area as "PC Zone 1" confers on the applicant the right to proceed with the PC Zone development process based on the information presented in the Plan until the earlier of i) approval of a development agreement, or ii) ten years following approval of the PC Zone application.

The new #14 condition will state: The applicant and the county will each work in good faith to prepare and approve the CSP and development agreement and, if applicable, with a new municipality to plan the proposed development.

Motion to recommend the PC Zone Plan Application to the Board of County Commissioners was made by Commissioner Nielson, Seconded by Commissioner Cloward.

Voting Yea: Chairman Schafer, Commissioner Wilson, Commissioner Cloward, Commissioner Johnston, Commissioner Nielson

Voting Nay: Commissioner Nelson

Planning Commissioner Mel Nelson read a statement about the lack of a flood plain study for the area of the PC Zone plan.

Elise Erler with the State Institutional Trust Land Administration (SITLA) stated that they are moving forward in a joint effort with San Juan County to fund a FEMA flood plain study.

BUILDING PERMIT(S) REVIEW**9. Building Permit List**

Time stamp 1:51:38 (audio)

Planning Commissioners reviewed the building permit list.

ADJOURNMENT

Time stamp 1:54:05 (audio)

Motion to adjourn was made by Commissioner Wilson, Seconded by Commissioner Nelson.
Voting Yea: Chairman Schafer, Commissioner Wilson, Commissioner Cloward, Commissioner Johnston, Commissioner Nelson, Commissioner Nielson

ADJOURNMENT

Time stamp 1:55:27 (audio)

Motion to enter the work meeting was made by Commissioner Wilson, Seconded by Commissioner Cloward.

Voting Yea: Chairman Schafer, Commissioner Wilson, Commissioner Cloward, Commissioner Johnston, Commissioner Nelson, Commissioner Nielson

10. Draft Zoning Ordinances DISCUSSION

The Planning Commission discussed the draft zoning ordinances, no action was taken.

ADJOURNMENT

Motion to adjourn was made by Commissioner Nielson, Seconded by Commissioner Johnston.
Voting Yea: Chairman Schafer, Commissioner Wilson, Commissioner Cloward, Commissioner Johnston, Commissioner Nelson, Commissioner Nielson



GRAND COUNTY COMMISSION
Gabriel Woytek (Chair) · Jacques Hadler (Vice Chair)
Evan Clapper · Trish Hedin · Mary McGann
Sarah Stock · Kevin Walker

January 25, 2022

San Juan County Administrative Law Judge
Lyn Loyd Creswell
lynloydcreswell@gmail.com

**Re: Grand County Commission's Comments Concerning Sky Ranch Airport
Administrative Appeal**

Dear Judge Creswell:

The Grand County Commission has been made aware of the administrative appeal filed by Karl Spielman and Tim and Beverly O'Niell concerning San Juan County Board of Commissioner's land use decision for the Sky Ranch Estates Phase II. We have learned that various issues are being reviewed by the Administrative Law Judge in this matter, including safety concerns related to the proposed Sky Ranch airport and the validity of San Juan County's procedural processes regarding County zoning ordinances that led up to the appeal of the Sky Ranch proposal, including the airport.

We commend the Administrative Law Judge for reviewing these issues as we have significant concerns about the risks an airport in Spanish Valley poses to the health, safety and welfare of residents of Grand County. Even if the airport is eventually deemed to meet appropriate safety standards in the immediate vicinity of the airport, we have concerns about the significant negative effects an airport in Spanish Valley will impose on Grand County residents' health, safety, quality of life and enjoyment of their property.

Grand County is directly adjacent to San Juan County. Spanish Valley is a long, narrow valley stretching 10 miles from Blue Hill in the south to the Colorado River in the north. Approximately 9,000 residents of the valley live in Grand County, and approximately 500 of the valley residents live in San Juan County. Impacts from developments in Spanish Valley have significant effects on residents of both counties. In particular noise and light pollution, air pollution, and our groundwater aquifer are valley-wide issues shared equally by residents on both sides of the county line.

Decades ago, Grand County, at great expense, relocated its airport from Spanish Valley to its current location 15 miles north of Moab, away from residential areas. The old Grand County airport was located less than one-half mile to the west of the proposed Sky Ranch airport. Safety of residents, pilots and passengers was a primary reason to relocate the airport out of Spanish Valley. The Valley was being transformed from open farm and ranchland to residential neighborhoods, and the narrow valley with its winds and geographical characteristics created dangerous conditions for an airport. Subsequent to moving its airport out of Spanish Valley, Grand County has banned all aircraft landings and take-offs, with a small number of exceptions (such as medical flights), from the Grand County portion of the valley due to noise, safety and public welfare concerns.

Aircraft using the Sky Ranch airport will undoubtedly fly the length of the valley, over Moab and Grand County residents' homes and businesses, due to the confining natural barriers on either side of the valley.

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www.grandcountyutah.net

The noise from these flights will have significant direct, negative impacts on Grand County residents' quality of life as well as their property values. Even the current, relatively low use levels of the Sky Ranch runway generate large number of complaints from Grand County residents.

In addition, Grand County school buses travel the roads at either end of the proposed airport. (The Grand County School District extends into San Juan County, since Grand schools are much closer to southern Spanish Valley than are San Juan schools.) There is risk of a tragic accident due to the absence of barriers and adequate space at the end of the runway for planes that overrun the runway for various reasons, including unpredictable winds and other weather-related events.

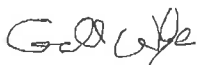
In addition to the health, safety and welfare of Grand County residents, we are concerned that San Juan County has not followed its own zoning ordinances and approval procedures for the proposed Sky Ranch airport – at both the Planning Commission and Board of Commissioners. While Grand County understands that the zoning ordinances and land use approval procedures differ between our two counties, we think it is important that each county follow its zoning ordinances so that residents and neighboring county governments can have a reasonable expectation as to what types of development will be approved.

Local government entities should strive to make decision that comply with their own zoning ordinances. They must make decisions in a reasoned process so that their decisions are based on actual facts. And local governments must have adequate information to clearly assess the costs and benefits of large project proposals – proposals that impact not just neighboring properties, but that impact residents of entire communities.

It is not clear that the decision to approve the Sky Ranch proposal issued by the San Juan County Board of Commissioners met these standards. The Board received various pieces of advice and information from county staff and the assistant county attorney during the deliberation of the Sky Ranch Estates proposal at its February 2021 meeting. The Board voted twice to table the issue pending more information, but eventually voted to approve the proposal, after continued urging by staff and the assistant county attorney, and arguably based on inaccurate information provided to the Board.

We raise the above concerns as this proposed airport will certainly affect the health, safety and welfare of the vast majority of Grand County's 9,000 residents. We appreciate your consideration of these concerns.

Sincerely,



Gabriel Woytek
Chair
Grand County Commission

BEFORE THE SAN JUAN COUNTY (UTAH) ADMINISTRATIVE LAW JUDGE

Karl Spielman, Tim O'Niell,
Beverly O'Niell,
Petitioners,

v.

San Juan County, Utah,
Respondents,

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Administrative Appeal of Board
of Commissions' Decision
Approving Sky Ranch Estates
Subdivision Phase II

Business Resolutions, LLC as
Trustee for Moab Development Trust,
Intervenor

**ORDER TO STAY SAN JUAN COUNTY 16 FEBRUARY 2021
BOARD OF COMMISSIONERS' DECISION TO APPROVE
SKY RANCH ESTATES SUBDIVISION PHASE II**

1. During 2018 the San Juan County Planning Commission considered an application for a residential subdivision near a private airfield (Sky Ranch Airport). After receiving information relating to potential safety concerns, the Planning Commission failed to recommend approval of the subdivision application and the applicant withdrew the application.
2. During October 2020 the applicant submitted a new residential subdivision application with San Juan County. On 11 February 2021, the San Juan County Planning Commission considered the application for a residential subdivision near the Sky Ranch Airport. On 16 February 2021 the Board of Commissioners considered the subdivision application and voted to approve (with a condition) the Sky Ranch Subdivision Estates Subdivision Phase II.
3. On 26 February 2021, petitioners filed an administrative appeal of the Board of Commissioners' action with the San Juan County Administrative Law Judge. That appeal alleged, in part, that the approved subdivision would be unsafe to human life.

4. Shortly after the appeal, the parties set a date that Petitioners' appeal would be heard by the San Juan County Administrative Law Judge pursuant to an ordinance approved by the County Board of Commissioners on 2 September 2020. That ordinance ["An Ordinance Establishing the Administrative Hearing Program within San Juan County"] caused: that San Juan County administrative decisions, if appealed to the County's administrative law judge, would be reviewed; and that the County's final administrative action be rendered after a due process evidentiary review.
5. The County's Administrative Hearing Program ordinance does not include an automatic or mandatory stay of administrative actions by San Juan officials pending review by the Administrative Law Judge.
6. The Administrative Law Judge has determined that land use appeal authorities in Utah may order stays of local government land use actions pending the appeal of such actions – where such stays serve a public purpose.
7. On 18 March 2021, petitioners requested a stay of the Board of Commissioners' approval of the Sky Ranch Subdivision Estates Phase II pending review and decision by the San Juan County Administrative Law Judge. The request was denied as moot when, on 7 June 2021, the San Juan County Administrative Law Judge stayed the appeal, pending further proceedings in the Planning & Zoning Commissions (such proceedings being a condition to the County Board of Commissioners' approval of Sky Ranch Estate Subdivision Phase II).
8. The further proceedings in the Planning & Zoning Commission concluded on 18 November 2021.
9. On 8 December 2021, petitioners renewed their request for a stay of the Board of Commissioners' approval of the Sky Ranch Subdivision Estates Phase II pending review and decision by the San Juan County Administrative Law Judge.

10. The Administrative Law Judge has determined that petitioners have raised important questions relating to public safety associated with the Sky Ranch Subdivision Estates Phase II. These public safety questions support a finding that a stay of the Board of Commissioners' 16 February 2021 serves a public purpose.
11. The San Juan County Administrative Law Judge has determined that the safety concerns alleged by petitioners are significant enough to approve: a stay of the Board of Commissioners' 16 February 2021 Decision, and a stay of the development of the Sky Ranch Subdivision Estates Phase II, pending review and decision by the San Juan County Administrative Law Judge.

ORDERED, by the San Juan County Administrative Law Judge:

- That the Board of Commissioners' 16 February 2021 decision approving Sky Ranch Subdivision Estates Phase II is stayed pending review and a final decision by the San Juan County Administrative Law Judge;
- That San Juan County file this order with the County Recorder;
- That Intervenor refrain from any development, construction, or associated activity relating to the Sky Ranch Subdivision Estates Phase II until this stay order is lifted; and
- San Juan County take action to assure that no development, construction, or associated activity occur relating to the Sky Ranch Subdivision Estates Phase II until this stay order is lifted.


Lyn Loyd Creswell
Administrative Law Judge

4 JANUARY 2022
Date



REPORT ON SAFETY CONSIDERATIONS AT SKY RANCH AIRPORT

February 16, 2022

From: Michael P. Fleming
Partner, Attorney at Law and Aviation Consultant
The Wicks Group

To: Karl Spielman, Tim O'Niell, and Beverly O'Niell (the "Petitioners")
c/o Shaunda L. McNeill, Esq.
Clyde Snow
One Utah Center, 201 South Main Street, Suite 2200
Salt Lake City, UT 84111

Reference: Administrative Appeal of San Juan County Utah Board of Commissioners' Decision
Approving Sky Ranch Estates Subdivision Phase II

This Report is provided at the request of Petitioners and their counsel, Clyde Snow, in connection with the referenced administrative appeal. Petitioners contend that the San Juan County Board of Commissioners (the "Respondent") erred in approving the Sky Ranch Phase II Subdivision ("Sky Ranch") without considering the safety implications of the changes to the operations of the airport at Sky Ranch (the airport carries the name of "Sky Ranch Airport" and FAA location identifier code "UT53"; it will also be referred to in this Report simply as the "Airport").

This Report sets forth the aviation safety considerations that the Respondent failed to consider when approving the plans of the Sky Ranch developers. The primary safety considerations are as follows:

1. High Density Altitude and Mountainous Terrain. The Sky Ranch Airport is located at a high altitude in an area with high summer temperatures. This yields a much higher than average "density altitude" which in aviation is a means of determining the degradation in an aircraft's flight performance, particularly during takeoff. High density altitude environments require relatively longer runways and enhanced safety margins. Mountainous terrain in the Airport's vicinity compounds this problem. Rising terrain around the Sky Ranch Airport means that aircraft have less margin for error and must achieve higher altitudes faster on takeoff, and must drop down from higher-than-average altitudes for landing, impacting both of these critical phases of flight. There is no evidence in the record that either the Respondent or the developers (or their expert) gave any consideration to the real safety impact of high density altitude flight operations at the Airport.
2. Wind Strength and Patterns. Similarly, the Airport is located in a mountainous region with high winds, directionally-variable winds, strong crosswind components, and occasionally mountain wind effects that would not be found at airports in level terrain. Airports in high and complex

wind environments require enhanced safety margins and operating procedures not necessary at most airports. There is no evidence in the record that either the Respondent or the developers (or their expert) gave any consideration to the safety impact of strong winds and challenging wind patterns at the Airport.

3. Non-Standard Traffic Patterns. The developer and its expert have presented traffic patterns for the use of the Sky Ranch Airport that are far from the FAA standard. Standard traffic patterns enhance safety; deviations from them, while sometimes necessary, tend to reduce the safety of flight operations at and around the airport in question. The proposed traffic patterns, apparently designed for noise abatement over nearby residences, place aircraft much farther from the runway than usual, much higher above ground level, and close to a nearby mountain ridge. These factors negatively impact the overall safety of flight operations. The record shows no consideration by the Respondent or the developers (or their expert) of the safety impact of non-standard traffic patterns at the Airport, despite the developer issuing a traffic pattern diagram that with non-standard orientation and mislabeled runways.
4. Inadequate Separation from Roadways. Inadequate separation exists between the proposed end of the runway and the public roadway running adjacent to the departure end. This situation poses an undue risk of a collision between aircraft taking off and ground vehicles transiting the road, and the developer has provided no information about steps to be taken to minimize and mitigate such risk.

Each of these safety considerations will be addressed in the following sections of this Report. This Report will also explain that the Federal Aviation Administration ("FAA") lacks jurisdiction over the development and design of private airports such as Sky Ranch. Accordingly, the Respondent Commissioners are the sole, last and final governmental entity charged with assessing the safety of the proposed development as relates to the Airport. The record exhibits no serious attempt on the part of the Commissioners to carry out this obligation in the interest of safety.

1. Safety Consideration 1: Density Altitude and Mountainous Terrain.

The FAA explains the importance of considering density altitude in its publication the Aeronautical Information Manual (the "AIM").¹ This is how the FAA explains density altitude and its impact on aircraft performance:

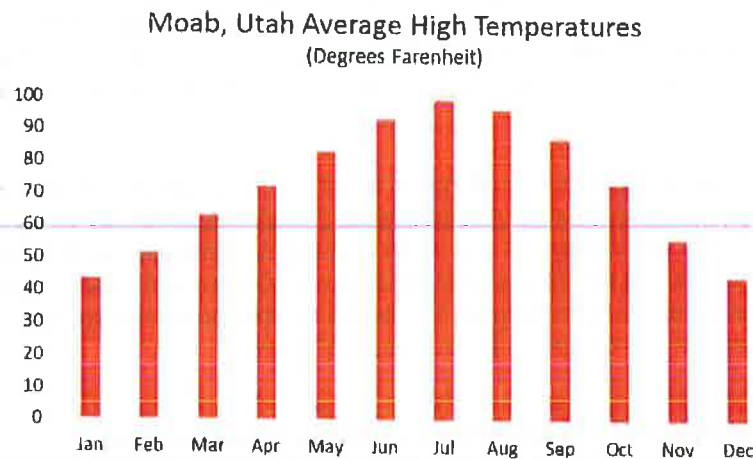
Performance figures in the aircraft owner's handbook for length of takeoff run, horsepower, rate of climb, etc., are generally based on standard atmosphere conditions (59 degrees Fahrenheit (15 degrees Celsius), pressure 29.92 inches of mercury) at sea level. However, inexperienced pilots, as well as experienced pilots, may run into trouble when they encounter an altogether different set of conditions. This is particularly true in **hot weather and at higher elevations**. Aircraft operations at altitudes above sea level and at higher than standard temperatures are **commonplace in mountainous areas**. Such operations quite often result in a **drastic reduction of aircraft performance capabilities** because of the changing air density. Density altitude is a measure of air density.... Air density decreases with altitude. As air density decreases, density altitude increases. The further effects of high temperature and high humidity are cumulative, resulting in an increasing high density altitude condition. **High density altitude reduces all aircraft performance parameters**. To the

¹ The Aeronautical Information Manual (AIM) is the FAA's official guide to basic flight information and Air Traffic Control procedures. It sets forth the basic aeronautical knowledge information required to fly in the United States National Airspace System. It also contains items of interest to pilots concerning factors affecting flight safety. It is available from the FAA's website at https://www.faa.gov/air_traffic/publications/atpubs/aim/html/.

pilot, this means that the normal horsepower output is reduced, propeller efficiency is reduced, and a higher true airspeed is required to sustain the aircraft throughout its operating parameters. **It means an increase in runway length requirements for takeoff and landings, and decreased rate of climb.** An average small airplane, for example, requiring 1,000 feet for takeoff at sea level under standard atmospheric conditions will require a takeoff run of approximately 2,000 feet at an operational altitude of 5,000 feet.²

The FAA's Master Record for Sky Ranch Airport³ lists its elevation as 4,899 feet above sea level (estimated). Larger airports with control towers provide density altitude advisories if the airport is situated at higher than 2,000 feet above sea level,⁴ and so nearly 4,900 feet is indeed a high-elevation airport for which density altitude should be considered to be a critical factor.

In addition to the high altitude of the Airport, density altitude is also affected by seasonally high temperatures at Moab, Utah. The following chart sets forth the average high temperature at Moab by month:



Source: <https://www.usclimatedata.com/climate/moab/utah/united-states/usut0165>

For at least five months of the year, average daily highs at Sky Ranch Airport are over 80 degrees Fahrenheit, reaching nearly 100 degrees in July on *average*. These are of course quite high averages, and so peak days will be much hotter. These conditions all yield high density altitude concerns and negatively impact aircraft performance, especially considering the Airport's high altitude.

Density altitude is such a critical factor in flight performance that the FAA's Safety Team has issued a special publication addressing it, FAA-P-8740-2 entitled simply "Density Altitude."⁵ The FAA states in the introduction to this document that density altitude "has a significant (and inescapable) influence on aircraft and engine performance, so every pilot needs to thoroughly understand its effects. Hot, high, and humid weather conditions can cause a routine takeoff or landing to become an accident in less time than it

² AIM Section 7-6-6(i), Mountain Flying, Density Altitude, accessed on February 9th, 2022 (emphasis added).

³ <https://adip.faa.gov/agis/public/#/airportData/UT53>.

⁴ AIM, Id. at Note 1 to Section 7-6-6.

⁵ [http://www.faa.gov/files/gslac/library/documents/2011/Aug/56396/FAA%20P-8740-02%20DensityAltitude\(hi-res\)%20branded.pdf](http://www.faa.gov/files/gslac/library/documents/2011/Aug/56396/FAA%20P-8740-02%20DensityAltitude%20(hi-res)%20branded.pdf).

takes to tell about it.” The FAA also points out that high density altitude conditions mean the aircraft will require longer takeoff distances, will climb out more slowly, will land at a higher ground speed and will require longer landing distances as a result.

Similarly, in an article entitled “Feel the Heat, Hot, High, and Humid Gives Horrendous Performance” in the Aircraft Owners and Pilots Association (AOPA) Flight Training magazine,⁶ noted general aviation author William E. Dubois also explains that “Hot and high” conditions “can have a significant effect on your aircraft’s performance The [Cessna 172] Skyhawk’s ground roll more than doubles between sea level and a pressure altitude of 8,000 feet.”

Continuing with the Cessna 172 as an example, as it is one of the most popular light general aviation aircraft in North America, the following chart sets forth an example of the impact of density altitude on one pilot’s aircraft.⁷

			Density altitude							
			Sea level @ 59°F 15°C		2500ft @ 50°F 10°C		5000ft @ 41°F 5°C		7500ft @ 32°F 0°C	
Gross weight (lb)	IAS at 50ft	Head wind (mph)	Ground run	To clear 50ft obstacle	Ground run	To clear 50ft obstacle	Ground run	To clear 50ft obstacle	Ground run	To clear 50ft obstacle
1700	60	0	435	780	520	920	625	1095	765	1370
		10	290	570	355	680	430	820	535	1040
		20	175	385	215	470	270	575	345	745
2000	65	0	630	1095	755	1325	905	1625	1120	2155
		10	435	820	530	1005	645	1250	810	1685
		20	275	580	340	720	425	910	595	1255
2300	70	0	865	1525	1040	1910	1255	2480	1565	3855
		10	615	1170	750	1485	920	1955	1160	3110
		20	405	850	505	1100	630	1480	810	2425

This particular aircraft, at sea level and fully loaded with a 10 mile per hour headwind, requires 1,170 feet to clear a 50-foot obstacle with a standard 10% allowance. At 7,500 feet density altitude and the same load, headwind, and safety allowance, that exact same aircraft requires 3,110 feet to safely clear a 50-foot obstacle. The aircraft requires nearly three times the takeoff distance due solely to the “hot and high” conditions at the airport. Utilizing the takeoff distance calculator at this same website shows that on a hot (but not extremely hot) day at 30 degrees Celsius 86 Fahrenheit, that same aircraft would require over 4,700 feet to complete a safe takeoff.

⁶ <https://www.aopa.org/news-and-media/all-news/2018/july/flight-training-magazine/feel-the-heat>.

⁷ <http://winternet.com/~taa/perf.html>.

Take-off distance calculator

Aircraft gross weight (lb): 2300

Airfield elevation (feet): 4899

Pressure (Inch): 29.93 ☒ above sea level
☐ above airfield

Temperature (°C): +35

Dew point (°C): +10

Headwind (knots): 10

Runway surface: Hard paved (tarmac, concrete etc.) ▾

Runway slope (%): 0 ☒ uphill
☐ downhill

☒ Use 1.33 safety factor

Density altitude (feet): 8755

Take-off distance TODR (ft.): 4747

The runway at Sky Ranch Airport is only 3,700 feet in total length.⁸ While certain aircraft on certain days will be able to depart the Airport safely, on many days of the year the runway length will be insufficient for many of the aircraft commonly used in light general aviation in the United States. For comparison, nearby Canyonlands Regional Airport offers a runway that is 7,361 feet in length,⁹ more than twice that of Sky Ranch Airport.

Moreover, the operating procedures for the Airport, set forth as Exhibit J to the developer's expert's report, note that there is a significant slope to the runway:

- 6) The runway slopes up to the south with a gradient that yields a 75' elevation difference between the end of Runway 30 and Runway 12.

If the runway slopes upwards to the south, that would mean aircraft taking off on runway 12, that is, taking off to the southeast, would require additional runway length in order to take off safely due to the upward slope in the runway.

The last safety consideration related to density altitude and terrain is that the preceding runway calculations do not consider whether the aircraft can climb faster than the rising mountainous terrain surrounding Sky Ranch Airport. Sky Ranch sits at a high elevation in Spanish Valley, Utah, and is surrounded by mountainous terrain and ridges. It is only 20 2 miles from the La Sal Mountains, with some peaks rising over 12,000 feet above sea level. The airport sits in a valley, but the valley's terrain is not level. The land slopes upwards around the Airport, leading to high ridges, especially to the east, west, and the valley's end, two miles to the south.

Pilots arriving or departing Sky Ranch Airport must consider the high and steep nearby terrain. Nearby mountain ridges require aircraft to descend faster when making an approach to landing (because they start from a higher altitude above ground level to ensure safe clearance over the higher terrain). Fast descents tend to lead to high ground speeds while landing, again requiring longer runways and ideally longer / broader safety buffer zones. Sloping terrain also means that aircraft taking off from Sky Ranch must not

⁸ This also ignores the additional runway length that would be required due to the uphill runway slope, as noted later in this Report.

⁹ <https://skyvector.com/airport/CNY/Canyonlands-Regional-Airport>.

only depart the runway, but must have the ability to climb at a rate that is faster than the rise in the terrain. Given the potential for high-density-altitude conditions, that can be challenging for many light general aviation aircraft powered by typical reciprocating piston (as opposed to turbocharged or turbine) engines.

The FAA has identified mountain flying as a potential hazard to safe flight operations requiring extra precautions and safety margins. The AIM states that a pilot's first experience of flying over mountainous terrain "could be a *never-to-be-forgotten nightmare* if proper planning is not done and if you are not aware of the potential hazards awaiting.... abrupt changes in wind direction and velocity occur; severe updrafts and downdrafts are common, particularly near or above abrupt changes of terrain such as cliffs or rugged areas; even the clouds look different and can build up with startling rapidity."¹⁰

FAA publication FAA-P-8740-60, "Tips on Mountain Flying," was published in 1999 via the FAA's Aviation Safety Program.¹¹ In it, the FAA states that mountain flying is "very unforgiving of poor training and planning." There is "a narrow window of safety that an untrained pilot can easily stray out of without the experience and knowledge gained from a recognized training program and a mountain checkout by a qualified mountain flight instructor." It addresses density altitude, mountain winds, and emergency procedures, offering 12 pages of tips for pilots to improve safety margins for mountain terrain operations.

Mountain flying often presents challenging wind conditions, addressed in the next section of this Report.

2. Safety Consideration 2: Wind Strength and Patterns.

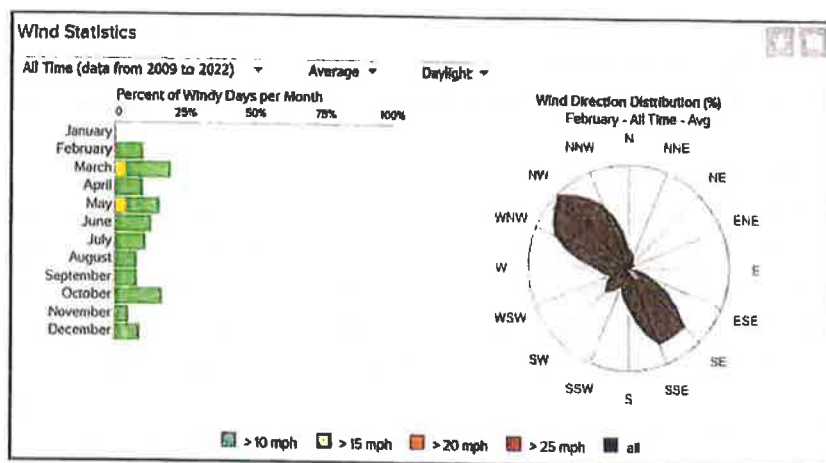
Local pilots report anecdotally that winds in this location are often variable and can contain strong cross-wind components. This differs greatly from many non-mountainous airports where winds are typically blowing from a generally fixed direction. Variable winds, high winds, and mountain wind effects add to the flying challenges at Sky Ranch, and require additional safety margins when present.

Wind data for the Moab and Spanish Valleys, depicted in the below chart,¹² support this anecdotal information, showing a relatively high percentage of windy days per month on average, and show that the wind direction is primarily from the northwest, but also quite often from the opposite, southeast, direction, and sometimes from the southwest (crosswind).

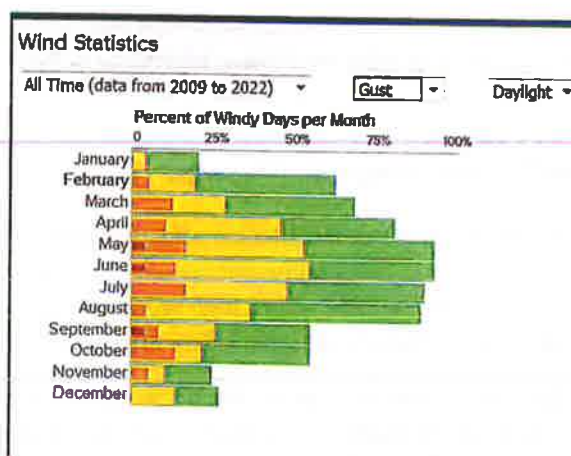
¹⁰ AIM at Section 7-6-6(a) (emphasis in the original).

¹¹ https://www.faa.gov/regulations_policies/handbooks_manuals/aviation/media/tips_on_mountain_flying.pdf

¹² <https://windalert.com/spot/47826>.



The location also experiences frequent and often strong wind gusts, especially during hotter months:



Strong winds, gusting winds and especially strong and/or gusting crosswind components all present challenges to pilots, especially those that are less experienced with them, as many private pilots could be. All suggest the need for additional safety margins and enhanced related buffer zones. Wind considerations impacting flight safety at Sky Ranch are dramatically compounded by mountain wind effects.

Hazardous mountain winds represent such a serious safety concern that the FAA has published a 99-page Advisory Circular, AC 00-57,¹³ addressing the topic. In the introduction to this AC, the FAA states that flights in the vicinity of mountainous terrain:

¹³ Hazardous Mountain Winds and their Visual Indicators, AC 00-57, https://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document/information/documentid/22294.

“...can present pilots with some of the most challenging and potentially dangerous situations encountered in air operations. Aircraft performance degradation because of high density altitudes, navigation problems associated with en route terrain obstructions, and rapidly changing weather patterns can cause difficulties for pilots of smaller aircraft operating at lower altitudes....All pilots who fly near mountainous terrain must deal with the potential for mountain-induced severe wind events, particularly during takeoff and landing. (Emphasis added.)

The FAA is stressing the importance of all of the environmental safety concerns set out in this Report. The AC also addresses a particularly challenging mountain wind effect known as mountain waves. The danger of mountain waves is also discussed by FAA in the AIM. As evidence of this impact locally, nearby Grand County moved its airstrip in the 1970s from a half mile west of Sky Ranch to a location that would be less susceptible to such hazardous wind effects.¹⁴ The Grand County Commission states that the “[s]afety of residents, pilots and passengers was a primary reason to relocate the airport out of Spanish Valley.”¹⁵

These environmental hazards are also set forth as “General Cautions” in the “Desert Sky Ranch Safety Rules and Regulations Regarding Operating Practices” document set forth as Exhibit J to the developer’s expert’s report, as shown in the below excerpt from that Exhibit:

GENERAL CAUTIONS

- 1) High density altitude is common during summer months.
- 2) High terrain to the west and east of the facility.
- 3) Cross winds are not uncommon.
- 4) During winter months runway may be snow covered with patchy ice.
- 5) No fuel storage is permitted on any residential lot.
- 6) The runway slopes up to the south with a gradient that yields a 75' elevation difference between the end of Runway 30 and Runway 12.

This document acknowledges that high density altitudes, high, mountainous terrain, strong crosswinds and elevation differences are all factors at the Airport. However, other than listing them in this document (and it is unclear how the developers will ensure that all arriving pilots will have access to this list), the developers do not appear to have undertaken any other steps to mitigate these hazards for pilots using the Airport.

Taken altogether, these environmental conditions – high density altitude, mountainous terrain, and challenging wind conditions – mean that the airport at Sky Ranch will often present pilots with a much-higher-than-average risk of potential flight hazards. Such elevated risks would logically suggest that the development of the airport should only be conducted giving due attention to infrastructure (such as the runway), safety buffers and margins, and operating practices and procedures that serve to identify and help to mitigate such potential hazards.

While the ultimate responsibility for the safe operation of any individual aircraft and private flight resides with the pilot, it is in the interest of flight safety and reducing the risk to persons and property on the ground to ensure that the airport is also established, designed and developed in a manner that enhances the safety of flight operations by the pilot community which the airport serves.

¹⁴ Petitioner Spielman reports that these mountain waves often cause micro-bursts or “dust devils” at Sky Ranch Airport, due to its proximity to the sheer 1,600-foot ridge less than two miles west, and the 900-foot ridge less than one mile to the east.

¹⁵ See January 25, 2022 submission from the Grand County Commission.

There is no evidence in the record that either the developers or the Respondent gave any serious consideration to the real safety impact of high density altitude flight operations, mountainous terrain, and mountain winds at the Airport. The developer's expert opines that the easement is sufficient, despite admitting that it is much less than the clearance from the runway recommended by the FAA. In doing so, he makes no reference to density altitude, the impact of strong crosswind components, or mountain terrain / wind risks (instead he compares Sky Ranch to other residential airparks that are not in mountainous areas and are mostly near sea level in elevation). He also opines that the runway length is sufficient, with no reference to or discussion of the impact of density altitudes on flight operations, the impact of mountain flying (often producing high landing speeds), or the impact of what the FAA calls one of the most challenging and potentially dangerous flight operations, mountain winds.

All of these critical environmental factors should have been given careful consideration by the developers of Sky Ranch. And by the Respondent when considering whether to approve the plans to change the nature of Sky Ranch Airport from essentially a rarely-used ranch strip served only by seasoned local mountain pilots, to a residential airpark serving dozens of aircraft, likely including transient or even novice pilots with little to no experience flying in such a challenging environment.

3. Safety Consideration 3: Non-Standard Traffic Patterns.

According to the FAA, a "traffic pattern" is the "traffic flow that is prescribed for aircraft landing at, taxiing on, or taking off from an airport." FAA Advisory Circular AC 90-66B¹⁶ recommends traffic patterns for airports without control towers, stating at Section 11.1 that the FAA "encourages airport owners and operators to establish traffic patterns as recommended in this AC." It recommends:

- Use of standard left traffic patterns (left turns) for all aircraft at all airports without operating control towers unless indicated otherwise by visual markings, light gun signals, airport publications, or published approach procedure (Section 9.1)
- That propeller airplanes observe a 1,000 foot above ground level (AGL) traffic pattern altitude, make left-hand traffic where possible (Section 11.4)

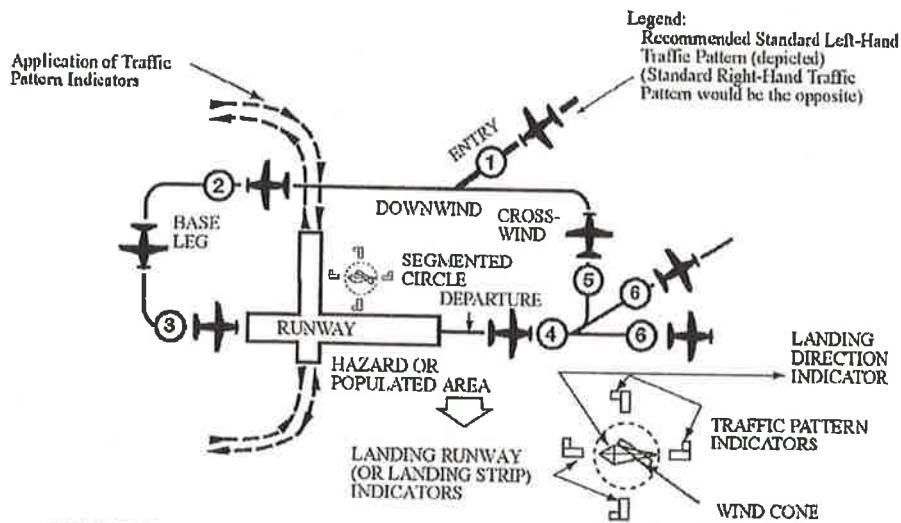
This type of standard traffic pattern is depicted in Appendix 1 to AC 90-66B, replicated from the AIM, which also addresses the importance of standard traffic patterns:

¹⁶

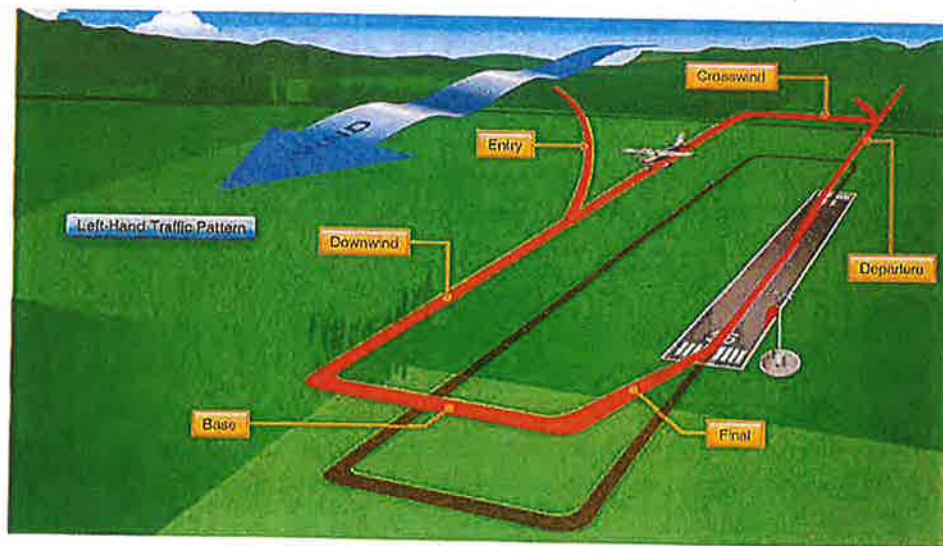
https://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentid/1032988.

APPENDIX A. TRAFFIC PATTERNS

Single Runway (Diagram from the AIM, Paragraph 4-3-3)



FAA has also published a document known as the Airplane Flying Handbook.¹⁷ As the name suggests, this document “provides basic knowledge that is essential for pilots and “introduces basic pilot skills and knowledge that are essential for piloting airplanes.” It provides the following image depicting the standard left-hand traffic pattern:



Pilots typically enter the downwind leg at a 45-degree angle, as shown here, labeled “Entry.” The “Downwind” leg is flown with the wind at the aircraft’s tail, so that the final approach to the runway will be into the wind (pilots always attempt to take off and land into the wind where possible). The FAA notes

¹⁷ Document FAA-H-8083-3C (2021),
https://www.faa.gov/regulations_policies/handbooks_manuals/aviation/airplane_handbook/.

that in such a standard traffic pattern this downwind leg should be flown ¼ to at most ½ mile from the runway.

While there can be deviations at individual airports due to historical practices, wind conditions, and terrain features, this standard traffic pattern approach is intended to enhance safety. It also gives incoming pilots who might be unfamiliar with an individual airport's practices an anticipated common approach. Deviating from it should be rare, well-justified, and properly disseminated and communicated to pilots so as to avoid unnecessary risks, for example of mid-air collisions involving pilots attempting to use the wrong traffic pattern.

The traffic pattern that the developers of Sky Ranch Airport have proposed materially deviates from this ideal standard traffic pattern in several respects, each of which has a negative impact on flight safety.

First, the developers are proposing the use of opposite runway directions for landings and takeoffs. The "Desert Sky Ranch Safety Rules and Regulations Regarding Operating Practices" document set forth as Exhibit J to the developer's expert's report notes in the below excerpt that landing aircraft should use Runway 12 (pointing at roughly 120 degrees compass bearing, meaning to the southeast) and departing aircraft should use Runway 30 (the opposite direction, northwest).

ARRIVALS AND DEPARTURES AT UT53

Standard communications procedures apply for providing position reports. To minimize the noise footprint, it is preferred that arrivals use Runway 12 when winds allow and departures use Runway 30 when winds permit. This places the flight path for arrivals and departures over undeveloped land and avoids any overflight of residential areas. Desert Sky Ranch is designated a private airport on FAA sectional charts and always requires prior permission to land.

Of course, there is in fact only one physical runway (using it in one direction is called Runway 12, and in the opposite direction is called Runway 30), so an aircraft taking off on Runway 30 would be traveling in the opposite direction to one landing on Runway 12, all on the same runway.

To visualize this, imagine the above FAA diagram but with the departing aircraft shown as an arrow in red headed down the runway towards the bottom of the diagram – in a direction facing the aircraft that is landing on the same runway! While it might be possible to avoid collisions with this proposed approach, it is far from typical and deviates from the standard traffic pattern approach recommended by the FAA, in a fashion that raises obvious safety considerations.

Second, the developer is proposing right-hand traffic for runway 30, deviating from the recommendation of using standard left-hand traffic. Right-hand traffic is sometimes used where terrain or historical practice dictates, but ideally the standard left-hand traffic would otherwise prevail. Using both left- and right-hand traffic patterns at the same airport might also add to potential pilot confusion. It is also far from clear how the developer intends to disseminate and communicate this information to pilots using the Airport, some of whom could be transient pilots unfamiliar with the airport.

The developer's Arrival / Departure Diagram for the Airport, set forth as Exhibit H to their expert's report, only adds to the confusion and safety concerns. First, it is not oriented in the customary fashion, with north at the top with regard to the runways, as is standard in aviation. The runway appears to be oriented in a direction from southwest at the bottom to northeast at the top. But it is not in fact oriented this way, as indicated by the compass coordinates for the runways – it is oriented roughly from southeast at the bottom and northwest at the top, runway 12/30.

Second, the runways are mislabeled. If one were to reorient this diagram with north at the top, the runway heading from southeast at the bottom to northwest at the top should be labeled as Runway 30 (Runway 30

means that when taking off the aircraft is headed towards compass direction 300), but is labeled Runway 12, and vice versa for the other runway direction. This means that every aspect of the developers' (and its expert's) narrative and proposed operating rules is in error, flowing from this erroneous diagram. This diagram does not appear to have been prepared by individuals familiar with aviation conventions in airport designs and charts. The developer's expert included this diagram as an exhibit to his report, but did not mention these fundamental errors.

Third, while no scale is shown, the distance of the downwind leg from the runway is much farther than the FAA standard of $\frac{1}{4}$ mile to *at most* $\frac{1}{2}$ mile. Indeed, if one uses the length of the runway, 3,700 feet, as a reference, the distance from the proposed downwind leg to the runway appears to be well over twice the runway length, meaning more than 7,200 feet, or well over 1.3 miles. Indeed, this distance appears to be closer to 10,000 feet, or nearly two miles, which is four times the FAA's recommended *maximum* distance.

Fourth, the proposed downwind leg is aligned with a 1,600-foot (above ground level, or AGL) ridge, meaning that to ensure safe separation from the top of the ridge pilots would have to fly a downwind leg at an altitude much higher than the standard 1,000 feet AGL, such as 2,600 feet above the runway level.

Taken together, these elements amount to a highly non-standard traffic pattern with a potentially significant impact on flight safety at and around the Airport. Indeed, it is hard to envision how any pilot could fly this proposed traffic pattern safely, even setting aside the obvious errors in the exhibit. These safety considerations were neither noted nor addressed by the Respondent when approving the Sky Ranch Phase II Subdivision.

4. Safety Consideration 4: Inadequate Separation from Roadways.

The final safety consideration not addressed by the Respondent is the lack of appropriate separation between the active runway at the Airport and the nearby, indeed essentially adjacent, public roadway. This concern is best illustrated by reference to the following photograph:¹⁸



This alarming photo shows a local school bus transiting extremely close to the end of the runway at Sky Ranch Airport.

While the FAA has not established a precise distance from the end of a runway to a private road, this is due to the fact that the FAA regulates airspace and aircraft operations, not municipal roadways. However, it does provide recommendations to enhance safety, including runways safety buffers derived by applying engineering standards.

FAA's leading publication on this topic is Advisory Circular 150/5300-13A, "Airport Design". While not mandatory at a private airport, the FAA recommends the use of an appropriate Runway Safety Area (RSA) which it says "enhances the safety of aircraft which undershoot, overrun, or veer off the runway."¹⁹ FAA further recommends the use of a Runway Obstacle Free Zone (ROFZ), which is "a defined volume of airspace centered above the runway centerline, above a surface whose elevation at any point is the same as the elevation of the nearest point on the runway centerline" and extends 200 feet beyond each end of the runway."²⁰ Through this ROFZ, a 20:1 slope must be able to be maintained by arriving and departing aircraft. In a high-density altitude takeoff, it is conceivable that the school bus and a departing aircraft could attempt to occupy the same airspace at the same time. It does not appear that the proposed

¹⁸ Photograph courtesy of Petitioner Spielman.

¹⁹ AC 150/5300-13A at Section 307(a).

https://www.faa.gov/airports/resources/advisory_circulars/index.cfm/go/document.information/documentID/1020359.

²⁰ AC 150/5300-13A at Section 308(a).

development and use of Sky Ranch Airport would likely comply with, or even considered, these FAA-recommended (though non-mandatory) airport-design safety standards.²¹

This concern is compounded in light of the many flying challenges at this location noted previously in this Report, and the lack of significant safety margins for pilot error in the Airport's proposed design and layout. The developer's expert does not explain the lack of separation from the roadway in his report, and there is no evidence in the record that this issue was considered by the Respondents in approving the Phase II Subdivision, despite its patent potential impact on the safety of individuals on the ground.

5. The Role of the FAA: Advisory in Nature.

The FAA's primary purpose is to regulate civil aviation safety.²² This extends to all civil aircraft operations, pilot licensing, certification and oversight of approved aviation organizations (such as air carriers, repair stations, and training organizations), and air navigation / use of airspace.

Under Title 14, Code of Federal Regulations (CFR) Part 139,²³ the FAA also oversees and regulates the certification and operation of certain U.S. commercial-service airports,²⁴ meaning larger airports that are served by commercial airlines. This regulation would not cover a small, private airport like Sky Ranch.

The FAA also ties its oversight of airports to Federal funding: airports that receive Federal support (such as grants from the Airport Improvement Program) must enter into certain "grant assurances" that require ongoing compliance with a host of FAA objectives. However, the FAA does not directly regulate other "non-Federally-obligated" airports, and this extends to private airports, which are not regulated by the FAA²⁵ and do not receive Federal funding (and accordingly are not bound by these grant assurances).²⁶

The FAA's role with regard to airports such as Sky Ranch is therefore solely advisory. It has no direct authority to regulate the airport, its design or its development.

The FAA does promulgate airport design standards and recommendations to increase safety,²⁷ but these too are purely advisory recommendations for private airports. The FAA notes that these should be considered by all airports, and in particular new airports, given their importance for ensuring flight safety: "Safety is the highest priority. The airport design standards in this AC are intended to identify the design

²¹ The author of this Report is not an aviation or airport engineer and as such cannot make a determination as to what the required RSA and ROFZ would be at this Airport if the FAA standards were followed. Accordingly this Report only observes that there is no evidence that these safety practices were followed or considered. Moreover, common sense and good piloting would suggest that there is a patent danger in extending a runway so close to an active roadway in a challenging, mountain-flying environment.

²² 49 U.S. Code § 106 - Federal Aviation Administration, at (g)(1).

²³ <https://www.ecfr.gov/current/title-14/part-139>.

²⁴ Specifically, those where an air carrier provides scheduled passenger-carrying operations with aircraft configured for more than 9 passenger seats, or unscheduled passenger-carrying operations operating aircraft configured for at least 31 passenger seats. 14 CFR 139.1(a)(1).

²⁵ The FAA's regulatory jurisdiction does extend to all pilots, airframe and powerplant mechanics, air carriers, aviation training organizations and the like, as well as to the use of airspace at and surrounding a U.S. airport to the extent regulated by the Federal Aviation Regulations.

²⁶ For example, at a congressional hearing in 2010, Catherine M. Lang, the Acting FAA Associate Administrator, Office of Airports, told the House Committee on Transportation and Infrastructure that "Private airparks are financed and maintained by the aviation community that uses them, and they are free to set their own standards for use, access, and safety." September 22, 2010.

²⁷ AC 150/5300-13A at Section 101(a).

elements needed to maintain safety and efficiency according to national policy.”²⁸ Prudent safety practices would therefore suggest that FAA advice and recommendations should at least be considered, but they are not mandatory for, and FAA does not have the authority to impose them on, private airports such as Sky Ranch.

The FAA explicitly encourages local governments to consider safety of airports and “compatible land-use planning” principles when making local zoning decisions and determinations. For example, in Advisory Circular AC 150/5190-4A, the FAA explicitly encouraged local and municipal governmental bodies to adopt its model zoning ordinance to limit the height of objects constructed around airports. FAA also makes available to local and municipal governments a variety of documents and advisory materials relating to compatible land-use planning around airports.²⁹

As just one example of many, the FAA makes available to local governments its “Toolkit” on land use compatibility and airports,³⁰ stating that the purpose is to “assist local units of government and land use planners who have an airport within their jurisdiction” with land-use planning decisions. It further states that because “the FAA has no land use control powers, it is important that local planners are aware of the various, critical safety considerations when siting developments around airports.” In offering these materials and recommendations, the FAA is explicitly acknowledging its limited jurisdiction, and encouraging local governments to consider its advice in airport-related zoning and planning determinations. The record in the Sky Ranch Airport case shows no evidence that the Respondent entered into any meaningful compatible land-use planning assessment or considered FAA guidelines or recommendations when approving the proposed project.

This Report previously established that the FAA does not regulate private airports. There is one narrow exception, relating to the notice requirement in Part 157 of the Federal Aviation Regulations (FARs).³¹ This regulation “applies to persons proposing to construct, alter, activate, or deactivate a civil or joint-use (civil/military) airport or to alter the status or use of such an airport. Requirements for persons to notify the Administrator concerning certain airport activities are prescribed in this part.”³² Notice is to be provided on FAA Form 7480.³³ The FAA makes an advisory-only determination of “no objection,” “conditional,” or “objectionable.” In doing so, the FAA considers:

- “matters such as the effects the proposed action would have on existing or contemplated traffic patterns of neighboring airports;
- the effects the proposed action would have on the existing airspace structure and projected programs of the FAA; and
- the effects that existing or proposed manmade objects (on file with the FAA) and natural objects within the affected area would have on the airport proposal.³⁴

In other words, FAA makes an advisory determination – based upon the information provided to it by the proposing party on Form 7480 – and only considers airspace issues and the impact of manmade and

²⁸ *Id.*, at Section 101(b).

²⁹ https://www.faa.gov/airports/environmental/land_use/

³⁰ https://www.faa.gov/about/office_org/headquarters_offices/apl/noise_emissions/planning_toolkit.

³¹ 14 CFR Part 157, <https://www.ecfr.gov/current/title-14/chapter-I/subchapter-I/part-157>.

³² *Id.*, at Section 157.1.

³³ <https://www.faa.gov/forms/index.cfm/go/document.information/documentid/185334>.

³⁴ 14 CFR Part 157.7.

natural objects. It does not consider the overall safety of the proposal. It does not have the authority to evaluate whether the traffic patterns of the airport in question are safe or advisable, or whether the runway lengths and offsets provide an effective level of safety. It is simply not within the FAA's regulatory jurisdiction to do so. So an FAA determination under Part 157, even if one of "no objection," does *not* mean, or even imply, that the FAA has reviewed the airport's overall safety. It certainly does not constitute an approval of the project by the FAA.

Neither the developers nor their expert have provided to date any FAA Form 7480 submitted to the FAA in support of the various projects to lengthen and move the Sky Ranch runway, or to redevelop the private ranch strip into a residential airpark serving numerous homes and aircraft. As such there has been no opportunity for independent verification of the accuracy and comprehensiveness of what was submitted. Nor have they provided any FAA correspondence or documentation of the FAA's Part 157 determination as to Sky Ranch Airport. Even if they have fully described the expansive plans and challenging mountain-flying environment to the FAA, and the FAA had issued a "no objection" determination, this would *still* not amount to an FAA approval or endorsement given that the FAA's mandate extends only to nearby airport traffic patterns, airspace considerations, and the impact of nearby manmade or natural objects (typically meaning review to ensure that there are no high towers or other obstacles in the area on file with the FAA.)

In short, the FAA lacks regulatory jurisdiction over the development of Sky Ranch Airport. It can only provide advisory recommendations for airport design and construction. The records suggests that such recommendations have not been considered by the Respondent.

6. The Role of Local Government: Primary Obligation.

Given the FAA's lack of regulatory authority, local and municipal governmental bodies have the primary (and perhaps only) obligation to ensure that safety is duly considered when developing a private airport such as Sky Ranch. Recognizing this reality, many state and local governments require licensure of private airports and site approval.

Examples include Virginia, which requires licensure as well as an investigation to determine that the proposal will "provide for the safety of civil aircraft alighting thereon or departing" from the proposed runway or airport,³⁵ as well as Pennsylvania which takes a similar approach.³⁶ In Florida, a "proposed private aviation facility must receive written approval from FDOT [Florida Department of Transportation] prior to site acquisition, construction, or establishment of the facility. A site approval is subject to any reasonable conditions necessary to ensure safety for aircraft and protect public health, safety, and welfare."³⁷

³⁵ Code of Virginia § 5.1-7. Licensing of Airports and Landing Areas, <https://law.lis.virginia.gov/vacode/5.1-7/>.

³⁶ See Pennsylvania Code, Chapter 471, Airport Rating and Licensing, <http://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/067/chapter471/chap471toc.html&d=>.

³⁷ Florida Statutes, Title XXV, Aviation, Regulation of Aircraft, Pilots and Airports, Section 330.27 *et. seq.*, http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0330/Sections/0330.27.html.

Some state and local governments go further. New Jersey's Administrative Code, Chapter 62 (Air Safety and Zoning)³⁸ sets forth requirements for developing Airport Safety Zones at local airports, and requires municipal approval.

Utah's Aeronautics Act provides simply, but powerfully, that the "use of private landing fields must not impose a hazard upon the person or property of others."³⁹ In Utah, the determination of whether such a hazard is imposed is a matter for the respective municipality to determine. San Juan County's planning process presented an ideal forum for the County to exercise such obligation. Absent any power by the FAA to oversee the plans for the Airport, the Commission stood in the position of the best and sole governmental body to assess the safety of the proposed development of the Sky Ranch Airport. The record shows no meaningful attempt by the Commission to conduct a rigorous safety investigation, nor even to afford a meaningful opportunity for those concerned with the safety of the Airport to offer input and be heard (despite multiple requests by the Petitioners to present safety considerations and testimony from their safety expert).

7. Conclusion

Airports of all types, including private airports and residential airparks, serve a crucial purpose in the U.S. general aviation system. Appropriate airport development would normally mean greater opportunities for recreational flying, in which the United States leads the world. But private aviation is not a risk-free activity. While pilots do assume a level of risk in their flying activities, an appropriate governmental role is to ensure that aviation safety is considered, and is not compromised. This is especially true in states, such as Utah, that require local bodies to ensure that they do not pose a hazard.

The Respondent does not appear to have meaningfully undertaken such a review, despite there being no other governmental body to do so. The FAA lacks jurisdiction over private airports such as Sky Ranch Airport. The FAA can only recommend that its design standards and land-use planning practices be considered. It does not appear that they were.

The Sky Ranch Airport is situated in a particularly challenging environment for light aircraft flying. Pilots must contend with very high density altitudes ("hot and high" conditions), rising mountainous terrain, and strong and gusting winds including strong crosswinds. In such an environment, the developers, despite having expressly admitted all of these antecedent conditions, have proposed a runway only 3,700 feet long and with a significant upward slope. This runway will be insufficient for many typical light aircraft to take off safely on many hot days. The developer is also proposing minimal safety buffers such as set-offs for proposed houses, RSAs and ROFZs. It has admitted that its proposed design does not comply with recommended FAA standards. The runway bumps up against a busy local road, further exacerbating the foregoing concerns.

The developer adds further challenge and complexity, as well as likely confusion, to flight operations at the Airport by proposing a non-standard traffic pattern. This non-standard pattern negatively impacts flight safety by using the same runway in two different directions for takeoffs and landings, using a right-hand traffic pattern for only one direction, and a downwind leg that appears to be at least four times the recommended pattern distance and would take the aircraft out over a high ridge, necessitating flying the

³⁸ <https://regulations.justia.com/states/new-jersey/title-16/chapter-62/subchapter-6/>.

³⁹ Utah Code Section 72-10-116(2)(b), https://le.utah.gov/xcode/Title72/Chapter10/72-10-S116.html?v=C72-10-S116_2016051020160510.

pattern at a much higher altitude than the standard 1,000 feet AGL. The developer has also promulgated a traffic pattern chart that shows a non-standard orientation, with mislabeled runways, and which would be highly likely to cause confusion among pilots using the Airport, which the developer's expert apparently failed to notice.

Into this challenging environment with inadequate infrastructure and safety margins as well as a confusing, non-standard traffic pattern, the developer appears prepared to invite non-local pilots, unfamiliar with the complexities of mountain flying and these local hazards. The developer even appears ready to allow short-term vacation rentals, undoubtedly marketed to pilots from all over the country, to fly in to vacation in the scenic Moab area.⁴⁰ Many of these pilots will be new to mountain flying. Few will expect to be placed in such a challenging environment. There is also no information on how the specifics of this Airport, such as its unusual traffic pattern, will be disseminated to these pilots to avoid the risk of midair collisions or flight into terrain, such as the local ridges over which they are asked to fly this traffic pattern.

The Respondent, faced with these complexities, sitting as the sole governmental body with the power to ensure that safety was duly considered, as well as its clear obligation to do so under Utah law, appears to have engaged in no meaningful assessment of the safety implications of the developer's proposed change in use of the property. It does not even appear to have considered any of the preceding safety considerations. Nor does it appear to have afforded members of the local community, including some of the most seasoned and experienced mountain pilots in the area, a venue for identifying these safety concerns so that they could be properly addressed. The record shows that the Respondent failed to adequately review the significant safety implications of the developers' proposed changes to the Sky Ranch Airport.

-oOo-

⁴⁰ While the new zoning regulations as of 2019 would not allow short-term vacation rentals on site, the developer appears to desire to offer short-term vacation rentals or "time shares" and these regulations, and the CC&RS, could easily change.

8. Expert Qualifications and Experience

Michael Fleming is a Partner at The Wicks Group (TWG),⁴¹ a Washington, DC-based, boutique aviation law and consulting firm. Mr. Fleming has more than 30 years' experience as an aviation professional, as both an attorney and a consultant. Mr. Fleming holds a law degree and a Masters of Business Administration, as well as a private pilot's license with instrument rating.

Mr. Fleming advises airports, airlines, governments (foreign civil aviation authorities as well as the FAA), and business aviation clients. He leads TWG's airports practice, with expertise in aviation regulations, Federal grant assurance compliance, and airport privatization / Public-Private-Partnership support. Mr. Fleming has also served as an expert witness on airport regulations in connection with complex litigation matters.

Mr. Fleming's relevant airport-related projects include:

- Advised Westchester County, New York for over a decade on numerous airport regulatory matters and grant assurance compliance in connection with its airport at White Plains, and advised the County's senior executive team on the FAA's Airport Investment Partnership Program, as well as leading the negotiations with the proposed private sector airport operator.
- Served as a consulting and testifying expert on airport regulations and grant assurance compliance in connection with a dispute relating to the Tulsa, Oklahoma airport, leading to a successful resolution of the case.
- Advised the City of Saint Louis, Missouri in connection with the FAA regulatory, legal and operational aspects of obtaining private investment in Lambert Airport.
- On behalf of an on-demand air carrier, provided expert testimony on U.S. airport regulations and grant assurances in an Ohio trial.
- Rewrote and updated the Airplane Flying Handbook on contract to the Federal Aviation Administration.
- Advised AFCO AvPORTS Management on a wide variety of regulatory and commercial matters in connection with their management of a portfolio of U.S. airports.
- Conducted a number of airport-related studies for an international transport research institute, including studies and reports (and frequently presented the findings at industry conferences or moderated discussion panels) on:
 - Generation of aeronautical and non-aeronautical revenues at U.S. airports
 - The impact of airline alliances on international gateway airports
 - Segmentation of multiple-airport markets in the U.S.
 - U.S. airports' airline incentive programs
 - Forms of private investment in U.S. airports, including sectoral legal / regulatory analysis
 - The Essential Air Service Program
 - The level and variety of rates and charges at major US airports and Tokyo.
- Advised Atlantic Aviation, a major FBO chain, on numerous airport grant assurance compliance matters (including revenue diversion and exclusive rights), and presented on airport grant assurance hot topics to the company's executive management team.
- Advised the Civil Aviation Authority of Singapore on the development of its business aviation airport at Seletar.

⁴¹ See www.wicks-group.com.

- Advised the Tweed New Haven Airport management team on aviation law and regulations, including grant assurances, relating to exclusive rights in connection with its FBO segment.
- Advised the civil aviation authority of the Republic of Trinidad and Tobago on the development of a secondary airport to serve the business and general aviation sector.
- Advised Narita International Airport on developing a business and general aviation terminal.
- Participated in numerous air service development projects on behalf of several U.S. airport clients including MWAA, Nashville Airport and Phoenix Sky Harbor.
- Led the analytical support on a large number of airport management and investment opportunities on behalf of Amsterdam Airport Schiphol.
- Developed an innovative peak-pricing structure for the redeveloped Terminal Four at JFK International Air Terminal, including rigorous regulatory review of the pricing strategy for compliance with the revenue-diversion prohibition.
- Conducted a large number of airport traffic and movement forecasts involving airports across the globe, as well as revenue forecasting, pricing studies and similar analyses.
- Negotiated ground handling arrangements for United Airlines in Asia, including Tokyo and Beijing airports.

Mr. Fleming graduated from the University of Michigan, and received a J.D.-MBA from the University of Georgia. He worked for other aviation law and consulting firms prior to joining TWG in 2006. Prior to that, he worked for United Airlines and for AMR/Piaggio.

Justin P. Matkin (8847)
 PARR BROWN GEE & LOVELESS
 101 South 200 East, Suite 700
 Salt Lake City UT 84111
 Telephone: (801) 532-7840
 Facsimile: (801) 532-7750

Attorney for Business Resolutions, LLC as Trustee of the Moab Development Trust and Mike Bynum as Manager

BEFORE THE SAN JUAN COUNTY UTAH ADMINISTRATIVE LAW JUDGE

KARL SPIELMAN; TIM O'NEILL; and
 BEVERLY O'NEILL;

Petitioners,

vs.

SAN JUAN COUNTY, UTAH,

Respondents.

and

BUSINESS RESOLUTIONS, LLC as Trustee
 of the Moab Development Trust and Mike
 Bynum as Manager;

Intervenor.

**JOHN RAMSEY'S MOTION TO
 INTERVENE**

John Ramsey hereby moves for leave to intervene in this administrative land use appeal as a party. Rule 24 of the *Utah Rules of Civil Procedure* permits anyone who files a timely motion and who "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest."

Mr. Ramsey is the owner of Lot 4 in Phase I of the Sky Ranch Estates Subdivision (the "Subdivision"). Mr. Ramsey is also a pilot and private airplane owner and purchased Lot 4 so that he could enjoy the benefits of having a residence with access to a private airstrip. In 2018, Mr. Ramsey was granted a building permit by San Juan County to begin construction of his residence with an airplane hangar. Construction was completed in 2019. Lot 4, like the other lots in Phase I, has direct access to the airstrip and Mr. Ramsey purchased and designed his home with the intent to utilize the existing airstrip. Mr. Ramsey is also the manager of the Sky Ranch airstrip, and thus particularly interested in the operation and rules relating to operation of the Sky Ranch airstrip.

While this appeal relates directly to the approval of Phase II of the Sky Ranch Subdivision, it has recently become apparent that Petitioners seek to restrict the use of the airstrip altogether. Indeed, during the hearing held on March 17, 2022, the Administrative Law Judge ("ALJ") indicated a tentative order that including a finding that Sky Ranch had lost its non-conforming use to operate the airstrip. The supplemental memorandum filed by the County on March 17, 2022 raised the issue of zoning estoppel. Mr. Ramsey has unique reliance on a specific County approval given that he was granted a building permit for a new residence with an airplane hangar with access to the existing airstrip after the improvements to the airstrip were made in 2017.

Based upon the foregoing, Mr. Ramsey respectfully requests that he be allowed to join this appeal as an intervenor. First, this motion to intervene is timely. While the appeal was originally filed some time ago, this matter was stayed until January 4, 2022. Since then certain additional fact finding and development of the record has taken place, but no final decision has been made and the parties have recently provided supplemental briefing to the ALJ. Another hearing has been discussed but not scheduled. Petitioners have requested an evidentiary hearing. Some of the briefing relating to zoning estoppel includes arguments relating to Mr. Ramsey's rights.

Mr. Ramsey also participated in the presentation of information to the Planning Commission on November 18, 2021 and even provided some of the information for the questions posed by the ALJ to Sky Ranch. Thus, adding Mr. Ramsey as a party will not delay the resolution of this matter nor will it be prejudicial to Petitioners.

Second, Mr. Ramsey's property rights may be impaired by the decision issued in this appeal which are not adequately represented by Sky Ranch. Petitioners assert (and the ALJ appears to agree), that Sky Ranch lost any non-conforming use to operate the airstrip when it made modifications to the airstrip in 2017. While Sky Ranch contests these positions, it is now clear that Mr. Ramsey's property rights could be negatively impacted by a decision issued by the ALJ. Mr. Ramsey should be entitled to protect his own rights and advance his own arguments and defenses to the Petitioners' positions. While the majority of the briefing and arguments have been focused on Phase II, Mr. Ramsey's interest is primarily focused on Phase I and his continued individual use of the airstrip that is now threatened. Mr. Ramsey is also in a unique position to raise arguments because of his purchase of Lot 4 in Phase I and the building permit issued to him by the County. Sky Ranch simply cannot advance the same arguments as Mr. Ramsey because the County issued the building permit to him – not Sky Ranch. Consequently, Mr. Ramsey should be allowed to intervene to protect his own individual and unique interests.

CONCLUSION

For the foregoing reasons, Mr. Ramsey respectfully requests that the ALJ grant his motion to intervene as a party to this administrative land use appeal.

DATED this 20th day of April, 2022.

PARR BROWN GEE & LOVELESS, P.C.

By: /s/ Justin P. Matkin

Justin P. Matkin (8847)
 PARR BROWN GEE & LOVELESS
 101 South 200 East, Suite 700
 Salt Lake City UT 84111
 Telephone: (801) 532-7840
 Facsimile: (801) 532-7750

Attorney for Business Resolutions, LLC as Trustee of the Moab Development Trust and Mike Bynum as Manager

BEFORE THE SAN JUAN COUNTY UTAH ADMINISTRATIVE LAW JUDGE

KARL SPIELMAN; TIM O'NEILL; and
 BEVERLY O'NEILL;

Petitioners,

vs.

SAN JUAN COUNTY, UTAH,

Respondents.

and

BUSINESS RESOLUTIONS, LLC as Trustee
 of the Moab Development Trust and MIKE
 BYNUM as Manager; and JOHN RAMSEY

Intervenors.

**ORDER DISMISSING TIM O'NEILL
 AND BEVERLY O'NEILL AS
 PETITIONERS**

Having considered the *Stipulated Motion for Dismissal Tim O'Neil and Beverly O'Neill as Petitioners*, and for good cause appearing, it is hereby ORDERED, ADJUDGED, AND DECREED THAT the Motion is GRANTED. Petitioners Tim and Beverly O'Neill (the "O'Neills") are hereby DISMISSED, with prejudice, as Petitioners in this matter. The O'Neills, the County, and Intervenors are to each bear their own fees and costs. Nothing in this Order shall

be construed to be a dismissal of Petitioner Karl Spielman in this administrative appeal or of the arguments asserted by Mr. Spielman herein.

DATED: 15th day of July, 2022

By: _____



Utah Administrative Law
Judge Lyn Lloyd Creswell

AGREED AND APPROVED:

CLYDE SNOW & SESSIONS

/s/ James W. Anderson

Shaunda L. McNeill

James W. Anderson

*Attorneys for Petitioners Karl Spielman and Tim
and Beverly O'Neill*

4867-6607-3125

My name is Karl Spielman, and my property adjoins Sky Ranch along the airport's immediate southern border.

I have only three minutes to say a few things. I urge this body to hear my full presentation on the next P&Z cycle of December 16th.

I have a knowledgeable aviation expert with answers and observations on the Sky Ranch issue. He is bringing important perspective, free of charge to you and I think it would be wise to listen. After all, it is this process that has made Mike Bynum forthcoming with safety improvements and because you have expected him to do so. This has been positive for San Juan County, Spanish Valley residents, and Mr. Bynum as well. There is more information of a safety nature to consider so I am officially requesting that my expert and I be placed on the December agenda.

I applaud some of Mr. Bynum's improvements, such as Displaced Thresholds and a 250-foot-wide Runway Object Free Area, but there are other things that he can easily do. The number one improvement to safety for the properties at the ends of the runways would be barrier restraints. This consists of a simple fence made of webbing at the ends of the runways to safely stop aircraft that are out of control and keep them from shooting out onto East Mt. Peale Drive, and hitting a school bus, for instance. This could easily happen as the Sky Ranch runway, at 3700 feet long is woefully shorter than the 6300 feet that the most conservative FAA guideline requires for airport use in the summers with the Density Altitude considerations at our elevation. Mr. Bynum's expert remarks on these issues but neglects to do the calculation. The FAA's theory is to look at the types of common General Aviation fleet of aircraft that might use a particular airport like Sky Ranch and calculates from those performance figures whether an airplane can leave the ground on a hot, thin air summer day, when fully loaded. A real-world Cessna 172, the most common aircraft, calculates at between 4200 and 5600 feet. Many of the airplanes in use today are marginal or unable to depart under these conditions. I'll show these calculations in detail on December 16th, if allowed.

No painted white lines can restrain an out-of-control airplane and we can't stretch the runway. Hence the barrier suggestion.

You all should care about these calculations, because you are planners yourselves. Whether you think that the airport is "grandfathered", or not, or you think that Mr. Bynum is not "obligated" to follow FAA guidelines, you cannot repeal the laws of physics. Because the nature and level of use is changing at Sky Ranch, you, as evaluators of last resort, MUST consider the public's safety.

Thank you.

Karl Spielman

185 Planesfield Drive

Moab, UT. 84532

435-260-1383

SUBJECT: Sky Ranch Runway
FROM: Mike Bynum <mike@berez.com>
TO: <walterblrd@sanjuancounty.org>
CC: Sky Ranch Team <mike@berez.com>
DATE: 10/10/2017 15:58

Hi Walter - I wanted to follow-up on our recent conversation regarding proceeding with the runway replacement at Sky Ranch. As you and I discussed, we will be going forward with the new runway in the next few weeks which will realign with the center of the property and be extended approximately 500' to provide threshold and designation markings at each end.

We are also working on some new lot layouts for the property which we will want to discuss with you. One would be based on one acre lots as currently permitted and the other suggests a layout that might be developed depending on the new zoning code. I will call you later to see if we can get some time on your schedule.

We look forward to working with you on this and other properties we have in San Juan County as part of the new Moab South community.

Thanks and happy trails,

Mike

SUBJECT: Fwd: FW: New Form Entry: Contact Form
FROM: "Pehrson, Kelly" <kpehrson@sanjuancounty.org>
TO: Mike Bynum <mike@berez.com>, Walter Blrd <walterblrd@sanjuancounty.org>
DATE: 12/12/2017 07:13

Mike, this is about the 10th letter we have received. We have a lot of eyes watching the airport. Doesn't bother us. Just please make sure everything you are doing is FAA approved and that we know what is going on and has been approved by P&Z if it needs too.

Thanks

TO: "Pehrson, Kelly" <kpehrson@sanjuancounty.org>, Walter Bird <walterbird@sanjuancounty.org>
 DATE: 14/12/2017 15:15

Rhaundale Hinsen, the Principle Operation Inspector at the FAA, has been notified of the temporary use of the Sky Ranch runway for the UPS (not FedEx - sorry) deliveries to Moab - The FAA has no further requirements - Thanks again, Mike

From: Kelly Pehrson <kpehrson@sanjuancounty.org>
 Date: Tue, 12 Dec 2017 14:25:57 -0700
 To: Mike Bynum <mike@bzyez.com>, Walter Bird <walterbird@sanjuancounty.org>
 Subject: Re: New Form Entry: Contact Form

Does the FAA know you will be doing that with FedEx ?

On Dec 12, 2017 2:12 PM, "Mike Bynum" <mike@bzyez.com> wrote:
 Hi Kelly,

The only activity at this time is replacement of the runway which has been vetted with the County - We will be submitting a new plat for the property to the County in the near future with only one acre lots along the runway - We want to keep this as a private facility only with as much consideration of the neighborhood as possible - As I previously mentioned, we intend to allow Fed. Ex. The use for delivery only during the approximately 4 weeks that Canyonlands Field is scheduled to be closed to all air traffic -beginning this coming January - They come in around 9:30am and depart around 4:30pm - Please let me know if I can provide any additional information.

Thank you, Mike

From: Kelly Pehrson <kpehrson@sanjuancounty.org>
 Date: Tue, 12 Dec 2017 07:13:14 -0700
 To: Mike Bynum <mike@bzyez.com>, Walter Bird <walterbird@sanjuancounty.org>
 Subject: Fwd: FW: New Form Entry: Contact Form

Mike, this is about the 10th letter we have received. We have a lot of eyes watching the airport. Doesn't bother us. Just please make sure everything you are doing is FAA approved and that we know what is going on and has been approved by P&Z if it needs too.

Thanks

Kelly

SUBJECT: Re: New Form Entry: Contact Form
FROM: "Bird, Walter" <walterbird@sanjuancounty.org>
TO: Mike Bynum <mike@berez.com>
CC: Kelly Pehrson <kpehrson@sanjuancounty.org>, Greg Adams <gregadams@sanjuancounty.org>
DATE: 13/12/2017 11:32

Mike:

Since the use of the property by Fed Ex for the few months is a commercial airport endeavor - I think it'd be a good idea for your group to file for a Conditional Use permit. You can follow this link <http://sanjuancounty.org/index.php/planning-and-zoning/> and click on the tab for Conditional Use for more info. Thanks.

Walter J. Bird
SJC Planning and Zoning Director
(435) 459-1838

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On Tue, Dec 12, 2017 at 2:11 PM, Mike Bynum <mike@berez.com> wrote:
Hi Kelly,

The only activity at this time is replacement of the runway which has been vetted with the County - We will be submitting a new plat for the property to the County in the near future with only one acre lots along the runway - We want to keep this as a private facility only with as much consideration of the neighborhood as possible - As I previously mentioned, we intend to allow Fed. Ex. The use for delivery only during the approximately 4 weeks that Canyonlands Field is scheduled to be closed to all air traffic - beginning this coming January - They come in around 9:30am and depart around 4:30pm - Please let me know if I can provide any additional information.

about:blank

3/10/22, 9:47 AM

San Juan County Mail - Fwd: Spanish Valley Airport



Laws, Kendall <klaws@sanjuancounty.org>

Fwd: Spanish Valley Airport

6 messages

Burton, Scott <sburton@sanjuancounty.org>
 To: Kendall Laws <klaws@sanjuancounty.org>

Mon, May 3, 2021 at 5:56 PM

----- Forwarded message -----

From: Bird, Walter <walterbird@sanjuancounty.org>

Date: Wed, Apr 11, 2018 at 8:29 AM

Subject: Re: Spanish Valley Airport

To: <John.Sweeney@faa.gov>, Kelly Pehrson <kpehrson@sanjuancounty.org>, Greg Adams <gregadams@sanjuancounty.org>, Scott Burton <sburton@sanjuancounty.org>

John:

My name is Walter Bird and I'm the Planning and Zoning Director for San Juan County. We really appreciate your counsel and advice on the Skyranch airport. I hope you can answer a question that I have. As you may or may not be aware, Mike Bynum is creating a large fly-in subdivision on his property at Skyranch. In his latest proposal, the runway itself will be used for ingress and egress to the housing units, as well as for mail / packages deliveries, and for emergency vehicle use. Is there anything in FAA regs that prohibits or discourages this on a private airport? Or again, is this something that is left up to the county to decide how to regulate? I'd really appreciate your thoughts on this. Thanks.

Walter J. Bird
 SJC Planning and Zoning Director
 (435) 587-3225

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On Mon, Apr 9, 2018 at 12:07 PM, <John.Sweeney@faa.gov> wrote:

Same things apply....local rules and regulations. The only the FAA asks for is to submit a 7480 so we can issue an airspace determination. The determination we issue is only in reference to the airspace, not what is or is not allowed on the ground.

3/10/22, 9:47 AM

San Juan County Mail - Fwd: Spanish Valley Airport

We are currently in the process of reviewing three 7480's and should be issuing determinations shortly. One for Karls airport, one for Sky Ranch and one for the BLM heliport just south of Karls place. All three facilities had never notified the FAA of their existence so we are cleaning that up now. I will copy you on the determination we issue for those facilities.

John

From: Kelly Pehrson [mailto:kpehrson@sanjuancounty.org]
 Sent: Monday, April 09, 2018 11:57 AM
 To: Sweeney, John (FAA) <John.Sweeney@faa.gov>
 Cc: walterbird@sanjuancounty.org; Mel.Leseberg@aviation.com
 Subject: Re: Spanish Valley Airport

John another quick question, Mr Spielman has his own runway just south of this runway. As far as I know this was not approved by the county and I'm just curious if the FAA has a stance on individuals creating their own runways?

Sent from my iPhone

On Apr 9, 2018, at 11:52 AM, <John.Sweeney@faa.gov> <John.Sweeney@faa.gov> wrote:

Kelly,

Sorry I didn't respond to the first email, it was sent to me junk folder for some reason. You are correct that the FAA has no authority to tell the county/city or private land owners what they can and cannot do in reference to private use airports. The FAA would urge you to consider some of the design standards that we apply to public use airports, such as safety areas and Runway Protection Zones. You are not required to, but it might be in the best interest of the users of the airport and the ground. Since we spoke in St George, Karl called again and provided me with a picture.

I never said that the FAA was appalled at the county allowing this to happen. But based on the picture he shared and I have attached to this email, in my opinion there is a safety concern that should be addressed. It is completely up to the county on how or if they want to address this issue. Our office would be happy to provide guidance and offer any assistance if the county would like it.

3/10/22, 0:47 AM

San Juan County Mail - Fwd: Spanish Valley Airport

FYI, I did share this picture with UDOT and also informed them of the conversations we had at UAOA as well as the numerous conversations I have had with Karl.

As you will see in the picture the runway stops approximately 30' from a county road.

Thanks,

John Sweeney
Community Planner
FAA-Denver ADO
303-342-1263

From: Pehrson, Kelly [mailto:kpehrson@sanjuancounty.org]
Sent: Monday, April 09, 2018 11:18 AM
To: Sweeney, John (FAA) <John.Sweeney@faa.gov>
Subject: Fwd: Spanish Valley Airport

????

Kelly Pehrson, MBA
Chief Administrative Officer
Emergency Manager
San Juan County



Real Estate Business
Resolutions
Property Management

November 6, 2019

Trent Schafer
Lloyd Wilson
Walter Bird
Mark Vlassic

Gentlemen-

I have an existing approved airstrip, known as Sky Ranch, on property in San Juan County. We recently received approval for an amended subdivision, and we are nearing completion on the construction of the first home with its own hanger. I reviewed the latest draft code revision from Landmark and attended the Planning Commission meeting on October 30, 2019. I have a concern with the fact that the existing airstrip is not listed as a permitted or conditional use in the proposed Spanish Valley Residential (SVR) District. Could you please clarify why the existing airstrip is not included?

If the County chooses not to include an airstrip as a permitted or conditional use in the future, then we respectfully request that some language be added that existing airstrips are considered permitted conforming uses and that no new airstrips are permitted.

I would appreciate an open discussion on how best to acknowledge the existing airstrip and to ensure its continued use in the future. I look forward to hearing from you.

Sincerely,



Mike Bynum

SAN JUAN COUNTY, UTAH

*This is to certify that***BUILDING
PERMIT****PERMIT # 18015****HAS BEEN ISSUED TO**

PERMITTEE: John Ramsey

AT: 273 Mustang Dr, Moab, UT 84532

ZONE:

FOR: New Residence

DESCRIPTION NOTE:

APPROVED BY:

08/06/2018

DATE

BUILDING OFFICIAL

BUILDING PERMIT INFORMATION

It shall be unlawful to commence work before this placard is placed in a conspicuous place on the premises. Work shall commence within 180 days after issuance and will expire if work is suspended or has been abandoned for a period of 180 days.

It shall be unlawful to occupy this building until a Certificate of Occupancy is issued in accordance with the Building Codes of San Juan County, Utah.

CALL 435-587-3221 TO SCHEDULE ALL INSPECTIONS

NOTE: 24 HOURS NOTICE IS REQUIRED FOR ALL INSPECTIONS.



RAMSEY RESIDENCE
SKY RANCH, SAN JUAN COUNTY, UTAH

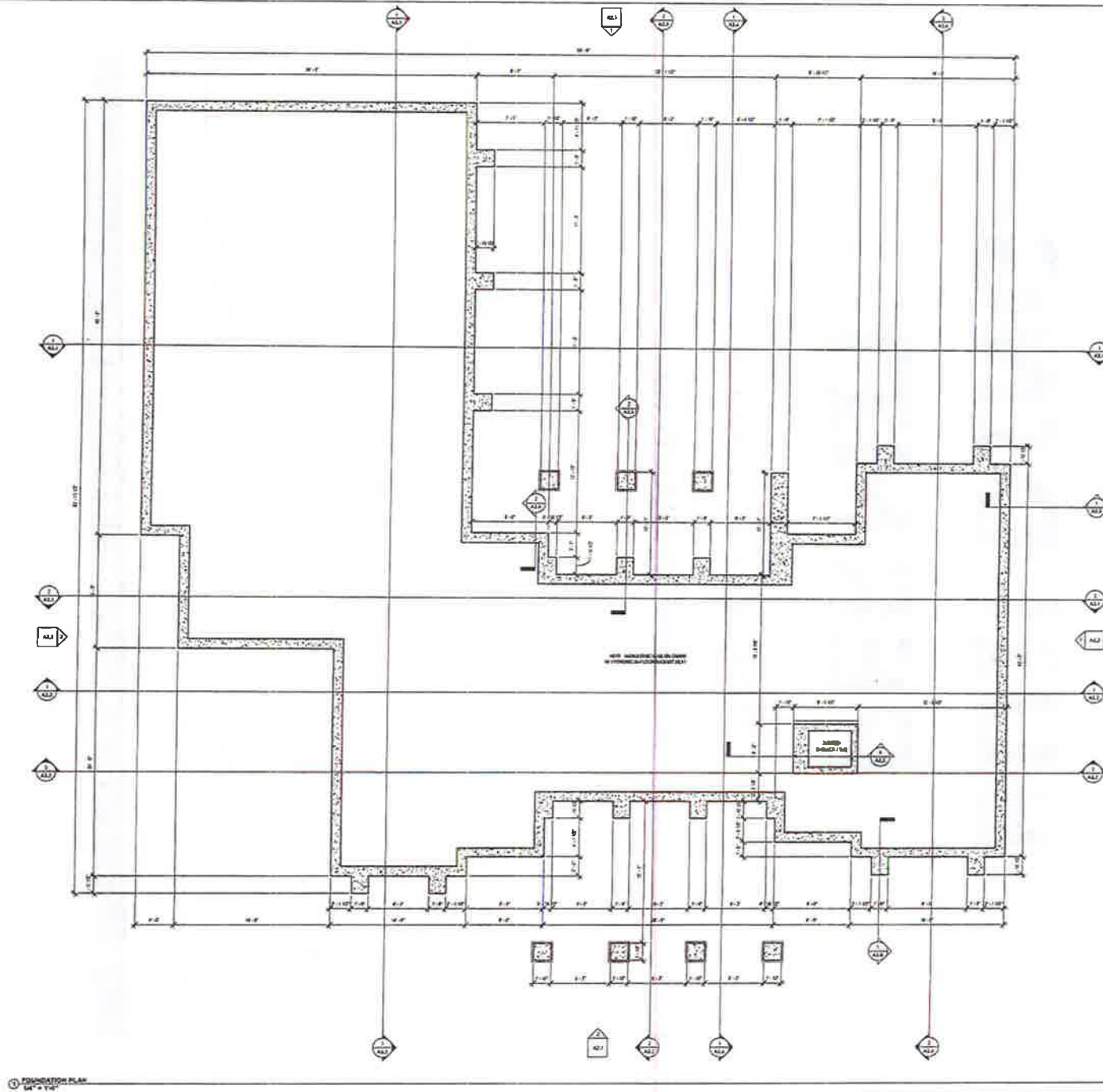
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FOUNDATION
PLAN

A1.2



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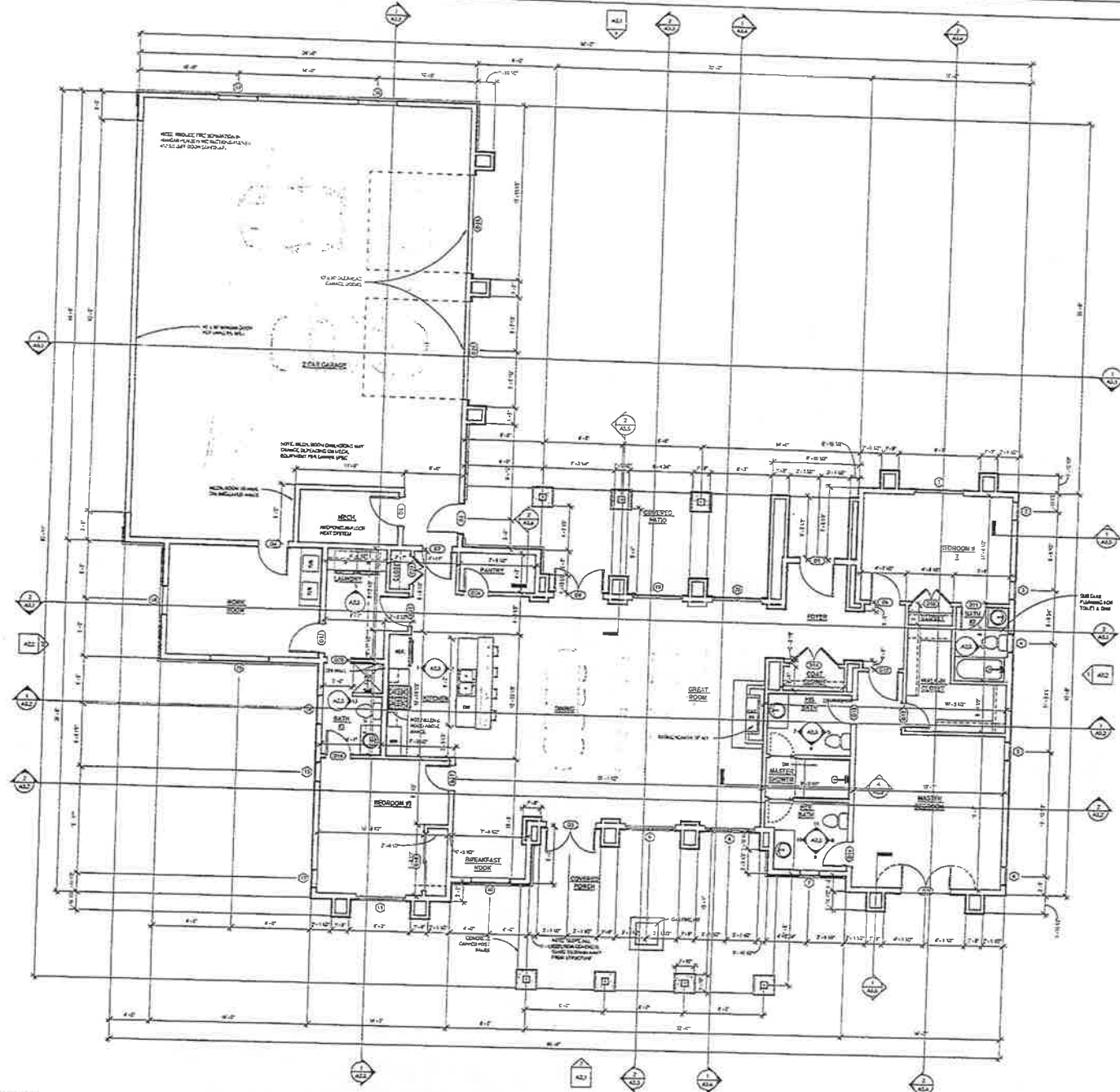




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FLOOR PLAN

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④ FLOOR PLAN
1/4" = 1'-0"





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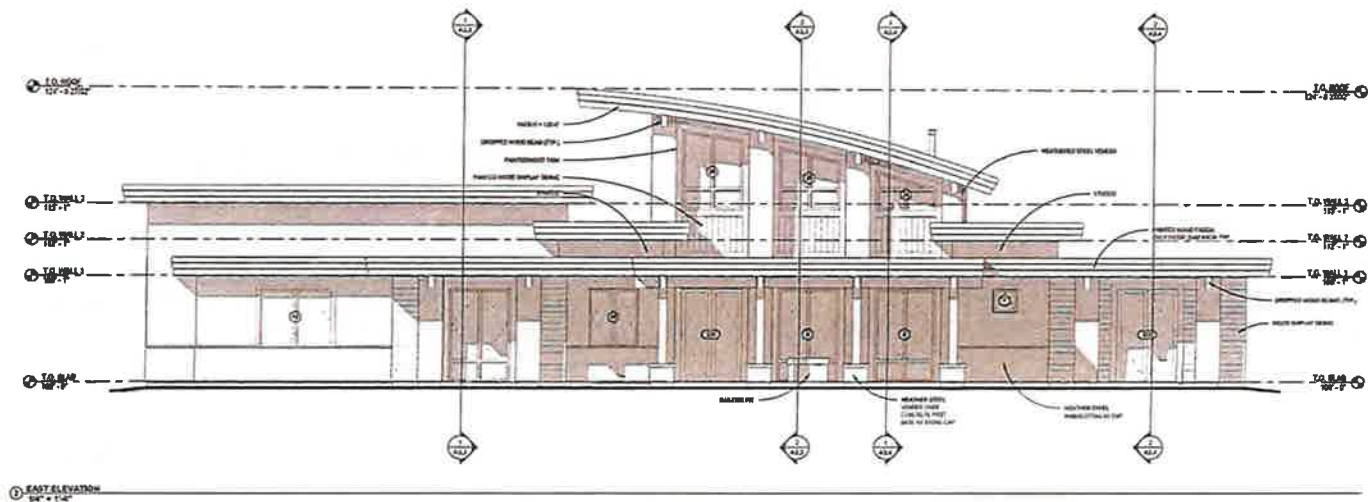
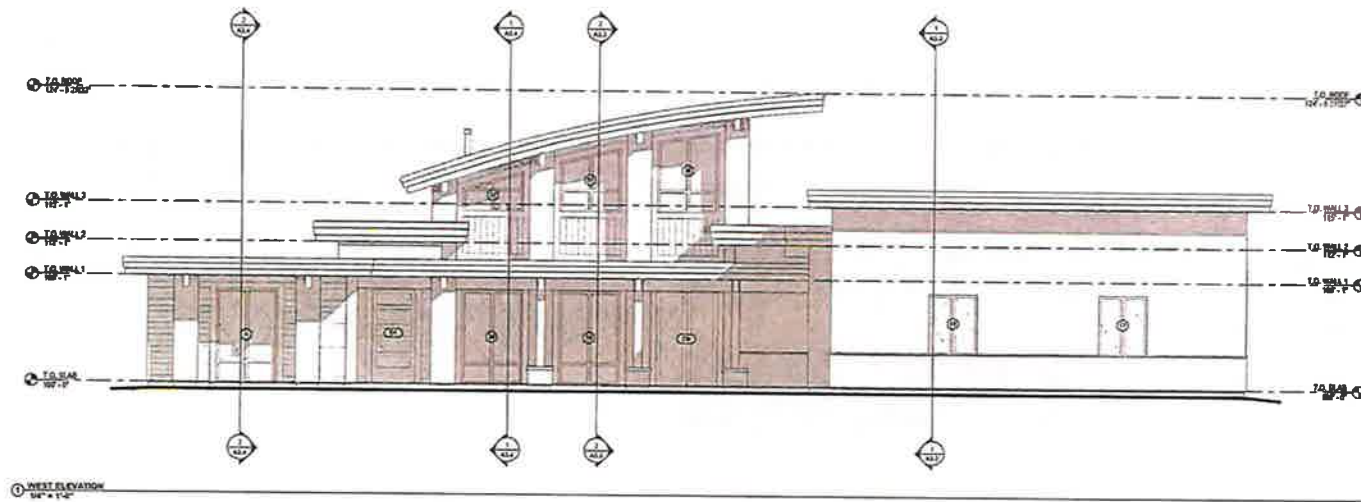
ROOF PLAN

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RAMSEY RESIDENCE
SKY RANCH, SAN JUAN COUNTY, UTAH



Weight required: The use of three plates total is recommended; the largest can be used only when proper fit, stabilization, activation is shown to any level in which it is being practiced. This is to be done only after stabilization has been shown (see Section 11.2).

[illegible]

EXTERIOR ELEVATIONS

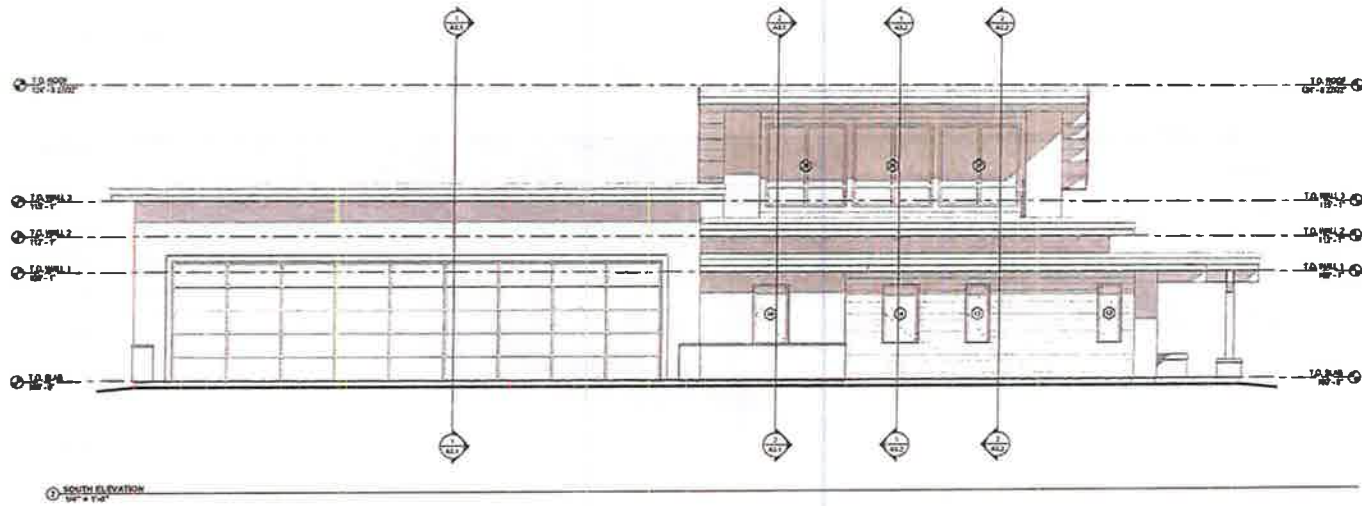
A2.1



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A2.2

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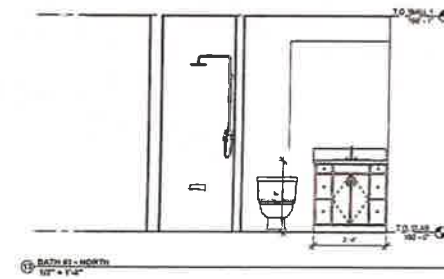
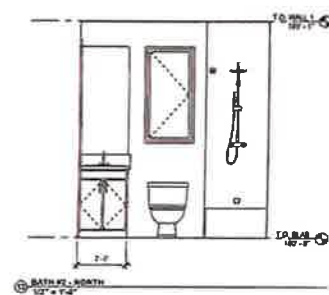
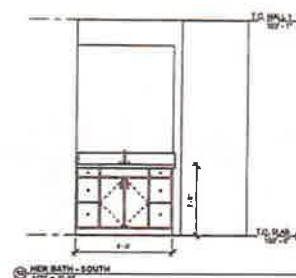
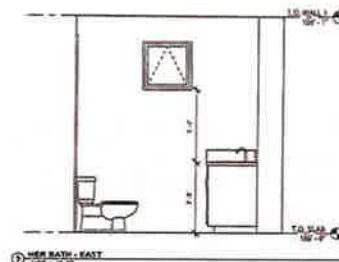
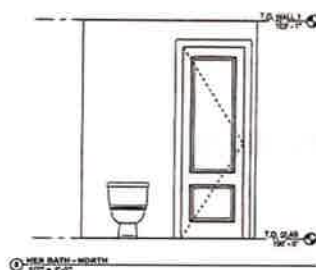
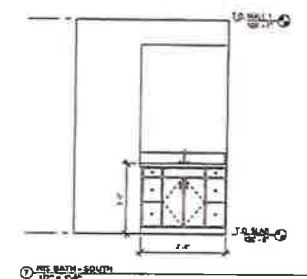
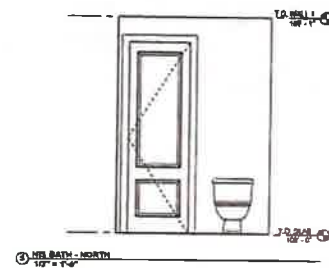
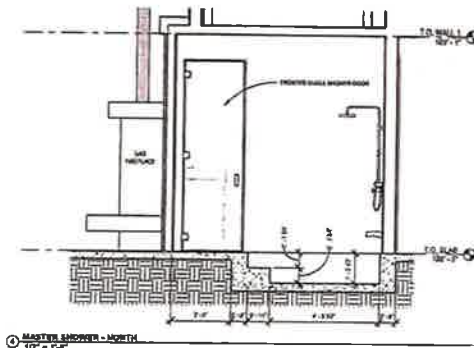
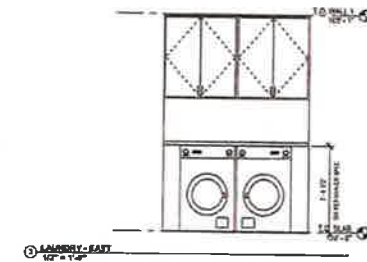
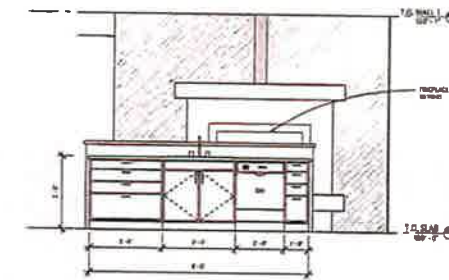
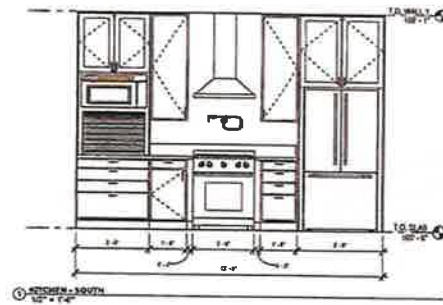
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[illegible]

INTERIOR ELEVATIONS

A2.3

Print Date: 8/7/2018 3:42:58 PM





All-glass construction. The new airframe parts are constructed by the applicant, but subject to our approval. Representative information is made by any evaluation study is not fully published. This is the place and procedure to review with State Treaty Division, 13C.

Page# 8418 02/12/2018 1:43:31 PM



RAMSEY RESIDENCE
SKY RANCH, SAN JUAN COUNTY, UTAH



Allylphenyl resins: The use of these resins should be restricted in the general life by which they are employed. Resins of this type are used in many applications where it is not possible to use the resin in its pure form. This is the case with the use of these resins in the manufacture of the resin.

[illegible]

BUILDING SECTIONS

A3.2



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 PH 719.333.0803 CASEY@BYNUMDB.COM

RAMSEY RESIDENCE
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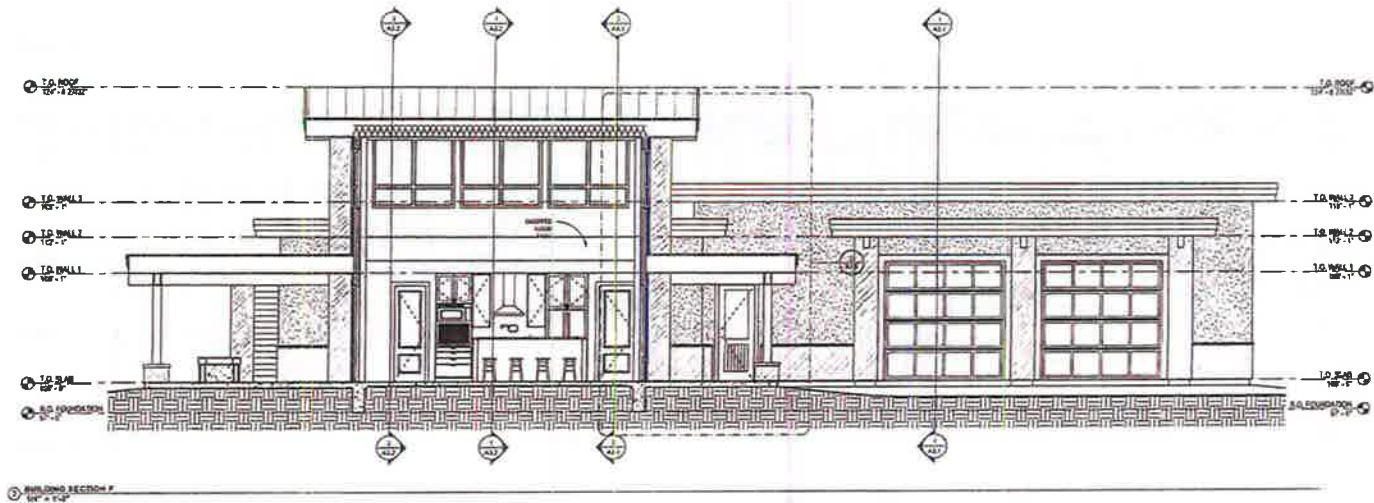
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BUILDING SECTIONS

A3.3

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BYNUM DESIGN BUILD

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THE TRUTH ABOUT CASHMERE

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SKY RANCH, SAN JUAN COUNTY, UTAH

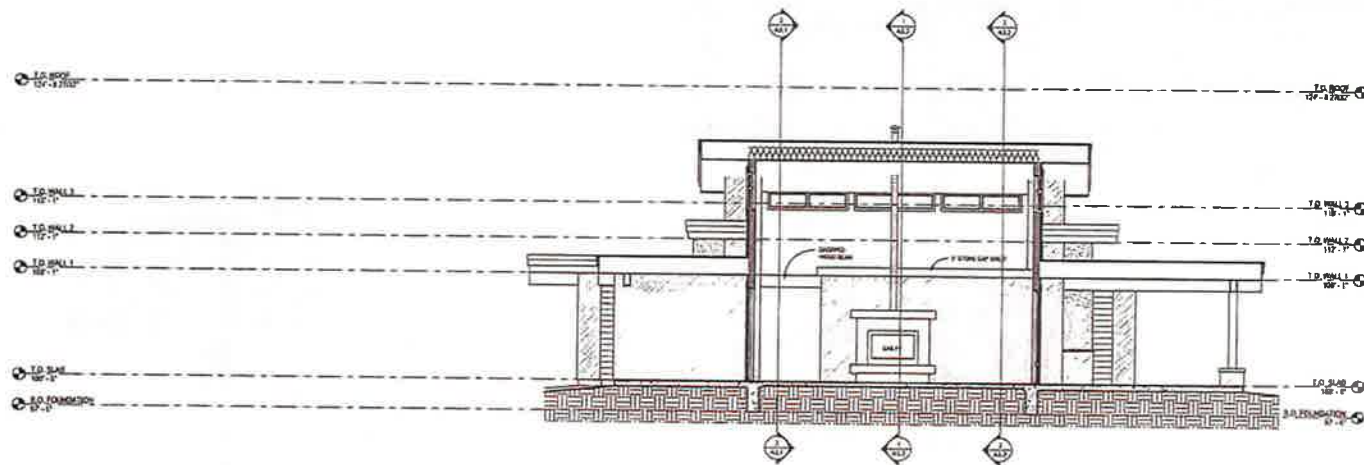
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[illegible]

BUILDING SECTIONS

A3.4

Page 1344 8/22/2018 1:43:10 PM



① BUILDING SECTION C
1/4" = 1'-0"



② WELDING SECTION B
1/4" x 1/4"



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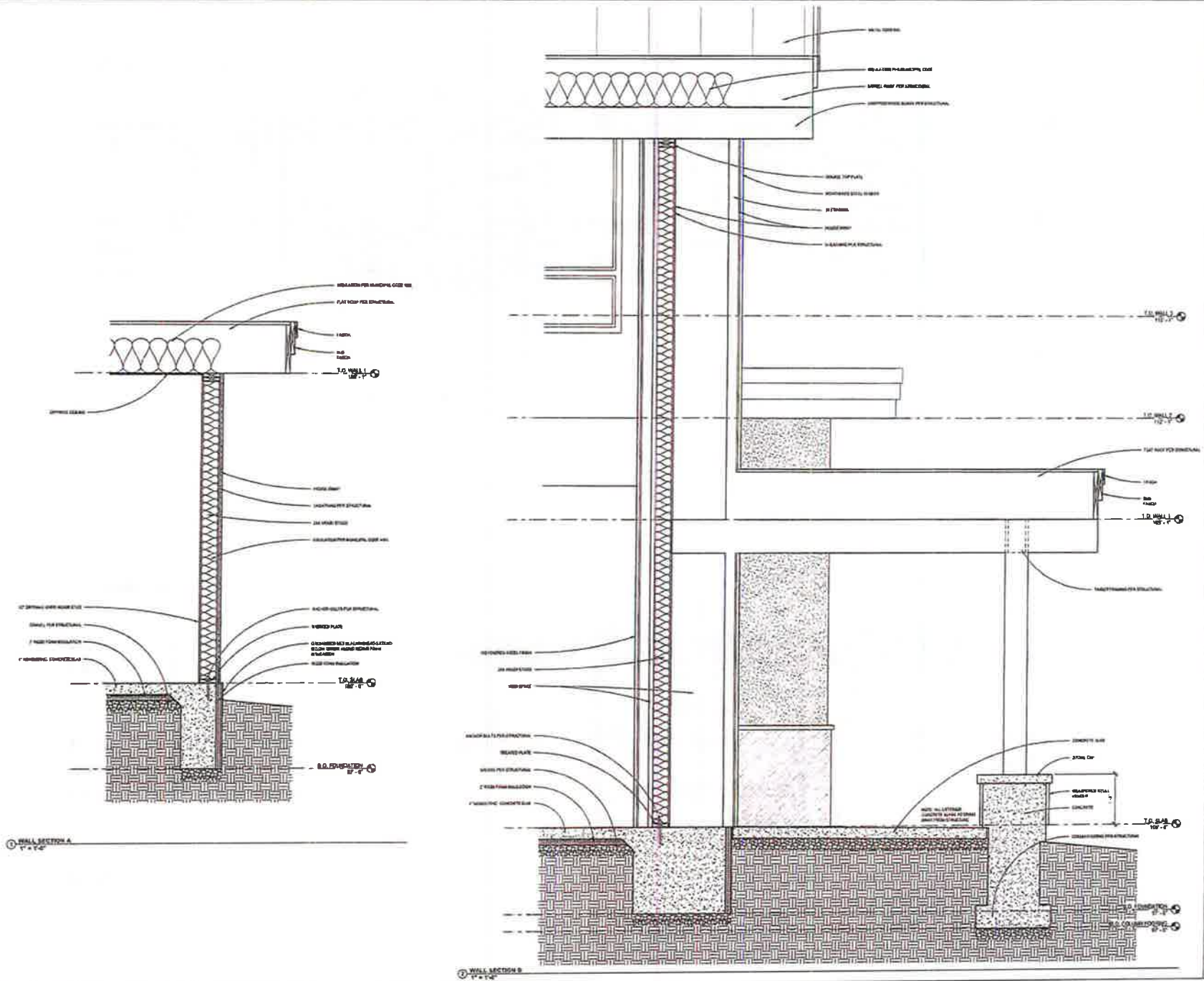
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WALL SECTIONS

A3.5

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② WALL SECTION B
1" = 1'-0"



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RAMSEY RESIDENCE
SKY RANCH, SAN JUAN COUNTY, UTAH

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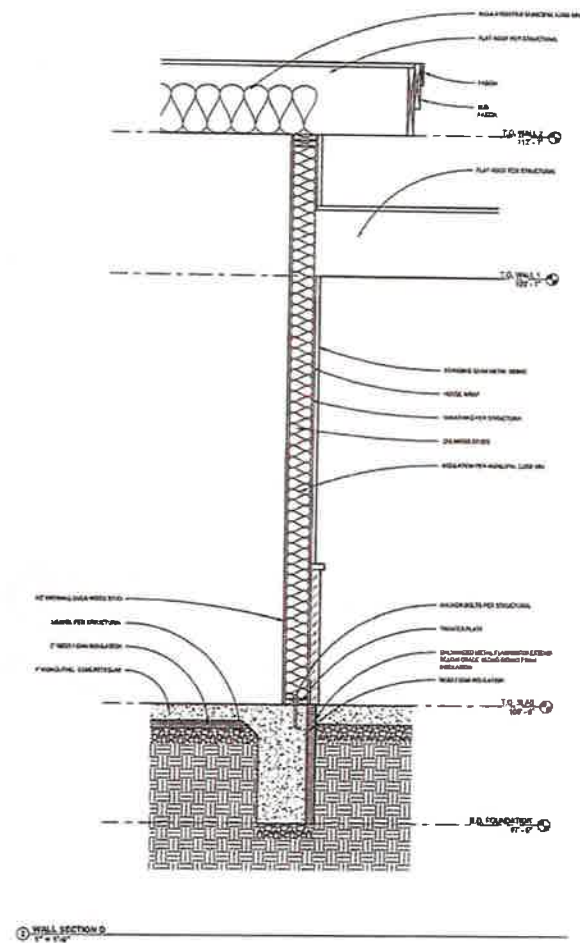
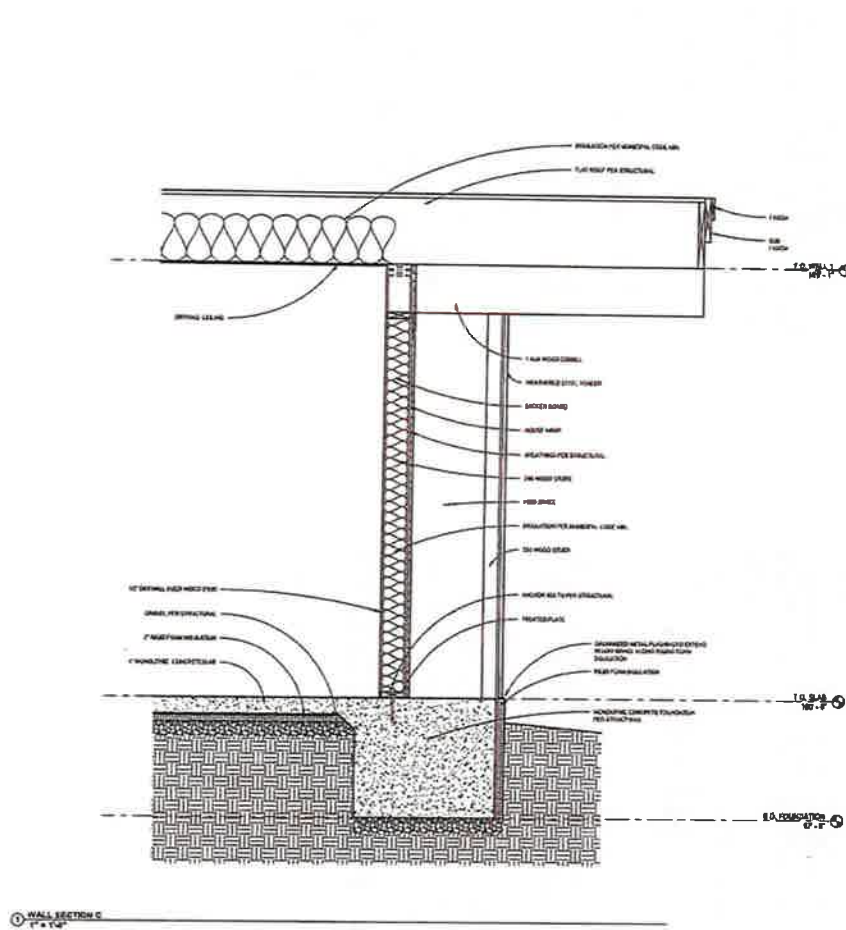
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WALL SECTIONS

A3.6

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WINDOW & DOOR SCHEDULES

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DOOR SCHEDULE						
Slack	Description	Hand	Function	Width	Height	Comments
001	Swing - Single - Infl. Closet	Left - In	Sl. Slng	2'-0"	6'-0"	Payee - Entry
002	Swing - Double - Closet	Left - In	Sl. Slng	2'-0"	6'-0"	Master Bedroom
003	Swing - Double - Closet	Out	Exterior	2'-0"	6'-0"	Great Room - East
004	Swing - Single - Panel	Left - In	Sl. Slng	2'-0"	6'-0"	400 Pwr Hse. Utility - Walk In
005	Swing - Single - Panel	Right - In	Sl. Slng	2'-0"	6'-0"	Mastered Room
006	Single - Infl. Closet	Left - In	Exterior	2'-0"	6'-0"	Garage
007	Swing - Single - Panel	Left - In	Exterior	2'-0"	6'-0"	100 Pwr Hse. - Garage Entry
008	Swing - Double - Closet	Left - In	Sl. Slng	2'-0"	6'-0"	Great Room - West
009	Swing - Single - Panel	Left	Interior	2'-0"	6'-0"	Masterroom #2
010	Swing - Double - Panel	Left	Interior	4'-0"	6'-0"	Masterroom #1 - Walk In Closet
011	Swing - Single - Panel	Right	Interior	2'-0"	6'-0"	Bath #1
012	Swing - Single - Panel	Left	Interior	2'-0"	6'-0"	Master Bedroom
013	Swing - Single - Panel	Left	Interior	2'-0"	6'-0"	Master Bedroom Closet
014	Swing - Single - Panel	Left	Interior	2'-0"	6'-0"	Her Bath
015	Swing - Single - Panel	Right	Interior	2'-0"	6'-0"	Her Bath
016	Swing - Double - Panel	Left	Interior	2'-0"	6'-0"	Power Coat Closet
017	Swing - Single - Panel	Right	Interior	2'-0"	6'-0"	Bedroom #1
018	Sliding - Closet	NA	Exterior	6'-0"	6'-0"	Bedroom #2
019	Swing - Single - Panel	Left	Interior	2'-0"	6'-0"	Bath #3
020	Single - Pocket	Left	Interior	2'-0"	10'-0"	Laundry
021	Swing - Single - Panel	Right	Interior	2'-0"	6'-0"	Laundry
022	Swing - Single - Panel	Right	Interior	2'-0"	6'-0"	Walk In
023	Swing - Double - Panel	Left	Interior	2'-0"	6'-0"	Garage Entry Linen
024	Swing - Single - Panel	Left	Interior	2'-0"	6'-0"	Utility
025	Overhead	Left	Interior	10'-0"	10'-0"	Garage - Insulated
026	Overhead	Right	Interior	10'-0"	10'-0"	Garage - Insulated

BYLAWS
OF
DESERT SKY RANCH OWNERS ASSOCIATION

Pursuant to the provisions of the Utah Revised Nonprofit Corporation Act, the Board of Directors of DESERT SKY RANCH OWNERS ASSOCIATION, a Utah nonprofit corporation, hereby adopts the following bylaws (the "Bylaws") for such nonprofit corporation.

ARTICLE 1

NAME, PURPOSE AND PRINCIPAL OFFICE

1.1. Name. The name of the nonprofit corporation is DESERT SKY RANCH OWNERS ASSOCIATION, hereinafter referred to as the "Association."

1.2. Purpose. The Association is organized as a nonprofit corporation for the benefit of the owners of real property within a residential development known as Desert Sky Ranch, located in San Juan County, Utah (the "Project"). The Association shall be operated exclusively to (i) provide for the general administration of the Project, and (ii) exercise rights, privileges and duties provided in that certain Declaration of Covenants, Conditions, Restrictions and Easements for Desert Sky Ranch (hereinafter referred to as the "Declaration"), which document has been recorded in the office of the County Recorder for San Juan County, State of Utah as Entry No. _____ in Book at Page _____ on the _____ day of _____, 2021. The provisions of the Declaration, as the same may be amended from time to time in accordance with the provisions thereof, are hereby incorporated by this reference. The real property which shall be initially subject to the Declaration is specifically set forth on Exhibit "A", which is attached hereto and incorporated herein by this reference. The Declaration is subject to amendment, including the annexation of additional real property, in accordance with the provisions of the Declaration.

1.3. Office. The principal office of the Association shall be located at 9 North Main, Moab, Utah 84532. Such office may be changed from time to time as may be determined by the Board.

ARTICLE 2

DEFINITIONS

Except as otherwise provided herein or as otherwise required by the context, all terms defined in the Declaration shall have such defined meanings when used in these Bylaws.

ARTICLE 3

MEMBERS

3.1. Members. Each Owner shall be entitled and required to be a Member of the Association. An Owner shall become a Member of the Association immediately and automatically upon becoming an Owner and shall cease to be a Member immediately and automatically upon

ceasing to be an Owner as evidenced in the official records of the County Recorder, San Juan County, State of Utah. The right to be a Member shall be appurtenant to the real property within the Project and shall not be transferred except upon the transfer of fee title to said real property and then only to the transferee of title thereto. Any transfer of title to a Parcel shall operate automatically to transfer the Owner's rights as a Member of the Association appurtenant thereto to the new Owner thereof. Any attempted separate transfer of a Member's interests shall be void.

3.2. Membership Voting Rights. The Association shall have three (3) classes of Members: Class A, Class B and Class C.

3.2.1. Class "A". Class "A" Members shall be the Owners that own any one or more of the following Lots: (i) Lot 1 through Lot 45, and/or Lot B1 through Lot B6 (collectively, the "Class A Lots"), with the exception of Declarant (and any assignee of Declarant receiving Class "C" votes). Each Class "A" Member shall be entitled to vote on all issues (including Aviation Issues and Non-Aviation Issues) to be voted upon by the Members of the Association. The number of votes which a Class "A" Member shall be entitled to cast during a vote of the Members shall be equal to the number of Class A Lots owned by such Member.

3.2.2. Class "B". Class "B" Members shall be the Owners that own any one or more of the following Lots: Lot 46 through Lot 76 (collectively, the "Class B Lots"), with the exception of Declarant (and any assignee of Declarant receiving Class "C" votes). Each Class "B" Member shall be entitled to vote on all Non-Aviation Issues to be voted upon by the Members of the Association. Class "B" Members shall not participate in any vote with respect to any Aviation Issues. The number of votes which a Class "B" Member shall be entitled to cast during a vote of the Members shall be equal to the number of Class B Lots owned by such Member.

3.2.3. Class "C". The Class "C" Member shall be Declarant (during such time as Declarant is also an Owner, which may be from time to time) and any successor or assignee of Declarant who takes title to one or more Parcels for the purpose of development and sale (and/or for construction of Improvements for occupancy or other use) and to whom Declarant assigns in a recorded writing one or more of the Class "C" votes. The Class "C" Member shall be entitled to four (4) times the number of votes designated for each Class A Lot and Class B Lot, as set forth above. Therefore, the number of votes applicable to a Parcel owned by Declarant determined pursuant to Section 3.2.1. or 3.2.2., *times four (4)*, shall be the number of Class "C" votes applicable to such Parcel and which may be cast by Declarant. The Class "C" Member shall be entitled to vote on all issues (including Aviation Issues and Non-Aviation Issues) to be voted upon by the Members of the Association. The Class "C" Membership shall terminate and any Owner then holding Class "C" Membership shall be deemed to be a holder of Class "A" Membership or Class "B" Membership, as applicable, upon the happening of the earliest to occur of the following: (i) when the Declarant elects by written notice to the Association to terminate its Class "C" Membership; or (ii) when eighty percent (80%) of the Lots are no longer owned by Declarant (or any affiliate of Declarant).

3.3. Members of Record. Upon becoming an Owner of a Parcel in the Project, with the exception of conveyances from the Declarant to an Owner, each Owner shall promptly furnish to the Association a conforming copy of the fully executed Parcel conveyance document or other document which creates an ownership interest in such Parcel, and the address to which said Owner desires notice under these Bylaws shall be given. Said copy and the address for notice shall be maintained in the records of the Association as provided in Section 4.2. For purposes of determining Members entitled to notice or to vote at any meeting of the Members, or any adjournment thereof, the Board may designate a record date for determination of the official

Members of the Association, which date shall not be more than ninety (90) nor less than thirty (30) days prior to the meeting. If no record date is designated, the date on which notice of the meeting is mailed shall be deemed to be the record date for determining Members entitled to notice of or to vote at the meeting. The persons or entities appearing in the official records of the County Recorder, San Juan County, State of Utah on such record date as the Owner of each respective Parcel in the Project shall be deemed to be the Members entitled to notice of and to vote at the meeting of the Members. The officers and Directors of the Association shall be entitled to rely upon the information contained in the official records of the County Recorder, San Juan County, State of Utah as provided to them by a title company or other party retained for such purpose and shall have no duty, express or implied, to search any public record to determine who is entitled to vote.

ARTICLE 4

MEETINGS

4.1. Meetings. There shall be a meeting of the Members of the Association not less often than once each calendar year; provided, however, that a meeting of the Members may also be called by the Board or upon the written request of Members which shall be entitled to cast at least one-third ($1/3$) of the total votes of the Association's Members. A meeting of the Members shall be held at such time and place within San Juan County or Grand County, State of Utah, as shall be designated by the Board. In the event that the Board shall receive a written request for a meeting from at least one-third ($1/3$) of the total votes of the Association's Members, within ten (10) days of the date of the receipt of such request, the Board shall set the date, time and location of such meeting and such meeting shall be held within thirty (30) days of the date of such request. Any meeting required to be held pursuant to those Bylaws may be held by electronic means provided that all persons participating in the meeting may hear each other during the meeting.

4.2. Registered Address. Each Member shall register with the Association under such Member's current mailing address for purposes of notice hereunder. Such registered address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, the address to which the real property tax notice for the Member's Parcel as contained in the records of the San Juan County Assessor/Treasurer's Office shall be deemed to be the registered address of such Member and shall be used for purposes of notice hereunder.

4.3. Notice of Meetings. The Board shall cause written or printed notice of the time, place and purpose of all meetings of the Members (whether annual or special), to be delivered, not more than forty-five (45) nor less than ten (10) days prior to the meeting, to each Member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered three (3) days after being deposited in the United States mail so addressed, with first class postage thereon prepaid. If delivered by overnight delivery service, such notice shall be deemed to be delivered one day following placement with such delivery service. A waiver of notice signed by any Member entitled to receive such notice, whether before or after the time stated therein, shall be the equivalent to the giving and receipt of such notice.

4.4. Quorum. At any meeting of Members, the Members entitled to cast, in person or by proxy, a minimum of fifty-one percent (51.0%) of the total votes of the Association's Members, shall be required to constitute a quorum necessary for the conduct of business at such meeting. If the quorum required for the conduct of the business of the Association shall not be present at any meeting, then the Members so present may adjourn the meeting to a date which shall be not less than ten (10) days or more than thirty (30) days from that date. Notice of such adjournment and

the date to which the meeting shall have been adjourned shall be given to all Members. The quorum to be required at the rescheduled meeting shall be fifty percent (50.0%) of the quorum which was required at the meeting which was adjourned without the conduct of the business of the Members. In the event that the required quorum shall not be present at any meeting so rescheduled in the manner set forth, the meeting shall again be rescheduled and notice shall be given to all Members, all in the manner set forth for the first rescheduled meeting, and the quorum required shall again be reduced to fifty percent (50.0%) of the quorum required at the most recent rescheduled meeting. Any meeting can be rescheduled as many times as may be required to eventually permit the business of the meeting to be conducted. At any rescheduled meeting, the only business which may be conducted shall be the business listed on the notice for the originally-scheduled meeting.

4.5. Proxies. At each meeting of the Members, each Member entitled to vote shall be entitled to vote in person or by written proxy provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Member. If there is more than one Owner of a Parcel, the instrument authorizing the proxy to act must have been executed by all Owners. Such instrument authorizing a proxy to act shall be delivered at the beginning of the meeting to the Secretary of the Association or to such other officer or person who may be acting as secretary of the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

4.6. Votes. Each Member shall be entitled to vote on all matters brought before the Members for a vote thereon, subject to any applicable limitations as set forth in Section 3.2 above. Unless otherwise specifically provided, a majority of the votes present, in person or by proxy, and entitled to vote on any matter before the Association shall be required to approve such matter. Any Member may, by written notice to the Association, transfer its voting rights to its Mortgagee or to the Occupant of such Member's Parcel. Such transfer shall be effective until notice of revocation of such transfer signed by said Member shall be received by the Association. No such transfer shall relieve a Member/Owner of any obligation under the Declaration.

4.7. Multiple Ownership. The votes for each respective Parcel shall be voted together. If title to a Parcel is held by more than one party, then all such parties shall be Members of the Association and entitled to participate as a Member, but the votes allocated to such Parcel must be voted together so that all votes associated with a Parcel shall be voted as a block. No fractional votes shall be allowed. In the event of joint or multiple Owners of a Parcel, said Owners shall designate in writing one party to vote on behalf of said Owners and such designated Owner, and only such designated Owner, shall cast the votes attributable to such Parcel.

4.8. Vote of Members. The Board may cause such matters as it shall determine to be submitted to a vote of the Members either at the annual meeting of the Members or at a special meeting called for the purpose of conducting a vote of Members. In addition to such matters as the Board may submit to a vote of the Members, there shall be submitted to a vote of the Members any matters required to be voted upon by Members in accordance with the provisions of the Act, including specifically but without limitation, any amendment to the Articles.

4.9. Informal Action by Members. Any action required to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting if consent in writing, setting forth the action so taken, shall be signed by all of the Members entitled to vote with respect to the subject matter thereof.

4.10. Waiver of Irregularities. All inaccuracies and irregularities in the manner of voting, form of proxies and method for ascertaining Members present shall be deemed waived if no objection thereto is made at the meeting.

ARTICLE 5

BOARD OF DIRECTORS

5.1. General Powers. The property, affairs and business of the Association shall be managed by its Board of Directors (the "Board"). The Board may exercise all of the powers of the Association, whether derived from law or the Articles of Incorporation, except such powers as are by law, by the Articles of Incorporation, by these Bylaws or by the Declaration vested solely in the Members. The Board may, by written contract, delegate, in whole or in part, to a professional management organization or persons, such of its duties, responsibilities, functions and powers as are properly delegable.

5.2. Initial Board of Directors. The initial Board shall be composed of three (3) Directors, as named in the Articles of Incorporation. The Directors specified in the Articles of Incorporation and any replacements duly appointed by Declarant shall serve until their successors are duly elected and qualified at a meeting of the Members, which meeting and election shall occur not less than two (2) years after Declarant (and/or any affiliate of Declarant) ceases to own any property in the Project. As used in these Bylaws, the term "Declarant Control Period" shall mean and refer to the period during which Declarant owns property in the Project, together with the two-year period after Declarant (and/or any affiliate of Declarant) ceases to own any property in the Project. The Directors need not be Members of the Association.

5.3. Elected Board of Directors. At the meeting of the Members described in Section 5.2 above, there shall be elected by the Members in accordance with the provisions of these Bylaws, a Board which shall be composed of three (3) Directors all of whom shall be separately elected by the Members.

5.3.1. Terms of Service of Directors. At the meeting of Members described in Section 5.2 above, the Members shall elect two (2) Directors to serve for a term of two (2) years and one (1) Director to serve for a term of one (1) year. At each annual meeting of the Members thereafter, Directors shall be elected for a term of two (2) years to fill any vacancy created by the expiration of the term of any Director.

5.3.2. Election by Vote. All elections of Directors shall be conducted by secret ballot in accordance with the rights, classes, and votes as set forth in the Declaration. Directors to be elected shall be chosen from candidates, duly nominated in accordance with procedures adopted by the Members at such meeting for such purpose. The candidate, or candidates, for an election of more than one Director, who receive the highest number of votes cast by those voting at such meeting, in person or by proxy shall be elected to serve as Director(s).

5.4. Regular Board Meetings. The regular annual meeting of the Board shall be held without other notice than this Bylaw immediately after and at the same place as the annual meeting of the Members. The Board may provide by resolution the time and place, within San Juan County or Grand County, State of Utah, for the holding of additional regular meetings. Notice of the time and place of any additional regular meetings shall be given to each Director in writing not less than fifteen (15) days prior to the meeting. Written notice need not be given,

however, to any Director who has signed a waiver of notice or a written consent to the holding of the meeting.

5.5. Special Meetings. Special meetings of the Board may be called by or at the request of any Director. The President or other persons authorized to call special meetings of the Board may fix any place, within San Juan County or Grand County, State of Utah, as the place for holding any special meeting of the Board called by the President or such persons. Notice of any special meeting shall be given at least fifteen (15) days prior thereto.

5.6. Notice. Notice of meetings of the Board required to be given shall be in writing and shall be delivered personally, or mailed first class and postage prepaid to each Director at his registered address or given by email. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with first class postage thereon prepaid. If delivered by email, such notice shall be deemed to be delivered upon confirmation of receipt from the recipient. Any Director may waive notice of a special meeting. Notice of any meeting of the Board shall be given to any Member who shall request such notice in writing and shall pay, in advance, costs and expenses which shall be incurred in the preparation and giving of such notice.

5.7. Quorum; Manner of Acting; Electronic Meetings. A majority of the authorized number of Directors shall constitute a quorum for the transaction of business at any meeting of the Board. Except as otherwise required in these Bylaws, the Articles of Incorporation or the Declaration, the act of the majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board. The Directors shall act only as a Board and individual Directors shall have no powers as such. Any meeting required to be held pursuant to those Bylaws may be held by electronic means provided that all persons participating in the meeting may hear each other during the meeting.

5.8. Compensation. No Director shall receive compensation for any services that he may render to the Association as Director; provided, however, that Directors may be reimbursed for expenses incurred in performance of their duties as Directors and, except as otherwise provided in these Bylaws, may be compensated for services rendered to the Association in a capacity other than as Director.

5.9. Resignation and Removal. A Director may resign at any time by delivering a written resignation to the President or the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. Except with respect to the initial Directors named in the Articles of Incorporation and any replacements duly appointed by Declarant (who shall not be subject to removal by vote of the Members), any Director may be removed at any time, for or without cause, by the affirmative vote of Members holding at least two-thirds (2/3) of the total number of votes of the Association's Members at a special meeting of the Members called specifically for such purpose. Any Director whose removal has been proposed by the Members shall be given an opportunity to be heard at such meeting.

5.10. Vacancies. If one or more vacancies shall occur in the Board by reason of the death, resignation, removal or disqualification of a Director, or if the authorized number of Directors shall be increased, the Directors then in office shall continue to act and such vacancies or newly created positions shall be filled by a majority vote of the Directors then in office, though less than a quorum, in any way approved by such Directors at an official meeting of the Board. Any vacancy in the Board which shall occur by reason of removal of a Director by the Members, shall be filled by election at the meeting of Members at which such Director is removed, or if the vacancy results from resignation of a Director, at the next scheduled meeting of Members following the

resignation. Any Director elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor.

5.11. Informal Action by Directors. Any action that is required or permitted to be taken at a meeting of the Board, may be taken without a meeting if a consent in writing, setting forth the actions so taken, shall be signed by all of the Directors.

5.12. Open and Closed Meetings. Regular and special meetings of the Board shall be open to all Members of the Association. Notwithstanding the foregoing, upon the motion of any Director, which motion shall be approved by the affirmative vote of not less than two (2) Directors, the Board shall have the power to close a portion of any regular or special meetings for the purpose of discussing, as a Board, such matters as the Directors shall determine; provided, however, that no vote on any matter shall be taken during any such closed portion, and immediately upon the termination of such closed portion, the Board shall report in open meeting a brief summary of the subject matter so discussed. The closure of the meeting and the brief summary shall be duly noted in the minutes of the meeting.

5.13. Minutes of Meetings. Within thirty (30) days after the adjournment of any meeting of the Board, a copy of the written minutes of such meeting shall be available, upon request, to each Member of the Association.

ARTICLE 6

OFFICERS

6.1. Officers. The officers of the Association shall be at least a President and a Secretary. The Board of Directors may appoint such other officers as it may, from time to time, deem to be appropriate. The Board shall be entitled to establish such organization and elect such officer(s) as it shall deem necessary to properly perform the functions of the Association. An officer of the Association need not be a Member of the Association.

6.2. Election, Tenure and Qualifications. The officers of the Association shall be chosen by the Board annually at the regular annual meeting of the Board. In the event of failure to choose officers at such regular annual meeting of the Board, officers may be chosen at any regular or special meeting of the Board. Each such officer, whether chosen at a regular annual meeting of the Board or otherwise, shall hold office until (i) a successor shall have been chosen and qualified by an election by the Board; (ii) the death of such officer; or (iii) such officer resigns, is disqualified or removed in the manner provided in these Bylaws, whichever first occurs. Any one person may hold two or more of such offices, except that the President may not also be the Vice President, the Secretary or the Treasurer. No person holding two or more offices shall act in or execute any instrument in the capacity of more than one office. The President shall be and shall remain a Director of the Association during the entire term of office as President. No other officer need be a Director of the Association.

6.3. Resignation and Removal. Any officer may resign at any time by delivering a written resignation to the President or to the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed by a majority vote of the Board at any time, for or without cause.

6.4. Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of the death, resignation, removal, disqualification or any other cause, or if a new office

shall be created, such vacancies or newly created offices may be filled by the Board at any regular or special meeting.

6.5. The President. The President shall preside at meetings of the Board and at the meetings of the Members. The President shall execute on behalf of the Association all conveyances, mortgages, documents and contracts approved by the Board and shall do and perform such other acts and things as the Board may require.

6.6. The Vice President. The Vice President, if any, shall act in the place and stead of the President in the event of the President's absence or inability or refusal to act and shall do and perform such other duties as the Board may require.

6.7. The Secretary. The Secretary shall keep the minutes of the Association and the Board and shall maintain such books and records as these Bylaws, the Declaration or any resolution of the Board may require to be kept. The Secretary shall perform such other duties as the Board may require. If no Treasurer has been elected by the Board, the Secretary shall perform the duties of the Treasurer.

6.8. The Treasurer. The Treasurer, if any, shall have the custody and control of the funds of the Association, subject to the action of the Board, and shall, when requested by the President to do so, report the state of the finances of the Association at each annual meeting of the Members and at any meeting of the Board. The Treasurer shall perform such other duties as the Board may require.

6.9. Compensation. No officer shall receive compensation for any services that may be rendered to the Association by such person as an officer, provided, however, that an officer may be reimbursed for expenses incurred in performance of duties required as an officer to the extent that such expenses are approved by the Board and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association in a capacity other than the capacity of an officer.

ARTICLE 7

COMMITTEES

7.1. Designation of Committees. The Board may from time to time by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions and powers. The membership of each such committee designated hereunder shall include at least one (1) Director. No committee member shall receive compensation for services that may be rendered to the Association as a committee member, provided, however that a committee member may be reimbursed for expenses actually incurred in the performance of responsibilities of a committee member to the extent that such expenses are approved by the Board and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in the capacity as a committee member. Such committees shall exist at the pleasure of the Board and the existence thereof may be terminated at any time by resolution of the Board. Each such committee shall have and exercise only such authority and prerogatives as shall be specifically delegated by the Board and unless otherwise designated, shall act only in an advisory capacity to the Board.

7.2. Proceedings of Committees. Each committee designated hereunder by the Board may appoint its own presiding and recording officers and may meet at such place and times and

upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board. Notice of any such meetings shall be given to all committee members at least three (3) days prior to the date of such meeting. All such meetings shall be open to any Member of the Association.

7.3. Quorum and Manner of Acting. At each meeting of any committee designated hereunder by the Board, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event less than three members) shall constitute a quorum for the transaction of business and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Board hereunder shall act only as a committee and the individual members thereof shall have no powers as such.

7.4. Resignation and Removal. Any member of any committee designated hereunder by the Board may resign at any time by delivering a written resignation to the President, the Board or the presiding officer or chairperson(s) of the committee of which said person is a member. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, for or without cause, remove any member of any committee.

7.5. Vacancies. If any vacancy shall occur in any committee designated by the Board hereunder, due to disqualification, death, resignation, removal or otherwise, the remaining members shall, until filling of such vacancy constitute the then total authorized membership of such committee and, provided that two or more members are remaining (at least one of which is a Director), may continue to act. Such vacancy may be filled at any regular or special meeting of the Board.

ARTICLE 8

INDEMNIFICATION

8.1. Indemnification. Except as otherwise set forth in the Association's Articles of Incorporation, no member of the Board or officer of the Association shall be personally liable to the Association or its Members or any third party(ies) for civil claims arising from acts or omissions made in the performance of duties as a Member of the Board or officer unless the acts or omissions are the result of the intentional misconduct or gross negligence of such Director or officer. To the full extent allowed under Utah law and in accordance with the provisions contained herein, the Association shall indemnify an individual made a party to a proceeding because such person is or was a Director or officer of the Association against any and all reasonable expenses, including attorney's fees and costs, in connection with such proceeding if (i) such person's conduct was in good faith, and (ii) such person reasonably believed that said person's conduct was in, or not opposed to, the Association's best interest, and (iii) in the case of any criminal proceeding, said person had no reasonable cause to believe such person's conduct was unlawful.

8.2. Advances. Expenses incurred in defending the civil or criminal action, suit or proceeding that is contemplated in this Article 8 may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon a majority vote of a quorum of the Board and upon receipt of an undertaking by or on behalf of the person to repay such amount or amounts unless it is ultimately determined that such person is entitled to be indemnified by the Association as authorized under this Article.

8.3. Scope of Indemnification. The indemnification provided for by this Article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision of the Association's Articles of Incorporation, Declaration, vote of disinterested Members or Directors, or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office. The indemnification authorized by this Article shall apply to all present and future Directors, officers, committee members, employees and agents of the Association and shall continue as to such persons who cease to be Directors, officers, committee members, employees or agents of the Association and shall inure to the benefit of the heirs and personal representatives of all such persons and shall be in addition to all other rights to which such person may be entitled as a matter of law. The Association shall have no indemnification obligation in any circumstance where (a) the Board member or officer is found liable to the Association; or (b) any other proceeding charging that the Board member or officer derived an improper personal benefit, whether or not involving action in such person's official capacity, in which proceeding the person was adjudged liable to the Association on the basis of having received such improper benefit.

8.4. Insurance. The Association may, but is not required to, purchase and maintain insurance from time to time on behalf of any person who was or is a Director, officer, committee member, employee or agent of the Association or who was or is serving at the request of the Association as a director, officer, committee member, employee or agent of another corporation, entity or enterprise (whether for profit or not for profit) against any liability asserted against or incurred by such person or arising out of such person's status as such, whether or not the Association would have the power to indemnify such person against such liability under the laws of the State of Utah, as the same may be hereby amended or modified.

8.5. Payments in Premiums. All indemnification payments made and/or all insurance premiums for insurance maintained, pursuant to this Article, shall constitute a Common Expense under the Declaration.

ARTICLE 9

FISCAL YEAR AND SEAL

9.1. Fiscal Year. The fiscal year of the Association shall begin on the 1st day of January each year and shall end on the 31st day of December next following, provided, however, that the first fiscal year shall begin on the date of recording the Declaration and shall end on the 31st day of December next following.

9.2. Seal. The Board may by resolution, but shall not be required, to provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Association, the State of incorporation, the non-profit nature of the Association and the words "Corporate Seal".

ARTICLE 10

RULES AND REGULATIONS

The Board may, in its discretion, make reasonable rules and regulations governing the Project and the use of the Common Areas and Streets (prior to any dedication of said Streets); provided, however, that such rules and regulations shall be consistent with the rights and obligations established by the Declaration and these Bylaws. The Members shall be provided with

copies of all rules and regulations adopted by the Board and with copies of all amendments and revisions thereof.

ARTICLE 11

ASSESSMENTS

Members of the Association shall be subject to Assessments by the Association from time to time in accordance with the provisions of the Declaration. Members shall be personally liable to the Association for payment of such assessments, together with interest thereon, and costs of collection as provided in the Declaration. The provisions of the Declaration regarding the levy and collection of Assessments shall be applicable to all Members.

ARTICLE 12

REPORTS AND CORPORATE RECORDS

12.1. Maintenance and Inspection of Records. The accounting books, records and minutes of the proceedings of the Members, the Board and any committees of the Board shall be kept at such place or places designated by the Board, or in the absence of such designation at the principal office of the Association. The minutes shall be kept in written or typed form and the accounting books and records shall be kept in either written or typed form or in any other form capable of being converted into written, typed or printed form. The minutes and accounting books and records shall be open to inspection on the written demand of any Member at any reasonable time during usual business hours for a purpose reasonably related to the Member's interest as a Member. The inspection may be made in person or by an agent or attorney who has been authorized in writing by a Member to make such inspection and shall include the right to copy and make extracts. The Board shall establish reasonable rules with respect to (i) notice to be given to the custodian of the records by the Member desiring to make the inspection, (ii) hours and days of week when such inspection may be made, and (iii) payment of the cost of reproducing copies of documents requested by a Member. Each Director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and copies of documents.

12.2. Budgets and Reports to Members. The Association shall distribute to the Directors and make available to each Member annual budgets and reports as determined by the Directors.

ARTICLE 13

AMENDMENTS

Except as otherwise provided by law, by the Articles of Incorporation, by the Declaration or by these Bylaws, these Bylaws may be amended, modified or repealed and new Bylaws may be made and adopted by the Members only upon (i) the affirmative vote of at least two-thirds of the total number of votes of those Members present or represented by proxy at a duly called meeting of the Members, provided a quorum exists at such meeting, and (ii) as a requirement applicable during the Declarant Control Period only, the affirmative vote of at least two of the three initial Directors (or, if applicable, their replacements duly appointed by Declarant). Such action shall not be effective, however, unless and until a written instrument setting forth (i) the amended, modified, repealed or new Bylaw(s), (ii) the number of votes cast in favor of such action, and (iii)

the total number of potential votes at such meeting, shall have been executed and verified by the current President of the Association and filed in the records of the Association. If the effect of such amendment shall require a corresponding amendment to the Declaration, then such amendment shall be effective at such time as a corresponding amendment to the Declaration shall have been adopted in accordance with the provisions thereof, executed and recorded in the office of the County Recorder for San Juan County, State of Utah. To the extent permitted by law, the provisions of this Article 13 shall govern in the event of any conflict with the Act.

ARTICLE 14

CONFLICTS WITH DECLARATION

The provisions of the Declaration supersede and govern the provisions of these Bylaws. Any term, condition, requirement, or provision in these Bylaws which conflicts with the provisions of the Declaration shall be interpreted such that the terms of the Declaration shall govern and apply.

Secretary's Certificate

I, the Undersigned, being the Secretary of Desert Sky Ranch Owners Association, do hereby certify the foregoing to be the Bylaws of such corporation, as adopted by written consent of its Board of Directors dated effective as of _____, 2021.

_____, Secretary

WHEN RECORDED, RETURN TO:
Business Resolutions, LLC, Trustee
9 North Main
Moab, Utah 84532

Tax Parcel Numbers: _____

DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS

FOR

DESERT SKY RANCH

_____, 2021

**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
DESERT SKY RANCH**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR DESERT SKY RANCH (this "Declaration") is made this ____ day of _____, 2021, by BUSINESS RESOLUTIONS, LLC, a Colorado limited liability company, as TRUSTEE of the MOAB DEVELOPMENT TRUST dated September 26, 2014 ("Declarant") in contemplation of the following facts and circumstances:

A. Declarant is the fee simple owner of certain real property located in San Juan County, State of Utah more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property").

B. The Property is being developed as a residential subdivision and private aircraft runway known as "Desert Sky Ranch" (the "Project"). Declarant desires to adopt this Declaration to establish certain covenants, conditions, restrictions, rules, agreements, provisions, easements, constraints and limitations with respect to the use, management and operation of the Project as more fully set forth herein, which are intended for the benefit of Declarant, each Owner, and the protection and preservation of the value of each legal parcel of real property, the Project as a whole, and any and all improvements constructed or placed thereon.

DECLARATIONS AND AGREEMENTS

NOW, THEREFORE, Declarant does hereby declare that the Property shall be held, sold, conveyed, transferred, leased, subleased, used, operated, maintained and occupied subject to this Declaration and the covenants, conditions and restrictions set forth herein which shall run with said real property and all portions thereof and shall be binding upon all parties having or acquiring any right, title or interest in and/or to all or any portion of said real property, and the respective heirs, successors and assigns of such parties.

That certain Restrictive Covenants for Sueno Grande Subdivision, dated April 23, 2008, and recorded in the San Juan County Recorder's Office on April 28, 2008, in Book 891, at Page 210, Entry No. 102655, which instrument was previously recorded against a portion of the Property, is hereby terminated in its entirety, and such instrument shall be deemed null and void, having no force or effect.

**ARTICLE 1
Definitions**

Unless the context clearly indicates otherwise, certain terms used in this Declaration shall have the meanings set forth in this Article 1. In this Declaration, unless the context requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.

1.1. "Act" shall mean the Utah Revised Nonprofit Corporation Act.

1.2. "Additional Property" shall mean any real property within San Juan County which is contiguous with all or any portion of the Property whether or not such additional property is owned (either now or hereafter) by Declarant or any other third party which is made subject to this Declaration by an amendment hereto provided that the owner of such property must consent to making such property subject to this Declaration. Until such time as any such property is in fact made subject to this Declaration by an amendment hereto, the same shall not be subject to this Declaration.

1.3. "Airstrip Easement" shall mean the approximately 3,700 foot long and 250 foot wide easement, as shown on the Plat(s), which encompasses the Runway, the Taxiways and other aviation related improvements and areas. The entire Airstrip Easement is designated as Common Area, notwithstanding that the Airstrip Easement is located upon and constitutes a portion of certain Class "A" Lots within the Project.

1.4. "Annual Budget" shall mean the budget described in Section 8.3.

1.5. "Articles" shall mean the Articles of Incorporation of the Association prepared and filed for the formation of the Association in accordance with the requirements of applicable laws and regulations of the State of Utah.

1.6. "Assessments" shall mean General Assessments, Supplemental Assessments and Reimbursement Assessments.

1.7. "Association" shall mean Desert Sky Ranch Owners Association, a Utah nonprofit corporation, organized to (i) collect any and all Assessments, (ii) maintain the Common Areas, (iii) enforce the terms and provisions of this Declaration, and/or (iv) otherwise perform all other tasks and duties set forth in this Declaration, the Bylaws, the Articles, and/or any other documents governing the Project.

1.8. "Aviation Expenses" shall mean those Common Expenses which are specifically related to the Runway, Taxiways and any other improvements, amenities and/or services that directly enable or support aviation operations at the Project, as determined by the Board in its sole, reasonable discretion.

1.9. "Aviation Issues" shall mean any issues which are materially related to aviation improvements and operations at the Project, as determined by the Board in its sole, reasonable discretion. Owners of Class B Lots shall not participate in any vote with respect to any Aviation Issues.

1.10. "Aviation Rules and Regulations" shall mean any instrument adopted by the Board for the regulation and management of the Runway, the Taxiways and other aviation related improvements, areas, services, operations and uses at the Project.

1.11. "Board" shall mean the governing board of the Association which shall be responsible for the management of the affairs of the Association.

1.12. "Bylaws" shall mean the written procedures, if any, adopted for the regulation or management of the affairs of the Association.

1.13. "Class A Members" and "Class A Lots" shall have the meanings set forth in Section 6.3.1 of this Declaration.

1.14. "Class B Members" and "Class B Lots" shall have the meanings set forth in Section 6.3.2 of this Declaration.

1.15. "Class C Member" shall have the meaning set forth in Section 6.3.3 of this Declaration.

1.16. "Common Areas" shall mean all property designated on the recorded Plat(s) as Common Area, or described within this Declaration as Common Area, and to include property owned by the Association, being owned or intended ultimately to be owned by the Association for the common use and enjoyment of Owners, together with all improvements or structures thereon and all of the easements appurtenant thereto.

1.17. "Common Expenses" shall mean any and all costs and expenses incurred by the Association in the performance and preservation of the rights, duties and obligations of the Association, including, without limitation, (i) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Areas, (ii) providing facilities, services, and other benefits to Owners as set forth in this Declaration, (iii) levying, collecting and enforcing the assessments, (iv) the costs and expenses associated with the existence and operation of the Association including, where necessary, the costs and fees of professionals retained by the Association, (v) costs and expenses of enforcing the terms and provisions of this Declaration, and (vi) a reasonable contingency reserve, surplus and/or sinking fund as determined in the sole discretion of the Association.

1.18. "County" shall mean San Juan County, in the State of Utah.

1.19. "Declarant" shall mean Business Resolutions, LLC, a Colorado limited liability company, as Trustee of the Moab Development Trust dated September 26, 2014, notwithstanding that Declarant, may not, at times, also be an Owner.

1.20. "Declarant Control Period" shall mean and refer to the period during which Declarant owns at least 80% of the Lots within the Project, together with the two-year period after Declarant (and/or any affiliate of Declarant) ceases to own at least 80% of the Lots within the Project.

1.21. "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions and Easements for Desert Sky Ranch, together with any subsequent amendments which are recorded in the County records.

1.22. "Default Rate" shall mean a per annum rate of interest which shall be ten percent (10.0%) per annum above the Reference Rate.

1.23. "Design Guidelines" shall mean the written design standards adopted by the Declarant.

1.24. "Design Review Board" shall mean the design review board as established and set forth in accordance with Article 5 of this Declaration.

1.25. "Dwelling" shall mean a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the same Lot and used in conjunction with such residence.

- 1.26. "Easement" or "Easements" shall mean any easement or, as the context shall require, all easements (i) granted pursuant to the provisions of this Declaration, (ii) set forth on any Plat, or (iii) to which the Property is subject pursuant to documents which have been or will be recorded with the San Juan County Recorder, State of Utah, or (iv) currently existing or affecting the Project, whether or not recorded.
- 1.27. "General Assessment" shall mean the share of the Common Expenses which are to be paid by each Owner pursuant to Section 8.4 hereof.
- 1.28. "Hangar" shall mean an aircraft storage building. Hangars shall be permitted only on Class "A" Lots and on the Hangar Parcel.
- 1.29. "Hangar Parcel" shall mean that certain real property identified as [[Tract E]] of the [[Final Plat of Sky Ranch Estates, Phase II]].
- 1.30. "Hangar Unit" shall mean a discrete portion of a fully constructed Hangar located on the Hangar Parcel, which portion is designed and/or intended as a storage area for a single aircraft. The maximum number of Hangar Units which shall be permitted on the Hangar Parcel is twenty-four (24) Hangar Units. Hangars that are not located on the Hangar Parcel shall not be deemed to include any Hangar Units.
- 1.31. "Improvements" shall mean and include all improvements made or constructed upon any portion of the Project, and shall include, without limitation, all Dwellings, Hangars, driveways, streets, sidewalks, trails, pathways, curbs, gutters, landscaping, stormwater detention areas, retaining walls, signs, utilities and lighting.
- 1.32. "Interest Rate" shall mean a per annum rate of interest which shall be four percent (4.0%) per annum above the Reference Rate.
- 1.33. "Lot" shall mean any numbered building lot (including Lots i – 75 as set forth on the Phase II Plat, and including Lots B1 – B6, as defined below) shown on any official, recorded Plat of all or a portion of the Project, whether or not it contains any Improvements. Parcels that are entirely comprised of Common Area are not considered Lots for purposes of this Declaration.
- 1.34. "Lots B1 – B6" shall mean and refer to those certain six lots comprising the Sky Ranch Estates Amended subdivision, as created and set forth on the Final Plat of Sky Ranch Estates Amended, recorded in San Juan County on May 16, 2018, as Entry 150112. For purposes of this Declaration, the letter "B" precedes the lot numbers as set forth on such Final Plat of Sky Ranch Estates Amended, in order to distinguish such lots from other lots as numbered on any other Plat of the Property.
- 1.35. "Member" or "Members" shall mean those parties which shall be entitled to vote and otherwise participate in decisions made by the Association, as set forth in this Declaration, which parties must be Owners.
- 1.36. "Mortgage" shall mean any mortgage, deed of trust or other security instrument by which a Parcel or any part of the Property is encumbered. No Mortgage executed by an Owner of a Parcel shall be construed to constitute a lien or other encumbrance upon any other Parcel.

1.37. "Mortgagee" shall mean any person, party or entity named as the mortgagee or beneficiary under a Mortgage or any successor in interest to such person, party or entity.

1.38. "Non-Aviation Issues" shall mean any issues which are not materially related to aviation improvements and operations at the Project, as determined by the Board in its sole, reasonable discretion.

1.39. "Occupant" shall mean any party, whether such party shall be an individual, corporation, limited liability company, joint venture, partnership, or other group, entity or association which has purchased, leased, rented or otherwise acquired the right to occupy and/or use any Parcel, Dwelling, Hangar Unit, or portion thereof, whether or not such right is exercised.

1.40. "Owner" shall mean any party, including (as applicable) Declarant and the Association, whether such party shall be an individual, corporation, limited liability company, joint venture, partnership, entity or association, which holds in fee title, the rights and incidents of ownership of real property in the State of Utah as to a Parcel within the Project as evidenced in the official records of the San Juan County Recorder, State of Utah. The term "Owner" shall not refer to any party that shall have such interest solely as security for performance of any obligation, including a Mortgage.

1.41. "Owner's Percentage" shall mean the ownership percentages of the Members as more fully described in Section 8.2.

1.42. "Parcel" shall mean each portion of the Project, including each Lot, which either (i) has been designated on any Plat as a legal lot which may be separately transferred or conveyed under the laws of the State of Utah, or (ii) has been conveyed as a legal lot to an Owner as evidenced in the official records of San Juan County, State of Utah. A Parcel may also be designated on any Plat as a "Lot" or "Tract." Since Additional Property may be annexed into the Project, the number of Parcels within the Project may change or increase over time.

1.43. "Phase II Plat" shall mean that certain Final Plat of Sky Ranch Estates, Phase II, recorded in San Juan County on _____, 2021, as Entry _____.

1.44. "Plat" shall mean a plat of all or a part of the Property which may be prepared, submitted and approved in accordance with applicable ordinances of the County and which may, either prior to, contemporaneous with, or subsequent to the recordation of this Declaration, be recorded in the official records of San Juan County, State of Utah. Multiple plats may be recorded covering parts of the Property and/or any Additional Property annexed hereto and all such plats taken together shall be referred to as the Plat, unless otherwise indicated.

1.45. "Processing Fee" shall mean the fee and/or charge described in Section 5.5 of this Declaration.

1.46. "Project" shall mean the Property, together with the Improvements which are now located upon or may in the future be located upon the Property and which shall collectively be commonly known as Desert Sky Ranch.

1.47. "Project Sign" shall mean the sign(s) more fully described in Section 7.7, if any.

1.48. "Property" shall mean the real property described in paragraph "A" above, less any portion thereof that shall be transferred, deeded or otherwise dedicated to the County and/or any governmental or quasi-governmental agency or authority (including, without limitation, any district created or formed in connection with any drainage, utilities, roadways, trails, or other causes) for public use, together with any Additional Property subsequently annexed hereto.

1.49. "Reimbursement Assessment" shall mean amounts required to be repaid by an Owner pursuant to Section 8.6 hereof.

1.50. "Reference Rate" shall mean the prime rate as published from time to time in the Wall Street Journal or other reasonable substitute publication (as determined by the Board).

1.51. "Rules" shall mean the rules and regulations, including without limitation the Aviation Rules and Regulations, adopted by the Board, for the regulation and management of the Association and the Project, as described in Section 7.11.

1.52. "Runway" shall mean the approximately 3,700 foot long by approximately 50 foot wide paved aircraft landing area or airstrip with the Federal Aviation Administration identifier "UT53".

1.53. "Sign Easement" shall mean the easement(s) described in Section 3.2.

1.54. "Streets" shall mean that portion of the Property which shall be designated on the Plat for the construction, maintenance and existence of streets, roads, sidewalks and related improvements. The Streets are private roads and comprise part of the Common Area.

1.55. "Supplemental Assessments" shall mean the share of any additional assessment levied in accordance with provisions of Section 8.5 hereof which is to be paid by each Owner.

1.56. "Taxes" shall mean all taxes, assessments, charges and fees imposed, assessed or levied by any governmental or public authority against or upon the Property and/or Improvements.

1.57. "Taxiways" shall mean the paved drive areas that provide aircraft access to the Runway from the Lots and Hangars.

ARTICLE 2 Submission

2.1. Declaration. Declarant hereby declares that the Property and any and all Improvements that shall at any time be located upon any portion of the Property shall be held, sold, conveyed, transferred, designed, constructed, operated, used, maintained, leased, subleased and occupied subject to the covenants, conditions, restrictions and easements set forth in this Declaration and which are for the purpose of (among other things) establishing procedures for implementation for design standards, mutual easements, covenants and restrictions to provide for the common management and operation of certain portions of the Project, to place certain use restrictions and/or limitations on the Property, or portions thereof, and to protect and preserve the value of the Project.

2.2. Covenants to Run With Land. This Declaration and all of the easements, covenants, conditions, restrictions and other provisions contained herein are intended to be, and shall constitute covenants which shall run with the land and which shall be binding upon and shall inure to the benefit of Declarant, each respective Owner and Occupant, and any other party which has or may acquire any interest in or to any portion of the Project and each respective grantee, transferee, heir, devisee, personal representative and successor and assign thereof. Any party which acquires an interest in any portion of the Project, or which may occupy any portion of the Project, shall be bound by this Declaration and all of the easements, covenants, conditions, restrictions and other terms and provisions herein contained.

2.3. Recordation of Plat(s). Declarant reserves the right to cause one or more Plat(s) to be recorded or amended subsequent to the date of the recordation of this Declaration. Upon approval of a Plat in the manner required by law, Declarant shall cause such Plat to be recorded in the official records of San Juan County. The drawings and/or illustrations which shall be approved in the manner required by this Section 2.3 shall be collectively deemed to be the Plat, notwithstanding the fact that there shall be more than one such drawing and/or survey illustration which shall be approved and recorded as the design and construction of the Project shall be completed. Declarant specifically reserves the right to record such number of Plats as Declarant shall determine, in its discretion, to be necessary to adequately define the Project and all of the Parcels and other parts of the Project. Declarant further reserves the right to record such revisions, amendments, restatements or supplements to the Plat, whether one or more, as may be required to cause the Plat to accurately represent the Parcels and other parts of the Project as constructed and existing as of the date of such recordation. After an Owner becomes the owner of a Parcel, no revision, amendment, restatement or supplement to the Plat may modify conditions which exist upon an Owner's Parcel without the written consent of such Owner, which consent shall not be unreasonably withheld, conditioned or delayed. An amendment, restatement or supplement to the Plat permitted in accordance with the provisions of this Section 2.3 shall be attached to a supplement to this Declaration and recorded in the official records of San Juan County. Such supplement to this Declaration shall specifically state that the Plat attached thereto shall, for all purposes thereafter, constitute an additional Plat referred to in this Declaration. Any such supplement to this Declaration authorized pursuant to this Section 2.3 shall be signed by Declarant and need not be signed by, nor consented to by any Owner, Mortgagee or San Juan County (unless required under applicable law).

2.4. Additional Property. Declarant reserves the unilateral option and right, but shall not be obligated, to annex Additional Property into the Project at any time and from time to time, which additional Property shall be added into the Project by an amendment to this Declaration and/or the Plat, as set forth in Section 2.3 above. Any such amendment shall be signed by the Owner of the Additional Property.

2.5. Phasing. Without limiting the generality of the foregoing, Declarant shall have the right to record additional Plats, or annex Additional Property into the Project, in connection with any phasing or staging of development of the Property and/or any surrounding property.

ARTICLE 3 Easements

3.1. General. The Property and any portion of the Property which is sold or otherwise conveyed as a separate Parcel shall be conveyed and owned subject to and together with the Easements recited in this Declaration or as shall be set forth on the Plat, whether or not such Easements are specifically set forth in the document of conveyance. In each instance the physical

location of an Easement may, in some circumstances, be located in the same place and the use thereof may be shared with other Easements similarly located and in each such instance the rights and privileges associated with each such Easement shall be interpreted separately, but the use shall be deemed to be non-exclusive with any other Easement similarly located. Except as may be specifically set forth elsewhere in this Declaration, no Easement may be amended, extinguished or otherwise modified in any manner by an amendment to this Declaration or the Plat without the express written approval of the owner of the real property which shall be benefitted or intended to be benefitted by the existence of such Easement. It is expressly agreed that any and all Easements granted pursuant to this Declaration shall survive any termination, expiration or other cessation of this Declaration and shall be extinguished only upon the execution and delivery of a termination executed by the party legally entitled to terminate the Easement intended to be terminated. Any grantee using the easements granted herein or by separate document shall be obligated to repair and return the area of the Easement to the condition in which it was found, including the replacement of any Improvements that were located thereon.

3.2. Common Area Easements. Except as limited in 3.2.1 below, each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Area, including, without limitation, the Airstrip Easement. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom, or encumbered, pledged, assigned or otherwise alienated by an Owner. Any Owner may temporarily delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, or contract purchaser, subject to all applicable regulations.

3.2.1 Limitation on Common Area Easements. An Owner's right and easement of use and enjoyment concerning the Common Area shall be subject to the following:

- a) The right of the Association to govern the use of the Common Area so as to provide for the enjoyment of said Common Areas by the Owners in a manner consistent with the preservation of quiet enjoyment of the Lots by the Owners, including the right of the Association to impose reasonable limitations on the use of the Common Area;
- b) The right of the Association to suspend an Owner's right to the use of the Common Areas, or any amenities included therein, for any period during which an Owner is in violation of the terms and conditions of this Declaration or delinquent in the payment of a levied assessment or fee.
- c) The right of the County and any other governmental or quasi-governmental body having jurisdiction over the Property, to enjoy access and rights of ingress and egress over and across any street, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection, utility access/installation, and providing any other governmental or municipal service.
- d) The right of the Association to dedicate or transfer 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, provided that such dedication or transfer must first be assented to by a majority of the votes of the Association. No such dedication or transfer, however, may take place without the Association first receiving written approval from such public agency or authority pursuant to

all applicable laws, rules and ordinances in effect at the time of such proposed dedication or transfer.

e) Class "A" Members shall be the only Owners that have the right to use the Runway, Taxiways and other improvements and amenities within the Airstrip Easement, in accordance with rules and regulations established by the Board, unless otherwise approved in writing by the Board.

3.3. Airstrip Easement. The Association shall have the exclusive right and authority to manage and control the use of the Runway, Taxiways and other improvements and amenities within the Airstrip Easement. In no event shall any Owner construct or alter any improvements whatsoever (including, without limitation, any landscaping) within the Airstrip Easement without the prior written consent of the Design Review Board, in accordance with the provisions of Article V of this Declaration.

3.4. Avigational Easement. The entire Property is subject to an avigational easement which allows for the operation of aircraft in accordance with the terms of this Declaration. Each Owner acknowledges that they have chosen to be part of an aviation related community, and as such, they waive any and all claims they otherwise may have against the use of the Runway, Taxiways and other related improvements by or for aircraft. Each Owner expressly waives any claim against the Association related to any harm to persons or property resulting from aircraft operations at the Property, including but not limited to noise, fumes or any other damage or harm to such Owner, or such Owner's guests, invitees or tenants.

3.5. Sign Easement. There is hereby granted to Declarant and the Association an easement (the "Sign Easement") to construct, install, service, replace and maintain the Project Sign for the designation of the name of the Project on either Lot 46 or Lot 64 as determined in Declarant's sole discretion. The location of the Sign Easement shall be located generally adjacent to Spanish Valley Drive and shall be of sufficient size to permit the Association to have access to construct and maintain the Project Sign as designed by Declarant and to have access to the Sign Easement as reasonably necessary for its intended purpose. The Sign Easement shall be located within the area designated on the Plat as determined by Declarant. The Sign Easement herein granted shall include an easement over and across the surface of the Property from an adjacent street to the location of the Project Sign as shall be reasonably necessary for the construction, installation, servicing, replacement and maintenance of the Project Sign. Responsibility for the maintenance of the Project Sign is specifically set forth in Section 7.7.

3.6. Access to Perform Duties. There is hereby granted unto the Association an easement, together with the right to grant and transfer such Easement to others as is reasonably required to accomplish the intended purpose of such Easement, over and through all portions of the Project for the purpose of permitting the Association to exercise its rights and discharge its obligations and duties under this Declaration. Such right of access is also hereby granted to all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their respective duties.

3.7. No Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Project to or for the general public or for any public

purpose whatsoever, it being the intention of the Declarant that this Declaration will be strictly limited to and for the purposes herein expressed. Notwithstanding the grant of the Easements, each Owner may be entitled to take whatever steps it deems necessary to protect and preserve the private ownership of its Parcel and to prevent same from being dedicated to the public use as a matter of law. An Easement granted herein to the County shall be deemed granted to the County only, which may be used by its employees, agents, contractors and representatives in performance of their respective duties within the Project, and shall not be construed to be a grant to the public generally.

ARTICLE 4 Development and Use Restrictions

4.1. Construction of Improvements. Once commenced, construction of all Improvements shall be diligently prosecuted to completion. The Owner of the Parcel on which Improvements are being constructed shall at all times keep the Streets contiguous to the Parcel free from any dirt, mud, garbage, refuse, trash or other debris which might be occasioned by construction of the Improvements.

4.2. Maintenance of Improvements. Once installed, all Improvements located upon a Parcel shall be continuously maintained so as to preserve a well-kept appearance. Both before and after the installation of such Improvements, each Owner shall keep its Parcel free from rubbish, debris, fire hazards or any unsanitary, unsightly or offensive condition and to conduct such weed abatement, rubbish and debris removal and other maintenance as shall be required by applicable ordinances of the County, and by the Rules.

4.3. On-Street Parking; RV/Trailer/Boat Parking. The Association shall have the right to govern the use of the Streets for on-street parking so as to provide for the preservation of quiet enjoyment of the Lots by the Owners, including the right of the Association to impose reasonable limitations with respect to on-street parking. Unless otherwise approved by the Board in writing, (i) on-street parking shall not be permitted on Waco Drive or Mustang Drive, and (ii) on-street parking shall be permitted on Sky Ranch Loop and Sky Ranch Circle. In no event shall any recreational vehicle (RV), motor home, travel trailer, utility trailer, boat or other similar vehicle or trailer be parked (i) on any Parcel for a period of more than three (3) days (unless parked entirely within a garage), or (ii) on any Street within the Project.

4.4. Common Areas. The Association shall manage, administer, maintain and repair the Common Areas; provided, however, that nothing contained herein shall preclude the Association from entering into contracts with other parties, including a management association, to perform tasks related to the management, administration, maintenance and repair of the Common Areas, or any portion thereof, including without limitation, the Airstrip Easement. All costs and expenses incurred in connection with such management, administration, maintenance and repair of the Common Areas, including specifically, but without limitation, any capital improvement which is made upon or within the Common Areas, shall constitute a Common Expense.

4.5. Permitted Use. All Parcels shall be used in compliance with all applicable zoning ordinances. The Hangar Parcel, may, upon obtaining necessary zoning approvals, be improved and used for the sale, rental or other use of Hangars and/or Hangar Units and other aviation related activities and services, subject to the following: any person or party (other than Declarant or any affiliate of Declarant) that owns or rents a Hangar Unit must also be the owner or tenant of a Dwelling located at the Project. In addition, if an Owner owns two Lots, one with a Dwelling,

and the other with a Hangar, the Owner's Hangar may not be rented unless such Owner's Dwelling is also rented by the same tenant.

4.6. No Short-Term Rentals. No Dwelling at the Project shall be rented on a nightly basis, or for any rental period of less than twenty-eight (28) consecutive days.

4.7. Compliance with Law. No portion of the Project may be occupied for any use which is in violation of any applicable ordinances, laws and regulations of any governmental entity having jurisdiction over the use of all or any portion of the Project.

4.8. Nuisances. No Owner or Occupant shall create a nuisance in the Project. No rubbish or debris of any kind shall be placed or permitted to accumulate outside a Dwelling upon any Parcel, and no odor shall be permitted to arise therefrom including open burning, so as to render any Parcel or any portion thereof unsanitary, unsightly, offensive or materially detrimental to any Property in the vicinity thereof or to the Occupants thereof. No use or operation shall be conducted in the Project that is noxious, objectionable, unsightly or materially detrimental to others in any manner and due to any cause such as, but not limited to, vibration, sound, radiation, air, water, drainage or sewer pollution, dust or emission of odorous toxic or nontoxic substances. Notwithstanding anything to the contrary herein, in no event shall aviation operations conducted in accordance with the terms of this Declaration be deemed a nuisance or otherwise in violation of the foregoing provisions.

4.9. Aviation Rules and Regulations. No portion of the Project may be used or occupied in violation of such Aviation Rules and Regulations as may be adopted by the Board from time to time, including without limitation, the Desert Sky Ranch Safety Rules and Regulations Regarding Operation Practices, attached hereto as Exhibit B.

4.10. Subdivision of Parcel. Declarant shall have the right, subject to applicable laws and ordinances, but without the consent being required of any Owner or any Mortgagee, to relocate or otherwise reconfigure the boundary lines of any Parcel, to eliminate Parcels designated on the Plat, to create new Parcels through the subdivision or reconfiguration of one or more existing Parcels and to otherwise design and develop the Parcels within the Project as Declarant shall determine; provided, however, that such rights shall be applicable only to Parcels which shall be owned by Declarant at the time of such adjustments. Nothing contained herein shall be construed to grant Declarant the right to alter the boundary of any Parcel not owned by Declarant without the express written consent of the Owner of such Parcel. Upon any reconfiguration of a Parcel, Declarant may cause to be prepared and recorded an amendment to the Plat which shall set forth the boundaries of the reconfigured Parcel. No signature of any Mortgagee or any Owner, other than Declarant, shall be required on any such amendment.

4.11. Reservation by Declarant. Declarant reserves the right to erect, construct and maintain upon the Project or upon any portion of the Project owned by Declarant, such signs, sales offices or other administrative offices as may be reasonably necessary for the completion of the Project and the leasing, sale or other disposition of the Parcels.

4.12. No Third Party Beneficiary. This Declaration is being recorded for the benefit of Declarant, the Owners and certain other parties specified herein and no other party shall be entitled to enforce any provision hereof. No party shall be permitted to claim that such party is an intended third party beneficiary entitled to enforce rights, duties and/or obligations set forth herein unless the intent to benefit such party and/or a specific right of enforcement is specifically set forth herein.

ARTICLE 5 Architectural Control

5.1. Architectural Control. No Owner, except Declarant, shall, without the prior written approval of the Design Review Board, granted in accordance with the provisions of this Article and/or the other provisions of this Declaration, undertake or permit others to undertake upon such Owner's Parcel (i) the construction, installation, erection, improvement, or expansion of any Dwelling, Hangar or other Improvements, including any sheds, storage facilities or other secondary or ancillary structures, (ii) the placement and construction of all utility facilities (including, but not limited to, culinary water, irrigation water, sanitary sewer, storm water drainage, natural gas, electricity, cable television, telephone, internet and other forms of communication), (iii) the voluntary demolition or destruction of any Dwelling or other Improvements, (iv) the grading, excavation, filling or similar disturbance of the surface of the land, including, without limitation, changes of grade or drainage pattern, (v) clearing or removal of trees, shrubs or plants, (vi) planting or other installation of landscaping, (vii) the construction or erection of any fencing or other barriers between or upon Parcels within the Project, including location, height and acceptable materials, or (viii) any change or alteration of any previously approved Improvement, including any change to (a) exterior appearance, color or texture of any Dwelling, or (b) approved landscaping. Approval shall be requested and granted or denied in accordance with this Article and/or the Design Guidelines. If the Design Review Board should determine in its reasonable discretion, in accordance with the provisions of this Declaration, that a proposed Improvement or alteration of same (including each of the above-referenced items) is not in harmony with the Project, and/or is not consistent with the Design Guidelines, such Improvement or alteration shall not be made. Declarant, the Association, and the Design Review Board shall have the standing and authority to enforce the provisions of this Article (and the decisions of the Design Review Board) in accordance with rights and remedies provided in this Declaration in courts of competent jurisdiction.

5.2. Design Review Board. Declarant hereby establishes a three (3) member Design Review Board to act in accordance with the provisions of this Article. The members of the Design Review Board may, but need not, be Owners or Occupants of Parcels within the Project. Until the expiration of the Declarant Control Period, Declarant shall have the right to appoint all members of the Design Review Board. Thereafter, the three (3) person membership of the Design Review Board shall be appointed by the President of the Association or, if the president shall fail to designate the Members of the Design Review Board, by the majority of all of the votes of the Association. Each person appointed or elected to the Design Review Board shall serve for a term of three (3) years; provided, however, that any person may be removed by the same method by which such person was appointed or elected. Any person may serve multiple terms. Without limiting the generality of the foregoing, any member of the Design Review Board may resign at any time from the Design Review Board, in which event such member shall be replaced in accordance with the terms and provisions of this Section 5.2. In the event that any member of the Design Review Board shall resign, the remaining two members may act by unanimous consent to the extent required to conduct the business of the Design Review Board prior to the designation or election of a replacement member of the Design Review Board pursuant to procedures set forth in this Section 5.2. If and to the extent there shall be a duly elected president of the Association at the time a vacancy shall occur on the Design Review Board by reason of the resignation of a member thereof, such president may designate a replacement member of the Design Review Board. After the expiration of the Declarant Control Period, a member of the Design Review Board may be removed by the president of the Association or the majority of all of the votes of the Association.

5.3. Purpose of Design Review Board. It is the stated purpose of the Design Review Board to assure that all Dwellings and other Improvements which shall be constructed or installed upon and within the Project shall (i) be of good quality and sound construction, (ii) harmonize with the existing surroundings and Improvements which have been or will be constructed upon the Project, assuring a consistent and integrated appearance (iii) be located upon the applicable Parcel in such manner as to enhance the overall design of the Project, (iv) be in compliance with the Design Guidelines, and (v) not detract from the overall quality and design of the Project. The Design Review Board shall be permitted to approve such plans and specifications as it shall, in its judgment, have determined will promote the development and maintenance of the Project. Compliance of proposed plans and specifications with applicable zoning requirements, building codes and other laws shall not necessarily mean that such plans and specifications shall be permitted to be developed and implemented pursuant to this Declaration. Approval of the designs, plans and specifications may be withheld not only because of noncompliance with any of the specific conditions, covenants and restrictions contained in this Declaration or the Design Guidelines, but also by virtue of the dissatisfaction of the Design Review Board with the location of the Improvements on the Parcel, the elevation, the color scheme, the finish, design, proportions, architecture, drainage plan, shape, height, style and appropriateness of the proposed Improvements or alteration to existing Improvements, the materials used therein, the landscaping, including size, height or location of vegetation on the Parcel, or because of the Design Review Board's dissatisfaction with any other matters which, in the judgment of the Design Review Board, will render the proposed Improvements out of harmony with the Project and/or not in keeping with the Design Guidelines.

5.4. Design Guidelines. All structures within the Project should generally fit with and generally blend with the landscape. Because of the open nature of the Project, all structures must look attractive from all sides. Typical metal Hangars will not be allowed. Flat roofs shall be hidden by parapet walls. Exterior colors should be earth tones, to harmonize with surroundings. Construction of a Dwelling must commence prior to or at the same time as construction of a Hangar on any and all Class "A" Lots (if an Owner owns two Lots, one of the Lots may have a Hangar only, but construction of a Dwelling on the other Lot must commence prior to or at the same time as construction of the Hangar). The following minimum building setback (meaning the distance from the building to the lot line) requirements shall apply to all buildings within the Project: (i) front yard = 25 feet, (ii) interior side yard = 8 feet, (iii) street side yard = 25 feet, and (iv) rear yard = 20 feet. Until the expiration of the Declarant Control Period, Declarant shall have the unilateral right to adopt and revise Design Guidelines to inform Owners of the standards which will be applied in approving or disapproving proposed Improvements. The Design Guidelines and any requirements imposed by the Design Review Board as a condition for approval of any proposed Improvements shall be in compliance with existing law, but may impose additional requirements not otherwise imposed by law. After Declarant shall no longer have the right to adopt the Design Guidelines; the Owners, by a vote of at least two-thirds of the votes of the Association, shall have the right to adopt, amend or revise Design Guidelines. Any amendment shall only be effective prospectively; and no amendment or revision shall require an Owner to alter or modify either (i) any existing Improvement constructed in accordance with the provisions of this Article upon said Owner's Parcel, or (ii) plans and specifications which shall have previously been approved by the Design Review Board within one (1) year of the date of the adoption of such amendment or revision, pursuant to which plans and specifications construction shall have commenced, but may not be completed. In order to preserve the value of existing Improvements and to apply uniform standards for the design and construction of Improvements within the Project, no modification of the Design Guidelines shall provide for or permit a material degradation of the architectural standards originally set forth and used as the standard for approval of the construction of any Improvements constructed within the Project. The different,

additional or revised Design Guidelines shall become effective as to all matters requiring Design Review Board approval from and after the date of adoption of the revised Design Guidelines. Design Guidelines may amplify, but may not be less restrictive than the regulations and restrictions contained in this Declaration and shall be binding upon all Owners of Parcels within the Project. Review and approval by the Design Review Board shall be based upon the standards set forth in this Declaration and in the Design Guidelines. The Design Review Board shall consider not only the quality of the specific proposal, but also its effect and impact on neighboring Parcels, existing Dwellings and the entire Project. In no event shall any Improvement be constructed which shall not be in compliance with engineering, architectural or building codes or any other code design requirements and zoning or other applicable municipal, state or federal laws, ordinances or regulations. Each Owner and potential Owner shall have access to a copy of the Design Guidelines.

5.5. Design Review Procedures. An Owner shall submit three (3) copies of preliminary plans and specifications for any Improvements to be constructed upon its Parcel, which plans and specifications shall include, site plans, maps, dimension drawings, exterior elevations, drainage plans, exterior colors, materials and textures and other data sufficient to adequately disclose the scope and design of the proposed Improvements. The Design Review Board shall designate from time to time, by written notice to the Owners, the present recipient (and recipient's address) for all plans and specifications submittals. The Design Review Board may, without modification or amendment to this Declaration, periodically change the recipient for plans and specifications submittals by written notice to the Owners. If the Design Review Board determines the submission to be insufficient, a written notice shall specify the information that will be required to permit the Design Review Board to begin its review.

Further, the Design Review Board, as a condition to its acceptance and review of an Owner's plans and specifications, may (in addition to any and all other conditions set by the Design Review Board): (i) establish a construction commencement and completion timetable; and (ii) impose a nonrefundable processing and review fee (the "Processing Fee"). The Processing Fee shall be determined by a fee schedule which may be amended by the Design Review Board from time to time. The Processing Fee shall cover the Design Review Board's actual out-of-pocket costs and expenses incurred as a result of the Design Review Board's process and review of the submitted plans and specifications. The Processing Fee shall include, without limitation, processing expenses, architectural and engineering fees including fees of outside consultants engaged by the Design Review Board, and inspection fees. An Owner applying for Design Review Board approval shall pay for the Processing Fee in accordance with any procedures provided by the Design Review Board.

5.6. Review Period. All such plans and specifications submitted to the Design Review Board shall be approved or disapproved by the Design Review Board in writing within fifteen (15) business days after its receipt of a complete submission. In the event that additional information is requested by the Design Review Board, the approval period will be extended accordingly. The Design Review Board shall provide written notification of approval or disapproval. In the event that the plans and specifications are not approved as submitted, such written notification shall also include a reasonably detailed explanation of the reasons for such disapproval. The Design Review Board shall have the right to approve submitted plans and specifications subject to specified conditions. Upon approval, at least one (1) copy of the plans and specifications and related materials shall be returned to the Owner and at least one (1) copy shall be retained by the Design Review Board.

5.7. Term of Approval. Approval by the Design Review Board shall be effective for a period of one (1) year from the date the approval is given. If construction has not commenced within the said one (1) year period, the approval shall be deemed expired and no construction shall thereafter commence without written renewal of such prior approval and such renewal shall be upon such terms as shall be imposed by the Design Review Board and, if adopted, pursuant to Design Guidelines then in effect.

5.8. Required Vote. The act, concurrence or determination of (1) at least two members of the Design Review Board shall be necessary for the Design Review Board to act. Such concurrence or action of said members of the Design Review Board may occur with or without a meeting, and at the same time or at different times. The Design Review Board shall maintain such records as it shall deem necessary to record actions taken or determinations made by it.

5.9. Variances. The Design Review Board may from time to time authorize variances from compliance with any provision of the Design Guidelines when circumstances such as topography, natural obstructions, or aesthetic, environmental or planning objectives or considerations may so warrant; provided, however, that no variance granted shall, in the opinion of the Design Review Board, constitute a material violation of the standards for the Project. Each such variance must be approved by at least two members of the Design Review Board. If such a variance is granted, no violation of this Declaration or the Design Guidelines shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive or to render unenforceable any of the terms and provisions of this Declaration for any purpose except as to the particular Parcel and the provisions and circumstances covered by the variance, nor shall the granting of a variance be deemed to set a precedent with respect to any subsequent requests for variances. The Design Review Board shall not delegate to any single member or group of members of the Design Review Board or to any other person the power to grant variances pursuant to this section. Any request for variance must be in writing and specify the variance requested and the reasons for such variance. A request for a variance shall be reviewed by the Design Review Board within fifteen (15) business days after its receipt of a written request for same. The Design Review Board shall provide written notification of approval or disapproval. In the event that the Design Review Board shall fail to act within said fifteen (15) day period, the requested variance shall be deemed disapproved.

5.10. Final Plans. Upon approval of preliminary plans and specifications, the Owner shall proceed to prepare final construction plans and specifications, including final plans for landscaping, which shall conform with the plans and specifications approved by the Design Review Board. Not later than the time the final plans and specifications are submitted to the appropriate governmental authority for the issuance of building permits, the Owner shall submit copies of the final plans and specifications to the recipient of plans and specifications submittals designated by the Design Review Board. Prior to the commencement of construction, the Design Review Board shall have the right to determine whether the final plans and specifications and landscaping plan conform with the approval previously granted by the Design Review Board. Such determination shall be made within fifteen (15) business days of the date final plans and specifications are delivered to the Design Review Board. The Design Review Board shall provide written notice of its approval or disapproval. Failure of the Design Review Board to provide such notice within said seven (7) day period shall be deemed approval.

5.11. Inspection. The Design Review Board shall have the right and authority, but not the obligation, to monitor construction of the Improvements to see that such Improvements are in compliance with the plans and specifications which have been approved by the Design Review Board. Either directly or by a consultant retained for such purpose, the Design Review Board

shall notify the Owner in writing of any failure to comply with the plans and specifications approved by the Design Review Board. This right of inspection shall expire fifteen (15) business days after the Design Review Board shall have received a written notice of completion of construction from the Owner. The costs of any such inspections shall be paid for by the applicable Owner.

5.12. Notice of Noncompliance. If the Design Review Board determines that any Improvements have been constructed without approval of the Design Review Board or were not constructed in substantial compliance with the description and materials furnished to and any conditions of approval imposed by the Design Review Board, then the Design Review Board shall notify the Owner in writing of such noncompliance. Such notice shall specify the noncompliance and shall require the Owner to take such action as may be necessary to remedy the noncompliance within ten (10) business days of the date of such notice or in the event such noncompliance is not reasonably capable of being remedied within said ten (10) days, then within such time, the Owner shall have commenced such action as shall be required to remedy the noncompliance and shall diligently prosecute same to completion.

5.13. Correction of Noncompliance. If the Owner does not comply with the notice sent pursuant to this Article, then Declarant, the Board and/or the Design Review Board may, in its discretion, record a notice of noncompliance against the Parcel on which the noncompliance exists, and/or remove or correct the noncomplying Improvement and, in such event, the Owner shall reimburse Declarant, the Board and/or the Design Review Board, as applicable, upon demand, for any and all expenses incurred in connection therewith. The Declarant, the Board and/or the Design Review Board shall have standing and authority to enforce in courts of competent jurisdiction its decisions and the Design Guidelines. The right to remedy or remove any noncomplying Improvement shall be in addition to all other rights and remedies which the Board may have at law, in equity or under this Declaration, including specifically, but without limitation, the right to injunctive relief from a court of competent jurisdiction to stay construction or compel removal of a noncomplying Improvement. Should the Declarant, the Board and/or the Design Review Board be required to enforce the provisions hereof, the attorneys' fees and costs incurred, whether or not judicial proceedings are involved, shall be collectible from the Owner of the applicable Parcel.

5.14. No Liability. The Design Review Board as a body, and each member of the Design Review Board individually, shall not be held liable (as a body or individually) for civil claims arising from (i) the acts or omissions of the Design Review Board or the Design Review Board members individually while performing the duties of the Design Review Board (unless the aforementioned claims are the result of the gross negligence or intentional misconduct of the Design Review Board or Design Review Board member), or (ii) the acts and/or omissions of any Owner in the performance or nonperformance of said Owner's obligations under this Declaration. Plans and specifications are not reviewed for (i) engineering, architectural, building code or any other code design requirements, (ii) compliance with zoning or other applicable municipal ordinances or regulations, or (iii) compliance with the requirements of any public utility. Neither the approval of plans and specifications by the Design Review Board, nor the compliance of such plans and specifications to the Design Guidelines shall be construed to constitute any acknowledgement, warranty or representation by Declarant, the Board and/or the Design Review Board as to the technical sufficiency, adequacy or safety of any Improvement or the compliance with applicable building codes, regulations or laws, including specifically, but without limitation, the Americans With Disabilities Act of 1990, as amended, and any regulations adopted pursuant thereto. Any costs, expenses or attorneys' fees incurred by the Declarant, the Board and/or the Design Review Board to defend any claims brought by an Owner under this Declaration shall be

reimbursed by said Owner in accordance with this Declaration or any other applicable methods adopted by the Board.

Article 6 Association

6.1. **The Association.** The administration of the Project shall be by the Association, which shall exist for the sole purpose of performing the functions and providing the services contemplated in this Declaration, including, without limitation, the implementation of the Design Guidelines. The Association shall be organized as required by the Act prior to or concurrently with the execution and recordation of this Declaration and Declarant shall be responsible to pay costs and expenses incurred in such organization. The Association shall be operated as a nonprofit corporation and shall be governed by the Board and officers authorized by the Bylaws. The Association may adopt, amend and revise from time to time, Bylaws which shall constitute written procedures for the regulation and management of the affairs of the Association; provided, however, that no provision of the Bylaws shall substantially alter or amend the rights or obligations of the Owners set forth in this Declaration.

6.2. **Members of Association.** Each Owner shall be entitled and required to be a Member of the Association. An Owner shall become a Member of the Association immediately and automatically upon becoming an Owner and shall cease to be a Member immediately and automatically upon ceasing to be an Owner as evidenced in the official records of San Juan County. The right to be a Member shall be appurtenant to the real property within the Project and shall not be transferred except upon the transfer of title to said real property and then only to the transferee of title thereto. Any transfer of title to a Parcel shall operate automatically to transfer the Owner's rights as a Member of the Association appurtenant thereto to the new Owner thereof. Any attempted separate transfer shall be void.

6.3. **Voting Rights.** The Association shall have three (3) classes of Members: Class A, Class B and Class C.

6.3.1. **Class "A".** Class "A" Members shall be the Owners that own any one or more of the following Lots and/or Hangar Units: Lot 1 through Lot 45, Lot B1 through Lot B6, and/or any Hangar Unit (each, a "Class "A" Lot", and collectively, the "Class "A" Lots"), with the exception of Declarant (and any assignee of Declarant receiving Class "C" votes). Each Class "A" Member shall be entitled to vote on all issues (including Aviation Issues and Non-Aviation Issues) to be voted upon by the Members of the Association. The number of votes which a Class "A" Member shall be entitled to cast during a vote of the Members shall be equal to the number of Class "A" Lots owned by such Member. Each Class "A" Member shall be responsible for its proportionate share of Common Expenses, including Aviation Expenses, as set forth in Article 8.

6.3.2. **Class "B".** Class "B" Members shall be the Owners that own any one or more of the following Lots: Lot 46 through Lot 76 (collectively, the "Class "B" Lots"), with the exception of Declarant (and any assignee of Declarant receiving Class "C" votes). Each Class "B" Member shall be entitled to vote on all Non-Aviation Issues to be voted upon by the Members of the Association. Class "B" Members shall not participate in any vote with respect to any Aviation Issues. Class "B" Members shall not be obligated to pay any Aviation Expenses, but shall be responsible for their proportionate share of other Common Expenses, as set forth in Article 8. The number of votes which a Class "B" Member shall be entitled to cast during a vote of the Members shall be equal to the number of Class "B" Lots owned by such Member.

6.3.3. Class "C". The Class "C" Member shall be Declarant (during such time as Declarant is also an Owner, which may be from time to time) and any successor or assignee of Declarant who takes title to one or more Parcels for the purpose of development and sale (and/or for construction of Improvements for occupancy or other use) and to whom Declarant assigns in a recorded writing one or more of the Class "C" votes. The Class "C" Member shall be entitled to four (4) times the number of votes designated for each Class "A" Lot and Class "B" Lot, as set forth above. Therefore, the number of votes applicable to a Parcel owned by Declarant determined pursuant to Section 6.3.1. or 6.3.2., *times four (4)*, shall be the number of Class "C" votes applicable to such Parcel and which may be cast by Declarant. The Class "C" Member shall be entitled to vote on all issues (including Aviation Issues and Non-Aviation Issues) to be voted upon by the Members of the Association. The Class "C" Member shall be responsible for Common Expenses, including Aviation Expenses, and the Class "C" Member's share thereof shall be calculated in the same manner as a Class "A" Member's share thereof is calculated, as set forth in this Declaration. The Class "C" Membership shall terminate and any Owner then holding Class "C" Membership shall be deemed to be a holder of Class "A" Membership or Class "B" Membership, as applicable, upon the happening of the earliest to occur of the following: (i) when the Declarant elects by written notice to the Association to terminate its Class "C" Membership; or (ii) when eighty percent (80%) or more of the Lots are no longer owned by Declarant (or any affiliate of Declarant).

6.4. Voting. Each Member shall be entitled to vote on all matters brought before the Members for a vote thereon, subject to any applicable limitations as set forth in Section 6.3 above. A Member may be denied the right to exercise its right to vote or participate in any meeting of the Members for failure of said Member to pay Assessments levied against such Member's Parcel. Unless otherwise specifically provided, a majority of the votes present, in person or by proxy, and entitled to vote on any matter before the Association shall be required to approve such matter. Any Owner may, by written notice to the Association, transfer its vote to its Mortgagee or to the Occupant of such Owner's Parcel (including the tenant of such Owner's Hangar Unit). Such transfer shall be effective until notice of revocation of such transfer signed by said Owner shall be received by the Association. No such transfer shall relieve an Owner of any obligation under this Declaration.

6.5. Multiple Ownership. If title to a Parcel or Hangar Unit is held by more than one party, then all such parties shall be Members of the Association and entitled to participate as a Member, but no fractional votes shall be allowed. In the event of joint or multiple Owners of a Parcel or Hangar Unit, said Owners shall designate in writing one party to cast one vote on behalf of said Owners and such designated Owner, and only such designated Owner, shall cast the vote attributable to such Parcel or Hangar Unit.

6.6. Vote of Members. The Board may cause such matters as it shall determine to be submitted to a vote of the Members either at the annual meeting of the Members or at a special meeting called for the purpose of conducting a vote of Members. In addition to such matters as the Board may submit to a vote of the Members, there shall be submitted to a vote of the Members, any matters required to be voted upon by Members in accordance with the provisions of the Act, including specifically but without limitation, any amendment to the Articles.

6.7. Meetings. There shall be a meeting of the Members of the Association not less often than once each calendar year; provided, however, that a meeting of the Members may also be called by the Board or upon the written request of Members which shall be entitled to cast at least one-third (1/3) of the total votes of the Association. A meeting of the Members shall be held

at such time and place within San Juan County or Grand County, as shall be designated by the Board. In the event that the Board shall receive a written request for a meeting from at least one-third ($1/3$) of the total votes of the Association, within ten (10) days of the date of the receipt of such request, the Board shall set the date, time and location of such meeting and such meeting shall be held within thirty (30) days of the date of such request. At any meeting of Members, the Members entitled to cast, in person or by proxy, a minimum of fifty-one percent (51.0%) of the total votes of the Association, shall be required to constitute a quorum necessary for the conduct of business at such meeting. If the quorum required for the conduct of the business of the Association shall not be present at any meeting, then the Members so present may adjourn the meeting to a date which shall be not less than ten (10) days or more than thirty (30) days from that date. Notice of such adjournment and the date to which the meeting shall have been adjourned shall be given to all Members. The quorum to be required at the rescheduled meeting shall be fifty percent (50.0%) of the quorum which was required at the meeting which was adjourned without the conduct of the business of the Members. In the event that the required quorum shall not be present at any meeting so rescheduled in the manner set forth, the meeting shall again be rescheduled and notice shall again be given to all Members, all in the manner set forth for the first rescheduled meeting, and the quorum required shall again be reduced to fifty percent (50.0%) of the quorum required at the most recent rescheduled meeting. Any meeting can be rescheduled as many times as may be required to eventually permit the business of the meeting to be conducted. In connection with any meeting rescheduled as set forth above due to the lack of a quorum, only the issues and items which were originally described in the initial notice to the Members with respect to the initial meeting therefore shall be addressed. No additional or new items or issues may be addressed at such rescheduled meeting(s).

6.8. Organization. The Board shall be entitled to establish such organization and elect such officer(s) as it shall deem necessary to properly perform the functions of the Association; provided, however, that if no other officer or organization shall be established, the Board shall, at a minimum, upon a majority vote of the Board, appoint at least a President who shall be authorized to act for and on behalf of the Association and shall be authorized to enter into contracts and other agreements and to execute such other documents as may be required to permit the Association to perform the duties and obligations and exercise the rights and privileges of the Association as contained in this Declaration. An officer of the Association need not be a Member.

6.9. No Personal Liability; Indemnification. Except as otherwise set forth in the Association's Articles of Incorporation, no Member of the Board or officer of the Association shall be personally liable to the Association or its Members or any third party(ies) for civil claims arising from acts or omissions made in the performance of duties as a Member of the Board or officer, unless the acts or omissions are the result of the intentional misconduct or gross negligence of such Board member or officer. To the full extent allowed under Utah law and in accordance with the provisions contained herein, the Association shall indemnify an individual made a party to a proceeding because such person is or was a Board member or officer of the Association against any and all reasonable expenses, including attorney's fees and costs, in connection with such proceeding if (i) such person's conduct was in good faith, and (ii) such person reasonably believed that said person's conduct was in, or not opposed to, the Association's best interest, and (iii) in the case of any criminal proceeding, said person had no reasonable cause to believe such person's conduct was unlawful. The Association shall not indemnify a Board member or officer under this provision in connection with (i) a proceeding by or in the right of the Association in which the Board member or officer was adjudged liable to the Association, or (ii) any other proceeding charging that the Board member or officer derived an undisclosed personal benefit, whether or

not involving action in such person's official capacity, in which proceeding said person was adjudged liable on the basis that said person derived an improper personal benefit.

ARTICLE 7 Rights, Duties and Obligations

7.1. Association Generally. The Association may, by written contract, delegate in whole or in part, to such person or persons as it shall deem advisable, such of the Association's duties, responsibilities and functions as are properly delegable, including without limitation, responsibilities related to the Runway and Taxiways. The Association shall have the right to exercise any right or privilege given to it expressly by this Declaration or by law, and every other right or privilege or duty given to it herein or reasonably necessary to effectuate any such right, privilege or duty. All goods and services procured by the Association in performing its responsibilities shall constitute a Common Expense. Nothing contained in this Declaration shall be construed to obligate the Association to incur any expenses which cannot be reimbursed to the Association from the Owners by virtue of an Assessment. The Association shall have standing and authority to enforce in courts of competent jurisdiction the provisions of this Declaration, including but not limited to compliance with the Design Guidelines. The right to remedy any noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity or under this Declaration, including specifically, but without limitation, the right to injunctive relief from a court of competent jurisdiction to compel correction of the noncomplying condition. Should the Association be required to enforce the provisions hereof, the attorneys' fees and costs incurred, whether or not judicial proceedings are involved, shall be collectible from the Owner of the applicable Parcel.

7.2. Maintenance of Parcels and Improvements. Except as otherwise provided in Section 7.4 below with respect to Common Areas, the Association shall not be responsible for the maintenance of any Parcel in accordance with the provisions of this Declaration, including specifically Section 4.2; provided, however, that the Association shall be responsible to cause Owners to maintain Parcels and Improvements as required by this Declaration. Each Owner shall be responsible for the management and maintenance of the Parcel or Parcels owned by such Owner. Each Owner shall, at such Owner's sole cost and expense, keep the Owner's Parcel and all Improvements located thereon, in a good, clean, safe and sanitary condition, order and repair and cause all weeds, rubbish and debris to be removed from its Parcel. Each Owner shall be responsible for the exterior maintenance of any Dwelling, Hangar and any and all Improvements, including sidewalks and driveways, located on said Owner's Parcel.

7.2.1. Failure to Maintain. If the Association determines that the level of maintenance on (i) any Improvement, (ii) any Owner's Parcel, or (iii) any vacant Parcel, is unacceptable, the Association shall so notify the Owner of such Parcel. Such notice shall specify the noncompliance and shall require the Owner to take such action as may be necessary to remedy the noncompliance within thirty (30) days of the date of such notice or in the event such noncompliance is not reasonably capable of being remedied within said thirty (30) days, then within such time, the Owner shall have commenced such action as shall be required to remedy the noncompliance and shall diligently prosecute same to completion. Notwithstanding the foregoing, if necessary due to safety considerations, the period allowed for remedying the noncompliance may be less than 30 days as reasonably determined by the Association.

7.2.2. Correction of Noncompliance. If, in the Association's opinion, the Owner shall fail to correct the stated deficiencies within the required period, the Association may order the necessary work (the "Required Maintenance") performed at the Owner's expense. The cost of the Required Maintenance together with an administrative fee in an amount equal to ten percent (10.0%) of the cost of the Required Maintenance, shall be assessed to said Owner as a Reimbursement Assessment. If the Owner does not comply with the notice sent pursuant to Section 7.2.1 and the Association elects not to cause the Required Maintenance to be completed, then the Association, in its discretion, may or may not record a notice of noncompliance against the Parcel on which the noncompliance exists. In any event, the Owner shall reimburse the Association upon demand, for any and all expenses incurred in connection therewith.

7.3. Architectural Standards. The Association shall be responsible for the implementation of the Design Guidelines and to cause all Improvements within the Project which are to be constructed or renovated, shall be constructed or renovated in accordance with the standards set forth in the Design Guidelines as same are interpreted and applied by the Design Review Board.

7.4. Management of Common Areas. The Association shall be responsible for the exclusive management, control, operation and maintenance of the Common Areas, including the Airstrip Easement and all associated Improvements, and shall keep the same in good, clean, safe and sanitary condition, order and repair. Where it deems necessary or desirable, the Association may construct, reconstruct, repair or replace any capital improvement related to or located upon the Common Areas. The Association is hereby granted an easement over and across each Parcel to maintain the Common Areas in a good, clean, safe and sanitary condition, order and repair. Costs and expenses incurred by the Association in the maintenance of Common Areas shall be Common Expenses.

7.5. Maintenance of Streets. Streets shall be maintained by the Association for the benefit of the Project, as determined by the Association in the Association's sole discretion. Such maintenance may include, without limitation, removal of snow and ice. Costs and expenses incurred by the Association in the maintenance of Streets and other Common Areas shall be Common Expenses.

7.6. Allocation of Taxes. Each Owner shall be responsible to pay, prior to delinquency, any and all Taxes which shall be levied against such Owner's Parcel and any Improvements located upon such Owner's Parcel. Declarant shall be responsible to pay, prior to delinquency, any and all Taxes which shall be levied against any portion of the Property owned by Declarant. The Association shall be responsible to pay, prior to delinquency, all Taxes levied against any portion of the Property owned by the Association. Any Owner, Declarant or the Association shall be entitled to protest or appeal the amount of Taxes levied and delay payment of Taxes being protested or appealed, provided that such protest or appeal is prosecuted according to applicable law and such law shall permit delay in payment of such Taxes pending resolution of such protest or appeal. In the event that Taxes are not separately levied and collected by the applicable taxing authority between the Parcels, then the Association shall make a reasonable allocation of the Taxes based upon the value of applicable portions of the Project.

7.7. Project Sign. Declarant may construct a sign which shall be designed to identify the name and other identification of the Project generally (the "Project Sign"). The Project Sign, if constructed, shall be constructed within a sign easement. The initial design of the Project Sign shall be determined in the sole discretion of Declarant and may, but shall not be required to include the sign, flagpoles, lighting, landscaping features, etc. Declarant shall be responsible for

payment of costs and expenses incurred in the construction and installation of any Project Sign that Declarant shall elect to install. The Association shall be responsible to maintain any Project Sign installed and Improvements related to such Project Sign and any and all costs and expenses which shall be incurred in the operation, servicing, replacement and maintenance of the Project Sign (and such related Improvements) shall be a Common Expense. It is presently expected that only one (1) Project Sign shall be constructed, if any; provided, however, to the extent that more than one sign for the benefit of the entire Project shall be constructed, the provisions of this Section 7.7 shall be applicable to each such sign.

7.8. Enforcement of Rights. The Board shall be responsible to reasonably pursue performance of duties and obligations to be performed and/or collection of payments required to be made to or for the benefit of the Association or the Project generally, including, by way of illustration and not by way of limitation, payment of unpaid Assessments from Owners, compliance with the Design Guidelines, enforcement of Aviation Rules and Regulations, enforcement of warranty obligations of parties responsible for the construction and/or maintenance of Improvements constructed for the benefit of the Association or the Project generally and insurance claims resulting from damage to the Common Areas.

7.9. Manager. The Association may by written contract delegate in whole or in part to a professional manager such of the Association's duties, responsibilities, functions, and powers hereunder as are properly delegable, including without limitation, responsibilities related to the Runway and Taxiways. The fees for the services of any manager retained by the Association shall be a Common Expense.

7.10. Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably implied from the existence of any right, privilege, or duty given to it herein or reasonably necessary to effectuate any such right, privilege, or duty.

7.11. Association Rules. The Board from time to time and subject to the provisions of this Declaration, the Articles, and the Bylaws, may adopt, amend, repeal and enforce Rules governing, without limitation, the following: (a) the use of the Common Areas, including without limitation, the Runway, Taxiways, trails, open space and Streets; (b) the use of any facilities or Improvements owned by the Association; (c) collection policies and procedures; and (d) other matters concerning the use and enjoyment of the Property and the conduct of residents, as deemed necessary by the Board. The Rules may supplement, clarify and add detail to issues addressed in this Declaration, the Articles, and the Bylaws. However, the Rules may not contradict this Declaration, the Articles, or the Bylaws.

ARTICLE 8 Assessments

8.1. Payment of Assessment. Each Owner by acceptance of a deed to any Parcel (or by acceptance of any other form of transfer or conveyance of such Parcel to such Owner), whether or not it shall be so expressed in such deed or other transfer or conveyance document, shall be deemed to and does hereby covenant and agree to pay to the Association any and all Assessments levied against its Parcel in accordance with the provisions of this Declaration. Declarant shall have the duty to pay any and all Assessments which shall be levied against any Parcel owned by Declarant. The Assessments, together with interest thereon which shall accrue at the Interest Rate or Default Rate, as set forth herein, late charges and costs of collection thereof, including court costs and reasonable attorneys' fees, shall be a charge and continuing lien upon the Parcel

against which such Assessments are made from the date on which such Assessments are due. Assessments may commence upon the date of the recording of this Declaration.

8.2. Apportionment. Each Owner shall be responsible to pay a percentage of any General Assessment or Supplemental Assessment, which percentage shall be in proportion to such Owner's respective percentage ownership (the "Owner's Percentage") of the total of (i) the total number of Lots which shall exist in the Project, plus (ii) the total number of Hangar Units which shall exist in the Project. An Owner's Percentage may vary during a calendar year if the number of Lots owned by such Owner shall change during such year, or if the total number of Hangar Units shall change during such year. Each Owner's Percentage shall be obtained by dividing the number of Lots and/or Hangar Units owned by such Owner by the total number of Lots and Hangar Units within the Project on the same date. As an example and for purposes of illustration only, if there are eighty-two (82) Lots and ten (10) Hangar Units existing at the Project, an Owner which owns one Lot (or one Hangar Unit) would have an Owner's Percentage of $1/92$, or 1.087%. The amount obtained by multiplying the total amount of the applicable Assessment by the Owner's Percentage shall be the amount of the applicable Assessment which such Owner shall be required to pay.

8.3. Annual Budget. General Assessments shall be determined on the basis of a calendar year beginning January 1, and ending December 31; provided, however, that the first such year shall begin on the date that this Declaration is recorded and shall end December 31, of the then-current year. On or before November 1st of each year, the Board shall prepare and furnish to each Owner or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year, the "Annual Budget." The Annual Budget shall itemize for the applicable year, the estimated Common Expenses, that portion of such Common Expenses (with corresponding dollar amounts) which comprise Aviation Expenses, anticipated receipts, if any, reserves, and any estimated deficits or surpluses from the prior operating period. The Annual Budget shall serve as notice of and as the supporting document for the General Assessment for the upcoming fiscal year and as a guideline under which the Project shall be operated during such annual period.

- (a) Reserve Fund Analysis. The Board shall cause a reserve analysis to be conducted no less frequently than every six (6) years to analyze the cost of repairing, replacing or restoring Common Areas that have a useful life of three years or more and a remaining useful life of less than 30 years. This reserve analysis should be reviewed no less frequently than every three (3) years and updated if necessary. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis.
- (b) Reserve Fund Account Creation. The Board shall create a reserve fund account that is separate and distinct from the Association's general account, which account shall be funded from the reserve fund assessments. The amount of the reserve fund assessment shall be a separate line item in the approved Annual Budget.

8.4. General Assessment. All Common Expenses shall be paid through an annual general assessment to all Owners. Each Owner's share of the total Common Expenses, as estimated by the Annual Budget, shall be a "General Assessment." Each Class "A" Member and the Class "C" Member shall be responsible for its proportionate share of Aviation Expenses as set forth in the Annual Budget. As an example and for purposes of illustration only, if there are sixty-

one (61) Class "A" Lots (which number includes ten (10) Hangar Units) existing at the Project, an Owner which owns one Class "A" Lot would be responsible for 1/61, or 1.639% of the Aviation Expenses. The Class "B" Members shall not be obligated to pay any Aviation Expenses. Each respective share of a General Assessment shall be based upon the Annual Budget determined in accordance with Section 8.3. In the Board's discretion, such General Assessment may include an amount to be held in reserve for capital expenditures, and any and all other applicable costs and expenses in the Board's discretion. Within ninety (90) days of the close of each calendar year, each Owner shall be provided a copy of the operating statement of the Association for the preceding year. Said operating statement shall provide reasonable detail of the actual income and expenses of the Association for the applicable year.

8.4.1. Notice. The General Assessment for each calendar year shall be due and payable on January 1 of such year. Failure of the Board to give timely notice of any General Assessment by delivery of the Annual Budget, as provided herein, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration or a release of any Owner from the obligation to pay such General Assessment or any other Assessment; provided, however, the date on which payment shall become due in such case shall be deferred to a date thirty (30) days after notice of such General Assessment shall have been given to the Owners in the manner provided in this Declaration.

8.4.2. Payment. Any Owner which shall not have paid its annual General Assessment in full on or before January 1 of each year, or the date upon which the same shall be due in accordance with Section 8.4.1 shall be deemed to have elected to pay such General Assessment in twelve (12) equal monthly installments. Any General Assessment which shall not be paid on or before January 1 of the applicable year shall accrue interest at the Interest Rate on the unpaid balance thereof from the original date due until paid. The Board may, but shall not be required to send out monthly statements to an Owner and each such installment shall be due and payable on the first day of each month without notice or demand. Any monthly installment of any General Assessments which shall not have been received by the Board on or before the fifth day of any month in which it is due shall be assessed a late charge in an amount to be determined from time to time by the Board, but which shall not be in excess of ten percent (10.0%) (or the maximum rate permitted by applicable law, whichever is lower) of the amount of the unpaid installment. In the event that a monthly installment of a General Assessment which is being paid monthly as permitted in accordance with the provisions of this section is not paid when due, then so long as the monthly payment or payments shall remain delinquent, the unpaid balance of such General Assessment shall accrue interest at the Default Rate. Late charges and interest on any unpaid monthly installments of any General Assessments may be charged according to procedures established by the Board, whether or not monthly statements shall be sent. The Board shall have the right to establish a fee for costs and expenses incurred in maintaining records of the installment payments of General Assessments, which fee shall be charged only to Owners who pay such General Assessments on an installment basis.

8.5. Supplemental Assessments. In addition to the General Assessment, the Board may upon the vote of the majority of the Board at a meeting called for the purpose of such vote, levy, in any year, one or more Supplemental Assessments applicable to that year only for the purpose of paying, in whole or in part, (i) the cost of any reconstruction, repair or replacement of a capital improvement upon the Common Areas, (ii) deficits created by non-payment of any Assessments by any Owner, (iii) extraordinary costs and expenses which may be incurred in the maintenance of the Common Areas, (iv) costs not otherwise included in the Annual Budget, and/or (v) other costs and expenses required to be paid by the Owners in accordance with the provisions of this Declaration. To the extent that any Supplemental Assessment is for Aviation Expenses, Class "B"

Members shall not be obligated to pay such Supplemental Assessment. At the time of the adoption of such Supplemental Assessment, the Board shall designate the time and the manner in which such Supplemental Assessment is to be paid by each Owner, as applicable; provided, however, that the due date for payment of a Supplemental Assessment shall be at least thirty (30) days from the date that notice of the Board's approval of the Supplemental Assessment shall be given by the Board. Such Supplemental Assessment shall be apportioned to each Owner in the manner set forth in Section 8.2 (and, with respect to Aviation Expenses, in the manner set forth in Section 8.4). Any Supplemental Assessment which shall not be paid on or before the applicable due date shall accrue interest at the Default Rate on the unpaid balance thereof from the original date due until paid.

8.6. Reimbursement Assessment. The Board may, subject to the provisions hereof, levy an Assessment against any Owner if (i) the willful or negligent failure of such Owner to comply with this Declaration, the Articles, or the Bylaws has resulted in the expenditure of funds by the Association to cause such compliance, or (ii) any such Owner shall cause any damage to any Improvement required to be maintained by the Association. Such Assessment shall be known as a "Reimbursement Assessment" and shall be levied only after notice provided in Section 8.8. The amount of the Reimbursement Assessment shall be due and payable to the Association thirty (30) days after notice to the Owner of the decision of the Board that the Reimbursement Assessment is owing. Interest shall accrue on any Reimbursement Assessment at the Default Rate from the date of expenditure of funds by the Association until such amounts shall be repaid.

8.7. Collection of Assessments. The Board shall in its sole discretion, be entitled to establish such procedures for the collection of Assessments, including provisions for late charges, interest on unpaid Assessments, and such other matters as the Association shall determine, and shall have any and all rights and remedies provided at law or in equity for the collection of debts, subject only to the requirement of notice as provided in Section 8.8.

8.8. Notice of Unpaid Assessment. If any Assessment or any installment thereof is not paid within thirty (30) days after its due date, the Board may mail a notice of default to the applicable Owner. Such notice shall specify (i) that the applicable Assessment or installment thereof is late, (ii) the action required to cure such default, including the specific amount required to be paid, including late charges, interest and costs of collection, if any, (iii) a date not less than thirty (30) days from the date the notice is mailed by which such default must be cured, and (iv) that a failure to cure the default on or before the date specified in the notice may result in the acceleration of the balance of the Assessment for the current year and the filing and/or foreclosure of a lien for the Assessment. If the default in the payment of the Assessment is not cured as specified in the notice, the Board, at its option, may declare all of the unpaid balance of the Assessment to be immediately due and payable without further notice or demand to the Owner and may enforce the collection of the full Assessment and all charges and interest thereon in any manner authorized by law or in this Declaration.

8.9. Remedies to Enforce Assessments. Each Assessment, together with accrued interest, late charges or other similar charges, levied shall be a separate, distinct and personal debt and obligation of the Owner against whom such Assessment is assessed. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association against such Owner without foreclosing or waiving the lien securing the same. Any and all rights and remedies shall be exercised in such manner, on one or more occasions and in such order as the Board shall elect, without waiver of any other right or remedy or lien provided in this Declaration or by law. Any failure of the Board to exercise any such right on one or more occasions shall not constitute a waiver of the right to so exercise such right in the future. In addition to the amount

of the unpaid Assessment, an Owner shall be required to pay any and all costs and expenses which may be incurred by the Association in collection of such Assessment, including reasonable attorneys' fees and costs, whether or not litigation is commenced.

8.10. Lien for Assessments. All sums assessed to an Owner of any Parcel in the Project pursuant to the provisions of this Declaration, together with interest thereon at the Interest Rate or Default Rate, as applicable, late charges and costs of collection, shall be secured by a continuing lien on such Parcel in favor of the Association. The Board may record a notice of lien amount for sums assessed pursuant to this Declaration. If it elects to do so, the Board shall cause to be prepared a written notice of lien setting forth (i) the name of the Owner of the applicable Parcel, (ii) the legal description of the Parcel, (iii) the amount of the Assessment, (iv) the date such Assessment was due and (v) the amount remaining unpaid. Such notice of lien shall be signed and acknowledged by an officer of the Association, and shall be recorded in the official records of San Juan County. No notice of lien shall be recorded until there is a delinquency in the payment of the Assessment and after the notice required to be given pursuant to Section 8.8. Such lien may be enforced by the sale or foreclosure of the Parcel encumbered by the lien at a foreclosure sale conducted by the Board or its attorney in accordance with the provisions of Utah law applicable to the foreclosure of a mortgage or trust deed or in any manner permitted by Utah law. In a foreclosure conducted under the trust deed statute, the Association may appoint any licensed attorney or title company as trustee. In any such sale or foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, including reasonable attorneys' fees, and such costs and expenses shall be secured by the lien herein provided whether or not the same shall be specifically set forth therein. The Owner shall also be required to pay to the Association any Assessments against the Parcel which shall become due during the period of foreclosure or sale, and all such Assessments shall be secured by the lien herein provided. The Association shall have the right and power to bid in any foreclosure or sale and, upon purchase thereof, to hold, lease, mortgage or convey the subject Parcel. In the event a proceeding for the foreclosure of the lien granted hereby shall be commenced, while such proceeding shall be in process, the Association shall be entitled to the appointment of a receiver to collect the rentals being derived from such Parcel.

8.11. Priority of Lien; Liability of Owner. This lien shall have priority over all other interests in the Parcel except liens for real property taxes and mortgages in certain circumstances. The priority of lien for Assessments provided for herein over a Mortgage shall be governed by the provisions of Section 10.3. No foreclosure of a lien shall extinguish the personal liability of the Owner therefor unless the Association shall either (i) actually purchase the Parcel at the foreclosure sale conducted to foreclose such lien, or (ii) actually receive payment in full of amounts due. An Owner's personal liability for payment of Assessments shall be reduced by the amount actually paid at the foreclosure by the successful bidder which shall remain after allocation for payment of all costs and expenses incurred by reason of such sale. No other sale or transfer shall relieve such Owner from liability for any Assessments which shall be due as of the date of foreclosure. Further, this Declaration shall constitute notice to any purchaser or transferee of any Owner of the lien for assessments and other amounts created hereby. Consequently, any such purchaser or transferee of any Parcel shall take such Parcel subject to any such lien and, upon acceptance of the deed or other transfer or conveyance document related thereto, shall be responsible for the payment of both (i) all then-current and future obligations for the payment of assessments and other amounts described herein, and (ii) any and all assessments and other amounts previously assessed or due that have not then been paid in full.

8.12. Certificate of Assessment. The Board shall, upon written request, and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth

whether the Assessments on a specific Parcel have been paid and said certificate may be conclusively relied upon by the party requesting same.

8.13. No Avoidance. No Owner may avoid or diminish such Owner's obligation to pay Assessments, the right of the Association to assert a lien against said Owner's Parcel to enforce payment of same or be relieved of such Owner's personal obligation for the payment of Assessments by reason of (i) a waiver of the use or enjoyment or the actual non-use of its Parcel, or of any Common Areas (ii) a waiver of any services provided for in this Declaration, or (iii) all or any part of said Owner's Parcel being unoccupied for all or any portion of the period for which such Assessments shall have been made.

8.14. Accrual of Interest. Interest shall accrue on amounts required to be paid in accordance with the provisions of this Declaration from the date such payment is due until the required amount is received by the Association. The Interest Rate and the Default Rate shall be adjusted at the same time and in the same manner as there shall occur any change in the Reference Rate. All calculations of interest hereunder shall be made as follows: (i) the Interest Rate or the Default Rate, as applicable, shall be multiplied by the amount due, (ii) the product determined in clause (i) above shall be divided by three hundred sixty-five (365); and (iii) the quotient obtained in clause (ii) above shall be multiplied by the actual number of days in the period for which the calculation is being made.

8.15. No Offset. All Assessments shall be payable in the amounts specified in the levy thereof, and no offset or reduction thereof shall be permitted for any reason, including, without limitation, any claim that the Association, the Board or any officer, employee, agent or representative thereof is not properly exercising its duties and powers under this Declaration.

8.16. Reinvestment Fee. With the exception of those Parcels conveyed by Declarant, the Association shall levy a one-time reinvestment fee when a change in ownership of a Parcel occurs in an amount as established by the Board from time to time, up to a maximum of one-half of one percent (0.05%) of the gross sales price of the Parcel. The purpose of the reinvestment fee is to benefit the Project and each Owner by facilitating the maintenance of the Common Areas.

ARTICLE 9 No Security Provided

Neither the Declarant nor the Association are obligated to provide any security or police services for the Project. Each Owner and Occupant is responsible for the security of its own Parcel and for the safety of its guests, visitors and invitees. By acceptance of title to or an interest in any Parcel, each Owner and Occupant agrees to accept responsibility for such security and waives and releases, on its own behalf and on behalf of its officers, directors, guests and/or invitees, any claim or cause of action against Declarant and the Association relating to failure to provide security for any part of the Project, including, without limitation the Streets.

ARTICLE 10 Mortgagee Protection

10.1. Mortgagee Protection. No breach of any of the covenants, conditions, restrictions, or limitations contained in this Declaration shall defeat or render invalid the lien of any Mortgage made in good faith and for value; provided, however, that all such covenants, conditions,

restrictions or limitations contained herein shall be binding upon an Owner whose title is derived through foreclosure, trustee's sale or by deed or assignment in lieu of foreclosure.

10.2. Notice of Noncompliance to Mortgagee. From and after the time a Mortgagee makes written request to the Association therefor, the Association shall send to the Mortgagee a copy of any notice of default sent to the Owner.

10.3. Priority of Assessment Lien. The lien or claim against a Parcel for unpaid Assessments levied by the Association pursuant to this Declaration shall be subordinate to a first Mortgage given in good faith and for value affecting such Parcel which has been recorded prior to the date such Assessment became due. A Mortgagee who comes into possession of the Parcel pursuant to its Mortgage or a deed or assignment in lieu of foreclosure shall take the same free of such lien or claim for unpaid Assessments or charges, but only to the extent of Assessments or charges which accrue prior to foreclosure of the Mortgage, exercise of a power of sale available thereunder or delivery of a deed or assignment in lieu of foreclosure, except that such Mortgagee shall be responsible for the payment of a pro rata share of such prior Assessments or charges resulting from a pro rata reallocation thereof to all Parcels including the Parcel in which the Mortgagee is interested. No Assessment, charge, lien or claim which is described in the preceding sentence as being subordinate to a Mortgage or as not being a burden to a Mortgagee coming into possession pursuant to its Mortgage or a deed or assignment in lieu of foreclosure shall be collected or enforced against a Mortgagee, a successor in title to a Mortgagee or the Parcel affected or previously affected by the Mortgage concerned (to the extent any such collection or enforcement would prejudice the interests of the Mortgagee or successor in title to the Mortgagee interested in such Parcel).

10.4. Financial Information. Any Mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Association during reasonable business hours. From and after the time a Mortgagee makes written request to the Association therefore, and at the expense of such Mortgagee, the Association shall furnish to such Mortgagee copies of such financial reports or information related to the activities of the Association, including the work performed to maintain the Common Areas as may be prepared for distribution to or use by the Owners generally.

10.5. Article Supersedes Others. In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article 10, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

10.6. Amendment to Article. No amendment to this Article 10 which has the effect of diminishing the rights, protection, or security afforded to Mortgagees shall be accomplished or effective unless all of the first Mortgagees of the individual Parcels have given their prior written approval to such amendments. Any amendment to this Article 10 shall be accomplished by an instrument executed by the Association and filed for record in the office of the County Recorder. In any such instrument, an officer of the Association shall certify under penalties of perjury that the prior written approval of first Mortgagees required by this Article 10 as a condition to amendment has been obtained.

10.7. Notices to Mortgagee. Any notice to a Mortgagee under this Article 10 shall be in writing and shall be sufficient for all purposes if personally delivered or if sent by first class mail,

postage prepaid, and addressed to the Mortgagee at the address for notices from time to time specified by the Mortgagee in writing to the Association.

ARTICLE 11 Enforcement

11.1. Enforcement by the Association. In addition to, and not in lieu of, any other enforcement rights set forth in this Declaration, the Association may enforce this Declaration, the Bylaws, the Design Guidelines and any determination of the Design Review Board (including without limitation, any and all easements, covenants, conditions, restrictions, terms, provisions, liens, charges, rights and/or duties now or hereafter imposed in any of the foregoing) through any of the following methods, as it deems appropriate in its sole discretion. The use of any one method does not prevent the use of another or multiple methods at the same time or subsequently. The person against whom any method of enforcement is utilized may be assessed for all costs and reasonable attorney fees incurred by the Association related to the enforcement efforts.

(i) Fines. The Association shall have the power to assess reasonable fines against Owners.

(ii) Suspension of Voting Rights. The Association may suspend an Owner's voting rights in the event that the Owner is more than thirty (30) days delinquent in paying any Assessment or other amount due hereunder, except for delinquencies solely based on the failure to pay fines and charges related thereto.

(iii) Suspension of Services and Access to Amenities. The Association may suspend any services provided by the Association to the Owner or the Owner's Parcel, including without limitation, use of the Runway, Taxiways or other aviation related amenities, in the event that the Owner is more than thirty (30) days delinquent in paying any Assessment or other amount due hereunder.

(iv) Legal Action. The Association may elect to bring a suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(v) Self Help. If an Owner fails to (1) maintain or repair its Parcel or any Improvement thereon as required herein, or (2) observe any restrictions imposed on such Owner (or any Occupant of such Owner's Parcel) by the Declaration, the Bylaws, the Design Guidelines and/or any determination of the Design Review Board, then the Association may give written notice to such Owner (or Occupant of such Owner's Parcel) stating the nature of the default and the corrective action that the Association determines to be required and requesting that the corrective action be carried out within a period of fourteen (14) days after the giving of such written notice (however, if necessary due to safety considerations, the period allowed for corrective action may be less than 14 days as reasonably determined by the Association). If the Owner (or Occupant of such Owner's Parcel) fails to carry out such action within the period specified by the notice or as otherwise required hereunder, the Association through its agents and representatives may enter the Parcel and cause corrective action to be taken. The Association may assess the Owner for the costs thereof including but not limited to reasonable attorney fees related to any such action.

11.2. The Failure to Enforce is No Waiver. The failure by the Association to enforce any provision, condition, term, limitation, restriction or prohibition set forth in the Declaration, the Bylaws, the Design Guidelines and/or any determination of the Design Review Board or to avail

itself of any remedy or procedure provided in any of the foregoing or by law shall not be deemed a waiver of any rights whatsoever.

11.3. Additional Enforcement Parties. All enforcement rights granted hereunder shall also be extended to Declarant, the Board and the Design Review Board.

11.4. Enforcement. Unless otherwise specifically set forth herein, Declarant, the Board and the Association shall have the right to enforce, by any proceeding at law or in equity, all easements, covenants, conditions, restrictions, liens, charges, rights and/or duties now or hereafter imposed by the provisions of this Declaration. Failure of Declarant or other specified party to enforce any easement, covenant, condition, restriction, lien, charge, right and/or duty contained herein on any one or more occasion shall not be deemed a waiver of the right to do so on any subsequent occasion.

ARTICLE 12 Miscellaneous Provisions

12.1. Notices. Upon acquisition of title to a Parcel, each Owner shall provide written notice to the Association of such Owner's address for purposes of furnishing notices in connection with this Declaration. The Association shall maintain a record of the notice addresses furnished by the Owners. The address provided by an Owner shall be used for any notice required to be given under this Declaration and if no such address shall have been provided, then the address used by the San Juan County Assessor/Treasurer, for the mailing of real property tax statements for such Parcel shall be used for such notice. All notices to be given pursuant to this Declaration shall be sufficient if given by personal service, by guaranteed overnight delivery service or by being mailed postage prepaid, certified or registered mail, return receipt requested, to the prescribed address. Any time period provided in the giving of any notice hereunder shall commence upon the date of personal service, the date after delivery to the guaranteed overnight delivery service or two (2) days after mailing by certified or registered mail. Notice of the regular annual meeting of the Members shall be sent as set forth in the Bylaws.

12.2. Amendment. Except where otherwise specifically provided in this Declaration, this Declaration may be amended only upon (i) the affirmative vote of two-thirds of the total votes of the Association, in person or by proxy, and (ii) as a requirement applicable during the Declarant Control Period only, the affirmative vote of at least two of the three initial Directors of the Board (or, if applicable, their replacements duly appointed by Declarant); provided, however, in all events if Declarant owns any Parcel or any portion of the Property, then Declarant must also consent to such amendment. Any such amendment shall recite that a vote has been properly taken and that the amendment has been approved in accordance with the provisions hereof, shall be certified by an officer of the Association and shall be recorded in the office of the County Recorder. Any such amendment shall take effect upon such recordation. Each Owner makes, constitutes and appoints the Association the true and lawful attorney-in-fact of said Owner to act in said Owner's name, place and stead to make, execute, sign, acknowledge and file with respect to the Project such amendments to this Declaration as may be required by law or by vote taken pursuant to the provisions of this Declaration. Any amendment to this Declaration which shall require the express consent of a specified party, shall be accomplished only by an amendment executed by both the Association and the party from whom such consent shall be required which shall be filed for record in the official records of San Juan County.

12.3. Amendment by Declarant. In addition to the rights of Declarant under Section 12.2 above (and in any other provision of this Declaration), Declarant reserves and shall have the

sole and unilateral right, privilege and option to (i) amend this Declaration without the vote or consent of any Owner for the purpose of curing any inconsistency between the provisions contained herein, (ii) amend this Declaration without the vote or consent of any Owner in any manner which does not adversely affect the substantive rights of existing Owners or Mortgagees, and (iii) amend this Declaration without the vote or consent of any Owner for the purpose of making any Additional Property subject to this Declaration. The foregoing amendments may be made without the joinder or approval of any Owner, Mortgagee or the Association.

12.4. Insurance. The Association shall obtain and maintain such insurance as may be required by law, including workers compensation insurance, and shall have the power to obtain such other insurance (including without limitation insurance related to the Runway, Taxiways, and other aviation related improvements, amenities and services) and such fidelity, indemnity or other bonds as the Board shall deem necessary or desirable. Insurance policies and insurance coverage shall be reviewed at least annually by the Board in light of the then existing and reasonably anticipated liabilities of the Association.

12.5. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property and Project for a term of ninety-nine (99) years from the date this Declaration is recorded, after which time, they shall be automatically extended for successive periods of ten (10) years, unless terminated at the end of any such period by the affirmative vote of two-thirds (2/3) of the total votes of the Association. No such termination shall terminate any Easement granted herein and all such Easements shall survive any termination of this Declaration and may be extinguished only in the manner provided by law for the termination of an easement.

12.6. No Merger. The easements, covenants and restrictions and other provisions contained in this Declaration shall remain in full force and effect despite the fact that any of the Parcels may be owned by the same persons from time to time. It is the express intent of the Declarant to create a common scheme for the development and use of the Project which will not be terminated by the doctrine of merger or otherwise unless this Declaration is terminated in accordance with the provisions hereof.

12.7. Assignment of Declarant's Rights and Remedies. Any and all of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant to any person, corporation, association or other entity which assumes such assigned duties of Declarant hereunder. In the event that Declarant attempts to assign less than all of the rights, powers and reservations of Declarant set forth herein, then any such assignment must specify which rights, powers and reservations are being assigned and the only party that shall be permitted to exercise a right reserved or granted unto Declarant shall be the party to whom such right has been assigned. To be effective, such assignment must be in writing, must be recorded in the official records of San Juan County, and must specifically refer to the rights, powers and reservations of Declarant hereunder which are being assigned. Upon acceptance of such assignment by any such person or entity (such acceptance may be shown, among other ways, by execution of such assignment by such assignee, or by such assignee recording the assignment in the official records of San Juan County) and recording of such assignment in the official records of San Juan County, said assignee shall, to the extent of such assignment, assume, and be deemed to have assumed, Declarant's duties hereunder and shall have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. Upon such assignment and recording, and to the extent thereof, the party making such assignment shall be relieved from all liabilities, obligations and duties hereunder arising from and after the date of such assignment. Anything contained elsewhere herein to the contrary notwithstanding, the mere conveyance or transfer of ownership of the Property, or any portion thereof, by Declarant to any

person or party, whether by deed or other instrument of conveyance, shall in no way convey any right, power or reservation of Declarant hereunder. A successor to Declarant by reason of any merger or consolidation of the then Declarant shall automatically be deemed to have assumed Declarant's duties hereunder and shall have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein.

12.8. Violation Creates Nuisance. Any violation of any provision, covenant, condition or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any party entitled to enforce the provisions of this Declaration.

12.9. Violation of Law. Any violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any Parcel or Improvements within the Project, is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

12.10. No Third Party Beneficiary. This Declaration has been executed and recorded for the benefit of Declarant and the Owners. Unless otherwise set forth herein with specificity which shall include the name of the party which shall be intended to be benefitted by a specific provision of this Declaration, no other party shall be construed to be an intended third party beneficiary of any of the rights, duties or obligations set forth herein and no party other than Declarant or an Owner shall, therefore, have the right to enforce any provision hereof, unless such right shall be specifically set forth herein.

12.11. Words of Conveyance. The use of the word "grant," and any form thereof, as used in provisions of this Declaration to create or preserve easements, licenses or other rights and privileges described herein shall be deemed to be construed in such manner as shall be required to give effect to the easement, license, right or privilege intended to be created or preserved by such provisions and, to the extent necessary to effect such result, any use of the word grant, or any form thereof, shall be deemed to include such other words of conveyance (e.g., such as reserve, quitclaim, convey, transfer, etc.) as may be required to give effect to the easement, license, right or privilege intended to be created or preserved.

12.12. Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

12.13. Gender and Number. In this Declaration, unless the context requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.

12.14. Captions. The titles, headings and captions used herein are for convenience only and are not a part of this Declaration and shall not be considered in construing, nor shall same be used to limit or amplify the terms and provisions hereof.

12.15. Invalidity of Provision. If any provision of this Declaration as applied to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Declaration, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Declaration as a whole.

12.16. Exhibits. All exhibits to this Declaration are incorporated herein by this reference.

12.17. Governing Law. This Declaration and the exhibits attached hereto shall be governed by and construed under the laws of the State of Utah.

[signature pages to follow]