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Case No. 73504-7-I

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

**EVERETT HANGAR, LLC, a Washington limited liability company,
Plaintiff-Respondent,**

v.

**KILO 6 OWNERS ASSOCIATION, a Washington nonprofit
corporation; KILO SIX, LLC, a Washington limited liability
company; HISTORIC HANGARS, LLC, a Washington limited
liability company; HISTORIC FLIGHT FOUNDATION, a
Washington nonprofit corporation; and JOHN SESSIONS, an
individual
Defendants-Appellants.**

BRIEF OF APPELLANTS

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STATE OF WASHINGTON
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I. INTRODUCTION

Defendant-Appellant Historic Flight Foundation (the “*Museum*”) operates a public vintage aircraft museum at the Snohomish County Airport (“*Paine Field*”). The Museum was developed in cooperation with Paine Field, and its operations are expressly permitted by its lease with Paine Field, CC&Rs governing the property, and the Snohomish County Code.¹ For more than six years, with Paine Field’s involvement and support, the Museum has hosted events inside its hangar and outside on its ramp, including at least two annual air shows sponsored by Paine Field.

The Museum’s neighbor, Plaintiff-Respondent *Everett Hangar*, LLC, has an easement over the Museum’s property that permits Everett Hangar to cross part of the Museum’s property only in limited circumstances—when “reasonably necessary.” The trial court has unreasonably interpreted that easement to dramatically expand its scope, and essentially prohibit the Museum from using its own leased ramp at any time for its own activities. The trial court’s interpretation conflicts with the easement language itself, the CC&Rs, the Museum’s lease, the parties’ conduct over the last six years, the Snohomish County Code, and common sense.

The easement at issue permits the parties to move across their neighbors’ properties only “as is reasonably necessary to move aircraft” to and from the nearest taxiway. Everett Hangar’s two corporate jets have two exits to the nearest taxiway, including one that does not cross Museum

¹ The Snohomish County Code, Title 15, contains the airport rules for Paine Field. Title 15 of the Code was admitted into evidence as trial exhibit 232.

property. Those jets depart fewer than 1.4 times per week, rarely need the exit nearest the Museum, *and have never, in more than six years at Paine Field, missed a flight.* Nevertheless, Everett Hangar claims the Museum has interfered with Everett Hangar's easement rights by displaying vintage aircraft on the Museum's ramp, and hosting periodic events.

After a bench trial, the Snohomish County Superior Court ruled for Everett Hangar. The trial court held that the easement, which exists only "as is reasonably necessary to move aircraft" to the taxiway, requires that the Museum's property remain unused at all times in case Everett Hangar wants to fly. The court entered findings of fact based in part on exhibits that were neither offered nor admitted. And the court entered an injunction that, for all practical purposes, gave Everett Hangar control over the Museum's exterior ramp 24 hours a day, 7 days a week.

The trial court seriously misinterpreted Everett Hangar's easement rights, and expanded them far beyond what the text of the easement permits—an easement only "as is *reasonably necessary.*" The court also acknowledged yet declined to enforce CC&R provisions requiring cooperation among neighbors, and went so far as to endorse Everett Hangar's blanket refusal to share flight information with the Museum—information that could be used to avoid potential conflicts.

The court turned Everett Hangar's right to an easement "as is reasonably necessary" on its head. Under the court's injunction, the Museum can now almost never use *its own leased property*, and Everett Hangar now

has a presumptive right to use the Museum's ramp any time it desires. The court had no legal basis to enter the injunction.

The court's injunction also directed the Museum and other Defendants to take certain safety and security measures not required by the CC&Rs. The injunction ignored CC&R provisions and ordered action neither required nor approved by Paine Field, the entity ultimately responsible for safety and security at the airport.² Paine Field—the Museum's landlord—has never complained about the Museum's activities. On the contrary, Paine Field has supported them. There are 500 planes and three other museums at Paine Field. No one else is subject to the restrictions imposed by the trial court on the Museum. The trial court erred as a matter of law in entering injunctive relief, and in doing so improperly rewrote the CC&Rs.

The court also erred in awarding Everett Hangar attorneys' fees and costs as a prevailing party, and in calculating the attorneys' fee award to Everett Hangar. Even though Defendants prevailed on all damages claims and half of the claims for injunctive relief, the trial court improperly determined Everett Hangar was the prevailing party. The *Cornish College* case requires the trial court to engage in a party-by-party and claim-by-claim analysis in determining attorneys' fees. The trial court acknowledged the requirements of *Cornish College*, then refused to apply them, conceding on the record that, if she was "wrong about that," this Court would "let [her] know that, as [it is] quick to do."

² Paine Field is not subject to Transportation Security Administration (TSA) security regulations.

This Court should reverse the trial court's rulings against Defendants and remand this case with orders to (1) dismiss all of Everett Hangar's claims with prejudice, and (2) award Defendants their attorneys' fees and costs.

II. ASSIGNMENTS OF ERROR

1. The court erred as a matter of law in finding for Everett Hangar on Counts I-III of its amended complaint, all of which alleged violations of the CC&Rs. (Count I relates to Everett Hangar's easement rights. Count II relates principally to Everett Hangar's safety and security concerns. Count III alleges that the Owner's Association created by the CC&Rs failed to meet its obligations under the CC&Rs.)

2. The court erred as a matter of law in entering injunctive relief.

3. The court erred as a matter of law in fashioning injunctive relief that is overly broad and unsupported by the record.

4. The court erred as a matter of law in awarding attorneys' fees and costs to Everett Hangar.

5. The court erred as a matter of law in calculating the attorneys' fee award to Everett hangar.

6. The court erred as a matter of law in dismissing all claims against Defendant-Appellant John Sessions *without* prejudice, rather than *with* prejudice, after a full bench trial on the merits.

7. The court erred as a matter of law in making findings of fact 25, 28, 45, 46, 47, 48, 52, 55, and 56.³

³ This Court should reverse the trial court even if it accepts all of the trial court's findings of fact. These findings of fact are, nevertheless, unsupported by evidence, and the trial court erred in making them.

8. The court erred as a matter of law in not admitting into evidence documents showing the Museum's current policies and procedures, including training materials (proffered exhibits 264-68, 270).

III. ISSUES RELATING TO ASSIGNMENTS OF ERROR

1. Did the court misinterpret and misapply the CC&Rs in holding that Defendants violated obligations under the CC&Rs?

2. Did the court err in ordering injunctive relief where Everett Hangar proved no well-grounded fear of an immediate invasion of a clear legal or equitable right?

3. Did the court err as a matter of law in fashioning injunctive relief that is not narrowly tailored to address the alleged harms, and that is unsupported by the record?

4. Did the court err as a matter of law in determining Everett Hangar was the prevailing party for purposes of making an award of attorneys' fees and costs?

5. Did the court err as a matter of law in assessing Everett Hangar's attorney fee request by failing to apply the proportionality approach required by this Court's decisions, and by failing to deduct fees not reasonably incurred?

6. Did the court err as a matter of law in failing to dismiss all claims against John Sessions *with prejudice*?

7. Did the court make factual findings unsupported by evidence?

8. Did the court err in refusing to admit into evidence documents established by Museum testimony to be its current policies and procedures?

IV. STATEMENT OF THE CASE

A. The Property

The property at issue (the “*Property*”) consists of three neighboring lots in the southwest corner of Paine Field. CP 453. The lots are referred to as Lots 11, 12, and 13 in relevant documents, and were described that way during the trial. *Id.* The lots run west to east: Lot 11 is west of Lot 12, and Lot 12 is west of Lot 13. *Id.* Trial Exhibit 271, included as **APPENDIX 1**, is a photograph showing an aerial view of the Property. On that photograph, the Museum hangar is the white-roofed building in the lower left hand corner just south of the “Lot 11 Ramp.” The Museum sits on Lot 11, which is 188 feet wide. *E.g.*, Ex. 11 (attached as **APPENDIX 2**) at Ex. D at 2.⁴ Everett Hangar is the larger white-roofed building to the east of the Museum, and sits on Lot 12, which is 322 feet wide. *E.g.*, *id.* at Ex. D at 2. The unmarked lot east of Everett Hangar is Lot 13. No structures are built on Lot 13. CP 453.

The northern portions of Lots 11 and 12 are paved areas called “ramps” or “aprons” that are marked on APPENDIX 1. Both hangars open onto those ramps. A grassy drainage area is situated between the Lot 12 ramp and the Kilo 7 taxiway that runs west to east just north of Lots 12 and 13. Planes leaving Everett Hangar have two exits around that drainage area to the Kilo 7 taxiway—one exit to the east, across Everett Hangar’s own ramp, and one to the west next to the Museum’s ramp. Additional ramp space owned by Paine Field sits north of the Lot 11 ramp and on the west end of the Kilo 7 taxiway, as marked on APPENDIX 1.

⁴ All “Ex.” citations are to trial exhibits unless otherwise indicated. The CC&Rs governing the Property were trial exhibit 11, and are also included with this brief as APPENDIX 2. All citations to the CC&Rs are to APPENDIX 2 unless otherwise indicated.

B. The Museum

The Museum is a tax-exempt, 501(c)(3) educational foundation. CP 460; RP 785.⁵ The Museum has a collection of vintage aircraft from 1927-1957. RP 736-37. Every plane in the Museum's collection is fully operational and still flies. RP 740. The collection ranges from historic bi-planes to World War II aircraft such as the B-25D Mitchell Bomber and the P-51B Mustang. RP 738, 744. The Museum displays its collection both inside its hangar and, on occasion, outside the hangar on the Museum's ramp and the Paine Field ramp.⁶ CP 460. The Museum is open from 10:00 a.m. to 5:00 p.m., Tuesday through Sunday, and at other times for special events. *Id.*

The Museum was founded and developed by Defendant-Appellant John Sessions, with support from Paine Field. In 2007, Paine Field leased the entire Property (which now consists of Lots 11-13) to Appellant Kilo Six, LLC for use as the "John T. Sessions Historic Aircraft Foundation," and for the "public display of aircraft, public education, and public meeting uses." Ex. 1 § 1.02. In 2009, Paine Field divided the Property into three separately leased parcels—Lots 11, 12, and 13. CP 454. Paine Field leased Lot 11 for, among other things, a "historic aircraft hangar and museum, public education, and event venue." Ex. 5 § 1.02(a). Those are the purposes for which Lot 11 is now used.

⁵ Unless otherwise indicated, all citations to the report of proceedings are to the bench trial report of proceedings consecutively paginated from February 10-19, 2015.

⁶ The court's finding of fact number 46, which finds that, "[e]ven on days when public events are not hosted," the Museum "frequently parks its vintage aircraft within the . . . object free area zones on its Lot 11 ramp" is not supported by evidence in the record. CP 464-65. The Museum uses its ramp, but no evidence shows the Museum frequently parks its planes in what was described at trial as the object free area.

In addition to displaying its vintage aircraft, the Museum hosts a range of educational, charitable, and civic activities, many of which require use of the Museum's ramp. For example, the Museum hosts annual events such as Challenge Air, which offers children and young adults with disabilities their first flying experiences. RP 878-80. The Museum also hosts significant air shows, such as Paine Field Aviation Day and Vintage Aircraft Weekend. Many events, including Aviation Day and Vintage Aircraft Weekend, are sponsored each year by Paine Field, which contributes money, services, fencing, and other support, including security planning. *E.g.*, CP 476; RP 242-44, 248, 765-70, 845, 878-80. Only a handful of these larger events occur each year, and they all occur during the summer flying season. Exs. 205, 274, 275. The Museum also promotes STEM education for students, RP 753, CP 460, and annually flies its planes over Memorial Day services around the state, CP 460.

Aviation Day and Vintage Aircraft Weekend attract thousands of guests each year. RP 775. For a typical event of that size, the Museum has displays on its exterior ramp and, with Paine Field's permission, adjacent Paine Field property. CP 461. With the permission of Kilo Six and Paine Field, the Museum also uses the empty Lot 13 for parking. *Id.* With Paine Field's approval, the Museum erects bicycle fencing, owned and provided by Paine Field, around Lots 11 and 13 (and any Paine Field property being used) to separate Museum guests from adjacent lots and the rest of the airport. CP 461, 476; RP 767, 845-46.

The Museum also uses at least 100 trained volunteers, plus paid employees, to monitor the events. RP 841-44. Volunteers serve, for example, as perimeter security and parking attendants, and they include docents with safety training and background in the history of the planes involved in Museum events. RP 844, 851-53. All volunteers receive training at the Museum. *Id.* Even on regular business days at the Museum, Museum rules require that a volunteer docent accompany all Museum patrons to displays outside the hangar on the Museum's ramp. *See* Ex. 269 at III.⁷ If no docents are available, Museum guests are limited to exhibits inside the Museum hangar. *See id.*

Museum events are posted each year on the Museum's website. Exs. 205, 274, 275; RP 256. All major events are scheduled months in advance. *See id.* Many major events, such as Aviation Day and Vintage Aircraft Weekend, have been held on the same weekend each year for several years. *See id.* Over the years, the Museum has made a point of reaching out to Everett Hangar, usually by email, in advance of major events to ensure that Museum activities will not conflict with Everett Hangar activities. Exs. 202-204, 206-214. In responding to those emails,

⁷ The trial court erred in refusing to admit into evidence the Museum's current written policies and procedures, including training materials. RP 848-58; proffered exhibits 264-68, 270 (attached as APPENDICES 4-9). Everett Hangar objected on the basis that the documents were hearsay, but the founder and president of the Museum, John Sessions, testified that the documents represented the Museum's current policies and training materials. RP 848-58. The documents were authenticated by the Museum president as statements made by the Museum, which (through its president) was testifying in the courtroom and subject to cross-examination. The documents were not hearsay, and the court should have admitted them. ER 801. Among other things, they state very clearly that Museum guests are not permitted to access the ramp unless escorted by a Museum docent. *E.g.*, APP. 6 (proffered exhibit 266 (DEF0001033)).

Everett Hangar never identified any potential conflict with scheduled Museum events. *See id.*

C. Everett Hangar

Everett Hangar owns the lease to Lot 12 and the hangar on Lot 12. CP 453. Dean Weidner is the sole manager and member of Everett Hangar LLC. Ex. 2 at 6. He also owns the two corporate jets—a Gulfstream IV and a Learjet 60—that have operated out of Everett Hangar since August 2008. CP 457-58.

Everett Hangar’s jets are reserved solely for Mr. Weidner’s business and personal use. *Id.* Weidner owns and operates approximately 42,000 apartments in nine states and four provinces. CP 454; RP 57. Weidner employees use Weidner’s jets for business travel to those locations. CP 454.

Each year, the Learjet and the Gulfstream make 20-40 flights each from Everett Hangar. Exs. 216-231; *see also* CP 458. Through 2014, the two jets never combined for more than 72 total flights from Everett Hangar in any year.⁸ *Id.* Thus, even during its busiest years, Everett Hangar has averaged fewer than 1.4 departures per week. Because each plane requires 30-45 minutes of preflight preparations, Everett Hangar requires approximately one hour per week on its ramp before departures. CP 458.

⁸ In the trial court’s findings of fact, the court, reviewing Everett Hangar’s flight logs, listed its count of flights each year through 2013. CP 458. The court’s calculations count a departure as one flight, and an arrival as a second flight. In other words, one round trip flight would count as two flights in the court’s calculations. Everett Hangar’s two jets combined to make 72 departures in both 2013 and 2014. This is consistent with the court’s calculations, which counted 144 total flights (72 multiplied by 2) in 2013. *Id.*

The vast majority of Everett Hangar's flights—90 to 95%—depart around 7:30 a.m. (before the Museum opens) and return between 7:00 p.m. and 11:00 p.m. (after the Museum closes). RP 261. Everett Hangar uses its east exit to Kilo 7 for two-thirds of its departures and 90% of its arrivals. RP 305. Use of the west exit is necessary only when the wind blows from the west at 15 knots or higher—something that occurs at Paine Field *fewer than four days every ten years*. CP 463; RP 623-24, 1035-36; Ex. 283.

Everett Hangar usually positions its plane on its own ramp for departure with the nose facing east and the plane parallel to its own hangar. After finishing preflight activities, it taxis out the east exit (away from the Museum) and turns east onto the Kilo 7 taxiway. A typical departure out the east exit with airplanes on the Museum's Lot 11 ramp is depicted in Ex. 215A. RP 279-83, 300. Accordingly, the trial court's finding of fact number 25, finding that there is "no place for [Everett Hangar] to direct jet blast that isn't potentially harmful," is not supported by the evidence. CP 459. According to Greg Valdez, Everett Hangar's Chief Pilot and Director of Flight Operations, and Norm McCord, Everett Hangar's Director of Maintenance and Chief Mechanic, these operations have been performed safely for over six years—as long as Everett Hangar has been at Paine Field—and have never resulted in injury or damage to anyone or anything. RP 117, 305-06, 308-09, 393, 403-04; CP 458.

Everett Hangar's flights are scheduled well in advance. Thirty to forty percent of Everett Hangar's flights are scheduled the year before. RP 155, 396-97, 402. A yearly schedule is circulated in November or December for

the next year's flights. *Id.* Additional flights are then added over the course of the year. *Id.* Changes to work flights are typically made a couple weeks in advance of the flight. *Id.* Personal flights are typically scheduled with a month's advance notice, and have never been scheduled with less than a week's notice. *Id.* No flight is scheduled with less than two days' notice. *Id.*

D. The Other Parties

Everett Hangar sued four Defendants in addition to the Museum. Defendant-Appellant Kilo Six, LLC is the entity originally formed to develop the Property. CP 454; Ex. 1. Paine Field initially leased the Property to Kilo Six in 2007, and continued to lease the Property to Kilo Six in 2009 when it divided the Property into three lots. *Id.* The lease for Lot 13 remains with Kilo Six. CP 454. The lease for Lot 12 was assigned by Kilo Six to Everett Hangar. CP 455. The lease for Lot 11 was assigned by Kilo Six to Defendant-Appellant Historic Hangars, LLC, which then subleased Lot 11 to the Museum. CP 454. Defendant-Appellant John Sessions is President of the Museum, Managing Member and sole member of Historic Hangars, and Managing Member and sole member of Kilo Six. CP 453.

The fifth and final Defendant-Appellant, Kilo 6 Owners Association, is a nonprofit corporation that has, as its members, the owners of the leases on Lots 11, 12, & 13 (Historic Hangars, Everett Hangar, and Kilo Six). CP 453. John Sessions is President of the Association. *Id.* The Association has certain rights and responsibilities under the CC&Rs and its bylaws. Exs. 3, 11. The operative CC&Rs, included as **APPENDIX 2**, were

recorded by the Declarant, Kilo Six, after the property was trifurcated into Lots 11-13.

E. Everett Hangar's Claims

Everett Hangar alleged breaches of the CC&Rs and Association bylaws by various Defendants, and a breach of fiduciary duty by John Sessions.⁹ CP 569-82. Everett Hangar sought damages and injunctive relief. CP 569-82; 1028-39.

Everett Hangar's allegations can be divided into two general categories: (1) operational concerns and (2) safety and security concerns.

1. Alleged Operational Concerns

Everett Hangar's allegations focused largely on one provision of the CC&Rs that grants lot owners an easement (the "*Easement*") over adjacent lots "as is reasonably necessary" in order to move aircraft to and from the owners' lots. Section 12.7 of the CC&Rs provides:

Each Owner shall have an ingress and egress easement over and across such portions of the airplane ramps located on any Lot as is reasonably necessary to move aircraft to or from any Building and the adjacent properties on which taxiways, runways and airport facilities are located.

APP. 2 § 12.7 (emphasis added). Everett Hangar claimed the Museum repeatedly prevented Everett Hangar from using this Easement, and that, "[o]n many occasions, the pilots of jet aircraft operating out of the Lot 12 hangar have been forced to delay flights due to the danger of jet blast injuring patrons of the museum or damaging property . . . thereby interfering with

⁹ For purposes of this brief, Defendants will cite Everett Hangar's Amended Complaint for Damages and Injunction unless otherwise indicated. CP 569-82. The court allowed the amended complaint to be filed during trial.

Plaintiff's operational use of Lot 12 and its ingress and egress easement over and across the apron of Lot 11." CP 575.

At trial, Everett Hangar testified that it has *never* missed a flight because of Museum activities. RP 305, 406-07. Accordingly, the trial court's finding of fact number 45, which found that the Museum has "prevented Everett Hangar from using its easement . . . when wind conditions require use of that exit," is not supported by the evidence. CP 464. At most, over six years of operations at Paine Field, Everett Hanger had experienced "on occasion" undocumented delays of 5-10 minutes when Everett Hangar repositioned aircraft to account for Museum activities. RP 171-72. Dean Weidner recalled only 3-5 delays of 10-15 minutes each over a six year period. RP 98. Everett Hangar also testified it was delayed on only one arrival in six years, and that it was delayed because it had to wait for Museum aircraft to depart the Kilo 7 taxiway (which Everett Hangar agrees the Museum was entitled to use for its own flights). RP 271-72. As Everett Hangar's own personnel acknowledged at trial, all Everett Hangar flights have been conducted safely, and none have ever resulted in harm to person or property. RP 305-06, 308-09, 403-04, 406-07. For that reason, finding of fact number 47, which found a "significant risk of jet blast and harm to vintage planes routinely parked on the Lot 11 ramp," is unsupported by evidence. CP 465.

Even though Museum activities had not interfered with Everett Hangar flights, Everett Hangar requested damages and an injunction to deal with the alleged violations.¹⁰ Everett Hangar requested an injunction

prohibiting Defendants, and all those acting in concert or participation with them, from operating a vintage aircraft museum static aircraft display on the Lot 11 apron, providing uncontrolled or poorly controlled public access to the Lot 11 apron or conducting any other similar operation on the Lot 11 apron inconsistent with the safe and efficient operation of all aircraft, including those operating out of the hangar on Lot 12.

CP 581.

2. Alleged Safety Concerns

Everett Hangar alleged that Museum “patrons frequently walk onto Lot 12’s apron and approach Plaintiff’s aircraft, mistakenly assuming those aircraft are part of Defendants’ static displays.”¹¹ CP 578. This poses “a significant security threat,” Everett Hangar claimed, because “criminals—including terrorists—could easily pose as museum patrons and raid a Lot 12 aircraft while it sat on the [ramp] during pre- or post-flight operations.” *Id.* According to Everett Hangar, “[t]his could result in theft, destruction of property, assault, abduction, homicide, commandeering, or hijacking.” *Id.* Everett Hangar also alleged that the Museum’s use of Lot 11 “exposes museum patrons to serious safety risks,” and “also exposes Plaintiff to

¹⁰ Everett Hangar requested damages in its original complaint. CP 1028-39. Its claims for damages were dismissed on summary judgment before the amended complaint was filed. CP 676-78.

¹¹ The trial court’s finding of fact number 56 finds that the Museum made no attempts “to prevent or stop” people from gaining “access into the restricted areas of Lot 12,” and cites in support Exs. 41, 62-64. CP 468. There is no evidence in the record to support this finding. Neither the exhibits themselves nor the testimony about them support this finding. RP 178-80, 214-17.

unnecessary liability associated with potential harm to the public or static displays (or other obstructions) situated on the Lot 11 apron.” CP 576.

Everett Hangar also alleged that Defendants’ use of Kilo Six’s empty Lot 13 exposed Everett Hangar and the rest of the airport to security risks. Everett Hangar alleged that Lot 13 was used by Defendants as a parking and event venue for Museum activities, and was secured only by “inadequate ‘bicycle fencing.’” CP 576. Everett Hangar alleged that Defendants’ “unsecured use of Lot 13 . . . exposes all Everett Hangar pilots and other personnel to safety and security risks,” and might endanger Museum patrons who, if they breached the bicycle fencing, could venture too close to Everett Hangar aircraft. *Id.*

In contrast to Everett Hangar’s hyperbolic claims, Everett Hangar testified at trial that no person or property had ever been harmed at Everett Hangar by third parties, or by Everett Hangar in the course of its operations. CP 393, 403-04. Everett Hangar also acknowledged that Paine Field sponsors Museum events, participates in the security planning for Museum events, and supplies fencing for Museum events. RP 242-44, 248. Deputies from the Snohomish County Sheriff’s Office also provide security at Museum events. RP 244, 248. Everett Hangar recognized that Paine Field is ultimately responsible for safety and security at the airport, and acknowledged it had complained to Paine Field about the Museum’s allegedly inadequate security practices. RP 223, 243, 253-54, 566. Paine Field—the parties’ landlord and the entity responsible for airport security—has required no additional security measures from the Museum in response

to Everett Hangar's complaints. *Id.* And Paine Field is not subject to TSA security regulations. CP 461; RP 1010.

In addition to the injunction it requested for Lot 11, Everett Hangar asked the court to prohibit Defendants from permitting public access to Lot 13 for any purpose unless and until Everett Hangar erected a tall fence (identical in material and design to Paine Field's perimeter fence) along the interior boundaries of Lot 13. CP 581. Everett Hangar also asked the court to order the Association to approve the construction of security fencing around Lot 12's parking lot, which is outside Paine Field's perimeter fencing south of Everett Hangar's hangar. *Id.*; *see* APP. 1. And Everett Hangar asked the court to order John Sessions to curtail activities on Lots 11 and 13, purportedly in order to stop breaching fiduciary duties to Everett Hangar. CP 581.

F. The Trial Court's Orders

On summary judgment, the court dismissed all of Everett Hangar's damages claims. CP 676-78. Everett Hangar failed to adduce any evidence of damages. *See id.* Only its claims for injunctive relief remained for trial. *See id.*

After a bench trial, the court incongruously concluded that the Easement, which provides for an easement "as is reasonably necessary to move aircraft to or from any building," was unrestricted by time or circumstances. CP 471. The court also concluded that the right "to move aircraft" included the right to move aircraft under jet power, such that the area required "to move aircraft" must encompass the Museum's entire ramp to accommodate jet blast zones of up to 240 feet behind Everett Hangar's

existing planes. CP 471-72. Based on these erroneous conclusions, and because the Museum's ramp is only 188 feet wide, the court held that the Museum and Historic Hangars violated Everett Hangar's easement rights by using "Lot 11's apron and ramp as a public museum and aircraft display." CP 474. The court issued this ruling even though the Museum had used its property in this way for more than six years pursuant to its lease.

The court issued an injunction, included as **APPENDIX 3**,¹² prohibiting Defendants, among other things, from placing anything on their lots that might be closer than 240 feet behind Everett Hangar's Lear jet. App. 3 ¶ 2. For all practical purposes, this requires the Museum ramp to be clear at all times—24 hours a day, 7 days a week—even though Everett Hangar averages fewer than 1.4 departures per week. The injunction would even bar the Museum's own flight activities. *See id.*

The court also incorrectly concluded that the Museum is "wide-open from a security standpoint."¹³ CP 476. It concluded the Defendants had violated the CC&Rs and failed to take other security precautions. *Id.* The court faulted the Museum for, among other things, failing to use security cameras and metal detectors, and failing to subject volunteers to criminal background checks or screening against TSA no-fly lists, even

¹² The court's injunction can be found at CP 449-51. All citations to the injunction are to the copy of the injunction found in the APPENDIX included with this brief.

¹³ Two of the trial court's findings of fact in support of this conclusion (findings 57 and 58) rely on five exhibits (Exs. 17, 24, 26, 28, 72) that were not admitted into evidence. CP 468-69, 553-67. In total, the trial court's findings of fact cited eight exhibits (the exhibits listed above, plus Exs. 39, 73, 74) neither offered nor admitted into evidence. CP 453-70, 553-67. The court relied on eight other exhibits (Exs. 15, 18, 22, 29-31, 37, 38) that were not admitted, but which were admitted in at least some form under different exhibit numbers. *See id.*

though the court acknowledged that the Museum is not legally obligated to do any of those things. CP 461, 475-76. The court entered an injunction prohibiting Defendants from (1) permitting anyone to access Lot 12 without Everett Hangar's permission, and (2) propping open any entry point on Lots 11 and 13 without the presence of a security guard. App. 3 ¶¶ 5-6. The court also ordered Defendants to construct a permanent fence around the interior of Lot 13. *Id.* ¶ 7.

The court found for John Sessions on all five counts of Everett Hangar's Amended Complaint. CP 483. The court also found in favor of Defendants on Count IV, which alleged a breach of the Association bylaws. *Id.* The court found in favor of Everett Hangar only on Counts I-III. *Id.* Each of those counts alleged violations of the CC&Rs. CP 578-80.

V. ARGUMENT

Everett Hangar is not entitled to injunctive relief. A permanent injunction is an extraordinary remedy that "should be used sparingly and only in a clear and plain case." *Resident Action Council v. Seattle Housing Auth.*, 177 Wn.2d 417, 445, 327 P.3d 600 (2013) (quotations and citations omitted). Courts cannot enter injunctions to protect plaintiffs from "mere inconveniences." *DeLong v. Parmelee*, 157 Wn. App. 119, 150, 236 P.3d 936 (2010). Here, the court badly misinterpreted and misapplied the CC&Rs and erred as a matter of law when it entered a permanent injunction in favor of Everett Hangar, which did not show a well-grounded fear of an immediate invasion of a clear legal and equitable right. *Hagemann v. Worth*, 56 Wn. App. 85, 87-88, 782 P.2d 1072 (1989). Even

if an injunction were justifiable (it is not), the trial court's injunction is overly broad and inconsistent with the CC&Rs and other relevant authority.

The court also erred in awarding attorneys' fees and costs to Everett Hangar. Everett Hangar was not the prevailing party. Defendants prevailed on all damages claims and half the injunction claims. Even if Everett Hangar had been the prevailing party, the court erred in analyzing and calculating the attorneys' fee award. The Court should reverse the trial court, award Defendants their attorneys' fees and costs on appeal, and remand this case with orders to (a) dismiss Everett Hangar's claims with prejudice, and (b) award Defendants their attorneys' fees and costs.¹⁴

A. The Museum Has Not Violated Everett Hangar's Ingress and Egress Easement

Easements, like contracts, must be interpreted according to their terms and "properly construed to give effect to the intention of the parties." *Brown v. Voss*, 105 Wn.2d 366, 371, 715 P.2d 514 (1986). Courts should determine intent by considering the "deed as a whole," *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003), and are not permitted to rewrite the document, *see Chaffee v. Chaffee*, 19 Wn.2d 607, 625, 145 P.2d 244 (1943) (courts cannot rewrite contracts). Here, the

¹⁴ Questions of law and conclusions of law are reviewed de novo. *Sloan v. Horizon Credit Union*, 167 Wn. App. 514, 518, 274 P.3d 386 (2012). Findings of fact are reviewed for substantial evidence, which is "a quantum of evidence sufficient to persuade a rational fair-minded person that the premise is true." *Thompson v. Hanson*, 142 Wn. App. 53, 59-60, 174 P.3d 120 (2007). The Court of Appeals can also consider uncontroverted evidence presented to the trial court. *State ex rel. Coyle-Reite v. Reite*, 46 Wn. App. 7, 11, 728 P.2d 625 (1986).

Injunctions are reviewed for abuse of discretion. *Atwood v. Shanks*, 91 Wn. App. 404, 408, 958 P.2d 332 (1998). A trial court abuses its discretion when its decision is "arbitrary, manifestly unreasonable, or based on untenable grounds." *Id.* at 409. A trial court "necessarily abuses its discretion if its ruling is based on an erroneous view of the law." *Id.* The Court also reviews the reasonableness of an attorney fee award under the abuse of discretion standard. *Diamaco, Inc. v. Mettler*, 135 Wn. App. 572, 576, 145 P.3d 399 (2006).

court badly misinterpreted the Easement and essentially rewrote it in a manner inconsistent with its own terms, other portions of the CC&Rs and relevant leases, and the Snohomish County Code.

1. The trial court's interpretation of the Easement is inconsistent with the Easement's own language

a. *The Easement applies only on occasions when its use is reasonably necessary*

The Property was developed for a vintage aircraft museum. The purpose of the Museum is to use its hangar and ramp to display and fly vintage aircraft. Nevertheless, the court concluded that the Easement trumps the Museum's rights to its own ramp, and requires the Museum ramp to be clear 24 hours a day, 7 days a week, in case Everett Hangar decides it (a) wants to fly, and (b) wants to use the west exit, instead of its east exit, to the Kilo 7 taxiway. This is not what the Easement requires, and it makes no sense. The Easement is limited in scope:

Each Owner shall have an ingress and egress easement over and across such portions of the airplane ramps located on any Lot *as is reasonably necessary* to move aircraft to or from any Building and the adjacent properties on which taxiways, runways, and airport facilities are located.

APP. 2 § 12.7 (emphasis added). That language cannot reasonably be read to grant other lot owners the right to demand that neighboring ramps remain clear of aircraft and other items at all times, especially in the context of the whole leases and CC&Rs. The parties were granted primary rights to use their own hangars and ramps, and they did not create an easement so broad that it would eradicate those rights. Rather, the CC&Rs permit the ramps to be used for their intended purposes, and grant only an

easement “as is reasonably necessary” to “move” aircraft over “portions” of the ramps. That language does not grant any lot owner 24/7 control over a neighbor’s entire ramp.

Indeed, the CC&Rs provide for several different easements, but only this Easement is limited by a requirement of reasonable necessity. *See* APP. 2. For example, the easement over the Area of Common Responsibility (e.g., parking lots and sidewalks) contains no “reasonably necessary” requirement. *Id.* § 12.4. Neither does the easement for emergency vehicles. *Id.* § 12.6. Those are simply “perpetual, non-exclusive” easements. The “reasonably necessary” language relating to access across neighboring ramps is thus uniquely limiting in the CC&Rs, and must be given effect. *4105 1st Avenue South Investment, LLC v. Green Depot WA Pacific Coast, LLC*, 179 Wn. App. 777, 784, 321 P.3d 254 (2014) (“The court must harmonize and give effect to all the language in a contract.”).

The context and text of the Easement make clear that “reasonably necessary” is intended to limit the easement only to *occasions* when it is “reasonably necessary” for a neighbor to invoke it to move an aircraft. The trial court disregarded these limitations, and held that the Easement controls the Museum’s ramp 24/7. That interpretation of the Easement assumes there are *no* occasions when the Museum may use its own ramp for activities, which is wholly inconsistent with the development of Lot 11 for the Museum’s use.

This use of “reasonably necessary” is common and well-developed in the context of easements. For example, a party seeking an easement by

implication must show (1) former unity of title and a subsequent separation (as existed here), (2) a prior quasi-easement between the parcels, and (3) a certain degree of necessity for the continuation of the easement. *Woodward v. Lopez*, 174 Wn. App. 460, 469, 300 P.3d 417 (2013). Absolute necessity is not required, but the test is whether reasonable alternatives are available. *Id.* at 469-70. Courts characterize this as a test of “reasonable necessity.” *E.g., id.* at 470.

This analysis is the same when a party “attempts to condemn a private way of necessity (i.e., easement) across neighboring property.” *Ruvalcaba v. Kwang Ho Baek*, 175 Wn.2d 1, 3, 282 P.3d 1083 (2012). In that context, an easement must “be reasonably necessary under the facts of the case, **as distinguished from merely convenient or advantageous.**” *Id.* at 7 (emphasis added, quotations and citations omitted). The person claiming an easement has the burden to prove reasonable necessity, “including the absence of alternatives.” *Id.* (quotations and citations omitted).

The court erred when it failed to apply the Easement in a manner consistent with this case law and the Easement’s own terms. The court misinterpreted the Easement to allow Everett Hangar access across the Museum’s ramp whenever and wherever convenient, not whenever and wherever “reasonably necessary.”

b. The Easement does not include jet blast

The court mistakenly concluded that, when the parties created an easement to “move” aircraft, they actually granted an easement to “move aircraft under power.” CP 472. The court therefore expanded the spatial

scope of the Easement to include jet blast safety zones that, with Everett Hangar's two current planes, extend as far as 240 feet behind the planes. Lot 11 is 188 feet wide. These jet blast zones, which the court purports to write into the Easement, would therefore dramatically expand the physical space necessarily dedicated to the Easement. This is not what the Easement provides. It grants only a right to an easement "as is reasonably necessary to move" aircraft—it says nothing about movement under power or jet blast.

Powered movement is not "reasonably necessary" as a practical matter. Planes can be—and often are—moved without creating jet blast. Everett Hangar testified that it tows its planes from its hangar to its ramp for every flight, and tows its planes to the Kilo 7 taxiway whenever it is preparing both its planes for departure. RP 156, 1206-1210. In those circumstances, one plane is prepared for flight close to the hangar, and the other is prepared on the Kilo 7 taxiway just north of the grassy drainage area above Lot 12. *Id.* Everett Hangar can thus safely "move" its aircraft to the taxiway (and beyond) without producing jet blast when beneficial to do so. *Id.*; RP 375-76 (describing that Everett Hangar could have a plane towed farther than Kilo 7 if necessary).¹⁵

This is consistent with the Snohomish County Code, which requires pilots to move a plane without power when necessary. For example, the Code requires a pilot "taxiing into areas where people are standing," to "shut the engine down and push the aircraft" or have it guided by two or

¹⁵ Even though Everett Hangar's planes can be towed, Everett Hangar would not often find it necessary to tow its planes across the Museum's ramp. In six years, Everett Hangar has used the west exit, under power, for one third of its departures. It has done so without incident.

more knowledgeable people. Ex. 232 § 15.08.334. Contrary to the court’s erroneous ruling, the Code does not place the burden on everyone else at the airport to vacate so aircraft can be operated under power. Indeed, as Everett Hangar acknowledges, responsibility for operating a jet safely rests with the *pilot*, e.g., RP 296-97, and this responsibility is reflected both in the Code, e.g., Ex. 232 § 15.08.322 (no aircraft shall be operated in a manner such that jet blast might harm people or property), and in federal regulations, e.g., 14 C.F.R. §§ 91.3, 91.13 (pilot is responsible for operation of the aircraft, and cannot operate it carelessly or recklessly in a manner that would endanger people or property). This is the scheme under which jet blast is managed at an airport, not by mandating vacant ramps—and certainly not by relying on easements that themselves say nothing about jet blast.

The effect of the court’s expansive jet blast addition to the Easement, combined with the court’s mistaken conclusion that the Easement right exists at all times regardless of necessity, is that the Museum’s entire ramp must be available to Everett Hangar 24/7. This interpretation of “reasonably necessary” turns the Easement on its head. Under the trial court’s interpretation, the Museum can almost never use its own ramp. Instead, ramps must be kept clear for potential use by neighbors (no matter how infrequent). The Easement simply does not provide neighbors that level of access and control, and should not be read to supplant the Museum’s own primary use of its leased property, which includes the ramp on its lot.

2. The trial court’s interpretation of the Easement is inconsistent with the CC&Rs, the leases, and the Snohomish County Code

Not only is the trial court’s interpretation of the Easement unsupported by the language of the Easement itself, but it conflicts with other portions of the CC&Rs, the leases, and the Snohomish County Code. *E.g.*, *Knipschild v. C-J Recreation, Inc.*, 74 Wn. App. 212, 215, 872 P.2d 1102 (1994) (contract terms must be construed with reference to the whole contract, and must be given a meaning that is “reasonable and consistent with the purpose of the overall undertaking”). Nothing in those documents limits the use of ramps in the way the trial court’s injunction would require.

Under their **leases** with Paine Field, each owner leases its entire lot, including the ramps. *E.g.*, Ex. 5 at Recitals ¶ C, §§ 1.01-.02. The leases describe these lots as the “Premises.” *Id.* § 1.01. The Museum’s Lot 11 Premises can be used—in their entirety—as a “public education and event venue.” *Id.* § 1.02. The Premises can also include, among other things, a “historic aircraft hangar and museum,” “associated space for aircraft repair and maintenance,” and parking. *Id.* The lease permits the use of the Lot 11 ramp for all these purposes. *Id.*

The **CC&Rs** also describe approved uses for the lots, including the ramps. The CC&Rs, signed by Kilo Six, Everett Hangar, and Paine Field, explain that “the Property, Lots and Buildings located thereon may be used for aviation-related purposes and for any purpose reasonably incident to such purposes.” APP. 2 at Ex. C § 2. The CC&Rs explicitly grant the Declarant (Kilo Six) “sole discretion” to determine the proper nature of

those uses: “In any case in which [the CC&Rs] refer[] to the use for which a portion of the Property is developed, the nature of such use shall be as determined in the sole discretion of the Declarant, for so long as it owns any portion of the Property.”¹⁶ *Id.* Ex. C at 1. These permitted “aviation-related” uses include the Museum’s past uses of the Lot 11 ramp (with Paine Field’s participation and support), and do not limit the use of the Lot 11 ramp in the manner the trial court now requires.

Neither Paine Field (the Lot 11 landlord) nor Kilo Six has ever identified the Museum’s activities on its own ramp as constituting an improper use under the lease, the CC&Rs, or the Snohomish County Code. To the contrary, Paine Field has sponsored and actively participated in many of the activities Everett Hangar claims violate its easement rights. Kilo Six allows use of its Lot 13 for air show parking. Plainly these events are permissible uses of the Museum’s lot, and Paine Field has never asked the Museum to curtail any of its activities. RP 223, 243, 253-54.

The **Snohomish County Code** also permits ramps to be used actively. For example, the Code generally defines a “ramp” or “apron” to be a place used for “parking, maneuvering, loading, unloading and servicing” aircraft. Ex. 232 § 15.08.065. It does not require that ramps be kept vacant.

Given all these permissible uses of the Property (including the ramps) under the CC&Rs, leases, and Snohomish County Code, the trial

¹⁶ Accordingly, the trial court’s conclusion in finding of fact number 28 that a car show is a “non-aviation event” is not a conclusion the court is entitled to make and, if properly labeled a finding of fact, is not supported by evidence. CP 460. Kilo Six makes that determination.

court erred when it interpreted the Easement to dramatically narrow the uses of the Property and effectively grant full control and access over ramps to neighboring owners.

3. The CC&Rs require owners to cooperate with one another

The evidence at trial established that the uses of the Museum and Everett Hangar do not conflict. Even if they did, the CC&Rs address this issue by requiring *cooperation* among the owners. The CC&Rs state that their Rules and Regulations were “adopted and are intended to provide for the harmonious operation and co-existence of [the Property’s] uses adjacent to one another.” APP. 2 at Ex. C § 1. They therefore require that each owner “cooperate and communicate with the other Owners in good faith,” and that the Rules and Regulations be “interpreted and applied, in a manner designed to achieve such purpose.” *Id.* The court erred by failing to enforce this provision, and explicitly excusing Everett Hangar from complying with it.

Beginning early in their time at Paine Field, John Sessions reached out to Everett Hangar to ensure the Museum’s operations did not conflict with Everett Hangar’s. Exs. 202-204, 206-214. Sessions emailed Everett Hangar’s Chief Pilot, Greg Valdez, about upcoming Museum events and asked Valdez whether Everett Hangar had any scheduled operations. *Id.* Valdez routinely responded, and never identified conflicts. *See id.* This is the process contemplated by the CC&Rs.

Everett Hangar later ceased its cooperation, claiming it could no longer share its flight plans. Everett Hangar claims its flight schedule must remain secret for both privacy and security reasons. RP 98, 227-28. Everett

Hangar also claims it has received warnings from the federal government identifying its planes as potential targets for terrorist activities.¹⁷ CP 466-67.

The court endorsed Everett Hangar's decision not to cooperate, but the court's conclusion is not supported by facts. CP 477. There is *no* evidence in the record that the Museum has ever mishandled flight information provided by Everett Hangar or anyone else. There is *no* evidence that the Museum shared that information with anyone who did not need to know it for operational purposes (whether with innocent third parties, terrorists, or business rivals).

Nor is there evidence in the record that the Museum refused to cooperate when Everett Hangar had a scheduled flight that coincided with an outdoor Museum event. Everett Hangar deceptively relies on one event it staged *after commencing this lawsuit*. Contrary to its claim it cannot reveal its flight schedule, Everett Hangar told the Museum, several days in advance, that it had a flight scheduled at the same time the Museum was hosting an annual Christmas event for children featuring Santa Claus arriving at the Museum in a red airplane. RP 312-14. While Everett Hangar

¹⁷ The trial court's finding of fact number 52, relating to "specific threat information . . . against the two specific planes [Everett Hangar] own[s]" is unsupported by the evidence. CP 466-67. First, the court cited as support two exhibits that were not admitted into evidence. *Id.* (citing Exs. 73-74, which were not admitted (CP 558)). Second, the court erred in admitting other evidence of these alleged threats over Defendants' objections. RP 229-32. The evidence is hearsay, and was used by Everett Hangar and the court for the truth of the matter asserted in that evidence: that Everett Hangar's planes are potential terrorist targets. This evidence should not have been admitted or relied on by the trial court. The court also suggests, in its findings and conclusions, that federal agencies warned Everett Hangar that Everett Hangar's particular planes had been the subject of terrorist threats. CP 466. Even if Everett Hangar's evidence is considered, it does not support this finding. Everett Hangar claims only that Gulfstream and Learjet aircraft, as a general matter, are the subject of federal warnings, not that Everett Hangar's two particular aircraft have been the subject of threats. Ex. 88.

was preparing its jet to depart, John Sessions readied the Museum hangar for the Christmas event by pulling planes out of the hangar and temporarily parking them on the Museum ramp and Paine Field ramp. RP 312-16, 330-33. The planes were parked safely more than 300 feet behind Everett Hangar's jet (well beyond the jet blast zone), which was already positioned for an easterly exit. *Id.* Everett Hangar nevertheless decided to reposition its plane farther to the east before starting the plane's engines and departing out the east exit. *Id.* Everett Hangar cites this as an example of a failure to cooperate. It was no such thing. There is no provision in the CC&Rs or any other document that entitles Everett Hangar to a limitless jet blast zone behind its planes, and in any event it safely made its departure out its east exit.¹⁸ Everett Hangar can cite no other occasion when it can even claim the Museum failed to cooperate with flight plans Everett Hangar shared with the Museum in advance. In fact, before this lawsuit, Everett Hangar had never even departed during a Museum event. *E.g.*, RP 242, 312.

Everett Hangar's refusal to cooperate with the Museum is particularly egregious given the significant advance notice it has of its scheduled flights. Most of its flights are scheduled weeks or months in advance, and no flight is scheduled with less than two days' notice, leaving more than enough time to communicate with the Museum about Everett Hangar's potential needs. Everett Hangar cannot, on the one hand, refuse to cooperate with its neighbor and, on the other hand, complain about its neighbor's alleged lack of cooperation.

¹⁸ Accordingly, the trial court's finding of fact number 48 is not supported by evidence. CP 465.

Cooperative communication between the parties is both required by the CC&Rs and consistent with common sense. The court erred when it refused to apply the cooperation requirement without legal or factual basis.

4. Defendants have not violated Everett Hangar's Easement rights

Despite Everett Hangar's refusal to communicate, Defendants have done nothing to interfere with Everett Hangar's Easement right to move planes across the Museum's ramp "as is reasonably necessary." Using its two available exits to the Kilo 7 taxiway, Everett Hangar has *never*, on any occasion, been unable to fly as scheduled because of Museum activities. At most, Everett Hangar claims it has had to modify its operations to account for Museum activities, and, in so doing, has had only a few ("on occasion") undocumented delays of 5-10 minutes.¹⁹ Because Everett Hangar has never failed to depart as planned, Everett Hangar has never been denied use of its easement across the Museum ramp when its use was "reasonably necessary." Everett Hangar has shown no clear legal or equitable right to anything it does not already have, and it can show no well-grounded fear of an invasion of any right. The trial court had no legal basis to rule for Everett Hangar or enter an injunction.

5. The trial court's injunction is arbitrary, and unsupported by the facts

Even if the trial court had a legal basis to enter an injunction, the form of its injunction is arbitrary, overly broad, and unsupported by the

¹⁹ As Greg Valdez testified, part of a pilot's job is identifying surrounding activities and accounting for them, including positioning a plane in a different (even less preferred) way, in planning for a departure. RP 296-97, 300-02. If Everett Hangar is not properly accounting for activities around its hangar, it cannot complain that those activities are causing minor delays a couple times a year.

facts. *King v. Riveland*, 125 Wn.2d 500, 520, 886 P.2d 160 (1994) (“injunctions should be narrowly tailored to remedy the specific harms shown”); *Atwood v. Shanks*, 91 Wn. App. at 408-409 (a court abuses its discretion in entering an injunction when its decision is “arbitrary, manifestly unreasonable, or based on untenable grounds”). This Court should vacate the trial court’s injunction.

The **Order Granting Permanent Injunction**, included in the attached **APPENDIX 3**, has seven paragraphs, the first four of which relate to the Easement. Together, they wrongfully prohibit the Museum from using its own ramp for almost any purpose at any time, including, as described in more detail below, for its own flights, contrary to the lease, the CC&Rs, and the Snohomish County Code. This is not an injunction “narrowly tailored to remedy the specific harms shown.” *King*, 125 Wn.2d at 520. Everett Hangar flies approximately 1.4 times every week. Ninety to ninety-five percent of those flights depart and arrive when the Museum is closed. These are not neighbors who are experiencing significant conflicts. They certainly are not experiencing conflicts sufficient to justify a permanent, 24/7 ban on the Museum’s use of its ramp. The trial court’s injunction thus creates far more hardship for the Museum than could possibly be justified. *E.g., Holmes Harbor Water Co., Inc. v. Page*, 8 Wn. App. 600, 603, 508 P.2d 628 (1973) (listing a number of factors courts should consider in entering an injunction, including the relative hardship to the defendants). In addition to this general defect, each of the first four paragraphs of the trial court’s injunction has its own, specific defects.

Paragraph 1 of the trial court’s injunction prohibits Defendants from placing any items—including aircraft—within a certain defined “Object Free Area” on the “portion of the Lot 11 ramp that provides access to the Kilo 7 taxi lane.” APP. 3 ¶ 1. This paragraph makes no exceptions. It does not permit the Museum to place planes within that area for maintenance, pre-flight preparations, flights themselves, or arrivals and post-flight activities. This is plainly inconsistent with the CC&Rs, leases, and Snohomish County Code, and effectively prevents the Museum from operating any of its own flights.

Paragraph 2 essentially renders the first paragraph superfluous. The second paragraph prohibits Defendants from placing any items—including aircraft—“within the jet blast zone of any aircraft on the ramps of Lot 11 or Lot 12.” APP. 3 ¶ 2. Because Everett Hangar’s jets have jet blast zones exceeding 200 feet, and because Lot 11 is less than 188 feet wide, this effectively requires the Museum to clear its ramp at all times.²⁰

Paragraph 2 places no limit on the property included within its scope. For example, the Paine Field ramp might be within the jet blast zone of an Everett Hangar jet using the west exit. Paine Field property is not subject to the CC&Rs—which provide an easement only over the Lot 11

²⁰ This paragraph is ambiguous as to timing. The trial court, in its findings and conclusions, explains that it finds no temporal limitation on the Easement. CP 471. Accordingly, Defendants read the second paragraph of the trial court’s injunction to prohibit the placement of any items, at any time, within the jet blast zone of any plane that might depart from Everett Hangar. The injunction itself, however, states that items cannot be placed within the jet blast zones only of “aircraft *on the ramps* of Lot 11 or Lot 12.” APP. 3 ¶ 2 (emphasis added). This might be interpreted to permit certain activity when aircraft *are not* on the ramps of Lot 11 or Lot 12. Even if this is the proper interpretation, the practical effect is the same. The Museum cannot use its ramp for any purpose and hope that Everett Hangar will not move a jet to its ramp without advance notice.

and 12 ramps—and Paine Field was not a party to the lawsuit. The court has no legal basis to prohibit Paine Field property from being used in any lawful manner Paine Field desires, or to prohibit the Museum from using the Paine Field ramp with Paine Field’s permission. Also, because the second paragraph is not limited to the Lot 11 ramp, it includes other property on Lot 11, such as the hangar. Everett Hangar has never even argued that the Museum cannot use its hangar in any manner it sees fit, and if the hangar door is open, items inside the hangar may be within the jet blast zones for either of Everett Hangar’s planes using the west exit to Kilo 7. The second paragraph also includes Lot 13. Everett Hangar did not ask that the use of Lot 13 be curtailed to accommodate jet blast.

Paragraph 2, like the first, also makes no provision for Museum flights or maintenance, and, literally read, even prohibits the Museum from placing items on Lot 11 within any jet blast safety zone for a *Museum* aircraft (not just an Everett Hangar aircraft). This effectively prohibits the Museum from operating its own flights. None of this is justified by the CC&Rs, leases, or Snohomish County Code.

Paragraph 3 prohibits Defendants “from blocking Everett Hangar’s access to the west or east exits to Kilo 7 taxi lane in any manner.” APP. 3 ¶ 3. Again, this impermissibly fails to account for the Museum’s own flights, which could, on occasion, coincide with Everett Hangar flights and require Everett Hangar to wait for some period of time before departing.

Paragraph 4, which prohibits Defendants from allowing people (except trained flight personnel) to stand within the jet blast zone of aircraft

moving to or from the Kilo 7 taxiway, explicitly includes Paine Field property within its scope. APP. 3 ¶ 4. Again, the Easement, which relates only to the Lot 11 and 12 ramps, does not apply to Paine Field property, regardless of whether it is under the temporary control of the Museum. Paragraph 4 also does not distinguish between Everett Hangar jets and any other jets. The court has no basis to prohibit Defendants from using their own planes in any manner they conclude is safe. The flight activity of Museum planes was not an issue in this lawsuit.

For all these reasons, the trial court's injunction, as it relates to the Easement, is arbitrary, overly broad, and unsupported by the record. It should be vacated.

B. Defendants Have Not Violated Any CC&R Obligations with Respect to Safety and Security

1. Everett Hangar has no clear legal or equitable right to require its neighbors to employ any particular safety or security measures

The CC&Rs are clear: each lot owner is solely responsible for safety and security on that owner's lot. Under § 4.5 of the CC&Rs, the "Association *may, but shall not be obligated to*, maintain or support certain activities within the Property designed to enhance the safety of the Property." APP. 2 § 4.5 (emphasis added). On the other hand, that section goes on to say, in bold, capital letters, that lot owners must take responsibility for safety and security on their own lots:

NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY OR SAFETY WITHIN THE PROPERTY, NOR SHALL ANY OF THEM BE

HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY OR SAFETY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SAFETY MEASURE OR SECURITY SYSTEM CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THEY ARE DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, AND ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTY ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS; TO THE AREA OF COMMON RESPONSIBILITY, THE IMPROVEMENTS THEREON AND THE CONTENTS THEREOF; AND TO PARCELS, THE IMPROVEMENTS THEREON AND THE CONTENTS THEREOF, RESULTING FROM ACTS OF THIRD PARTIES.

Id. This section highlights the limited effectiveness of security measures, and assigns lot owners responsibility for safety and security on their own lots.

The trial court wholly ignored this provision in the CC&Rs. It is not cited or quoted anywhere in the trial court's findings and conclusions. *See* CP 452-84. Instead, the court cited two other provisions of the CC&Rs that in any event do not support the court's conclusions. CP 475. First, the court cited § 5 of the CC&R Rules and Regulations which, like § 4.5 of the CC&Rs, merely *authorizes*—and does not require—the Association to address security on the Property. APP. 2 at Ex. C § 5.

Second, the court cited a provision in the Rules and Regulations relating to “Noxious Activities,” which prohibits any activity

which emits foul or obnoxious odors, fumes, dust, smoke, or pollution outside the Lot or which creates noise, unreasonable risk of fire or explosion, or other conditions which tend to disturb the peace or threaten the safety of the occupants and invitees of other Lots.

Id. at Ex. C § 3(i). From this provision, which relates to matters like fire and fumes, the court interpreted a broad right for any owner to demand that its neighbors prevent any condition or activity that might “threaten the safety” of people on other lots. CP 475. This provision provides no such general right.

First, the provision plainly relates to a narrow category of physical conditions comparable to pollution or fire. The trial court’s much broader interpretation violates the well-established rule that a “general term used in conjunction with specific terms will be deemed to include only those things that are in the same class or nature as the specific ones.” *Viking Bank v. Firgrove Commons 3, LLC*, 183 Wn. App. 706, 716, 334 P.3d 116 (2014). The “Noxious Activities” provision therefore applies only to conditions such as fire or pollution.

The trial court’s broad interpretation of the “Noxious Activities” provision also renders the warnings in § 4.5 of the CC&Rs—carefully drafted in bold, capital lettering—meaningless. Properly interpreted, the “Noxious Activities” provision—which relates only to a narrow category of physical conditions—does not conflict with § 4.5. But even if the trial court’s broad reading of the “Noxious Activities” provision were

supportable, the more specific contract provision relating to safety and security (§ 4.5) would control over the more general provision (the “Noxious Activities” provision, as interpreted by the trial court). *Wright v. Safeco Ins. Co. of Am.*, 124 Wn. App. 263, 277, 109 P.3d 1 (2004) (specific contract provisions control over more general contract provisions). In other words, because § 4.5 specifically places responsibility for safety and security with lot owners, the general “Noxious Activities” provision cannot undo the effect of § 4.5.

Without the “Noxious Activities” provision, neither Everett Hangar nor the court can identify any provision in the CC&Rs that obligates any Defendant to undertake the safety and security measures demanded by Everett Hangar and the trial court. Perhaps for that reason, the court also suggested that Defendants violated the Snohomish County Code and Paine Field regulations. CP 475. But Everett Hangar alleged only violations of the CC&Rs—and for good reason. CP 578-80. Everett Hangar is not the entity charged with enforcing the Snohomish County Code and Paine Field regulations at the airport: Paine Field is. As Everett Hangar admits, it made Paine Field aware of its complaints about Museum activities, and Paine Field has required no additional security measures from Defendants. There are 500 planes and three other museums at Paine Field. RP 762-64, 1011. No one else is subject to the restrictions imposed by the trial court on the Museum. The court erred as a matter of law by inserting itself where Paine Field would not. It had no legal basis under the CC&Rs to do so,

particularly not when no harm has ever come to people or property at Everett Hangar.

2. The trial court's injunction is overly broad, arbitrary, and without legal basis

Even if the court had properly found that Defendants violated some duty to promote safety and security under the CC&Rs, the court's injunction is wholly inappropriate. Paragraphs 5-7 of the trial court's injunction relate to safety and security. None is justifiable.

Paragraph 5 prohibits "Defendants" from "allowing, permitting or suffering" any person (including Defendants' own agents) from accessing Lot 12 from Defendants' properties without Everett Hangar's permission. APP. 3 ¶ 5. This is overly broad. *King*, 125 Wn.2d at 520 (injunctions must be narrowly tailored). First, it flatly contradicts other easements in the CC&Rs, including owners' rights to use Lot 12's ramp *as is reasonably necessary* for airplane movement, and owners' easement rights over Areas of Common Responsibility on Lot 12 (including the Declarant's ongoing right to establish new easements over the Areas of Common Responsibility). APP. 2 §§ 12.4, 12.7. The court has no legal basis to disregard those easements over Lot 12.

Second, Paragraph 5 is impermissibly vague. CR 65(d). Even though the Museum uses volunteers, fencing provided by Paine Field, and other security measures (including deputies from the sheriff's office), the court has concluded that the Museum is "wide-open from a security standpoint." Given that expansive conclusion, if a Museum patron violates Museum rules, crosses a Paine Field-provided security fence, and accesses Lot 12, the court

may well find that the Museum “allowed” that access to occur in violation of the injunction. This provision would thus hold Defendants responsible for trespasses by third parties, in clear conflict with § 4.5 of the CC&Rs. The injunction is thus impermissibly vague because it does not impose specific requirements over which Defendants have full control.

Paragraph 6 prohibits “Defendants” from “propping open any security gate, door or entry point of the Premises of Lots 11 or 13 unless a security guard is immediately present at the gate at all times.” APP. 3 ¶ 6. This injunction is arbitrary, overly broad, and unsupported by the record. There is no evidence, anywhere in the record, that any door has ever been “propped open” at any time on Lot 11, or that such an occurrence resulted in any violation of Everett Hangar’s rights. With respect to Lot 13, the court bases this injunction on a Paine Field sign on the Lot 13 gate that reads, “Gates must remain locked and closed at all times.” CP 475. This is a requirement that Paine Field, not Everett Hangar, is charged with enforcing, and Paine Field has not insisted that Defendants make any changes to their use of the Lot 13 gate.²¹ *E.g.*, CP 253-54.

Paragraph 7 requires “Defendants” to construct a permanent security fence along the interior of Lot 13 until the court grants permission to remove it. APP. 3 ¶ 7. The trial court is usurping Paine Field’s authority. The court itself acknowledged in its findings and conclusions that the

²¹ If the Lot 13 gate really were required to be closed at all times, it would be a fence, not a gate. Paine Field permits this gate to be opened, and in fact approves Lot 13’s use as a parking lot by helping plan Museum events and providing the bicycle fencing around Lot 13. The trial court’s finding of fact number 55, finding that the Lot 13 gate had been “illegally” propped open on occasion, is unsupported by evidence. CP 468.

Lot 11, 12, and 13 lease agreements require Paine Field’s approval for “any alteration of the appearance of the premises.”²² CP 480; *e.g.*, Ex. 7 § 1.02(b). The court also held, “There is no evidence that Snohomish County has or would approve additional fencing on Lots 11, 12, or 13.” CP 480. For that reason, the court rejected Everett Hangar’s request for a fence on Lot 12. *Id.* Nevertheless, the court inexplicably ordered a fence on Lot 13. Paine Field has already installed a permanent security fence on the exterior of Lot 13, *see* APP. 1, and has supplied the waist-high bicycle fencing that surrounds the interior of Lot 13. The court has no legal basis to insist that Paine Field—which is not a party to this action—permit an additional permanent fence on Paine Field property that Paine Field has not requested or approved.²³

The required fence is also not narrowly tailored to remedy specific harms alleged by Everett Hangar. *King*, 125 Wn.2d at 520. Everett Hangar complains that Lot 13 was unmonitored at various times when it was in use, and Paragraph 6 of the trial court’s injunction would require Lot 13 to be monitored if open. Although not required by Paine Field (as discussed above), monitoring guests is at least consistent with the Museum’s policies when using its own lot (policies the court has not ordered modified). An additional fence, which has not been approved by Paine Field and which

²² There is good reason for this: Paine Field, which itself has contracted to use Lot 13 for airport events in the past, Exs. 238-39, may not want tall, permanent fencing along the interior of Lot 13, where it might impede aircraft movement or parking, for example.

²³ The CC&Rs also leave to the Association’s “sole discretion” any changes to the exterior portions of the lots. APP. 2 § 10.2. The court has no legal basis to order the Association to construct a fence around Lot 13 irrespective of the uses to which Lot 13 may be put.

may limit the use of Lot 13 in ways not contemplated by the trial court, is broader than necessary. The court erred in ordering it.

C. The Trial Court Erred in Ruling for Everett Hangar on Count III of its Amended Complaint

In Count III of its amended complaint, Everett Hangar alleged that the Association has a duty to keep common areas safe, and complains that “Neither John Sessions, nor the Association he controls, have built or cooperated in building any kind of security barrier between Lots 11 and 12, or taken any other step to keep safe and secure the area common to the Lots or the easements across their aprons.” CP 580. Count III alleged that John Sessions, Kilo Six, and the Association violated the CCRs. CP 579-80. The court erroneously held that, as to Count III, Everett Hangar was entitled to judgment against the Association “and its member organizations, Historic Hangars, LLC and Kilo Six, LLC.” CP 478.

First, Everett Hangar did not allege Count III against Historic Hangars, so the court erred in holding that Historic Hangars violated it. CP 579.

Second, the court concluded that the *Association* failed to keep common areas safe and “enforce the CC&Rs.” CP 478. The Association is a separate legal entity from its member entities, and the court had no legal basis to hold “its member organizations,” Historic Hangars and Kilo Six, liable for alleged Association liabilities. *See, e.g., Truckweld Equip. Co. v. Olson*, 26 Wn. App. 638, 644, 618 P.2d 1017, 1021 (1980) (for purposes of piercing the corporate veil, an independent legal entity is separate from its members or owners).

Third, the Association itself violated no duty. As discussed above, the Association has no affirmative duty to undertake any particular actions to improve safety and security on the Property. The court erred in finding for Everett Hangar on Count III.

D. The Trial Court Should Have Dismissed All Claims Against John Sessions With Prejudice

After a full trial, the court found no violations by John Sessions, but nevertheless dismissed all claims against John Sessions *without* prejudice. CP 483. The court should have dismissed all claims against John Sessions *with* prejudice, as is appropriate after a trial on the merits. *Lawrence v. Dep't of Health*, 133 Wn. App. 665, 679, 138 P.3d 124 (2006).

E. The Trial Court Erred in Awarding Attorneys' Fees and Costs to Everett Hangar

For all the reasons described above, the court should have dismissed all of Everett Hangar's claims with prejudice and awarded Defendants their attorneys' fees and costs. Even if this Court were to affirm the trial court in whole or in part on the substantive issues, the trial court still erred in awarding attorneys' fees to Everett Hangar.

1. All parties prevailed on major issues, so Everett Hangar should not have been awarded fees

When Everett Hangar filed its complaint in February 2014, it sued for damages and injunctive relief and alleged five legal claims against five Defendants. CP 1028-39. It requested a jury trial on the damages issues. CP 1038. On summary judgment, the court dismissed Everett Hangar's damages claims with prejudice because Everett Hangar could provide no

evidence of actual damages. CP 676-78. Half the complaint was gone at that point.

With half the case already dismissed, Everett Hangar sought only injunctive relief at trial pursuant to its five claims against the five Defendants. After trial, the court found against only certain Defendants on only three of five claims, and the court granted only half the injunctive relief requested by Everett Hangar. CP 483, 449-51, 581. The court granted certain relief with respect to the use of Lot 11, and ordered a fence built around Lot 13. *See* APP. 3. The court did not enter relief with respect to John Sessions (who prevailed on all claims against him), and did not order a fence around Lot 12 (the most important issue to Everett Hangar in this lawsuit (*e.g.*, RP 100-01)). *Id.*

The claims won and lost by Everett Hangar are summarized in the chart below. A check mark indicates that the court found for Everett Hangar, at least in part, against the listed Defendant. An “x” indicates that the court found for the listed Defendant.

	Kilo 6 Owners Ass'n	Kilo Six, LLC	Historic Hangers, LLC	Historic Flight Foundation	John Sessions
<u>Count I</u> : Violation of Easement			✓	✓	✗
<u>Count II</u> : Violation of CC&R re Lot 11 Activities			✓	✓	✗

	Kilo 6 Owners Ass'n	Kilo Six, LLC	Historic Hangers, LLC	Historic Flight Foundation	John Sessions
<u>Count III:</u> Violation of CC&R re Safety & Security of Lots	✓ ²⁴	25	26		✗
<u>Count IV:</u> Violation of Ass'n Bylaws	✗	✗			✗
<u>Count V:</u> Breach of Fiduciary Duty					✗

The requested relief awarded and denied is summarized in the next chart. Again, a check mark indicates that the court awarded the relief, at least in part, and an "x" indicates the court denied the relief requested by Everett Hangar.

Relief Requested	Awarded?
Prohibiting displays and other activity on Lot 11 (original and amended complaint)	✓
Damages (original complaint)	✗
Injunction against John Sessions prohibiting him from breaching fiduciary duties (amended complaint)	✗
Injunction prohibiting Defendants from blocking construction of fence around Lot 12 (amended complaint)	✗
Injunction prohibiting use of Lot 13 until new fence erected around interior with northern boundary of fence limited to northern edge of Everett Hangar's hangar (amended complaint)	✓ ²⁷

²⁴ As explained above, the court erred in finding against the Association on Count III for reasons different from the errors made in finding against Defendants on Counts I and II. As with Counts I and II, however, for purposes of analyzing attorneys' fees, Defendants will assume judgment against the Association on Count III.

²⁵ For reasons that are unclear, the court found against Kilo Six on Count III even though the only duties alleged to have been breached belonged to the Association.

²⁶ For reasons that are unclear, the court found against Historic Hangers, LLC on Count III even though Everett Hangar did not allege Count III against Historic Hangers, and even though the only duties alleged to have been breached belonged to the Association.

²⁷ Despite Everett Hangar's request, the court did not diminish the usable space on Lot 13 by limiting the northern boundary of the ordered fence to the northern boundary of Everett Hangar's hangar. CP 451, 581.

As these charts show, Defendants successfully defended against major claims and most of the relief requested by Everett Hangar. Defendants incurred substantial fees and expenses defending against these claims, but they are less than half the amount Everett Hangar requested. Through trial, Defendants incurred approximately \$360,083 in total fees, compared with the \$819,053.57 requested by Everett Hangar.²⁸ CP 97, 391.

Under well-established Washington law, applied in case after case, attorneys' fees and costs should not be awarded in cases where all parties prevail on major issues.²⁹ Here, John Sessions prevailed on *all* claims against him. He is entitled to his reasonable attorneys' fees and costs. Everett Hangar prevailed on, at most, half the claims it alleged against the various other Defendants. Defendants prevailed on the rest. Everett Hangar was also awarded less than half the relief it requested, having been awarded only some of its requested injunctive relief and none of its requested damages. Under longstanding Washington law, there is no prevailing party

²⁸ Everett Hangar's initial fee request also included some post-trial entries. CP 147-216.

²⁹ *Am. Nursery Prods., Inc. v. Indian Wells Orchards*, 115 Wn.2d 217, 235, 797 P.2d 477 (1990) (declining to award fees on appeal in contract case because both parties prevailed on major issues); *McGary v. Westlake Investors*, 99 Wn.2d 280, 288, 661 P.2d 971 (1983) (same, in case involving breach of lease); *Marassi v. Lau*, 71 Wn. App. 912, 916, 859 P.2d 605 (1993) (“[I]f both parties prevail on major issues, an attorney fee award is not appropriate.”), *abrogated on other grounds by Wachovia SBA Lending, Inc. v. Kraft*, 165 Wn.2d 481, 490, 200 P.3d 683 (2009); *Sardam v. Morford*, 51 Wn. App. 908, 911-12, 756 P.2d 174 (1988) (affirming trial court's determination that neither party in lease dispute was prevailing party despite entry of money judgment in plaintiff's favor); *Tallman v. Durussel*, 44 Wn. App. 181, 189, 721 P.2d 985 (1986) (no prevailing party on appeal where each party prevailed on a major issue in dispute regarding promissory note); *Puget Sound Serv. Corp. v. Bush*, 45 Wn. App. 312, 320-21, 724 P.2d 1127 (1986) (declining to award fees on appeal in contract dispute because both parties prevailed on major issues and vacating the trial court's award of fees for the same reason); *Rowe v. Floyd*, 29 Wn. App. 532, 535-36, 629 P.2d 925 (1981) (affirming trial court's determination that no party was entitled to award of fees where judgment granted relief to both parties in real estate contract dispute).

in this action besides John Sessions, against whom Everett Hangar obtained no relief. The court should have ordered each other party to bear its own fees and expenses, and should have found that John Sessions was a prevailing party entitled to all his reasonable fees.

2. The trial court failed to apply the proportionality rule in awarding fees

Even if the court permissibly awarded attorneys' fees to parties other than John Sessions, the court was required to apply the proportionality approach to award fees and costs. *Cornish Coll. v. 1000 Vir. Ltd. P'ship*, 158 Wn. App. 203, 232, 242 P.3d 1 (2010). Application of the proportionality approach is mandatory. *See id.* at 234 (remanding for application of proportionality approach). Under the proportionality approach, each party is awarded attorneys' fees for those theories or claims upon which it prevails or against which it successfully defends, and the awards are then offset. *Id.* at 233-34; *see also Transpac Develop., Inc. v. Oh*, 132 Wn. App. 212, 130 P.3d 892 (2006) (reversing attorney fee award because court abused its discretion by failing to apply proportionality rule). Here, the court expressly declined to apply the proportionality rule, stating on the record that, if she was "wrong about that," this Court would "let [her] know that, as [it is] quick to do." RP 34-35 (June 6, 2015). This Court should reverse. The trial court should have applied the proportionality rule as required.

3. The trial court failed to scrutinize Everett Hangar's fee request and awarded unreasonable fees

The court awarded *every penny* of Everett Hangar's initial \$819,053.57 fee request.³⁰ CP 53-54. In doing so, it abdicated its duty to take an active role in assessing the reasonableness of the fee request, and to exclude all wasteful or duplicative hours and all hours pertaining to unsuccessful theories or claims. *Mahler v. Szucs*, 135 Wn.2d 398, 434-35, 957 P.2d 632 (1998). The court also failed to justify its decision with required findings and conclusions. *Id.* at 435. For that reason alone, the Court should remand this matter to the trial court. *Id.*

Everett Hangar's fee request included 1,847.46 hours spent by six attorneys and three staff members. CP 144-45. Everett Hangar thus requested fees for nearly 800 hours more than Appellants for three times the number of lawyers. CP 76, 95-96. The request was flatly unreasonable. It also failed to subtract the hours spent on certain unsuccessful theories or claims, such as Count IV (violation of association bylaws); damages; unawarded, but requested, injunctive relief; and all claims against John Sessions.³¹ The time sheets provided by Everett Hanger's attorneys were not sufficiently detailed to determine the precise number of hours spent on these unsuccessful claims and requests for relief, *see* CP 147-216, but the court was required to account for them.

This case could have, and should have, been handled much more efficiently, and the court was obligated to reduce hours that were not

³⁰ Everett Hangar also made a supplemental fee request. CP 48-51. The court did deny some of the requested fees in that case, but failed to apply the proportionality approach and, as discussed above, should not have awarded fees to Everett Hangar at all. CP 5.

³¹ Everett Hangar purportedly subtracted time spent on its unsuccessful Count V. *E.g.*, CP 398-400.

reasonably spent. *E.g.*, *Mahler*, 135 Wn.2d at 434. These would include, for example, time spent on discovery motions that were never filed, *e.g.* CP 181-88, hours spent preparing for and taking a document custodian deposition that resulted in no discovery motions or requests, *e.g.*, CP 180-84, or hours allegedly spent defending or attending depositions that the attorney did not attend, CP 188 (Rheaume entry incorrectly suggesting he defended McCord deposition), CP 199 (Rheaume entry incorrectly suggesting he attended Schultz deposition). CP 98. They also include the hundreds of hours of Everett Hangar's expensive senior lawyer spent doing tasks that could have been delegated to others. *See* CP 76.

In sum, the court did not meet its obligation to scrutinize Everett Hangar's fee request and reduce it as required by longstanding case law. If the Court concludes that an award of attorneys' fees to Everett Hanger was appropriate, it should remand and order the court to enter findings and conclusions justifying any fee award to Everett Hangar, making appropriate deductions and using proportionality analyses. *Mahler*, 135 Wn.2d at 435.

VI. REQUEST FOR ATTORNEYS' FEES AND COSTS

Pursuant to RAP 18.1, Defendants ask that they be awarded attorneys' fees and costs as provided by § 4.2 of the CC&Rs or § 9.03 of the parties' leases with Paine Field. Ex. 5 § 9.03; APP. 2 § 4.2. As discussed above, the court erroneously awarded Everett Hangar attorneys' fees and costs pursuant to § 4.2 of the CC&Rs.

VII. CONCLUSION

The trial court misinterpreted and misapplied the Easement, wrongfully transferring control of the Museum's ramp to Everett Hangar. The trial court turned the Easement's limitation of reasonable necessity on its head, and essentially barred the Museum from using its own leased property. The court further ordered Defendants to take security measures neither required by the CC&Rs nor mandated or approved by Paine Field. The court therefore erred as a matter of law in finding for Everett Hangar and entering injunctive relief. Even if injunctive relief were appropriate, the court entered an injunction that was arbitrary, overly broad, vague, and unsupported by the record. The Court should reverse the trial court's injunctive relief and findings against Defendants.

The trial court also erred in awarding attorneys' fees and costs to Everett Hangar, and erred in analyzing and calculating that award. The Court should reverse and remand with instructions to (1) dismiss all of Everett Hangar's claims with prejudice, and (2) award Defendants their reasonable attorneys' fees and costs.

RESPECTFULLY SUBMITTED this 17th day of December, 2015.

HILLIS CLARK MARTIN & PETERSON P.S.

By



Louis D. Peterson, WSBA #5776
Jake Ewart, WSBA #38655

Attorneys for Defendants-Appellants
Kilo 6 Owners Association, Kilo Six, LLC,
Historic Hangars, LLC, Historic Flight
Foundation, and John Sessions

ND: 19813.008 4815-9299-2298v9

CERTIFICATE OF SERVICE

The undersigned certifies that on this day she caused a copy of the Brief of Appellants, with Appendix, to be served via legal messenger and email to the last known address of all counsel of record.

I certify under penalty of perjury under the laws of the state of Washington and the United States that the foregoing is true and correct.

DATED this 17th day of December, 2015, at Seattle, Washington.



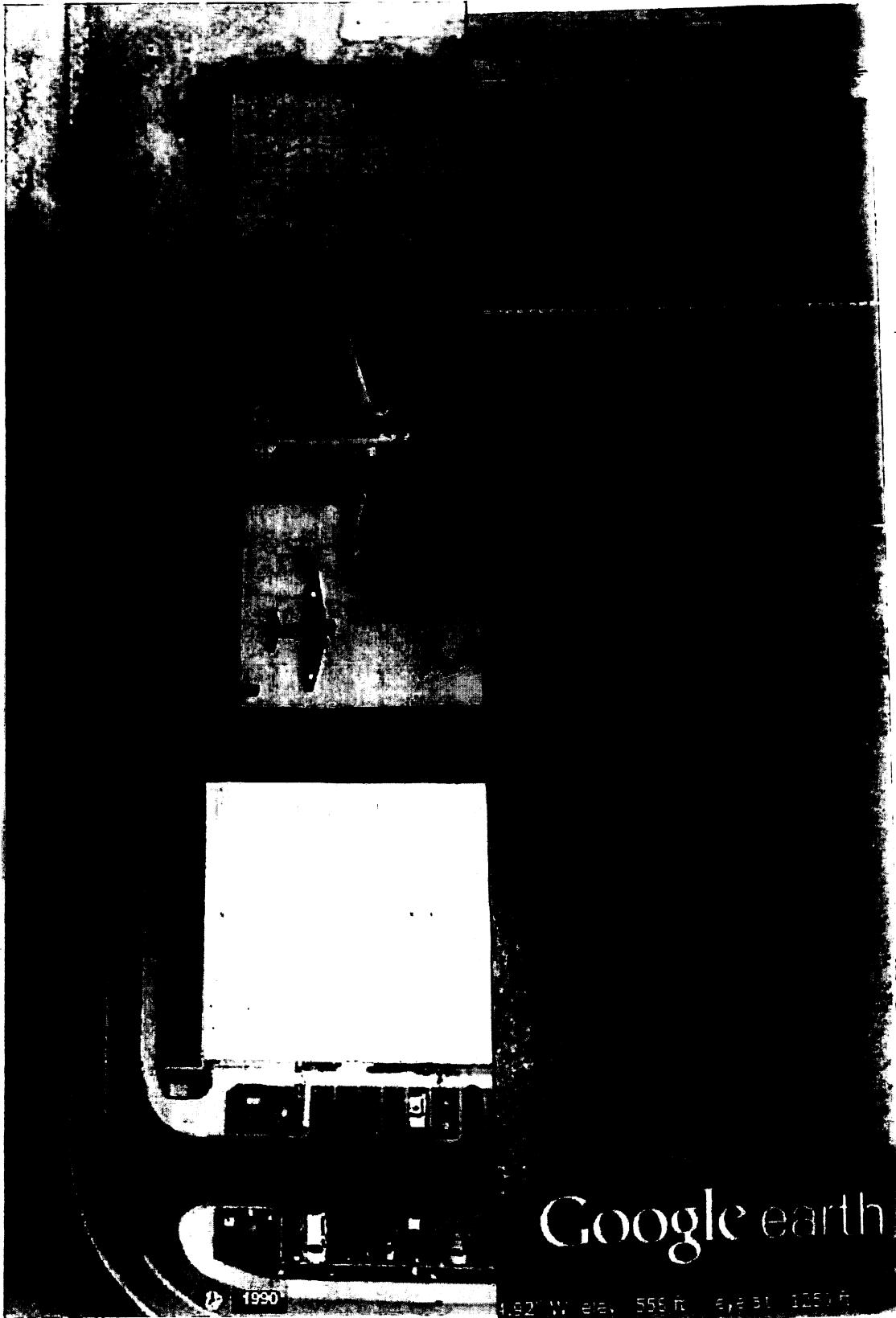
Suzanne Powers

APPENDIX

APPENDIX

1. Trial Exhibit No. 271 – aerial photo of airfield
2. Amended and Restated Ground Leasehold Declaration of Covenants, Conditions and Restrictions for Kilo 6 Hangars, recorded August 10, 2009 (Ex. 11)
3. Order Granting Permanent Injunction, entered May 19, 2015 (CP 449 – 451)
4. Proffered Trial Exhibit No. 264, Historic Flight Foundation Visitor and Restoration Center Volunteer Orientation Packet (Bates No. DEF0001488-1513)
5. Proffered Trial Exhibit No. 265, “Historic Flight Foundation Kilo 7 First Aid Awareness” (Bates No. DEF0001032)
6. Proffered Trial Exhibit No. 266, “Front Desk Protocol” (Bates No. DEF0001033)
7. Proffered Trial Exhibit No. 267, “Historic Flight Foundation Hazmat Awareness Training, Staff and Volunteers” (Bates No. DEF0001034)
8. Proffered Trial Exhibit No. 268, “Handy Facts and Figures” (Bates No. DEF0001035)
9. Proffered Trial Exhibit No. 269, “Paine Field Photographer Access Rules” (Bates No. DEF0001038)

APPENDIX 1



APPENDIX 2

When Recorded, Return to:

MICHAEL SCHUMACHER
Hilfs Clark Martin & Peterson
1221 2nd Avenue, 5th Floor
Seattle, WA 98101

280908108271 42 PGS
08/10/2009 9:48am \$103.00
SNOHOMISH COUNTY, WASHINGTON

**AMENDED AND RESTATED
GROUND LEASEHOLD DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
CHICAGO KILO 6 HANGARS**

CT 5304 594

42 103-

Grantor:	KILO SIX, LLC SNOHOMISH COUNTY EVERETT HANGAR LEC
Grantee:	BINDING SITE PLAN OF KILO 6 HANGARS
Legal Description (abbreviated):	Lots 11, 12, and 13, Paine Field Airport Sector 7 Binding Site Plan and Record of Survey recorded under Snohomish County Auditor's Recording No. 200812105004
<input checked="" type="checkbox"/> Additional on:	Exhibit A page 35
Assessor's Tax Lot ID #s:	28042200200100
Reference Nos. of Documents Released or Assigned:	200807300679

**AMENDED AND RESTATED DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
KILO 6 HANGARS**

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**AMENDED AND RESTATED
GROUND LEASEHOLD DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
KILO 6 HANGARS**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KILO 6 HANGARS (this "Declaration") is made this ____ day of August, 2009, by KILO SIX, LLC, a Washington limited liability company ("Declarant"), with the consent and approval of EVERETT HANGAR LLC, a Washington limited liability company and SNOHOMISH COUNTY ("County").

INTRODUCTION

A. Pursuant to a Land Lease dated as of May 18, 2007 and recorded under Snohomish County Auditor's Recording No. 200705250248 as amended by Amendment No. 1 to Land Lease and Amendment No. 2 to Land Lease dated April 9, 2008 and recorded under Snohomish County Auditor's Recording No. 20080411757 and 20080417183 respectively (the "Initial Land Lease"), Declarant acquired a real property leasehold interest in the real property along Paine Field Taxiway Kilo 6 that is described in EXHIBIT A (the "Entire Leased Property"). Because it was contemplated that the Entire Leased Property would be developed into three separate parcels with three separate buildings occupied by three separate users, Declarant previously executed and recorded, with the consent of the County, a Declaration of Covenants, Conditions and Restrictions under Snohomish County Recording No. 200807300679 to create a general plan of operation for the Entire Leased Property (the "Initial CCRs").

B. The County subsequently completed and recorded a binding site plan that subdivided the Entire Leased Property into three separate legal lots, including Lot 11, Lot 12, and Lot 13 of Sector 7 of Paine Field ("Lots" or "Kilo Six Lots"). Such Binding Site Plan was recorded under Snohomish County Auditor's Recording No. 200812105004 and created three separate Lots, as follows:

Lot	Area
Lot 11	54,071 sq. ft.
Lot 12	92,823 sq. ft.
Lot 13	123,489 sq. ft.

C. Based on the subdivision of the Entire Leased Property into three separate Lots, the County subsequently agreed to separate and trifurcate the Initial Land Lease

into three separate Amended and Restated Land Leases for Paine Field Sector 7 Lots 11, 12, and 13 (the "Leases" or "Lot Leases"), on terms substantially identical to those of the Initial Land Lease. The three Lot Leases, which took effect as of January 1, 2009, were recorded against the applicable portions of the Entire Leased Property on January 7, 2009, as follows:

Lot 11 Lease	Snohomish County Recording No. 200901070380
Lot 12 Lease	Snohomish County Recording No. 200901070381
Lot 13 Lease	Snohomish County Recording No. 200901070382

Concurrently with execution and recording of the Lot Leases, Declarant, the County, and the Kilo 6 Owners Association also executed and delivered an Assignment and Assumption of Slope Area License and Common Area Obligations dated as of January 7, 2009 and recorded under Snohomish County Recording No. 200901070446 (the "Common Area Assignment"), under which the Association directly assumed the license and obligations relating to the Landscaping Areas and other Areas of Common Responsibility (as defined in Article 1).

D. The Declarant desires to amend and restate the CC&Rs to conform them to the Lot designations assigned in the Binding Site Plan, and to make certain other updates and changes so that they will be compatible with the Lot Leases and the Common Area Assignment. Everett Hangar, which now owns the leasehold interest in Lot 12, has joined in this Declaration, and Snohomish County, which owns the underlying fee interest in each of the Lots, has also joined in execution of this Declaration.

DECLARATION

The Property (capitalized terms are defined in Article 1) consists of leasehold interests in the three Lots. This Declaration imposes upon the Property mutually beneficial restrictions for the benefit of the leasehold owners of each Lot, and establishes a flexible and reasonable procedure for the overall administration, maintenance and preservation of the Property. In furtherance of that plan, this Declaration provides for the Kilo 6 Owners Association, a Washington nonprofit corporation, to maintain certain Areas of Common Responsibility (as such term is defined in Article 1), and to administer and enforce the provisions of this Declaration, the Bylaws, and the Rules and Regulations (as further described in Article 1).

Because the Property may, under certain circumstances described herein, be deemed to include and this Declaration may apply to the underlying fee interest in the Land (as defined in Article 1) in the event that one or more leaseholds comprising the Property is terminated, Snohomish County, as the fee owner of such Land, has executed this Declaration to evidence its consent to and agreement with the terms and conditions of this Declaration, but Snohomish County is not and shall not be deemed to be a "Declarant". Because Everett Hangar now owns the leasehold interest in Lot 12, it has

also executed this Declaration to subject Lot 12 to the provisions of this Declaration, but Everett Hangar is not and shall not be deemed to be a "Declarant."

Declarant hereby declares that all of the Property described in EXHIBIT A shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which shall run with the land and title to the real property subjected to this Declaration. This Declaration shall be binding on and shall inure to the benefit of all parties having any right, title, or interest in any portion of the Property, their heirs, successors, successors-in-title, and assigns. This Amended and Restated Declaration shall amend, restate, and supersede the Initial CC&Rs in their entirety, and upon the recording of this Declaration, the Initial CC&Rs shall cease to have effect.

ARTICLE 1. DEFINITIONS

The terms used in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. "Area of Common Responsibility": All areas for which the Association has or assumes responsibility pursuant to the terms of this Declaration, other applicable covenants, or any contract. The Area of Common Responsibility includes, without limitation, the south and west Landscaping Areas and all portions of Lot 11, Lot 12, and Lot 13 that are developed and improved as parking areas, driveways, walkways, landscaped areas, fences, or gates as part of the original development of the Property by Declarant, and in each case as shown and designated on the Property Map.

1.2. "Articles of Incorporation" or "Articles": The Articles of Incorporation for the Association, as filed with the Washington Secretary of State on September 20, 2007, as amended from time to time; provided, that no amendment shall be made to such Articles after the date of transfer of title of a Lot from Declarant to an Owner that would adversely affect such Owner without that Owner's consent.

1.3. "Association": Kilo 6 Owners Association, a Washington nonprofit corporation, and its successors and assigns.

1.4. "Base Assessments": Assessments levied on all Lots subject to assessment under Section 9.7 to fund Common Expenses for the general benefit of all Lots, as more particularly described in Sections 9.1 and 9.3.

1.5. "Binding Site Plan": That certain Binding Site Plan and Record of Survey of the Property recorded under Snohomish County Auditor's Recording No. 200812105004.

1.6. **"Board of Directors" or "Board"**: The body responsible for administration of the Association, selected as provided in the Bylaws and generally serving the same role as the board of directors under Washington corporate law.

1.7. **"Building"**: Any building, aircraft hangar, storage shed, or other improvement on the Property that has one or more walls and a roof or overhead cover.

1.8. **"Building Areas"**: Any portion of a Lot on which a Building intended for occupancy is located or is being constructed.

1.9. **"Bylaws"**: The Bylaws of the Association, as they may be amended; provided, that no amendment shall be made after the date of transfer of title of a Lot to an Owner that would materially and adversely affect such Owner without that Owner's consent.

1.10. **"Common Area Assignment"**: That certain Assignment and Assumption of Slope Area License and Common Area Obligations dated as of January 7, 2009 and recorded under Snohomish County Recording No. 200901070446, under which the Association directly assumed the license and obligations relating to the Landscaping Areas and other Areas of Common Responsibility.

1.11. **"Common Expenses"**: The actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Lots, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the Bylaws, and the Articles of Incorporation, including, without limitation, the costs of performing the Association's responsibilities under Section 5.1. Common Expenses shall not include any expenses incurred by Declarant in connection with the original development of the Property and construction of improvements thereon.

1.12. **"Community-Wide Standard"**: The standard of permitted or required conduct, maintenance, or other activity on the Property established by or pursuant to this Declaration, the Architectural Standards, or the Rules and Regulations.

1.13. **"Declarant"**: Kilo Six, LLC, a Washington limited liability company

1.14. **"Governing Documents"**: A collective term referring to this Declaration, the Bylaws, the Articles, the Architectural Standards, and the Rules and Regulations, as each may be amended from time to time.

1.15. **"Land"**: The fee simple interest in the real property legally described in Exhibit A.

1.16. **"Landscaping Areas"**: All portions of certain properties located adjacent to the Property that any Owner has the right and obligation to maintain under and pursuant to the terms of a Lot Lease or that the Association has the right and obligation to maintain under the Common Area Assignment. The Landscaping Areas are shown and

designated as the West Slope and South Slope on the Final Slope Area Landscape and Maintenance Plan attached as Exhibit E to the Lot Leases, as such Landscape Area may be further reconfigured by Declarant and the County as provided in Section 8.2

1.17. "Lease" or "Lot Lease": Each of the following leases, initially executed between Snohomish County, as Lessor, and Declarant, as Lessee, dated as of January 7, 2009 and recorded against the applicable Lots on January 7, 2009, as they may be amended from time to time:

Amended and Restated Land Lease for Paine Field Sector 7 Lot 11	Snohomish County Recording No. 200901070380
Amended and Restated Land Lease for Paine Field Sector 7 Lot 12	Snohomish County Recording No. 200901070381
Amended and Restated Land Lease for Paine Field Sector 7 Lot 13	Snohomish County Recording No. 200901070382

The Lot 12 Lease was assigned by Declarant to Everett Hangar LLC immediately following its recording pursuant to an Assignment and Assumption of Amended and Restated Land Lease for Paine Field Sector 7 Lot 12 dated as of January 7, 2009 and recorded under Snohomish County Recording No. 200901070447. Following the recording hereof, the Lot 11 Lease is being assigned to Historic Hangars, LLC, a Washington limited liability company. Further assignments of the Leases may occur as permitted therein.

1.18. "Lot": The ground leasehold interest in each of Lot 11, Lot 12, and Lot 13, which, together, comprise the Property, as shown on the Binding Site Plan and Property Map, together with any Buildings, or other improvements constructed on such Lot. So long as a Lease with respect to a Lot remains in effect, the term "Lot" shall refer to the ground leasehold interest in such Lot, but in the event that a Lease is terminated with respect to a Lot at a time when this Declaration remains in effect, the term "Lot" shall refer to the underlying fee interest in such Lot. In either case, the term shall also include any improvements developed or constructed thereon. If any Lot is subdivided or resubdivided, whether by plat, deed, condominiumization, partial assignment of Lease, or otherwise, in each case in compliance with this Declaration and applicable law, each lot, parcel or ground leasehold interest created by such subdivision shall be considered a Lot hereunder, and votes and liability for assessments shall be recomputed for each Lot created by such subdivision in accordance with the Percentage Interest formula in Section 1.21, below.

1.19. "Member": A Person subject to membership in the Association, as provided in Section 3.2.

1.20. "Owner": One or more Persons who (i) hold all or any portion of lessee's interest under a Lease, but excluding in all cases any party holding an interest merely as security for the performance of an obligation, or (ii) in the event that a Lease has been terminated with respect to a Lot at a time when this Declaration is still in effect, the underlying owner of the fee interest in such Lot.

1.21. "Percentage Interest": The percentage used to allocate voting rights among the Members and Common Expense liabilities among the Owners. The Percentage Interest of each Lot shall be calculated by dividing the square footage of such Lot by the total square footage of all the Lots, with the quotient rounded to the nearest full percentage point. The initial Percentage Interests of the Lots are shown in EXHIBIT B; however, in the event that any Lots are subdivided or combined in accordance with the terms of this Declaration, the Percentage Interests of the Lots shall be recalculated in accordance with the foregoing formula which shall, in any event, control over any conflicting percentages shown on EXHIBIT B.

1.22. "Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.23. "Property": The real property described in EXHIBIT A, including all Buildings and other improvements constructed thereon.

1.24. "Property Map": The map of the Property attached hereto as EXHIBIT D

1.25. "Rules and Regulations": Those rules, regulations, and use restrictions affecting the Property, as adopted, supplemented, modified, repealed, and expanded, as set forth in Article 11. The initial Rules and Regulations are set forth in EXHIBIT C.

1.26. "Special Assessment": Assessments levied in accordance with Section 9.4 of this Declaration.

1.27. "Specific Assessment": Assessments levied in accordance with Section 9.5 of this Declaration.

ARTICLE 2. PROPERTY RIGHTS

2.1. Area of Common Responsibility.

Every Owner shall have a right and nonexclusive easement over the Area of Common Responsibility for ingress to and egress from the Owner's Lot, subject to the following:

- (a) this Declaration and the Bylaws;
- (b) any restrictions or limitations contained in a Lease; and

(c) the right of the Board to adopt reasonable rules, uniformly applied to all Members, regulating the use and enjoyment of the Area of Common Responsibility, including but not limited to restrictions on access to ramps between the Buildings and taxiways and other restricted areas.

Any Owner may extend its right of use and enjoyment of the Area of Common Responsibility to any lessees and other occupants of its Lot and their invitees, subject to regulation in accordance with Article 11.

ARTICLE 3. ASSOCIATION FUNCTION, MEMBERSHIP AND VOTING RIGHTS

3.1. Function of Association.

The Association shall be the entity responsible for the maintenance of the Area of Common Responsibility within the Property. The Association shall be the primary entity responsible for enforcement of this Declaration and such rules regulating use of the Property as the Board or the membership may adopt pursuant to Article 11. The Association also shall be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Architectural Standards. The Association shall perform its functions in accordance with the Governing Documents and applicable law.

3.2. Membership.

Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to Board regulation and the restrictions on voting set forth in Section 3.3 and in the Bylaws, and all co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights and privileges may be exercised by the Owner, if a natural person, or, in the case of an Owner which is a corporation, partnership or other legal entity, by any officer, director, partner, or trustee, or by any other individual designated by the Owner from time to time in a written instrument provided to the Secretary of the Association.

3.3. Voting.

Each Member shall have voting rights equal to the Percentage Interest of its Lot(s). If there is more than one Owner of any Lot, the votes for such Lot shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. In the absence of such advice, the vote for such Lot shall be suspended if more than one co-Owner seeks to exercise it in a manner inconsistent with the vote of another co-Owner. Any Owner may assign the right to cast all or a portion of the votes allocated to its Lot to the lessee of any portion of such Lot by written proxy filed with the Secretary of the Association in accordance with Section 2.9 of the Bylaws.

ARTICLE 4. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1. Area of Common Responsibility.

The Association, subject to the rights of the Owners set forth in this Declaration, shall maintain the Area of Common Responsibility and all improvements thereon (including, without limitation, landscaping, sidewalks, parking lots, driveways, lot lighting, storm water conveyance systems, security fences and gates, and other improvements to the Property, but specifically excluding the Buildings and aircraft ramps). The Association shall keep the Area of Common Responsibility in safe, good, clean, attractive, and sanitary condition, order, and repair, consistent with this Declaration and the Community-Wide Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management or security firms to assist in carrying out the Association's responsibilities under this Declaration and the Bylaws, the cost of which shall be a Common Expense.

4.2. Enforcement.

The Association may enforce, and may, after reasonable notice and opportunity to cure, impose sanctions for violations of, the Governing Documents in accordance with procedures set forth herein and in the Bylaws, including monetary fines and suspension of the right to vote. In addition, in accordance with the Bylaws, the Association may, after reasonable notice and opportunity to cure, exercise self-help remedies to cure violations and may suspend any services it provides to the Lot of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association unless the Owner is contesting the assessment or other charge in good faith. All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or Association rules, the prevailing party shall be entitled to recover all costs, including, without limitation, reasonable attorneys' fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right to enforce such provision under other circumstances or estop the Association from enforcing any other covenant, restriction or rule.

4.3. Implied Rights: Board Authority.

The Association may exercise any right or privilege given to it expressly by this Declaration or the Bylaws, and any right or privilege which could be implied from or which is necessary to effectuate any express right or privilege. Except as otherwise

specifically provided in the Governing Documents or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.4. Indemnification.

Except as otherwise provided in this Section or applicable law, the Association shall indemnify every officer, director, and committee member, including members of the Architectural Review Committee established under Article 10, against all damages and expenses, including reasonable attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which such person may be a party by reason of being or having been an officer, director, or committee member.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligence or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors, and committee members shall have no personal liability with respect to any contract or other commitment made or action taken, in good faith, on behalf of the Association (except to the extent that such officers, directors, or committee members may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.5. Security.

The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to enhance the safety of the Property. **NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY OR SAFETY WITHIN THE PROPERTY, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY OR SAFETY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SAFETY MEASURE OR SECURITY SYSTEM CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THEY ARE DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, AND ANY**

SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTY ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS; TO THE AREA OF COMMON RESPONSIBILITY, THE IMPROVEMENTS THEREON AND THE CONTENTS THEREOF; AND TO PARCELS, THE IMPROVEMENTS THEREON AND THE CONTENTS THEREOF, RESULTING FROM ACTS OF THIRD PARTIES.

ARTICLE 5. MAINTENANCE

5.1 Association's Responsibility

The Association shall maintain and keep in good repair the Area of Common Responsibility. Declarant hereby creates for the benefit of the Association perpetual, nonexclusive easements over the Property to enable the Association to fulfill its permitted and required responsibilities under this Section.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Lots as part of the Base Assessment. However, the Association shall, if commercially reasonable, seek reimbursement from the owner(s) of, or other Persons responsible for sharing in the costs of, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof.

In the event that the Association fails to perform properly its maintenance responsibilities hereunder, Declarant or any Owner may, upon not less than 10 days' notice and opportunity to cure such failure, cause such maintenance to be performed and, in such event, shall be entitled to reimbursement from the Association for all costs incurred. The Owners shall coordinate with one another in good faith in advance to minimize the potential for any such maintenance to interfere with the normal use or operation of a Lot, except in the case of an emergency making such coordination unfeasible.

5.2. Owner's Responsibility.

Each Owner shall maintain any Buildings or other improvements on such Lot that are used and/or occupied by such Owner in a manner consistent with the Community-Wide Standard and all applicable law and covenants. Any use of or activity on the portions of the Area of Common Responsibility located on an Owner's Lot shall also be in compliance with the Community-Wide Standard, and, without limiting the foregoing, each Owner shall be responsible for restoring such areas to a clean and orderly condition following any use of or activity on such areas by such Owner.

If any Owner fails to perform properly such Owner's maintenance responsibility hereunder, the Association may perform such maintenance responsibility; provided, however, the Association shall afford the Owner notice and an opportunity to cure (in

accordance with the procedure set forth in the Bylaws) the problem prior to entry, except when entry is required due to an emergency situation. In the event that the Association performs the maintenance, the Association shall assess all costs incurred by the Association against the Lot and the Owner thereof in accordance with Section 9.5.

ARTICLE 6. PARTY WALLS AND OTHER SHARED STRUCTURES

6.1. General Rules of Law to Apply.

Each wall, fence, gateway, driveway or similar structure built as a part of the original construction on the Lots which serves or separates any two adjoining Lots shall constitute a party structure. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

6.2. Maintenance: Damage and Destruction.

The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners whose property the party structure serves or separates.

If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner whose property the party structure serves or separates from other property may restore it. Other Owners whose property the party structure serves or separates from other property shall contribute to the restoration cost in proportion to the amount of their property served by the party structure. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

6.3. Right to Contribution Runs with Land.

The right or obligation of any Owner to contribution from or to any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

ARTICLE 7. INSURANCE AND CASUALTY LOSSES

7.1. Association Insurance.

(a) **Coverage.** The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect, if reasonably available and to the extent the Board deems reasonably necessary commercial general liability insurance on the Area of Common Responsibility; directors and officers liability coverage; fidelity insurance; and such additional insurance as the Board, in its business judgment, determines advisable or is required by law. The Board shall review annually and shall have an experienced insurance professional review the types and amounts of insurance

that the County desires to reincorporate into the infrastructure system serving the airport, including roadways, taxiways, slopes, landscape areas, utility corridors, greenbelts, or other County improvements. Such amendment shall not require the consent of any Person other than the Declarant and the Owner(s) of the Lot to be withdrawn, if not Declarant.

ARTICLE 9 ASSESSMENTS

9.I. Creation of Assessments.

The Association is hereby authorized to levy assessments against each Lot for Association expenses as the Board may specifically authorize from time to time. There shall be three types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Lots, allocated in accordance with the respective Percentage Interests of the Lots; (b) Special Assessments as described in Section 9.4, allocated in accordance with the respective Percentage Interests of the Lots; and (c) Specific Assessments as described in Section 9.5. Each Owner, by accepting an assignment of Lease for a Lot, or accepting deed or entering into a recorded contract of sale for any Lot or other portion of the Property, is deemed to covenant and agree to pay these assessments. Notwithstanding the foregoing or any other provision of this Declaration to the contrary, however, no Base Assessments shall be levied against any Lot unless and until Declarant has certified to the Board that development of such Lot is substantially complete, and such Lot's Percentage Interest of Common Assessments shall, until such time, be allocated among the Lots for which such certification of substantial completion has been made by Declarant, pro rata in accordance with such Lots' relative Percentage Interests, and until such certification of substantial completion the Owner shall be a Member, but shall not be entitled to vote on Association matters.

All assessments as to any Lot, together with interest from the due date of such assessment at an annual rate equal to the lesser of 12% or the highest rate allowed by Washington law, reasonable late charges (in such amount as the Board may establish by resolution from time to time), costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon the Lot against which each assessment is levied until paid, as more particularly provided in Section 9.7. Each such assessment, together with interest, late charges, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose.

The Association shall release the Lot's Owner from liability for assessments after the date of the Lot transfer, but the Owner shall continue to be liable for all assessments occurring prior to the date of the transfer. No first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

Assessments shall be paid in such manner and on such dates as the Board may reasonably establish. If the Board so elects, assessments may be paid in quarterly installments. Unless the Board otherwise provides, the Base Assessment shall be due and

payable in advance on the first day of each quarter of the fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Lot following 10 days' notice and opportunity to cure, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

The Association shall, within 5 days after request, furnish to any Owner liable for any type of assessment an estoppel certificate in writing signed by a Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a processing fee adopted and published by the Board for the issuance of such certificate.

No Owner may exempt itself from liability for assessments by non-use or abandonment of its Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or setoff shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

9.2. Computation of Base Assessment.

At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses for the coming year, which may include a capital contribution to a reserve fund in accordance with a budget separately prepared as provided in Section 9.3. In determining the total funds to be generated through Base Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year. The total budget shall be allocated among all Lots subject to assessment under Section 9.6 in accordance with the formula set forth in EXHIBIT B.

The Association shall include in the Common Expenses the total expenses which any covenant to share costs obligates the Association to pay; provided, however, if any portion of such expenses are for the benefit of the Owner(s) or occupants of one or more Lots, rather than the entire Association, the Association shall assess such expenses as Specific Assessments in accordance with Section 9.5(b).

The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to each Owner at least 30 days prior to the effective date of such budget. Such budget and assessment shall become effective unless disapproved at a meeting by a vote of Owners holding 66% of the Percentage Interests of the Association. There shall be no obligation to call a meeting for the purpose of considering a budget except on petition of the Owners as provided for special meetings in the Bylaws, which petition must be presented to the Board within 10 days after delivery of the budget and notice of assessments.

The Board may revise the budget and any assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget most recently in effect for the immediately preceding year shall continue for the current year.

9.3. Reserve Budget and Capital Contribution.

The Board annually may prepare reserve budgets for general purposes which take into account the number and nature of those assets within the Area of Common Responsibility which have an expected life of more than three years, the expected life of each asset, and the expected repair or replacement cost. The Board may set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the reserve budget, with respect both to amount and timing, by annual Base Assessments, over the budget period.

9.4. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted, extraordinary or other expenses which the Board determines to be more appropriately handled outside of the annual operating budget. Any such Special Assessment shall be levied against all Lots, in accordance with the formula set forth in EXHIBIT B, if such Special Assessment is for general Common Expenses. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

Any Special Assessment adopted by the Board shall become effective 30 days after notice of such Special Assessment is sent to the Owners unless disapproved at a meeting by Owners holding 66% or more of the Percentage Interests of the Association; provided, there shall be a meeting for the purpose of considering the Special Assessment within 10 days after the date of such notice. The Special Assessment shall not become effective unless and until the meeting is held and the requisite vote to disapprove is not obtained.

9.5. Specific Assessments.

The Board shall have the power to levy Specific Assessments against a particular Lot or Lots constituting less than all Lots within the Property as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to such Lot or occupants thereof upon request of such Lot's Owner pursuant to a menu of special services which the Board may from time

to time authorize to be offered to Owners, which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by or on behalf of the Owner; and

(b) to cover costs incurred in bringing the Lot into compliance with the terms of the Governing Documents or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their licensees, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing, in accordance with the Bylaws, before levying a Specific Assessment under this subsection (b).

9.6. Date of Commencement of Assessments.

The obligation to pay assessments shall commence as to each Lot on the first day of the calendar month following the month in which the Board first determines and levies assessments pursuant to this Article. The first annual Base Assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

9.7. Lien for Assessments.

All assessments authorized in this Article shall constitute a lien in favor of the Association against the Lot upon which they are levied until paid. The lien shall also secure payment of interest, late charges, and costs of collection (including reasonable attorneys fees). The Association shall have the right to record a notice of lien in the public records of Snohomish County giving notice of delinquent assessments of any Owner. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mortgages on real property are foreclosed under Washington laws provided, however, that no such foreclosure shall be commenced without approval by Owners holding 66% or more of the Percentage Interests of the Association.

The Association may bid for the Lot at the foreclosure sale and may use as a credit toward its bid the amount of the delinquent assessment and other charges authorized hereunder and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of any first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of any Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Unless and until paid by the prior Owner, such unpaid assessments shall be deemed to be Common Expenses collectable from Owners of all Lots subject to assessment under Section 9-6, including such acquirer, its successors and assigns.

9.8. Failure to Assess.

Failure of the Board to fix the amount of any assessment or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay annual Base Assessments on the same basis as due for the last year for which an assessment was determined, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls.

ARTICLE 10. ARCHITECTURAL STANDARDS

10.1. General.

No structure or thing shall be placed, erected, installed or posted on the Property, and no improvements or other work (including platting, staking, site planning, clearing, excavating, grading and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) ("Work") shall take place within the Property, except in compliance with this Article and the Architectural Standards. The Architectural Standards shall be defined by the exterior appearance of the Buildings and exterior development features of the Property as originally developed and constructed by Declarant, as modified from time to time in accordance with the requirements of this Section.

10.2. Architectural Review.

Each Owner shall be entitled to maintain, renovate, or improve the interior of its Building in any manner that is permitted under the law and that does not alter the exterior appearance of the Building or the Owner's Lot. Owners shall be obligated and entitled to maintain the exterior portions of their Buildings and Lots as originally constructed or developed (except for the portions thereof constituting part of the Area of Common Responsibility). Any other work, renovations, or improvements that would alter or otherwise affect the exterior appearance of a Building or Lot shall require the prior written approval of the Board, which approval may be granted or withheld in its sole discretion.

10.3. Limitation of Liability.

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Property but shall not create any duty on the part of the Board. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and the Board shall bear no responsibility for ensuring the structural integrity or soundness of approved construction or modifications, for ensuring compliance with building codes and other governmental requirements, or for ensuring that all structures are of comparable quality, value or size or of similar design. Declarant, the Association, the Board, or member of any of the foregoing shall not be held liable for soil conditions, drainage or other general site work, for any defects in plans revised or approved hereunder, for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Lot. In all matters, the Association shall defend and indemnify Declarant, the Board, and all persons comprising the Board, as provided in Section 4.4.

ARTICLE 11. RULES AND REGULATIONS

11.1. Plan of Development: Applicability; Effect.

Declarant has established a general plan of development for the Property in order to enhance all Owners' collective interests, the aesthetics and environment within the Property. The Property is subject to the land development, architectural, and design provisions set forth in Article 10, the other provisions of this Declaration governing individual conduct and uses of and actions upon the Property, and the guidelines, rules and restrictions promulgated pursuant to this Article, all of which establish affirmative and negative covenants, easements, and restrictions on the Property.

All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests and invitees of any Lot. Any lease on any Lot shall provide or shall be deemed to provide that the lessee and all occupants of the leased Lot shall be bound by the terms of the Governing Documents. Any Owner shall provide the Rules and Regulations to any lessee of any portion of the Owner's Lot.

11.2. Authority to Promulgate Rules and Regulations.

Initial Rules and Regulations applicable to the Property are attached as EXHIBIT C to this Declaration. Subject to the terms of this Article, such initial Rules and Regulations, and the Sections therein applicable to portions of the Property, may be supplemented, modified in whole or in part, repealed, or expanded as follows:

(a) *By Board.* Subject to its duty to exercise business judgment on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the initial Rules and Regulations set forth in EXHIBIT C. Prior to any such activity, the Board shall publish notice of any such proposed action in a community newsletter, or any such other source the Board

determines such proposed action will be disseminated on a community-wide basis at least 30 days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Any rule adopted by the Board shall be subject to disapproval at a meeting by Members holding 66% of the Percentage Interests in the Association. The Board shall have an obligation to call a meeting of the Members to consider disapproval upon petition of the Members as required for special meetings in the Bylaws, which petition is received by the Board within 30 days after written notice of such rule is mailed to the Members, or upon request by Declarant, which request the Declarant makes within 30 days after the Board mails written notice of the Board's adoption of the rule to the Declarant.

(b) *By Members.* The Members, at a meeting duly called for such purpose as provided in the Bylaws, may adopt rules which modify, cancel, limit, create exceptions to, or expand Rules and Regulations previously adopted by a vote of a majority of the Percentage Interests in the Association and the Declarant, if the Declarant still owns any portion of the Property at such time.

(c) *Notice.* Any additions or modifications to the Rules and Regulations adopted by the Board or the Members pursuant to subsection (a) or (b) of this Section shall become effective upon recordation of a notice thereof; provided, the Board shall give each Owner at least 30 days' written notice of any such additions or modifications prior to recordation. In the event that a petition for a special meeting is submitted within such 30-day period, recording of the notice shall not occur unless and until the meeting is held and any attempt to disapprove fails. The Association shall provide, without cost, a copy of the Rules and Regulations to any requesting Member.

(d) *Modification of Architectural Standards.* Nothing in this Article shall authorize the Board or the Members to modify, repeal or expand the Architectural Standards which may be modified only as provided in Article 10. All matters of architectural control and aesthetics shall be governed by the Architectural Standards.

(e) *By Declarant.* In addition to modifications by the Board or the Members as provided in Section 11.2(a) or (b) above, Declarant, so long as it has the right to unilaterally amend this Declaration under Section 13.2(a), may adopt rules which modify, cancel, limit, create exceptions to, or expand the initial Rules and Regulations set forth in EXHIBIT C or any such subsequent rules which may be adopted under this Declaration; provided, however, that no such rules adopted by Declarant may materially and adversely affect any Lot without the prior written consent of the Owner of such Lot. Prior to or concurrent with such change in the Rules and Regulations, Declarant shall provide written notice to the Board, along with a copy of the changes in Rules and Regulations. Declarant's changes shall be subject to the rights of Owners and others as provided in Section 11.4.

(f) **Rule Changes Not Effective Without Recording; Board Maintain Current Rules.** Any modification of the Rules and Regulations made under this Section 11 shall be effective when recorded in the real property records of Snohomish County. The Board shall maintain a list of the current rules and regulations, including any modifications made under this Section 11 which may modify the initial Rules and Regulations.

11.3. Owners' Acknowledgment.

ALL OWNERS AND OCCUPANTS OF PARCELS ARE GIVEN NOTICE THAT USE OF THEIR PARCELS IS LIMITED BY THE RULES AND REGULATIONS AS THEY MAY BE AMENDED, EXPANDED AND OTHERWISE MODIFIED HEREUNDER. EACH OWNER, BY ACCEPTANCE OF A DEED OR ENTERING INTO A RECORDED CONTRACT OF SALE, ACKNOWLEDGES AND AGREES THAT THE USE AND ENJOYMENT AND MARKETABILITY OF ITS PROPERTY MAY BE AFFECTED BY THIS PROVISION AND THAT THE RULES AND REGULATIONS MAY CHANGE FROM TIME TO TIME.

11.4. Protection of Owners and Others.

(a) **Similar Treatment.** Owners shall be treated similarly and no specific rule shall be applied based on the primary use of the property.

(b) **Displays.** The rights of Owners to display religious and holiday signs, symbols, and decorations (of the kinds normally displayed in structures having the same use as the portion of the Lot in which the display exists) inside structures on their Lots shall not be abridged, except that the Association may adopt time, place, and manner restrictions with respect to displays visible from outside the structure.

No rules shall regulate the content of political signs.

(c) **Activities Within Buildings.** No rule shall interfere with the activities carried on within the confines of Buildings located on Lots.

(d) **Allocation of Burdens and Benefits.** No rule shall change the formula for calculating Percentage Interests, it being the intent that any such change may be made only by amendment of this Declaration in accordance with Section 13.2. This provision does not affect the right to increase the amount of assessments as provided in Article 9.

(e) **Alienation.** No rule shall prohibit leasing or transfer of any Lot, or require consent of the Association or Board for leasing or transfer of any Lot.

(f) **Rights to Develop.** No rule or action by the Association or Board shall impede Declarant's right to develop the Property.

(g) **Abriding Existing Rights.** No rule shall require Owners to dispose of personal property which was kept in or on a Lot prior to the adoption of such rule and which was in compliance with all rules in force previous to such time, unless otherwise required to be removed by law; provided, this limitation on abridging existing rights shall be subject to the Board's right to restrict or require the removal of pets from the Property in accordance with the Rules and Regulations.

(h) **Reasonable Basis.** No rule may prohibit any activity, condition, or conduct unless there exists a reasonable basis for the enactment of such rule. For purposes of this subsection, reasonable basis may include, but not be limited to, concerns relating to safety, fair use of the Area of Common Responsibility, cost, aesthetics, or the goals of the plan for the development of the Property.

The limitations in subsections (a) through (h) of this Section 11.4 shall only limit rulemaking authority exercised under Section 11.2; they shall not apply to amendments to this Declaration adopted in accordance with Article 13.

ARTICLE 12. EASEMENTS

12.1. Easements for Utilities, etc.

This Declaration hereby reserves to Declarant, so long as Declarant owns any property described in EXHIBIT A or EXHIBIT B of this Declaration, the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company):

(a) with the prior written consent of the Owner of any affected Lot, which consent shall not be unreasonably withheld, delayed or conditioned, a non-exclusive easement upon, across, over, and under all of the Property (but not through or under a building envelope), for ingress, egress, installation, monitoring, replacing, repairing, and maintaining cable television systems, master television antenna systems or other devices for sending or receiving data or other electronic signals; security and similar systems; walkways; drainage systems; street lights; signage; all utilities, including, but not limited to, water, sewer, telephone, gas, and electric lines and meters; for the purpose of altering drainage and water flow across the Property; and otherwise as may be necessary, in the sole discretion of Declarant or the Association, for the performance of the Association's maintenance responsibilities under this Declaration; and

(b) with the prior written consent of the Owner of any affected Lot, which consent shall not be unreasonably withheld, delayed or conditioned, the non-exclusive right and power to grant such specific easements over the Property (but not through or under a building envelope) as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of the Property.

The Owner of any Lot to be burdened by any specific easement granted pursuant to this Section shall be given written notice in advance of the grant. The location of any easement granted pursuant to this Section outside any area which may have been reserved for such purpose on a recorded plat shall be subject to the written approval of the Owner of the property burdened by that easement, which approval shall not be withheld unreasonably, delayed or conditioned. Upon the exercise of any easement pursuant to this Section, the party exercising the easement shall (a) cause all work associated with the exercise of the easement to be performed with the least possible interference practicable to the use and enjoyment of the property burdened by that easement; and (b) upon completion of all work associated with that easement, cause the property burdened by that easement to be restored, to the extent reasonably possible, to its condition prior to the commencement of the work.

No above ground sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Property except (a) as may be approved by the Board; or (b) as may be constructed as a part of the original development or sale by Declarant; or (c) as may be permitted by the terms of any easement affecting the Property and recorded prior to the recording of this Declaration.

The easements provided for in this Section shall in no way adversely affect any other recorded easement on the Property, nor shall they be exercised in any manner which materially restricts or interferes with the use and development of a Lot.

12.2. Easements for Storm Water Drainage and Retention.

This Declaration hereby subjects each portion of the Property to a non-exclusive easement appurtenant to and for the benefit of each other portion of the Property for the purpose of storm water drainage and runoff, which easement shall include, but shall not be limited to, the right to tie in to existing storm water drainage facilities and infiltration ponds, and to divert storm water runoff from each Lot into such storm water drainage facilities and infiltration ponds at such points and in such manner as approved by Declarant, and for the flow of storm water runoff over the Property to such points and from such points through the storm water drainage facilities into ponds or retention facilities within or outside the Property. The foregoing easements shall be subject to any and all restrictions regarding quantity, rate and quality of discharge which Declarant may hereafter impose or which may be imposed on the Property, Declarant or any Owner by any governmental entity having jurisdiction.

12.3. Right of Entry.

The Association and Declarant shall have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, and to inspect for the purpose of investigating compliance with the Governing Documents. This right may be exercised by any member of the Board, any officer, manager, agent or employee of the Association acting with the permission of the Board; by Declarant or any officer, agent, or employee of Declarant acting with Declarant's permission so long as Declarant owns any Property.

and by all police, fire and similar emergency personnel in the performance of their duties. This right of entry shall include the right of the Association or Declarant to enter upon a Lot to perform maintenance or cure any condition which may increase the possibility of a fire or other hazard, in the event that the Owner fails or refuses to perform such maintenance or cure such condition within a reasonable time after request by the Board or Declarant. Except in an emergency situation to avoid an imminent threat of personal injury or property damage, entry into any portion of a Lot not generally open to the public shall only be authorized during reasonable hours and after receipt of the Owner's or occupant's consent or after reasonable prior notice to Owner or occupant.

12.4. Easements over Area of Common Responsibility.

In addition to the easements specifically described herein, Declarant does hereby reserve to each Owner, its successors and assigns, a perpetual, non-exclusive easement over the Area of Common Responsibility for such Owner's ingress, egress and access to its Lot, subject to restrictions imposed by the Board. Declarant further reserves a perpetual non-exclusive easement, for the benefit of Declarant, its successors and assigns, over the Area of Common Responsibility for such other purposes as Declarant, in its sole discretion determines appropriate, together with the right to grant additional easements over the Area of Common Responsibility to such Persons and for such purposes as Declarant deems appropriate in its sole discretion.

12.5. Signage Easements.

This Declaration hereby reserves, grants and establishes for the benefit of Declarant and the Association a non-exclusive easement to enter and install, maintain, repair, replace and operate entry, neighborhood or other signage, landscaping, lighting, monuments and related improvements over portions of the Area of Common Responsibility (collectively "Signage Easements"), subject to any limitations set forth in the Leases. All such Signage Easements shall be consistent with the requirements of the Leases and shall not unreasonably interfere with the use, development or ownership or any Lot by its Owner. No improvements shall be located within the Signage Easements without the approval of the Board.

12.6. Emergency Vehicle Access Easement.

This Declaration hereby reserves, grants and establishes for the benefit of Declarant, the Association, and emergency services vehicles a non-exclusive, perpetual easement on, over, and across all portions of the Area of Common Responsibility.

12.7. Ingress and Egress Easement for Aircraft. Each Owner shall have an ingress and egress easement over and across such portions of the airplane ramps located on any Lot as is reasonably necessary to move aircraft to or from any Building and the adjacent properties on which taxiways, runways and airport facilities are located.

ARTICLE 13. GENERAL PROVISIONS

13.1. Duration.

This Declaration shall be enforceable by Declarant, the Association, any Owner, and their respective legal representatives, heirs, successors, and assigns, for a term commencing upon recording of this Declaration and terminating upon the earlier of (i) the date by which all Leases have expired, or (ii) the date on which a Notice of Termination approved in accordance with the requirements of this Article has been recorded. Any such Notice of Termination must be signed and approved by all Owners.

Notwithstanding this, if any provision of this Declaration is unlawful, void, or voidable by reason of applicability of the rule against perpetuities, such provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

13.2. Amendment.

(a) **By Declarant.** In addition to specific rights granted elsewhere in this Declaration, until Declarant no longer owns any portion of the Property, Declarant may, but shall not be required to, unilaterally amend this Declaration for any purpose, except (i) that the amendment shall not have a material adverse effect upon the rights of any Owner and (ii) the Declarant may not change the formula for calculation of Percentage Interests. Without limiting the foregoing, Declarant may amend this Declaration in the event that it elects to subdivide or combine one or more Lots that it owns. Declarant reserves the right to make any such subdivision or combination in its sole discretion.

Until it no longer owns any portion of the Property, Declarant also may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary (i) to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which is in conflict therewith; (ii) to enable any reputable title insurance company to issue title insurance coverage with respect to any portion of the Property; or (iii) to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing and no such amendment shall change the formula for calculation of Percentage Interests.

(b) **By Owners.** Except as provided above and as otherwise specifically provided elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners holding 66% or more of the Percentage Interests and the Declarant, if Declarant still owns any portion of the Property at such time. However, the percentage of votes

necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) **Validity and Effective Date of Amendments.** Amendments to this Declaration shall become effective upon recording unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recording or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may directly or indirectly remove, revoke, or modify any right or privilege of or impose any obligation upon, Declarant without the written consent of Declarant (or the assignee of such right or privilege).

13.3. Severability.

Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect any other provisions or applications.

13.4. Cumulative Effect; Conflict.

The covenants, restrictions, and provisions of this Declaration shall be cumulative with any additional declaration or other covenants and restrictions applicable to any Lot, and the Association may, but shall not be required to, enforce the latter. Nothing in this Section shall preclude any other covenants applicable to any portion of the Property from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

13.5. Ownership of Lot by Government.

Declarant shall have the right but not the obligation to exempt the United States, Washington State, Snohomish County, or any other local governmental entity, any community facilities district or similar special district created under Washington State laws, or any related entity, as the Owner of a Lot, from any of the restrictions contained in the Governing Documents, if such exemption is required by the United States, Washington State, Snohomish County, or any related entity.

13.6. Compliance and Indemnification.

Every Owner and occupant of any Lot shall comply with the Governing Documents and other covenants applicable to its Lot. Failure to comply shall be grounds for an action by the Association or, in a proper case, by any aggrieved Lot Owner(s), to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.2 and in the Bylaws.

Each Owner shall indemnify and hold harmless the Association from any loss, damages, and expenses, including counsel fees, which it may incur as a result of the failure of such Owner, any occupant of such Owner's Lot, or any contractor, employee, or agent of such Owner acting within the scope of his contract, agency or employment, to comply with the Governing Documents or other covenants applicable to such Owner's Lot.

13.7. Notice of Sale or Transfer of Title.

Any Owner (other than Declarant, in connection with Declarant's initial sales of Lots to third parties) desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee and the proposed date of such transfer of title. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

13.8. Notice.

Except as may otherwise be provided in this Declaration, all notices, demands, bills, statements, or other communications hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class, postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member; or

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section; or

(c) if to Declarant, at the address of Declarant's principal place of business in Washington or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

All notices sent in compliance with the above shall be deemed received on the third day after the date postmarked. Nothing in this Section shall invalidate notice given by personal delivery (which shall include overnight delivery service or courier service) or by any other means, if actually received by the addressee.

13.9. Captions.

Titles or captions of Sections contained in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Declaration or the intent of any provision hereof.

13.10. Applicable Law.

This Declaration shall be construed and interpreted under Washington laws.

13.11. Exhibits.

EXHIBIT A, EXHIBIT B, EXHIBIT C, and EXHIBIT D attached to this Declaration are incorporated by this reference.

UNRECORDED INSTRUMENT

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the day and year first written above.

KILO SIX, LLC
a Washington limited liability Company

By: [Signature]
Name: John T. Sessions
Its: Managing member

STATE OF WASHINGTON }
COUNTY OF KING } ss.

On this day personally appeared before me John Sessions to me known to be the Managing Member of KILO SIX, LLC, the Washington limited liability company that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such company, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 5th day of August 2009.

[Signature]
ANN N. SNEYD
NOTARY PUBLIC, in and for the State of Washington,
residing at SEASIDE, WA
My Commission Expires 4-19-11

UNRECORDED

CONSENT OF OWNER

Snohomish County, as the owner of the underlying fee in the Property, hereby consents and agrees to the terms and conditions of this Declaration, and to the encumbrance of the Property thereby. Without limiting the foregoing, Snohomish County specifically acknowledges and agrees that in the event one or more but not all of the Leases is terminated prior to expiration of the term of this Declaration, this Declaration shall apply with respect to and encumber the underlying fee interest in the Property with respect to which the Lease expired, and that the owner of such interest shall for all purposes be deemed an "Owner" under the foregoing Declaration. Notwithstanding the foregoing, however, nothing set forth in the Declaration is intended or shall be deemed or construed to establish or designate Snohomish County as a "Declarant" hereunder.

SNOHOMISH COUNTY

By: D. T. Waggoner
Name: D. T. Waggoner
Is: Airport Director

STATE OF WASHINGTON

COUNTY OF KING

Snohomish ss.

On this day personally appeared before me DANE WAGGONER to me known to be the AIRPORT DIRECTOR of SNOHOMISH COUNTY, the Washington County that executed the foregoing Consent, and acknowledged such Consent to be the free and voluntary act and deed of such County, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 5th day of August, 2009.



Printed Name: JAMES L. MAYNARD
NOTARY PUBLIC in and for the State of Washington,
residing at TRUCKEE
My Commission Expires 10-7-2012

CONSENT OF EVERETT HANGAR LLC

Everett Hangar LLC, a Washington limited liability company, as the owner of the leasehold interest in Lot 12, hereby consents and agrees to the terms and conditions of this Declaration, and to the encumbrance of Lot 12 hereby. Notwithstanding the foregoing, however, nothing set forth in the Declaration is intended or shall be deemed or construed to establish or designate Everett Hangar LLC as a "Declarant" thereunder.

EVERETT HANGAR LLC
a Washington limited liability company

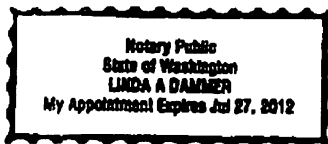
[Signature]
Name: W. Dean Weidner
Its: Sole member

STATE OF WASHINGTON

COUNTY OF KING

On this day personally appeared before me W. Dean Weidner to me known to be the Sole Member of EVERETT HANGAR LLC, the Washington limited liability company that executed the foregoing Consent, and acknowledged such Consent to be the free and voluntary act and deed of such limited liability company, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 4th day of August 2009.



[Signature]
Printed Name Linda A. Dammer
NOTARY PUBLIC in and for the State of Washington,
residing at Bethell, WA
My Commission Expires July 27, 2012

SUBORDINATION

The undersigned, as Beneficiary of the beneficial interest in and under a Deed of Trust recorded on Jan. 7, 2009, under Snohomish County Recorder's No. 200901010381 (the "Deed of Trust") against Lot 12 of the Binding Site Plan and Record of Survey of the Property recorded under Snohomish County Auditor's Recording No. 200812105004, hereby expressly subordinates said Deed of Trust and its beneficial interest thereunder to the foregoing Amended and Restated Ground Leasehold Declaration of Covenants, Conditions and Restrictions for Kilo 6 Hangars (the "Declaration"), and to all maintenance easements and other interests created thereunder. By executing this Subordination, the undersigned agrees that should the undersigned or its successors or assigns acquire title to all or any portion of Lot 12 by foreclosure (whether judicial or nonjudicial); deed-in-lieu of foreclosure or any other remedy in or relating to the Deed of Trust, the undersigned and such successors and assigns will acquire title subject to the provisions of the Declaration.

U.S. BANK NATIONAL ASSOCIATION

By: [Signature]
Name: Stephen Bro
Title: SVP

STATE OF WASHINGTON }
COUNTY OF KING } ss.

On this day personally appeared before me Stephen Bro to me known to be the Senior Vice President U.S. Bank National Association, and acknowledged such Consent to be the free and voluntary act and deed of such national association, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute such instrument.

2009 GIVEN UNDER MY HAND AND OFFICIAL SEAL this 5 day of August

ELIZABETH R. O'BRIEN-YANG
STATE OF WASHINGTON
NOTARY PUBLIC
MY COMMISSION EXPIRES
10-19-10

[Signature]
Printed Name Elizabeth R. O'Brien-Yang
NOTARY PUBLIC in and for the State of Washington
residing at 10800 NE 8th St., King City
My Commission Expires 10-19-10

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

All right, title, and interest of the lessees under those certain Amended and Restated Land Leases for Paine Field Airport Sector 7 Lots 11, 12, and 13, dated and effective as of January 1, 2009 and recorded under Snohomish County Recording Nos. 200901070380, 200901070381, and 200901070382 with respect to that certain real property legally described as follows:

LOT 11

Lot 11, Paine Field Airport Sector 7 Binding Site Plan and Record of Survey recorded under Snohomish County Auditor's Recording No. 200812105004, situate in Snohomish County, Washington.

LOT 12

Lot 12, Paine Field Airport Sector 7 Binding Site Plan and Record of Survey recorded under Snohomish County Auditor's Recording No. 200812105004, situate in Snohomish County, Washington.

LOT 13

Lot 13, Paine Field Airport Sector 7 Binding Site Plan and Record of Survey recorded under Snohomish County Auditor's Recording No. 200812105004, situate in Snohomish County, Washington.

together with the underlying fee interest in any portion of such real property with respect to which any of the foregoing Lot Leases are terminated during the term of the Declaration.

EXHIBIT B
SCHEDULE OF PERCENTAGE INTERESTS

LOT (AS DESIGNATED ON BINDING SITE PLAN)	SQUARE FOOTAGE	PERCENTAGE INTEREST AND VOTING PERCENTAGE
Lot 11	123,489	46%
Lot 12	92,823	34%
Lot 13	54,071	20%
TOTAL:		100%

Kilo 6 Hangars CCRs
ND- 19711 002 4844-0589-2866v7 7/31/09

Exhibit B

EXHIBIT C

INITIAL RULES AND REGULATIONS

Land uses within the Property shall conform to the requirements of and the restrictions set forth in the Declaration, as the same may be amended from time to time. In addition, the following restrictions shall apply to the Property until such time as they are amended, modified, repealed or limited by rules of the Association adopted pursuant to Article 11 of the Declaration. In any case in which this EXHIBIT C refers to the use for which a portion of the Property is developed, the nature of such use shall be as determined in the sole discretion of the Declarant, for so long as it owns any portion of the Property, and by the Board, thereafter.

1. Use Restrictions

The Property is located on Paine Field, and is being developed for aviation-related uses. These Rules and Regulations have been adopted and are intended to provide for the harmonious operation and co-existence of these uses adjacent to one another. Each Owner shall cooperate and communicate with the other Owners in good faith, and these Rules and Regulations shall be interpreted and applied, in a manner designed to achieve such purpose.

2. Intended Use and Use Restrictions

Subject to the specific restrictions and limitations set forth below, the Property, Lots and Buildings located thereon may be used for aviation-related purposes and for any purpose reasonably incident to such purposes. Interior portions of the Buildings also may be used for any other lawful purpose that does not constitute a nuisance or unreasonably interfere with the use or enjoyment of the other Lots, provided such use is not specifically prohibited by these Rules and Regulations.

Notwithstanding the foregoing, however, the following activities are prohibited within the Property unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

(a) *Outside Activities.* Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy or untidy condition to exist outside of the Buildings on the Lot.

(b) *Burning.* Outside burning of trash, leaves, debris or other materials, except during the normal course of constructing a structure on a Lot.

(c) *Fertilizers, Pesticides, Dumping.* Dumping of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the

Property, except that controlled or slow-release, low-phosphorus fertilizers may be applied to landscaping on Lots, provided that care is taken to minimize runoff.

(d) *Trash.* Accumulation of rubbish, trash, or garbage except between regular garbage pickups.

(e) *Drainage.* Obstruction or rechanneling of drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Declarant and the Association shall have such right; provided, the exercise of such right by Declarant or the Association shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent.

(f) *Subdivision.* Subdivision of a Lot into two or more Lots, or changing the boundary lines of any Lot after a subdivision plat including such Lot has been approved and recorded; provided, Declarant shall be permitted to partially assign Leases, subdivide, combine, replat, or adjust boundaries for Lots which it owns.

(g) *Activities Prohibited by Lease.* Use of a Lot for any purpose that is prohibited by or inconsistent with the Lease for such Lot.

(h) *Fuel Storage and Aircraft Maintenance.* Storage or use of jet fuel, gasoline, oil, heating and other fuels, cleaning supplies, or any other hazardous materials customarily used in connection with operation or maintenance of aircraft or an aircraft hanger, and all tools and mechanical equipment customarily used for such purposes, other than strictly in accordance with all applicable laws and in compliance with safety standards generally applicable in the aviation industry.

(i) *Clearing.* Any clearing, grading, excavating, or tree removal on a Lot, or any construction, erection, or placement of any thing, permanently or temporarily, on the outside portions of the Buildings, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article 10 of the Declaration.

(j) *Offensive Activity.* Any noxious or offensive activity which in the reasonable determination of the Board tends to cause danger, embarrassment, discomfort, annoyance, or nuisance to the other Owners.

(k) *Animals or Pets.* Raising, breeding or keeping of any animals or pets.

(l) *Hazardous Chemicals; Environmental Compliance.* Hazardous chemicals or substances must be stored, used and disposed of in a manner which prevents them from getting into the environment, including soil, creeks, wetlands, streets, storm drains, storm detention ponds and sewer systems.

3. Additional Prohibitions. The following shall be prohibited within the Property:

(a) *Mobile Homes.* Trailer courts, mobile home parks, recreation vehicle campgrounds, and facilities for the sales or service of mobile homes.

(b) *Sales.* Flea markets and fire and bankruptcy sale operations as a business (which shall not preclude temporary charitable or similar events conducted with prior approval of the Board).

(c) *Salvage.* Junk yards, scrap metal yards, automobile used parts or dismantling operations and sanitary landfills, except that nothing herein shall preclude recycling centers established solely for the collection and sorting of household recyclable materials.

(d) *Excavation; Minerals.* Commercial excavation of sand, gravel, minerals, or building or construction materials, except in the usual course of construction of improvements.

(e) *Obscene; Pornographic.* Massage parlors and businesses engaged in the sale of obscene or pornographic materials or in the provision of entertainment featuring topless or nude performers, or similar sexually-oriented businesses.

(f) *Consumer Credit.* Businesses advertising and businesses primarily engaged in providing check cashing services, loans or consumer credit to the public other than in connection with the purchase of the goods or services of such business, except that state or federally chartered banks and similar regulated financial institutions shall be permitted.

(g) *Pawn; Auctions.* Pawn shops or auctions (except that charitable auctions may be held within the confines of a Building).

(h) *Lights; Signage.* Any lighting feature or signage that, because of its degree of illumination, does not conform to the Community-Wide Standard.

(i) *Noxious Activities.* Any activity which emits foul or obnoxious odors, fumes, dust, smoke, or pollution outside the Lot or which creates noise, unreasonable risk of fire or explosion, or other conditions which tend to disturb the peace or threaten the safety of the occupants and invitees of other Lots.

(j) *Disrepair.* Structures, equipment or other items on the exterior portions of a Lot which have become rusty, dilapidated or otherwise fallen into disrepair.

(k) *Water Withdrawal.* Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Property.

(l) *Temporary or Abandoned Equipment.* Tents, trailers, mobile homes, abandoned or nonfunctional airplane-related or other equipment or vehicles, or any structure of a temporary nature, such as a shack or utility shed, except for construction trailers during ongoing construction on the Lot and temporary tents for special events.

4. **Leasing.** "Leasing," for purposes of this Paragraph, is defined as regular, exclusive occupancy of a Lot, or portion thereof, by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or employment. The Board may require any Owner to provide notice of any lease, together with such supporting information as reasonably required by the Board, within ten (10) days of the Board's request. Each Owner shall provide a copy of the current Rules to each lessee. Each lease shall contain the express provisions that the use is subject to these Rules and Regulations, and to the Governing Documents, and that tenant covenants to abide by the same.

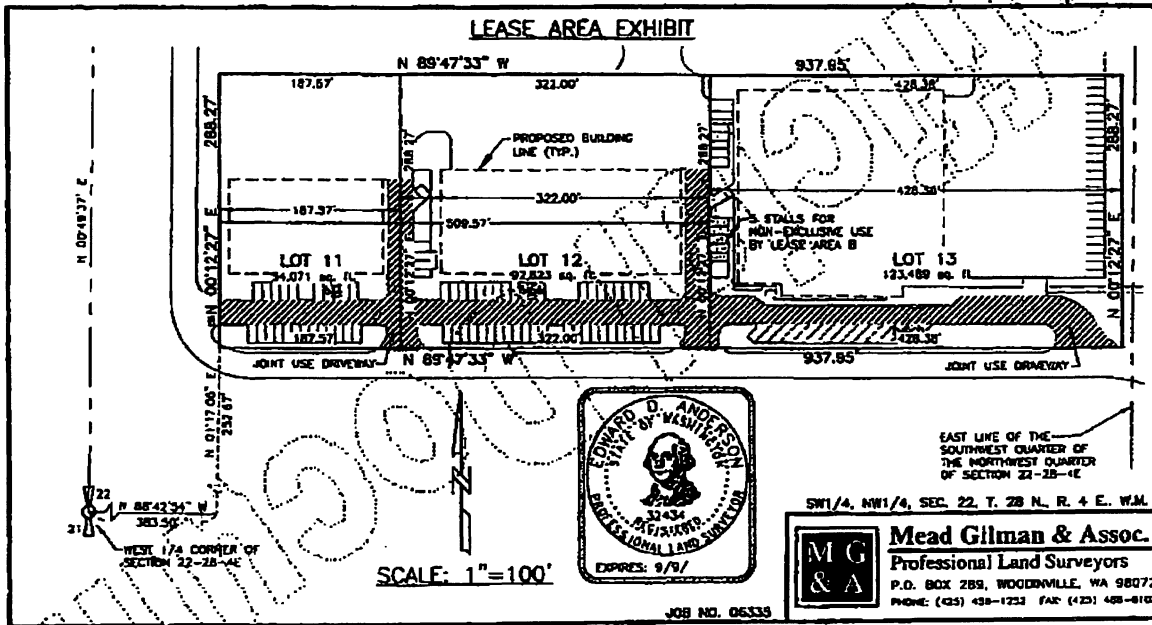
5. **Safety and Security.** Because of the nature of the anticipated use of the Property as an aircraft hangar facility for working aircraft, safety and security are of particular concern. For this reason, the Board is authorized to adopt safety and security rules and guidelines, to direct the Association to install fences, gates, signage, or other physical security measures on the facility, and to take any other measures reasonably necessary to ensure that safe and secure storage and operation of the aircraft located and stored on the Property.

EXHIBIT D
Property Map

Unofficial Document

Kilo 6 Hangar CCRs
 ND: 19711002 4844-038-286v1 7/31/09

Exhibit D - page 3



APPENDIX 3

FILED

The Honorable Millie M. Judge

2015 MAY 19 AM 9:54



SONYA KRASKI
COUNTY CLERK
SUPERIOR COURT OF THE STATE OF WASHINGTON

COUNTY OF SNOHOMISH

EVERETT HANGAR, LLC, a Washington limited liability company,

Plaintiff,

v.

KILO 6 OWNERS ASSOCIATION, a Washington nonprofit corporation; KILO SIX, LLC, a Washington limited liability company; HISTORIC HANGARS, LLC, a Washington limited liability company; HISTORIC FLIGHT FOUNDATION, a Washington nonprofit corporation; and JOHN SESSIONS, an individual;

Defendants.

Cause No. 14-2-02264-4

ORDER GRANTING
PERMANENT INJUNCTION

THIS MATTER came before the Court for trial on February 10, 2015, the parties being represented by counsel, the Court having considered the testimony and evidence, and having entered its Findings of Fact and Conclusions of Law and Order in this matter, and being fully informed in the premises; IT IS HEREBY ORDERED:

1. KILO 6 OWNERS ASSOCIATION, KILO SIX, LLC, HISTORIC HANGARS, LLC, AND HISTORIC FLIGHT FOUNDATION, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES AND GUESTS (HEREINAFTER "DEFENDANTS"), ARE ENJOINED FROM placing, parking, maintaining or permitting the placement, parking or maintenance, of any object(s) (including but not limited to: FODs, tents, tables, chairs, food and drink, musical instrument or non-fixed sound system, equipment, tools, balloons, non-fixed fences or barricades, signs, motorized and non-motorized vehicles and aircraft), within the movement area

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more particularly described as the "Object Free Area" ("OFA") for any aircraft on that portion of the Lot 11 ramp that provides access to the Kilo 7 taxi lane. For the Gulfstream IV aircraft, the OFA is defined by FAA Circular 150/5300-13A for Design Group III aircraft to mean an area of 118 foot clearance on either side of the wingspan of the aircraft. For all other aircraft using the Lot 11 ramp for access to Kilo 7, the applicable FAA Circular for such aircraft shall govern. For those aircraft, the OFA shall be measured from a distance of 61 feet from the Taxiway Edge Safety Margin (TSEM).

2. THE DEFENDANTS ARE FURTHER ENJOINED FROM placing, parking or maintaining any object(s) (including but not limited to: FODs, tents, tables, chairs, non-fixed fences or barricades, food and drink, musical instrument or non-fixed sound system, equipment, tools, balloons, signs, motorized and non-motorized vehicles and aircraft), within the jet blast zone of any aircraft on the ramps of Lot 11 or Lot 12. The jet blast safety zone for the Gulfstream IV is an area at least 200 feet behind that aircraft and up to 35 feet in width on either side of the aircraft. The jet blast safety zone for the Lear Jet aircraft is an area at least 240 feet behind that aircraft and up to 45 feet in width on either side of the aircraft. The jet blast safety zone for any other aircraft shall be as established by the manufacturer and/or FAA, if applicable.

3. DEFENDANTS ARE FURTHER ENJOINED FROM blocking Everett Hangar's access to the west or east exits to Kilo 7 taxi lane in any manner.

4. DEFENDANTS ARE FURTHER ENJOINED FROM allowing any person, except its trained flight personnel, to enter and remain upon the ramp to Lot 11 and Paine Field ramp, when it is under the control of one or more of the Defendants, within the OFA and/or Jet Blast Zone while an aircraft is moving toward or returning from the taxi lane of Kilo 7.

5. DEFENDANTS ARE FURTHER ENJOINED FROM allowing, permitting or suffering any person, including an officer, agent, employee, invitee and guest of each of them, to enter upon or gain access to Lot 12 from its properties without the advance, express permission of the Plaintiff.

6. DEFENDANTS are enjoined from propping open any security gate, door or entry point on the Premises of Lots 11 or 13 unless a security guard is immediately present at the gate at all times.

7. DEFENDANTS shall construct or install a permanent security fence along the boundaries of Lot 13 using material(s) of a similar height, grade, strength, and style of that constructed for the perimeter fence along Paine Field. The fence shall remain in place until such time as it is no longer needed due to site development and permission is granted for its removal by this Court.

DONE this 19th day of May, 2015.


The Honorable Millie M. Judge
Snohomish County Superior Court Judge

APPENDIX 4



Historic Flight Foundation
Visitor and Restoration Center

Dear Volunteer,

Thank you for your interest in joining the Historic Flight Foundation team. We are pleased to meet you and begin establishing a relationship between our Foundation and your experience and qualifications.

We need people who are up for the challenge, will follow through on their commitment, enjoy working with others, and are willing to jump right in.

We look forward to getting to know you and appreciate your support!

Best regards,

Vanessa Dunn
Christi Nyberg
Jessica Leftwich

**Your Visitor Services Staff
Historic Flight Foundation
Restoration Center Office**

10719 Bernie Webber Drive
Mukilteo, WA 98275
visitorservices@historicflight.org
www.historicflight.org
425-348-3200

Proffered
Trial Exhibit
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Historic Flight Foundation Volunteer Program

Who are our volunteers?

Actively employed, and retired, men and women, both young and senior. They possess many skills, professions and the desire to be part of an extraordinary mission. Volunteers are absolutely essential to the existence of the Historic Flight Foundation.

Mission Statement

Historic Flight at Kilo-7 offers a collection of the most important aircraft produced between 1927 and 1957—all restored and airborne again.

Our mission goes beyond serving as trustees of aviation's golden age, 1927-1957. We want you to experience the roar of our F8F "Wampus Cat" taking off. Watch engineers at work restoring the aircraft to flying condition. Share the rush of viewing historic aircraft from all angles.

Whether you're an experienced aviator, a student of history, or a newcomer to the world of aviation, we want to spark and fuel your passion.

PHILOSOPHY / GOALS

Research tells us that voluntarism increases academic achievement and cognitive development and improves commitment to the community.

Our volunteer program serves as an outlet to utilize your skills and develop positive outreach with our community. Together we seek to build a mission based on education & restoration.

RESPONSIBILITIES

Our Board of Advisors monitor and guide the foundations mission

- Facilitating
- Monitoring
- Evaluating
- Providing continuity for the success of the volunteer program

Our Staff are committed to initial volunteering training

- Welcoming volunteers
- Informing them about their tasks
- Providing materials
- Encouraging their initiatives and celebrating their efforts

Volunteers are committed to:

- Respecting the foundation and aircraft collection. We encourage you to read and study to increase your knowledge of our aircraft and their place in history.
- Performing assigned tasks to the best of their ability
- Working cooperatively with all staff and fellow volunteers, seeking clarification when necessary.

Our team of staff, pilots, active volunteers, and advisors of Historic Flight Foundation welcome your active and visible involvement in the life of our organization. Voluntarism enriches the learning environment of the community and the lives of those donating their time.

We look forward to your continued interest and support. Enjoy your time with us and do not hesitate to share your insights, question, and concerns. We rely on your feedback for the continued improvement of our volunteer program.

VOLUNTEER ACTIVITIES / PROGRAMS

The following are areas for volunteer opportunities

- **Educational**
 - Docent - Share your aircraft knowledge with visitors
 - Group Tours and School Tours
 - Ground School events
 - WWII education
 - Flight Simulator introduction and over-view
 - Youth (6-15) activities (STEM)
 - Play and/or teach games in classroom setting
 - Visit other attractions or venues to help teach and educate

- **Restoration & Aircraft Programs**
 - Assist our Mechanics with aircraft responsibilities
 - Assist with facility operations and cleaning
 - Act as Kilo 7 Ground Crew during events and public hours
 - Act as aircraft-assigned volunteer during public viewing/boarding
 - Marshal aircraft (direct movements of "hot" aircraft)
 - Ground crew (assist with aircraft operations on the ramp)

- **Event Management**
 - Pre and post event activities (setup, logistics, supply)
 - Parking assistance & crowd management
 - Security
 - Audio Visual
 - Food and beverage management, vendor coordination
 - Transportation
 - Mailing Materials
 - Office related correspondence and administrative
 - Photography (Special events, Santa visit, photo booth)

- **Offsite Volunteer Activities**
 - Newsletter
 - Website
 - Social Media (Face-book, blogs, etc)
 - Outreach to local attractions and schools
 - History related fact finding

VOLUNTEER PROCEDURES

Parking

You may wish to leave personal belongings locked in your vehicles as we have limited onsite storage.

Dress Code

Please dress in a professional manner. HFF will supply logo polo shirts and nametags for all active volunteers. Please wear both items during your volunteer hours. We expect a clean, well-groomed and welcoming image. In presenting that image, please refrain from wearing sunglasses, hats, or other concealing accessories, unless working outdoors. Certain duties may require special attire.

Availability

We ask that volunteers provide at least 8 hours of their time, per month, to stay active in our database. When vacations or work related commitments become more demanding, please let us know.

Entrance Area - (Always call if unable to keep a scheduled shift)

- Sign in.
- Please come properly dressed.
- Pick up nametag and wear at all times.
- When leaving, sign out and return name tag.

Work routine:

- Familiarize yourself with building operations.
- Always ask questions if unsure about a direction or routine.
- Respect the learning process. Understand that all guests and volunteers come in with different knowledge and experiences.
- Be aware that the Reception Area is within public view, and must remain presentable.
- When volunteering at the Restoration center, please keep personal matters discreet. Our priority is the guests and our ability to immediately assist them.
- As a volunteer you are expected to have a working knowledge of our Foundation and aircraft collection. If you do not know the answer to a question, please let the guest know you will find the answer and that you will follow up with them by email if they so desire.

You will be invited to attend a more detailed training program at the Foundation. On-going training will be offered to those who desire to take on specialized duties.

Thank you for your support!

MARSHALLING SIGNALS



START ENGINE(S)



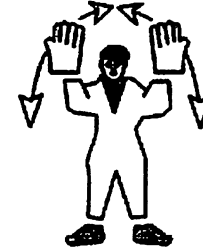
BRAKES
(commence with open palms)



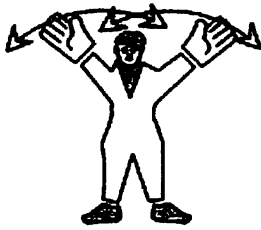
PLACE YOURSELF
FACING ME



PROCEED TO NEXT
MARSHALLER



MOVE AHEAD



STOP



TURN TO YOUR LEFT



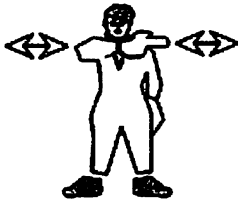
TURN TO YOUR RIGHT



TURN TAIL TO YOUR
LEFT



TURN TAIL TO
YOUR RIGHT



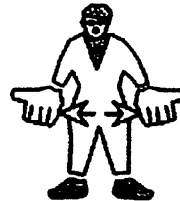
CUT ENGINES



CONNECT TO
GROUND POWER



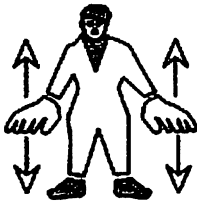
DISCONNECT TO
GROUND POWER



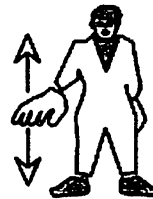
CHOCKS REMOVED



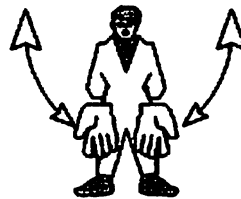
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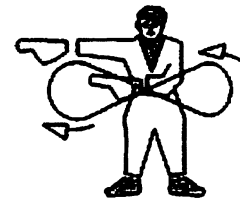
SLOW DOWN



SLOW DOWN ENGINE(S)
ON INDICATED SIDE



MOVE BACK



FIRE



ALL CLEAR

Ramp Safety Test #1

NAME: _____ **DATE:** _____

1. In Human Factors, what is one of the most common causes of accidents?
 - a. Compliments
 - b. Complacency
 - c. Stress

2. Following the "Human Factors Safety Checklist" before you do anything safety sensitive can help you stay safe and prevent accidents.
 - a. True
 - b. False

3. What does the acronym I.M.S.A.F.E. stand for?
I _____
M _____
S _____
A _____
F _____
E _____

4. What is a "Runway Incursion?"
 - a. "Any occurrence at an airport involving bird strikes, take offs without clearance, or FOD located on any area of the ramp"
 - b. "Any occurrence at an airport involving the incorrect presence of an aircraft, vehicle, or person on the protected area of a surface designated for the taxiing or takeoff of aircraft."
 - c. "Any occurrence at an airport involving the incorrect procedures or clearances allowing vehicles and tugs to cross the runway or proceed on a taxiway."

5. What markings designate the "Safety Area" of a runway?
 - a. A solid red line only
 - b. Two solid yellow lines with 2 dashed lines and a solid red line
 - c. A solid red line followed by a single yellow line and single dashes

6. It is ok to proceed across a runway safety boundary line if you are in view of the tower and there are no aircraft on the runway or taxiway.
 - a. True
 - b. False

7. In crowd control, what is the hand signal to give to the pilot to stop the engine or engine startup?
 - a. "Stop" signal
 - b. "Cut" signal
 - c. "Emergency Stop" Signal

8. F.O.D. is only pieces of metal, screws, bolts, and broken parts of aircraft. Paper items pose no threat to aircraft.
 - a. True
 - b. False

9. F.O.D. should be picked up immediately and disposed of when found. If not able to, you should contact the Airport Office and inform them of the location and type of F.O.D.
 - a. True
 - b. False

10. It is ok to walk through a prop arc as long as the engine isn't running and there isn't a pilot in the cockpit.
 - a. True
 - b. False

11. All propellers should be treated as "Hot" propellers.
 - a. True
 - b. False
12. From which direction should you always approach an aircraft?
 - a. From The Tail
 - b. From the right side in the co-pilot's view
 - c. From the left side in the Pilot's View
13. You are the 2nd marshaller with a large twin engine aircraft. At what point should you pull/place your chocks from/at the wheel?
 - a. When the plane comes to a stop
 - b. When you see the lead marshaller place/pull their chocks
 - c. When the lead marshaller signals you to pull/place your chocks
14. It is ok to face the wheel with your back to the prop if you can't reach the chocks easily as long as you do it quickly.
 - a. True
 - b. False
15. When using a GPU, when should you supply power to the aircraft?
 - a. When you connect the GPU to the aircraft
 - b. When the pilot signals you to supply power
 - c. When the pilot tries to start the engine
16. Where should you position a GPU?
 - a. Directly in front of the wing
 - b. As far from the aircraft connection port as possible
 - c. Away from the aircraft's path of movement

17. You should disconnect the plug and power supply immediately after the engine starts.
- a. True
 - b. False
18. What makes up the "Fire Triangle"
- a. Oxygen, Nitrogen, Gasoline
 - b. Air, Co2, Oxygen
 - c. Oxygen, Heat, Fuel
19. What Does "P.A.S.S." stand for?
- P _____
- A _____
- S _____
- S _____
20. What kind of fire extinguisher is the most commonly found in airport environments?
- a. Halon
 - b. Water
 - c. Dry chemical
21. You noticed an aircraft awaiting marshalling signals but your vest and marshalling sticks aren't near by. Its ok to go ahead and marshal the aircraft anyway.
- a. True
 - b. False
22. It is ok to be on the A.O.A. with your I.D. in your pocket.
- a. True
 - b. False





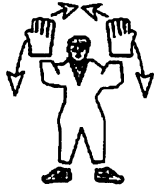



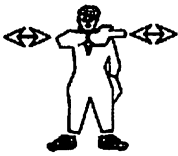


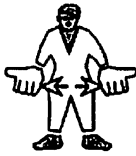

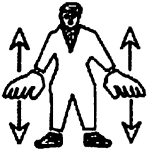

23. For Towing/Taxiing Large Twin Engine Aircraft, The minimum number of wing walkers required is;
- a. 5
 - b. 3
 - c. 1
24. For Towing/Taxiing small single engine aircraft, the minimum number of wing walkers required is;
- a. 5
 - b. 3
 - c. 1
25. A pilot approaches you and says he/she needs to move the aircraft out of the hangar. You are by yourself. You can go ahead and tow the aircraft by yourself.
- a. True
 - b. False
26. Photographers have free access to all areas of the airport and do not require training or a security I.D.
- a. True
 - b. False
27. You see someone walking out on the A.O.A. and you thought you saw them wearing a security I.D. but you weren't sure. There is no need to "Challenge" them.
- a. True
 - b. False
28. You need to marshal an aircraft but your I.D. lanyard broke. You place your I.D. in your wallet instead. Should you proceed?
- a. Yes
 - b. No

29. You came to the airport and realized you forgot your I.D. You should;

- a. Go home and retrieve your I.D.
- b. Not worry about it and go about your day
- c. Borrow a friend's I.D. for the day

30. Fill in the marshalling signals:

MARSHALLING SIGNALS

Procedure - Front Desk

- Greet guests in a timely manner with a warm welcome.
- Ask all guests to 'sign in' the logbook so that we may send them information regarding upcoming events of interest.
- If they are a 'member' make certain that they are current (they should have a card) and offer to renew.
- First time visitors explain the hangar rules:
 - We don't have any barriers, so you can get right up close and personal to all of the aircraft.
 - We ask that with all of the aircraft inside the hangar, you look but **please don't touch**.
 - (For children) **Please no running** inside the hangar, as there are many sharp pointy objects that can hurt you, and sometimes there are oil spots on the floor and you might slip and fall.
- Grumpy and DC-3 are available for entry if accompanied by a Docent. Guests **must be escorted by a volunteer** onto the tarmac behind the hanger.
- Point out Restrooms, refreshments and the Mezzanine area - photography is encouraged.
- If you have time - membership benefits may be of value to the guest.
- Deal with any potential issue or problem in a calm manner. Provide immediate aid and assistance if necessary. Take notes ASAP while the issue is still fresh. If an injury/accident occurs, fill out an accident report form.
- ALWAYS provide a Fond Farewell and 'stop back by' as they exit.

Open / Close Procedures

AM Routine

- Arrive by 9:30am
- A-frame sign out on the sidewalk
- A frame at intersection (Muk Speedway/Bernie Webber Drive) needs to be displayed during open days, **remember to drop it at close on Sunday.**
- Raise all blinds (except for tv viewing area)
- Turn on all lights
- Unlock perimeter doors
- Check Bathrooms - clean/resupply as needed
- Turn on music
- Coffee pot: 1 cup coffee per 10 cups water. Once brewed, strengthen by pouring a couple cups of the coffee back over the grounds then discard coffee grounds.
- Tidy and restock area as necessary
- Switch "Open" sign on

Log into:

- Front Desk 1 t@keflight
- Checkout Username: HFF; Password: grumpy
- Workspace Email visitorservices@historicflight.org
- Etapestry log in: guest password: beaver
- Facebook
- Historicflight.org

Count Till

Open & Close till count should be done each day, even on closed days

- Open **Cash Logs** folder on the desktop.
 - Duplicate last cash log > rename as today's date > open and make adjustments for today's till count.
- In **Checkout**, go to <Till Count> and enter the amount counted in till.
 - Amount counted should match "expected in till" amount. Press tab
 - Put note on cash log if there is a discrepancy
 - Click <submit>
 - Click <new sale>
 - You are ready for business
- If unable to use till and checkout for any reason, default to a Donation Day and place the Donation Jar on the counter.
- At the end of the day, enter total amount collected into Checkout as "Donation Sale"

FYI:

- Credit card machine will operate even if checkout is disabled.
- If cc machine is inoperable, default to manual swipe
 - Supplies located in lower left kitchen cupboard.
 - Always check for clear imprint of cc number, expiration date, and ask for phone and billing zip code.

Open / Close Procedures

PM Routine

Batch Settle CC Machine :

- Press the top left button (purple)
- Press settlement (F1)
- Enter Password (6682) and hit "ENTER"
- Press "ENTER" until it transmits and prints out the summary.
- Tear off the summary and staple with the other CC receipts for the deposit.
- Note the total CC amount on the Cash Log Sheet.

Close Cash Register:

- Count till and complete right side of today's Cash Log.
- Bringing till down as close to \$200 as possible, deposit notes only
- In Checkout, go to <till count> and enter amount counted in till and amount deposited.
- Click <submit>

- Print Cash Log, staple CC slips on back, tri-fold the sheet with the date on outside, put cash deposit inside and place in cupboard in JTS office.
- Close and lock till.

Complete Weekly log:

- Go to Checkout > Manager > Reports > End of Day & Products Sold

Closing Duties:

- A-frame sign in
- Lock ALL doors...double check!
- Check all heat is off (winter) including JTS office and bathroom.
- Windows closed (summer)
- Shut down Flight Sims
- Turn OFF the "Open" sign
- Lower all blinds
- Turn music off
- Clean coffee pot
- Empty all wastebaskets, replace bags, dump garbage in the dumpster
- Check & tidy bathrooms as needed. Refill any towels and/or TP
- Check that extra light is off in shower bathroom
- Lock all drawers (including till drawer with key).
- Tidy up the desk area.
- Turn off all lights (note: one light remains lit above each mezzanine area)

Make sure all heat is off, windows closed, and double check doors are locked when exiting.

Open / Close Procedures

How To Make a Sale in Checkout:

- Click “New Sale” up top.
- Add customer name to invoice, select customer tab, search name or ‘add new’ before completing sale. *Do this for all memberships, member sales, classroom and seminars, etc.*
- Find the product you are selling (Admission, T-shirt, etc.) and double click on it.
 - Use the search box to narrow the field.
 - If you make an error, click on the item you would like to remove and hit ‘delete’ on your keyboard. The item should disappear.
 - Double click on same items to increase the number selling
- Check for accuracy (item & size, etc.) when selecting apparel, as we need to maintain correct inventory count.
 - All Cooper Jones logo apparel can be searched for by typing in the 5 digit item number found on the tag
- Once you have selected all items to be sold, click the green “CHECKOUT” button on the lower right.
 - A smaller window will pop down with the methods of payment. Select the method (we only use cash, check, and credit, no debit) and then select “PAY.”
- Receipt will print automatically and open the till drawer. Give the guest the receipt. *Print duplicate receipt for all membership sales.*

Operating CC Machine:

NOTE: CC Machine runs all cards as Credit. No Debit/ATM card sales.

- Swipe Customer card, or enter card number manually
- Follow prompts for last 4 digits and sale amount.
- The machine may ask you for a POI Number, address, zip code, etc. Ignore all of these and press “ENTER” several times until it begins sending the information.
- If accepted, a receipt will print out. Tear off the first one and have the customer sign it. Press the green “ENTER” button again (a customer copy will print). Place the signed receipt through the slot on the till drawer. Tear off the customer copy receipt, staple to the “Checkout” receipt and give to the customer.
- Your sale is complete. Repeat all steps for further sales.

Open / Close Procedures

End of Day Sunday

Finish & Submit the Weekly Log

- Record the total # emails added to eTapestry over the last 7 days:
 - Go to eTapestry and select:
 - <Query>
 - <Base>
 - <New Accounts for Weekly Log>
 - Data fields are set to the following (should not need changing)
 - Starting Criteria: Base/All Constituents - A
 - Data Return Type: Accounts
 - Match: All of my Criteria
 - Account Created Date: Last 7 Days
 - Save and Preview - This will display total number of accounts added in the last 7 days.

- Email completed weekly log and visa log to JTS and cc Vanessa
- Check daily totals and for errors before sending

**Historic Aircraft Flight
Assumption of Risk and Liability Release**

I have been granted an opportunity to fly in an historic aircraft (the "**Flight**") owned or operated by the Historic Flight Foundation ("**Historic Flight**"). The aircraft will be flown by a pilot (the "**Pilot**") who may not be known to me but is licensed and has been approved to fly such aircraft under applicable FAA regulations. I agree and acknowledge that:

1. Flying in aircraft is a dangerous activity that entails risks. These risks include injury, death, and property damage, and can be caused by mechanical failure, weather, pilot error, or other factors, some of which may not be foreseeable beforehand or may be uncontrollable. Despite regular aircraft inspection and maintenance, these risks are inevitably greater in historic aircraft that have been in use for many years and were designed and manufactured many decades ago with less sophisticated technology than is currently available. I understand these risks, I have weighed them in making my decision to fly, and I assume all responsibility for these risks before, during, and after the Flight.

2. I will not sue Historic Flight, the Pilot, the owner of the aircraft, the mechanics who maintain the aircraft, the airport from which such Flight occurs, or any of their officers, directors, employees, agents, family members, or estates ("**Released Parties**") with respect to any problem or casualty related to the Flight. I knowingly assume all risks associated with the Flight and release the Released Parties from all liabilities, claims, or demands related to my participation in the Flight. This release is binding on my estate, my heirs and family members, and any other party who may have a right to sue on my behalf, including insurance companies. Should any of the Released Parties incur attorneys' fees as a result of claims asserted in violation of this release, I will reimburse and assume responsibility for all such fees. I understand that this release applies to both foreseeable and unforeseeable events that may have affected my or the Pilot's decision to undertake this Flight, as well as human error. I also understand that this release shall be continuous and ongoing, and shall apply to both the current Flight and any subsequent Flights involving any of the Released Parties.

3. My participation in this Flight and my signing of this release are entirely voluntary. I was not coerced in any way to sign this release or to participate in the Flight, no assurances or promises were made to me that conflict with this assumption of risk and release, and I have not relied on any separate assurances in making a decision to take advantage of the opportunity to fly in an historic aircraft. I have been given this document in advance and have had adequate time to read it, understand it, and ask any questions that I have, and I have received adequate answers to any questions that I have asked. I understand that I can seek legal counsel if I have any doubt before signing this release, but my signature indicates that I have either sought legal counsel or decided that I do not need legal counsel. I am under no pressure to make an immediate decision to participate in this Flight and am aware that I can refrain from signing this release and therefore refrain from the Flight. If I become uncomfortable with the risks at any time before departing on the Flight, I will decline to get in the aircraft or ask the Pilot to return me to the hangar. This release is a full and complete statement of my intentions and there are no other documents or information that can be used to modify the terms of this release.

4. I am an adult at least 18 years of age, mentally competent, and able to make a calculated decision to participate in the Flight after being advised of the risks. If I am providing this authorization and release on behalf of a minor under the age of 18 or other person under my guardianship or custody, I have confirmed my parenthood or guardianship below and I confirm my authority to give this release on behalf of such minor or dependent. (proof of guardianship may be required)

5. This release will be governed where possible in accordance with the laws of the State of Washington. If any provision of this release is determined to be unenforceable, the other provisions will still have effect.

Signature

Print Name

Emergency Contact (name/phone):

Date:

If signing for a minor or dependent, please confirm:

Name: _____

Age: _____

My relationship to dependent:



Accident/Incident Report Form

Date of Incident:

Affected Party:

Name: _____

Address: _____

Phone: _____ Email _____

Witness: _____ Phone: _____

Witness: _____ Phone: _____

What Happened? (Detailed description of events that occurred)

Action taken by Staff or Volunteer:

Signed _____ Date _____



Volunteer Application

Your Name:

Street Address:

City/State/Zip Code

Phone:

Email:

Emergency Contact

Name:

Street Address:

City/State/Zip Code

Phone:

Email:

Volunteer Positions Available

Please indicate the position(s) for which you are interested in applying:

Restoration Docent

Visitor Services

Restoration Assistant

Docent

Special Events Staff

Other _____

Reason for Volunteering: Please describe why and/or how your qualifications meet the mission of the Foundation. Attach additional pages if desired.



Volunteer Application Continued

Volunteer Related Qualifications

Please indicate & describe any specific skills, hobbies, interest, or training:

-
- | | |
|---|---|
| <input type="checkbox"/> Teaching (Age/Grade) | <input type="checkbox"/> Public Speaking |
| <input type="checkbox"/> Tour Guide/Docent | <input type="checkbox"/> Research/Library |
| <input type="checkbox"/> Military/War History | <input type="checkbox"/> Event Related |
| <input type="checkbox"/> Other _____ | |

Additional Information:

Employment: Currently Employed Retired/Semi Retired Unemployed
Reference Name:

Company Name:

Phone:

Address: (Street/City/State)

Dates of Employment:

Work Experience: Please describe your qualifications as it relates to the position(s) for which you are applying. Attach additional sheets if desired.

Education

School: _____ Graduated: (yes/no) Date: _____

City/State/Zip Code

Degree/Certifications/License:



Volunteer Application Continued

References

Name: Relationship:

Phone: Email:

References

Name: Relationship:

Phone: Email:

Availability

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Morning							
Afternoon							
Evening							

Other: (please describe)

Release of Liability

Upon selection by the Historic Flight Foundation, Volunteers are authorized to enter upon the premises for the general purpose of volunteering for assigned duties. In consideration of this selection, Volunteers release and hold harmless the Historic Flight Foundation and its officers, directors, employees, and agents from any and all liability for damage and injury to themselves or property, as a result of volunteer duties.

SIGNED:

Date:

*If under 18 years of age, parent/guardian must also sign & date below

SIGNED:

Date:

Please submit form to: Historic Flight Foundation
Restoration Center Office
10719 Bernie Webber Drive
Mukilteo, WA 98275

Historic Flight Foundation Volunteer Orientation

Who are our volunteers?

Men, women, young and senior. Active employed and retired with many skills, professions and the desire to be part of an extraordinary mission.

Volunteers are absolutely essential to the existence of the Historic Flight Foundation

What are the rewards?

Being part of history preservation

Learning experience

Share common interest

What are the duties?

Share your aircraft knowledge with visitors (Docent)

Facility operations and maintenance

Aircraft care

Ground crew (assist with aircraft operations on the ramp)

Marshaller (direct movements of "hot" aircraft)

Paine Field Photographer Access Rules

- **All photographers wishing to leave the public access areas must have passed the Paine Field Photographer Training class within the last year**
- **All photographers who leave the public access areas must be wearing their current Photographer Photo ID badge visibly on their person**
- **Photographers may NOT escort anyone under any circumstances**
- **Prior to leaving the public access areas, photographers must:**
 - **Sign out at the Front Desk**
 - **Notify HFF staff to inform the Paine Field Tower**
 - **Pick up and wear an HFF Photographer safety vest**
- **Photographers must remain in the designated Photographer Access areas**

Historic Flight Foundation Hazmat Awareness and Safety Training, Staff and Volunteers

OSHA 29 CFR 1910.101 (CFR172.700) compliant training

Function specific to level of exposure, training must be documented, retraining when the exposure changes

There are three entities subject to possible hazards

1) volunteers and staff, 2) visitors, 3) the aircraft

There are four levels of volunteer duties that may expose one to hazardous conditions

1) In hanger, 2) Ramp, 3) Ground crew and 4) Marshaller

Volunteer duties:

1) duties are within the hanger such as docent, maintenance, office team, other

2) trained to guide visitors onto the "cold" ramp

3) trained to carry out a variety of aircraft handling tasks, assist marshalls

4) having completed the Marshaller training and work on ramp with "hot" aircraft

Specific training

Docent orientation and Safety Awareness (hazmat, first aid)

Fire extinguisher operations (aircraft, ground material)

Aircraft marshalling

Authorized photographers

Potential hazards within Kilo 7 hanger, on ramp and at hanger 47-3

Oil, water, hydraulic fluid and objects on the floor (trip and slip)

Exposure to fuel leaks (enforce absolute no open flame rule)

Chemical contamination on skin, eyes, clothing, inhalation (flush, ventilate)

Forceful contact with objects- aircraft, tools, power doors (apply relevant 1st aid)

Fire danger (know extinguisher location, types and operation, master shutoff)

Operating near hot aircraft (Ground Crew and Marshalling Training)

Airfield driving authorization (Paine Field training required)

Lifting heavy or awkward objects (obtain assistance)

Evacuation plan (doors at each building corner)

Know location of master power shut-off and sprinkler shutoff

Backing vehicles near aircraft require a lookout

Main hanger doors operated by designated staff only

Moving aircraft require specific "push point" instruction

Special rules for trained and designated photographers

Mitigating equipment

Fire extinguishers at each exit door, on central pillar and along east wall

Hazmat spill kit hanging on west wall

Protective gloves in store room

First aid kit on entry door coat rack

Eye shields in west wall cabinets

Report all injuries to office staff, prepare incident report

FOD foreign object damage (pickup ramp debris)

October 2014

New Volunteer Program Steps

Name: _____ Date: _____

Screening:	Date	Initials
Review application and check references		
Invite candidate to next Volunteer Orientation		

Orientation:	Date	Initials
Introduction to HFF and brief outline of volunteer program		
Importance of recording volunteer hours		
HFF Volunteer Handbook		
HFF Aircraft Notebook		
Photograph for records		

First Visits:
 Prospective volunteers will then be scheduled to shadow an active volunteer for several subsequent meetings and will include:

1. Safety		
a. Emergency procedures and events		
b. Fire Safety - Extinguisher locations and uses		
c. Chemicals, hazmat requirements and protective gear		
d. Ramp Safety		
e. Marshalling		

2. Daily Volunteer Duties		
a. Dress code and grooming		
b. Opening and closing procedures		
c. Basic Hangar maintenance		
d. Procedure Bulletins		
e. Special Event Duties		
f. A&P work		

3. Visitor Experience and giving Tours		
a. Greeting and talking with guests		
b. Tailoring a successful tour		
c. Group Tours		
d. Aircraft do's and don'ts		
e. Children, post card and other mementos		
f. Retail - Promoting Membership rides and store merchandize		

Volunteer Benefits - among others
Active volunteers receive an HFF logo Shirt and Name badge
Air Show participation and travel
"Behind the Scenes" group tours of other museums

APPENDIX 5

Historic Flight Foundation
Kilo 7
First Aid Awareness

Bill High, EMT, DMT (retired) Instructor

Calling and directing medic units (expedite the professionals)
911 to control center (responders Paine Field, Mukilteo fire dept.)
Place directors (1) on road, (2) at gate (3) inside hanger
Response time 4-10 minutes
Do no harm; assist to the level of your training and experience
Good Samaritan Law

Physical distress

Heart attack (pain, fatigue, sweating, weakness, etc)
Fainting (sudden stressful event)
Stroke (sudden weakness on one side, facial droop, slurred speech)
Sprained ankle, wrist, etc. (prompt cold pack)
Broken Bone (stabilize, call for medics)
Dehydration (hot day, ask have you been taking water?)

Contact with chemicals (as needed remove clothing, flush skin)

Cuts and scrapes (arterial versus venous bleeding)
clean, close, cover

Burns (first, second, third degree)
Immediate cold material, light dry cover

First Aid supplies at Kilo 7
Kit in office cupboard
B-25 survival kits in storage closet

Incident report

If there is blood, broken bone or tendon damage, we take the injured patron to the clinic at HFF expense. No exceptions.
If a lesser injury, volunteers may use their discretion but a stop at the clinic should always be offered.

Appendix 6

Front desk protocol

- Greet guests in a timely manner with a warm welcome.
- Ask all guests to 'sign in' the logbook so that we may send them information regarding upcoming events of interest.
- If they are a 'member' make certain that they are current (they should have a card) and offer to renew.
- First time visitors explain that while the center is 'up close and personal' we would appreciate it if they "**look but please don't touch**".
- Grumpy and DC-3 are available for entry if accompanied by a Docent. Guests **must be escorted by a Docent** onto the tarmac behind the hanger.
- Point out Restrooms, refreshments and the Mezzanine area – photography is encouraged.
- If you have time – membership benefits may be of value to the guest.
- Deal with any potential issue or problem in a calm manner. Provide immediate aid and assistance if necessary. Take notes ASAP while the issue is still fresh. If an injury/accident occurs, fill out an accident report form.

ALWAYS provide a Fond Farewell and 'stop back by' as they exit.

APPENDIX 7

Historic Flight Foundation Hazmat Awareness Training, Staff and Volunteers

OSHA 29 CFR 1910.101 (CFR172.700) compliant training

Function specific to level of exposure

Training must be documented

Retraining when the exposure changes

There are four levels of volunteer duties that may expose one to hazardous conditions

1) **In hanger**, 2) **Ramp**, 3) **Ground crew** and 4) **Marshaller**

Volunteer duties:

1) duties are within the hanger such as docent, maintenance, office team, other

2) trained to guide visitors onto the “cold” ramp

3) trained to carry out a variety of aircraft handling tasks, assist marshalls

4) having completed the Marshaller training and work on ramp with “hot” aircraft

Specific training

Docent orientation

Fire extinguisher operations (aircraft, ground material)

Aircraft marshalling

Authorized photographers

Potential hazards within Kilo 7 hanger, on tarmac and at hanger 47-3

Oil, water, hydraulic fluid and objects on the floor (trip and slip)

Exposure to fuel leaks (enforce absolute no open flame rule)

Chemical contamination on skin, eyes, clothing, inhalation (flush, ventilate)

Forceful contact with objects- aircraft, tools, power doors (apply relevant 1st aid)

Fire danger (know extinguisher location, types and operation)

Operating near hot aircraft (Ground Crew and Marshalling Training)

Airfield driving authorization (Paine Field training required)

Lifting heavy or awkward objects (obtain assistance)

Evacuation plan (doors at each building corner)

Know location of master power shut-off

Backing vehicles near aircraft require a lookout

Main hanger doors operated by designated staff only

Moving aircraft require special push points

Special rules for trained and designated photographers

Mitigating equipment

Fire extinguishers at each exit door, on central pillar and along east wall

Hazmat spill kit hanging on west wall

Protective gloves in store room

First aid kit on entry door coat rack

Eye shields in west wall cabinets

FOD foreign object damage (pickup ramp debris)

March 2014

Proffered
Trial Exhibit
267

DEF0001034

APPENDIX 8

Handy Facts and Figures.

- If you notice anything out of the ordinary, anything that looks sounds or looks wrong report it ASAP It might be nothing and you feel silly but the only time it could avoid a mishap. Better be safe or silly than sorry!
- Avoid leaving anything laying around on the tarmac that could be difficult to see from the cockpit of a tail wheel aircraft.
- Do not wear rings while pulling a wooden prop blade.
- Avoid walking backwards anywhere on the field.
- Avoid prop blades unless directed otherwise.
- Keep eye contact with the pilot while she/he is starting up (unless her/his head is deep inside the cockpit doing the checklist)
- Keep an fire extinguisher handy when you are present at starting up an aircraft (that has not flown for a while).
- When in doubt about anything – Ask!

APPENDIX 9

Paine Field Photographer Access Rules

- All photographers wishing to leave the public access areas must have passed the Paine Field Photographer Training class within the last year
- All photographers who leave the public access areas must be wearing their current Photographer Photo ID badge visibly on their person
- Photographers may NOT escort anyone under any circumstances
- Prior to leaving the public access areas, photographers must:
 - Sign out at the Front Desk
 - Notify HFF staff to inform the Paine Field Tower
 - Pick up and wear an HFF Photographer safety vest
- Photographers must remain in the designated Photographer Access areas

