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June 25, 1991

VIA HAND DELIVERY

Mr. Steve Tribble, Director
Division of Records & Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32301

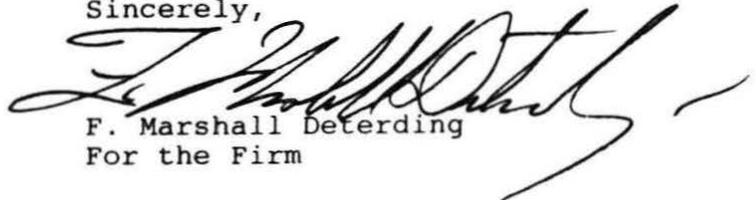
Re: Docket No. 910111-WS; Sandy Creek Airpark, Inc.;
Complaint Against Sandy Creek Utilities, Inc.
Our File No. 28031.01

Dear Mr. Tribble:

Enclosed please find the original and fifteen (15) copies of the Prefiled Rebuttal Testimony of Mr. Greg Delavan, which are being forwarded to you for filing in the above-referenced docket.

Should you have any questions or comments regarding this matter, please feel free to call.

Sincerely,



F. Marshall Deterding
For the Firm

- ACK
- AFA _____
- APP _____
- CAF _____
- CMU _____
- FMD/sa _____
- CTR _____
- EAG Enclosure
- LEG cc Mr. Greg Delavan
- LIN cc Nard S. Helman, Esquire
- OPC _____ 2
- RCH _____
- SEC 1
- WAS _____
- TR _____

DOCUMENT NUMBER-DATE
06398 JUN 25 1991
PSC-RECORDS/REPORTING

1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

2 DOCKET NO. 910111-WS

3 PREFILED REBUTTAL TESTIMONY OF MR. GREG DELAVAN

4 Q. What is your name and employment address?

5 A. My name is Greg Delavan. I am Vice President of
6 Sandy Creek Airpark, Inc., 1C Airway, Panama City,
7 Florida 32404.

8 Q. Have you previously provided direct testimony in
9 this proceeding?

10 A. Yes, I have.

11 Q. What is the purpose of this rebuttal testimony?

12 A. To respond to some of the points raised by Ms.
13 Deborah Swain in her testimony filed in this
14 docket.

15 Q. There has been some suggestion that the Utility
16 does not have adequate capacity to provide service
17 to Sandy Creek Airpark. Do you have any comments
18 on this question?

19 A. Yes, I have several points concerning the specific
20 capacity issues and some of the testimony provided
21 by Ms. Swain related to that issue.

22 Q. Please discuss water capacity first.

23 A. Ms. Swain has stated in her testimony that the
24 Utility does not have the water capacity to provide
25 service to the Airpark. As a basis for this, she

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FPSC-RECORDS/REPORTING

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1 relies upon the finding in the Commission's
2 Proposed Agency Action Order in the Utility's staff
3 assisted rate case, that the water facilities are
4 93% used and useful. I believe there are several
5 problems with this conclusion being applied to the
6 question of whether the Utility has capacity to
7 serve the Airpark.

8 First, Ms. Swain notes that the Utility had the
9 equivalent of nine ERCs included as margin reserve,
10 and has only nine additional connections available.
11 It is my understanding that the margin reserve is
12 allowed by the Commission for just the purpose of
13 allowing the Utility the capacity needed to provide
14 service to new customers as that service is
15 requested. Therefore, this capacity is available
16 to the Airpark or any other customer who needs
17 service.

18 Secondly, Ms. Swain's (and the Commission's)
19 calculations of what number of ERCs are represented
20 by the margin reserve allowance and the additional
21 capacity available are made based upon total flows,
22 including not only fire flow but maximum daily
23 flow. By this method, Ms. Swain is effectively
24 considering each ERC to be approximately 1,200
25 gallons. This is almost four times the industry

1 average for an individual single family home, and I
2 do not believe it is representative of what can be
3 expected as far as demand to be placed upon the
4 system by each individual residence added. In
5 reality, even assuming the fire flow and maximum
6 daily flow calculations utilized in the rate case
7 used and useful analysis are appropriately
8 considered in the analysis of the capacity
9 available for new customers, there are at least
10 sixty available connections based upon the industry
11 average of 350 gallons per day per ERC. More
12 appropriately, the Staff engineer found in his
13 report that the actual gallons sold reflected a
14 daily flow per ERC of 158 gallons. This actual
15 data is more appropriately utilized than even the
16 industry standards, and under that type of analysis
17 the margin reserve and excess capacity of the
18 Utility combined will serve approximately 124
19 additional ERCs, rather than the 18 which Ms. Swain
20 alleges (180,000 gallons per day capacity minus
21 maximum daily flow of 100,421 minus 60,000 gallons
22 of fire flow allowance equals 19,579 gpd available,
23 divided by 158 equals 124 ERCs of excess capacity.)

24 Third, I do not know if the maximum daily flow
25 figure of approximately 104,000 gallons utilized by

1 the Commission Staff and included in the
2 Commission's Final Order, is reflective of actual
3 demand on the system. I understand that there were
4 several major line breaks during this period of
5 time, therefore making this figure inflated. It is
6 my understanding that there has been some question
7 of the accuracy of the flow meter as well. In
8 addition, given that the water sold to customers
9 averages only about 22,000 gpd, I do not understand
10 how the Commission can believe that the 104,000
11 maximum can be accurate. Even if it is accurate
12 because of irrigation use on common areas, once the
13 Commission requires recognition of this use and
14 requires appropriate billing, it cannot be expected
15 to continue. In addition, there is a rapid trend
16 for individual customers to put in irrigation wells
17 of their own since the new rates and rate structure
18 are being implemented as a result of the rate case.

19 Fourth, to reach the level of used and useful
20 proposed by the Commission in rate setting, a
21 60,000 gallon per day allowance for needed fire
22 flow has been included. It is my understanding
23 that there is no local ordinance requiring fire
24 flow, and that this allowance was based in part
25 upon some industry "targets" for this purpose

1 established by the National Fire Protection
2 Association. A representative of the local fire
3 department has indicated to me that there is no
4 need for fire flow from this system, and, in fact
5 that the system has never been depended on for this
6 purpose. As such, I do not believe any fire flow
7 allowance should be authorized, and certainly not
8 for the purposes of determining whether or not the
9 Utility has the capacity to serve new customers.
10 To hold this capacity in reserve where it is never
11 utilized by the local fire fighting authorities is
12 without merit. In any case, it is common for
13 utilities to "borrow" from fire flow capacity to
14 serve new demand until it is feasible to start
15 expansion.

16 Even if fire flow is necessary it is my
17 understanding from discussions with the Staff
18 engineer that these requirements can be met by the
19 simple addition of a pump, at an estimated cost of
20 around \$2,500.00

21 Finally, the capacity of the plant as
22 determined in the Staff engineer's report and
23 utilized in the rate case of 180,000 gpd is based
24 upon the assumption that only capacity of one of
25 the wells can be utilized at any point in time.

1 This is a result, according to the Staff report, of
2 permitting restrictions. Even if you assume that
3 the storage capacity cannot assist in providing
4 more capacity to the Utility, surely for very
5 little cost the Utility can expand its system,
6 either by the addition of a well or additional
7 storage, or by obtaining permit approval to
8 increase the overall withdrawal allowed. They
9 certainly appear to have the pumping capability,
10 wells. and treatment capability to serve double the
11 capacity that was recognized in the rate case.
12 Though DER may require a second well, they surely
13 don't require that all its capacity go totally
14 unused.

15 For the purposes of determining whether the
16 Utility can provide service to the Airpark, it
17 appears to me that for all the above stated
18 reasons, they have ample water capacity to provide
19 service to the Airpark, and many other customers.

20 Q. Please provide us your comments with regard to Ms.
21 Swain's position on sewer service capacity from the
22 Utility.

23 A. Ms. Swain readily admits that the Utility's plant
24 is only 24% used and useful and as such there is
25 substantial excess capacity in the wastewater

1 treatment system. During the early years of our
2 communication with the Utility regarding obtaining
3 water and sewer service, there was never any
4 question but that water and sewer service was
5 available. The only question was when sewer
6 capacity would be available. We were told for
7 years that as soon as the expansion was completed,
8 we could be provided with service. Since the
9 expansion of the wastewater treatment plant has
10 been completed, there is substantial excess
11 capacity, as demonstrated by the used and useful
12 analysis included in the Commission's Proposed
13 Agency Action Order on the Utility's rate case
14 (Order No. 24170).

15 However, Ms. Swain has also suggested that
16 because of "inadequacies" in the design of the
17 collection system noted by the Commission in its
18 Order, the Utility should not consider making
19 conditions worse by connecting the Airpark system
20 until the collection system problems are fully
21 resolved. I personally find such a position
22 shocking. The Airpark constructed the system in
23 Phase II only after approval of the design was
24 given by the Utility's own engineer. The system is
25 exactly the same as the rest of the Utility's

1 current wastewater collections system, if not
2 better, and it meets all DER standards. In fact,
3 we made improvements to our collection system to
4 eliminate some of the problems the Utility was
5 experiencing with their system.

6 Finally, the Utility representatives themselves
7 signed off on the permit application for
8 construction of this system. It seems
9 unconscionable to me that the Utility could then be
10 allowed to deny service to us because they consider
11 our system to be "inadequate" despite the fact that
12 it is virtually the same as the rest of their
13 system, if not better. If there is a need for a
14 change in the overall system, then that should
15 include change as and when necessary to the system
16 constructed by the Airpark, based upon criteria
17 OK'd by the Utility. In addition, the Utility's
18 position in this regard says nothing of the
19 existing system which they own or operate in the
20 Airpark's Phase I, and the other areas to which the
21 Utility has declined to include in their
22 certificate extension and to provide service.

23 In conclusion, the Utility has more than
24 adequate capacity to provide wastewater service,
25 and in fact we have constructed the facilities to

1 serve Phase II of the Airpark so that they can be
2 connected directly to the treatment plant, and not
3 place any further load on the Utility's existing
4 collection system. This was all done with full
5 knowledge and approval of the Utility. If anyone
6 should be allowed to connect to the wastewater
7 treatment plant and utilize this excess capacity,
8 it should be the Airpark Phase II since it is
9 closest to the treatment facilities and has the
10 newest, most recently constructed facilities.

11 Q. I take it you have also read Ms. Swain's comments
12 concerning the financial ability of the Utility to
13 serve the Airpark.

14 A. Yes, and I believe there are several points which
15 need to be made in that regard.

16 First, Ms. Swain notes that the Utility is
17 operating at a loss and that the rates under the
18 Proposed Agency Action Order are not designed to
19 cover the costs to operate and maintain the
20 Airpark's system. By definition, the Commission
21 authorizes rates which it believes are necessary
22 and adequate to fund the cost of Utility operations
23 and grant a return on facilities which can be
24 related to the Utility as a separate entity. If
25 the revenues are insufficient to cover costs, then

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it is because those costs are more appropriately related to the related party developer and having excess capacity. As to covering the costs of operating and maintaining the Airpark's system, as I understand the base facility charge rate design, and service availability charges, the whole purpose behind the establishment of those rates and charges is to insure that as each customer is added, they carry their proportional share of operation and maintenance related to them through their service availability and service rates. Therefore, by definition it does not seem logical to suggest that the rates imposed by the Commission, to the extent they are lawfully designed and set, which I must assume they are, are not intended to cover the costs of operating and maintaining the system on a customer by customer basis. The fact that the entire system will not be fully connected immediately seemed to have little relation to whether or not the burden of serving each individual customer can be generated through approved rates. This is especially true in this circumstance, where other than the existence of the line itself, the pumps and other items which might require maintenance from the Utility, are only

1 added as the customers are added. As such, once
2 the customer is added, the revenues will be there
3 to generate the cost to cover operation and
4 maintenance of that system.

5 The Utility currently serves customers in its
6 certificated service territory and has vacant lots
7 in that territory, as well as the vacant lots along
8 the lines which the Utility has proposed to exclude
9 from its service territory in this current
10 application. If it is, in fact, true that the
11 Utility cannot afford to provide service because of
12 the absence of these individual lots, then
13 guaranteed revenues if any should be paid by each
14 of those individual lot owners, including the
15 related party to the Utility. If such charges are
16 to be imposed against the Airpark, they ought to be
17 imposed system wide, otherwise the proposal is
18 discriminatory.

19 What the Utility needs is additional customers
20 to help cover its fixed costs. Their actions, in
21 both their extension application and in their
22 continuing refusal to provide service to the
23 Airpark despite repeated assurance over almost ten
24 years of the Utility's intention to provide such
25 service, effectively eliminates their ability to

1 recover their costs by adding customers, and
2 therefore revenues.

3 Next, Ms. Swain suggests that unless the
4 Utility is authorized to charge a guaranteed
5 revenue, they will be unable to operate the system
6 as currently proposed. Again, the system as
7 currently proposed in the Airpark and as actually
8 constructed, was done so only after in depth and
9 lengthy discussions with the Utility, approval of
10 plans by the Utility's engineer, and construction
11 and conformance with those plans and approval of
12 that construction by the Utility representatives.

13 Secondly, to suggest that the Utility cannot
14 serve a customer until it gets approval for a new
15 charge it proposes that it needs, seems a bit far
16 fetched. I have never heard of a utility being
17 able to hold up service to a customer who needs it,
18 when the Utility has adequate capacity by stating
19 that they would like to have an additional charge
20 prior to providing such service. The fact remains
21 that currently the Utility has no such guaranteed
22 revenue fee, and certainly is in need of additional
23 customers to help support its plant investment.
24 And, as stated above, if they are to impose these
25 types of charges and guaranteed revenues on the

1 Airpark, as well as prepayment of connection fees,
2 they should also be imposed upon related parties
3 and individual lot owners along the lines currently
4 owned and operated by the Utility. To do otherwise
5 is to discriminate against the Airpark.

6 When the Utility needed additional capacity to
7 serve its own related party lands, it was quite
8 able to obtain that financing from its related
9 party bank in the form of debt or equity
10 investment. Surely, the Utility can also obtain
11 funding for improvements currently needed, if in
12 fact any are needed.

13 Q. What about Ms. Swain's contention about why the
14 Airpark has not as yet been connected to the
15 Utility's system?

16 A. Ms. Swain has suggested that the Utility has
17 repeatedly advised the Airpark that fees must be
18 paid in advance for reservation of capacity, and
19 that the Airpark has never agreed to this
20 condition. This is false. The Utility only
21 recently, for the first time, ever raised the
22 suggestion that the Airpark would be required to
23 pay, in advance, a reservation of capacity fee.
24 This after years of discussion of connection of the
25 system with never a mention of such a requirement.

1 The Utility has never before required anyone to pay
2 such advance reservation of capacity fees, and to
3 the extent it intends to require the Airpark to do
4 so, it should also require its related party entity
5 to do so for all those lots remaining unconnected
6 to the system which are owned by that related
7 party. The past practices of the Utility, which
8 represent its current service availability policy
9 in the absence of its unwritten policy to the
10 contrary, dictate that the Utility will add
11 individual customers as they request service, upon
12 payment of the appropriate service availability fee
13 individually.

14 In addition, once the Utility did advise the
15 Airpark of a desire to require advance reservation
16 of capacity fees, I, as the Airpark representative,
17 immediately responded and asked them to provide us
18 with the details concerning this proposal. We were
19 never informed of what they intended to charge,
20 until I, and my attorney, attended a meeting with
21 the Commission Staff members, Mr. Feil and Mr. Von
22 Fossen, Ms. Swain, and the Utility's attorney, Mr.
23 Gatlin, on March 25. At that time, Ms. Swain
24 provided us with a list that indicated that the
25 Utility would require us to make an advance payment

1 toward their extension of service territory to
2 include Phase II of the Airpark, and also to pay
3 for them to request a service availability charge
4 increase. Even with that, they would not agree to
5 provide us service, only to consider the provision
6 of such service. This seemed absurd to us, and I
7 believe it would be absurd to anyone under those
8 circumstances. We indicated to them that we would
9 be more than willing to discuss the provision of
10 some prepaid service availability fees, though that
11 in itself seemed to be a deviation from the
12 existing service availability policy of the
13 Utility. The other conditions proposed made it
14 apparent that no reasonable agreement could be
15 entered into unless the Utility was directed to do
16 so by this Commission.

17 Q. Did you in fact receive the list of conditions
18 which Ms. Swain included with her direct testimony
19 as Attachment A?

20 A. Yes, I did, at the March 25 meeting. This was the
21 first time the Utility was ever willing to provide
22 in writing the conditions precedent to providing
23 service. However, I am not even sure that it is a
24 list of conditions precedent to providing service.
25 Ms. Swain is asked the question, "Is the Utility

1 willing to connect the Airpark if certain
2 conditions are met?" at the bottom of page 5 of her
3 testimony. However, her response is similar to the
4 response which we received at our meeting on March
5 25. This is, that the Utility is willing to
6 "consider" providing service to the Airpark if the
7 Utility meets all of these conditions. Her answer
8 to the question at the top of page 6 makes this
9 clear. While she states that the Utility does not
10 presently have adequate capacity in water treatment
11 or wastewater collection, nor financial capacity to
12 provide service to the Airpark; if the conditions
13 are met as proposed by the Utility, they will at
14 least have the financial ability. In other words,
15 they will still lack, according to her, the
16 treatment and wastewater collection capacity, and
17 as such it does not appear that they will provide
18 service to the Airpark, even if all of those
19 conditions were met.

20 Secondly, I believe that the conditions as
21 proposed by the Utility are not only overly
22 burdensome but, in effect, an attempt to require
23 that the Airpark pay for many costs which the
24 Utility would normally incur, and which it could
25 have substantially reduced had it seen fit to do

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so.

Q. Ms. Swain states that the listed conditions are commonly required by the utilities in negotiating developer agreements. What is your response to that allegation?

A. It is my understanding that the requirements of the Utility contained in her list go far beyond any requirements ever imposed upon a developer by a utility for the extension of service, much less this Utility. She states that the list has required that many of the costs be borne by the developer and paid in advance because of the "tight financial constraints" of the Utility. It appears to me as though the intent is to keep from providing service to the Airpark, since the conditions proposed by her are far beyond reasonable, and wholly outside the Utility's tariff or past service availability policy. In addition, it is my understanding from talking with persons familiar with the private water and sewer industry in this state, that they are far beyond anything that any other utility has ever required, to their knowledge. Certainly not with Commission approval.

Q. Please go down the list and provide us with your comments concerning the nature of the requirements

1 proposed by the Utility, and your understanding of
2 those requirements.

3 A. The first condition is that a letter of intent be
4 prepared by the Airpark to formalize the request
5 for service. The Airpark has filed numerous formal
6 requests for service over the years. I do not
7 understand the purpose behind this additional one,
8 unless it is simply to impose an additional burden
9 on the Airpark. Perhaps, the purpose of this
10 requirement is to have the Airpark agree to pay
11 whatever the costs the Utility or its consultants
12 might incur related to the agreement for
13 establishment of new service availability fees and
14 extension of their service territory to include the
15 Airpark.

16 I have several problems with this, if this is
17 the intent. First, she wants us to pay \$7,500.00
18 in advance to cover the legal and consulting fees
19 related to three separate items. It is my
20 understanding that Rule 25-30.540, Florida
21 Administrative Code, does not envision paying for
22 all costs related to entering into an agreement,
23 but simply its administrative, engineering and
24 legal costs incurred in the execution and
25 performance of the agreement. We have already paid

1 them the engineering fees which they demanded
2 previously. There can be little left to incur
3 related to the execution and performance of an
4 appropriate agreement. We have constructed the
5 facilities in accordance with an agreed upon set of
6 plans, and are ready to connect those directly to
7 their sewer treatment facilities without utilizing
8 any of their existing collection system.

9 Secondly, the rule requires that the advance
10 deposit shall not exceed 10% of the total charges
11 to be paid by the application or the additional
12 engineering, administrative and legal expenses
13 prudently incurred by the utility. The \$7,500.00
14 cannot possibly represent 1/10 of the total costs
15 to be incurred in relation to the agreement. There
16 is no provision within the rule to require that the
17 developer pay for an application for increase in
18 service availability fees, or extension of
19 territory. In fact, the Utility could have
20 extended its territory to serve the Airpark in the
21 pending application. We urged both the Commission
22 and the Utility to take such action, before the
23 Order was even issued which required the Utility to
24 file such an application. As I have stated
25 previously, we believe it is imprudent on the part

1 of the Utility to have filed the application as
2 they did. In any case, if they are going to
3 require the Airpark to pay the costs of such an
4 extension, then each individual lot owner should
5 pay for an extension to service to their lots, and
6 the Utility's related property owner should be
7 paying for the cost of Docket No. 910260-WS instead
8 of the Utility.

9 Their suggestion that the developer pay for the
10 establishment of new service availability fees
11 sounds totally inappropriate to me. I have
12 discussed this with people knowledgeable in the
13 utility area, including my counsel, and they have
14 indicated to me they have never heard of such a
15 requirement being imposed on someone. In fact, the
16 Utility is asking us to take over all the capital
17 costs of administration of their Utility. Those
18 service availability fees will be equally
19 applicable to all persons requesting service of the
20 Utility, and as such they ought to be a capitalized
21 cost to the Utility and included in rate base to
22 the extent that such costs are reasonable. The
23 same is true with an extension of certificate.

24 The Utility next proposes that the developer
25 prepay all impact fees established in the service

1 availability filing. As I have stated previously,
2 the Utility has never required any prepayment of
3 impact fees, and the Utility's related landowner
4 has never paid any such fees. It has been the
5 service availability policy of this Utility to
6 connect each individual customer as service is
7 requested, and the impact fee for his individual
8 lot is paid. It appears to me to be discriminatory
9 to suddenly require that an unrelated party prepay
10 service availability charges much less ones that
11 have not been applied for or approved.

12 Secondly, they are proposing that the Airpark
13 pay the gross-up on contributions-in-aid-of-
14 construction to be donated to the Utility. It is
15 my understanding that not only does this Utility
16 not have approval for gross-up, but they have not
17 even requested it. This is similar to their
18 argument concerning guaranteed revenues. They are
19 asking this developer to agree to pay something
20 that they don't even have approval for.

21 As far as the items in number 4 of the
22 attachment, those generally seem reasonable.
23 However, it depends upon how much of a "warranty"
24 they want from the developer when we dedicate our
25 facilities to them. Since rates are established

1 for their current system, which include repair of
2 pumps, etc., in the system, if we are to be
3 responsible for repair of those normal maintenance
4 items during that warranty period, the rates for
5 service to the Airpark's customers would, in
6 effect, be excessive, since the Utility would not
7 incur that cost. This seems unreasonable and
8 discriminatory to me. If what the Utility is
9 asking for in the alternative is a warranty against
10 defects in workmanship or installation, we would be
11 glad to provide that to them, and we should provide
12 such a warranty to them.

13 In their final provision, under section 5 of
14 Attachment A to Ms. Swain's testimony, I have noted
15 that they will not accept the pumping stations or
16 septic tanks as utility property. It is my
17 understanding that throughout their system, the
18 septic tanks themselves have never been considered
19 to be utility property, and we certainly request
20 that the customers in the Airpark be treated like
21 all other customers. As such, the septic tanks
22 should remain the property of the individual lot
23 owners. As far as the pumping stations, it is my
24 understanding that they have always been part of
25 the Utility's property, that the Commission has set

1 rates based upon recognition of the costs on
2 average for maintenance of these facilities, and as
3 such, if the Airpark or its individual residents
4 are required to maintain these facilities, the
5 rates which the Commission is currently in the
6 process of setting will be excessive for Airpark
7 customers, and this provision and those rates will
8 be discriminatory. I cannot imagine the Commission
9 approving such a scheme.

10 Finally, Ms. Swain states that this list is not
11 intended to be a complete description of the terms
12 and conditions of a developer agreement, and is
13 only the minimum terms which will be required. It
14 already appears to me to go far beyond what I
15 understand has ever been required in a developer
16 agreement. It is apparent that their purpose is to
17 keep from providing service to the Airpark by
18 simply making the conditions for such service so
19 unreasonable as to make compliance with them
20 impossible. They even wish to go beyond that and
21 leave the door open to impose additional
22 conditions. I don't know any solution other than
23 to request that the Commission advise the Utility
24 that these suggestions are untenable, and not
25 within the Utility's policy or the Commission's

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rules.

Q. Finally, Mr. Delavan, Ms. Swain notes that the Airpark has not contacted the Utility regarding these conditions other than at the March 25 meeting, and a phone call which she received from your counsel, Mr. Nard Helman, and from those discussions she would conclude that the conditions have been rejected. Is this correct?

A. Yes and no. We attempted to respond to each and every condition at our March 25 meeting. However, after an hour of meeting between myself, two members of the Commission Staff, Mr. Feil and Mr. Von Fossen, Mr. Gatlin, and Ms. Swain, the Utility representatives suddenly announced that they would have to leave. This only one hour after we had begun our meeting. At that time, we were attempting to discuss the various conditions which the Utility was proposing. I will readily admit that it was apparent that we could probably not agree to those conditions since they were far beyond anything ever proposed to us before, and it is my understand far beyond anything ever proposed by a utility in a developer agreement.

As far as a counter-offer, it seemed that we were so far apart, and the Utility's intent was

1 obviously to keep from providing us with service at
2 all, that it was apparent we would have to go
3 forward with our Complaint to let the Commission
4 decide what were the appropriate conditions. It
5 was not a matter of our being unwilling to
6 negotiate, but simply based upon these conditions
7 it is obvious that the Utility had no intention of
8 ever coming to any agreement for any reasonable
9 terms.

10 Q. Do you have any further testimony to provide in
11 this regard?

12 A. Yes. I have repeatedly stated that there was never
13 any question of whether the Utility was to provide
14 service to the Airpark from the day of inception of
15 both entities. When they were under common
16 ownership, and when that ownership was separated,
17 all parties agreed and understood that service
18 would be provided when capacity was available, and
19 no mention was ever made of all these conditions
20 which the Utility is now proposing, including the
21 prepayment of all service availability charges
22 related to any one phase. This understanding was
23 reiterated in discussions with Utility
24 representatives over the last three years. I have
25 reviewed the old files which I have, and have

1 accumulated some additional correspondence which I
2 have attached to my testimony as Exhibit _____ (GD-
3 11). This correspondence was from the period of
4 time where the Utility and the Airpark were under
5 common ownership. It is obvious here that the
6 owners of the Utility and the Airpark made
7 commitments to various governmental agencies that
8 water and sewer service were available currently,
9 even at that time, to Phase II, as well as Phase I
10 of the Airpark. It has only been in the last few
11 months that any question has even arisen concerning
12 that fact.

13 Q. Do you have any further testimony at this time?

14 A. No, I do not.

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Where nature knows how to relax

**Sandy
Creek
Ranch
& Country Club**

June 30, 1983

Veterans Administration
P. O. Box 1437
St. Petersburg, FL 33731
Attn: Mr. Tom Smith

re: Application for Environmental Review
Sandy Creek Airpark, Inc.

Dear Mr. Smith:

I am enclosing the following documentation in duplicate for your review:

- 1) Completed Application for Environmental Review (VA 26-8492) referencing Sandy Creek Airpark, Inc.
- 2) Location Map
- 3) Preliminary Subdivision Plan
- 4) Equal Opportunity Certification (VA 26-421)
- 5) Affirmative Marketing Plan (VA 26-8791)
- 6) Preliminary Grading and Topographic Plans and Data
- 7) Letter to Mr. Ed Witherton of HUD indicating that HUD approval is not desired at this time
- 8) Bay County Map
- 9) Copy of special Warranty Deed pertaining to Oil, Gas and Mineral Exceptions
- 10) Copies of Proposed Declaration of Covenants, Conditions and Restrictions
- 11) Sample Copies of Proposed Sales Contracts and Deeds

Sandy Creek Airpark lies adjacent to Sandy Creek Ranch and Country Club, Phase I which is currently being processed through your office under ASP #1724-J. Sandy Creek Airpark is serviced by the same water and sewer facilities which are owned and maintained by The Ranch, Inc. The Ranch, Inc. is responsible for the continuing maintenance, servicing and operation of said facilities. The Airpark is serviced by the following utilities: Electric Service - Gulf Coast Electric Co-op; Telephone Service - Southern Bell Telephone; Garbage Service - M. & O. Sanitation, Inc.



(GD-11)

November 4, 1983

Mr. John W. Mason
Veterans Administration
Regional Office
P. O. Box 1437
St. Petersburg, Florida 33731

re: Sandy Creek Air Park
VA File #1872
Routing: 317/261

Dear Mr. Mason:

Enclosed please find the following:

Copy of Veterans Administration Form 26-8492, application for Environmental Review, pertaining to the above-referenced subdivision.

Copy of Acknowledgment of receipt of Environmental Review exhibits dated August 10, 1983.

Copy of correspondence dated October 2, 1983 from your office indicating Sandy Creek Air Park has been placed on discontinued status.

On June 30, 1983, Sandy Creek Air Park applied for environmental review by the Veterans Administration for VA Subdivision approval of Sandy Creek Air Park, Inc. Said correspondence included numerous documentation, and a copy of said letter is enclosed.

Sandy Creek Air Park has obtained the items requested by the Veterans Administration outlined in the Acknowledgment of Receipt of Environmental Review exhibits and are included as follows:

Recorded plat of Sandy Creek Air Park, recorded in OR Book 14, page 4 of the Public Records of Bay County, Florida.

Grading and drainage plan which was included in the initial correspondence is again submitted.

Recorded copy of Declaration of Covenants, Conditions and Restrictions recorded in OR Book 948, page 83, Public Records of Bay County, Florida.

continued.....

Mr. John W. Mason
November 4, 1983
Page 2.

Soils analysis containing information required on HUD Data
Sheet 79-G.

There apparently is some confusion regarding the community water and sewage disposal systems at Sandy Creek Air Park. The Declaration of Covenants, Conditions and Restrictions, in Sections 17 and 18, references septic tanks, sewer pumps and sewer lines. Sandy Creek Air Park is serviced by a sewer system owned by The Ranch, Inc. who has subcontracted operational requirements to the Water Spigot, Inc. This system is a "low pressure" system approved by the Department of Environmental Regulation. (See Construction Permits #CS03-40604 and #DC03-40596 issued by the State of Florida, Department of Environmental Regulation.)

The system contains a small lift station at each residence which is similar in size and style to that of a standard "septic tank." No lots in Sandy Creek Air Park are allowed to have an individual sewage disposal system. The sewer system and water system owned by The Ranch, Inc. which services Sandy Creek Air Park also services Sandy Creek Ranch & Country Club, Phase I which is a Veterans Administration approved subdivision (ASP #1724-J).

Enclosed is the Sandy Creek Ranch Water System approval issued by the Department of Environmental Regulation under DER Permit #DS0317613 and extension thereof under Permit #DS0356636.

Also enclosed is a copy of the approval letter from the Department of Environmental Regulation pertaining to Storm Water Discharge at Sandy Creek Air Park.

The roads and the air strip will be owned by Sandy Creek Air Park Owners Association, Inc. Sandy Creek Air Park Owners Association, Inc. is responsible for the repair and maintenance of said roads and air-strip as set out in the Declaration of Covenants, Conditions and Restrictions.

Sandy Creek Air Park again requests Veterans Administration Subdivision Approval for Sandy Creek Air Park. If additional documentation is necessary, please contact me.

Sincerely,

Larry E. Myers
Vice President

LEM:ng

enclosures



Final satisfactory compliance of
all subdivision conditions. Your submission
for loan guaranty will be processed.

By J. Mason Date 6-5-84

NOV 17 1983

RE: LETTER OF ACCEPTANCE

The Ranch, Inc.
P.O. Box 1866
Wilma Route 75-427
Panama City, Fl. 32401

Subdivision Name:
Sandy Creek Airport, et
Location:
Bay County
VA File No.:

1872

VA environmental review has been completed. After we receive your signed concurrence with the contents of this letter, we will accept formal applications for commitments on individual properties or group submissions. All commitments issued will be subject to compliance with the following checked conditions.

1. Construct subdivision improvements in accordance with plans, specifications and other exhibits certified to by each professional on _____

Obtain written approval from VA for any changes in exhibits prior to proceeding with work. HUD will accept exhibits without changes or additions.

- 2. Furnish one set of Street and Drainage Plans signed by local authority.
- 3. Comply with HUD Data Sheet 79G (Including certifications by the Soils Engineer and the Erosion-control Specialist).

On completion of subdivision improvements, furnish your signed certification that all improvements have been constructed per VA accepted exhibits and all VA and local standards.

Furnish evidence that the *water* water supply and sanitary sewerage systems have been accepted for continuous maintenance by local authority that has jurisdiction. *community*

Furnish copy of recorded plat and covenants with certifications including signatures of any mortgage or lien holder.

~~Obtain~~ written approval from VA for any changes in ~~exhibits~~ prior to proceeding with work. ~~One set of~~ ~~exhibits~~ ~~will~~ be accepted at HUD since concurrence that this development is environmentally acceptable has not been requested nor obtained.

(Over)

Restricted
One Acre Homesites



THE RANCH, INC.

 BUILDERS
Exclusively At

EQUESTRIAN CENTER
Horse Shows, Boarding
Riding Trails

SANDY CREEK RANCH

"A Community of Custom Built Country Homes"

P. O. BOX 1886 • PANAMA CITY, FLORIDA 32401 • TELEPHONE (904) 871-0654

November 23, 1983

Mr. John Mason
Veterans Administration
Regional Office
P. O. Box 1437
St. Petersburg, Florida 33731

Dear Mr. Mason:

The Ranch, Inc. is the owner and operator of the water plant, water lines, etc. that constitute the water system, and the sewage lagoon, pumps, lines, etc. that constitute the DER approved sewage disposal system -- all of which services Sandy Creek Air Park.

The Ranch, Inc. collects all revenues for said systems and is responsible for and does maintain and repair both systems.

The Ranch, Inc. has on staff a qualified and licensed water treatment plant operator whose name is Jan Thomas, license no. 4249. In addition, The Ranch, Inc. has contracted with the Water Spigot, a state approved analysis laboratory, to provide the necessary bacteriological data required by the Department of Environmental Regulation.

Sincerely,

THE RANCH, INC.

Adam J. Whitley
President

ng

SANDY CREEK RANCH

"A Community of Custom Built Country Homes"

P. O. BOX 1866 • PANAMA CITY, FLORIDA 32401 • TELEPHONE (904) 871-0654

November 23, 1983

Mr. John Mason
Veterans Administration
Regional Office
P. O. Box 1437
St. Petersburg, Florida 33731

Re: Sandy Creek Air Park, Inc.

Dear Mr. Mason:

I appreciate your assistance in enabling the Ranch, Inc. to receive Veterans Administration conditional Subdivision Approval on Sandy Creek Air Park, Inc.

Your letter of acceptance, dated November 17, 1983 (a copy of which is enclosed containing the signed concurrence of the developer) indicates some additional requirements:

In answer to paragraph 5, pertaining to streets, drainage, water supply and sanitary sewage systems, I enclose:

1. A letter from Sandy Creek Air Park Homeowners Association indicating acceptance and maintenance responsibilities for said streets and drainage.
2. A letter from The Ranch, Inc. indicating its servicing responsibilities for the water system and sewage system.

In answer to paragraph 6, enclosed is a copy of the recorded plat and a copy of the recorded Covenants, Conditions and Restrictions for Sandy Creek Air Park, Inc.

There is no mortgage holder or lien holder on Sandy Creek Air Park property.

continued.....

May 24, 1984

Mr. John Mason
Veterans Administration
Regional Office
P. O. Box 1437
St. Petersburg, Florida 33731

re: Sandy Creek Air Park

Dear Mr. Mason:

Based on Paragraph 4 of your letter of acceptance for Sandy Creek Air Park, Inc., VA File No. 1872, this is to certify that all subdivision improvements for Sandy Creek Air Park have been completed and constructed as per the VA exhibits and meet all VA and local standards.

Thank you for your prompt assistance in this matter.

Sincerely,

Larry E. Myers
Vice President

LEM:ng



Sandy Creek Ranch

The Country Club Community That's Pure Country
P.O. Box 1866
County Road 2297
Panama City, Florida 32402
Phone: 904/871-0654

August 10, 1984

Mr. William E. Bond, Jr.
Clerk, Partington, Hart & Hart
Attorneys at Law
713 South Palafox Street
P. O. Box 12585
Pensacola, Florida 32501

re: Plat of Sandy Creek Airpark,
Phase II, and C.I.T. Mortgage
Correction

Dear Mr. Bond:

You represented CIT Corporation as Plaintiff in Case #821990 against Sandy Creek Ranch & Country Club et al as Defendants. Said case resulted in Adam J. Whitley signing a note and mortgage to CIT Corporation in the amount of \$145,842.47 on property that was to be platted as a portion of Sandy Creek Airpark, Phase II. I am enclosing two plats of Sandy Creek Airpark, Phase II and the original mylar for your review.

Due to the fact that CIT holds a mortgage on part of the land that is to be platted, their joinder in the plat is required. However, at the time the mortgage legal description was prepared, the engineering work had not commenced. It has now been determined after the engineering work has been completed, that the legal description contained on the mortgage should be corrected as it interferes with the most efficient land use as developed by the surveyor.

The legal description on said mortgage contained a provision for 13 lots and a non-exclusive easement for ingress and egress to said lots. I have outlined on one of the plats the location of the land contained in the legal description on CIT's mortgage. The changes that I am proposing are minor but they allow for the most effective platting of land based on existing topography. I wish to have CIT join in the plat and correct the legal description contained on their mortgage instrument.

The current mortgage payment, however, is in arrears. In discussion with Dave Hammond of CIT, he does not appear to have any hesitation in signing the plat providing it meets with your approval. It should be obvious to all parties concerned that it behooves CIT to correct the mortgage and join in the plat. If, in the unexpected event that CIT must foreclose the mortgage, they will have lots that are easier to convey - both in terms of obtaining surveys, legal descriptions, and



Sandy Creek Ranch

The Country Club Community That's Pure Country
P.O. Box 1866
County Road 2297
Panama City, Florida 32402
Phone: 904/871-0654

Mr William E. Bond, Jr.
August 10, 1984
Page 2.

title insurance, and in obtaining water and sewer permits. It is our intention to pave the road and install underground utilities similar to those installed on the north side of the airstrip. Additionally, restrictive covenants and association documents will need to be signed by CIT at such time as they are made available to us by our attorney.

My concern is that due to the fact that the mortgage is currently in arrears, CIT will feel that they have some leverage to require the mortgage to be brought current before signing the plat. It is our intention to proceed with the recording of a plat with or without the joinder of CIT. In the unlikely event that CIT feels compelled not to sign this plat, the plat can be modified to provide for paving and underground utilities to come from the east and terminate at the eastern line of the property encumbered by CIT's mortgage. Should CIT agree to signing the plat, the development will continue from west to east, allowing for paving and utilities to be made available to the land encumbered by CIT's mortgage as shown on the existing proposed plat.

We are making every effort to bring the mortgage current and to continue making the payments on a timely basis as stated on said note and mortgage. It can only be assumed at this point that CIT will bear with us so that we may avoid any additional and unnecessary action.

I am entrusting the original Mylar Plat to you. If CIT fails to sign same, I will be expecting to receive it back from you as soon as possible. Please expedite your review of the enclosed information and forward the original plat for CIT's signature as soon as possible if the information contained herein meets with your approval. We must go before the Board of County Commissioners for permission to record the plat and arrangements must be made in advance.

If you have any questions or need additional information, please let me know as soon as possible.

Sincerely,



Larry E. Myers
Vice President

LEM:ng

enclosures

SANDY CREEK RANCH

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June 24, 1983

Ms. Patti Gainer
Freedom Mortgage Company
6916 W. Highway 98
Panama City Beach, FL 32407

re: VA Case #534730 - Gillis

Dear Patti:

In reference to our phone conversation of today, June 24th, pertaining to sewer and water services on the above referenced case, this letter is to confirm the fact that The Ranch, Inc. is the owner of the sewer system and the water system servicing Sandy Creek Ranch. The Ranch, Inc. collects all revenues for said system and is responsible for and does maintain and repair both the water and sewer systems.

The Ranch, Inc. has on staff a duly qualified and licensed water treatment plant operator whose name is Jan Thomas, License #4249. Construction has just been completed on the sewer plant, and we are under contract with Capitol Labs in Tallahassee for licensed sewer plant operation.

Access to the above referenced property is by way of former State Road 167, now known as County Road 2297 which is an asphalt-paved county-maintained road with adjoining drainage area also repaired and maintained by Bay County. The enclosed map and boundary survey indicates the lot in relation to said road and drainage facilities.

I trust this letter with the information contained herein is sufficient to satisfy the Veterans Administration requirements indicated on the C.R.V.

Sincerely,

Larry E. Myers
Vice President

LEM/sks

Enclosures

ACKNOWLEDGMENT OF RECEIPT OF ENVIRONMENTAL REVIEW EXHIBITS

8-10-83

NAME OF SPONSOR
The Parcel, Inc.

ADDRESS OF SPONSOR (Include Number, Street or Rural Route, City, County, State and ZIP Code)
*P.O. Box 1866
Newa Rents 75-427
Palm Bay, FL 32909*

SPONSOR'S TELEPHONE NO. (Include Area Code)
904-871-0654

VA FILE NUMBER
1872

DEVELOPER'S NAME (SEE TRACT NUMBER)
Paidy Creek, Deepark, INC.

CITY
Bay County

YOUR REQUEST FOR ENVIRONMENTAL REVIEW WAS RECEIVED ON _____ PROCESSING WILL BEGIN IMMEDIATELY. PLEASE REFER TO THE VA FILE NUMBER ABOVE IN ALL CORRESPONDENCE REGARDING THIS SUBMITTAL.

THE ITEMS CHECKED BELOW ARE REQUIRED BEFORE FURTHER ACTION MAY BE TAKEN ON YOUR REQUEST. PLEASE BE AWARE YOU MUST COMPLY WITH THE ADDITIONAL REQUIRMENTS INDICATED.

~~PLAT~~ PLAT & Clarify who owns AIR STRIP.

PRELIMINARY SUBDIVISION PLAN & MASTER PLAN IF THERE IS ADJACENT LAND UNDER SPONSOR'S (DEVELOPER'S) CONTROL.

VA FORM 26-421, EQUAL OPPORTUNITY CERTIFICATION

ENVIRONMENTAL IMPACT STATEMENT (Required because of the size of the proposal)

OTHER (Specify):

SPONSOR MUST INDICATE BY LETTER:

1. HUD APPROVAL IS DESIRED AT THIS TIME, OR
2. HUD APPROVAL IS NOT DESIRED AT THIS TIME AND HUD FINANCING WILL NOT BE OFFERED IN THE DEVELOPMENT, HOWEVER, HE OR SHE IS AWARE THAT IF HUD PARTICIPATION IS DESIRED AT A LATER DATE, AN APPLICATION FOR SUBDIVISION FEASIBILITY ANALYSIS MUST BE SUBMITTED TO HUD WITH ALL OF THE REQUIRED EXHIBITS TO SUPPORT THE PROPOSALS, AND HE OR SHE IS AWARE OF THE POSSIBILITY THAT HUD MAY NOT ACCEPT THE SUBDIVISION.

PROPOSED SUBDIVISION COVENANTS AND RESTRICTIONS

GRADING AND DRAINAGE PLAN

STATEMENT FROM LOCAL HEALTH AUTHORITY OR OTHER AUTHORITY HAVING JURISDICTION THAT IT IS NOT ECONOMICALLY FEASIBLE TO ESTABLISH PUBLIC OR COMMUNITY WATER AND/OR SEWAGE DISPOSAL FACILITIES, IF APPLICABLE.

COMPLETE VA FORM 26-1888 (SUBDIVISION SEWAGE DISPOSAL REPORT). LOCAL HEALTH AUTHORITY FORMS MAY BE USED IN LIEU OF VA FORM 26-1888 IF THE INFORMATION REQUIRED IN VA FORM 26-1888 IS INCLUDED IN THE LOCAL HEALTH AUTHORITY FORMS.

→ Clarify your Declaration states septic systems - the Reg-1 states public sewer.

APPLICATION FOR ENVIRONMENTAL REVIEW

NAME AND ADDRESS OF DEVELOPER
 The Ranch, Inc.
 P. O. Box 1866
 Wewa Route 75-427

CITY OR COUNTY: Panama City (Bay County) STATE: Florida ZIP CODE: 32401 TELEPHONE NUMBER (Include Area Code): (904) 871-0654

HUD/VA FILE NUMBER: NAME OF SUBDIVISION: SANDY CREEK AIRPARK, INC.

TRACT NUMBER: LOCATION OF SUBDIVISION: 4 miles off Highway 22 on State Road 2297

STAGE OF DEVELOPMENT OF SUBDIVISION: Started Completed

Environmental review of this proposal is requested and the following exhibits are attached:
 Location Map Optional Information submitted:
 Preliminary Subdivision Plan Soils Report Topographic Data
 Signed Equal Employment Opportunity Certification Preliminary Grading Plan A-95 Comments
 HUD 92010/VA 26-421 Other _____
 Affirmative Marketing Plan (HUD-935-2/Certification of Intent Not to Market (HUD-935-3))

GENERAL INFORMATION

1. Developer is: Land Owner Option Holder

2. Size of this Parcel: 66 acres

3. Number of Lots: 48

4. Typical Lot Size: 150' x 225'

5. Adjacent Land Under Developer's Control: 48 Acres

6. Other Land Uses: Subdivision

7. Parcel is part of a locally-approved development plan of _____ lots

8. Developer will:
 develop land and build homes; initial plan is to start _____ homes in \$ 65,000.00 to \$ 75,000.00 price range.
 develop land and sell improved lots
 produce finished typical building sites at a price of \$ _____
 limit site grading to minor redistribution with house foundation in natural soil.
 construct house foundations on soils engineered cuts and fills.

9. Any Special Assessments? Yes No
 If yes, describe under Remarks.

10. Any Mineral Reservations? Yes No
 If Yes, describe under Remarks.

11. Bus (distance, direction, frequency): School Bus only (twice daily)

12. Fire Station (distance, direction): 2 miles North

13. Shopping (distance, direction): 9 miles Northwest

14. Is Tentative Map approved by Local Authorities?
 Yes No

15. Is Plan recorded?
 Yes No

16. Covenants recorded? Yes No
 Will be identical to previous unit.
 Will conform with FHA Data Sheet 40.

17. a. Water System: Central (Public or Community) Individual
 b. Sewerage System: Central (Public or Community) Individual

18. Proposed Street Improvements:
 Pavement Base: Clay
 Wearing Surface: Asphalt
 Curb and Gutter Sidewalks

19. Underground electric and telephone? Yes No
 (Explain under Remarks)

20. Gas? Yes No

21. Will development include common area? Yes No
 (Describe facilities and maintenance under Remarks)

22. Developer has has not previously dealt with this HUD/VA Office. has dealt with other HUD/VA Office
 (Explain under Remarks).

23. Schools (Distance, direction):
 Elementary: 7 miles Northwest
 Junior High: 10 miles Northwest
 High: 10 miles Northwest

24. Historic/Archeological sites within one mile.
 Yes (Attach Description)
 No

25. Planned Unit Development:
 Units: 1 Br. 2Br. 3Br. 4Br. Total _____
 Off-Street Parking Spaces _____
 Planned Common Areas: Yes
 Annual HOA Assessment _____

*Any subdivision where there is a mandatory membership in a Homeowner's Association requiring lien supported assessments will be processed as a Planned Unit Development (PUD).

REMARKS (Use additional sheets if necessary)
 There will be annual assessments to pay for maintenance of airstrip and roads.

CERTIFICATE

By submitting this request for site eligibility and signing this certification, builder, developer, seller or other signatory agrees with the Federal Housing Commissioner that pursuant to the requirements of the HUD Regulations, (a) neither it nor anyone authorized to act for it will decline to sell, rent or otherwise make available any of the properties or housing in the subdivision to a prospective purchaser or tenant because of race, or sex, or creed or national origin; (b) it will comply with state and local laws and ordinances prohibiting discrimination; and (c) failure or refusal to comply with the requirements of either (a) or (b) shall be a proper basis for the Commissioner to reject requests for future business with which the sponsor is identified or to take other corrective action he may deem necessary to carry out the requirements of the Regulations.

The undersigned further agrees, in consideration of the review of this proposal by HUD, that any deposits or downpayments received by the undersigned or an agent of the undersigned in connection with the purchase of a home within the subdivision described above shall, upon receipt, be deposited in escrow or in trust or in a special account which is not subject to the claims of my creditors and where it will be maintained until it has been disbursed for the benefit of the purchaser or otherwise disposed of in accordance with the terms of the contract of sale.

SIGNATURE OF DEVELOPER: [Signature] TITLE: President NAME OF DEVELOPMENT COMPANY: SANDY CREEK AIRPARK, INC. DATE: 5/26/83