

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

**HTX HELICOPTERS, LLC d/b/a  
HELIBLOCK,**  
  
**COMPLAINANT,**  
  
**V.**  
  
**RHODE ISLAND AIRPORT  
CORPORATION,**  
  
**RESPONDENT.**



**FAA Docket No. 16-21-10**

**DIRECTOR'S DETERMINATION**

**I. INTRODUCTION**

This matter is before the Federal Aviation Administration (FAA) on a complaint filed under Title 14 of the Code of Federal Regulations, Part 16 (14 CFR Part 16) by HTX Helicopters, LLC, d/b/a HeliBlock (Complainant or HeliBlock) against the Rhode Island Airport Corporation (Respondent or RIAC), sponsor and operator of the Block Island State Airport (Airport or KBID).

HeliBlock alleges that RIAC violated Grant Assurance 22, *Economic Nondiscrimination*, and Grant Assurance 23, *Exclusive Rights*, when it denied HeliBlock the ability to operate out of the Airport without a lease, and when it did not renew HeliBlock's lease based on a contested breach of the previous lease.<sup>1</sup> HeliBlock claims RIAC is discriminating against HeliBlock by not providing reasonable access to the Airport, and also claims that RIAC is granting an exclusive right to other aeronautical users by banning the helicopter operator from the Airport. HeliBlock alleges that RIAC violated Grant Assurance 19, *Operation and Maintenance*, in asserting that RIAC did not operate the Airport in a safe and serviceable condition. (FAA Exhibit 1, Item 3, para. 29 and para. 56-58).

RIAC denies the allegations, and states that it has had a long-standing unwritten policy to require a lease for commercial operators based at all of the airports it operates. (FAA Exhibit 1, Item 7, para. 13 - 14). Further, RIAC claims that its actions to deny HeliBlock access to the Airport without a lease and to choose not to renew the lease due to the contested breach are "reasonable"

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<sup>1</sup> RIAC invoked the indemnification clause in HeliBlock's lease after RIAC was added as an indispensable party to a noise/nuisance lawsuit (Kramer lawsuit) filed by Block Island property owners against HeliBlock. The original lawsuit was dismissed partially on the grounds that RIAC was not included in the lawsuit. An inverse condemnation or takings claim against RIAC was added to the refiled lawsuit. (FAA Exhibit 1, Item 3, Exhibit G and Item 21, Exhibit F-3).

and “prudent”. (FAA Exhibit 1, Item 8, p. 3). RIAC states that HeliBlock provides no evidence to suggest that the Airport is not being operated in a safe and serviceable manner. (FAA Exhibit 1, Item 7, para. 56). Further, it states “HeliBlock is being treated in the same manner, and subject to the same terms and conditions, as all other similarly situated users of RIAC airports.” (FAA Exhibit 1, Item 8, p. 14).

With respect to the allegations presented in this Complaint, under the specific circumstances at the Airport as discussed below and based on the Administrative Record in this proceeding, the Director finds the Respondent not in violation of Grant Assurance 19, *Operation and Maintenance*, since no evidence was submitted by the Complainant to support the claimed violation. The Director finds the Respondent in violation of Grant Assurance 22, *Economic Nondiscrimination*; the application of the indemnification clause by RIAC for a noise/nuisance lawsuit is unreasonable and unjustly denies HeliBlock access to the Airport. The Director finds the Respondent not in violation of Grant Assurances 23, *Exclusive Rights*, since the pleadings provide no evidence that a similarly situated operator is being granted an exclusive right that is being denied to HeliBlock.

The FAA’s decision in this matter is based on applicable Federal law, FAA policy, and review of the pleadings and supporting documentation submitted by the parties, which comprise the Administrative Record reflected in the attached FAA Exhibit 1.

## **II. PARTIES**

### **A. Complainant**

The Complainant, HTX Helicopters, LLC, d/b/a HeliBlock, is a New York limited liability company, with its base of operation located at Tom Harvey Road, Westerly, Rhode Island 02891. HeliBlock is a Part 135 operator providing helicopter sight-seeing tours in and around the coast of Rhode Island, including Block Island. It also offers helicopter charter service between Westerly State Airport and Block Island State Airport. HeliBlock executed successive leases with RIAC from 2016 to 2019 to operate out of the Airport. (FAA Exhibit 1, Item 3, para. 1, 3, and 4, and Exhibits A, B, C, and D).

### **B. Respondent**

The Rhode Island Airport Corporation (RIAC) is a subsidiary of the Rhode Island Commerce Corporation and is charged with operating and maintaining six public use airports owned by the State of Rhode Island, including Block Island State and Westerly State Airports. (FAA Exhibit 1, Item 9, p. 3). The FAA recognizes RIAC is the sponsor for the six airports. KBID has been financed, in part, with funds provided by the FAA under the Airport Improvement Program (AIP) authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. § 47107, *et seq.* The Airport has received over \$12 million dollars in AIP grant funds, including a grant in 2021 to rehabilitate the apron. (FAA Exhibit 1, Item 25).

Block Island Airport is a public use, non-hub, primary airport according to the National Plan of Integrated Airports (NPIAS) 2021-2025. The Airport is located on Block Island in the Town of Shoreham, Rhode Island and has one 2,502-foot runway. It supports over 16,000 annual

enplanements and over 7,000 annual operations. Four aircraft are based at KBID. (FAA Exhibit 1, Items 26 and 27).

### III. PROCEDURAL HISTORY

- 1) On May 21, 2021, HeliBlock filed a formal complaint under 14 CFR Part 16. (FAA Exhibit 1, Item 3).
- 2) On June 7, 2021, FAA docketed the complaint as No. 16-21-10. (FAA Exhibit 1, Item 2).
- 3) On July 27, 2021, RIAC filed its Answer, Memorandum of Law in Support of the Answer, and Exhibits in Support of the Memorandum of Law in Support of the Answer. (FAA Exhibit 1, Items 7, 8, and 9).
- 4) On August 6, 2021, HeliBlock filed its Reply to the Answer and Exhibits in Support of the Reply. (FAA Exhibit 1, Items 11 and 12).
- 5) On August 23, 2021, RIAC filed its Rebuttal to the Reply. (FAA Exhibit 1, Item 15).
- 6) On November 1, 2021, HeliBlock filed its Amended Reply to Complainant's Answer along with Exhibits in Support of the Amended Reply. (FAA Exhibit 1, Items 20 and 21).
- 7) On November 24, 2021, RIAC filed a Rebuttal to Complainant's Amended Reply. (FAA Exhibit 1, Item 24).

All other extension requests, motions and orders are included in the Administrative Record – FAA Exhibit 1.

### IV. FACTUAL BACKGROUND

- 1) On, June 29, 2016, HeliBlock entered into a lease with RIAC to operate its helicopter sightseeing business at KBID, and subsequently entered into similar successive annual leases in 2017, 2018, and 2019.<sup>2</sup> The leases provided exclusive use of a 165 square foot (SF) terminal office space and 6,400 SF of nonexclusive use of operational ramp area. (FAA Exhibit 1, Item 3, Exhibits A, B, C, and D).
- 2) September 17, 2018, HeliBlock was party to a lawsuit (Kramer lawsuit) initiated by several Block Island property owners. The property owners alleged that the helicopter noise disturbance generated from HeliBlock's operation at KBID was a nuisance given the frequency and nature of the operations. (FAA Exhibit 1, Item 3, para. 21, Exhibit E, para. 35-41).
- 3) March 15, 2019, HeliBlock filed a motion to dismiss the lawsuit. Three reasons were cited in the motion for dismissal including: the federal preemption for noise, failure to exhaust other

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<sup>2</sup> The term of the 2016 lease was July 1, 2016 to September 30, 2016. All successive leases were for one year for the terminal space and seasonal use of the ramp for supporting its helicopter operation.

remedies, and failure to name RIAC as party to the lawsuit. (FAA Exhibit 1, Item 9, Exhibit 1D).

- 4) Spring of 2019 -The Superior Court of Washington County, Rhode Island, granted HeliBlock's Motion to Dismiss but allowed the plaintiffs to refile its complaint. (FAA Exhibit 1, Item 9, Exhibit 1, p. 5). A specific date was not provided in the pleadings.
- 5) June 18, 2019 - The plaintiffs filed an amended suit and named RIAC, as well as HeliBlock, as defendants. The refiled Kramer lawsuit added inverse condemnation claims against RIAC. (FAA Exhibit 1, Item 3, Exhibit F). The lawsuit "alleges that RIAC is liable for Nuisance and 'Inverse Condemnation' as a result of HeliBlock's activities." (FAA Exhibit 1, Item 3, Exhibit G, p. 1).
- 6) July 25, 2019 - RIAC tendered the lawsuit defense of the claims to HeliBlock, citing the indemnification clause in its 2019 lease with RIAC. (FAA Exhibit 1, Item 3, Exhibit G, p. 2).
- 7) August 2, 2019 - HeliBlock raised issues about the indemnification claim. (FAA Exhibit 1, Item 9, Exhibit 1F).
- 8) August 15, 2019 - RIAC claimed the right to indemnification under the lease and asserted a cross-claim against HeliBlock on those grounds. (FAA Exhibit 1, Item 3, Exhibit H).
- 9) Fall of 2019 - The parties' counsels and the plaintiffs' counsel in the Kramer lawsuit corresponded regarding potential mediation of all the claims. (FAA Exhibit 1, Item 3, Exhibit N).
- 10) March 26, 2020 - RIAC informed HeliBlock that it did not intend to renew the 2019 lease and would not consider a new lease with HeliBlock until it rectified the breach by defending, indemnifying, and holding RIAC harmless in the Kramer lawsuit. (FAA Exhibit 1, Item 3, Exhibit K-3).
- 11) June 30, 2020 - HeliBlock's 2019 lease expired. (FAA Exhibit 1, Item 9, Exhibit 1, para. 25 and 27). HeliBlock continued to operate from the Airport without a lease. (FAA Exhibit 1, Item 3, para. 33).
- 12) July 9, 2020 - RIAC sent a letter informing HeliBlock that it needed to cease operations at KBID. (FAA Exhibit 1, Item 3, Exhibit M).
- 13) Summer of 2020 - HeliBlock continued to operate at KBID without a lease throughout the summer of 2020. (FAA Exhibit 1, Item 9, Exhibit 1, para. 46).
- 14) October 8, 2020 - RIAC adopted a formal written leasing policy requiring a lease for all based commercial operators at all the airports that it operates. (FAA Exhibit 1, Item 9, Exhibit 1, para. 11 and 15, and Exhibit 1A).
- 15) March 22, 2021 - The Rhode Island Federal District Court dismissed HeliBlock's request for a declaratory judgment that it had the right to operate at KBID without a lease. (FAA Exhibit 1, Item 8, p.8).

- 16) May 5, 2021 - HeliBlock informed RIAC of its intent to begin seasonal operations at KBID without a lease. (FAA Exhibit 1, Item 9, Exhibit 1I).
- 17) May 10, 2021 - RIAC responded that it would not re-enter into a lease to allow HeliBlock to operate from KBID until it rectified the breach of the 2019 lease. RIAC indicated it would take legal action against HeliBlock if necessary. (FAA Exhibit 1, Item 9, Exhibit 1J).
- 18) June 9, 2021 - RIAC filed a motion for a temporary restraining order and preliminary injunction against HeliBlock with the Rhode Island Superior Court to prevent it from operating at the Airport. (Exhibit 1, Item 9, Exhibit 5).
- 19) July 1, 2021 - RIAC implemented minimum standards for Rhode Island State Airports. (FAA Exhibit 1, Item 9, Exhibit 1B).
- 20) July 14, 2021 - RIAC was granted a Temporary Restraining Order<sup>3</sup> against HeliBlock. (FAA Exhibit 1, Item 15, Exhibit 1).
- 21) September 8, 2021 - The Rhode Island Superior Court denied RIAC's motion for a preliminary injunction against HeliBlock. The Court found that RIAC failed to demonstrate a prima facie argument and that the indemnification issue in the lease was complex. The Court recognized the need for a lease and indicated that HeliBlock should continue under the terms of the now expired 2019 lease. (FAA Exhibit 1, Item 21, Exhibit V).

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<sup>3</sup> A written Court Order was not prepared.

## V. ISSUES

The Complaint alleges three grant assurance violations outlined below:

First, HeliBlock alleges RIAC violated Grant Assurance 19, *Operation and Maintenance*, by “[failing] to operate the airport and all related facilities at KBID, at all times, in a safe and serviceable condition in accord with federally prescribed minimum standards.” (FAA Exhibit 1, Item 3 para. 56).

Second, HeliBlock alleges RIAC violated Grant Assurance 22, *Economic Nondiscrimination* by “unjustifiably discriminating against HeliBlock, based upon HeliBlock’s type, kind, and class of commercial aircraft operation, in its refusal to allow HeliBlock, and the related business category of helicopter sightseeing tours for the public, to make reasonable use of KBID with or without a lease.” (FAA Exhibit 1, Item 3, para. 57).

Third, HeliBlock alleges RIAC violated Grant Assurance 23, *Exclusive Rights* stating “the attempted ban by RIAC effectively creates an exclusive right at KBID for other types of commercial aeronautical operations that engage in all other classifications of commercial activities.” (FAA Exhibit 1, Item 3, para.58).

Upon review of the allegations and the relevant airport-specific circumstances, the FAA has determined that the following issues require analysis under this Determination to provide a complete review of RIAC’s compliance with applicable Federal law and policy:

**Issue 1 – Whether RIAC violated Grant Assurance 22, *Economic Nondiscrimination*, by requiring HeliBlock to have a lease and operating agreement to operate at the Airport.**

**Issue 2 – Whether RIAC violated Grant Assurance 22, *Economic Nondiscrimination*, by refusing to renew HeliBlock’s lease and denying access to the Airport.**

**Issue 3 – Whether RIAC violated Grant Assurance 23, *Exclusive Rights*, when it denied HeliBlock a lease and access to the Airport.**

## VI. APPLICABLE FEDERAL LAW AND POLICY

### A. Airport Sponsor Grant Assurances

As a condition precedent to providing airport development assistance under the AIP, the FAA must receive certain assurances from the airport sponsor. Title 49 U.S.C. § 47107(a) sets forth certain sponsorship requirements to which an airport sponsor receiving federal financial assistance must agree. The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances. See link in the Index (FAA Exhibit 1, Item 1) for a description of all the grant assurances.

## **B. FAA Enforcement Responsibilities**

The Federal Aviation Act of 1958, as amended, 49 U.S.C. § 40101, assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. Commitments assumed by airport owners or sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance, as well as ensuring the public reasonable access to the airport. Pursuant to 49 U.S.C. § 47122, the FAA must ensure that airport sponsors comply with their federal grant assurances.

## **C. The Complaint and Investigative Process**

Pursuant to 14 CFR § 16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The complainant should provide a concise but complete statement of the facts relied upon to substantiate each allegation and describe how the complainant was directly and substantially affected by the actions taken or omitted by the respondents. The regulations governing Part 16 proceedings provide that, if the parties' pleadings supply "a reasonable basis for further investigation," the FAA should investigate "the subject matter of the complaint." 14 CFR § 16.29(a).

In accordance with 14 CFR § 16.33(b) and (e), "a party adversely affected by the Director's Determination may file an appeal with the Associate Administrator for Airports within 30 days after the date of service of the initial determination." If no appeal is filed within the time period specified in paragraph (b) of this section, the Director's Determination becomes the final decision and order of the FAA without further action.

## **VII. ANALYSIS**

### **Preliminary Issue - HeliBlock's claim of RIAC being in violation of Grant Assurance 19, *Operation and Maintenance***

HeliBlock claims that RIAC is in violation of Grant Assurance 19, *Operation and Maintenance*. RIAC denies this allegation and indicates that it has a program in place to inspect the Airport for safety concerns on a regular basis (FAA Exhibit 1, Item 9, Exhibit 2, para. 8-16). Grant Assurance 19, *Operation and Maintenance*, requires the sponsor to operate the airport "in a safe and serviceable condition." (FAA Exhibit 1, Item 1, p. 9). HeliBlock fails to provide any detail to support its claim that the Airport is not being operated in a safe and serviceable manner. The Director dismisses HeliBlock's claim for lack of specificity or evidence, and finds that RIAC is not in violation of Grant Assurance 19.

### **Issue 1 – Whether RIAC violated Grant Assurance 22, *Economic Nondiscrimination*, by requiring HeliBlock to have a lease and operating agreement to operate at the Airport.**

HeliBlock raised several points under Issue 1 questioning: a) RIAC's ability to require a lease and operating agreement for exclusive and nonexclusive use of airport facilities, b) the timing of adoption of the written leasing policy and minimum standards, and c) the inconsistent application of lease requirements.

## 1. Heliblock's Position

- a) ***Ability to require a lease and operating agreement for exclusive and nonexclusive use of airport facilities*** – Heliblock claims that RIAC requires it to have a lease to operate at the Airport but states it should be able to use the nonexclusive ramp space without a lease and continued to operate at the Airport once the lease had expired. Heliblock states, “While RIAC is certainly free to require a lease for the use of office space within the terminal building, there are no federal or state laws or regulations that require a commercial operator to obtain a lease or similar agreement for the purposes of conducting aeronautical operations at any state airport.” (FAA Exhibit 1, Item 3, para 31).
- b) ***Timing of adoption of written leasing policy and minimum standards*** – Heliblock states that the written leasing policy and minimum standards were not in effect at the time of the expiration of its lease. It claims that the policy and standards were adopted in response to its lease dispute. Heliblock states “As a result, it is quite clear that RIAC had no enforceable leasing policy in effect when Heliblock’s lease expired, but rather, that it has drummed up a policy after the fact and for the sole purpose of supporting its efforts to curtail Heliblock’s operations at KBID.” (FAA Exhibit 1, Item 20, pp. 4-5). Further, it states that the leasing policy and minimum standards were not adopted in accordance with state law. (FAA Exhibit 1, Item 20, p. 5).
- c) ***Inconsistent application of lease requirements*** – Heliblock claims that RIAC requires it to have a lease to operate from the Airport and other commercial operators are not required to. Heliblock contends “numerous similarly situated commercial operators use Block Island State Airport without the benefit of a written lease or other agreement, and to the best of Heliblock’s knowledge and belief, RIAC has taken no similar action to prevent any other commercial operator from using the Airport despite the lack of a lease or similar agreement.” (FAA Exhibit 1 Item 3, para 37). Further, Heliblock claims it is not required to have a lease to operate out of Westerly State Airport, another airport operated by RIAC. (FAA Exhibit 1 Item 3, para 15).

## 2. RIAC's Position

- a) ***Ability to require a lease and operating agreement for exclusive and nonexclusive use of airport facilities*** – RIAC asserts it is acting in accord with long-standing leasing policy and sound management principles by requiring Heliblock obtain a lease in order to base its air tour business at KBID. (FAA Exhibit 1, Item 8, p. 1). RIAC indicates it requires a lease for any commercial operator for both exclusive and nonexclusive use of airport facilities, stating “the lease covers more than just the right to use an office; it also regulates Heliblock’s access to aeronautical facilities and its use of those facilities for its commercial operations.” (FAA Exhibit 1, Item 24, p. 6).

RIAC claims it has the authority to require a lease and indicates that the FAA has supported this claim. RIAC buttresses this claim with precedent from previous Part 16 cases. RIAC points out that “[Respondents] have the right to promulgate and enforce rules and regulations for the purpose of ensuring safety and consistent business practices regarding the use of the



airport. A license, permit, or lease is a reasonable legal instrument to fulfill this purpose.” (*Skydance Helicopters, Inc. d/b/a Skydance Ops., Inc. v. Sedona Oak-Creek Airport Auth.*, FAA Docket. No. 16-02-02, Director’s Determination, p. 34 (Mar. 7, 2003)).

- b) ***Timing of adoption of written leasing policy and minimum standards*** – RIAC indicates that it has had a long standing unwritten policy to require a lease and has now made the policy formal along with associated minimum standards. (FAA Exhibit 1, Item 9, Exhibit 1, para. 13-17).
- c) ***Inconsistent application of lease requirements*** – RIAC states it has consistently enforced its long standing unwritten policy requiring all based commercial operators to have a lease with RIAC or FlightLevel Aviation, a fixed base operator (FBO) located at the Airport. (FAA Exhibit 1, Item 9, Exhibit 1, para. 11). RIAC clarifies that HeliBlock does not have a lease to operate from Westerly State Airport because it operates from Dooney Aviation’s ramp which is adjacent to, but not on, airport property. (FAA Exhibit 1, Item 8, pp. 3-4). Further RIAC states “HeliBlock failed to identify any aeronautical user, much less a similarly situated one that RIAC has treated dissimilarly to HeliBlock.” (FAA Exhibit 1, Item 15, p. 3). In response to not requiring transient operators to have a lease, RIAC indicates that it is allowed to treat different types of operators differently and that HeliBlock is a based operator due to its frequency of use and the company’s website advertising its services. (FAA Exhibit 1, Item 8, pp. 15-16).

### **3. Director’s Determination**

- a) ***Ability to require a lease and operating agreement for exclusive and nonexclusive use of airport facilities*** – A review of the 2019 lease (FAA Exhibit 1, Item 12, Exhibit F) indicates that it includes the exclusive use of the terminal and nonexclusive use of the ramp. (FAA Exhibit 1, Item 12, Exhibit F). It is common practice to have a lease and operating agreement with a tenant that covers both the exclusive and nonexclusive use of the airport and operational spaces for operators that offer commercial aviation services to the public. Order 5190.6B, *Airport Compliance Manual*, recognizes this and states:

Airport lease agreements usually reflect a grant of three basic rights or privileges: (1). The right for the licensee or tenant to use the airfield and public airport facilities in common with others so authorized. (2). The right to occupy as a tenant and to use certain designated premises exclusively. (3). The commercial privilege to offer goods and services to airport users. (*Airport Compliance Manual*, p. 12-1).

RIAC cites FAA precedent, noting leases are a valid tool for sponsors to use to regulate safety and ensure a standard level of service.<sup>4</sup> The Director agrees with RIAC in noting that

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<sup>4</sup> RIAC cites “[it] is the prerogative of the airport owner to impose conditions on users of the airport to ensure its safe and efficient operation,” and such conditions “must be [...] uniformly applied.” *McDonough Properties, L.L.C. v. City of Wetumpka*, FAA Docket No. 16-12-11, Director’s Determination p. 19 (Oct. 10, 2013) (citing FAA Order 5190.6B, *Airport Compliance Manual*, September 30, 2009, § 3-12). (FAA Exhibit 1, Item 8, p. 14).

HeliBlock back-tracks from its argument and acknowledges RIAC's right in its Amended Reply stating:

HeliBlock does not dispute the notion that RIAC can and should regulate operations to ensure the safe and efficient operation of its airports - whether by minimum standards or by a lease bearing some relationship to an operator's business - provided that the regulations are reasonable and not unjustly discriminatory. (FAA Exhibit 1, Item 20, p.13).<sup>5</sup>

The Director finds that RIAC has a proprietary right as the operator of the Airport to implement processes to regulate based commercial operations to ensure safety and efficiency as well as to maintain a specific standard of service to the public. Further, RIAC has a responsibility under Grant Assurance 24 to be as self-sustaining as possible, which may include collecting fees for use of the airfield and airport facilities. The FAA recognizes a lease, operating agreement, or permit that may cover both exclusive and nonexclusive use of the airport as standard methods to meet these obligations and the authority to mandate such methods is a business decision granted to the airport operator.

Grant Assurance 22(h) supports this stating, "The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport." (FAA Exhibit 1, Item 1, p. 10). Although there may be no state or federal law requiring a lease, as the operator of the Airport, RIAC made the business decision to require all commercial based operators to have a lease and operating agreement. In contrast, to allow HeliBlock to conduct and base its commercial operations without a lease while requiring all other commercial operators to have a lease could be seen as a violation of Grant Assurance 22. In this case, RIAC did not violate Grant Assurance 22, when it required HeliBlock to have a lease similar to all other based operators.

- b) ***Timing of adoption of written leasing policy and minimum standards*** – The FAA, while encouraging it, does not require a sponsor to have a written leasing policy or minimum standards. RIAC indicated that it required a lease without the formal written policy consistently across all the airports it operates and HeliBlock has not provided any evidence to refute this. Requiring HeliBlock to have a lease does not oblige RIAC to have a written leasing policy or minimum standards if its actions have been consistent among similarly situated operators. HeliBlock has not demonstrated that it was treated differently than other similar operators.

Further, the FAA has recognized that a sponsor has the right to update lease requirements and minimum standards. The Director stated,

The FAA encourages airport sponsors to establish reasonable minimum standards that are relevant to the proposed aeronautical activity with the goal of protecting the level and quality of services offered to the public. Minimum standards can be modified to reflect the airport's desire to learn from experience and to be watchful

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<sup>5</sup> Also cited by RIAC (FAA Exhibit 1, Item 24, pp 4-5).

for improvements in the way it does business in order to protect the public interest. (*Royal Air, Inc. v. City of Shreveport through the Shreveport Airport Authority*, FAA Docket No. 16-02-06, Director’s Determination, pp. 19-20, (January 9, 2004)).

HeliBlock’s suggestion that the formal leasing policy and minimum standards were implemented to justify its actions against HeliBlock is not relevant to this Determination. A formal written policy and minimum standards are not prerequisites in order to require a lease, and the sponsor, in any case, has the right to update requirements. Further, it is not necessary to reach the issue of whether the leasing policy and minimum standards were adopted in accordance with state procedures as part of this Determination.

- c) ***Inconsistent application of lease requirements*** – The Director notes HeliBlock offers no evidence of another based commercial operator that was not required to have a lease to operate from any RIAC operated airport as noted by the Respondent. Further, HeliBlock’s example of not having a lease to operate from Westerly State Airport was adequately addressed by RIAC; RIAC explained that HeliBlock operates off a ramp located adjacent to airport property. HeliBlock did not dispute this point in its Reply. There is no indication that the unwritten or written leasing policies were not applied consistently to all commercial based operators. Finally, based on a review of HeliBlock’s operation, it is clear that HeliBlock is a based operator at KBID that provides commercial services to the public, and RIAC has the right to treat this operation differently than a transient operator.<sup>6</sup> In addition, HeliBlock does not attempt to argue that it is a transient operator. Therefore, RIAC’s different treatment of HeliBlock from transient operators is reasonable.
- d) ***Summary*** - Grant Assurance 22, *Economic Nondiscrimination* subsection (a) requires a sponsor to make the “airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.” (FAA Exhibit 1, Item 1, p. 10).

Subsection (e) of this Assurance states “[tenants] shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities...” (FAA Exhibit 1, Item 1, p. 10).

The Director finds that RIAC did not violate Grant Assurance 22(a) or (e) by requiring HeliBlock to have a lease and operating agreement for both exclusive and nonexclusive use of airport facilities. Further, the Director finds no evidence that RIAC applied the lease requirement inconsistently for similarly situated operators in accordance with Grant Assurance 22(e).

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<sup>6</sup> “The FAA has consistently treated ‘based aircraft’ users and ‘transient’ users of specific airport sponsors as not ‘similarly situated’ in regard to general aviation airport user fees and terms.” (*R/T-182, LLC v. Portage County Regional Airport Authority*, FAA Docket No. 16-05-14, Final Agency Decision, p. 12. (March 29, 2007)).

**Issue 2 – Whether RIAC violated Grant Assurance 22, *Economic Nondiscrimination*, by refusing to renew HeliBlock’s lease and denying access to the Airport.**

Several points are brought up by HeliBlock under Issue 2, including a) RIAC’s application of the indemnification clause and b) RIAC’s refusal to renew the lease resulting in denial of access.

**1. Heliblock’s Position**

- a) **Application of the Indemnification Clause** – HeliBlock claims that RIAC’s reason for finding it in breach of the lease is unjust and, although it is being arbitrated in state court, is the basis for the Part 16 Complaint. HeliBlock claims that the “lease is lacking specificity to shift the burden of the sovereign act of taking onto a commercial lessee” (FAA Exhibit 1, Item 3, para. 24). HeliBlock provides evidence that its insurance policy specifically excludes coverage for liability associated with aircraft operations and more specifically with noise or vibrations from aircraft operations. The legal opinion addressing insurance coverage states:

There is a specific exclusion of insurance coverage for any loss arising out of any audible or inaudible noise pollution or vibration phenomena associated with HTX's [HeliBlock] helicopter operations at the airport [KBID] premises: Therefore, the Policy does not provide HTX or RIAC with insurance coverage for the Kramer lawsuit noise pollution nuisance and inverse condemnation damage claims. (FAA Exhibit 1, Item 21, Exhibit U, p. 2).

The legal opinion also addressed the lease agreement, and concluded that it was not covered because it had never been submitted to the insurance carrier for review as an insured contract. (FAA Exhibit 1, Item 21, Exhibit U, p. 2).

HeliBlock also provides evidence demonstrating that insurance to cover a taking is not available to a private entity and largely unavailable to public entities. HeliBlock further claims that noise liability insurance is not available. (FAA Exhibit 1, Item 20 p. 9).

- b) **Not renewing the lease resulting in denial of access** – HeliBlock claims RIAC is denying it the ability to renew the lease based on its action to contest the indemnification clause. HeliBlock states that RIAC is attempting to “extort HeliBlock into paying a dubious and contested claim for indemnification” by requiring it to pay for its legal fees to be able to operate out of the Airport. (FAA Exhibit 1, Item 20, p. 2).

## 2. RIAC's Position

- a) **Application of the Indemnification Clause** – RIAC suggests that the lease dispute is a matter for state court and cites several Director's Determinations indicating the FAA does not involve itself in lease disputes under the Part 16 process.<sup>7</sup>

RIAC claims it is simply invoking the indemnification clause in the lease. In a letter to HeliBlock it states, "Consequently, RIAC hereby requests that HeliBlock defend, indemnify and hold RIAC harmless in accordance with Art. 9.1 and invokes any and all applicable insurance from HeliBlock's insurers as a result of this lawsuit." (FAA Exhibit 1, Item 3, Exhibit G, p. 2). Further RIAC claims it has a right to protect itself from liability and states "RIAC's effort to protect itself from financial and legal exposure not only falls within its rights, but further upholds its grant-assurance obligations." (FAA Exhibit 1, Item 24, p. 9).

- b) **Not renewing the lease resulting in denial of access** – RIAC claims it has a right not to renew HeliBlock's lease based on the two alleged breaches of the previous lease. In addition to not holding RIAC in indemnity, the other alleged breach of the lease is lack of timely notification of the Kramer lawsuit.<sup>8</sup> RIAC claims, "[it] is prepared to renew HeliBlock's lease at BID [KBID] if HeliBlock agrees to honor and fulfill its indemnification obligations under its most recent lease." (FAA Exhibit 1, Item 7, para. 52). RIAC claims that its "decisions are based solely on HeliBlock's failure to cure its past breach of the Lease and its actions to expose RIAC to liability and litigation while refusing to honor its indemnity obligations." (FAA Exhibit 1, Item 8, p. 15). RIAC cites to several previous Director's Determinations that have supported an airport sponsor's right to choose not to renew a lease.<sup>9</sup>

Finally, RIAC denies it is banning HeliBlock and indicates it would enter into a new lease with HeliBlock if HeliBlock would rectify the breach of the previous lease and pay for its legal fees in defense of the Kramer lawsuit.

## 3. Director's Determination

- a) **Application of the Indemnification Clause** – RIAC cites various Director's Determinations that suggest the FAA does not review lease terms under the Part 16 process. Indeed, the Director has indicated,

The FAA does not arbitrate or mediate negotiations through a formal Part 16 proceeding. Nor does the FAA enforce lease terms between parties to an agreement. Rather, the FAA enforces contracts between an airport sponsor and

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<sup>7</sup> The Respondent cites the following cases: *Rick Aviation, Inc. v. Peninsula Airport Comm'n*, FAA Docket. No. 16-05-18, Director's Determination, p. 38, (May 8, 2007); *RDM, LLC v. Ted Stevens Anchorage Int'l Airport*, FAA Docket. No. 16-09-14, Director's Determination, p. 34 (June 7, 2011) and *Platinum Aviation v. Bloomington-Normal Airport Auth.*, FAA Docket. No. 16-06-09, to demonstrate the Director leaves lease disputes for state courts.

<sup>8</sup> RIAC claims that the lease requires HeliBlock to notify them in a timely fashion regarding any lawsuit.

<sup>9</sup> RIAC cites *Skydive Myrtle Beach, Inc. v. Horry Cty. Dep't of Airports*, FAA Docket. No. 16-14-05, Director's Determination, p. 38 (Oct. 7, 2015) and *Ashton v. City of Concord*, FAA Docket. No. 16-02-01, Director's Determination, p. 26 (Aug. 22, 2003) to demonstrate the sponsor's right to choose not to renew or enter into a lease.

the Federal government. (*AmAv v. Maryland Aviation Administration*, FAA Docket No. 16-05-12, Director's Determination, p. 23 (March 20, 2006)).

RIAC is correct in stating that the agency does not typically involve itself in lease disputes. However, if the terms and, moreover, the actions of the sponsor in regard to the agreement are unreasonable and unjustly deny access to an aeronautical user, the terms of the lease should be considered. As previous Director's Determinations have noted "the FAA judges compliance by an airport sponsor's actions or inactions with respect to those agreements or minimum standards." (*Self Serve Pumps v. Chicago Executive Airport*, FAA Docket No. 16-07-02, Director's Determination, pp. 31-32 (March 17, 2008)). The Director has evaluated the actions of sponsors in relation to agreements for "reasonableness" in several cases.<sup>10</sup> Importantly, the Director has previously stated:

Although a contract may be valid under state law, it may be in violation of the applicable federal obligations. Even where a state court ruling has found contracts between an airport tenant and the airport sponsor to be valid and enforceable, a state court ruling cannot limit the FAA's ability and responsibility to adjudicate grant assurance matters. (*Platinum Aviation and Platinum Jet Center BMI v. Bloomington-Normal Airport Authority*, FAA Docket No. 16-06-09, Director's Determination, p. 18 (June 4, 2007)).

In addition, a pending ruling in state court regarding a lease dispute does not preclude the FAA from evaluating the actions of the sponsor for reasonableness and compliance with FAA grant obligations.

In [...] *Arapahoe County Public Airport Authority v. FAA*, 242 F.3d 1213 (10th Cir. 2001) and *American Airlines v. City of Dallas*, 202 F.3d 788 (5th Cir. 2000), an airport sponsor or owner argued that the United States Department of Transportation (DOT) or FAA was barred from carrying out its duties to administer the Federal aviation laws because of pending state court cases or an earlier state court decision finding that the airport's conduct was lawful. In both cases the courts of appeals held that the pending or prior state court litigation did not bar the Federal agency from conducting its own proceeding and determining whether an airport was complying with its obligations under Federal law.<sup>11</sup>

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<sup>10</sup> The following are cases where the Director reviewed the lease terms and sponsor actions for reasonableness: *Brown Transport Co v. City of Holland*, FAA Docket No.16-05-09, Director's Determination (March 1, 2006); *Skydive Sacramento v. City of Lincoln*, FAA Docket No. 16-09-09, Director's Determination (May 4, 2011); and *Jetaway Aviation v. Monroe County*, FAA Docket No. 16-08-01, Director's Determination (July 2, 2009).

<sup>11</sup> *In the Matter of Federal Compliance by the Naples Airport Authority*, FAA Docket No.16-01-15, Director's Determination, p. 26 (March 10, 2003). Also see *City of Naples Airport Auth. v. FAA*, 409 F.3d 431, 433 (D.C. Cir. 2005), the court supported FAA's right to withhold grants when an airport operator imposes an unreasonable Stage 2 noise restriction, but remanded the case because the FAA's conclusion that the Stage 2 ban was not justified was not supported by substantial evidence.

The Director will exercise his right in this case to review the reasonableness of RIAC's actions in applying the terms of the lease as it relates to the sponsor's grant assurances.

The indemnification clause in the 2019 lease (FAA Exhibit 1, Item 3, Exhibit D, art. 9) and prior leases appears to be generic. Indemnification clauses in general are acceptable.<sup>12</sup> The clause in the lease states:

Indemnification by Tenant. To the fullest extent permitted by law, Tenant will defend, indemnify, and hold RIAC, and the State of Rhode Island, its respective officers, directors, employees, agents, affiliates, successors and assigns, harmless from and against any and all loss, costs, claims, demands, actions, causes of action, awards, penalties, damages or liabilities, of every kind and character, whether in law or in equity, including without limitation, costs of investigations, attorneys' fees, expert witness fees and court costs, whether by reason of death, injury, or damage to any person or persons or damage or destruction of property or loss of use thereof, or any other reason, arising out of or otherwise caused by, directly or indirectly: (i) any failure by Tenant to perform its obligations in accordance with the terms and conditions of this Agreement; (ii) any other breach by Tenant of the terms and conditions of this Agreement; or (iii) the acts or omissions of Tenant, or any of its officers, directors, employees, agents, suppliers, business visitors, or guests, in, on or about the Airport. Tenant shall give RIAC prompt and timely notice of any claim made or proceeding instituted which in any way, directly or indirectly, contingently or otherwise, affects or might affect RIAC, and RIAC shall have the right to control, at Tenant's expense, the defense of such claim or proceeding to the extent of RIAC's own interests. Tenant's indemnity and defense obligations under this Agreement will survive the expiration or sooner termination of the Term. (FAA Exhibit 1, Item 3, Exhibit D, art. 9.)

RIAC's application of the clause, however, is inconsistent with the insurance requirements in the HeliBlock lease. Specifically, the 2019 lease and previous HeliBlock leases require workers' compensation insurance, general commercial liability insurance, and aircraft liability insurance (FAA Exhibit 1, Item 3, Exhibit D, art.7.6), but do not require noise liability insurance. Yet, RIAC interprets the clause as now requiring HeliBlock to indemnify it from noise litigation. It states "RIAC hereby requests that HeliBlock defend, indemnify and hold RIAC harmless in accordance with Art. 9.1 and invokes any and all applicable insurance from HeliBlock's insurers as a result of this lawsuit." (FAA Exhibit 1, Item 3, Exhibit G, p. 2).

It seems reasonable for HeliBlock to assume that any application of the indemnification clause by RIAC would be consistent with the insurance requirements in the lease. Indeed it appears RIAC believed this when it invoked the clause and requested HeliBlock contact its insurance provider. The Record does not specify whether the insurance certificate for

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<sup>12</sup> In *Jimsair Aviation Services, Inc. v. San Diego County Regional Airport Authority*, FAA Docket No. 16-06-08, Director's Determination, pp. 41-42 (April 12, 2007), the Director found the proposed corrective action that included reasonable insurance and indemnification requirements could resolve a compliance issue.

HeliBlock was provided to RIAC or if RIAC reviewed the insurance as part of its due diligence. The Director, however, notes that the plain language of the policy identifies that noise claims are specifically excluded. (FAA Exhibit 1, Item 21, Exhibit U, p. 2). Presumably, RIAC's rights, as the additional insured, would be those set out under the terms, exclusions, and limitations of the insurance policy.

HeliBlock claims noise liability insurance as well as taking insurance are not available to the helicopter operator. RIAC does not dispute this claim in the pleadings. The Director previously determined "an unattainable, non-existent insurance provision constitutes an unreasonable denial of access to the Complainant, in violation of grant assurance 22." (*Skydive Sacramento v. City of Lincoln*, FAA Docket No. 16-09-09, Director's Determination, p. 25 (May 4, 2011)). Noise and taking insurance may or may not be available to the operator on a reasonable basis. The record, however, shows that HeliBlock's 2019 lease does not require noise liability insurance and that the lease agreement was not covered as an insured contract.<sup>13</sup> Further, the legal opinion requested by the insurance company of the policy coverage demonstrates that HeliBlock and RIAC are not covered for the Kramer lawsuit. (FAA Exhibit 1, Item 21, Exhibit U, p.1).

The extent by which the indemnification clause and additional insured requirements are adequate to cover the claims in the current state court proceeding is not at issue here. Nor is the issue whether there was an obligation to provide the insurance carrier with a copy of the written agreement to request approval as an insured contract under the policy. The focus in this proceeding is the sponsor's underlying actions in denying access to the Airport via unreasonable application of lease provisions.

An indemnification clause that is applied by an airport sponsor to encompass any and all instances related to liability is not reasonable under the grant assurances if it results in a denial of access. The tenant is agreeing to an unknown and likely significant cost for potential legal fees and damages not covered by its insurance policy and for which insurance may not be available as a condition of access. Indeed, no reasonable operator would sign a lease if it were aware that it would be signing a blank check to cover any future uninsured liability on behalf of the airport sponsor. The Director finds RIAC's application of the indemnification clause to be unreasonable and thus an unreasonable denial of access in violation of Grant Assurance 22.

**Not renewing the lease resulting in denial of access** – The Director previously determined that a sponsor may choose not to renew a lease for specific causes,<sup>14</sup> including (1) "history of lawsuits, Part 16 complaints, and threats of future litigation" (*Skydive Myrtle Beach, Inc. v. Horry County Department of Airports*, FAA Docket No. 16-14-05, Director's Determination, p. 38, (August 4, 2016)), (2) "persons who have shown an inability to accept and abide by the rules imposed by the Airport." (*Jacquelin R. Ashton & Kent J. Ashton v. City of Concord*,

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<sup>13</sup> When HeliBlock's insurance company indicated that they were not covered for noise liability, RIAC requested HeliBlock ask if the agreement between RIAC and HeliBlock was covered as an insured contract. The insurance company indicated that the agreement was not covered. (FAA Exhibit 1, Item 21, Exhibit U, p. 2).

<sup>14</sup> Causes for not renewing the lease include, inter alia, tenants not paying their rent, tenants operating in an unsafe or inappropriate manner, or tenants acting in an overly litigious manner.



*North Carolina*, FAA Docket No. 16-02-01, Director’s Determination, p. 21 (August 22, 2003) or (3) “Not adhering to minimum standards or not paying rent” (*Rick Aviation, Inc. v. Peninsula Airport Commission*, FAA Docket No. 16-05-18, Director’s Determination, p. 38 (May 8, 2007)).

Each of these matters suggest a legitimate cause for denying or not renewing a lease. In this case, the pleadings provide no indication that HeliBlock violated the rules or did not pay its rent. In fact, as referenced below, a RIAC official said HeliBlock was always cooperative. RIAC claims that HeliBlock caused the lawsuit against it, but it was the Court that allowed the plaintiffs in the Kramer lawsuit to refile and include RIAC as an indispensable party. (FAA Exhibit 1, Item 8, p. 7).

RIAC, however, denies it has any responsibility for HeliBlock’s operations, but, at the same time argues in its temporary restraining order motion that it requires a lease to regulate HeliBlock. (FAA Exhibit 1, Item 9 Exhibit 5). In addition, RIAC acknowledges some basic responsibility for the aircraft noise in a letter to HeliBlock regarding potential mediation with the plaintiffs in the Kramer lawsuit stating “any proposed operational changes, including but not limited to moving the helicopter landing area, that will directly affect aviation activities at the airport must be reviewed and approved by RIAC in advance.” (FAA Exhibit 1, Item 3, Exhibit K-3, p. 1).

The Director has stated:

Federal courts since Burbank have recognized the “proprietary powers exception,” under which airport operators may enact noise-based restrictions affecting aircraft operations to protect themselves from liability for noise damages.<sup>15</sup> The rationale for the proprietary powers exception to Federal preemption is the fact that airport proprietors (rather than the airlines or the Federal Government) bear monetary liability for excessive aircraft noise under the Supreme Court’s decision in *Griggs v. County of Allegheny*, 369 U.S. 84 (1962).<sup>16</sup>

Relatedly, the Director has indicated, and courts have recognized, that airports are allowed to implement policies and procedures to mitigate noise issues around an airport because it bears some responsibility for aircraft noise. Indeed RIAC has exercised this authority by its actions to implement noise procedures for helicopters.<sup>17</sup> Airport sponsors assume a certain level of risk associated with running an airport including that associated with aircraft noise.

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<sup>15</sup> See, e.g., *San Diego Unified Port District v. Gianturco*, 651 F.2d 1306, 1314 (9th Cir. 1981), cert. denied sub nom.; *Department of Transportation v. San Diego Unified Port District*, 455 U.S. 1000 (1982); *British Airways Board v. Port Authority of New York and New Jersey*, 558 F.2d 75, 84 (2d Cir. 1977), aff’d, as modified, 564 F.2d 1002 (2d Cir. 1977).

<sup>16</sup> *In the Matter of Federal Compliance by the Naples Airport Authority*, FAA Docket 16-01-15, Director’s Determination, p. 42 (March 10, 2003). Also see *City of Naples Airport Auth. v. FAA*, 409 F.3d 431, 433 (D.C. Cir. 2005), and footnote 11 above.

<sup>17</sup> RIAC has established noise procedures and include “...the use of prescribed approach and departure patterns, use of designated or preferred helicopter landing areas, and compliance with engine shutdown/cooldown times prescribed by RIAC.” (FAA Exhibit 1, Item 3, p. 4).

Such a risk is fundamental to the core function of an airport. The examples that RIAC provides in the pleadings regarding its right to protect itself from liability are not core to the airport operation. These examples include liability associated with tenants' off-airport land interests,<sup>18</sup> and ongoing ownership litigation.<sup>19</sup>

A sponsor has the ability and responsibility to defend itself and cannot simply assign the entire risk to a tenant where, in RIAC's own admission, the tenant does not have the authority to alter operational procedures to mitigate noise as part of any mediation.<sup>20</sup> The Director has determined "federal obligations require that an airport sponsor retain the ability to take legal action, and hence pay for it, to preserve its rights and powers, manage the operations of the airport, or simply defend the airport or its own actions in legal challenges," (*NBAA, Inc., v. Town of East Hampton*, FAA Docket No. 16-15-08, Director's Determination, p. 6 (March 26, 2018), *aff'd* Final Agency Decision, (July 9, 2020)).

Finally, the lease indicates that the indemnification clause relates to the tenant not acting in accordance with its obligations, in breach of the agreements, or through its acts and omissions. (FAA Exhibit 1, Item 3, Exhibit D, art. 9). RIAC provides no evidence that HeliBlock was negligent or failed to follow RIAC noise procedures. Further, the lawsuit is based on the frequency of the helicopter operations and the nature of helicopter noise, and provides no evidence of any specific noncompliant actions by the Complainant.

Moreover, the decision issued in the state court denying RIAC's motion for a preliminary injunction found the testimony offered by James Warcup, Chief Aviation Inspector for the State of Rhode Island, credible. The decision specifically referenced that Mr. Warcup testified that the HeliBlock was "always cooperative" and a "safe operation." (FAA Exhibit 1, Item 21, Exhibit V, pp. 23-25).

HeliBlock states "[it] has complied with all aircraft noise mitigation procedures, both formal and informal, established by RIAC." (FAA Exhibit 1, Item 3, para. 17). Under the circumstances, conducting frequent helicopter operations at the Airport cannot itself be considered grounds for breach of the indemnification clause and justification for not renewing the lease and denying HeliBlock access to the Airport.

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<sup>18</sup> *JetAway Aviation, Inc. v. Montrose Cty.*, FAA Docket No. 16-08-01, Director's Determination at 40 (July 2, 2009). Cited by RIAC (FAA Exhibit 1, Item 7, p. 11).

<sup>19</sup> *Skydive Monroe, Inc. v. City of Monroe*, FAA Docket No. 16-06-02, Director's Determination at 15 (Mar. 30, 2007). Cited by RIAC (FAA Exhibit 1, Item 7, p. 10).

<sup>20</sup> See 14 CFR Part 150, Airport Noise Compatibility Planning. The voluntary 14 CFR Part 150 Noise Compatibility Program provides a structured process for airports to engage with communities, commercial operators and other user groups as well as the FAA, with the goal of reducing incompatible land uses. A Part 150 study is a discrete undertaking intended to involve all stakeholders in evaluating current and future noise impacts, and identifying measures to mitigate them. It can result in recommendations for strategies to improve noise compatibility of existing and future development around airports, such as changes in flight procedures and local zoning, land acquisition, sound insulation, and others. Federal funding for some solutions, such as sound insulation, require a Part 150 study.

RIAC's other justification for the alleged breach, lack of timely notification of the lawsuit, was not mentioned again by RIAC in its Rebuttal. The lawsuit was filed in September 2018; however, the attorney for HeliBlock was not made aware of it until January 2019, when it was alerted to the pending motion for default judgment. The notification to RIAC came two days after the attorney became aware of it.<sup>21</sup>

Even if the Director accepts RIAC's claim that timely notification was not made and was a breach of the lease agreement, it is not a substantial violation that would be cause to not renew the lease and deny access to HeliBlock. RIAC confirms this by referring to the refusal to indemnify as a "material breach" while simply referring to the lack of timely notification as an "additional breach." (FAA Exhibit 1, Item 9, Exhibit 1, p. 6). Further, RIAC says it would renew the lease and continue its business relationship with HeliBlock if it indemnifies RIAC and covers attorney fees, but mentions nothing of the notification requirements.

RIAC's claims are not sufficient to warrant its actions to deny access to the operator. The Director finds RIAC's actions in not renewing the lease an unreasonable denial of access in violation of Grant Assurance 22.

- b) **Summary** - In consideration of the above, the Director determines that RIAC's application of the indemnification clause, and its refusal to renew HeliBlock's lease due solely to a contested material breach of the indemnification clause, is unreasonable and unjustly discriminates against HeliBlock, in violation of Grant Assurance 22. Furthermore, conditioning any future lease and airport access on this flawed application of the indemnification clause is an unreasonable denial of access violation of Grant Assurance 22.

### **Issue 3 – Whether RIAC violated Grant Assurance 23, *Exclusive Rights*, when it denied HeliBlock a lease and access to the Airport.**

#### **1. Heliblock's Position**

HeliBlock claims "[it] has been directly affected by RIAC's actions as they are the only commercial aircraft operation that provides sightseeing tours by helicopter at KBID and, consequently, the only aircraft operation that RIAC has attempted to ban from any use of KBID." (FAA Exhibit 1, Item 3, para 53).

#### **2. RIAC's Position**

RIAC states, "Fundamentally, RIAC is holding HeliBlock to the same leasing standards to which it holds all aeronautical users. Because HeliBlock is not being denied a right or privilege that others enjoy, it fails to state a valid claim under Assurance 23." (FAA Exhibit 1, Item 8, p. 2).

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<sup>21</sup> HeliBlock states in correspondence to RIAC "You are correct in suggesting the subject litigation may have been filed in September of 2018, but the defendant was unaware of the action until I was provided a courtesy copy in conjunction with plaintiffs' Motion for the Entry of a Default Judgment. That courtesy notice was given to me by email dated January 7, 2019. Two days later on January 9, 2019, Matt Hallet notified RIAC by email of the litigation." [ is the the end of the quote? I guessed it was] (FAA Exhibit 1, Item 3, Exhibit K-1 p. 1).

### 3. Director's Determination

Grant Assurance 23 states a sponsor will “permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public” (FAA Exhibit 1, Item 1, p. 11). A complainant must prove that a similarly situated operator has been granted a right that it has been denied to demonstrate an exclusive right has been given. Although HeliBlock was denied access due to the unreasonable application of the terms of the lease, there is no evidence in the pleadings to indicate that any similarly situated operator was granted an exclusive right. Even though HeliBlock is the only helicopter operator based at the Airport, RIAC's formal leasing policy requires a similar indemnification clause in all its commercial leases. The Director finds RIAC did not violate Grant Assurance 23, *Exclusive Rights*.

## VIII. CONCLUSION AND FINDINGS

Upon consideration of the submissions, responses by the parties, the administrative record herein, applicable law and policy, and for the reasons stated above, the Director of the FAA Office Airport Compliance and Management Analysis finds and concludes:

**Preliminary Issue** - The Respondent is not currently in violation of Grant Assurance 19, *Operation and Maintenance*, since the Complainant offered no evidence or documentation to support a violation.

**Issue 1** – The Respondent's actions to require HeliBlock to have a lease to operate from KBID is not a violation of Grant Assurance 22, *Economic Nondiscrimination*.

**Issue 2** – The Respondent is in violation of Grant Assurance 22, *Economic Nondiscrimination*, by refusing to renew HeliBlock's lease and denying it access to the Airport.

**Issue 3** - The Respondent is currently not in violation of Grant Assurance 23, *Exclusive Rights*, since there is no evidence of an exclusive right being granted.

## ORDER

ACCORDINGLY, it is ordered that:

- 1) The Respondent shall present a corrective action plan (CAP) to the FAA New England Region Airports Division within 30 days from the date of the Order. The plan shall explain in detail how it intends to return the Airport to compliance with its federal grant assurances by providing reasonable access in accordance with Grant Assurance 22.
- 2) Pending the FAA's approval of a CAP, this office will recommend to the FAA Director of the Office of Airport Planning and Programming to withhold approval of any applications submitted by RIAC for funding discretionary projects authorized under 49 U.S.C. § 47115.

All other Motions not expressly granted in this Determination are denied.

### RIGHT OF APPEAL

This Director's Determination under FAA Docket No. 16-21-10 is an initial agency determination and does not constitute final agency decision and order subject to judicial review under 49 U.S.C. § 46110. (14 CFR § 16.247(b)(2)). A party to this proceeding adversely affected by the Director's Determination may file an appeal with the Associate Administrator within 30 days after the date of service of the initial determination. If no appeal is filed within the time period specified, the Director's Determination becomes the final decision and order of the FAA without further action. A Director's Determination that becomes final because there is no administrative appeal is not judicially reviewable. (14 CFR § 16.33.)

**KEVIN  
WILLIS**

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Kevin C. Willis  
Director, Office of Airport Compliance  
and Management Analysis

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Date