U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of Airport Safety and
Standards

800 Independence Ave., S.W.
Washington, D.C. 20591

JAN 14 2003

Universal Aviation Services
c/o Randall J. Lee
CEO, Jet Lift International
100 Jet Aire Court, Suite 3
Orlando-Sanford Airport
Sanford, FL 32773-6843

William Brain
1320 East French Avenue
Orange City, FL 32763

Victor D. White
Director of Aviation
Sanford Airport Authority
One Red Cleveland Boulevard Suite 200
P.O. Box 818
Sanford, FL 32773

Re: Formal Complaint No. 13-95-25

Dear Messrs. Lee, Brain and White:

Enclosed is a copy of the final decision of the Federal Aviation Administration (FAA) with respect to the above-referenced formal complaint under Federal Aviation Regulations (FAR) § 13.5. The FAA has reviewed the allegations contained in the above-referenced complaint. Based on our review of the record in this matter, we have decided that the complaint warrants no further FAA action and will be dismissed.

Based on the record in this proceeding, we find that the Sanford Airport Authority is not in violation of its assurances under the Surplus Property Act of 1944, as amended, codified as 49 USC § 47152, or any of its grant assurances under 49 USC § 40103(e), 49 USC §47107(a)(4) and 49 USC § 47107(a)(1)(5)(6).

The reasons for dismissal are set forth in the enclosed Record of Decision. This Record of Decision is the FAA's final agency action with respect to this matter.

Sincerely,

David L. Bennett
Director, Office of Airport
Safety and Standards

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Universal Aviation Services, Inc.	)	
	)	
Complainant	)	
v.	)	**Docket No. 13-95-25**
	)	
Sanford Airport Authority,	)	
	)	
Respondent	)	
	)	

RECORD OF DECISION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) based on the formal complaint filed by William E. Brain, General Manager, Universal Aviation Services, Inc. (UAS/Complainant) against the Sanford Airport Authority (SAA/Respondent), owner of Orlando-Sanford Airport (SFB) of Sanford, Florida in accordance with FAA Investigative and Enforcement Procedures, 14 CFR Part 13.

Primarily, Complainant alleged in its complaint that SAA has entered into various lease agreements, leases and contracts with Central Florida Terminals, Inc. (CFT) that give CFT the "exclusive right" for aeronautical services and activities in violation of the prohibition on exclusive rights in the Surplus Property Deed which conveyed the airport premises to SAA.

Our decision on this matter reflects the consideration of the above claims, in view of the quitclaim deed and assurances entered into by the City of Sanford and, subsequently, the SAA, and is based on the applicable law and FAA policy, review of the arguments and supporting documentation submitted by the parties, and the documents listed in the attached Index of Administrative Record[1]. Based on the investigation and information in the Administrative Record, the FAA finds that SAA is not in violation of its Federal obligations, including the prohibition on the granting of exclusive right in the Surplus Property Deed and grant assurance.

[1] FAA Exhibit 1 provides the Index of the Administrative Record in this proceeding.

II. THE AIRPORT

The Orlando-Sanford Airport, formerly known as Central Florida Regional, is a public-use airport operated by the SAA. The airport was transferred to the City of Sanford, a municipal corporation of the State of Florida, on September 4, 1969. [FAA Exhibit 1, Item 3, Exhibit A] Subsequently, the Airport was transferred to the SAA. [FAA Exhibit 1, Items 11-13]

SFB is located 16 nautical miles northeast of Orlando, Florida adjacent to the City of Sanford, encompassing 1,866 acres of land. Serving the Orlando Metropolitan area, SFB supports a wide variety of aviation activity, including 397,557 general aviation (GA) operations annually; as well as 7,190 air carrier operations and 430 air taxi operations annually. SFB has 244 based-aircraft reported on the airport inspection 5010 form, dated March 3, 2002. [FAA Exhibit 1, Item 1]

SFB has received grants under the Federal Aid to Airports Program, Airport Development Aid Program and the Airport Improvement Program. Since 1982 SFB has received approximately $39.4 million in Federal airport improvement grant funds. These funds were used for various planning, expansion, rehabilitation, marking and lighting projects. In Fiscal Year 2002, SFB received grants in the amount of $6.76 million, programmed to rehabilitate apron and runway, acquire land and equipment and enhance security. [FAA Exhibit 1, Item 2]

III. BACKGROUND

On September 4, 1969, a Quitclaim Deed, under and pursuant to the provisions of the Federal Property and Administrative Services Act of 1949, as amended, and the Surplus Property Act of 1944, as amended, transferred certain property known as the Sanford Naval Air Station to the City of Sanford. The Quitclaim Deed required that

> The property transferred by this instrument shall be used for public airport purposes for the use and benefit of the public, on reasonable terms and without unjust discrimination and without grant or exercise of any "exclusive right"..... As used in this instrument, the term "airport" shall be deemed to include all land, buildings, structures, improvements and equipment used for public airport purposes. [FAA Exhibit 1, Item 3, Exhibit A]

On June 30, 1971, the Sanford Airport Authority was created by Special Act in Chapter 71-924, Law of Florida, known as the Sanford Airport Authority Act. The Authority was created:

> for the purpose of performing such acts as shall be necessary for the sound planning for, and development and maintenance of an airport for the City of Sanford and the territory included within the district,... which special district

shall be a public body corporate and politic and shall embrace and include the corporate limits of the City of Sanford. [FAA Exhibit 1, Item 11, p. 3]

The Authority was empowered to acquire, finance and operate an airport; to issue revenue bonds or other obligations; to contract with governmental agencies; to enter into contracts, leases, mortgages and other agreements; and to exercise all incidental powers necessary to carry out the purposes of this act. [FAA Exhibit 1, Item 11]

On December 4, 1981, the City of Sanford gave all the rights, powers and authority necessary to operate and control the Sanford Airport to the Sanford Airport Authority, through the instrument of City Resolution No. 1315:

A Resolution of the City Commission of the City of Sanford, Florida, designating Sanford Airport Authority, a public body politic and corporate, as the agent of said city for the purposes of control, development, operation and maintenance of Sanford Airport and all related facilities.
[FAA Exhibit 1, Item 12]

Whereas the Authority had been operating, maintaining, improving and developing the Airport pursuant to the Sanford Airport Authority Act since August 31, 1971, the City, by the force of this resolution, officially and retroactively granted jurisdiction, as described above, to the Authority, making such grant of authority part of the public record.

The relationship between the City and the Authority has continued to be formalized. In August of 1996, the City and the Authority entered into a formal long-term Airport Lease Agreement by which the City again clarifies the role of the Authority:

The City hereby grants, transfers and conveys unto the Authority the exclusive right and jurisdiction to occupy, operate, control, maintain and use the Airport for a term of thirty-five (35) years commencing retroactively... on October 1, 1995, for public airport purposes, subject to easements, deed restrictions, grant assurances with the United States, State of Florida, applicable laws, ordinances and other restrictions of record... Such grant, transfer and conveyance of Airport property includes the right of the Authority to lease to others all or portions of the Airport Property. [FAA Exhibit 1, Item 13, p. 2]

Furthermore, the Airport Lease Agreement stipulates that the City leases to the Authority

...any and all rights and title heretofore in the City to all the fixtures, equipment, materials, furnishings, and all other personal property now utilized by the Authority, subject to all the terms and restrictions contained in the Quitclaim Deed between the City and the United States of America. [FAA Exhibit 1, Item 13, p. 3]

Article 6 of the Airport Lease Agreement addresses the preservation of rights and powers to abide by grant agreements and other federal assurances:

> The Authority hereby expressly agrees to be bound by and to fully perform all covenants and duties made or incurred by the Authority in connection with all federal and state grants obtained by the Authority in connection with the Airport. ... A determination by the federal or state government or any agency thereof, that there exists a default under any grant or conveyance of surplus property shall be considered a default of a material provision of this Agreement for the purposes of Article 9. The City and the Authority agree that they will cooperate in seeking federal, state, local and private grants and economic development assistance and where necessary, provided approval is obtained by both the City and the Authority, they will execute applications as necessary and will administer existing grants in conformity with the terms of said grants in such a way as to comply with the grants. The City agrees that for purposes of soliciting and receiving any federal or state grants that the Authority shall be deemed to be an agent for the owner of the Airport Property. [FAA Exhibit 1, Item 13, p. 7]

Article 9 outlines procedures for terminating the lease or otherwise providing remedies, stating that "this agreement is subject to termination by the City if the Authority shall be in default of any of the material provisions set forth herein...," including that which is described above. [FAA Exhibit 1, Item 13, p. 9]

The Sanford Airport Authority entered into Lease No. 94-42 (Lease) with Central Florida Terminals, Inc. (CFT)[2] on March 23, 1995, amended in its entirety on August 28, 1995 to fund and construct, among other support facilities, an addition to the airport terminal. [FAA Exhibit 1, Item 14] "This Lease, effective as of the date set forth above, shall have an initial term of twenty (20) years for purpose of the Bonds and leasing requirements of Part II Chapter 159, Florida Statutes...." [FAA Exhibit 1, Item 14, p. 8] As described in the leasing documents, the leasehold consists of 6 parcels and improvements thereon:

(i) Parcel 1, consisting of 4,100 square feet of land and 31,800 square feet of ramp...
(ii) Parcel 2, consisting of 51,713 square feet of land...
(iii) Parcel 3, consisting of 414,385 square feet of ramp... and being referred to herein... as the "Remote Parking Positions..."
(iv) Parcel 4, consisting of 555,019 square feet... "Rental-Car Services Facilities..."
(v) Parcel 5, consisting of 59,000 square feet of land and 15,000 square feet of ramp... "Aircraft Catering Facility..."
(vi) Sufficient land for the "Air Cargo" premises, as to be set forth in a Separate Agreement...
(vii) Any existing improvements or those constructed or placed on Parcels 1 through 6... [FAA Exhibit 1, Item 14, pp. 2-3]

[2] CFT was purchased and now is known as OSI; CFT will be used throughout.

Also on August 28, 1995, the Authority entered into Operating Agreement 94-45 with CFT, which states that

> CFT is obligated to construct, operate and maintain the Terminal Addition and its Support Facilities pursuant to the Lease and to provision aeronautical and non-aeronautical services therefrom for arriving and departing aircraft, passengers [and] cargo. [FAA Exhibit 1, Item 15]

The lease documents describe this facility, as including a "Terminal Addition," a two level facility adjacent to the existing terminal, containing passenger ticketing, baggage make-up, security facilities, and a passenger departure lounge capable of serving 1,000 departing passengers during peak periods. The second floor would include a "Grand Hall," providing retail areas and other passenger services and conveniences. This area would require security clearance and would be under the supervision of U.S. Customs. A concourse connected to the "Grand Hall" would contain five second level aircraft gates. [FAA Exhibit 1, Item 20, p. 1] A 30,000 square foot "Welcome Center" would complement the "Terminal Addition" providing arriving passengers an area to connect with their tour operator and/or rental car. Other facilities include remote aircraft parking positions, a rental car services facility, aircraft catering facility and FIS addition. [FAA Exhibit 1, Item 20]

As stated in the Amended and Restated Project Lease Number 94-42, this lease was granted

> for and in consideration of the payment by the Lessee of the rates (rents), fees and charges and the performance by the Lessee of the covenants, agreements and conditions hereinafter agreed to be performed by it. [FAA Exhibit 1, Item 14]

These payments, duties and responsibilities as delineated in the Operating Agreement as an attachment to the Lease, have the effect of creating an exclusive leasehold for CFT constituting the 7 parcels of land, described above, and designated for aeronautical and non-aeronautical uses:

> CFT shall have the exclusive right to provide all aeronautical and non-aeronautical services in and from the Premises of the Project, as authorized in the Lease, to serve the Airline users of the Terminal Addition and their passengers and cargo subject to all existing agreements of the Authority with others as of the effective date of the Lease. CFT shall have the non-exclusive right to negotiate, as provided by law, or respond to requests for proposals of the Authority to provide, aeronautical and non-aeronautical service as the Authority may decide in other common use areas of the Terminal not exclusively leased to CFT, under terms and conditions set forth under an agreement agreed to by the Authority and CFT and not part of the premises or this Lease. The Authority reserves the right to contract or authorize others to provide aeronautical and non-

aeronautical services and facilities outside the Premises of Lease Number 94-42. [FAA Exhibit 1, Item 15, p. 8]

As reflected in the record, in a letter to the FAA presented by the SAA and signed by Stephan J. Cooke, Director of Aviation, UAS "presently has full rights to provide ground handling services on the Airport under an agreement with the Authority dated December 7, 1994." [FAA Exhibit 1, Item 6, Attachment A, p. 4] The Complainant submitted "Non-Exclusive General Aeronautical Services Agreement," which puts forth the terms and conditions, as well as the rights, privileges and obligations of UAS regarding doing business at SFB. [FAA Exhibit 1, Item 21] This agreement, unless otherwise terminated, is in effect until December 6, 1999 and allows ground-handling services except fueling on "non-exclusive and common use public airport facilities." [FAA Exhibit 1, Item 21] The payments and charges associated with UAS agreements and leases, as presented in the record, are discussed in the Analysis and Discussion section.

According to excerpts of a document submitted by the Complainant, the SAA entered into a separate agreement with CFT on November 6, 1995 for the lease of land for the purposes of "construction of aviation fuel receiving, storage, quality control and distribution." [FAA Exhibit 1, Item 7, Exhibit 9] This separate agreement was alluded to in the Operating Agreement, anticipating the need to provide additional fueling capacity for the airlines using the Terminal Addition. [FAA Exhibit 1, Item 15, p. 14]

As reported by the Complainant and confirmed by the Respondent, in a letter to the FAA on September 17, 1997, the exclusive leasehold in question, originally having been constructed, owned and operated by CFT, was sold in a stock transaction to TBI. All of the stock was transferred on May 20, 1997. [FAA Exhibit 1, Item 22]

The Complainant alleges that the SAA has entered into various agreements, leases and contracts with the private corporation known as Central Florida Terminals, Inc. (CFT) that give CFT the "exclusive right" to perform various aeronautical services and activities. The granting of an exclusive right as alleged would violate §13(g)(2)(C) of the Surplus Property Act of 1944 as amended, 49 USC § 47152(3).[3]

[3] The FAA also considers whether the SAA is in violation of the grant assurances regarding exclusive rights as set forth in 49 USC § 40103(e), 49 USC § 47107(a)(4) and the Authority's federal grant assurances.

IV. ISSUES

The Complainant presents the following issues for decision:

1. Whether the SAA violated provisions prohibiting the granting of an exclusive right included in reservations, restrictions, conditions or covenants of the Federal Deed issued by the United States on September 4, 1969.

2. Whether the SAA engaged in activities, agreements, leases and contracts in violation of provisions prohibiting economic discrimination set forth in the same Quitclaim Deed, as per § 13(g)(2)(B) of the Surplus Property Act of 1944 as amended, 49 USC § 47152(2).[4]

V. APPLICABLE LAW AND POLICY

The Federal role in civil aviation includes legislatively authorized programs for providing Federal funds and other assistance to local communities for the development of airport facilities. In each such program, the airport sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely and efficiently and in accordance with specified conditions. Commitments assumed by airport 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.

The Federal Aviation Act of 1958, as amended (FAAct), 49 USC 40101, *et seq.*, as amended by Pub. L. No. 104-264 (October 9, 1996), assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety and security, among other things, the encouragement and development of civil aeronautics. Under these broad powers, the FAA seeks to achieve safety and efficiency of the total airspace system through direct regulation of airmen, aircraft, and airspace. This Federal role has been augmented by various legislative actions which, *inter alia*, authorize programs for providing funds and other assistance to local communities for the development of airport facilities.

49 USC § 47101, *et seq.*, provides for Federal airport financial assistance for the development of public-use airports under the Airport Improvement Program (AIP) established by the Airport and Airway Improvement Act of 1982, as amended (AAIA). Title 49 USC § 47107, *et seq.*, sets forth assurances to which an airport sponsor agrees as a condition of receiving Federal financial assistance. Upon acceptance of an AIP grant,

[4] The FAA also considers whether the SAA is in violation of grant assurances prohibiting economic nondiscrimination as set forth in § 511(a)(1) of the Airport and Airway Improvement Act of 1982, P.L. 97-248 (AAIA) as amended, codified as 49 USC § 47107 (a)(1)(4)(5)(6); as amended by Public Law No. 103-305 (August 23, 1994), as well as the Authority's Federal grant assurances.

the assurances become a binding obligation between the airport sponsor and the Federal government. The assurances made by airport sponsors in AIP grant agreements are important factors in maintaining a viable national airport system.

Airport Sponsor Assurances

As a condition precedent to providing airport development assistance under the Airport Improvement Program 49 USC § 47107, *et seq.*, the Secretary of Transportation and, by extension, the FAA must receive certain assurances from the airport sponsor. Title 49 USC § 47107(a) sets forth the statutory sponsorship requirements to which an airport sponsor receiving Federal financial assistance must agree. These sponsorship requirements, or assurances, are included in every airport improvement grant agreement as set forth in FAA Order 5100.38A, Airport Improvement Program (AIP) Handbook, issued October 24, 1989, Ch. 15, Sec. 1, "Sponsor Assurances and Certification." Upon acceptance of an AIP grant by an airport sponsor, the assurances become an obligation between the airport sponsor and the Federal government. These obligations are incorporated into grant agreements and instruments of conveyance in order to protect the public's interest in civil aviation and to ensure compliance with Federal laws.

The planning and development of Orlando-Sanford Airport has been financed, in part, with AIP funds provided by the FAA and the Airport Sponsor has received surplus Federal property.

The FAA has a statutory mandate to ensure that airport owners comply with the sponsor assurances. See, *e.g.*, the FAAct, 49 USC §§ 40101, 40113, 40114, 46101, 46104, 46105, 46106, 46110, and the Airport and Airway Improvement Act of 1982, as amended and recodified, 49 USC §§ 47105(d), 47106(d), 47107(k), 47107(l), 47111(d), 47122. FAA Order 5190.6A, *Airport Compliance Requirements* (hereinafter Order), issued on October 2, 1989, provides the policies and procedures to be followed by the FAA in carrying out its legislatively mandated functions related to federally-obligated airport owners' compliance with their sponsor assurances.

Assurance 22: Reasonable Use and Economic Nondiscrimination

Assurance 22, "Economic Nondiscrimination," of the prescribed sponsor assurances satisfies the requirements of 49 USC § 47107(a)(1). It provides, in pertinent part, that the sponsor of a federally obligated airport

> "...will make its airport available as an airport for public use on reasonable terms and without unjust discrimination, to all types, kinds, and classes of aeronautical activities." Assurance 22(a)

Assurance 22(c) provides that "each fixed-based operator at the airport shall be subject to the same rates, fees, rentals and other charges as are uniformly applicable to all other

fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities."

The Order describes the responsibilities under Assurance 22 assumed by the owners of public-use airports developed with federal assistance. Among these is the obligation that the owner of any airport developed with Federal grant assistance will operate it for the use and benefit of the public and make it available to all types, kinds and classes of aeronautical activity on fair and reasonable terms and without unjust discrimination. A parallel obligation is implicit in the terms of conveyance of Federal property for airport purposes under the Surplus Property Act. See Order, Sec. 4-13a.

Each commercial aeronautical activity at any airport shall be subject to the same rates, fees, rentals and other charges as are uniformly applied to all other commercial aeronautical activities making the same or similar uses of such airport utilizing the same or similar facilities. See Order, Sec. 4-14(a)(2).

FAA policy provides that, at general aviation airports, variations in commercial aeronautical activities' leasehold locations, leasehold improvements, and the services provided from such leasehold may be the basis for acceptable differences in rental rates, although the rates must be reasonable and equitable. See Order, Sec. 4-14(d)(2)(c).

Regarding reasonable access for aeronautical users and services providers, the Order states:

> The prime obligation of the owner of a federally-assisted airport is to operate it for the use and benefit of the public.... While the owner is not required to construct hangars and terminal facilities, it has the obligation to make available suitable areas or space on reasonable terms to those who are willing and otherwise qualified to offer flight services to the public (i.e. air carrier, air taxi, charter, flight training, crop dusting, etc.) or support service (i.e. fuel, storage, tie down, flight line maintenance, etc.) to aircraft operators. This means that unless it undertakes to provide these services itself, the airport owner has a duty to negotiate in good faith for the lease of such premises as may be available for the conduct of aeronautical activities." See Order, Sec. 4-15.
>
> If adequate space is available on the airport, and if the airport owner is not providing the service, it is obligated to negotiate on reasonable terms for the lease of space needed by those activities offering flight services to the public, or support services to other flight operators, to the extent that there may be a public need for such services. A willingness by the tenant to lease the space and invest in facilities required by reasonable standards shall be construed as establishing the need of the public for services proposed. See Order, Sec. 4-15c.

The FAA's interest in such lease agreements is confined to their impact on the owner's obligation to the Government. The type of document or written instrument used to grant airport privileges is the sole responsibility of the airport owner.

Assurance 23: Exclusive Rights

Section 308(a) of the FAAct, 49 USC § 40103(e), provides, in relevant part, that "[a] person does not have an exclusive right to use an air navigation facility on which Government money has been expended." An "air navigation facility" includes an "airport." See 49 USC §§ 40102(a) (4), (9), (28).

Section 511(a)(2) of the AAIA, 49 USC § 47107(a)(4), similarly provides, in pertinent part, that "a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport."

The Surplus Property Act of 1944, as amended, 49 USC § 47152 (3), states that "a right may not be vested in a person, excluding others in the same class from using the airport at which the [surplus] property is located."

Assurance 23, "Exclusive Rights", of the prescribed sponsor assurances requires, in pertinent part, that the sponsor of a federally obligated airport "...will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public."

The FAA has concluded that the existence of an exclusive right to conduct any aeronautical activity at an airport limits the usefulness of the airport and deprives the using public of the benefits of competitive enterprise. The FAA considers it inappropriate to provide Federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities. See Order, Sec. 3-8(a).

The Order provides additional guidance on the application of the statutory prohibition against exclusive rights and FAA policy regarding exclusive rights at public-use airports. See Order, Ch. 3.

Assurance 24: Fee and Rental Structure

Section 47107 (a)(13) of 49 USC requires, in pertinent part, that the sponsor of a Federally obligated airport "will maintain a fee and rental structure for the facilities and services being provided the airport users which will make the airport as self-sustaining as possible under the circumstances existing at that particular airport." In addition, under § 47107(a)(1), fees must be reasonable and not unjustly discriminatory.

Assurance 24, "Fee and Rental Structure," of the prescribed sponsor assurances satisfies the requirements of § 47107(a)(13), by obligating the airport sponsor to maintain a fee and rental structure for the use of airport facilities and services, which will make the airport as self-sustaining as possible under the circumstances existing at that particular airport.

The Order states that the sponsor's obligation to make an airport available for public use does not preclude the owner from recovering the cost of providing the facility through fair and reasonable fees, rentals or other user charges which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport. See Order, §4-14(a).

The FAA Airport Compliance Program

The FAA's airport compliance efforts are based on the binding obligations, including those discussed above, which an airport owner accepts when receiving Federal grant funds or the transfer of Federal property for airport purposes. The FAA discharges its responsibilities for ensuring airport sponsor compliance with their Federal obligations through its Airport Compliance Program.

Formal complaints filed against Federally funded airports before December 16, 1996 are processed under Part 13 of Title 14 of the Code of Federal Regulations, specifically 14 CFR §13.5. This regulation designated generally as 14 CFR Part 13, Investigative and Enforcement Procedures, contains the procedures to file complaints with the FAA Administrator with respect to anything done or omitted to be done by any person in contravention of any provision of any Act or of any regulation or order issued under it, as to matters within the jurisdiction of the Administrator.[5] The relevant process for complaints against Federally funded airports is under 14 CFR §13.5.

FAA Order 5190.6A, Airport Compliance Requirements, issued October 2, 1989, (Order) sets forth policies and procedures for the FAA Compliance Program. The Order is not regulatory and is not controlling with regard to airport sponsor conduct; rather it establishes the policies and procedures to be followed by FAA personnel in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments made to the United States by airport owners as a condition for the grant of Federal funds or the conveyance of Federal property for airport purposes.

The Order covers all aspects of the airport compliance program except enforcement procedures. Enforcement procedures regarding airport compliance matters, absent the filing of a formal complaint under Federal Aviation Regulations (FAR) Part 13 (14 CFR 13.5), continue to be set forth in the predecessor order, FAA Order 5190.6 issued August 24, 1973, and incorporated by reference in the Order. See Order, Sec. 5-3, and Sec. 6-2.

[5]Complaints filed after December 16, 1996 are governed by 14 CFR Part 16, Rules of Practice for Federally Assisted Airport Enforcement Proceedings. See Rule of Practice for Federally Assisted Airport Enforcement Proceedings, 61 Fed. Reg. 53998 (October 16, 1996). Complaints may be filed under Part 16 alleging violations of the federal grant assurances required under 49 USC 47107 to be given by airports receiving federal airport improvement program funds

VI. ANALYSIS AND DISCUSSION

In this complaint, the role of the FAA is to determine whether the SAA is in compliance with its Federal obligations. If SAA is found to be in pending non-compliance, the FAA will advise the airport as to how to come into a state of compliance. As in all cases, the judgment to be made is whether the airport sponsor is reasonably meeting Federal obligations. The FAA's concern in investigating complaints is to determine whether the sponsor is in current compliance with its grant agreements and the covenants in instruments of conveyance. [See Executive Air Taxi Corp. v. City of Bismarck, ND, FAA Docket 13-91-5, 13-92-4, Record of Determination at 26 (June 23, 1993), Affirmed, Executive Air Taxi Corporation v. FAA, No. 93-1478, slip op. (D.C. Circuit June 3, 1994)] If an investigation of a complaint uncovers a violation of a Federal obligation, the FAA will initiate dialogue with the affected airport and attempt to achieve voluntary compliance with the pertinent obligations. See Order, Sec. 5-2 (c).

Generally in its complaint, the Complainant alleges that the SAA is violating its Federal obligations regarding exclusive rights as set forth in the Quitclaim Deed and its grant agreements. The Complainant contends that SAA has done this by entering into various agreements, leases and contracts with CFT that give CFT the "exclusive right" to various aeronautical services and activities at SFB. UAS's claims are general in nature. The Complainant cites excerpts of documents where the terms "exclusive use" or "exclusive rights" appear in connection with CFT's lease and operating agreements, rather than citing instances of UAS being denied access to potential customers in support of its claim. [FAA Exhibit 1, Item 3]

Also, the Complainant alleges that the SAA is violating its Federal obligations regarding economic nondiscrimination as set forth in the Quitclaim Deed and its grant agreements by maintaining a fee and rental rate structure that treats CFT preferably. The Complainant provides excerpts of agreements between the SAA and CFT and between SAA and UAS illustrating differing provisions related to the remuneration to the SAA for the respective privileges for the use of the airport enjoyed by CFT and UAS as support for this claim. [FAA Exhibit 1, Item 7]

The SAA denies that it has provided an exclusive right to CFT or unjustly discriminated against UAS. The SAA maintains that the agreements with CFT are related to CFT's use of its leasehold and its non-exclusive right to use common use areas of the airport on par with other service providers located at SFB. [FAA Exhibit 1, Item 6, Exhibit D] The SAA also states that UAS's interpretation of the lease and use documents, fees and rents, and Federal law and policy is inaccurate. [FAA Exhibit 1, Item 9] Furthermore, the SAA claims that CFT and UAS are not of the same class of aeronautical service providers, thus failing to be similarly situated in regards to the alleged economic discrimination. [FAA Exhibit 1, Item 9]

In regards to the individual allegations of the granting of an exclusive right and unjust economic discrimination, the following provides the FAA's understanding of the record

and the reasoning used to reach this decision. Other related issues of the use of common-use and exclusive-use ramp are also discussed.

Exclusive Rights Allegation

UAS provides numerous excerpts from documents that it contends establishes an exclusive right for CFT: "The Sanford Airport Authority has entered into various agreements, leases and contracts with a private corporation known as Central Florida Terminals, Inc. [which] give Central Florida Terminals, Inc., the "Exclusive Rights" to various aeronautical services and activities at the new public passenger "terminal addition," which in itself is an aeronautical activity, at Orlando-Sanford Airport." [FAA Exhibit 1, Item 3] UAS offers the following arguments and evidence in support of the allegation:

> Universal believes that review of all the documents signed between the Authority and CFT will show the consistent theme running through all the document[s] that exclusivity has been granted to CFT. [FAA Exhibit 1, Item 7]

UAS submitted excerpts of drafts of various documents listed in the administrative record as attachments or exhibits and summarized in the Background section above. These documents represent various aspects of the issue of exclusive rights, exclusive use of a leasehold and availability on fair and reasonable terms. In order to discuss this case fully, the issues and circumstances raised by these documents have been categorized into the sub-issues that follow.

Quitclaim Deed

The Complainant presents documents that discuss the issue of exclusive rights for use of SFB. UAS argues that these documents demonstrate the granting of an exclusive right by SAA to CFT in violation of provisions of the Quitclaim Deed. The Complainant specifically refers to language in the Quitclaim Deed that deals with the prohibition of exclusive rights, as cited in the Background section above. The Complainant also highlighted a paragraph that reads, "The grantee will not grant or permit any exclusive right for the use of the airport at which the property described herein is located which is forbidden by Section 308 of the Federal Aviation Act of 1958, as amended, by any person or persons to the exclusion of others in the same class...." [FAA Exhibit 1, Item 3, Exhibit A]

The SAA responds, "The Authority has not provided any exclusive right to the use of any land or facility of the Airport in violation of our Quitclaim Deed from the United States of America or any federal grant assurance obligation." [FAA Exhibit 1, Item 6, Exhibit D p. 1]

Regarding the Federal law applicable to the surplus property airports and the language of the Quitclaim Deed cited above, it should be noted that the Surplus Property Act of 1944, as amended, 49 USC § 47152 (3) states:

> No exclusive right for the use of the airport at which the property disposed of is located shall be vested (either directly or indirectly) in any person or persons to the exclusion of others in the same class. For purposes of this condition, an exclusive right is defined to mean- (1) any exclusive right to use the airport for conducting any particular aeronautical activity requiring operation of aircraft; (2) any exclusive right to engage in the sale of supplying of aircraft, aircraft accessories, equipment, or supplies (excluding the sale of gasoline and oil), or aircraft services necessary for the operation of aircraft (including the maintenance and repair of aircraft, aircraft engines, propellers, and appliances).

The above language, cited from the Quitclaim Deed as well as federal law, clearly states that a violation of the exclusive rights provision would require the "exclusion of others in the same class" from the airport. Furthermore, the FAA acknowledges the existence of exclusive leaseholds on surplus property airports and grant-assisted airports. Therefore, this investigation would have to find that the SAA has entered into agreements that prevent others from offering any or all of the services offered by CFT in order to find the SAA in non-compliance. The record does not establish this.

Agreements between the City and the SAA

UAS offers excerpts of documents to the record illustrating the relationship between the City of Sanford and the SAA. It is not clear, by the record, whether the Complainant is suggesting that this relationship also violates exclusive right provisions or that this relationship further restricts the activities of the SAA regarding leasing portions of the airport. In any case, this section discusses these agreements and arrangements. As chronicled in the above Background section, control and management of SFB has been transferred from the City of Sanford to the SAA.

The Quitclaim Deed states in subparagraph (b), "...the property transferred hereby may be successively transferred only with the proviso that any such subsequent transferee assumes all the obligations imposed upon the grantee by the provisions of this instrument." [FAA Exhibit 1, Item 3, Exhibit A] The prohibition against exclusive rights as cited above is one of these provisions.

Upon review of the SAA enabling legislation and the City of Sanford Resolution No. 1315, as discussed in the Background section above, the SAA was created by the State of Florida as a local governmental unit and empowered by the City of Sanford to exercise authority of the airport as the agent of the City. [FAA Exhibit 1, Item 12, p. 2]

The "Lease Agreement" between the City and the SAA, signed on August 13, 1996, contains language regarding the Federal obligations of the Quitclaim Deed and grant agreements:

> The Authority [SAA] hereby expressly agrees to be bound by and to fully perform all covenants and duties made or incurred by the Authority in connection with all federal and state grants obtained by the Authority in connection with the Airport. ... A determination by the federal or state government or any agency thereof, that there exists a default under any grant or conveyance of surplus property shall be considered a default of a material provision of this Agreement for the purposes of Article 9. [FAA Exhibit 1, Item 13 p. 7]

Article 9 outlines procedures for terminating the lease or otherwise providing remedies, stating that "this agreement is subject to termination by the City if the Authority shall be in default of any of the material provisions set forth herein...," including that which is described above. [FAA Exhibit 1, Item 13 p. 9]

This relationship, as presented by the documents in the record, appears to be consistent with Federal law and FAA policy, which allow the transfer of Federal grant or Federal surplus property obligations to an eligible sponsor that assumes the applicable Federal obligations. See Order § 4-2(a). Such a transfer, as described above, does not alter the applicable definition of "exclusive rights," nor add any additional restrictions on SAA in the awarding of exclusive leaseholds. The above examination of this relationship, including the complete documents that establish the SAA and that transfer management authority over the SFB to SAA, reveals that this arrangement does not violate any prohibition in law or policy of exclusive rights.

CFT Leasehold Agreements Regarding Alleged Exclusivity

The Complainant states that this formal complaint is made "to determine if the Sanford Airport Authority has violated any reservations, conditions or covenants regarding exclusive rights of the Federal [Quitclaim] Deed." [FAA Exhibit 1, Item 3] It goes on to state that the agreements between SAA and CFT constitute the violation of exclusive rights:

> the Sanford Airport Authority has entered into various agreements, leases and contracts with a private corporation known as Central Florida Terminals, Inc. These various agreements, leases and contracts give Central Florida Terminals, Inc. the "Exclusive Rights" to various aeronautical services and activities at the new public passenger "terminal addition," which in itself is an aeronautical activity.... [FAA Exhibit 1, Item 3]

In the reply, the Complainant again quotes the language of the Quitclaim Deed and further asserts that "Universal believes that review of all the documents signed between

the Authority and CFT will show the consistent theme running through all the documents that exclusivity has been granted to CFT." [FAA Exhibit 1, Item 7] The Complainant goes on further that an "agreement approved by the Authority entitled Sanford Airport Authority Airport Use Agreement 94-45A for Airlines and Service Providers Using Orlando-Sanford Airport, page 12 item IX states 'Third party ground handlers shall at all times be prohibited from operating on the exclusive leasehold premise and exclusive ramp areas.' Not only does this demonstrate that exclusivity has been granted to CFT by the Authority, and in our opinion violates Federal Anti-Trust Statutes..." [FAA Exhibit 1, Item 7, p. 3] The Use Agreement referred to by the Complainant is the agreement form, attached to the Lease with CFT/TBI, that airline users of public areas of the airport sign. It is included in the record in full as Item 16.

The Respondent answers by submitting correspondence, dated September 28, 1995, prior to the filing of the formal complaint, to Universal Aviation Services, stating:

> ... the Sanford Airport Authority ("Authority") in its Lease Number 94-42 ("Lease"), did not provide the Lessee, Central Florida Terminals, Inc. ("CFT") the exclusive right to provide all or any ground handling services to all commercial aircraft using the Orlando Sanford Airport ("Airport").... Under the Lease CFT was granted an exclusive lease of aeronautical and non-aeronautical land to build a competing addition ("Terminal Addition") and related federal inspection service addition ("FIS Addition") to the existing terminal ("Terminal") as well as other related aeronautical and non-aeronautical facilities [FAA Exhibit 1, Item 6, Exhibit D]

In its rebuttal, the Respondent states that "It is not disputed that the Authority has granted CFT certain rights..., however, these rights are not prohibited or violative of the deed, the grant assurances or Section 308 of the Civil Aeronautics Act." [FAA Exhibit 1, Item 9, p. 1] The Respondent goes on to state that

> Any airline wishing to utilize the Airport has a choice of two terminals, a corresponding choice of exclusive ramp or common area ramp, and a similar choice of ground handling companies and other service providers to service their aircraft and passengers. There cannot be an exclusive right as a matter of law if there is more than one option for any particular aeronautical activity being offered at the Airport... CFT simply has the right to designate who will provide services on their exclusive leasehold, a right enjoyed by all tenants at the Airport. [FAA Exhibit 1, Item 9, p. 2]

A review of the documents presented, as summarized in the background section, reveals the nature of the relationships among the SAA, CFT and aeronautical services customers. The lease, referred to as 94-42, has many attachments, excerpted by the Complainant. This investigation has examined the complete final documents, as listed in the Index of

Administrative Record (See FAA Exhibit 1). The Operating Agreement, forming Exhibit C of the Lease 94-42, states:

> CFT shall have the exclusive right to provide all aeronautical and non-aeronautical services in and from the Premises of the Project, as authorized in the Lease, to serve the Airline users of the Terminal Addition and their passengers and cargo subject to all existing agreements of the Authority with others as of the effective date of the Lease. CFT shall have the non-exclusive right to negotiate, as provided by law, or respond to requests for proposals of the Authority to provide, aeronautical and non-aeronautical service as the Authority may decide in other common use areas of the Terminal... [FAA Exhibit 1, Item 15, p. 8]

Furthermore, as Attachment B to the Operating Agreement with CFT, and therefore the Lease, a document form puts forth the terms and conditions for use of the exclusive leasehold facilities of CFT and the services offered within. "Terminal Addition Use Agreement 94-45B at Orlando-Sanford Airport" (CFT/OSI-Airline agreement) states the following:

> ...CFT is the exclusive aeronautical and non-aeronautical service provider for the Terminal Addition and Support Facilities and has the power and authority to enter into agreements thereunder with airlines for the use of the Terminal Addition. [FAA Exhibit 1, Item 17, p. 1] ...
>
> Notwithstanding the foregoing, Airline is free to provision aeronautical goods and services provided by the Authority, or its approved service providers, at any other area of the Airport not exclusively leased by the Authority. The Authority reserves the right to license all providers of aeronautical and non-aeronautical goods and services at, on or within the Airport. [FAA Exhibit 1, Item 17, p. 12]

By the record, the Complainant and Respondent do not dispute the facts in this case. Rather, interpretation of what constitutes the granting of an exclusive right as defined in the Quitclaim Deed and Federal law appears to be the point in dispute between the parties. The record shows, as has been discussed above that the Quitclaim Deed does obligate the City of Sanford to certain assurances including the prohibition of "exclusive rights." The City of Sanford and the State of Florida have created the SAA to administer SFB. The SAA has, as has been demonstrated by the above discussion of various documents, obligated itself to adhere to these Federal grant assurances and the Quitclaim Deed. The record does not substantiate that the agreements between the City of Sanford, the State of Florida and the SAA constitute a violation of exclusive rights provisions. No evidence was presented to the record, nor a claim made, that UAS or any other service provider at SFB has been prevented from competing for customers to be serviced from common use areas or on the exclusive leasehold of the respective competitor.

In light of these findings of fact, which are not substantially disputed, the FAA is left with the Federal law and FAA policy and the language in the Quitclaim Deed regarding

exclusive rights to determine whether SAA is in compliance with its Federal obligations. The Complainant, in pertinent part, correctly quotes the Quitclaim Deed in its reply:

> ...the property transferred by this instrument shall be used for public airport purposes for the use and benefit of the public, on reasonable terms and without grant or exercise of any exclusive right for the use of the airport within the meaning of the term "exclusive right" as used in subparagraph (c) of the next succeeding paragraph. As used in this instrument, the term "airport" shall be deemed to include all land, buildings, structures, improvements and equipment used for public airport purposes.... [FAA Exhibit 1, Item 3, Exhibit A, p. 5]
>
> The grantee will not grant or permit any exclusive right for the use of the airport at which the property described herein is located which is forbidden by Section 308 of the Federal Aviation Act of 1958, as amended, by any person or persons to the exclusion of others in the same class and will otherwise comply with all applicable laws. ...the grantee specifically agrees that, unless authorized by the Administrator, it will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right to conduct any aeronautical activity on the airport including but not limited to, charter flights,... air carrier operations, aircraft sales, and services... and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity. [FAA Exhibit 1, Item 3, Exhibit A, p. 6]

The above quote states that a violation of the "exclusive rights" provision of the Quitclaim Deed would require the exclusion of others desiring to engage in activities in the same class, or at least a mechanism, in the form of an agreement or economic arrangement, designed to exclude others of the same class.

The FAA Order describes basic airport relationships such as those presented here between the Complainant and the Respondent, and the Respondent and CFT. The Order recognizes that in most instances a sponsor must turn to private enterprise to provide services, which will make the use of the airport by the public attractive and convenient. The Order also recognizes that these rights are typically afforded through an airport use agreement between the sponsor and a tenant, which grants three rights. The three rights are (1) the right for the licensee or tenant to use the landing area and public airport facilities in common with others so authorized; (2) the right to *occupy as a tenant and to use exclusively certain designated premises* (emphasis added); and (3) the commercial privilege or the franchise right to offer goods and services to the public who use the airport. [See Order 6-2]

As understood in the FAA Order, the FAA has reviewed the lease terms in CFT's contract with the Respondent. The FAA did this to determine whether this arrangement has the effect of granting or denying rights to use airport facilities contrary to SAA's grant obligations, the Quit Claim Deed conditions or law. Further, this review was done to identify any terms or conditions which could prevent the realization of the full benefits

for which the airport was constructed or which could develop into a restriction on the Respondent's ability to meet its federal obligations.

UAS has not claimed in the record that they have been prevented by SAA and CFT from acquiring or constructing similar facilities and offering similar services. In fact, the evidence in the record does not show that UAS has been prevented from engaging in the provision of like services on the airport, nor does it show that they have been prevented from marketing their services to potential customers, by the force of any agreements presented to the record between SAA and CFT. As reflected in the record, the SAA states that UAS "presently has full rights to provide ground handling services on the Airport under an agreement with the Authority dated December 7, 1994." [FAA Exhibit 1, Item 6, Attachment A, p. 4] The "Non-Exclusive General Aeronautical Services Agreement" with UAS allows ground-handling services, except fueling, on "non-exclusive and common use public airport facilities." [FAA Exhibit 1, Item 21]

A claim of a violation of the exclusive rights provision of the Quitclaim Deed would need to demonstrate that the agreements between SAA and CFT have the effect of preventing other similar aeronautical service providers from using the airport to conduct aeronautical activities or provide aeronautical services. [See Surplus Property Act of 1944, as amended, 49 USC § 47152 (3)] Simply demonstrating that a competitor has exclusive use of a leasehold does not show a violation of the exclusive rights provision as defined in law and the Quitclaim Deed.

The fact that CFT has made a substantial capital investment in order to provide comprehensive services to their aeronautical customers, does not excuse potential competitors from the need to invest similar amounts of capital in order to provide similar services. While airport sponsors are not required to make these investments themselves, sponsors do have an obligation to make available suitable areas or space on reasonable terms to those who are willing and otherwise qualified to offer aeronautical and aeronautical support services to the public. This means that unless it undertakes to provide these services itself, the airport owner has a duty to negotiate in good faith for the lease of such premises as may be available for the conduct of aeronautical activities. [See Order, Sec. 4-15]

The Complainant has made no allegation that the Respondent has refused to lease it space to construct a hangar or a terminal for it to provide aeronautical services.[6] There has been no showing that the Respondent entered into agreements in an attempt to prevent the Complainant from offering aeronautical services that are being provided by CFT. The Complainant has failed in its burden to support its exclusive rights claim violation by merely proffering that a competitor has exclusive use of a leasehold.

---

[6] An airport owner is not obligated to provide space unless the activity offers services to the public or support services actually needed by aircraft operators otherwise entitled to use the public landing areas. [See Order Sec. 4-15b]

CFT Fuel Farm Agreement

The SAA entered into a separate agreement with CFT on November 6, 1995 (Fuel Farm Agreement) for the lease of land for the purposes of "construction of aviation fuel receiving, storage, quality control and distribution," according to excerpts of a document submitted by the Complainant. [FAA Exhibit 1, Item 7, Exhibit 9] The Complainant submits this excerpt, citing it as evidence, but without making an argument as to how it violates the exclusive rights provision. A review of this excerpt and of the operating agreement to which it refers, reveals that:

> the Operating Agreement and Lease requires that CFT, upon written request of the Authority, purchase refueling trucks, purchase and install up to three (3) 20,000 gallon jet-a storage tanks and refurbish up to three (3) pre-existing 50,000 gallon concrete storage tanks, or alternatively provide equivalent storage tanks within the existing fuel farm of the Authority, or in an area adjacent to such fuel farm. [FAA Exhibit 1, Item 7, Exhibit 9]

The Fuel Farm Agreement was entered into as a less-cost alternative to the above specific provisions and states that "CFT has requested that the Authority lease and license certain lands to CFT for the construction of aviation fuel receiving, storage, quality control and distribution facilities...; WHEREAS, CFT desires that the Authority operate the Fuel Farm for CFT on an independent contractor basis." [FAA Exhibit 1, Item 7, Exhibit 9, pp. 1 and 2] The Fuel Farm Agreement creates a 20 to 30 year lease for 4.6 acres of land upon which CFT will construct fuel farm facilities as described. [FAA Exhibit 1, Item 7, Exhibit 9]

Given the evidence, as summarized, from the record, and the Complainant's lack of an argument or evidence to refute SAA's contention, the FAA is unable to find that this agreement shows that SAA has violated the provisions prohibiting exclusive rights.

Conclusion

In summary, the FAA is unpersuaded by the evidence in the record that UAS has been prevented by the SAA from pursuing opportunities to build a facility and to offer services similar to CFT, or that it has been prevented from offering services in common use areas. A claim that an aeronautical service provider is being prevented from offering services within another provider's leasehold, in itself, does not establish a violation of the exclusive rights prohibition. Furthermore, the Quitclaim Deed and the documents between the City of Sanford and the SAA do not show evidence of the granting of an exclusive right, nor does the arrangement warrant establishing a stricter standard for the interpretation of "exclusive rights." The Complainant has submitted no argument to the record as to how the Fuel Farm Agreement, or other documents alluded to by the Complainant, violate the exclusive rights provision. Accordingly, the FAA does not find that the SAA is in violation of the exclusive rights provisions of the Quitclaim Deed or the applicable Federal grant assurance.

Economic Discrimination Allegation

UAS states that "the Authority has also [discriminated] against Universal as it relates to the 'privilege fee' to be paid to the Authority by Universal and CFT." [FAA Exhibit 1, Item 7, p. 5] Specifically UAS argues in its reply dated May 2, 1996 that:

> The ground handling agreement between Universal and the Authority under "Article 3.01 gross receipts percentage fee states Universal's agreement with the Authority requires Universal to pay 10% of gross receipts derived from airport operations....
>
> The agreement between CFT & Authority allows for operating expenses to be subtracted from gross revenues. Although CFT has a higher percentage, the ability for CFT to subtract certain operating expenses and in certain instances bad debts, the actual amount of fees paid by Universal and CFT based on the same gross revenue and can be substantially different....
>
> Further the privilege fee agreement between CFT and the Authority states that "if any given fiscal year the excess revenue is at a deficit (expenses exceed revenue) the Authority shall not be entitled to a privilege fee for that fiscal year...."
>
> Project lease No. 94-42 CFT has been given a three-year waiver of all land rents. However, the official minutes of the Sanford Airport Authority Board Meeting of December 6, 1994, Jettaire, an FBO located here on the field had requested a deferral of rent from the Authority for the start of their project and according to the minutes the request was denied due to FAA Objections based on Grant and Deed Assurances. [FAA Exhibit 1, Item 7]

The Complainant also mentions the Fuel Farm Agreement payment terms, citing them as differing from the previous Lease Agreement for the Terminal Addition regarding the price per square foot of land. It is unclear how differing payment terms for different parcels of land, used for dissimilar purposes by the same lessee could constitute discrimination.

The SAA states in its rebuttal:

> Universal has not been discriminated against concerning the gross receipts percentage fee or handling of bad debts. Universal and CFT are not in the same class of service providers. Universal is a ground handler who agreed, like all other ground handlers, to pay the Authority ten percent (10%) of its gross receipts. CFT is a fixed base operator providing terminal facilities and all support services. In lieu of ground rentals in years 1-3, CFT pays the Authority thirty five percent (35%) of excess revenues over allowable expenses. Thereafter, CFT pays ground rentals plus twenty five percent (25%) of excess revenues. The Authority retains control over all bad debt sought to be deducted from gross revenues. The comparisons are illogical and do not equate with discrimination against Universal.

> Universal states that CFT was given a three year waiver of ground rentals while Jettaire, an FBO at the Airport, was denied a waiver of rentals. As stated above, the Authority receives an additional ten percent (10%) from CFT in the first three (3) years of Project Lease 94-42. The Authority did and still believes that the percentage rents will far exceed the ground rentals which could have been obtained. Jettaire offered nothing in exchange for their request for a waiver of ground rentals, just a total abatement. [FAA Exhibit 1, Item 9, p. 3]

Upon review of the above-summarized arguments and the various documents submitted to the record regarding the arrangements between the SAA and CFT and between the SAA and UAS, the FAA finds that UAS and CFT are not making the same or similar use of SFB. Furthermore, the record does not demonstrate that CFT is making the same or similar use with any other service provider identified in the complaint. The actual schedules of rates and charges to be paid by the service providers at SFB are not disputed. The agreements entered into between the SAA and CFT commit the lessee to provide funding for substantial capital improvements to the leasehold. No evidence has been presented to the record that demonstrates remotely similar commitments by UAS. UAS has not claimed interest in developing a fuel farm facility, nor presented any information as to the lease terms available to it from SAA for such a facility. UAS has not demonstrated that SAA has failed to make airport facilities and services available on fair and reasonable terms without unjust discrimination.

FAA Order 5190.6A discusses the obligation of an airport sponsor to treat in a uniform manner those users making the same or similar use of the airport and to make all airport facilities and services available on fair and reasonable terms without unjust discrimination. See Order, Sec. 4-14(a) and 3-1. The prohibition on unjust discrimination does not prevent an airport proprietor from making reasonable distinctions among aeronautical users and assessing higher fees on certain categories of aeronautical users based on those distinctions. As a matter of policy, the FAA has not interpreted surplus property obligations as applying a different standard than the grant assurance cited above.

Therefore, the FAA is unable to find that SAA has discriminated against UAS or has provided unreasonable terms for access to the aeronautical use of the airport.

ORDER

Under the specific circumstances at the Orlando Sanford Airport as discussed, and based upon the evidence of record in its entirety, we find that:

(1) the SAA's arrangements with CFT and other airport tenants do not violate the provisions against exclusive rights set forth in § 308 of the Federal Aviation Act, 49 USC § 40103(e), as amended by Pub. L. No. 103-305

(August 23, 1994); § 511(a)(2) of the AAIA, 49 USC § 47107(a)(4), as amended by Pub. L. No. 103-305 (August 23, 1994); and the SAA's federal grant assurances.

(2) the SAA's arrangements with CFT, UAS and other airport tenants do not violate the provisions against economic discrimination set forth in § 511(a)(1) of the Airport and Airway Improvement Act of 1982, as amended, 49 USC § 47107(a)(1)(5) as amended by Pub. L. No. 103-305 (August 23, 1994), and the SAA's federal grant assurances.

ACCORDINGLY, the FAA dismisses the complaint of Universal Aviation Services, Inc., against the Sanford Airport Authority.

These determinations are made under §§ 307, 308(a), 313(a), and 1006(a) of the Federal Aviation Act of 1958, as amended, 49 USC §§ 40103(b)(1), 44502, 44721, 40103(b)(2), 40103(e), 40113, 40114, 47122, 46104, and 46110 as amended by Pub. L. No. 103-305 (August 23, 1994), respectively, and §§ 511(a), 511(b), and 519 of the Airport and Airway Improvement Act of 1982, as amended, 49 USC §§ 47107(a)((1)(5), 47107(a)(4), 47107(g)(1), 47111(d), 47122 as amended by Pub. L. No. 103-305 (August 23, 1994), respectively.

RIGHT OF APPEAL

This order constitutes final agency action under § 1006(a) of the Federal Aviation Act of 1958, as amended, 49 USC § 46110, as amended by Pub. L. No. 103-305 (August 23, 1994). Any party to this proceeding having a substantial interest in this order may appeal the order to the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within 60 days after entry of this order.

JAN 14 2003

David L. Bennett
Director, Office of Airport
Safety and Standards

FAA EXHIBIT 1

Universal Aviation Services, Inc.
v
Sanford Airport Authority

Formal Complaint Docket Number 13-95-25

INDEX OF ADMINISTRATIVE RECORD

The following documents (Items) constitute the administrative record in this proceeding:

1) 03/04/97 — FAA Form 5010, airport inspection on March 4, 1997 for Orlando Sanford Airport (SFB), Site No. 03407.A

2) 08/06/97 — Airport Sponsor AIP grant history, dated 08/06/97, listing the Federal airport improvement assistance provided by the FAA to the Airport Sponsor for projects at SFB.

3) 10/12/95 — Letter from William E. Brain, General Manager, Universal Aviation Services, Inc., filing a formal complaint to the docket against the Sanford Airport Authority (SAA) on behalf of Universal Aviation Services, Inc. (UAS) with attachments as follows:

- 09/04/69 — Exhibit A, Quitclaim Deed, transferring certain property known as the Sanford Naval Air Station to the City of Sanford.
- 08/28/95 — Exhibit B, excerpts (pp. 1 and 8) from Operating Agreement 94-45 between the SAA and Central Florida Terminals (CFT). The complete document is included as Item 15.
- undated — Exhibit C, excerpts (pp. 1 and 11) from Terminal Addition Use Agreement Form 94-45B between the SAA and CFT.
- undated — Exhibit D, excerpt (p. 1) of Exhibit D of Project Lease Number 94-42 between the SAA and CFT, titled, "Description of the Project." The complete document is included as Item 20.

4) 11/16/95 — Letter from William E. Brain, submitted to the record as supplemental information to the formal complaint with attachments as follows:

- 11/09/95 — Exhibit A, Letter from Luis Reiter, Bond Counsel to the SAA, to Stephen H. Coover, counsel to the SAA, regarding the relationship between the City of Sanford and the SAA.
- 11/09/95 — Exhibit B, Letter from Stephen H. Coover, SAA General Counsel, to UAS transmitting a draft Operation and Use Agreement between the City of Sanford and the SAA.

5) 03/26/96 — (a) Letter from FAA Office of Chief Counsel to Stephen J. Cooke, SAA Director of Aviation transmitting a copy of the complaint docketed as 13-95-25. (b) Letter from FAA Office of Chief Counsel to UAS advising that its complaint had been docketed.

6) 04/16/96 — Letter from Stephen H. Coover, general counsel to the SAA, filing a response to the Formal Complaint No. 13-95-25 with attachments as follows:

- 09/28/95 — Exh. A, Letter, with attachments, from Stephen J. Cooke, Director of Aviation for the SAA, to

Pablo G. Auffant, FAA Orlando Airports District Office (OADO).

09/26/95 Exh. B, Letter from Stephen H. Coover to Stephen J. Cooke, expressing his opinion as to whether Lease Number 94-42 between the SAA and CFT contains mandatory provisions as required by the FAA, and transmitting the attached Lease Review Form.

12/27/94 Exh. C, Memorandum from the SAA to Airlines/Tour Operators describing ground handling or passenger services available at SFB.

09/28/95 Exh. D, Letter from Stephen H. Coover to William Brain responding to UAS Part 13 complaint.

09/28/95 Exh. E, Letter from Timothy B. Howe, then President of CFT, to Stephan J. Cooke, expressing concurrence with interpretations regarding project lease and attorney opinion.

7) 05/02/96 Letter from William E. Brain on behalf of UAS, providing rebuttal to the response of SAA with Exhibits 1 through 9 as follows:

09/04/69 Exhibit 1, excerpts (pp. 1, 2 and 3) of Quitclaim Deed.

12/15/95 Exhibit 2, excerpts (pp. 1 and 10) from Amended and Restated Project Lease Number 94-42, with no signature page.

12/07/94 Exhibit 3, excerpts (pp. 1, 3 and 4) of Non-Exclusive General Aeronautical Services Agreement between SAA and UAS.

undated Exhibit 4, Attachment "A" of Operating Agreement, Excess Revenue and Privilege Fee Calculation. Final version with changes, as Attachment "D."

undated Exhibit 5, excerpt (p. 26) of CFT Operating Agreement describing the calculation of the privilege fee.

undated Exhibit 6, excerpts (pp. 4 and 23) from UAS's agreements with SAA regarding gross receipts and the definition of gross receipts.

undated Exhibit 7, excerpts (p. 10) from draft CFT lease regarding premises rental and undated excerpts from minutes of the SAA Board.

undated Exhibit 8, excerpt (p. 10) of draft CFT lease regarding premises rental, same as above.

11/06/95 Exhibit 9, excerpt (pp. 1,2 and 3) from Separate Agreement Under Project Lease Number 94-42 for Central Florida Terminals, Inc.'s Fuel Farm at Orlando Sanford Airport.

8) 07/03/96 Letter from FAA Office of Chief Counsel to Stephen Coover, SAA Attorney, transmitting a copy of UAS' rebuttal.

9) 07/26/96 Letter from Stephen H. Coover, presenting response to UAS rebuttal.

10) 01/15/97 Letter, with attachments from William E. Brain providing unsolicited additional information to the record, including a letter from Brendan P. Carmody, President & CEO of CFT, to Stephen J. Cooke, dated 12/31/96; excerpt of a Terminal Addition Use Agreement dated 10/30/95; and excerpts of Capital Expenditure Forecast and Sanford equipment Requirement.

11) 06/30/71 Special Act in Chapter 71-924, Law of Florida, known as the Sanford Airport Authority Act, creating the Sanford Airport Authority.

12) 12/04/81	A resolution of the Sanford City Commission, designating the Sanford Airport Authority as the agent of the City for the purposes of control and operation of SFB.
13) 08/13/96	Airport Lease Agreement between the City of Sanford and the Sanford Airport Authority.
14) 08/28/95	Project Lease Number 94-42, with exhibits A, B and E with attachments, between the SAA and CFT for the leasehold in question.
15) 08/28/95	Operating Agreement 94-45 for the terminal addition between SAA and CFT, with attachments.
16) undated	Airport Use Agreement 94-45A form. Form to be filled out by airlines wishing to use facilities operated by SAA.
17) undated	Terminal Addition Use Agreement 94-45B form. Form to be filled out by airlines wishing to use terminal facilities operated by CFT.
18) undated	Proforma Budget Format for Fuel Service Facility.
19) undated	Excess Revenue and Privilege Fee Calculation.
20) undated	Description of the Project to Lease Number 94-42.
21) 08/28/97	Letter from Randall J. Lee, CEO of Jet Lift International as an agent of Universal Aviation Services, providing information requested by the FAA.
22) 09/17/97	Letter to the FAA from Stephen J. Cooke, submitting to the record evidence of the change of ownership of CFT to TBI plc.