

**UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC**

Goodrich Pilot Training Center, LLC, and  
Aviation Management Group, LLC

Complainants

v.

Village of Endicott, New York

Respondent



**FAA Docket 16-08-03**  
April 3, 2009

**DIRECTOR'S DETERMINATION**

**I. INTRODUCTION**

This matter is before the Federal Aviation Administration (FAA) based on the Complaint filed under 14 Code of Federal Regulations (14 CFR) Part 16, by Goodrich Pilot Training Center, LLC and Aviation Management Group, LLC (Complainants).<sup>1</sup> The Complaint was filed against the Village of Endicott, New York (Respondent), as owner/sponsor of the Tri-Cities Airport (CZG or Airport).

In this Part 16 Complaint, Complainants allege the Respondent violated 49 United States Code (U.S.C.) § 47107(a)(1)-(6), Grant Assurance 22, *Economic Nondiscrimination*, and Grant Assurance 23, *Exclusive Rights*, by terminating Complainants' leases at the Airport without good cause, thereby economically discriminating against their businesses through unreasonably denying them use of the Airport. The Respondent admits it terminated Complainants' leases. However, the Respondent asserts the Complainants' conduct, including self-dealing, nonpayment of rent, and the results of an audit, justified its decision to deny the Complainants the right to continue offering aeronautical business services at the Airport. The Complainants' conduct, as described in documents submitted to the record, and the Respondent's contention that its actions were reasonable are evaluated in this determination.

As part of this Complaint, Complainants request that the FAA (i) declare that the actions by the Village of Endicott and the proposed lease termination are unlawful and

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<sup>1</sup> The Director notes that Goodrich Aviation Development Services, LLC (GADS), was a party to the Part 13 section 13.1 complaint preceding this Part 16. Documents submitted to the record, including court documents from cases between GADS and the Respondent, list GADS as a party of interest.

economically discriminatory and that (ii) the Village be enjoined and restrained from continuing or beginning any eviction proceedings against the Complainants.

The Respondent requests dismissal of the Complaint alleging Complainants' past and current behavior substantiate its decision to terminate the leases in question and Complainants' Complaint "fails to assert any claim under Grant Assurance No. 23." [FAA Exhibit 1, Item 3, Page 17]

The decision in this matter is based on: (i.) applicable law and FAA policy regarding the Respondent's Federal obligations as imposed by Grant Assurances 5 - *Preserving Rights and Powers*, 22 - *Economic Nondiscrimination*, and 23 - *Exclusive Rights*, as well as Title 49 U.S.C. § 47107 *et. seq.*; and (ii.) arguments and supporting documentation submitted by the parties, which comprise the administrative record reflected in the attached FAA Exhibit 1.

With respect to the allegations presented in this Complaint, under the specific circumstances as discussed below and based on the evidence of record in this proceeding, the FAA finds the Respondent is not currently in violation of its Federal obligations.

The basis for the Director's Determination is set forth herein.

## II. PARTIES

### A. Complainants

Goodrich Pilot Training Center, LLC and Aviation Management Group, LLC, in this case are referred to as "Complainants" or "Goodrich." Douglas Goodrich describes himself as a member/manager of Goodrich Pilot Training Center [FAA Exhibit 1, Item 4, Exhibit 6, Para 1], a limited liability company organized and existing under the laws of the State of New York and is engaged in the instruction and training of airplane pilots. [FAA Exhibit 1, Item 1, Para 1] Douglas Goodrich also describes himself as a member/manager of Aviation Management Group [FAA Exhibit 1, Item 4, Exhibit 5, Para 1], a limited liability company organized and existing under the laws of the State of New York and is engaged in the business of owning and leasing airplanes. [FAA Exhibit 1, Item 1, Para 2]

In the Part 13 section 13.1 complaint filed with the New York Airport District Office preceding this Part 16 Complaint, Complainants' attorney asserts that:

*Pursuant to the (Management) Agreement, Goodrich Aviation Development Services, LLC, was to provide certain aeronautical services, including a mechanic's operation and a flight school...*

*Initially Goodrich Aviation Development Services, LLC, undertook both operations under its own name; however, subsequently Goodrich Pilot Training*

*Center, LLC and Aviation Management Group, LLC, were created for liability and tax purposes. [FAA Exhibit 1, Item 6, Exhibit 6]*

Therefore, based on the evidence submitted into record and the Part 13 section 13.1 filings, and for the purpose of consistency and clarity, the Director believes it is important to clearly reference Douglas Goodrich and GADS' relationship with the Complainants. Douglas Goodrich is the manager of GADS, the manager of Aviation Management Group, and the manager of Goodrich Pilot Training Center. [FAA Exhibit 1, Item 4, Exhibits 5 and 6]

## **B. Respondent**

The Village of Endicott ("Village" or "Respondent") is a municipal corporation chartered by the State of New York. [FAA Exhibit 1, Item 1, Exhibit 1, Page 1] The Village is the owner/sponsor of the Tri-Cities Airport (CZG) [FAA Exhibit 1, Item 7] and has accepted \$3.7 million of Federal grants [FAA Exhibit 1, Item 9] under the Airport Improvement Program (AIP) authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. § 47101, *et seq.*

## **III. BACKGROUND AND PROCEDURAL HISTORY**

The majority of the documents comprising the record for this Complaint consist of pleadings submitted in court proceedings in other venues, including the New York State Supreme Court, the Town of Union, and the Broome County Appellate Court in the New York State Court systems, where action is still pending.

The background and procedural history of this Complaint contains five sections, each of which describes the history of the relationships and issues set forth in the record.

### **Management Agreement**

The relationship between GADS and Respondent formally commenced on October 1, 1997, when these parties entered into a Management Agreement (Agreement) [FAA Exhibit 1, Item 1, Exhibit 1, Page 1].<sup>2</sup> The Agreement expired on September 30, 2002 but allowed for a five year extension "provided that Goodrich is not in default under the terms of this Agreement." [FAA Exhibit 1, Item 1, Exhibit 1, Section 5] According to Goodrich, the extension option was exercised; [FAA Exhibit 1, Item 1, Para 7] the Village does not dispute this. [FAA Exhibit 1, Item 3, Para 7]

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<sup>2</sup> According to the documentation submitted to the record in this Complaint, Goodrich Aviation Development Services, LLC is either a parent company or sister company of the named Complainants in this matter. "Goodrich Aviation Development Services, LLC established four separate businesses at the Tri-Cities Airport, the flight school (Goodrich Pilot Training Center), the mechanic operation, a sales/leasing business (Aviation Management Group), and the general business operation. All four businesses use said telephone number... Relinquishing control of the number would cause severe economic hardship to the Goodrich businesses." [FAA Exhibit 1, Item 1]

The Management Agreement defined the relationship between Goodrich Aviation Development Services, LLC and the Village. Specifically, it stated:

*The Village retains all of the rights and responsibilities which may not be delegated to an airport manager<sup>3</sup> under any rule and regulation of the Federal Aviation Administration, by rule, regulation or contract, or continuing guarantee or assurance heretofore provided to the Federal Aviation Administration by the Village.*

*Goodrich shall not be deemed to be an employee of the Village; the relationship between the parties being that of an owner/independent contractor. [FAA Exhibit 1, Item 1, Exhibit 1, Section 2]*

The Management Agreement served as a contractual instrument wherein the Respondent granted GADS the right to manage the Airport on behalf of the Respondent. However, the Agreement states that the Respondent retains all of its rights and responsibilities which cannot be delegated under any rule or regulation of the FAA. In return for managing the Airport, GADS received a \$50,000 set annual fee from the Respondent. The Agreement also set forth a rental structure for GADS to pay the Respondent. The rental structure consisted of a 2.5 percent fee on all of GADS' gross sales. The Agreement defined gross sales as:

*... the gross amount received by Goodrich from all sales... all charges for services and merchandise sold by Goodrich at the Airport. Said services and merchandise shall include, but not be limited to the sale of fuel, hangar rentals, aircraft maintenance, facilities rentals, tie downs, landing fees, aircraft sales, equipment and parts sales, flight instruction fees, and other sales at the Airport, together with the gross amount received by Goodrich from other sources of income derived from the business conducted at the Airport. [FAA Exhibit 1, Item 1, Exhibit 1, Section 6(c)]*

Furthermore, the Respondent stated that a "2.5% gross sales provision is standard for all businesses operating at the Tri-Cities Airport." [FAA Exhibit 1, Item 3, Para 43] [FAA Exhibit 1, Item 14, Section 4(d)] The tenant leases executed by GADS through Douglas Goodrich in his capacity as airport manager/contractor, included as exhibits in the record, had almost identical language requiring revenue producing businesses leasing office and/or hangar space "to pay to the lessor, for and on behalf of the Village, an additional rental based on 2.5% of tenant's gross sales." The definition of gross sales in the tenant leases mirrors the language in the Management Agreement and becomes a point of contention between the parties and is discussed in the subsection entitled: "Civil Court Proceedings History."

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<sup>3</sup> The Management Agreement uses the terms "airport manager" and "contractor" interchangeably when referring to GADS and Douglas Goodrich.

## **Allegations Regarding Breach of Contract**

In 2002, the Management Agreement was extended by its terms for a period of five years without controversy.

Beginning in 2004, a dispute between the parties arose when GADS proposed before the Village of Endicott's Board of Trustees to raise the hangar rental rates at the Airport effective April 1, 2004.

At the February 9, 2004 Board meeting, the meeting minutes show that the motion to raise the hangar rental rates did not receive a second and thereby failed. [FAA Exhibit 1, Item 15]

The following year, effective April 1, 2005, GADS unilaterally raised the hangar rental rates at the Airport without seeking approval of the Board, and, as noted by the Respondent, in violation of the terms of the Management Agreement, which included "numerous provisions ... requiring consultation with the Village" before raising Airport fees. [FAA Exhibit 1, Item 3, Para 7]

On November 30, 2005, the Respondent notified Douglas Goodrich for GADS that:

*Respondent unilaterally raised hangar rental rates at the Tri-Cities Airport, effective April 1, 2005 without seeking or obtaining the approval of the Village. In or around January of 2004, (Goodrich) sought approval from the Village to raise the rental rates, and a motion to raise said hangar rates failed on February 9, 2004.<sup>4</sup>*

*Pursuant to Section 7(b) of the Management Agreement, you are hereby notified that you have breached the contract between the parties and the Village of Endicott hereby demands that you cure the breach within 30 days. [FAA Exhibit 1, Item 1, Exhibit 3]*

Goodrich disagreed with Respondent's contention that he was in violation of the Management Agreement, asserting the unilateral increase in hangar rental fees was "within the lessor's right under the (management) agreement." [FAA Exhibit 1, Item 1, Exhibit 4.11, Para 19]

On December 16, 2005, Goodrich advised his attorney:

*... that his understanding was that the Village, in executive session, approved litigation against unnamed defendants, and assumed that one of the defendants was Goodrich<sup>5</sup>, and that it was the intent of the Village to evict Goodrich in the*

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<sup>4</sup> See, FAA Exhibit 1, Item 15

<sup>5</sup> There is no evidence in the record confirming that the Respondent planned to commence litigation against GADS. The only reference to litigation is reflected in the minutes from a Village of Endicott Board of Trustees Work Session held November 28, 2005 wherein then

*event that the alleged default set forth in the notice of November 30, 2005, was not cured within the thirty (30) day cure period. [FAA Exhibit 1, Item 1, Exhibit 4.A, Para 12]*

That same day, Complainants' attorney requested "an immediate hearing (with Respondent's attorney) to resolve the dispute and controversy" regarding the breach of contract allegation. At or around this time, Complainants' attorney stated that he contacted then Village Mayor, Joan Pulse, to ascertain the Respondent's intentions with regard to eviction proceedings or litigation over the alleged breach of the Management Agreement. Complainants' attorney stated:

*... (he) had discussed the matter and issues with the Mayor no less than five times without any admission by the Mayor that there was any intent to litigate; as a matter of fact, the Mayor indicated that she did not prefer litigation. [FAA Exhibit 1, Item 1, Exhibit 4.A, Para 15]*

On December 29, 2005, GADS submitted an Order to Show Cause to the New York State Supreme Court, County of Broome, seeking "a preliminary injunction" and a "temporary restraining order" to prevent the Village from pursuing eviction proceedings. [FAA Exhibit 1, Item 1, Exhibit 4] Until this point, the Village only had demanded that GADS cure the alleged breach. At no point did the Village issue an eviction notice for the alleged breach of raising the rents unilaterally. [FAA Exhibit 1, Item 1, Exhibit 3] The court proceedings in this forum are inventoried in the record in FAA Exhibit 1 and recounted in the subheading: "Civil Court Proceedings History." These proceedings brought forth by GADS in the New York State Supreme Court concluded in June 2006 when GADS and the Respondent signed a Stipulation agreeing to set aside the contractual breach matters over the hangar rate rental increases. The Director notes that the Village did not respond to the legal proceedings initiated by the Complainants. Furthermore, there is nothing in the record to indicate the Village intended to commence eviction proceedings as the Village chose not to respond to the charges and thereby the matter was stayed by the court without Respondent's objection. [FAA Item 1, Exhibit 6]

The core issue in dispute over the alleged breach of contract regarding the Management Agreement and subsequent court proceedings initiated by the Complainants was ***whether or not GADS had the ability to unilaterally implement hangar rental rate increases.***

The Director has reviewed the evidence presented by the parties in these actions and has extracted the relevant information as applicable to this Complaint, which will be analyzed and discussed in Section VI of this Determination.

### **Disputes Over Termination of Leases and Evictions Post-Management Agreement**

The record is silent on activities from June 2006 through September 2007.

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Mayor Pulse "stated that the trustees needed to go into an Executive Session to discuss personnel and litigation issues."

On September 30, 2007, the Management Agreement between Goodrich Aviation Development Services, LLC, and the Village of Endicott “terminated by its terms” and the Respondent resumed management of the Airport. [FAA Exhibit 1, Item 1, Para 7] In the days prior to the expiration of the Agreement, on September 26, 2007, Douglas Goodrich signed as both the Airport manager and tenant, a Standard Hangar Lease Agreement between Goodrich Aviation Development Services, LLC and Aviation Management Group, LLC. Also on September 26, 2007, Douglas Goodrich signed as both the Airport manager and tenant, a Standard Subprime-Heated Office Space Agreement between Goodrich Aviation Development Services, LLC and Goodrich Pilot Training Center, LLC.

When the Respondent resumed management of the Airport on October 1, 2007, the Respondent learned of the above referenced leases and immediately sought to terminate them and evict the Complainants for “granting himself rights to certain space at the Airport.” [FAA Exhibit 1, Item 3, Para 42] The Respondent also stated that upon further examination of the Airport’s records, the Respondent learned that GADS had executed leases with terms and locations that “were not offered to individuals or organizations at the Airport other than those with whom Mr. Goodrich financially benefitted.” [FAA Exhibit 1, Item 3, Para 42] GADS had leased to himself the three primary buildings used for Airport business operations, aircraft storage, and aircraft maintenance services. Through these leases, executed by GADS, through Douglas Goodrich, as Airport manager to the Goodrich Complainants as tenants just days before the Management Agreement expired, Douglas Goodrich sought to continue his ten year exclusive control over these key properties on the Airport.

In early October 2007, the Respondent offered Complainants an opportunity to discuss alternate arrangements for space on the Airport. When the Respondent advised Complainants of the termination of these leases in a letter dated October 2, 2007, Respondent’s attorney notes: “I believe this (finding alternate space on the Airport) can be done without the need of judicial intervention, and to that end, would welcome the ability to sit down with you to discuss the possibilities for the future.” [FAA Exhibit 1, Item 1, Exhibit 10.2] Complainants’ attorney acknowledged Respondent’s offer in his response letter dated October 10, 2007, but objected to the space offered stating it was “less accessible, subject to flooding and out of pedestrian traffic pattern.” [FAA Exhibit 1, Item 1, Exhibit 10.4] The record does not indicate whether the Complainants suggested other space, met with the Respondent, or attempted to negotiate a mutually agreeable location.

At the request of the Respondent, the Office of the New York State Comptroller, Division of Local Government and School Accountability, audited the Tri-Cities Airport in 2007. The following actions arose in conjunction with this audit:

- On October 1, 2007, the Village resumed control of the Tri-Cities Airport.
- On October 2, 2007, the Village notified Complainants’ attorney of its intent to evict the Complainants.

- On October 11, 2007, the Respondent acknowledged and accepted the findings of the above referenced audit by letter, thereby inferring it was aware of the results no later than that date.
- On October 22, 2007, the State Comptroller publicly released its “Village of Endicott, Oversight of Tri-Cities Airport, Report of Examination for the period covering June 1, 2005 through April 3, 2007.” [See, FAA Exhibit 1, Item 8] The Comptroller’s stated objective for the audit was to “determine if the Village’s share of gross sales revenues from Airport operations was in accordance with provisions in the (Management) Agreement with the Airport’s FBO.” [FAA Exhibit 1, Item 8, Page 5] The audit concluded that the Village “failed to provide adequate oversight over the agreement... did not verify that moneys received were accurate and adequately supported... as a result, the Village did not receive revenue of approximately \$13,608 to which it may have been entitled” during the audited time period. [FAA Exhibit 1, Item 8, Page 7] The report notes that the last audit performed by the Village in 2002 covered the period of 1998 through 2000. Records from 2000 through May 31, 2005 were not available for this audit. The terms of the Management Agreement required Goodrich to make such files available for examination only for two years.<sup>6</sup>
- On October 24, 2007, two days after the audit was publicly released, Respondent officially issued thirty (30) day notices of termination of tenancy to the Complainants. Respondent asserted the Complainants’ self-dealing and nonpayment of approximately \$13,608 in gross sales revenue as detailed in the results of the audit justified this action.
- On November 12, 2007, as a result of the audit, the Village Trustees passed a resolution banning Douglas Goodrich from serving as a contractor or employee<sup>7</sup> of the Village of Endicott, specifically at the Airport.

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<sup>6</sup> Based on the findings and recommendations of the audit conducted by the New York State Comptroller’s Office, the Respondent in this matter has attempted to reconstruct files and records relating to the management of the Airport during the term of the Management Agreement through the discovery phase of a legal action currently being litigated in the Town of Union Court in the State of New York. However, this documentation is in the possession of GADS, which has sought Protective Orders to prevent the Respondent from obtaining these files and records. [FAA Exhibit 1, Item 3]

<sup>7</sup> These terms, contractor and employee, also are used in the Management Agreement entered into between Respondent and GADS to define the relationship between the parties. It states: “Goodrich shall not be deemed to be an employee of the Village; the relationship between the parties (was) that of an owner/independent contractor.” [FAA Exhibit 1, Item 1, Exhibit 1] A legal definition of an independent contractor may be one who provides goods and services for another for a set fee under an express or implied agreement. A legal definition of an employee may be a person who is hired for a wage, salary, fee or payment to perform work for an employer.



## Part 13 section 13.1 and Part 16 Procedural History

On the same day the audit was issued, October 22, 2007, GADS and the Complainants in this Part 16 case filed a complaint pursuant to 14 CFR §13.1, *Investigative and Enforcement Procedures*, with the FAA New York Airports District Office (ADO). GADS and the Complainants alleged, “the Village of Endicott is economically discriminating against them by threatening to terminate the present lease(s)... for no good cause and in violation of sections 22 and 23 of the Airport Sponsor Assurances and other related Federal and FAA rules and regulations.” [FAA Exhibit 1, Item 1, Exhibit 10.A]

On November 28, 2007, the FAA’s New York ADO sent a letter to Respondent’s attorney advising a Part 13 section 13.1 complaint had been filed against the Village by GADS and the Complainants. The FAA letter stated that GADS and the Complainants alleged the Respondent “violated Grant Assurance 22, *Economic Nondiscrimination*, and 23, *Exclusive Rights*.” [FAA Exhibit 1, Item 1, Exhibit 10.5]

On November 30, 2007, Respondent filed its response to the Part 13 section 13.1 complaint with the FAA’s New York ADO. Respondent denied GADS and the Complainants’ allegations that the Village terminated their leases for no good cause by stating GADS and the Complainants:

*... have engaged in a pattern of self-dealing, misappropriated Village assets, exploited their management authority in order to obtain goods and services from the Airport (i.e. storage, at a greatly reduced rate for half a decade) and have withheld tens of thousands of dollars from the Village.*<sup>8</sup> [FAA Exhibit 1, Item 6, Exhibit 2]

On February 28, 2008, the Respondent sent a follow up to its original response to the FAA’s New York ADO requesting a clear declaration from the Agency regarding “its role, or lack thereof, with respect to local eviction proceedings.” [FAA Exhibit 1, Item 6, Exhibit 5] GADS’ and the Complainants’ attorney filed a reply to the Respondent’s letter the same day with the New York ADO asserting that the FAA indeed has jurisdiction over the eviction proceedings.<sup>9</sup>

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<sup>8</sup> In the Response, Respondent cites the results of the New York State Audit found that the Village may have been underpaid at least \$13,608 between June 2005 and April 2007 by GADS and the Complainants. Furthermore, Respondent notes herein Goodrich did not allow the State auditors full access to his accounting records, thereby the total amount of \$13,608 found in the audit only covers a period of less than 20% of the term of the ten year agreement. Respondent also cites a dispute over a telephone number, which will be discussed only as it pertains to the Respondent’s grant assurances later in this Determination. [FAA Exhibit 1 Item 6, Exhibit 2]

<sup>9</sup> The FAA’s Part 16 Complaint purview regarding lease agreements is “confined to the agreement’s impact on the sponsor’s Federal obligations.” However, regarding whether an eviction is wrongful is a matter to be resolved under State Law. The Complainants’ arguments that the ‘Complainant is not in breach or default of its lease agreements with the Village and therefore is not subject to eviction,’ is not a matter for adjudication by FAA under Part 16. *See, Edward S. Mainardi, Sr. v. Lincoln Park Airport, Inc.*, FAA Docket 16-02-12 (Director’s Determination Issued November 25, 2003) (Final Agency Decision Issued October 18, 2004) and

On March 3, 2008, the FAA issued its Part 13 section 13.1 Decision finding the Respondent was not currently in violation of its Federal grant assurances.

On March 5, 2008, Goodrich Pilot Training Center, LLC and Aviation Management Group, LLC filed their Part 16 Complaint with 12 primary exhibits including 13 sub-exhibits attached to an Order to Show Cause and 7 sub exhibits attached to Complainants' Response to Respondent's Petitions. [FAA Exhibit 1, Item 1]

On March 25, 2008, the FAA provided Notice of Docketing to the parties. [FAA Exhibit 1, Item 2]

On April 15, 2008, the Respondent filed its Answer and Request for Dismissal. [FAA Exhibit 1, Item 3]

On May 14, 2008, Complainants submitted their Reply with 6 exhibits and a cover letter wherein Complainants object to the Part 13 decision claiming it was erroneously based on allegations of nonpayment of rent. [FAA Exhibit 1, Item 4]

On June 12, 2008, the Respondent filed its Rebuttal.<sup>10</sup> [FAA Exhibit 1, Item 5]

On October 21, 2008, the Director issued a Notice of Extension of Time for issuance of Director's Determination to on or before December 12, 2008 and a Request for additional document production by Complainants and Respondent. [FAA Exhibit 1, Item 10]

Responses to the request for additional document production. [FAA Exhibit 1, Item 11 and 12]

On December 8, 2008, the Director issued a Notice of Extension of Time for issuance of Director's Determination to on or before February 27, 2009. [FAA Exhibit 1, Item 13]

On February 5, 2009, the Director issued a Notice of Extension of Time for issuance of Director's Determination to on or before March 27, 2009. [FAA Exhibit 1, Item 14]

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Long Island Jet Center East, Inc. v. County of Suffolk, New York, FAA Docket 16-04-05 (Director's Determination Issued January 21, 2005).

<sup>10</sup> The Director notes that Exhibit 1 Items 4 and 5 were each submitted in the form of a letter and not labeled as a "reply" or "rebuttal." Part 16 permits the filing of a reply within ten days of the date of service of the answer, and the filing of a rebuttal within ten days of the date of service of the reply. Neither Item 4 nor Item 5 was served within the regulatory timeframes and no requests for extensions of time were filed. Additionally, neither of the documents was served with a certificate of service; each letter listed opposing counsel as being copied. The Director has received no filings objecting to the inclusion of Item 4, identified by the Director as the Complainants' Reply or Item 5, identified by the Director as the Complainants' Rebuttal. Accordingly, these documents are included in the Record Index and are being considered by the Director in this proceeding.

## **Civil Court Proceedings History**

The proceedings in civil courts provide for the majority of the exhibits included in evidence and attached to FAA Exhibit 1 of this Complaint.

The first matter addresses GADS' suit against the Village in the Supreme Court of the State of New York that commenced on December 29, 2005, when the Complainants filed an Order to Show Cause requesting the Court tentatively enjoin and restrain the Village from "terminating the Management Agreement, evicting Goodrich Aviation Development Services, LLC, or its agents or employees... tolling the running of the cure period and the termination of the Management Agreement." [FAA Exhibit 1, Item 1, Exhibit 4] As previously noted in this Determination, the record shows the Village did not engage in the litigation or any proceedings to evict GADS in this instance as it did not provide the New York State Supreme Court with an "Answer to the Verified Complaint or papers in opposition to the Order to Show Cause." [FAA Exhibit 1, Item 1, Exhibit 6] Instead, the Respondent signed a Stipulation which led to the Court issuing an Order on June 6, 2006 enjoining the Respondent from "commencing any eviction proceedings in respect to any claimed breach of contract, particularly the unilateral increase of rents to tenants at the Airport, which is the subject matter of this (sic) proceeding, prior to the date of the order of the court... during the pendency (sic) of this action." [FAA Exhibit 1, Item 1, Exhibit 6]

The Respondent abided by the Stipulation and declined to pursue eviction.

The second litigation, brought about by the Respondent, commenced after the Management Agreement expired in 2007. Citing the Complainants' history of self-dealing, nonpayment of rent, and the result of the State Comptroller's audit, on October 24, 2007, the Respondent formally notified the Complainants of its intent to evict, providing Complainants thirty days to vacate their Airport leaseholds for the leases executed by and between GADS and the Complainants. [FAA Exhibit 1, Item 1, Exhibit 8]

By December 3, 2007, forty days following the notice of eviction, Complainants had not vacated their Airport leaseholds; at this point, Respondent filed Notices of Petition to Recover Real Property and Petitions to Recover Real Property under the jurisdiction of the Court of the Town of Union, New York. This filing by the Respondent to enforce the evictions initiated the second civil court proceeding are intertwined with the matters at issue in this Complaint.

The Complainants opposed the evictions by requesting Stays and filing appeals. The Town Court's initial Decision and Order, issued on March 24, 2008, to evict Complainants was upheld on appeal to the Broome County Court. At some point in the month or two following these court proceedings, the Complainants were evicted. Proceedings in the appeals, including discovery, are still pending legal dispensation. The legal issues in dispute in the civil court forum, including ownership of a telephone

number and contractual breaches regarding rent and fee structures,<sup>11</sup> are not within the purview of the FAA's Part 16 proceedings as previously cited. These issues will not be adjudicated in this Determination. However, the Director will address the Respondent's overall management rights, powers, and responsibilities as they specifically pertain to its grant assurances.

#### IV. ISSUES UNDER INVESTIGATION

The FAA is responsible for adjudicating airport compliance matters involving Federally-assisted airports arising under the Airport and Airway Improvement Act (AAIA) of 1982, as amended; certain airport-related provisions of the Federal Aviation Act of 1994, as amended; the Surplus Property Act, as amended; predecessors to those acts; and regulations, grant agreements, and documents of conveyance issued or made under those acts. [See, FAA Rules of Practice for Federally-Assisted Airport Enforcement Proceedings, 14 CFR Part 16]

In accordance with this mandate, this Director's Determination addresses the following issues as they pertain to the disputes over the termination of leases and evictions:

**ISSUE #1:** *Whether the Respondent's termination of Complainants' lease agreements and resolution banning Douglas Goodrich from receiving a contract from the Village for conducting a business at Tri-Cities Airport unjustly discriminates against Complainants in violation of Grant Assurance 22, Economic Nondiscrimination.*

**ISSUE #2:** *Whether the Respondent, by prohibiting the Complainants, specifically Douglas Goodrich, from serving as an aeronautical service provider of the Village at Tri-Cities Airport grants an exclusive right to others in violation of Grant Assurance 23, Exclusive Rights.*

**ISSUE #3:** *Whether the Management Agreement the Respondent entered into with GADS, specifically Douglas Goodrich, and Respondent's failure to take action against Goodrich during the term of the Agreement undermined and abrogated Respondent's rights and powers in violation of Grant Assurance 5, Preserving Rights and Powers.*

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<sup>11</sup> The Management Agreement between GADS and Respondent stipulated that in addition to standard rental rates, "Goodrich shall pay to the Village a rental based on 2.5 percent of Goodrich's gross sales..." [FAA Exhibit 1, Item 1, Exhibit 1] The results of the New York State audit indicate GADS did not pay these fees or the seven cents per gallon fee on aviation fuel sales properly. [FAA Exhibit 1, Item 10] In accordance with the auditor's recommendations, the Village has attempted to reconstruct GADS' records. However, GADS has sought protective orders in 23 instances rather than assume a cooperative posture in this investigation. [FAA Exhibit 1, Item 3, Para 47-69]

## V. APPLICABLE LAW AND POLICY

The Federal role in civil aviation is provided by various legislative actions that authorize 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 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 fair and reasonable access to the airport. In addition to managing the airport in accordance with the grant assurances, ensuring the airport operates for the use and benefit of the public is the prime obligation set forth in the Federal grant assurances. [See, FAA Order 5190.6A, Section 4-13.a]

Title 49 U.S.C. § 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. Title 49 U.S.C. § 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, the assurances become a binding contractual 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. The AIP provides grants to eligible airport sponsors (recipients of grants are referred to as "sponsors") for the planning and development of public-use airports. Airport sponsors who accept a grant offer also accept conditions and obligations associated with the grant assurances. These include 39 specifically delineated obligations [FAA Exhibit 1, Item 1, Exhibit 12] such as operating and maintaining the Airport in a safe and serviceable condition, not granting exclusive rights, mitigating hazards to airspace, using airport revenue properly, etc.

### **Airport Sponsor Assurances**

As a condition precedent to providing airport development assistance under the Airport Improvement Program, 49 U.S.C. § 47107, *et seq.*, the Secretary of Transportation and, by extension, the FAA must receive certain assurances from the airport sponsor. Title 49 U.S.C. § 47107(a) sets forth the statutory 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.<sup>12</sup> FAA Order 5190.6A, *Airport Compliance Requirements* (Order 5190.6A), issued on October 2, 1989, provides the policies and procedures to be followed

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<sup>12</sup> See, e.g. the Federal Aviation Act of 1958, as amended and recodified, Title 49 U.S.C. §§ 40101, 40113, 40114, 46104, 46105, 46106, 46110; and the Airport and Airway Improvement Act of 1982, as amended and recodified, Title 49 U.S.C. §§ 47105(d), 47106(d), 47107(k), 47107(l), 47111(d), 47122

by the FAA in carrying out its legislatively mandated functions related to Federally obligated airport owners' compliance with their sponsor assurances. The FAA considers it inappropriate to provide Federal assistance for improvement to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities. The grant assurances relevant to the issues raised in the Complaint are the following:

#### **Grant Assurance 5, *Preserving Rights and Powers***

Grant Assurance 5, *Preserving Rights and Powers*, implements the provisions of the Airport and Airway Improvement Act (AAIA), 49 U.S.C. Section 47107(a), *et seq.*, and requires, in pertinent part, that the sponsor of a Federally obligated airport "...will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor." [FAA Exhibit 1, Item 1, Exhibit 12]

Furthermore, Grant Assurance 5.f. states:

*If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance with Title 49, United States Code, the regulations and the terms, conditions and assurances in the grant agreement and shall insure that such arrangement also requires compliance therewith.* [FAA Exhibit 1, Item 1, Exhibit 12]

#### **Grant Assurance 22, *Economic Nondiscrimination***

The owner of an airport developed with Federal assistance is required to operate the airport for the use and benefit of the public. Grant Assurance 22, *Economic Nondiscrimination*, deals with both the reasonableness of airport access and the prohibition of adopting unjustly discriminatory conditions as a potential for limiting access. Grant Assurance 22 of the prescribed sponsor assurances implements the provisions of 49 U.S.C. § 47107(a)(1) through (6), and requires, in pertinent parts:

- a. (The airport owner/sponsor) will 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.
- b. In any agreement, contract, lease or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or

- engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to –
- i. Furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
  - ii. Charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchases.
- h. (The airport owner/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.
- i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport as such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

Subsection (h) qualifies subsection (a) and subsection (i) represents an exception to subsection (a) to permit the sponsor to exercise control of the airport sufficient to preclude unsafe and inefficient conditions that would be detrimental to the civil aviation needs of the public.

In all cases involving restrictions on airport use imposed by airport owners for safety and efficiency reasons, the FAA will make the final determination on the reasonableness of such restrictions when those restrictions deny or limit access to, or use of, the airport.<sup>13</sup>

### **Grant Assurance 23, Exclusive Rights**

The prohibition against exclusive rights and a sponsor's responsibilities to prevent a granting of an exclusive right is codified in several documents. Title 49 U.S.C. § 40103(e), in which Congress re-codified and adopted substantially unchanged the exclusive rights prohibition prescribed in Section 303 of the Civil Aeronautics Act of 1938 and subsequently included in Section 308(a) of the Federal Aviation Act of 1958, as amended, prohibits exclusive rights at certain facilities and states, in pertinent part, that “(a) person does not have an exclusive right to use an air navigation facility on which government money has been expended.”

Title 49 U.S.C. § 47107(a)(4) requires that “a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport.” Grant Assurance 23, *Exclusive Rights*, of the prescribed sponsor assurances implements the provision of 49 U.S.C. § 40103(e) and 47107(a)(4), and requires, in pertinent parts, that the sponsor of a Federally obligated airport:

*...will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical service to the public...*

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<sup>13</sup> See, FAA Order 5190.6A, Chapter 3-1

*...will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities...*

FAA Order 5190.6A, Chapter 3, provides additional guidance on the application of the statutory prohibition against exclusive rights and FAA policy regarding exclusive rights at public use airports, in pertinent parts:

*...owners of public use airports developed with Federal funds... (have) the obligation to make all airport facilities and services available on fair and reasonable terms without unjust discrimination. This covenant enjoins the owner from granting any special privilege or monopoly in the use of public use airport facilities.*

FAA Advisory Circular 150/5190-6, *Exclusive Rights at Federally-Obligated Airports*, provides guidance on how an airport sponsor can comply with the statutory prohibition on the granting of exclusive rights.

### **The FAA Airport Compliance Program**

The FAA discharges its responsibility for ensuring airport sponsors comply with their Federal obligations through its Airport Compliance Program. Sponsor obligations are the basis for the FAA's airport compliance effort. The airport owner accepts these obligations when receiving Federal grant funds or when accepting the transfer of Federal property for airport purposes. The FAA incorporates these obligations in grant agreements and instruments of conveyance to protect the public's interest in civil aviation and to ensure compliance with Federal laws.

The FAA designed the Airport Compliance Program to ensure the availability of a national system of safe and properly maintained public-use airports that airport sponsors operate in a manner consistent with their Federal obligations and the public's investment in civil aviation. The Airport Compliance Program does not control or direct the operation of airports. Rather, it monitors the administration of the valuable rights that airport sponsors pledge to the people of the United States in exchange for monetary grants and donations of Federal property to ensure that airport sponsors serve the public interest.

FAA Order 5190.6A, *Airport Compliance Requirements*, dated October 2, 1989, sets forth policies and procedures for the FAA Airport 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 interpreting and administering the various continuing commitments airport owners make to the United States as a condition for receiving Federal funds or Federal property for airport purposes. The Order, *inter alia*, analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the application of the assurances in the operation of



public-use airports, and facilitates the interpretation of grant assurances by FAA personnel.

The FAA Compliance Program is designed to achieve voluntary compliance with Federal obligations accepted by owners and/or operators of public-use airports developed with FAA-administered assistance. Therefore, in addressing allegations of non-compliance, the FAA will make a determination of whether an airport sponsor currently is in compliance with the applicable Federal obligations. Consequently, the FAA will consider the successful action by the airport to cure any alleged or potential past violation of an applicable Federal obligation to be grounds for dismissal of such allegation. [*See Wilson Air Center v. Memphis and Shelby County Airport Authority*, FAA Docket 16-99-10 (Director's Determination Issued August 2, 2000 (Final Agency Decision Issued August 30, 2001))]

### **Enforcement of Airport Sponsor Assurances**

Enforcement procedures regarding airport compliance matters may be found at FAA Rules of Practice for Federally Assisted Airport Enforcement Proceedings, (14 CFR Part 16). These procedures were published in the Federal Register (61 FR 53998, October 16, 1996) and became effective December 16, 1996.

### **The Complaint and Appeal 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(s) shall provide a concise but complete statement of the facts relied upon to substantiate each allegation. The complaint(s) shall also describe how the complainant(s) directly and substantially has/have been affected by the things done or omitted by the respondent(s). [*See*, 14 CFR § 16.23(b)(3-4)]

If, based on the pleadings, there appears to be a reasonable basis for further investigation, the FAA will investigate the subject matter of the Complaint. In rendering its initial determination, the FAA may rely entirely on the Complaint and the responsive pleadings provided. Each party shall file documents that it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance. [*See*, 14 CFR § 16.29]

The proponent of a motion, request, or order has the burden of proof. A party who has asserted an affirmative defense has the burden of proving the affirmative defense. This standard burden of proof is consistent with the Administrative Procedures Act (APA) and Federal case law. The APA provision [*See*, 5 U.S.C. § 556(d)] states, “(e)xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof.” [*See also*, Director, Office Worker's Compensation Programs, Department of Labor v. Greenwich Collieries, 512 US 267, 272 (1994) and Air Canada et al. v. Department of Transportation, 148 F3d 1142, 1155 (DC Cir, 1998)] Title 14 CFR § 16.229(b) is consistent with 14 CFR §16.23, which requires the Complainant to submit all documents

then available to support his or her complaint. Similarly, 14 CFR § 16.29 states that, “(e)ach party shall file documents that it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance.”

Title 14 CFR § 16.31(b-d), in pertinent parts, provides that “(t)he Director's determination will set forth a concise explanation of the factual and legal basis for the Director's determination on each claim made by the complainant. A party adversely affected by the Director's determination may appeal the initial determination to the Associate Administrator as provided in §16.33.” In accordance with 14 CFR § 16.33(b) and (e), upon issuance of a Director's determination, “a party 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;” however, “(i)f 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. A Director's determination that becomes final because there is no administrative appeal is not judicially reviewable.”

Title 14 CFR § 16.247(a) defines procedural recourse for judicial review of the Associate Administrator's final decision and order, as provided in 49 U.S.C. § 46110 or section 519(b)(4) of the Airport and Airway Improvement Act of 1982, as amended, (AAIA), 49 U.S.C. § 47106(d) and 47111(d).

## **VI. ANALYSIS AND DISCUSSION**

Prior to analyzing and discussing the pertinent issues in this case, it is relevant to restate that the FAA's Office of Airports, Airport Compliance and Field Operations, reviews matters pertaining to airport compliance. [See, 14 CFR § 16.1] The agency does not act as a court of appeals or secondary review board on matters outside the scope of the FAA's Part 16 purview.

The central focus of this Complaint revolves around the relationship between the Complainants and Respondent, including as it related to the terms of a Management Agreement that covered the period from October 1, 1997 to September 30, 2007. This Agreement served as a contractual instrument wherein the Respondent assigned GADS the responsibility of managing the Tri-Cities Airport. The issues raised by Complainants in this Complaint are rooted in the parties' differing interpretations of the Management Agreement's terms and their respective tenant leases. The Director's findings for each issue are based on the Respondent's obligations under its Federal grant assurances, applicable law, and precedent.

**ISSUE #1:** *Whether the Respondent's termination of Complainants' lease agreements and resolution banning Douglas Goodrich from receiving a contract from the Village for conducting a business at Tri-Cities Airport unjustly discriminates against Complainants in violation of Grant Assurance 22, Economic Nondiscrimination.*

Within the last few days of the term of the Management Agreement, GADS executed leases with the Complainants for prime Airport property. Douglas Goodrich signed for both GADS and the tenant Complainants. Upon regaining control of the Airport, the Respondent notified GADS and the Complainants these leases would terminate in thirty days, per the terms of the leases. In this Complaint, the Complainants allege that the Respondent's termination of their leases "for no good cause" constitutes a violation of Grant Assurance 22, *Economic Nondiscrimination* and is economically discriminatory. Complainants also allege that the Respondent did not make the Airport available for public use on reasonable terms.

Respondent states it had valid cause and good reason to deny complainants' manager Douglas Goodrich's status as contractor or employee of the Village. The record includes documentation supporting the Respondent's decision based on three primary reasons: 1. the results of a New York State audit and Complainants' failure to cooperate with the Respondent to comply with the State's recommended cures; 2. the Complainants' history of self-dealing and improper use of its managerial power; and 3. the Complainants' litigiousness.

The record reflects that on November 12, 2007, the Village trustees voted and passed a resolution banning Douglas Goodrich from serving as a contractor or employee of the Village of Endicott, specifically at the Airport. The Complainants allege that, "the actions (evictions) taken by the (Respondent) have no legal or reasonable basis and upon information and belief are solely to be personal." [FAA Exhibit 1, Item 1, Para 27]

Complainants further contend that the Village failed to adopt minimum standards despite Complainants' "suggestions and requests" to do so "over the past ten years." [FAA Exhibit 1, Item 1, Para 26] In their allegations, Complainants speculate that had minimum standards been adopted, the Village's "actions against (the Complainants) would be a clear violation of any suggested or recommended minimum standards endorsed by the FAA." [FAA Exhibit 1, Item 1, Para 26]

The FAA's Advisory Circular (AC) on Minimum Standards for Commercial Aeronautical Activities (AC 150/5190-7) states that minimum standards are optional; however:

*the FAA highly recommends their use and implementation as a means to minimize the potential for violations of Federal obligations... The airport sponsor of a Federally obligated airport agrees to make available the opportunity to engage in commercial aeronautical activities by persons, firms, or corporations that meet reasonable minimum standards established by the airport sponsor.... Such standards must be reasonable and not unjustly discriminatory. [See, AC 150/5190-7]*

As noted in the Advisory Circular, the FAA does not approve or endorse minimum standards; instead, the agency "may advise sponsors on the appropriateness of proposed

standards to ensure they do not place the airport in a position inconsistent with its Federal obligations.” [See, AC 150/5190-7] Minimum standards are intended to enable sponsors to uphold the tenets of grant assurances.

The Director previously has held that a complainant has the burden of proof to show how a respondent restricted aeronautical access and did so unreasonably contrary to its grant assurances. [See, SeaSands Air Transport, Inc. v. Huntsville-Madison County Airport Authority, FAA Docket 16-05-17 (Director’s Determination Issued August 28, 2006)] In this Complaint, the Complainants erroneously imply the language in the Grant Assurance 22, *Economic Nondiscrimination*, which states a sponsor “will make the airport available,” equates to the right to conduct an aeronautical business on the Airport. However, this language neither equates to unfettered “aeronautical access” nor a mandate that anyone and everyone has the right to be granted a contract to conduct an aeronautical business on an airport. Aeronautical access is the privilege to use the public areas of the airport; it is not a legal right to conduct an airport business.

Complainants failed to establish how the Respondent’s decision to deny Complainants the opportunity to engage in a commercial aeronautical activity would have violated minimum standards. In fact, the Director believes the adoption of minimum standards may have further substantiated the Respondent’s decision to deny Complainants the opportunity to engage in a commercial aeronautical activity. Many versions of minimum standards enumerate Grant Assurance 22 (c), which states in part:

*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.* [FAA Exhibit 1, Item 1, Exhibit 12]

Based on the evidence submitted to the record, specifically the New York State Audit, Goodrich failed to pay the uniformly applied percentage of gross sales delineated in the standard subprime lease agreements for revenue producing businesses. In upholding the Respondent’s decision to deny Goodrich’s entities, the Complainants in this matter, the opportunity to engage in a commercial aeronautical activity, the Director relies upon the precedent set in SeaSands, which states “timely payment of rent for exclusive occupancy of aeronautical facilities is a reasonable requirement under grant assurance 22. Grant assurance 22 states that the Authority ‘will make the airport available as an airport for public use on reasonable terms.’ Where a tenant failed to pay its rent, denying it access would not be unreasonable.”<sup>14</sup> [See, SeaSands, Page 19] Thus, the Respondent’s actions

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<sup>14</sup> The Director notes that the Complainants claim they have submitted documentation asserting that all rents were paid. [FAA Exhibit 1, Item 4] The results of the audit of GADS’ management of the airport do not support this claim as the audit found errors relating to an erroneous deduction for parts revenue, erroneous fuel sales reporting, omission of an aircraft sale, omissions from aircraft maintenance revenue, and incomplete bookkeeping that could reveal more payment errors. [FAA Exhibit 1, Item 8] Regardless of the status of the rents and percentage of gross sales revenue, an airport sponsor could reasonably conclude that a late payment of rent does not cure

comply with its grant assurances. If the Respondent had allowed the Complainants to continue to abrogate lease provisions, this could have caused competing FBOs to claim unjust economic discrimination under Grant Assurance 22 for improper preferential treatment.

*Audit and Failure to Cooperate.*

The Respondent and Complainants disagree over alleged nonpayment of rent under the rental fee structure for gross sales set forth in the Management Agreement. An independent audit conducted by the State of New York's Comptroller's Office concluded that over a period of twenty three (23) months (June 2005 to April 2007)<sup>15</sup>, "the Village did not receive revenue of approximately \$13,608 to which it may have been entitled." [FAA Exhibit 1, Item 8, Page 7]

Based on the evidence in record, the Complainants and Respondent currently are engaged in litigation<sup>16</sup> pertaining to allegations of breach of contract and fiduciary responsibility on the part of the Complainants. The Comptroller's report (or Audit) previously referenced and made part of the record as FAA Exhibit 1, Item 8, makes significant conclusions regarding the Village's fiduciary responsibilities relating to the Airport. As part of the discovery phase of the action brought about by the Respondent in the Town Court of Union, New York, Respondent requested that GADS turn over documents relating to the management of the Airport as delineated in Paragraphs 6(e) and (g) of the Management Agreement, which states:

*(e) Goodrich shall keep full, complete and proper books, records and accounts of the gross sales both for case and credit of its operations at the Airport; these books, records and accounts... shall at all reasonable times be open to the inspection of the Village, Village treasurer, or other authorized representatives or agents.*

*(g) For the purpose of enabling the Village to check the accuracy of any such statement and the sufficiency of said rental payment, Goodrich shall for a period of two (2) years after submission to the Village of any such statements keep safe and intact of all Goodrich's records, books, accounts and other data... and shall upon request make them available to the Village, the Village's auditor, representative or agent for examination at any time period.*

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the reason for denial of access: the original non-payment of rent. [See, Jack Cox v. City of Dallas, TX, FAA Docket No. 16-97-2 (Director's Determination Issued October 24, 1997)]

<sup>15</sup> The Comptroller's office only had access to records dating back to June 2005 since the Management Agreement between GADS and Respondent limited the amount of time records needed to be maintained and produced for audit purposes to two (2) years. It appears the audit was initiated in June 2007.

<sup>16</sup> This suit as well as four other legal actions will be more fully addressed under the subsection entitled "Proactive and Reactive Litigiousness" later in this section.

As Respondent notes in its Answer to the instant Complaint, the Complainants and Douglas Goodrich have refused to turn over all documentation requested by the Village and instead sought protective orders in court under a separate legal proceeding. [FAA Exhibit 1, Item 3, Para 47-69] The Director believes it is reasonable for Respondent to request access to documents pertaining to the management of the Airport as recommended by the New York State Comptroller's audit. However, rather than cooperating with the Respondent to comply with the State's recommendations, Complainants have opted to pursue protective orders through litigation. The Complainants' failure to assist the State in reconstructing the Airport's financial records and continued litigation creates doubt that they will be cooperative tenants in the future.

While the Director understands that the Management Agreement referenced in this Complaint terminated by its own terms on September 30, 2007, the public's interest in the Airport through its participation in the Airport Improvement Program has not expired nor have its grant agreements. [FAA Exhibit 1, Item 9] Pursuant to the sponsor's responsibilities under its grant assurances the FAA encourages audits. As a result, financial documents relating to the Airport's operations should be made available to the sponsor as reasonably requested.<sup>17</sup> [FAA Exhibit 1, Item 1, Exhibit 12, *See Assurance 26.b*] [*See, Rick Aviation, Inc. v. Peninsula Airport Commission*, FAA Docket 16-05-18 (Director's Determination Issued May 8, 2007, page 37) (Final Agency Decision Issued February 6, 2007)] In *SeaSands*, the Director found that a sponsor's refusal to grant an aeronautical service provider a contract may not necessarily be unreasonable in light of specific circumstances. [*See, SeaSands*, Page 27]

The Director has held and been sustained in supporting an airport sponsor's decision to require resolution to outstanding financial matters prior to re-engaging in future business agreements with aeronautical service providers. In *Jimsair Aviation Services, Inc. v. San Diego County Regional Airport Authority*, FAA Docket 16-06-08 (Director's Determination Issued April 12, 2007) (Final Agency Decision Issued August 8, 2007), the Director found:

*"The record also show(ed) the Authority ceased negotiations with the Complainant for cause when it was discovered through an audit that the Complainant had a financial deficiency. It is not imprudent for a sponsor to require resolution of outstanding financial matters prior to entering into additional financial arrangements with the same airport tenant."* [*See, Jimsair*, page 20]

When considering a complainant's allegation of unjust economic discrimination due to an airport sponsor's refusal to enter into a lease agreement, the Director held in *Jack Cox v. City of Dallas, TX*, FAA Docket No. 16-97-2 (Director's Determination Issued October 24, 1997):

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<sup>17</sup> The Director's finding that the request for the documents in question relating only to the Airport's management is reasonable, was based upon the grant assurances.

*...given (the Complainant's) role in the history of a lease characterized by assumption, default, and assignment, the (Respondent) appears to have acted prudently in including the restrictive language to protect itself from a potential repetition of unsatisfactory, costly and burdensome landlord-tenant conflict. [See, Cox, Page 14]*

### Self-Dealing.

The Director is going to examine an issue about the Complainants' alleged self-dealing and its impact on the Respondent's grant assurance obligations. In September 2007, GADS issued two leases, one for hangar space to Complainant Aviation Management Group and one for office space to Complainant Goodrich Pilot Training Center. Complainants' contend these "are the same leases given to every other entity who lease hanger (sic) and/or office space at the Tri-Cities Airport." [FAA Exhibit 1, Item 6, Exhibit 3]

The Respondent counters that this is actually an improper act of self-dealing that created an exclusive and unfettered business environment for Goodrich and his entities (Complainants) on the Airport. [FAA Exhibit 1, Item 3] The Respondent asserts that this further supports its decision to discontinue business agreements with them. The record substantiates the Respondent's allegations.

In the first instance of self-dealing, the Respondent cites GADS' execution of the two leases to the Complainants in the last days of the ten year term of the Management Agreement. [FAA Exhibit 1, Item 1, Exhibit 7] This self-dealing is contrary to the terms of the Agreement, which specifically stated that leases with existing and prospective tenants be negotiated by GADS "on terms and conditions agreed to and approved by the Village." [FAA Exhibit 1, Item 1, Exhibit 1, Section 4(b)] As the Respondent notes:

*It is rare, indeed, to encounter leases signed as landlord and tenant by the same person. Yet, that is what Mr. Goodrich did on the twenty-sixth day of the eleventh month in the last year of a ten year contract. [FAA Exhibit 1, Item 6, Exhibit 5]*

The Respondent contends that these leases, which were unilaterally entered into by and between Goodrich and his entities (including the Complainants) without the Village's approval, enabled Complainants to continue their ten year practice of giving themselves full and unfettered use of the primary Airport facilities to their benefit and to the exclusion of other Airport entities. [FAA Exhibit 1, Item 1, Exhibits 4.3 and 4.4]

The Complainants admitted to a second instance of self-dealing when they acknowledged violating a lease executed by and between themselves in 2002. Douglas Goodrich, through GADS as the contractor under the Agreement, leased to himself in a separate lease another hangar that provided for the storage of one aircraft, specifically designated by its tail number. Goodrich has conceded that he violated terms of this lease, executed by and between Douglas Goodrich, by storing additional aircraft, aircraft parts, and non

aviation use items in this space for at least five years. [FAA Exhibit 1, Item 3, Para 42 and included exhibit A]

The facts in the record clearly illustrate the Complainants' self-dealing including the leases unilaterally entered into at the end of the term of the Agreement and violation of the terms of a certain lease identified above. These undisputed facts provide a reasonable basis to validate the Respondent's actions to discontinue lease agreements with the Complainants, pending resolution of defaults and possible rehabilitation of the business relationship.<sup>18</sup> [*See, Kent J. Ashton and Jacquelin R. Ashton v. City of Concord, North Carolina*, FAA Docket No. 16-02-01 (Director's Determination Issued August 22, 2003) (Final Agency Decision Issued February 27, 2004)]

*Proactive and Reactive Litigiousness.*

Finally, the record reflects that GADS and the Complainants have a history of litigation against the Respondent. The record contains documentation pertaining to five often times intertwined legal actions, four of which were initiated by the Complainants as proactive or reactive:

1. December 2005, GADS filed suit in the New York State Supreme Court against Respondent to prevent eviction and other penalties for alleged contract breaches under the Management Agreement;
2. October 2007, Respondent's commenced action against GADS and Complainants alleging breach of contract and fiduciary duty seeking eviction;
3. October 2007, Complainants filed legal action by acquiring a "Yellowstone Injunction" against the Respondent to prevent eviction;
4. Late 2007/Early 2008, Complainants filed legal action seeking protective orders for documents requested by Respondent to comply with recommendations issued by the New York State Comptroller's office in an audit of the Airport conducted in 2007; and
5. Spring 2008, Complainants appealed eviction order issued by the Town of Union Court; proceedings still ongoing.

In the first instance of litigation, it is relevant to note that contrary to Complainants' suppositions, no evidence is present to reflect that the Village was interested in litigating the alleged breach of contract matter that arose in December 2005 nor did they ever

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<sup>18</sup> As discussed more fully in the following subsections of this Determination, the FAA has held in other Part 16 determinations and final agency decisions that an airport sponsor is not required to close it eyes to one's previous bad acts. Instead, the Agency recommends a sponsor proceeds prudently to ensure it does not put itself at financial risk again. However, Grant Assurance 22 might, depending on the circumstances, prevent a sponsor from banning an entity from the airport in perpetuity, without opportunity for rehabilitation. [*See, SeaSands*]



initiate an official eviction proceeding. [FAA Exhibit 1, Item 1, Exhibit 4.A, Para 12] As stated in the New York State Supreme Court Order issued June 6, 2006, the Village did not submit an “Answer to the Verified Complaint or papers in opposition” to the Complainants’ initiated action against the Respondent in the matter. [FAA Exhibit 1, Item 1, Exhibit 6] However, the parties’ attorneys submitted a Stipulation agreeing to set aside the contractual breach matters over the hangar rate rental increases. [FAA Exhibit 1, Item 1, Exhibit 5]

The next instance of litigation was initiated by the Respondent to terminate the Complainants’ leases. This was based on the results of a New York State audit and Complainants’ failure to cooperate with the Respondent to comply with the State’s recommended cures. The grounds also included the Complainants’ history of self-dealing and improper use of its managerial power, as described above and substantiated by the record in this Complaint. In fact, the Complainants suggested at least three times that the Respondent should “sue the appropriate entities” if they wished to regain control of the Airport’s telephone number. [FAA Exhibit 1, Item 6, Exhibit 3].

Further litigation (October 2007 – present) commenced by Complainants appears to be reactionary responses to the Respondent’s suit. In Kent J. Ashton and Jacquelin R. Ashton v. City of Concord, North Carolina, FAA Docket No. 16-02-01 (Director’s Determination Issued August 22, 2003) (Final Agency Decision Issued February 27, 2004), the Director acknowledges, “it is the Complainants’ right to pursue complaints and protect their interest (however) it is the Respondent’s right to protect itself from the possibility of future costly and frivolous litigation.” [See, Ashton, Page 27] Continuing, the Director found that an Airport sponsor:

*... was not obligated to expose itself to future lawsuits by entering into a business agreement with (Complainant). Given (Complainant’s) prior history of lawsuits and FAA complaints, plus a threat of future litigation, the Respondent states, ‘The decision by the City to not lease storage space at the Airport to Mr. Ashton or anyone associated with Mr. Ashton in the ownership of an aircraft is simply a very prudent business decision given the undisputed fact that Mr. Ashton intends to continue filing baseless complaints against the City.’ [See, Ashton, Page 27]*

The Director also found an airport sponsor’s attempt to limit contact as a way to reduce litigation with the complainant as reasonable, noting that the respondent’s “Federal obligations limit (a sponsor’s) proprietary rights, but do not eliminate them.” [See, Ashton, Page 27] This standard logically applies to the issues raised in this Complaint based on the record, which illustrates Complainants’ proactive and reactive litigiousness.

### *Conclusion.*

The evidence in the record clearly reveals a series of previous bad acts perpetrated by the Complainants. Based on the documents catalogued in FAA Exhibit 1, including the audit, the Complainants’ history of self-dealing, and the Complainants’ litigious history, the Director finds:

1. the Respondent's refusal to grant Complainants' manager, Douglas Goodrich, the right to conduct future businesses at the Airport, at this time, is a reasonable action to limit Respondent's exposure to future financial risk;
2. the termination of the leases with Complainants was neither without "good cause" nor unreasonable, nor did it constitute a violation of Grant Assurance 22; [*See, SeaSands*, Page 28] and
3. the Respondent's refusal to enter into a new lease agreement at this time with the Complainants to provide aeronautical business services is neither unreasonable nor unjustly discriminatory.

The Complainants have not submitted any evidence to the record indicating they are prohibited from using the Airport for take offs, landings, or other aeronautical purposes. [FAA Exhibit 1, Item 6, Exhibit 5] The Complainants' allegation that the Respondent has "refus(ed) to provide any terms under which the Complainants' may use the Airport" is not supported by the record, which indicates that the Respondent offered the Complainants space with which they were not satisfied, and then offered to "tour the Tri-Cities Airport" with their attorney in an attempt to "discuss the possibilities for the future." [FAA Exhibit 1, Item 1, Exhibit 10.2] In any case, as stated in *JimsAir* and *SeaSands*, the Village is acting reasonably and prudently to resolve existing contract disputes prior to considering the negotiation of any new leases.

The record indicates and the New York State Comptroller's audit confirms that the Village lapsed in its oversight of the Tri-Cities Airport throughout most of the ten-year term of the Management Agreement. The audit indicates that it appears the Respondent lost revenue due to its lack of oversight during the term of the Management Agreement. [*See, FAA Exhibit 1, Item 8*] The FAA's Compliance Program is designed to achieve voluntary compliance with a sponsor's federal obligations. The Director recognizes an airport sponsor's voluntary corrective action as a means to cure compliance violations. Accordingly, based on the Respondent's actions to regain control and oversight of the Airport, recoup unpaid fees in accordance with the recommendations of the New York State audit, and resolve past bad acts, the Director finds the Respondent is not currently in violation of Grant Assurance 22.

**ISSUE #2:** *Whether the Respondent, by prohibiting the Complainants, specifically Douglas Goodrich, from serving as an aeronautical service provider of the Village at Tri-Cities Airport grants an exclusive right to others in violation of Grant Assurance 23, Exclusive Rights.*

Due to the termination of the Complainants' leases by the Respondent, Complainants allege an exclusive right has been created at the Airport. Complainants believe that the Respondent's refusal to grant Complainants the right to conduct a business at the Airport is tantamount to granting an exclusive right because they are not allowed to compete with other businesses on the Airport.

*Complainants' Allegations of Exclusion.*

As set forth previously in this Determination, the Village of Endicott Board of Trustees passed a resolution on November 12, 2007, excluding Complainants' manager, Douglas Goodrich, from serving as a contractor or employee of the Village of Endicott, specifically at the Airport. The Complainants allege this is a violation of Grant Assurance 23, *Exclusive Rights*, because the Respondent has prohibited the Complainants from competing with any other business at the Airport.

The Complainants further allege:

*This lack of competition not only discriminates and harm (sic) the Goodrich businesses, the lack of competition harms the Airport and the community.* [FAA Exhibit 1, Item 1, Exhibit 10.A, Para 37]

*Respondent's Rebuttal and Counter-Claims Against Complainants.*

Respondent counters these charges by claiming, "Complainants' Complaint, in its entirety, does not allege a single action taken by the Village that could in any way be construed as violative of Grant Assurance No. 23." [FAA Exhibit 1, Item 3, Para 39] In fact, and perhaps most significantly, the Respondent points out that Complainants admit the Village did not grant another service provider an exclusive right, stating: "(Complainants) never alleged that another FBO was given an exclusive right, only that rights were being denied the Complainants for no genuine or valid reason." [FAA Exhibit 1, Item 1, Para 34]

In addition to concurring with the Complainants that the Respondent did not grant another service provider an exclusive right, the Respondent counters that Goodrich granted himself an exclusive right in at least two different instances. In the first instance, the Respondent alleges the Complainants' sole use of the Respondent's previously established Airport office telephone number for personal business enterprises separate from the enterprise contracted to manage the Airport constitutes an exclusive rights violation.<sup>19</sup>

In a second instance of alleged exclusive rights violations on the part of the Complainants, the Respondent claims:

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<sup>19</sup> The dispute over the ownership of the telephone number currently is being litigated in court. The owner of the telephone number is not an issue for the FAA to decide; instead, this Director's Determination's scope is limited to the use of the telephone number as a right in terms of airport access and is not meant to be construed as a legal determination of ownership in other litigation matters. Nonetheless, the Airport's telephone number does not appear to have been offered for use to other aeronautical service providers on the Airport and thus could be construed as a special privilege. [FAA Exhibit 1, Item 1, Exhibit 10.A, Para 10] [See also, FAA Order 5190.6A, Chapter 3 Section 3-1]

*...no where are (Complainants') self-dealing and questionable business practices more evident than in the leases that are at issue in the eviction proceeding (being litigated in the New York State Court system). It is rare, indeed, to encounter leases signed as landlord and tenant by the same person. Yet, that is what Mr. Goodrich did on the twenty-sixth day of the eleventh month in the last year of a ten year contract. [FAA Exhibit 1, Item 6, Exhibit 5]*

### *Conclusion.*

Goodrich admits executing Airport tenant lease agreements for his own personal businesses. [FAA Exhibit 1, Item 1, Para 8] Goodrich further admits he “established four separate businesses at the Tri-Cities Airport,” three of which were separate from the entity that was the party to the Management Agreement. [FAA Exhibit 1, Item 1, Exhibit 10.A, Para 10] These practices indicate that Goodrich not only may have created a monopoly at the Airport,<sup>20</sup> but there appears to be “a conflict of interest or a violation of the statute prohibiting certain exclusive rights” based on the fact that the leases were signed by Goodrich as both Airport manager, representing the Village, and as an Airport tenant, representing himself. [See, FAA Order 5190.6A, Chapter 4, Section 4]

However, contrary to the Respondent’s claims above, Goodrich could not have violated the airport sponsor grant assurances as they are the sponsor’s responsibility to uphold.<sup>21</sup> Therefore, Goodrich’s questionable self-dealings are also the responsibility of the Respondent to cure. This aspect of the grant assurance will be addressed under **Issue #3**.

In conclusion, the Complainants have not met the burden of proof of an exclusive rights violation. In Ashton, [See also, Lange v. FAA, 208 F2d 389, 393-394 (2<sup>nd</sup> Cir. 2000)] the Director held:

*The FAA has determined that an airport sponsor’s refusal to enter into a lease or grant leases to some tenants but not others, does not (emphasis included in citation) by itself constitute the granting of an exclusive right...*

Based on the facts entered into evidence and the Complainants’ own admission, the Director cannot find the Respondent currently is in violation of Grant Assurance 23, *Exclusive Rights*.

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<sup>20</sup> See, FAA Order 5190.6A, Chapter 3, Section 3-8.a., which states: “Apart from legal considerations, the FAA considers it inappropriate to provide Federal funds for improvements to airports where the benefits of such improvements will not be fully realized due to the inherent restrictions of an exclusive monopoly on aeronautical activities.”

<sup>21</sup> See, FAA Order 5190A, Chapter 4, Section 4-2, which states: “None of these contractual delegations of responsibility absolve or relieve the airport owner from the primary obligations to the Government. As principal party to the agreement the owner alone is accountable for conformity to its terms and conditions.”

Thus by prohibiting Complainants (specifically GADS and Douglas Goodrich) from providing aeronautical services to the public, the sponsor here did not grant a special privilege or monopoly in the use of the public use airport facilities. The situation is quite the opposite; the sponsor's actions in excluding GADS and Mr. Goodrich and his various business entities would appear to prohibit a monopoly and encourage competition in accordance with the purpose of the exclusive rights statute and assurance.

With regard to the Respondent's claims, it appears that conditions existed at the airport that were not consistent with the exclusive rights statute and assurance. The Respondent's agent, GADS for all practical purposes controlled the airport, provided all aeronautical services, etc. The Director notes that the Respondent may have been in violation of Grant Assurance 23 under some of the terms of the now expired Management Agreement. In addition to the two instances cited by the Respondent above, the record indicates the Management Agreement entered into between the parties may have conveyed an exclusive right to the Complainants. According to FAA AC 150/5190-6, "while (an airport sponsor) may exercise the exclusive right to provide aeronautical services, they may not grant or convey this exclusive right to another party." The Agreement appears to have conveyed upon Goodrich "the exclusive and sole right to sell aviation and jet fuel at the Airport." [FAA Exhibit 1, Item 1, Exhibit 1, Section 4(h)] This clause may have been a direct violation of Grant Assurance 23, *Exclusive Rights*.

The Director does not generally find sponsors in non-compliance for past compliance violations that it subsequently cured or is in the process of curing. The Director is satisfied that the Respondent is not currently in violation of Grant Assurance #23, *Exclusive Rights*, based on the following that is reflected in the record:

1. the Management Agreement potentially conveying exclusive rights to the Complainants has expired;
2. the Respondent did not enter into a continuation or other agreements conferring the Complainants an exclusive right; and
3. the Respondent has taken steps to cure past potential compliance violations.

**ISSUE #3:** *Whether the Management Agreement the Respondent entered into with GADS, specifically Douglas Goodrich, and Respondent's failure to take action against Goodrich during the term of the Agreement undermined and abrogated Respondent's rights and powers in violation of Grant Assurance 5, Preserving Rights and Powers.*

The Complainants have included assertions that the Director would like to address:

*"(the Management Agreement) clearly grants Goodrich Aviation Development Services, LLC, the authority to enter into leases for hanger (sic) and office space." [FAA Exhibit 1, Item 1, Para 11]*

*“...in January 2004, as a courtesy, Goodrich informed the Village of his intention to raise rents at the Airport but was under no duty or obligation to do so.” [FAA Exhibit 1, Item 1, Para 12]*

*“...pursuant to the terms of the (Management Agreement), the management of the Airport was the sole and exclusive obligation and responsibility of Goodrich.” [FAA Exhibit 1, Item 1, Exhibit 4.11]*

*“Mr. Goodrich, as the manager and operator of the Airport, had and has the ability to establish the rent for each tenant” and “...Mr. Goodrich was not seeking approval from the Village to raise the rental rates, but was merely advising the Board...” [FAA Exhibit 1, Item 1, Exhibit 2]*

Upon further review of the pleadings and other record evidence in the Complaint, the Director is concerned the Respondent, by entering into management contracts with GADS and Douglas Goodrich may have undermined its rights and powers, in a manner inconsistent with Grant Assurance 5, *Preserving Rights and Powers*.

Each of these assertions by the Complainants conflicts with the Respondent's obligations under Grant Assurance 5, *Preserving Rights and Powers*. The Village cannot be found in violation of Grant Assurance 5 merely by the assertions of Complainants. However, these can be violations if, given the language in the contract, the Village chooses to abrogate its right and powers. For example, when Goodrich previously raised rental rates “unilaterally ... in March 1999, without submission to the Board of Trustees of the Village for approval,” [FAA Exhibit 1, Item 1, Exhibit 4.11, Para 14], Respondent was either unaware or did not act, effectively abrogating its rights and powers. However, in 2004 and 2005, by objecting Respondent took action to regain control when Goodrich again attempted and ultimately did raise rental rates without the approval.

Under Grant Assurance 5, an airport sponsor cannot take any action that may deprive it of its rights and powers to direct and control airport development and comply with the applicable Federal obligations. [*See, Platinum Aviation, et al. v. BNAA*, FAA Docket 16-06-90 (Director's Determination Issued June 4, 2007) (Final Agency Decision Issued November 28, 2007)] The Village appropriately retained this power under the Management Agreement, which provided that:

*... all the provisions (of this Agreement) shall be subject and subordinate to all the terms and conditions of the instruments and documents now or hereafter in effect between the Village and the United States of America. [FAA Exhibit 1, Item 1, Exhibit 1, Section 7(a)]*

The Director notes that Paragraph 2 of the Management Agreement specifically addresses the Village's authority, stating: “The Village retains all rights and responsibilities which may not be delegated to an airport manager under any rule and regulation of the Federal Aviation Administration...” Either the Complainants failed to recognize these distinct clauses in the Management Agreement or they chose to ignore them when making the

above referenced statements. Further to that point, the Agreement states at Paragraph 4(b): “Goodrich shall have the authority and exclusive right to negotiate leases and month to month tenancies with existing and prospective tenants on terms and conditions as agreed to and approved by the Village and Goodrich.” (emphasis added). Goodrich’s assertion that he was under no duty or obligation to seek approval from the Board to raise rents appears to disregard this clause.

FAA Order 5190.6A, Chapter 4, Section 4.2.c. states:

*Airport owners subject to continuing obligations to the Federal Government may enter into arrangements which have the effect of delegating certain of these obligations to other parties. For example... at small airports arrangements in which the owner relies upon a commercial tenant or franchised operator to cover a broad range of airport operating, maintenance and management responsibilities (are prevalent). None of these contractual delegations of responsibility absolve or relieve the airport owner from the primary obligations to the Government. As principal party to the agreement the owner alone is accountable for conformity to its terms and conditions. Particular attention should be directed to ensure that such delegations to a proprietary enterprise do not result in a conflict of interest or a violation of the statute prohibiting certain exclusive rights. The airport owner shall not delegate its authority to one FBO to negotiate an operating agreement (lease) with another FBO.*

With the expiration of the Management Agreement, the Village is not in violation of Grant Assurance 5, *Preserving Rights and Powers*, but the Director cautions the Village that it is required to preserve its rights and powers to enforce the grant assurances should it wish to engage in future management arrangements.

## **VII. FINDINGS AND CONCLUSION**

Upon consideration of the submissions, responses by the parties, the record herein, applicable law and policy, and for the reasons stated above, the Director of the FAA Office Airport Compliance and Field Operations finds that the Village of Endicott currently is not in violation of Grant Assurance 5, *Preserving Rights and Powers*; Grant Assurance 22, *Economic Nondiscrimination*; or Grant Assurance 23, *Exclusive Rights*.

The Director concludes, under the purview of 14 CFR Part 16, that

- (i) The Respondent’s termination of Complainants’ lease agreements and resolution banning Douglas Goodrich from receiving a contract from the Village for conducting a business at Tri-Cities Airport was not in violation of Grant Assurance 22, *Economic Nondiscrimination*.
- (ii) The Respondent’s decision to prohibit the Complainants, including Douglas Goodrich, from serving as an aeronautical service provider of the Village at Tri-Cities

Airport does not grant an impermissible exclusive right under Grant Assurance 23, Exclusive Rights.

(iii) The Respondent has taken appropriate action against Complainants and appears to be reserving sufficient rights and authority to insure that the airport will be operated and maintained in accordance with Grant Assurance 5, Preserving Rights and Powers.

### **ORDER**

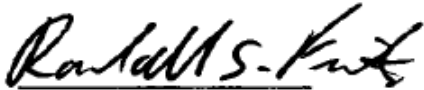
Accordingly, it is ordered that:

1. The Complaint is dismissed; and
2. All motions not expressly granted in this Determination are denied.

### **RIGHT OF APPEAL**

This Director's Determination, FAA Docket No. 16-08-03, is an initial agency determination and does not constitute a final agency decision and order subject to judicial review as provided in 14 CFR § 16.247(b)(2). A party to this proceeding adversely affected by the Director's Determination may appeal the initial determination to the FAA Associate Administrator for Airports pursuant to 14 CFR § 16.33(b) within thirty (30) days of service of this Determination on the parties.

Signed,



Randall S. Fiertz  
Director, Office of Airport Compliance  
And Field Operations

April 3, 2009