STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SPRUCE CREEK PROPERTY
OWNERS' ASSOCIATION, INC.,

Petitioner.

v. DOAH NO. 91-004783

DOT

_____/

STIPULATION AND JOINT MOTION TO DISMISS PETITION

COME NOW the parties, SPRUCE CREEK PROPERTY OWNERS' ASSOCIATION and FLORIDA DEPARTMENT OF TRANSPORTATION, by and through their undersigned attorneys and jointly move for the dismissal of the Petition in this cause.

The parties have negotiated a mutually agreeable settlement in full and complete resolution of all the issues raised by the Petition and now, therefore, stipulate as follows:

1. The Petition shall be dismissed, with each side to bear its own attorneys fees and costs, upon the following basis:

a. The DEPARTMENT shall forthwith issue Amended Conditions to Petitioner's private airport license, previously issued on June 5, 1991, said Amended Conditions being attached to this Stipulation as Exhibit "A" made a part of said license.

b. The terms of the conditions to Petitioner's license (Exhibit "A") shall be interpreted in accordance with the Petitioner's letter dated October 23, 1991 and the DEPARTMENT'S response to said letter dated October 23, 1991, copies of which letters

are attached hereto as Exhibits B and C respectively.

SO STIPULATED AND AGREED.

DATED this 28th day of October, 1991.

James Patrick Curry, Esquire
Curry, Taylor & Carls
Florida Bar # 179834
1900 Summit Tower Blvd., Suite 800
Orlando, FL 32810
Tel. (407) 660-1040
Fax. (407) 660-9422

Vernon L. Whittier, Esquire
Assistant General Counsel
Department of Transportation
605 Suwannee Street, MS-58
Tallahassee, FL 32399-0450

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Exh. "A"

CONDITIONS

Spruce Creek Airport (Private)

1. Aircraft operations are limited to VFR only.

2. Aircraft operations are limited to use as a private airport only by the licensee and its specifically invited guests. It is the responsibility of each invited guest pilot to comply with the requirement of 14 CFR 91.103. [FAR 91.103]

3. Any authorized services are limited to the licensee and its specifically invited guests.

4. The public may not be generally solicited or advertised to come and use Spruce Creek Airport for the purpose of selling them goods and services.

5. Flight patterns and operational procedures are subject to review by the Department prior to licensing.

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October 23, 1991

V.L. Whittier, Esq.
Assistant General Counsel
Department of Transportation
605 Suwannee Street, MS-58
Tallahassee, FL 32399-0450

Re: Spruce Creek Airport License
DOAH Number 91-004783

Dear Mr. Whittier:

This letter is being submitted to the Department for the purpose of finalizing our mutual understanding of the conditions to the Spruce Creek Airport license as a private airport. A copy of the conditions are included herewith as Exhibit "A".

My client's understanding of the conditions is:

1) That the term "the licensee and its specifically invited guests" (used in Conditions 2 and 3) includes all those persons and entities permitted to use the Spruce Creek Airport under my client's Invitee Policy, a copy of which is attached to this letter as Exhibit B-1.

2) That the Department has reviewed my client's Invitee Policy (Exhibit B-1), the Operational Procedures (attached as Exhibit B-2) and the existing flight patterns at Spruce Creek Airport and finds them to be compatible with the intent of the conditions to the license. Should my client in the future desire to change or modify the invitee policy or the operational procedures for Spruce Creek Airport, my client may submit said changes to the Department for review similar to that which the Department has now done.

3) That the conditions on Spruce Creek's license are related only to those matters within the Department's jurisdiction over Spruce Creek Airport, i.e., aircraft operations to the airport, and not to other matters outside of that jurisdiction and that the conditions relate to the current license which is subject to all the requirements of Chapter 330, Florida Statutes.

Please confirm in writing that the Department is in agreement with my client's understanding on these matters. I am enclosing a proposed stipulation resolving these matters.

If it is agreeable to you, I will execute the original for my client and forward it to you with the conditions, this letter and its exhibits and your letter of response attached, for filing with the Division of Administrative Hearings, in full resolution of this matter.

Thank you and the Department for your cooperation on this matter.

Sincerely,

James Patrick Curry

JPC/e
Enclosures
cc: Ron White, President, SCPOA
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BE IT RESOLVED that the Board of Directors of Spruce Creek Property Owners' Association does hereby resolve and adopt the folowing rules and regulations concerning the Invitee Policy at Spruce Creek Airport:

ATTEST:

Karla L. Sammons
Secretary

(Corporate Seal)

Spruce Creek Property Owners' Association, Inc.
By: Donald Caldwell
President

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INVITEE POLICY

WHEREAS, Spruce Creek Property Owners' Association, Inc. (hereinafter "POA") is the corporation not-for-profit designated by the various covenants and restrictions applicable to Spruce Creek to enforce and implement said covenants and restrictions; and

WHEREAS, the Members of Spruce Creek, their tenants and guests have a non-exclusive easement of enjoyment for the normal use of the taxiways and runways and common areas at Spruce Creek and specifically at Spruce Creek Airport (hereafter "Airport"); and

WHEREAS, said non-exclusive easement is subject to the rules and regulations of the association; and

WHEREAS, limitations on the use of the landing strip, runway or taxiway facilities at the Airport may be imposed if required by law or governmental regulation; and

WHEREAS, Spruce Creek Airport is licensed as a private Airport as defined by F.S. 330.27(10) and POA is the named licensee at the Airport; and

WHEREAS, F.S. 330.27(10) limits or defines a private Airport as one that is "publicly or privately owned which is used primarily by the licensee but which is available for use by invitation of the licensee." and

WHEREAS, the number of Members who are pilots, their tenants and guests who fly and others who use Spruce Creek Airport is such that an orderly system is necessary to regulate what constitutes "use by invitation of the licensee" (i.e. of the POA).

NOW THEREFORE, the Board of Directors of Spruce Creek Property

Owners' Association, Inc. does hereby resolve and adopt the following rules and regulations concerning use of the Spruce Creek Airport:

Rights to Use Spruce Creek Airport

1. Definitions

   (a) "Member" means a member of the Spruce Creek Property Owners' Association, Inc. as defined by its Articles of Incorporation.

   (b) "Tenant" means a person who rents or leases property at Spruce Creek from a Member;

   (c) "Guest" means any person whose right to enjoy the taxiways, runways, landing strip and other common areas at Spruce Creek Airport is solely derived from a valid invitation.

   (d) "Airport" means the Spruce Creek Airport.

   (e) "Invitation" means a specific oral or written offer to allow a specific person or persons to visit the Spruce Creek Airport, with or without compensation or remuneration.

   (f) "Commercial Member" means a member who owns a commercial lot.

2. Invitations to use the Airport

   (a) A member may use the Airport.

   (b) Any member may invite a guest to use the Airport.

   (c) A tenant may use the Airport, but a tenant may not

extend invitations to guests to use the Airport, unless:

1) the right to extend invitations to guests is specifically included in a written lease between the tenant and his landlord/member; and

2) said written lease is approved in writing by the POA; and

3) an owner who includes the right to use the airport in his lease of property to a tenant, gives up both his own right to use the airport and his right to extend invitations to guests, appurtenant to that specific property. Owners of multiple pieces of property at Spruce Creek may lease away their right to use and extend invitations appurtenant to some property and retain said right as to others.

(d) Commercial members may extend invitations to their clients and prospective clients to be guests at and to use the Airport provided:

1) that said use is limited to doing business with the commercial members; and

2) that invitations by commercial members are specific and not in the form of advertising directed to the public in general. Any advertisement carrying a designation that does

activity is located at Spruce Creek Airport must also contain the phrases "private airport" and "by invitation only."

(e) A guest may not extend invitations to other persons to use the Airport.

3. Enforcement

Violations of the provisions of Section 2 above will result either a) in the Member's suspension of his or her right to use the Airport and to extend invitations to use the Airport for such a period as the Board of Directors of Spruce Creek Property Owners' Association, Inc. considers appropriate, pursuant to Article III, Section 3(d) of the Declaration of Covenants and Restrictions for Fly In Spruce Creek Inc. Subdivision, as amended, or b) in the levy of a fine against the offending Member, in a reasonable amount to be determined by the Board, or both.

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October 17, 1991

BE IT RESOLVED that the Board of Directors of Spruce Creek Property Owners' Association does hereby resolve and adopt the folowing rules and regulations concerning Aircraft Procedures and Safety Rules for Airport Environment at Spruce Creek Airport:

ATTEST:

Secretary

Spruce Creek Property Owners' Association Inc.
By:

(Corporate Seal)

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OPERATIONAL PROCEDURES

AIRCRAFT PROCEDURES AT SPRUCE CREEK AIRPORT

1. TRAFFIC PATTERN All pilots should be aware that Spruce Creek Airport is under the Daytona Beach ARSA. The following traffic pattern altitudes are in effect:
   Light Aircraft are to fly a left hand pattern at 800 feet at less than 200 knots.
   Other Aircraft are to fly a left hand pattern at 1000 feet at less than 200 knots.

2. PREFERRED RUNWAY During calm and direct crosswinds, the preferred runway is 23.

3. USE OF UNICOM All pilots operating into or out of Spruce Creek Airport must announce arrival and departure intentions and make appropriate position reports on 122.7 MHz.

4. NOISE ABATEMENT All Pilots will use the noise abatement procedures published for their aircraft by the manufacturer.

5. STANDARD DEPARTURES Climb straight ahead to a minimum of 500 ft. and beyond the end of the runway. In consideration of our neighbors, when departing runway 5, stay South of the residential area just to the left of your departure path.

6. RUN-UPS & GROUND HOLDING When running up or when holding for departure, consider where your prop wash is going. Use the provided run-up pads (see #7).

7. FLIGHT OPERATIONS AND NIGHT OPERATIONS Operations at the Airport shall be limited to normal takeoffs and landings. No simulated emergencies shall be conducted. Touch and go's are limited to Three. For night departures after 10:00 p.m. and before 7:00 a.m., perform all run-ups at the intersection of Beech and Cessna Boulevards. Night proficiency flights should be accomplished by 10 p.m. In an effort to control excessive noise and maintain the safest possible operation, low passes shall not be conducted.

8. TAXIWAYS & SPEED Pilots are requested to use a reasonable taxi speed, keeping in mind that there are young children in the neighborhood. Stop or slow at all taxiway intersections and road entrance points. Taxiways are marked with a YELLOW CENTER LINE. Follow the Yellow Center line where available. When visitors are landing it is the responsibility of the host property owner to remind the guest airplane of the rule of the Yellow Center Line.

9. LICENSED AIRCRAFT ONLY Air operations are limited to licensed aircraft.

10. FORMATION FLYING Formation takeoffs and landings are prohibited. All other formation flying shall be conducted in accordance with FAR'S.

11. ACROBATIC FLIGHT Careful review of FAR 91.303 will show that acrobatic flight is prohibited below 1500 feet AGL.

12. STRAIGHT IN APPROACHES Enter the traffic pattern in a STANDARD MANNER. Straight in Approaches are not recommended.

13. HELICOPTER OPERATIONS Helicopters should be cautious of rotor wash. Takeoffs, landings and hover taxi shall not be conducted in the residential areas.

14. INSURANCE All Aircraft operating out of Spruce Creek will carry liability insurance, a minimum amount of $500,000.00.

PROCEDURES ENFORCEMENT POLICY

1. First Violation: A WRITTEN WARNING.

2. Second Violation: 30 DAY SUSPENSION OF AIRPORT USE.

3. Third Violation: 180 DAY SUSPENSION OF AIRPORT USE.

4. Fourth Violation: PERMANENT REVOCATION OF AIRPORT USE.

5. Civil Action.

6. Any pilot choosing to disregard the enforcement procedures will have his record turned over to the proper authorities.

Signatures of file.

SAFETY RULES FOR AIRPORT ENVIRONMENT

1. There are 5 Taxiway Roadway combinations: Lindy Loop, Cessna Blvd., Beech Blvd., Echo, and Delta. AIRPLANES HAVE THE RIGHT-OF-WAY ON THESE ROADS/TAXIWAYS COMBINATION. THERE IS ONE MAIN RUNWAY. NO CARS ARE PERMITTED ON THE RUNWAY or RUNUP PADS.

2. All unattended aircraft shall be tied down at all times. The POA has designated tie down areas with registration at the FBO. Aircraft will be subject to a per diem monetary fine by the POA for parking illegally on common grounds.

3. All Airplanes, Automobiles, and all motorized vehicles shall be registered.

4. Tied-down Aircraft are off-limits to anyone not authorized by owner.

5. For safety stay at least 25' from any aircraft moving or tied down.

6. Aircraft only are permitted on the runway and run-up pads. The use of Skateboards, skates, bicycles, golf carts, motorbikes, auto, and even walking are prohibited from the Airport Runway.
   A Pilot at the controls of an Aircraft has enough to do without maneuvering to avoid objects on the Runway.

7. When on any of the Taxiway Roadway conbinations or Taxiways, the Airplane has the RIGHT OF WAY. Be extremely careful and move to the side when an Aircraft appears.

8. Before driving a Truck, R.V., or taking something to a hangar via the taxiways, you must get permission from the POA Office. Remind your Builder or Handy-Man that no one comes to the home via the taxiways. Commercial Vehicles have to have a permission pass from the POA Office (exclusive of the fuel trucks).

9. No objects may obstruct the Taxiway Easement.

10. All aircraft operations shall be from the improved portions of the runway and clearways.

Signatures of file.

FLORIDA DEPARTMENT OF TRANSPORTATION
LAWTON CHILES
GOVERNOR
605 Suwannee Street, Tallahassee, Florida 32399-0450
BEN G. WATTS
SECRETARY

October 23, 1991

James Patrick Curry, Esquire
Curry, Taylor & Carls
1900 Summit Tower Blvd., Suite 800
Orlando, Florida 32810

Re: Spruce Creek Airport License
DOAH No. 91-004783

Dear Mr. Curry:

This is to advise that your letter of October 23, 1991 is the Department's understanding of the conditions specified in Exhibit "A" to the current license for Spruce Creek Airport as a private airport.

Sincerely,

Vernon L. Whittier, Jr.
Assistant General Counsel

VLW:gr

cc: Nick A. Serianni
State Public Transportation
Administrator

Jack K. Johnson
Manager, Aviation Office

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EXHIBIT C