

DISTRICT COURT, COUNTY OF BOULDER
STATE OF COLORADO
1777 Sixth Street, Boulder, CO 80306
(303) 441-3750

Plaintiffs: DREW PHILLIP & HANNAH JO FULLER;
JASON C. ABAIR; RENEE & GREGORY ALANIZ LIVING
TRUST; AMY ALEXANDER; DANIEL & LISA ALLEN;
JOSEPH ROBERT ALREAD & ERIKA LIN STENSVAAG;
CHRISTIAN PETER & HEATHER ELIZABETH
ANDERSEN; PETER GRADY ARNOLD & JAMIE SCHIEL
ARNOLD; KIRSI A. AULIN; BRANDON DAVID &
HEATHER DAWN BARBER; COLIN R. & LAURA E.
BAUKOL; BONNIE J. & RANDALL LOUIS BIRD; SHAWN
PAUL & ANNA BISAILLON; CHARLES J. & LINDA D.
BLAKELY; THEODOOR P. & ROSALIE T. BOEZAART;
BRIAN & MILENA BOUCHARD; HEATHER C.
BOUDREAU; ROBERT BOUTELLE & TAYLOR AUBRY
KOMIN; RACHAEL S. BRAY; BROGDEN-HUOT LIVING
TRUST; DALE T. & LEANNE BROTSKI; SHANA BURACK
& BRIAN ANDREW HICKS; KEITH A. BUSCHMANN &
SANDRA J. MORRISON; MARC & CRYSTAL CALLIPARI;
LIHUA CAO & XUE WEI; DERRICK T. & TRICIA A.
CARPENTER; ZHONGMING CHEN & PEIQI HE;
MICHAEL CITARELLA; DUSTIN & TERRILL CLYMER;
ROBERT R. & LYNN E. CONKLIN; ROBERT W. &
LAURIE COOK; MARGO COOPER & EDMUND
EISSENSTAT; CESAR AUGUSTO GUERRERO CORDOBA
& KATI MARIANNA GUERRERO; ERIC D. COSMOS;
NANCY T. & RICHARD W. CRIST III; DANIELLE DAVIS;
SERGEY I. DEREVYANKO; MATTHEW S. DEW & LIHUA
ZHONG; TODD R. & KATHERINE M. DIERKING;
REBECCA & JEFFREY DIMAIO; XIAOYUN DING AND
YINAN DENG; RYAN & LAURA DIONNE; INGA CLAIRE
DIXON REVOCABLE LIVING TRUST; CHRISTOPHER
JAMES & SARAH KAY DRUMMOND; MATTHEW S. &
KARIN Y. DUDEK; PATRICIA E. & SEAN M. DUNHAM;
THE DURAND LIVING TRUST; CHRISTOPHER AND
VICTORIA EDMONSTON; BRIAN & JEANNINE ELLIOTT;
SPENCER & BRITTANY EREKSON; KAREN M.
FALARDEAU; ADAM & STEFANIE FLACH; MICHAEL &
KATHRYN FLOOD; CHRISTOPHER R. AND JENNY R.
FOX; ANDREW JAMES FRAZIER & KELLY JEAN

▲ COURT USE ONLY ▲

Case No. 23 CV 31075

FRAZIER; WILLIAM GALERSTEIN & ALICE PENTON;
ANUP GANDHI & NIKITA KATARIA; DAWN GARNER;
THE MICHAEL J. GAZARIK LIVING TRUST & THE
MICHELLE V. GAZARIK LIVING TRUST; BROOK Z.
GEBRE-MARIAM; JOSEPH C. GOGAIN JR. & MARTA
SCHILLING-GOGAIN; GOSPODAREK FAMILY TRUST;
JEFFERY E. & DENISE T. GREENE; MICHAEL J. &
CLAIRE M. GREENING; MELISSA & RYAN GROELZ;
STEVEN C. & AMY E. GROSS; GREGORY G. & CANDICE
J. GRUBB; YOUFAN GU, XIAOYAN SHI, & GORDON
SHOUYI GU; MICHELLE & MARC GUSSENBAUER;
LISA-MARIE & ROBERT GUSTOFSON; MARC &
LINDSEY MORRIS GUTMAN REV TRUST; LUCIE
GUYOT REVOCABLE LIVING TRUST; ZAID HADDAD
AND OUMNIA REGHAI HADDAD; YONGXIN HAN &
YINGXIN ZHANG; THOMAS W. HANKS & CLARISSA W.
LIU; TIMOTHY DAVID HANKS & NIMISHA SINHA
HANKS; PETER HAUER & ELIZABETH ANN PARADY;
TAO HE & XIA FANG; JOHN R. & PATRICIA HECKMAN;
LACEY & NATHAN HEDIN; SAUL HERBERT & ELENA
POLOVNIKOVA; THEODORE J. & WHITNEY R.
HILLESTAD; DANIEL & ANDREA HIMMELBERGER;
DAVID A. & LAURA M. HODGSON; ROCHELLE M.
HOFFMAN; JONATHAN D. & JESSICA N. HOOVER;
NICOLE C. & JAMES P. HOWE; ALISON B. HUBBARD;
MAXIMIANO HYNSON LIVING TRUST; CLAYTON &
PATRICIA A. JAMES; VIDYA JAYAKAR & JAI
KUMARAN KUPPUSWAMY CANCHEEVARAM; ROBERT
B. & REBEKAH JAYNE; JASON RAMSEY AND ANDREA
LEANNE JENKINS; LINDSAY H. JOHNSON; MARK A.
JOHNSON; JONATHAN E. JONES, KAREN A. JONES,
MARK FULLER FORDNEY, & JENNIFER MARIE
FORDNEY; SHANNON E. JONES; JORDAAN FAMILY
REVOCABLE TRUST; JZYV REVOCABLE TRUST;
PIYUSH RAMESH KANSARA & PURVI PIYUSH
KANSARA; MORTEZA KARIMZADEH; MARC & LARA
KATZIN; PREMA KHANNA; GEORGE D. & HILLARY
NUSSBAUM KELLOGG; BRIAN & MARY E. KEMP;
TIMOTHY J. KENKEL AND SARAH KENNEDY;
ANDREW & JESSICA KIEHLING; BRIAN DUNCAN
KNOTT; JULIE A. KRAFT; DAVID F. & DENA M.
KRENIK; ERIK & KASIA KREUGER; KARVIN R.
KUFFER; CUO LAN & YONGXIN ZHANG; TODD P. &
CARRIE M. LANDIN; KELLIE & ZACHARY LANGE;

SHANDONG LAO & YAN WANG; JONATHAN L. & CAROLYN A. LASKER; TRACEY L. & MICHELLE D. LEESE; MICHAEL B. & ERICA N. LEIBOVITZ; GREGORY & ANNE-LAURE LEPERE; HUI LI & YIFENG TIAN; HAIDAO LIN & BINXIN XING; YING LIN & GANG QIAN; KRISTIN LISTECKI; SONG LIU & NA WANG; STEVE & TAMI LORD; MICHAEL D. LYNN TRUST & RHONDA C. LYNN TRUST; MICHAEL A. & MICHELLE L. MACISZEWSKI; SEAN D. & IVY L. MADAY; HEATHER N. MALM; RACHEL MATZ; AMANDA & CONNOR MCCLUSKEY; JOHN & KRISTEN MCCORMICK; SARAH & JAY MCMAHON; RYAN A. & AMANDA L. MEDINE; THE JEREMY MIRMELSTEIN REVOCABLE LIVING TRUST & THE ALYSSA WHITCRAFT REVOCABLE LIVING TRUST; H. ALEXANDER MIKISHKO; LYNN M. AND JOHN R. MITTON; KYLE DUNCAN & JULIA ANN MOFFETT; LARS K. & MARCELA J. MORALES; KATHLEEN M. MORIARTY; ANTHONY LEE MYERS JR. & YEN LIN MYERS; ETHAN & BRITTANY NEIL; AUSTIN & KOZUE NORAUSKY; COREY & BECKY OCHSNER LIVING TRUST; BRYAN F. & FRANCES O'LEARY; THOMAS J. & BONNIE J. PARACHINI; BRITT-ANNE & FRANK PARKER; JENNIFER S. PEACOCK; MARC & AMY P. PEDRUCCI; SARAH PELTIER & BRIAN FRUTIG; TARA AND ERIC S. PELTIER; KEVIN J. & DONNA S. PENDLETON; JACQUELINE A. PESA; BARBARA J. PESKIND; ROBERT GATES AND KARA MARIE PHILLIPS; STEPHANIE AND ADAM PHILLIPS; CHRISTOPHER & BETH PLOTT; MICHAEL PRIDDY & ESA CRUMB; SUSAN & DAVID PUJDAK; YONGHAI QIAN & HONGYAN LUO; BRIAN JON & MARY ELIZABETH QUESENBERRY; AZALEE RAFII; LI REN & JIAN WANG; BRIAN C. & MARGARET T. RESCH; COURTNEY KEISTER REYNOLDS & JOHN LEE REYNOLDS IV; TIMOTHY A. & MARYELLEN F. REZVAN; BRANNON H. & LANA P. RICHARDS; RIVINUS FAMILY REVOCABLE TRUST; CHRISTOPHER J. & GABRIELLE L. ROBBIE; JESSICA & MICHAEL ROCKWAY; MARK J. & KIMBERLY A. RUND; DANIEL SALIMBENE & TARA CIBELLI; GEOFFREY R. SANDFORT & AMBER N. GREVES; SACHIN & MANISHA SANGVIKAR; ALICE C. SANTMAN; JUSTIN RICHARD & STEPHANIE ERIN SATIN; JOEL DAVID SAYRES; SHANE & MELANIE SCHIEFFER; ANDREW L. SCHIFLE &

JENNIFER F. TUEY; BLAKE & SUSAN T. SCHMIDT;
BENJAMIN AND ELIZABETH SCHNEIDER; STEVEN
JAMES & JACLYN MARIE SCHULTZ; JOSHUA B. & LORI
B. SCOTT; SUSAN M. SEIGEL; DANIEL J. SHAY &
ANNALISSA PHILBIN; ANDREW W. SIEGMUND &
MARTHA J. SCHELER; SURAJ SINGH & MOLLY E.
MILLETT; SOMASUNDARAM SUNDARAM & KAVITHA
SOMASUNDARAM; JOHN W. & RACHEL E. STANTON;
CHAD & DARCEY SYPOLT REVOCABLE TRUST; BRIAN
AND LINDSEY TAYLOR; CHRISTIAN R. & CHRISTINA
L. TENEROWICZ; JEFFREY & KRISTY THOMPSON;
TRACY L. TROCH; SHAWN & JOYCE UHLENHAKE;
PRABHU VELAYUTHAM & RAJALAKSHMI
NATARAJAN; NORBERT VER & MARIA KOUZMINA;
ADAM AND SARAH VONNAHME; JUNGANG WANG &
ZHUXIAO LI; QI WANG & JUANJUAN ZHU;
SHUAIHANG WANG AND ANDREW AUDIBERT LIVING
TRUST; WEI WANG & YUEFENG GAO; XI WANG & RAN
SHI; YIYUAN WANG & YIFAN CHENG; MARK JAMES &
BRIDGETT ANNE WEIDNER; DAVID & MICHELE
WEINGARDEN; JOEL AND JILL L. WHITE; ZOE & BRIAN
WHITMORE; SEAN WILCOX; JESSICA L. WILLIAMS;
KYLE L. WILLIAMS; STEVE & MERRY WOLF TRUST;
MINMING WU & HONG LI; MING XIE & HUILIN FENG;
NATHAN YECKE; XIAOJUN YIN & JING LU; MICHAEL
R. & ANN MARIE YOUNCE; ANDREA E. YOUNG;
CHRISTOPHER G. & ROBYN C. YORK; JEFFREY C.
ZABEL REVOCABLE TRUST & THE SARAH M. ZABEL
REVOCABLE TRUST; WEIPING ZHAO; XIAOWEI
ZHENG;

v.

Defendant: JEFFERSON COUNTY, COLORADO, as
successor in interest to the Jefferson County Airport Authority.

<p><i>Attorneys for Plaintiffs</i> John R. Sperber, #22073 Sean J. Metherell, #47438 Rebecca A.R. Smith, #52501 FAEGRE DRINKER BIDDLE & REATH LLP 1144 Fifteenth Street, Suite 3400 Denver, CO 80202 Telephone Number: (303) 607-3500 jack.sperber@faegredrinker.com sean.metherell@faegredrinker.com becca.smith@faegredrinker.com</p>	
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COMPLAINT AND JURY DEMAND

Plaintiffs named in the caption and identified further below (collectively, “Homeowners”), by and through their attorneys, Faegre Drinker Biddle & Reath LLP, allege as follows:

Introduction

1. This is an inverse condemnation lawsuit seeking just compensation for hundreds of individual Homeowners who have been substantially deprived of the use and enjoyment of their homes and properties (collectively, “Properties”) because of Defendant’s ongoing airport operations.

2. An inverse condemnation action is a special statutory proceeding that is to be tried as if it were an eminent domain proceeding, which concerns only issues relating to the just compensation owed for governmental use of private property and cannot address collateral issues that change the scope of the proceedings. *See Ossman v. Mountain States Tel. & Tel. Co.*, 520 P.2d 738, 742 (Colo. 1974); *Dep’t of Transp. v. Auslaender*, 94 P.3d 1239, 1241 (Colo. App. 2004).

3. Defendant, Jefferson County, Colorado, as successor in interest to the Jefferson County Airport Authority (the “County”), owns and operates the Rocky Mountain Metropolitan Airport (“Airport”).

4. The Airport is the third-busiest airport in the state of Colorado. In 2022 (the most recent year for which such data is publicly available), on average, the Airport experienced a takeoff or landing every two minutes.

5. Through its Airport, the County engages in flight operations through, over, and across the Properties (collectively, “Airport Operations”) despite the County lacking avigation easements or any other property right permitting it to do so.

6. The airspace above a property is included within the bundle of rights owned by landowners. For a property located in a rural area, landowners own the airspace up to 500 feet; in a congested area, they own the airspace up to 1,000 feet. Navigable airspace exists above those thresholds and is generally considered part of the public domain.

7. Here, the Homeowners own the airspace up to 1,000 feet above the Properties (“Homeowners’ Airspace”).

8. Easements allowing the County to use the Homeowners’ Airspace for flights and other airplane-caused impacts on the Properties previously existed at one time. But an increase in Airport Operations overburdened these prior easements, and a Boulder County District Court determined that 9 of 29 prior easements were terminated according to their terms (the “Terminated Easements”). See *Rock Creek Master Homeowners Ass’n, Inc. v. Jefferson Cnty.*, 20CV30837, order *aff’d Rock Creek v. Jefferson*, 22CA602 (unpublished pursuant to C.A.R. 35(e)) on June 15, 2023).

9. Despite that District Court order, the County has continued its Airport Operations as though the Terminated Easements were still in full legal force and effect. The County has not sought new easement rights from Homeowners or offered to pay them just compensation for the continued Airport Operations.

10. In fact, the County has significantly increased the amount and intensity of its Airport Operations ever since the prior easements were terminated, including using the Airport for flight school training flights that include frequent low-flying airplanes engaging in “touch and go” takeoff and landing exercises with planes flying in a racetrack looping pattern through, over, and across the Properties and Homeowners’ Airspace at all hours of the day and night.

11. It is commonplace for the Airport Operations to include planes making 10-15 loops in a single training flight, and there can be multiple training flights in a pattern at once, resulting in significant invasions of Homeowners’ Airspace. Some Homeowners have tracked 20-40 “touch and go” takeoffs and landings by a single plane during a training flight. Recently, one plane did 58 loops during a single training flight.

12. These increased Airport Operations have caused excessive noise, vibrations, fuel pollution, and other airplane-created impacts (collectively, “Airport Impacts”), which directly and substantially interfere with the Homeowners’ use and enjoyment of their Properties and that significantly affect the marketability and value of the Properties.

13. The flights also drop lead particulates found in the aviation fuel used by small planes directly onto the Properties, causing an ongoing physical occupation of the Properties, raising serious health concerns, and again directly and substantially interfering with the Homeowners’ use and enjoyment of their Properties and significantly affecting the marketability and value of the Properties.

14. In addition to the physical invasions of the Homeowners' Airspace and Properties, the Properties also suffer from damaging impacts caused by the Airport Impacts described above, significantly affecting the marketability and value of the Properties.

15. The County has continued its Airport Operations with full knowledge that it lacks property rights to invade the Homeowners' Airspace, homes, and land; and with full knowledge of the impacts such operations have on the Properties.

16. Even though the Airport Operations are creating greater burdens now than when the prior easements were terminated, the Airport Operations are projected to continue increasing each year. The County has not sought new easements from Homeowners or offered to pay them just compensation for this further taking and damaging of Homeowners' Properties.

17. Because the County is a governmental entity with eminent domain power and is operating the Airport for a purported public purpose, the Airport Operations and Airport Impacts constitute the taking and damaging of Homeowners' constitutionally protected property rights, which requires the payment of just compensation under the Colorado Constitution.

18. Colo. Const. art. II, § 15 provides even greater protections to property owners than the U.S. Constitution, by allowing just compensation to be awarded to property owners for both the direct taking of their properties *and* for the damaging of their properties caused by public improvements and activities.

19. The Homeowners accordingly file this Complaint and Jury Demand for inverse condemnation. They seek a ruling from the Court that interests in their Properties have been taken and damaged, as those terms are used under Colorado law; defining with particularity the scope of the rights that have been permanently or temporarily taken; and setting a valuation trial to a jury to determine the just compensation owed to the Homeowners. They also seek the award of their attorney fees, expert and other litigation costs, statutory interest as provided for by law, and other appropriate relief.

Parties

20. The following 16 pages identify the parties to this lawsuit. The factual allegations begin on page 23 of this Complaint.

21. The County is now and, at all times relevant herein, was the owner and operator of the Airport, formerly the Jefferson County Airport until its name was changed in 2006.

22. The County is the successor in interest to the Jefferson County Airport Authority ("County Authority"), which first opened the Airport in 1960 and owned and operated the airport until 1998.

23. The following Plaintiffs' properties are in Zone 3 as depicted on the Town of Superior Development Map (attached as **Exhibit A**), and at one time were burdened by an Avigation Easement Agreement dated May 1, 1992, and recorded on May 4, 1992, in Jefferson County at reception number 92051546 (attached as **Exhibit B**):

(1) Inga Claire Dixon Revocable Living Trust owns the property at 1860 Vernon Lane, Superior, CO 80027;

(2) Christopher and Victoria Edmonston own the property at 1955 Eldorado Circle, Superior, CO 80027;

(3) Ryan A. and Amanda L. Medine own the property at 1560 Masters Court, Superior, CO 80027;

(4) Tara and Eric S. Peltier own the property at 540 Campo Way, Superior, CO 80027;

(5) Yonghai Qian and Hongyan Luo own the property at 550 Campo Way, Superior, CO 80027; and

(6) Joel and Jill L. White own the property at 1970 Eldorado Circle, Superior, CO 80027.

24. The following Plaintiffs' properties are in Zone 10 as depicted on Exhibit A. The Avigation Easement Agreement labeled Exhibit B also burdened these properties at one time:

(1) Joseph Robert Alread and Erika Lin Stensvaag own the property at 2200 Keota Lane, Superior, CO 80027;

(2) Xiaoyun Ding and Yinan Deng own the property at 2259 Jarosa Lane, Superior, CO 80027;

(3) Christopher R. and Jenny R. Fox own the property at 2090 Keota Lane, Superior, CO 80027;

(4) Zaid Haddad and Oumnia Reghai Haddad own the property at 2285 Keota Lane, Superior, CO 80027;

(5) Jason Ramsey and Andrea Leanne Jenkins own the property at 2188 Imperial Lane, Superior, CO 80027;

(6) Lynn M. and John R. Mitton own the property at 2105 Keota Lane, Superior, CO 80027;

(7) Benjamin and Elizabeth Schneider own the property at 2183 Imperial Lane, Superior, CO 80027; and

(8) Xiaowei Zheng owns the property at 2064 Jarosa Lane, Superior, CO 80027.

25. The following Plaintiffs' properties are in Zone 13 as depicted on Exhibit A, and at one time were burdened by an Avigation Easement Agreement dated October 6, 1992, and recorded on October 9, 1992, in Boulder County at reception number 01227934 (attached as **Exhibit C**):

(1) Brandon David and Heather Dawn Barber own the property at 916 Monroe Way, Superior, CO 80027;

(2) Brogden-Huot Living Trust owns the property at 982 Eldorado Drive, Superior, CO 80027;

(3) Lihua Cao and Xue Wei own the property at 2264 Lasalle Street, Superior, CO 80027;

(4) Zhongming Chen and Peiqi He own the property at 983 Northern Way, Superior, CO 80027;

(5) Steven C. and Amy E. Gross own the property at 1057 Eldorado Drive, Superior, CO 80027;

(6) Marc and Lindsey Morris Gutman Rev Trust owns the property at 1062 Eldorado Drive, Superior, CO 80027;

(7) Tao He and Xia Fang own the property at 2044 Lasalle Street, Superior, CO 80027;

(8) John R. and Patricia Heckman own the property at 1042 Eldorado Drive, Superior, CO 80027;

(9) Maximiano Hynson Living Trust owns the property at 962 Eldorado Drive, Superior, CO 80027;

(10) Robert B. and Rebekah Jayne own the property at 1102 Eldorado Drive, Superior, CO 80027;

(11) Jonathan E. Jones, Karen A. Jones, Mark Fuller Fordney, and Jennifer Marie Fordney own the property at 981 Monroe Way, Superior, CO 80027;

(12) Todd P. and Carrie M. Landin own the property at 2224 Lasalle Street, Superior, CO 80027;

(13) Kyle Duncan and Julia Ann Moffett own the property at 1122 Eldorado Drive, Superior, CO 80027;

(14) Anthony Lee Myers Jr. and Yen Lin Myers own the property at 1026 Monroe Way, Superior, CO 80027;

(15) Thomas J. and Bonnie J. Parachini own the property at 2084 Lasalle Street, Superior, CO 80027;

(16) Kevin J. and Donna S. Pendleton own the property at 922 Eldorado Drive, Superior, CO 80027;

(17) Barbara J. Peskind owns the property at 941 Monroe Way, Superior, CO 80027;

(18) Li Ren and Jian Wang own the property at 1016 Monroe Way, Superior, CO 80027;

(19) Christopher J. and Gabrielle L. Robbie own the property at 762 Eldorado Drive, Superior, CO 80027;

(20) Daniel Salimbene and Tara Cibelli own the property at 2219 Lasalle Street, Superior, CO 80027;

(21) Susan M. Seigel owns the property at 969 Monarch Way, Superior, CO 80027;

(22) John W. and Rachel E. Stanton own the property at 2239 Lasalle Street, Superior, CO 80027;

(23) Adam and Sarah Vonnahme own the property at 2204 Lasalle Street, Superior, CO 80027;

(24) Shuaihang Wang and Andrew Audibert Living Trust owns the property at 954 Lasalle Street, Superior, CO 80027;

(25) Ming Xie and Huilin Feng own the property at 914 Lasalle Street, Superior, CO 80027; and

(26) Weiping Zhao owns the property at 1006 Monroe Way, Superior, CO 80027.

26. The following Plaintiffs' properties are in Zone 15 as depicted on Exhibit A, and at one time were burdened by an Avigation Easement Agreement dated July 29, 1993, and recorded on August 10, 1992, in Boulder County at reception number 01323785, and also recorded on July 30, 1993, in Jefferson County at reception number 93113570 (attached as **Exhibit D**):

(1) Renee and Gregory Alaniz Living Trust owns the property at 618 Eaton Circle, Superior, CO 80027;

- (2) Amy Alexander owns the property at 508 Eaton Circle, Superior, CO 80027;
- (3) Rachael S. Bray owns the property at 2355 Andrew Drive, Superior, CO 80027;
- (4) Margo Cooper and Edmund Eissenstat own the property at 518 Eaton Circle, Superior, CO 80027;
- (5) Matthew S. Dew and Lihua Zhong own the property at 494 Briggs Place, Superior, CO 80027;
- (6) Spencer and Brittany Erekson own the property at 528 Eaton Circle, Superior, CO 80027;
- (7) Anup Gandhi and Nikita Kataria own the property at 653 Eaton Circle, Superior, CO 80027;
- (8) Thomas W. Hanks and Clarissa W. Liu own the property at 509 Briggs Place, Superior, CO 80027;
- (9) Maximiano Hynson Living Trust owns the property at 2225 Andrew Drive, Superior, CO 80027;
- (10) Mark A. Johnson own the property at 2560 Clayton Circle, Superior, CO 80027;
- (11) Cuo Lan and Yongxin Zhang own the property at 578 Eaton Circle, Superior, CO 80027;
- (12) Steve and Tami Lord own the property at 549 Briggs Place, Superior, CO 80027;
- (13) Bryan F. and Frances O'Leary own the property at 2221 Dailey Street, Superior, CO 80027;
- (14) Michael Priddy and Esa Crumb own the property at 2236 Dailey Street, Superior, CO 80027;
- (15) Sachin and Manisha Sangvikar own the property at 613 Eaton Circle, Superior, CO 80027;
- (16) Christian R. and Christina L. Tenerowicz own the property at 415 Andrew Way, Superior, CO 80027;

(17) Qi Wang and Juanjuan Zhu own the property at 2370 Andrew Drive, Superior, CO 80027;

(18) Wei Wang and Yuefeng Gao own the property at 2261 Dailey Street, Superior, CO 80027; and

(19) Sean Wilcox owns the property at 1981 Dailey Lane, Superior, CO 80027.

27. The following Plaintiffs' properties are in Zone 18 as depicted on Exhibit A, and at one time were burdened by an Avigation Easement Agreement dated June 6, 1995, and recorded on July 19, 1995, in Boulder County at reception number 01531881 (attached as **Exhibit E**):

(1) Charles J. and Linda D. Blakely own the property at 1500 Aster Court, Superior, CO 80027;

(2) Brian and Milena Bouchard own the property at 3145 E. Yarrow Circle, Superior, CO 80027;

(3) Dale T. and Leanne Brotski own the property at 1476 Vinca Place, Superior, CO 80027;

(4) Derrick T. and Tricia A. Carpenter own the property at 1532 Hyacinth Way, Superior, CO 80027;

(5) Michael Citarella owns the property at 1544 Aster Court, Superior, CO, 80027;

(6) Sergey I. Derevyanko owns the property at 1509 Aster Court, Superior, CO 80027;

(7) Ryan and Laura Dionne own the property at 2954 Basil Place, Superior, CO 80027;

(8) The Durand Living Trust owns the property at 2942 W. Yarrow Circle, Superior, CO 80027;

(9) Adam and Stefanie Flach own the property at 3216 Goldeney Place, Superior, CO 80027;

(10) Jeffery E. and Denise T. Greene own the property at 1512 Snapdragon Court, Superior, CO 80027;

(11) Gregory G. and Candice J. Grubb own the property at 3257 W. Yarrow Circle, Superior, CO 80027;

(12) Youfan Gu, Xiaoyan Shi, and Gordon Shouyi Gu own the property at 1519 Ivy Place, Superior, CO 80027;

(13) Peter Hauer and Elizabeth Ann Parady own the property at 1429 Aster Court, Superior, CO 80027;

(14) Saul Herbert and Elena Polovnikova own the property at 3007 W. Yarrow Circle, Superior, CO 80027;

(15) Daniel and Andrea Himmelberger own the property at 1426 Vinca Place, Superior, CO 80027;

(16) David A. and Laura M. Hodgson own the property at 1519 Aster Court, Superior, CO 80027;

(17) Jordaan Family Revocable Trust recently sold the property at 1419 Aster Court, Superior, CO 80027;

(18) Morteza Karimzadeh owns the property at 3022 W. Yarrow Circle, Superior, CO, 80027;

(19) Brian Duncan Knott owns the property at 3030 E. Yarrow Circle, Superior, CO 80027;

(20) Julie A. Kraft owns the property at 3131 Gardenia Way, Superior, CO 80027;

(21) Kristin ListECKI owns the property at 3121 Gardenia Way, Superior, CO 80027;

(22) Heather N. Malm owns the property at 2922 W. Yarrow Circle, Superior, CO 80027;

(23) The Jeremy Mirmelstein Revocable Living Trust and the Alyssa Whitcraft Revocable Living Trust own the property at 1459 Aster Court, Superior, CO 80027;

(24) Kathleen M. Moriarty owns the property at 1457 Hyacinth Way, Superior, CO 80027;

(25) Susan and David Pujdak own the property at 2929 Basil Place, Superior, CO 80027;

(26) Brannon H. and Lana P. Richards own the property at 3277 W. Yarrow Circle, Superior, CO 80027;

(27) Jessica and Michael Rockway own the property at 1529 Ivy Place, Superior, CO 80027;

(28) Steven James and Jaclyn Marie Schultz own the property at 3137 W. Yarrow Circle, Superior, CO 80027;

(29) Andrew W. Siegmund and Martha J. Scheler own the property at 3032 W. Yarrow Circle, Superior, CO 80027;

(30) Yiyuan Wang and Yifan Cheng own the property at 3132 W. Yarrow Circle, Superior, CO 80027;

(31) Zoe and Brian Whitmore own the property at 1564 Aster Court, Superior, CO 80027;

(32) Jessica L. Williams owns the property at 1449 Aster Court, Superior, CO 80027;

(33) Minming Wu and Hong Li own the property at 3117 W. Yarrow Circle, Superior, CO 80027;

(34) Nathan Yecke owns the property at 3141 Goldeneye Place, Superior, CO 80027; and

(35) Xiaojun Yin and Jing Lu own the property at 3125 E. Yarrow Circle, Superior, CO 80027.

28. The following Plaintiffs' properties are in Zone 19 as depicted on Exhibit A, and at one time were burdened by an Avigation Easement Agreement dated September 27, 1995, and recorded on October 10, 1995, in Boulder County at reception number 01551661, and also recorded on October 19, 1995, in Boulder County at reception number 01556192 (attached as **Exhibit F**):

(1) Jason C. Abair owns the property at 2921 Silver Place, Superior, CO 80027;

(2) Christian Peter and Heather Elizabeth Andersen own the property at 2812 Flint Court, Superior, CO 80027;

(3) Peter Grady Arnold and Jamie Schiel Arnold own the property at 2724 N. Torreys Peak Drive, Superior, CO 80027;

(4) Marc and Crystal Callipari own the property at 2862 Flint Court, Superior, CO 80027;

(5) Nancy T. and Richard W. Crist III own the property at 713 Gold Way, Superior, CO 80027;

- (6) Todd R. and Katherine M. Dierking own the property at 2778 Slate Court, Superior, CO 80027;
- (7) Rebecca and Jeffrey Dimaio own the property at 2918 Marble Lane, Superior, CO 80027;
- (8) Christopher James and Sarah Kay Drummond own the property at 2938 Marble Lane, Superior, CO 80027;
- (9) Michael and Kathryn Flood own the property at 733 Gold Way, Superior, CO 80027;
- (10) The Michael J. Gazarik Living Trust and The Michelle V. Gazarik Living Trust own the property at 2788 Slate Court, Superior, CO 80027;
- (11) Michael J. and Claire M. Greening own the property at 2940 N. Torreys Peak Drive, Superior, CO 80027;
- (12) Lisa-Marie and Robert Gustofson own the property at 699 Flagstone Place, Superior, CO 80027;
- (13) Lucie Guyot Revocable Living Trust owns the property at 2801 Silver Place, Superior, CO 80027;
- (14) Yongxin Han and Yingxin Zhang own the property at 734 Topaz Street, Superior, CO 80027;
- (15) Timothy David Hanks and Nimisha Sinha Hanks own the property at 2925 N. Torreys Peak Drive, Superior, CO 80027;
- (16) Theodore J. and Whitney R. Hillestad own the property at 934 Topaz Street, Superior, CO 80027;
- (17) Clayton and Patricia A. James own the property at 2838 Marble Lane, Superior, CO 80027;
- (18) Lindsay H. Johnson owns the property at 939 Topaz Street, Superior, CO 80027;
- (19) JZYV Revocable Trust owns the property at 2826 Silver Place, Superior, CO 80027;
- (20) Marc and Lara Katzin own the property at 2706 Silver Place, Superior, CO 80027;

- (21) George D. and Hillary Nussbaum Kellogg own the property at 2832 Flint Court, Superior, CO 80027;
- (22) David F. and Dena M. Krenik own the property at 944 Topaz Street, Superior, CO 80027;
- (23) Erik and Kasia Kreuger own the property at 2817 N. Torreys Peak Drive, Superior, CO 80027;
- (24) Kellie and Zachary Lange own the property at 2930 N. Torreys Peak Drive, Superior, CO 80027;
- (25) Shandong Lao and Yan Wang own the property at 2849 Quartz Way, Superior, CO 80027;
- (26) Michael B. and Erica N. Leibovitz own the property at 718 Gold Way, Superior, CO 80027;
- (27) Song Liu and Na Wang own the property at 2822 N. Torreys Peak Drive, Superior, CO 80027;
- (28) Robert Gates and Kara Marie Phillips own the property at 719 Flagstone Place, Superior, CO 80027;
- (29) Stephanie and Adam Phillips own the property at 961 Sapphire Way, Superior, CO 80027;
- (30) Christopher and Beth Plott own the property at 2913 Marble Lane, Superior, CO 80027;
- (31) Brian Jon and Mary Elizabeth Quesenberry own the property at 2950 N. Torreys Peak Drive, Superior, CO 80027;
- (32) Timothy A. and Maryellen F. Rezvan own the property at 2754 N. Torreys Peak Drive, Superior, CO 80027;
- (33) Mark J. and Kimberly A. Rund own the property at 2828 Marble Lane, Superior, CO 80027;
- (34) Justin Richard and Stephanie Erin Satin own the property at 2733 Slate Court, Superior, CO 80027;
- (35) Shane and Melanie Schieffer own the property at 2852 Flint Court, Superior, CO 80027;

(36) Suraj Singh and Molly E. Millett own the property at 919 Topaz Street, Superior, CO 80027;

(37) David and Michele Weingarden own the property at 2716 Silver Place, Superior, CO 80027;

(38) Steve and Merry Wolf Trust owns the property at 728 Gold Way, Superior, CO 80027;

(39) Ming Xie and Huilin Feng own the property at 3040 N. Torreys Peak Drive, Superior, CO 80027;

(40) Christopher G. and Robyn C. York own the property at 2817 Flint Court, Superior, CO 80027; and

(41) Jeffrey C. Zabel Revocable Trust and the Sarah M. Zabel Revocable Trust own the property at 2842 Flint Court, Superior, CO 80027.

29. The following Plaintiffs' properties are in Zone 21 as depicted on Exhibit A, and at one time were burdened by an Avigation Easement Agreement dated December 6, 1995, and recorded on December 7, 1995, in Boulder County at reception number 01567720 (attached as **Exhibit G**):

(1) Daniel and Lisa Allen own the property at 838 Maroon Peak Circle, Superior, CO 80027;

(2) Kirsi A. Aulin owns the property at 949 Windom Peak Drive, Superior, CO 80027;

(3) Colin R. and Laura E. Baukol own the property at 723 Maroon Peak Circle, Superior, CO 80027;

(4) Bonnie J. and Randall Louis Bird own the property at 2911 Castle Peak Avenue, Superior, CO 80027;

(5) Shawn Paul and Anna Bisailon own the property at 3444 Huron Peak Avenue, Superior, CO 80027;

(6) Theodoor P. and Rosalie T. Boezaart own the property at 920 Cobalt Way, Superior, CO 80027;

(7) Heather C. Boudreau owns the property at 1008 Huron Peak Avenue, Superior, CO 80027;

(8) Robert Boutelle and Taylor Aubry Komin own the property at 3744 Gypsum Court, Superior, CO 80027;

- (9) Shana Burack and Brian Andrew Hicks own the property at 1016 Sapphire Way, Superior, CO 80027;
- (10) Keith A. Buschmann and Sandra J. Morrison own the property at 3692 Blanca Peak Drive, Superior, CO 80027;
- (11) Dustin and Terrill Clymer own the property at 956 Shavano Peak Drive, Superior, CO 80027;
- (12) Robert R. and Lynn E. Conklin own the property at 721 Graphite Way, Superior, CO 80027;
- (13) Robert W. and Laurie Cook own the property at 927 Sandstone Way, Superior, CO 80027;
- (14) Cesar Augusto Guerrero Cordoba and Kati Marianna Guerrero own the property at 863 Maroon Peak Circle, Superior, CO 80027;
- (15) Eric D. Cosmos owns the property at 3624 Huron Peak Avenue, Superior, CO 80027;
- (16) Danielle Davis owns the property at 864 Sunlight Way, Superior, CO 80027;
- (17) Danielle Davis also owns the property at 915 Cobalt Way, Superior, CO 80027;
- (18) Matthew Dew and Lihua Zhong own the property at 3420 Castle Peak Avenue, Superior, CO 80027;
- (19) Matthew S. and Karin Y. Dudek own the property at 910 Cobalt Way, Superior, CO 80027;
- (20) Patricia E. and Sean M. Dunham own the property at 3574 Huron Peak Avenue, Superior, CO 80027;
- (21) Brian and Jeannine Elliott own the property at 711 Graphite Way, Superior, CO 80027;
- (22) Karen M. Falardeau owns the property at 743 Maroon Peak Circle, Superior, CO 80027;
- (23) Andrew James Frazier and Kelly Jean Frazier own the property at 823 Maroon Peak Circle, Superior, CO 80027;

(24) Drew Phillip and Hannah Jo Fuller own the property at 928 Grays Peak Drive, Superior, CO 80027;

(25) William Galerstein and Alice Penton own the property at 3113 Castle Peak Avenue, Superior, CO 80027;

(26) Dawn Garner owns the property at 3615 Huron Peak Avenue, Superior, CO 80027;

(27) Brook Z. Gebre-Mariam owns the property at 814 Sunlight Way, Superior, CO 80027;

(28) Joseph C. Gogain Jr. and Marta Schilling-Gogain own the property at 938 Grays Peak Drive, Superior, CO 80027;

(29) Gospodarek Family Trust owns the property at 948 Huron Peak Avenue, Superior, CO 80027;

(30) Melissa and Ryan Groelz own the property at 831 Maroon Peak Circle, Superior, CO 80027;

(31) Michelle and Marc Gussenbauer own the property at 843 Grays Peak Drive, Superior, CO 80027;

(32) Lacey and Nathan Hedin own the property at 703 Maroon Peak Circle, Superior, CO 80027;

(33) David A. and Laura M. Hodgson own the property at 3240 Basalt Court, Superior, CO 80027;

(34) Rochelle M. Hoffman owns the property at 2987 Shale Court, Superior, CO 80027;

(35) Jonathan D. and Jessica N. Hoover own the property at 3188 Castle Peak Avenue, Superior, CO 80027;

(36) Nicole C. and James P. Howe own the property at 916 Shavano Peak Drive, Superior, CO 80027;

(37) Alison B. Hubbard owns the property at 3230 Huron Peak Avenue, Superior, CO 80027;

(38) Vidya Jayakar and Jai Kumaran Kuppuswamy Cancheevaram own the property at 3153 Castle Peak Avenue, Superior, CO 80027;

- (39) Shannon E. Jones owns the property at 3122 Cimarron Place, Superior, CO 80027;
- (40) Piyush Ramesh Kansara and Purvi Piyush Kansara own the property at 3335 Castle Peak Avenue, Superior, CO 80027;
- (41) Prema Khanna owns the property at 833 Maroon Peak Circle, Superior, CO 80027;
- (42) Brian and Mary E. Kemp own the property at 853 Maroon Peak Circle, Superior, CO 80027;
- (43) Timothy J. Kenkel and Sarah Kennedy own the property at 3614 Huron Peak Avenue, Superior, CO 80027;
- (44) Andrew and Jessica Kiehling own the property at 3137 Cimarron Place, Superior, CO 80027;
- (45) Karvin R. Kuffer owns the property at 3050 Huron Peak Avenue, Superior, CO 80027;
- (46) Jonathan L. and Carolyn A. Lasker own the property at 3645 Huron Peak Avenue, Superior, CO 80027;
- (47) Tracey L. and Michelle D. Leese own the property at 933 Grays Peak Drive, Superior, CO 80027;
- (48) Gregory and Ann-Laure Lepere own the property at 935 Cobalt Way, Superior, CO 80027;
- (49) Hui Li and Yifeng Tian own the property at 3238 Castle Peak Avenue, Superior, CO 80027;
- (50) Haidao Lin and Binxin Xing own the property at 3140 Huron Peak Ave, Superior, CO 80027;
- (51) Ying Lin and Gang Qian own the property at 3507 Blanca Peak Court, Superior, CO 80027;
- (52) Michael D. Lynn Trust and Rhonda C. Lynn Trust own the property at 3280 Basalt Court, Superior, CO 80027;
- (53) Michael A. and Michelle L. Maciszewski own the property at 3148 Castle Peak Avenue, Superior, CO 80027;

- (54) Sean D. and Ivy L. Maday own the property at 946 Shavano Peak Drive, Superior, CO 80027;
- (55) Rachel Matz owns the property at 3173 Castle Peak Avenue, Superior, CO 80027;
- (56) Amanda and Connor McCluskey own the property at 3158 Castle Peak Avenue, Superior, CO 80027;
- (57) John and Kristen McCormick own the property at 2931 Castle Peak Avenue, Superior, CO 80027;
- (58) Sarah and Jay McMahon own the property at 783 Maroon Peak Circle, Superior, CO 80027;
- (59) H. Alexander Mikishko owns the property at 3822 S. Torreys Peak Drive, Superior, CO 80027;
- (60) Lars K. and Marcela J. Morales own the property at 908 Maroon Peak Circle, Superior, CO 80027;
- (61) Ethan and Brittany Neil own the property at 2861 Castle Peak Avenue, Superior, CO 80027;
- (62) Austin and Kozue Norausky own the property at 3467 Blanca Peak Court, Superior, CO 80027;
- (63) Corey and Becky Ochsner Living Trust owns the property at 918 Maroon Peak Circle, Superior, CO 80027;
- (64) Britt-Anne and Frank Parker own to the property at 2946 Castle Peak Avenue, Superior, CO 80027;
- (65) Jennifer S. Peacock owns the property at 900 Cobalt Way, Superior, CO 80027;
- (66) Marc and Amy P. Pedrucci own the property at 913 Grays Peak Drive, Superior, CO 80027;
- (67) Sarah Peltier and Brian Frutig own the property at 963 Huron Peak Avenue, Superior, CO 80027;
- (68) Jacqueline A. Pesa owns the property at 3133 Castle Peak Avenue, Superior, CO 80027;

- (69) Azalee Rafii owns the property at 3664 Huron Peak Avenue, Superior, CO 80027;
- (70) Li Ren and Jian Wang own the property at 833 Grays Peak Drive, Superior, CO 80027;
- (71) Brian C. and Margaret T. Resch own the property at 3142 Cimarron Place, Superior, CO 80027;
- (72) Courtney Keister Reynolds and John Lee Reynolds IV own the property at 3315 Castle Peak Avenue, Superior, CO 80027;
- (73) Rivinus Family Revocable Trust owns the property at 3143 Castle Peak Avenue, Superior, CO 80027;
- (74) Geoffrey R. Sandfort and Amber N. Greves own the property at 3729 Gypsum Court, Superior, CO 80027;
- (75) Alice C. Santman owns the property at 3549 Huron Peak Avenue, Superior, CO 80027;
- (76) Joel David Sayres owns the property at 3172 Cimarron Place, Superior, CO 80027;
- (77) Andrew L. Schifle and Jennifer F. Tuey own the property at 718 Maroon Peak Circle, Superior, CO 80027;
- (78) Blake and Susan T. Schmidt own the property at 3325 Castle Peak Avenue, Superior, CO 80027;
- (79) Joshua B. and Lori B. Scott own the property at 2966 Castle Peak Avenue, Superior, CO 80027;
- (80) Daniel J. Shay and Annalissa Philbin own the property at 978 Huron Peak Avenue, Superior, CO 80027;
- (81) Somasundaram Sundaram and Kavitha Somasundaram own the property at 3652 Blanca Peak Drive, Superior, CO 80027;
- (82) Chad and Darcey Sypolt Revocable Trust owns the property at 3110 Huron Peak Avenue, Superior, CO 80027;
- (83) Brian and Lindsey Taylor own the property at 848 Maroon Peak Circle, Superior, CO 80027;

(84) Jeffrey and Kristy Thompson own the property at 3100 Huron Peak Avenue, Superior, CO 80027;

(85) Tracy L. Troch owns the property at 3163 Castle Peak Avenue, Superior, CO 80027;

(86) Shawn and Joyce Uhlenhake own the property at 804 Sunlight Way, Superior, CO 80027;

(87) Prabhu Velayutham and Rajalakshmi Natarajan own the property at 3525 Castle Peak Avenue, Superior, CO 80027;

(88) Norbert Ver and Maria Kouzmina own the property at 3103 Castle Peak Avenue, Superior, CO 80027;

(89) Jungang Wang and Zhuxiao Li own the property at 1043 Huron Peak Avenue, Superior, CO 80027;

(90) Xi Wang and Ran Shi own the property at 3517 Blanca Peak Court, Superior, CO 80027;

(91) Mark James and Bridgett Anne Weidner own the property at 3107 Cimarron Place, Superior, CO 80027;

(92) Kyle L. Williams owns the property at 925 Cobalt Way, Superior, CO 80027;

(93) Minming Wu and Hong Li own the property at 3121 Ruby Way, Superior, CO 80027;

(94) Michael R. and Ann Marie Younce own the property at 1033 Huron Peak Avenue, Superior, CO 80027; and

(95) Andrea E. Young owns the property at 928 Maroon Peak Circle, Superior, CO 80027.

Venue

30. Venue is proper in the Boulder District Court because all of the Properties are located in Boulder County.

Factual Allegations

31. The following factual allegations are relevant to all Homeowners, Properties, and Homeowners' Airspace.

32. The Properties are a part of Rock Creek Ranch, a planned unit development containing approximately 2,800 residential units located in the Town of Superior, Boulder County, Colorado (“Rock Creek”).

33. The Properties are generally located northwest of the Airport, following in a direct line from the runways at the Airport. The ends of these runways are visible in the bottom right corner of Exhibit A.

34. The Airport is run by a staff of approximately 25 County employees responsible for the administration, operation, and maintenance of the airfield.

35. The County has legal authority to exercise the power of eminent domain to acquire property for public use.

36. The Airport uses federal monies to help fund some of its operations, development, and infrastructure, including multiple federal grants from the Federal Aviation Administration (“FAA”).

37. Because the Airport has this federal financial assistance, the Homeowners will be statutorily entitled to the reimbursement of their “reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees actually incurred” if the County is found liable for inverse condemnation through either a court order or a settlement. *See* Colo. Rev. Stat. § 24-56-116 (2023).

The Properties Were Previously Burdened by Limited Avigation Easements

38. When a developer sought to develop Rock Creek in the late 1980s, the County Authority requested that the developer be required to grant an avigation easement over the entirety of the development.

39. The developer thereafter agreed, among other things and subject to the express limitations described below, “to grant an Avigation Easement over the entire Rock Creek Ranch boundary.”

40. Between 1991 and 1996, the developer and other property owners granted 29 avigation easements to the County Authority, covering the entire Rock Creek neighborhood.

41. Each avigation easement was recorded separately and burdened discrete sections of land now containing numerous individual properties, but with otherwise identical terms. *See* Exhibits B–G (six of the prior easements that have since been terminated).

42. In the now Terminated Easements, the County Authority secured the nonexclusive right to use the airspace above Rock Creek for the passage of aircraft, as well as the right to make noise and vibrations caused by operation of aircraft. *See id.*

43. In return, the County Authority agreed to certain “limitation events” including, but not limited to, restrictions on the types of flights it would operate, passenger usage, noise contours, and vibration effects. *See id.*

44. Each easement provided that it “shall remain in effect” unless and until any of these “limitation events” occurred. *See id.*

45. After the easements were granted, the Rock Creek neighborhood was rezoned and developed with residential homes.

46. Each of the Homeowners either currently owns or recently sold their property within the Rock Creek neighborhood.

A Division of this Court Terminated Nine of Twenty-Nine Easements

47. In October 2020, the Rock Creek Master Homeowners Association, Inc. (the “HOA”) sued the County in Boulder County District Court (case number 2020CV30837).

48. The HOA alleged there that one or more “limitation events” had occurred due to increased operations and noise at the Airport and that all 29 aviation easements encumbering Rock Creek had therefore been terminated.

49. After a two-day bench trial to Senior District Court Judge Stephen Enderlin Howard the District Court issued its Bench Trial Order on December 23, 2021, attached as **Exhibit H**, in which it ruled that the Airport’s conduct amounted to a “limitation event” that would result in the termination of at least some of the easements.

50. Specifically, the District Court concluded that Limitation D had been triggered. Limitation D provided that such easements would terminate if “[t]he noise contours contained in the Master Plan are exceeded by the sustained operation of aircraft in the Airspace Easement.”

51. As provided in Exhibit H, the District Court found that the easements incorporated noise contour levels from an Airport Master Plan published in 1988 and recognized that “the Ldn 60¹ contour is usually regarded as the critical contour at general aviation airports.” The District Court further found that the 1988 Master Plan provided that its contours represented the most severe conditions for both present and future development of the Airport, and it heard testimony that those contours were designed to represent noise levels that would never be exceeded.

52. The District Court further found that the 60 Ldn Contour included in the 1988 Master Plan did not cover any property in the Rock Creek neighborhood. However, a later Master Plan published in 2000 covered approximately 39 acres of residential property in the Rock Creek neighborhood.

¹ This Complaint provides information about Ldn measurements at paragraph 79 *infra*.

53. Accordingly, because the 60 Ldn Contour in the 2000 Master Plan exceeded the proposed future 60 Ldn Contour provided in the 1988 Master Plan, the District Court concluded that a “limiting event” had occurred, and that easements had terminated on at least some properties in the Rock Creek neighborhood, but that it lacked sufficient evidence to determine which of the easements had terminated.

54. The parties thereafter submitted a stipulation identifying the easements that had terminated based on the findings and conclusions in the District Court’s Bench Trial Order.

55. The District Court issued a Supplemental Order and Final Judgment on March 24, 2022, attached at **Exhibit I**, terminating the following nine aviation easements:

Associated Filing Number	Boulder Reception Number	Jeffco Reception Number
3	N/A	92051546
10	N/A	92051546
13	01227934	N/A
15	01323785	93113570
17A	01531880	F0066440
18	01531881	N/A
19	01556192 & 01551661	N/A
20	01556193 & 01551662	N/A
21	01567720	N/A

Excerpt from p. 2 of Exhibit L.

56. All of the Properties fall within these Terminated Easements.

57. Both parties appealed the District Court’s ruling on various grounds. The District Court’s judgment was affirmed in its entirety on June 15, 2023, by a division of the Court of Appeals in an unpublished opinion, *Rock Creek Master Homeowners Ass’n, Inc. v. Jefferson Cnty.*, 22CA0602, attached as **Exhibit J**. No further appeals were taken.

58. As a party to the HOA lawsuit, the County is aware that it no longer has any property right to operate flights through the Homeowners’ Airspace following the Court of Appeals Opinion and the expiration of any further appeal period.

The County has Continued and Increased its Airport Operations Without Easement Rights

59. The Airport has become appreciably busier in recent years, with takeoffs and landings jumping from 170,000 in 2018 to more than 260,000 in 2022, an increase of approximately 53% in only 4 years.

60. Based on the 2022 numbers, on average, a flight took off or landed every two minutes at the Airport.

61. Flights operate every day of the year, and the Airport operates 24 hours a day.

62. The Airport serves commercial, private, military, and medical flights.

63. The Airport Operations also include jet airplanes, including “public charter” services such as JSX, which began flying 30 passenger jets out of the Airport in the summer of 2022 and which has been steadily increasing its destinations and number of flights since that time. *See* JSX Public Air Charter Service, <https://tinyurl.com/e3fhprw3> (last visited December 17, 2023).

64. In addition to these flights, the Airport has contracted with four flight schools, whose pilots operate repeated training loops through the Homeowners’ Airspace and conduct “touch and go” takeoff and landing training operations in a racetrack pattern over the Properties at all hours of the day and night.

65. Flights from the Airport Operations have been tracked as low as 150-350 feet above the Properties, and Airport Operations routinely include flights within the Homeowners’ Airspace.

The Airport Operations Cause Lead Particulates from Aviation Fuel to Invade and Contaminate the Properties

66. The flight schools and at least some of the commercial, private, military, and medical flights operate piston-engine airplanes.

67. According to the FAA, aviation gasoline is “the aviation fuel most commonly used in piston-engine aircraft” and “remains the only transportation fuel in the United States to contain lead.” *See* Federal Aviation Administration, *Aviation Gasoline*, <https://tinyurl.com/4448d8p8> (last visited December 17, 2023).

68. These emissions cause lead particulates to directly invade the Properties, including the homes, windowsills, vegetable gardens, yards, and land.

69. The Airport provides leaded fuel to airplanes and accepts incoming aircraft operating on leaded fuel coming from other destinations.

70. The low-altitude flights from the Airport Operations result in leaded fuel emissions onto the Properties.

71. Lead exposure causes health hazards, as lead toxicity can damage nearly every organ system in the human body. *See, e.g.*, Centers for Disease Control and Prevention, *Health Effects of Lead Exposure*, <https://tinyurl.com/yc69ks8y> (last visited December 17, 2023);

Colorado Dept. of Public Health and Environment, *Lead in aviation gas*, <https://tinyurl.com/5esfemja> (last visited December 17, 2023).

72. The EPA recently released a regulatory announcement on lead emissions from aircrafts: “Protecting children’s health and reducing lead exposure are two of EPA’s top priorities. The scientific evidence demonstrates that low levels of lead in children’s blood can have harmful effects on cognitive function in children, including reduced IQ and decreased academic performance. There is no evidence of a threshold below which there are no harmful effects on cognition in children from lead exposure.” EPA, *EPA Finalizes Endangerment Finding for Lead Emissions from Aircraft that Operate on Leaded Fuel* (October 2023), available at <https://tinyurl.com/mrye2b46>.

73. The County is aware of the dangers of lead exposure and provides public information to its citizens about such dangers. *See, e.g.*, Jefferson County Public Health, *Lead Prevention*, <https://tinyurl.com/3u2ryyyj> (last visited December 17, 2023); Jefferson County Public Health, *Preventing Lead Exposure in Children*, <https://tinyurl.com/bde3u2w7> (last visited December 17, 2023); Jefferson County Public Health, *What You Need to Know About Lead Poisoning*, <https://tinyurl.com/ytk6n36e> (last visited December 17, 2023); Jefferson County Public Health, *Childhood Lead Screening A Guide for Health Professionals*, <https://tinyurl.com/495yxzm9> (last visited December 17, 2023).

74. In October 2023, in recognition of the harm from lead exposure, the County announced that it intended to begin offering unleaded fuel in the fall of 2024 and entirely transition to unleaded fuel by 2027. *See* Daily Camera, *Jefferson County Airport Announces Full Shift to Unleaded Fuel by 2027*, John Aguilar (October 4, 2023), available at <https://www.dailycamera.com/2023/10/04/rocky-mountain-airport-lead-gasoline-noise/>. But it is not clear whether or when the County will be able to fully transition its fuel supply.

75. Unless and until planes using leaded fuel stop operating at the Airport, leaded fuel particulates will continue to invade the Properties.

76. According to an April 2023 letter from The Town of Superior Board of Trustees, “[r]ecently, nine members of the Superior community have had their homes tested for lead, and all 18 samples, two per household, have come back positive.”

77. Many Homeowners have avoided spending time outdoors because of concerns about lead exposure.

78. Where a property has a risk of lead contamination, home values plummet. For example, in Flint, Michigan, according to a paper published in the *American Economic Journal: Economic Policy*, property values dropped by 20% or greater and did not recover even after the state spent over \$400 million remediating the crisis.

The Airport Operations Cause Excessive Noise and Vibrations

79. “Day-night average sound level (DNL) means the 24-hour average sound level, in decibels, for the period from midnight to midnight, obtained after the addition of ten decibels to sound levels for the periods between midnight and 7 a.m., and between 10 p.m., and midnight, local time. The symbol for DNL is L_{dn} .” 14 CFR § 150.7. L_{dn} is a noise metric developed by the FAA that purportedly attempts to reflect a person’s cumulative exposure to sound over a 24-hour period. It takes into account both the amount of noise from each aircraft operation as measured by A-weighted decibels, (“db(A)”), as well as the total number of operations flying throughout the day and applies an additional 10dB weighting for flights between 10 p.m. and 7 a.m. This information is then used to develop noise contours reflecting cumulative exposure during an annual average day. As such, the L_{dn} does not measure the specific impact of any single noise event.

80. An A-weighted decibel is a measure of the relative loudness of sounds as perceived by the human ear, taking into account the frequency of the sound. Decibel measurements are logarithmic, meaning that the sound impact doubles for every three decibels increased.

81. Planes flying in and within the vicinity of the Homeowners’ Airspace and Properties often exceed more than 90 and have exceeded 100 decibels; numerous flights create noise in excess of 60 decibels at ground level.

82. In addition to the noise and vibrations caused by flights taken by commercial, private, military, and medical aircrafts, the flight schools put pilots on repetitive “touch-and-go” routes where airplanes engage in a looping takeoff and landing flight training, which can include multiple planes flying in the same racetrack pattern over the Properties.

83. These “touch-and-go” training flights also operate overnight, with many flights occurring between midnight and 5:00 am and with noise exceeding 70-80 decibels at times. Airport Operations also routinely and dramatically increase starting at 5:00 am.

84. Airport Operations cause Airport Impacts, including deafening, disturbing, and frightening noise and vibrations on the Properties day and night.

85. Noise from these Airport Operations makes it difficult for Homeowners to sleep, work, study, converse, take work and personal phone calls, concentrate, entertain, spend time in their front or back yards, read, listen to radio or television, or otherwise peacefully enjoy and use their Properties.

86. Noise from these Airport Operations significantly interferes with sleep and creates additional health risks. *See, e.g.,* N.Y. Times, *Noise Could Take Years Off Your Life. Here’s How* (June 9, 2023), <https://www.nytimes.com/interactive/2023/06/09/health/noise-exposure-health-impacts.html>; Harvard Medicine, *Noise and Health* (Spring 2022), <https://magazine.hms.harvard.edu/articles/noise-and-health>.

87. The County is aware that it causes excessive noise and vibrations on the Properties from numerous sources, including, but not limited to, landowner noise complaints; the HOA litigation; correspondence from the Town of Superior; letters from U.S. Senators Michael Bennett and John Hickenlooper and from U.S. Representatives Joe Neguse and Brittany Pettersen.

88. Through its continued Airport Operations, the County has effectively ignored these harms that it is causing, with Jefferson County Commissioner Tracy Kraft-Tharp saying, “An airport is like a highway—if there is a Harley-Davidson going down that road really loudly, you can’t ban all Harley Davidsons.”

89. This may or may not be true for Harley Davidsons on highways—but highways are constructed only after a governmental entity acquires the necessary property rights to build and maintain that highway, which requires the payment of just compensation to landowners for the scope of the rights taken and for the damage caused to landowners’ remaining property from motorcycles and other highway impacts.

90. Here, the County does not own an avigation easement or other property right allowing airplanes to use or to cause noise and vibration on Homeowners’ Properties.

Airport Operations Have Significantly Affected the Value and Marketability of the Properties

91. The Airport Operations and Airport Impacts directly and substantially interfere with the Homeowners’ use and enjoyment of their Properties, and significantly affect the marketability and value of the Properties.

92. Some of the Homeowners and other neighbors in Rock Creek who have marketed their properties for sale have had difficulty selling their properties due to the Airport Operations and Airport Impacts.

93. Properties offered for sale have been sitting on the market for longer than other similar properties not impacted by such activity; some potential buyers have not moved forward after visiting properties; and some properties have been sold below market value.

94. Regardless of whether offered for sale or not, all of the Properties have diminished in value due to the Airport Operations and Airport Impacts on their Properties and other impacts, even if emanating from the navigable airspace or other nearby properties.

**First Claim for Relief
(Inverse Condemnation—Taking of an Avigation Easement)**

95. All previous allegations are herein incorporated by reference.

96. Pursuant to the prior easements, the County once had nonexclusive rights to use the Homeowners’ Airspace as part of its Airport Operations and to cause on the Properties “all other

effects that may be caused by the operation of aircraft landing at or taking off from or operating at or on the Airport,” all subject to certain limiting conditions.

97. Following the final determination on appeal affirming the District Court’s decision that was entered on June 15, 2023, it became clear that the County’s property rights to use the Homeowners’ Airspace would not continue to exist, nor would the County have the right to cause other impacts to the Properties.

98. The County knows that it has no property right to use the Homeowners’ Airspace or to invade, occupy, or cause impacts on the Properties.

99. Nonetheless, the County intentionally continues to use the Homeowners’ Airspace and to otherwise burden the Properties as though the Terminated Easements were still in full force and effect.

100. The County has also intentionally increased use of and burdens on Homeowners’ Airspace and Properties even after the District Court and Court of Appeals rulings; the County is projected to further increase its Airport Operations each year.

101. Each of the Homeowners has a constitutionally protected property interest in the Homeowners’ Airspace and to use and enjoy their Properties free from unreasonable impacts and intrusions.

102. The County has the power of eminent domain but has failed or refused to exercise that power to acquire an avigation easement or any other property right to use the Homeowners’ Airspace or to invade or occupy the Properties.

103. The County’s development, operation, and maintenance of the Airport is a public improvement for a public use.

104. The County’s design, development, construction, installation, control, and operation of the Airport and the flights operating from it constitute a public use.

105. The County’s continued and consistent use of the Homeowners’ Airspace and other impacts caused to the Properties by the Airport Operations substantially impair the Homeowners’ use and enjoyment of their Properties and constitute the taking of an avigation easement over each Property.

106. The taking of such avigation easement was accomplished without the payment of just compensation, in contravention of Colo. Const. art. II, § 15.

107. The taking of such avigation easement was obtained without Homeowners’ consent, for a public purpose, and without any compensation to Homeowners.

108. Due to these unreasonable, unlawful, and adverse actions of the County, the Homeowners suffer and will continue to suffer damages resulting from the taking of their Properties, including, but not limited to, significant impacts to the marketability and value of their Properties.

109. The Homeowners are entitled to just compensation for the value of the avigation easements taken, including, but not limited to, the fair market value of the rights taken; damages to their remainder property that result from that taking; remediation costs or other costs to cure; attorney fees, expert expenses, litigation costs, and interest as permitted by Colorado law; and all other relief that is just and proper.

110. The Homeowners accordingly request that this Court find that the County has taken an avigation easement, define the scope of that avigation easement, and award just compensation and damages in an amount to be proven at a valuation trial.

Second Claim for Relief
(Inverse Condemnation—Taking by Physical Occupation of the Homeowners’ Airspace by Low Flights and of the Properties by Lead Contamination)

111. All previous allegations are herein incorporated by reference.

112. Even if the County had never previously held avigation easements over the Properties and even if the Court does not directly find that the County has taken a new avigation easement, the County’s ongoing and increasing Airport Operations are a physical invasion and occupation of the Homeowners’ Airspace and Properties that constitute a taking without payment of just compensation.

113. The County knows it has no property right to use the Homeowners’ Airspace or to cause any Airport Impacts on the Properties due to the Airport Operations, including any right to operate flights within Homeowners’ Airspace or to cause lead contamination to physically invade and occupy the Properties.

114. Nonetheless, the County knowingly and intentionally operates flights that routinely invade the Homeowners’ Airspace and cause noise, vibrations, and other Airport Impacts to the Properties.

115. The County also knowingly and intentionally operates flights using leaded fuel through and above the Homeowners’ Airspace, which directly result in leaded fuel particulates physically invading and occupying the Properties.

116. Homeowners have a constitutionally protected property interest in the Homeowners’ Airspace, which is owned by the Homeowners, as well as in keeping the surfaces of their Properties free from lead contamination and other physical occupations or invasions.

117. The County has the power of eminent domain but has failed or refused to exercise that power to acquire an easement or other property right allowing it to use the Homeowners' Airspace or to cause any impacts on the Properties.

118. The physical occupation of the Properties by airplanes invading the Homeowners' Airspace, as well as by lead particulates occupying the Properties, substantially impairs Homeowners' use and enjoyment of the Properties and constitutes a taking of property rights within the Properties.

119. This taking was accomplished in contravention of Colo. Const. art. II, § 15.

120. The County's taking of Homeowners' property rights was done without Homeowners' consent, for a public purpose, and without any compensation to Homeowners.

121. Due to these unreasonable, unlawful, and adverse actions of the County, Homeowners suffer and will continue to suffer damages resulting from the taking of property rights within their Properties, including, but not limited to, significant impacts to the marketability and value of the Properties.

122. The Homeowners are entitled to just compensation for the value of the property rights taken, including, but not limited to, the fair market value of the rights taken; damages to their remainder property that result from that taking; remediation costs or other costs to cure; attorney fees, expert expenses, litigation costs, and interest as permitted by Colorado law; and all other relief that is just and proper.

123. The Homeowners accordingly request that this Court find that the County has taken property rights within the Properties and award just compensation and damages in an amount to be proven at a valuation trial.

**Third Claim for Relief
(Inverse Condemnation—Damaging of the Properties)**

124. All previous allegations are herein incorporated by reference.

125. Damages to the Homeowners' remaining interests in their Properties caused by Airport Impacts should be included as part of the just compensation owed for the taking of property interests in the Homeowners' Airspace and Properties as alleged above, because such damages are the direct and proximate result of those takings, and because the Airport Operations off of the Properties are integrated and inseparable from the Airport Operations on the Properties. Accordingly, the Homeowners are entitled to compensation for all such impacts, whether or not they are deemed "special" or "unique" as those terms are used in Colorado law.

126. And, even if some of the impacts to the Properties are caused by Airport Operations that do not amount to a taking of property, the Homeowners still have a constitutionally protected

interest in their Properties being free from Airport Impacts and to the reasonable use and enjoyment of their Properties.

127. Colo. Const. art. II, § 15 provides greater protections to property owners than the U.S. Constitution by allowing just compensation to be awarded to property owners for both direct taking of their properties *and* for the damaging of their properties caused by public improvements and activities on other properties, even in circumstances where there is no taking of their own property.

128. The Airport Impacts alleged above have caused physical harm to the Properties and the Homeowners and have caused substantial damages to the Properties by affecting rights and interests that are not shared with the public generally, and that are different in kind, not just degree from those suffered by other members of the public.

129. The Airport Operations and Airport Impacts unreasonably interfere with the Homeowner's use of their Properties in so substantial of a way as to deprive the Homeowners of the practical enjoyment of their Properties.

130. Such interferences are of sufficient directness, peculiarity, and magnitude that fairness and justice, as between the County and the Homeowners, requires the burden imposed to be borne by the public through the payment of just compensation.

131. The allegations in paragraphs 126-130 are further supported by the following:

- (1) Through its order identifying the Terminated Easements, Exhibit I, the District Court distinguished the Properties at issue in this litigation, where impacts from the Airport Operations were deemed significant enough to constitute a limiting condition causing those prior easement rights to revert back to the Homeowners. By contrast, other properties within Rock Creek remain encumbered by aviation easements. The noise levels on the Properties continue to be louder than the Terminated Easements once permitted.
- (2) As explained above and in Exhibit H, the permissible noise levels from Airport Operations on the Properties exceed the scope of what was originally permitted by the easements that once burdened the Properties. The noise events experienced on the Properties routinely exceed 60 decibels, often exceed 90 decibels, and have exceeded 107 decibels. This causes difficulty for Homeowners to converse, study, work, take work and personal phone calls, concentrate, entertain, spend time in their front or back yards, read, listen to radio or television, and sleep. To guard against these noise events, Homeowners would need to undertake significant expenses, such as installing soundproofing measures and other remediation measures, and even these measures would not fully mitigate the impacts of the noise events.

- (3) Science has developed over the past two decades to show that consistent exposure to noise causes deleterious health effects. Noise and vibrations also negatively affect property values, including the value of the Properties.
- (4) Likewise, as alleged above, the flights cause lead contamination on the Properties. Homeowners and their guests are limited in their ability to use and enjoy the outdoor spaces of their properties, such as front and back yards. Homeowners also fear that their kitchen gardens may be contaminated with lead. Lead and other forms of contamination also negatively affect property values, including the value of the Properties. To combat this contamination, Homeowners would need to take expensive measures, including, but not limited to, performing tests of their soil, home exteriors, and kitchen gardens, and to remediate the lead as possible.

132. The noise, vibrations, and lead contamination caused by the Airport Operations and Airport Impacts substantially impairs and interferes with Homeowners' use and enjoyment of the Properties and constitutes a damaging of those Properties.

133. The interference by the County with Homeowners' use and enjoyment of the Properties due to Airport Impacts including noise, vibration, and lead contamination is so substantial that it is offensive, inconvenient, and annoying to any reasonable person in the community.

134. The interference by the County with Homeowners' use and enjoyment of the Properties due to Airport Impacts including noise, vibration, and lead contamination is negligent or intentional.

135. The County knows that it has no property right to cause excessive noise and vibrations on the Properties and knows that the Airport Operations causes such Airport Impacts including noise and vibrations.

136. Likewise, the County knows that it has no property right to cause lead contamination by lead particulates on the Properties and knows that the Airport Operations cause such lead contamination.

137. Nonetheless, the County continues the Airport Operations.

138. The Airport has the power of eminent domain but has failed or refused to exercise that power to acquire any rights to cause noise, vibrations, or lead contamination on the Properties.

139. The Airport Operations and Airport Impacts constitute a damaging of the Properties in contravention of Colo. Const. art. II, § 15.

140. The County's damage to the Properties is being done without Homeowners' consent as part of Airport Operations serving a public purpose, and without any compensation to Homeowners.

141. Due to these unreasonable, unlawful, and adverse actions of the County, Homeowners suffer and will continue to suffer damages resulting from the damaging of their Properties, including, but not limited to, significant impacts to the marketability and value of the Properties.

142. The Homeowners are entitled to just compensation for the damaging of their Properties, including, but not limited to, the diminution in value caused to the Properties; stigma effects; remediation costs or other costs to cure; attorney fees, expert expenses, litigation costs, and interest as permitted by Colorado law; and all other relief that is just and proper.

143. Homeowners accordingly request this Court find that the Airport has caused a damaging of the Properties and award just compensation and damages in an amount to be proven at the valuation trial.

Prayer for Relief

WHEREFORE, Homeowners respectfully request that this Court:

- A. Find and determine that a taking and damaging of the Properties has occurred, describing with particularity the date of such taking and damaging, and further describing with particularity the scope of the rights in the Properties that have been taken and damaged by the County.
- B. Require the County to pay just compensation to each Homeowner pursuant to the provisions of Colo. Const. art. II, § 15, C.R.S. § 24-56-116, and other applicable laws relating to the taking or damaging of property for public use.
- C. Require the County to pay interest as provided by law pursuant to the provisions of Article I, Title 38 of C.R.S and other applicable law.
- D. Require the County to pay all Homeowners' attorney fees and litigation costs incurred by the Homeowners in pursuing this proceeding to establish a taking and damaging of their Properties and to determine the just compensation they are owed as are appropriate under law including, but not limited to, all of Homeowners' court costs, deposition costs, witness fees, expert witness fees, consultant fees, appraisal costs, attorney fees, and any other litigation expenses which are otherwise appropriate for the County to pay Homeowners in eminent domain proceedings pursuant to C.R.S. § 24-56-116, and other applicable law.
- E. Grant such other and further relief that the Court deems appropriate.

Jury Demand

If the Court determines that there has been a taking and/or damaging of Homeowners' Properties, Homeowners hereby elect a trial to a jury of six freeholders to determine the just compensation owed.

Respectfully submitted this 21st day of December 2023.

FAEGRE DRINKER BIDDLE & REATH LLP

/s/ John R. Sperber

John R. Sperber, No. 22073

Sean J. Metherell, No. 47438

Rebecca A.R. Smith, No. 52501

Attorneys for Plaintiffs

Addresses for Plaintiffs' respective property interests (pp. 8–23)

Please direct all correspondence to counsel at the following address:

Faegre Drinker Biddle & Reath LLP

1144 15th Street, Suite 3400

Denver, CO 80202

In accordance with C.R.C.P. 121 §1-26(7) a printed or printable copy of this document with original, electronic, or scanned signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.

EXHIBIT A

Town of Superior Development Map

Town of Superior Development

Town of Superior



Development Overview

Under Review Development

Approved Development - Pending Construction | Approved Development - Under Construction

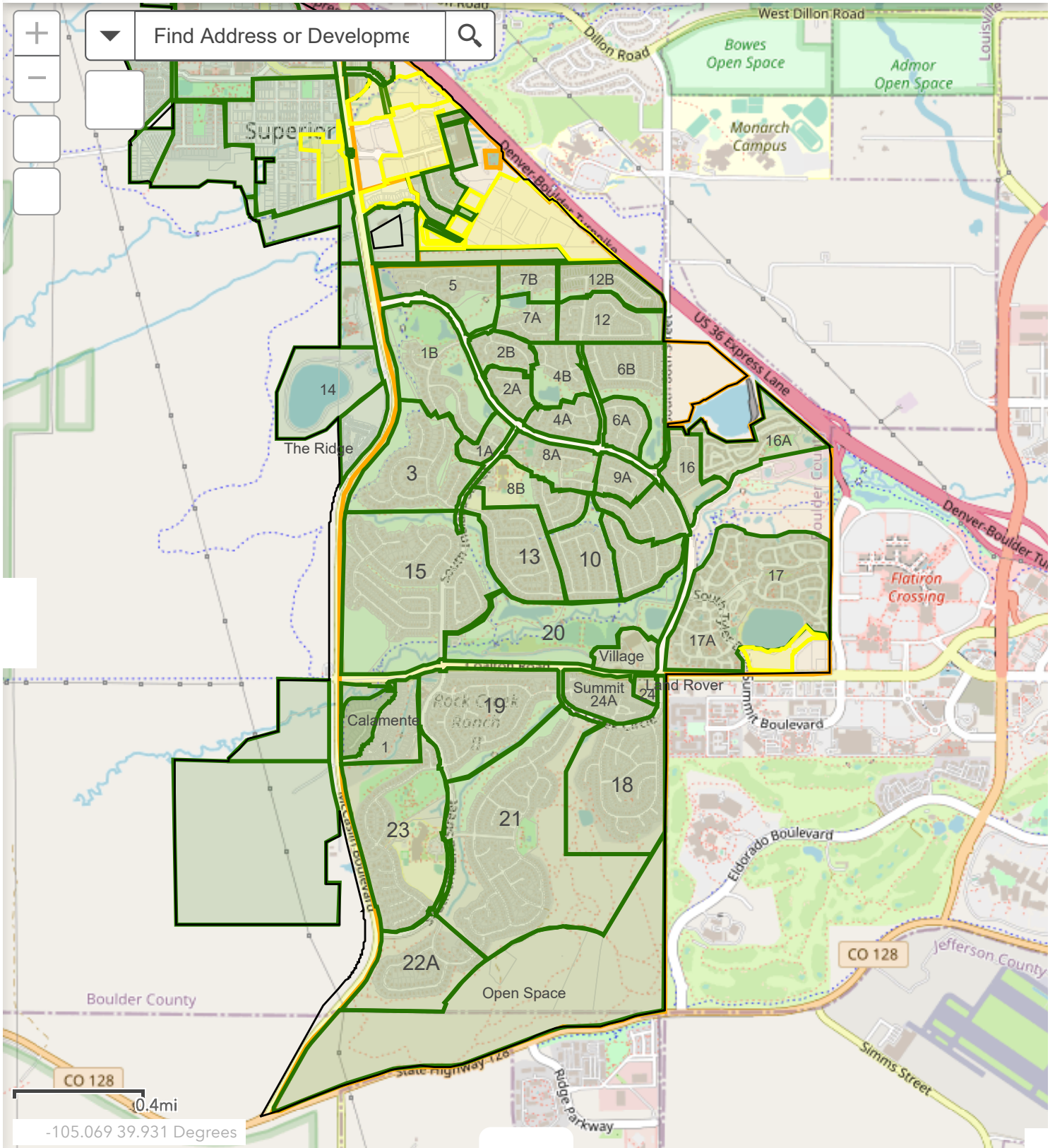


EXHIBIT B

Previous Avigation Easement For Zones 3 and 10

45.00

AVIGATION EASEMENT AGREEMENT
ROCK CREEK RANCH FILING NO.'S 3, 10 AND 11

THIS AVIGATION EASEMENT AGREEMENT is made this 1st /-9
day of May, 1992, between RICHMOND HOMES, INC. I,
a Delaware corporation, (the "Grantor"), and the JEFFERSON
COUNTY AIRPORT AUTHORITY OF COLORADO, the governing body of
the Jefferson County Airport ("Airport") hereafter called
the "Authority."

WHEREAS, Grantor is the owner in fee simple of that
certain parcel of land situated in the County of Boulder,
State of Colorado, which is part of the property known as
Rock Creek Ranch, more specifically described in Exhibit
"A" attached hereto and incorporated herein by this
reference (the "Property"); and

WHEREAS, the Grantor and the Authority desire to enter
into this Agreement for the Property which is around and
about the Airport boundaries; and

WHEREAS, the Authority has accepted, enacted and
proposed a master plan for the Airport dated January, 1988,
such plan having been prepared by Barnard Dunkelberg &
Company URS Engineers ("Master Plan").

NOW, THEREFORE, in consideration of the sum of Ten
Dollars (\$10.00), the mutual promises and agreements
hereinafter set forth, and other good and valuable
consideration, the receipt and sufficiency of which is
hereby acknowledged, the Parties agree as follows:

1. Easement. The Grantor for itself, its
administrators, successors and assigns does hereby grant,
bargain, sell and convey unto the Authority (the "Grantee"),
its successors and assigns, a non-exclusive easement and
right of way appurtenant to the Airport for the passage of
all aircraft by whom so ever owned and operated in the
airspace above the surface of Grantor's property at a height
which is regulated by the FAA as of the date of this
Avigation Easement Agreement to an infinite height above the
Property (the "Airspace Easement") together with the right
to cause in the Airspace Easement such noise, vibration and
all other effects that may be caused by the operation of
aircraft landing at or taking off from or operating at or on
the Airport. To have and to hold said Easement and right of
way and all rights pertaining thereto unto the Grantee its
successors and assigns until the Airport shall be abandoned
or shall be ceased to be used for Airport purposes, or the
occurrence of any of the contingencies set forth in
Paragraph 2, then such easement shall revert back to
Grantor, its successors and assigns, it being understood and

agreed that this covenant and agreement shall run with the land.

2. Limitations. The Easement granted under Paragraph 1 shall remain in effect unless any of the following shall occur:

a. The Airport shall cease being used as a "General Aviation Reliever Airport" as those terms are defined, as of the date of this Agreement, by the Federal Aviation Administration Rules and Regulations or any rules or regulations which may later be enacted which are more strict than current rules and regulations.

b. The type and size of aircraft using the Airport as permitted under the Master Plan shall be changed or become inconsistent with such Master Plan, if there is an increase in passenger usage over that disclosed in the Master Plan, or the Airport is used for freight delivery.

c. The Authority shall lengthen the existing runways, build additional runways or increase the load capacity of such runways beyond the proposed limits currently contained in the Master Plan.

d. The noise contours contained in the Master Plan are exceeded by the sustained operation of aircraft in the Airspace Easement.

e. The noise, vibration and all other effects of aircraft operation on the Property exceeds 60 ldn.

If any of the above shall occur this Easement shall terminate without further notice.

3. No Waiver. Nothing stated in the foregoing grant shall allow the unlawful operation or passage of any aircraft by any person over and across the Property in violation of applicable Federal, State and Local Laws or Federal Aviation Administration Requirements, nor release any person from liability for damages or divest the Grantor its successors and assigns, from any right or cause of action for damages to any person or property for other claims resulting from such unlawful or negligent operation of any aircraft at any altitude over and across the Property.

4. Grantor Not Bound. The Parties acknowledge that the Property is or may be zoned residential. The Parties also acknowledge that the Master Plan designates certain "Instrument Critical Zones" and "Visual Runway Critical Zones" on the Property, which zones are not recommended by the Authority for residential use, and the Authority hereby acknowledges that portions of the Property as presently

zoned, are not consistent with the "Land Use Compatibility Matrix" contained in the Master Plan at Appendix 1. Notwithstanding the Instrument Critical Zones and the Visual Runway Critical Zones set forth in said Master Plan, Grantor shall not be bound by the Master Plan or any other limitations as to zoning, use and development of the Property. Nothing in this Agreement is intended to grant the Authority any surface easements, surface controls or other claims on or to the surface rights of the Property.

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5. Grantee to Inform Users. As part of the consideration for the granting of this Easement, the Authority, together with its successors and assigns, shall use reasonable efforts to acquaint the Airport users with flight, noise, weight, and easement restrictions through its normal information dissemination process. The Authority shall not, however, be liable to any third party as a result of a failure to notify or otherwise disseminate such information unless such liability has occurred due to the gross negligence of the Authority.

6. Reservation of Rights. Grantor reserves the right to pursue any and all causes of action against the Grantee or any aircraft user, owner or operator arising from the Grantee's negligence or willful and wanton acts in operating aircraft or the Airport and nothing stated in the grant set forth above shall release any person from liability for damages or shall divest Grantor, its successors and assigns from any right or cause of action for damages to any person or property resulting from the unlawful negligent or willful and wanton operation of any aircraft at any altitude over and across the Property.

7. Non-Exclusive Easement. Nothing herein shall be construed to be a prohibition to the granting or additional easements by Grantor to third parties in the Airspace Easement, which would not interfere with the use of the Airspace Easement by the Grantee or in the Property or the airspace below the Airspace Easement.

RECEPTION NO. 92051546

IN WITNESS WHEREOF, the Grantor and the Authority, by and through their duly authorized representatives, have hereunto set their hands this 1st day of May, 1992.

4

RICHMOND HOMES, INC. I

By: Gary L. Mandarich
Gary L. Mandarich,
President

ATTEST:

By: Timothy R. Garrelts
Timothy R. Garrelts
Assistant Secretary

STATE OF COLORADO)
CITY AND) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 23rd day of April, 1992, by Gary L. Mandarich, as President, and Timothy R. Garrelts, as Assistant Secretary of Richmond Homes, Inc. I.

WITNESS my hand and official seal.

My commission expires: March 9, 1994



Susan M. Licht
Notary Public

JEFFERSON COUNTY AIRPORT
AUTHORITY

By: David D. Callender
Title: Chairman

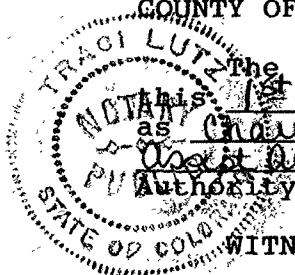
RECEPTION NO. 92051546

ATTEST:

By: Robert T. John
Title: Asst Airport Manager

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STATE OF COLORADO)
COUNTY OF Jefferson) ss.



The foregoing instrument was acknowledged before me
this 1st day of May, 1992, by David D. Callender
as Chairman, and Robert T. John as
Asst Airport Mgr. of the Jefferson County Airport
Authority.

WITNESS my hand and official seal.

My commission expires: 2-4-94

Traci Lutz
Notary Public

(avigea.7)

LEGAL DESCRIPTION

Rock Creek Ranch Filing No. 3

A parcel of land located in Section 30, Township 1 South, Range 69 West of the Sixth Principal Meridian, Town of Superior, County of Boulder, State of Colorado, more particularly described as follows:

Commencing at the Northwest corner of said Section 30;
thence N88°47'37"E along the North line of the Northwest quarter of said Section 30, 802.37 feet to a point on a curve on the easterly right-of-way line of McCaslin Boulevard;
thence along said easterly right-of-way line the following six (6) courses:

1. thence along said curve to the left having a radius of 5400.00 feet, a central angle of 02°04'26" (the chord of which bears S13°39'11"E, 195.46 feet), 195.47 feet;
2. thence S42°45'46"E, 85.00 feet;
3. thence S14°41'25"E, 40.00 feet;
4. thence S00°23'39"E, 161.99 feet;
5. thence S14°41'25"E, 50.00 feet to a point of curve;
6. thence along said curve to the right having a radius of 1300.00 feet, a central angle of 15°46'22", 357.87 feet to the Point of Beginning, said point being on the southerly boundary of Rock Creek Ranch Filing No. 1B;

thence along said southerly boundary the following thirteen (13) courses:

1. thence S87°03'42"E, 357.41 feet;
2. thence S19°49'42"E, 12.97 feet;
3. thence S28°31'54"E, 250.96 feet;
4. thence S73°31'54"E, 21.21 feet;
5. thence N61°28'06"E, 105.00 feet;
6. thence S28°31'54"E, 59.19 feet to a point of curve;
7. thence along curve to the right having a radius of 570.00 feet, a central angle of 03°59'17", 39.68 feet;
8. thence N65°27'24"E, 166.82 feet;
9. thence S41°49'36"E, 69.16 feet;
10. thence S21°50'10"E, 89.90 feet;
11. thence S30°25'50"E, 104.90 feet;
12. thence S39°01'29"E, 104.90 feet;
13. thence S29°15'40"E, 77.01 feet;

thence along the boundary of Rock Creek Ranch Filing No. 1A the following six (6) courses:

1. thence S42°50'25"W, 162.74 feet;
2. thence S07°01'58"E, 143.40 feet;
4. thence S34°50'37"E, 110.00 feet;
5. thence S73°34'58"E, 66.26 feet;
6. thence S78°36'02"E, 247.51 feet;

thence S49°29'50"E, 74.17 feet to a point on the westerly right-of-way line of South Indiana Street as platted in Rock Creek Ranch District Streets Filing No. 1;

thence along the westerly line of said South Indiana Street the following six (6) courses:

1. thence S40°30'10"W, 380.81 feet to a point of curve;
2. thence along said curve to the left having a radius of 840.00 feet, a central angle of 17°42'43", 259.67 feet to a point of reverse curve;
3. thence along said curve to the right having a radius of 30.00 feet, a central angle of 86°02'44", 45.05 feet;
4. thence S18°50'11"W, 60.00 feet to a point on a curve;
5. thence along said curve to the right having a radius of 30.00 feet, a central angle of 86°02'44" (the chord of which bears S28°08'27"E, 40.94 feet), 45.05 feet to a point of reverse curve;
6. thence along said curve to the left having a radius of 840.00 feet, a central angle of 06°27'40", 94.72 feet to the South line of the Northwest quarter of said Section 30;

thence S89°17'51"W along said South line, 617.65 feet to the Southwest corner of the Southeast quarter of the Northwest quarter of said Section 30;
thence continuing S89°17'51"W along said South line, 1178.13 feet to a point on a curve on the easterly right-of-way line of said McCaslin Boulevard;
thence along said easterly right-of-way line the following four (4) courses:

1. thence along said curve to the right having a radius of 1593.30 feet, a central angle of 31°25'34" (the chord of which bears N26°13'50"E, 862.99 feet), 873.91 feet to a point of tangent;
2. thence N41°56'37"E along said tangent, 167.00 feet to a point of curve;
3. thence along said curve to the left having a radius of 1420.26 feet, a central angle of 03°25'29", 84.89 feet to a point on a curve;
4. thence along said curve to the left having a radius of 1300.00 feet, a central angle of 40°28'49" (the chord of which bears N21°19'22"E, 899.48 feet), 918.47 feet to the Point of Beginning containing 55.168 acres, more or less.

RCR\LEGALS\3

RECEPTION NO. 92051546

Legal Description - *Rock Creek Ranch Filing No. 10*

A parcel of land located in the East half of Section 30, Township 1 South, Range 69 West of the Sixth Principal Meridian, Town of Superior, County of Boulder, State of Colorado, more particularly described as follows:

Commencing at the Southeast corner of the Northeast quarter of said Section 30 and considering the East line of the Northeast quarter of said Section 30 to bear $N00^{\circ}08'10''W$ with all bearings contained herein relative thereto;
thence $S87^{\circ}24'13''W$, 992.47 feet to the Point of Beginning, said point being on the southerly boundary of Rock Creek Ranch Filing No. 9B;
thence along said southerly boundary the following four (4) courses:

1. thence $N70^{\circ}18'48''W$, 113.47 feet;
2. thence $N30^{\circ}46'21''W$, 119.51 feet;
3. thence $N06^{\circ}04'59''W$, 85.71 feet;
4. thence $N10^{\circ}36'39''E$, 58.19 feet to a point on the southerly line of Rock Creek Ranch Filing No. 8A;

thence $N88^{\circ}56'57''W$ along said southerly line, 96.34 feet to the southeasterly line of Rock Creek Ranch Filing No. 8B;
thence along said southeasterly line the following five (5) courses;

1. thence $S10^{\circ}36'39''W$, 286.67 feet;
2. thence $S29^{\circ}11'23''W$, 101.76 feet;
3. thence $S43^{\circ}09'07''W$, 88.29 feet;
4. thence $S57^{\circ}59'20''W$, 88.10 feet;
5. thence $S70^{\circ}11'05''W$, 455.51 feet;

thence $S19^{\circ}48'55''E$, 635.50 feet;
thence $S13^{\circ}35'58''E$, 67.87 feet;
thence $S11^{\circ}26'31''E$, 439.87 feet;
thence $S56^{\circ}26'31''E$, 21.21 feet;
thence $N78^{\circ}33'29''E$, 66.71 feet;
thence $N82^{\circ}47'02''E$, 69.01 feet;
thence $S89^{\circ}58'49''E$, 600.43 feet;
thence $N45^{\circ}01'11''E$, 21.21 feet;
thence $N81^{\circ}39'21''E$, 100.24 feet;
thence $N09^{\circ}49'43''W$, 651.15 feet;
thence $N04^{\circ}35'16''E$, 129.16 feet;
thence $N47^{\circ}43'10''W$, 95.13 feet;
thence $N20^{\circ}25'15''W$, 447.19 feet;
thence $N24^{\circ}56'14''E$, 168.78 feet to the Point of Beginning containing 27.570 acres, more or less.

RECEPTION NO. 92051546

Legal Description - *Rock Creek Ranch Filing No. 11*

9

A parcel of land located in the West half of Section 29 and the East half of Section 30, Township 1 South, Range 69 West of the Sixth Principal Meridian, Town of Superior, County of Boulder, State of Colorado, more particularly described as follows:

Commencing at the Southeast corner of the Northeast quarter of said Section 30 and considering the East line of the Northeast quarter of said Section 30 to bear N00°08'10"W with all bearings contained herein relative thereto;
thence S87°24'13"W, 992.47 feet to the Point of Beginning, said point being on the southerly boundary of Rock Creek Ranch Filing No. 9B;
thence along said southerly boundary the following seventeen (17) courses:

1. thence S70°18'48"E, 139.45 feet;
2. thence S60°00'26"E, 59.25 feet;
3. thence S51°37'16"E, 55.48 feet;
4. thence S44°08'33"E, 59.30 feet;
5. thence S36°39'50"E, 55.48 feet;
6. thence S29°33'35"E, 53.57 feet;
7. thence S22°10'41"E, 176.06 feet;
8. thence S57°56'06"E, 112.19 feet;
9. thence S81°46'04"E, 82.45 feet;
10. thence N80°10'17"E, 203.00 feet;
11. thence S09°49'43"E, 89.94 feet;
12. thence N80°10'17"E, 50.00 feet to a point on a curve;
13. thence along said curve to the right having a radius of 20.00 feet, a central angle of 89°19'57" (the chord of which bears N34°50'16"E, 28.12 feet), 31.18 feet to a point of reverse curve;
14. thence along said curve to the left having a radius 778.74 feet, a central angle of 16°41'33", 226.88 feet to a point of reverse curve;
15. thence along said curve to the right having a radius of 774.19 feet, a central angle of 12°46'17", 172.57 feet to a point of tangent;
16. thence N75°34'57"E along said tangent, 14.64 feet to a point of curve;
17. thence along said curve to the right having a radius of 50.00 feet, a central angle of 92°41'50", 80.89 feet;

thence S19°30'12"W, 150.39 feet;
thence S44°37'48"E, 21.21 feet;
thence S00°22'12"W, 99.00 feet;
thence S11°33'30"W, 188.72 feet;
thence S38°21'45"W, 78.91 feet;
thence S45°52'12"W, 80.00 feet;
thence S54°48'21"W, 47.06 feet;
thence S64°26'55"W, 128.27 feet;
thence S30°57'31"W, 172.06 feet;
thence S67°35'18"W, 562.16 feet;
thence S80°31'55"W, 86.53 feet;
thence N54°38'54"W, 21.28 feet;
thence N09°49'43"W, 651.15 feet;
thence N04°35'16"E, 129.16 feet;
thence N47°43'10"W, 95.13 feet;
thence N20°25'15"W, 447.19 feet;
thence N24°56'14"E, 168.78 feet to the Point of Beginning containing 22.156 acres, more or less.

RECEPTION NO. 92051546

EXHIBIT C

Previous Avigation Easement For Zone 13

AVIGATION EASEMENT AGREEMENT

THIS AVIGATION EASEMENT AGREEMENT is made this 6th day of October, 1992, between RICHMOND HOMES, INC. I, a Delaware corporation, (the "Grantor"), and the JEFFERSON COUNTY AIRPORT AUTHORITY OF COLORADO, the governing body of the Jefferson County Airport ("Airport") hereafter called the "Authority."

30

WHEREAS, Grantor is the owner in fee simple of that certain parcel of land situated in the County of Boulder, State of Colorado, which is part of the property known as Rock Creek Ranch, more specifically described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the Grantor and the Authority desire to enter into this Agreement for the Property which is around and about the Airport boundaries; and

WHEREAS, the Authority has accepted, enacted and proposed a master plan for the Airport dated January, 1988, such plan having been prepared by Barnard Dunkelberg & Company URS Engineers ("Master Plan").

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), the mutual promises and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Easement. The Grantor for itself, its administrators, successors and assigns does hereby grant, bargain, sell and convey unto the Authority (the "Grantee") its successors and assigns, a non-exclusive easement and right of way appurtenant to the Airport for the passage of all aircraft by whom so ever owned and operated in the airspace above the surface of Grantor's property at a height which is regulated by the FAA as of the date of this Avigation Easement Agreement to an infinite height above the Property (the "Airspace Easement") together with the right to cause in the Airspace Easement such noise, vibration and all other effects that may be caused by the operation of aircraft landing at or taking off from or operating at or on the Airport. To have and to hold said Easement and right of way and all rights pertaining thereto unto the Grantee its successors and assigns until the Airport shall be abandoned or shall be ceased to be used for Airport purposes, or the occurrence of any of the contingencies set forth in Paragraph 2, then such easement shall revert back to Grantor, its successors and assigns, it being understood and

agreed that this covenant and agreement shall run with the land.

2. Limitations. The Easement granted under Paragraph 1 shall remain in effect unless any of the following shall occur:

a. The Airport shall cease being used as a "General Aviation Reliever Airport" as those terms are defined, as of the date of this Agreement, by the Federal Aviation Administration Rules and Regulations or any rules or regulations which may later be enacted which are more strict than current rules and regulations.

b. The type and size of aircraft using the Airport as permitted under the Master Plan shall be changed or become inconsistent with such Master Plan, if there is an increase in passenger usage over that disclosed in the Master Plan, or the Airport is used for freight delivery.

c. The Authority shall lengthen the existing runways, build additional runways or increase the load capacity of such runways beyond the proposed limits currently contained in the Master Plan.

d. The noise contours contained in the Master Plan are exceeded by the sustained operation of aircraft in the Airspace Easement.

e. The noise, vibration and all other effects of aircraft operation on the Property exceeds 60 ldn.

If any of the above shall occur this Easement shall terminate without further notice.

3. No Waiver. Nothing stated in the foregoing grant shall allow the unlawful operation or passage of any aircraft by any person over and across the Property in violation of applicable Federal, State and Local Laws or Federal Aviation Administration Requirements, nor release any person from liability for damages or divest the Grantor its successors and assigns, from any right or cause of action for damages to any person or property for other claims resulting from such unlawful or negligent operation of any aircraft at any altitude over and across the Property.

4. Grantor Not Bound. The Parties acknowledge that the Property is or may be zoned residential. The Parties also acknowledge that the Master Plan designates certain "Instrument Critical Zones" and "Visual Runway Critical Zones" on the Property, which zones are not recommended by the Authority for residential use, and the Authority hereby acknowledges that portions of the Property as presently

zoned, are not consistent with the "Land Use Compatibility Matrix" contained in the Master Plan at Appendix 1. Notwithstanding the Instrument Critical Zones and the Visual Runway Critical Zones set forth in said Master Plan, Grantor shall not be bound by the Master Plan or any other limitations as to zoning, use and development of the Property. Nothing in this Agreement is intended to grant the Authority any surface easements, surface controls or other claims on or to the surface rights of the Property.

5. Grantee to Inform Users. As part of the consideration for the granting of this Easement, the Authority, together with its successors and assigns, shall use reasonable efforts to acquaint the Airport users with flight, noise, weight, and easement restrictions through its normal information dissemination process. The Authority shall not, however, be liable to any third party as a result of a failure to notify or otherwise disseminate such information unless such liability has occurred due to the gross negligence of the Authority.

6. Reservation of Rights. Grantor reserves the right to pursue any and all causes of action against the Grantee or any aircraft user, owner or operator arising from the Grantee's negligence or willful and wanton acts in operating aircraft or the Airport and nothing stated in the grant set forth above shall release any person from liability for damages or shall divest Grantor, its successors and assigns from any right or cause of action for damages to any person or property resulting from the unlawful negligent or willful and wanton operation of any aircraft at any altitude over and across the Property.

7. Non-Exclusive Easement. Nothing herein shall be construed to be a prohibition to the granting or additional easements by Grantor to third parties in the Airspace Easement, which would not interfere with the use of the Airspace Easement by the Grantee or in the Property or the airspace below the Airspace Easement.

IN WITNESS WHEREOF, the Grantor and the Authority, by and through their duly authorized representatives, have hereunto set their hands this _____ day of October, 1992.

RICHMOND HOMES, INC. I

By: Gary L. Mandarich
Gary L. Mandarich,
President

ATTEST:

By: Timothy R. Garrelts
Timothy R. Garrelts
Assistant Secretary

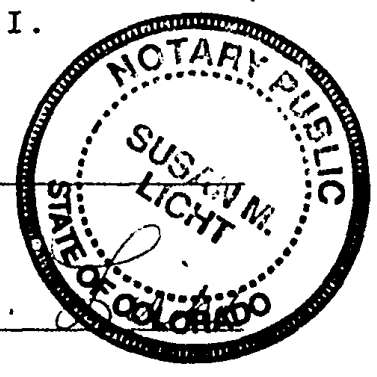
STATE OF COLORADO)
CITY AND) ss
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 2nd day of October, 1992, by Gary L. Mandarich, as President, and Timothy R. Garrelts, as Assistant Secretary of Richmond Homes, Inc. I.

WITNESS my hand and official seal.

My commission expires: 3/9/94

Susan M. Licht
Notary Public



JEFFERSON COUNTY AIRPORT
AUTHORITY

By: David D. Callender

Title: Chairman

ATTEST:

By: David C. Gordon
Title: Assistant Secretary

STATE OF COLORADO)
COUNTY OF Jefferson) SS

The foregoing instrument was acknowledged before me this 6th day of October, 1992, by David O. Callender, as Chairman, and David C. Gordon as Assist Secretary of the Jefferson County Airport Authority.

WITNESS my hand and official seal.



My commission expires: 2-4-94

Traci Lutz
Notary Public

(avigea.5)

Legal Description

A parcel of land located in Section 30, Township 1 South, Range 69 West of the Sixth Principal Meridian, County of Boulder, State of Colorado, more particularly described as follows:

Commencing at the Northwest corner of said Section 30 and considering the North line of the Northwest quarter of said Section 30 to bear $N88^{\circ}47'37''E$ with all bearings contained herein relative thereto;

thence $S43^{\circ}54'01''E$, 3106.07 feet to the Point of Beginning, said point being the westernmost corner of Tract A of Rock Creek Ranch Filing No. 8B, a subdivision recorded at Reception No. 1204800 of the Boulder County Records;

thence $S40^{\circ}30'10''W$ along the easterly right-of-way line of South Indiana Street as platted in Rock Creek Ranch District Streets Filing No. 1, 11.95 feet to a point of curve;

thence along said easterly right-of-way line and along said curve to the left having a radius 760.00 feet, a central angle of $33^{\circ}20'05''$, 442.17 feet to a point of cusp on a curve to the right;

thence along said curve to the right having a radius of 30.00 feet, a central angle of $94^{\circ}42'52''$ (the chord of which bears $N54^{\circ}31'31''E$, 44.14 feet), 49.59 feet to a point of tangent;

thence $S78^{\circ}07'03''E$ along said tangent, 268.91 feet to a point of curve;

thence along said curve to the right having a radius of 192.00 feet, a central angle of $03^{\circ}03'41''$, 10.26 feet;

thence $S14^{\circ}56'38''W$, 95.00 feet;

thence $S20^{\circ}56'16''E$, 24.31 feet;

thence $S56^{\circ}49'11''E$, 49.29 feet;

thence $S33^{\circ}50'22''E$, 57.97 feet;

thence $S12^{\circ}28'48''E$, 68.77 feet;

thence $S05^{\circ}46'42''E$, 546.02 feet;

thence $S27^{\circ}08'50''E$, 137.64 feet;

thence $S33^{\circ}51'47''E$, 99.10 feet;

thence $S39^{\circ}16'16''E$, 380.63 feet;

thence $S64^{\circ}58'55''E$, 210.35 feet;

thence $S87^{\circ}47'56''E$, 571.66 feet;

thence $N86^{\circ}23'53''E$, 147.78 feet to the westerly boundary of Rock Creek Ranch Filing No. 10;

thence along the boundary of said Rock Creek Ranch Filing No. 10 and the boundary of Rock Creek Ranch Filing No. 8 the following seven (7) courses:

1. thence $N56^{\circ}26'31''W$, 21.21 feet;
2. thence $N11^{\circ}26'31''W$, 439.87 feet;
3. thence $N13^{\circ}35'58''W$, 67.87 feet;
4. thence $N19^{\circ}48'55''W$, 1089.62 feet;
5. thence $S88^{\circ}50'07''W$, 854.79 feet;
6. thence $N00^{\circ}42'09''W$, 308.28 feet;
7. thence $N84^{\circ}36'19''W$, 173.11 feet to the Point of Beginning containing 37.503 acres, more or less.

EXHIBIT D

Previous Avigation Easement For Zone 15

6-1

**AVIGATION EASEMENT AGREEMENT
ROCK CREEK RANCH FILING NO. 15**

THIS AVIGATION EASEMENT AGREEMENT is made this 29th day of July, 1993, between RICHMOND HOMES, INC. I, (the "Grantor"), and the JEFFERSON COUNTY AIRPORT AUTHORITY OF COLORADO, the governing body of the Jefferson County Airport ("Airport") hereafter called the "Authority."

WHEREAS, Grantor is the owner in fee simple of that certain parcel of land situated in the County of Boulder, State of Colorado, which is part of the property known as Rock Creek Ranch, more specifically described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the Grantor and the Authority desire to enter into this Agreement for the Property which is around and about the Airport boundaries; and

WHEREAS, the Authority has accepted, enacted and proposed a master plan for the Airport dated January, 1988, such plan having been prepared by Barnard Dunkelberg & Company URS Engineers ("Master Plan").

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), the mutual promises and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Easement. The Grantor for itself, its administrators, successors and assigns does hereby grant, bargain, sell and convey unto the Authority (the "Grantee") its successors and assigns, a non-exclusive easement and right of way appurtenant to the Airport for the passage of all aircraft by whom so ever owned and operated in the airspace above the surface of Grantor's property at a height which is regulated by the FAA as of the date of this Avigation Easement Agreement to an infinite height above the Property (the "Airspace Easement") together with the right to cause in the Airspace Easement such noise, vibration and all other effects that may be caused by the operation of aircraft landing at or taking off from or operating at or on the Airport. To have and to hold said Easement and right of way and all rights pertaining thereto unto the Grantee its successors and assigns until the Airport shall be abandoned or shall be ceased to be used for Airport purposes, or the occurrence of any of the contingencies set forth in Paragraph 2, then such easement shall revert back to Grantor, its successors and assigns, it being understood and agreed that this covenant and agreement shall run with the land.

3000

#01323785 08/10/93 08:19 AM REAL ESTATE RECORDS
F1858 CHARLOTTE HOUSTON BOULDER CNTY CO RECORDER

1-6

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Ret on back

2. Limitations. The Easement granted under Paragraph 1 shall remain in effect unless any of the following shall occur:

a. The Airport shall cease being used as a "General Aviation Reliever Airport" as those terms are defined, as of the date of this Agreement, by the Federal Aviation Administration Rules and Regulations or any rules or regulations which may later be enacted which are more strict than current rules and regulations.

2

b. The type and size of aircraft using the Airport as permitted under the Master Plan shall be changed or become inconsistent with such Master Plan, if there is an increase in passenger usage over that disclosed in the Master Plan, or the Airport is used for freight delivery.

c. The Authority shall lengthen the existing runways, build additional runways or increase the load capacity of such runways beyond the proposed limits currently contained in the Master Plan.

d. The noise contours contained in the Master Plan are exceeded by the sustained operation of aircraft in the Airspace Easement.

e. The noise, vibration and all other effects of aircraft operation on the Property exceeds 60 ldn.

If any of the above shall occur this Easement shall terminate without further notice.

3. No Waiver. Nothing stated in the foregoing grant shall allow the unlawful operation or passage of any aircraft by any person over and across the Property in violation of applicable Federal, State and Local Laws or Federal Aviation Administration Requirements, nor release any person from liability for damages or divest the Grantor its successors and assigns, from any right or cause of action for damages to any person or property for other claims resulting from such unlawful or negligent operation of any aircraft at any altitude over and across the Property.

4. Grantor Not Bound. The Parties acknowledge that the Property is or may be zoned residential. The Parties also acknowledge that the Master Plan designates certain "Instrument Critical Zones" and "Visual Runway Critical Zones" on the Property, which zones are not recommended by the Authority for residential use, and the Authority hereby acknowledges that portions of the Property as presently zoned, are not consistent with the "Land Use Compatibility Matrix" contained in the Master Plan at Appendix 1. Notwithstanding the Instrument Critical Zones and the Visual

Runway Critical Zones set forth in said Master Plan, Grantor shall not be bound by the Master Plan or any other limitations as to zoning, use and development of the Property. Nothing in this Agreement is intended to grant the Authority any surface easements, surface controls or other claims on or to the surface rights of the Property.

5. Grantee to Inform Users. As part of the consideration for the granting of this Easement, the Authority, together with its successors and assigns, shall use reasonable efforts to acquaint the Airport users with flight, noise, weight, and easement restrictions through its normal information dissemination process. The Authority shall not, however, be liable to any third party as a result of a failure to notify or otherwise disseminate such information unless such liability has occurred due to the gross negligence of the Authority.

3

6. Reservation of Rights. Grantor reserves the right to pursue any and all causes of action against the Grantee or any aircraft user, owner or operator arising from the Grantee's negligence or willful and wanton acts in operating aircraft or the Airport and nothing stated in the grant set forth above shall release any person from liability for damages or shall divest Grantor, its successors and assigns from any right or cause of action for damages to any person or property resulting from the unlawful negligent or willful and wanton operation of any aircraft at any altitude over and across the Property.

7. Non-Exclusive Easement. Nothing herein shall be construed to be a prohibition to the granting or additional easements by Grantor to third parties in the Airspace Easement, which would not interfere with the use of the Airspace Easement by the Grantee or in the Property or the airspace below the Airspace Easement.

6-4

IN WITNESS WHEREOF, the Grantor and the Authority, by and through their duly authorized representatives, have hereunto set their hands this 29th day of July, 1993.

RICHMOND HOMES INC. I

By: Timothy R. Garrelts
Timothy R. Garrelts,
Executive Vice President

4

ATTEST:

By: Brian A. Peterson
Brian A. Peterson
Executive Vice President

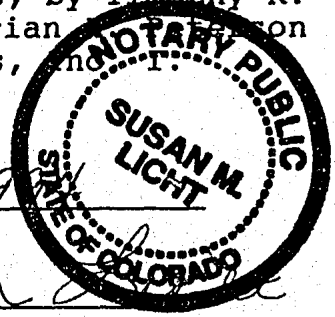
STATE OF COLORADO)
CITY AND) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 26th day of March, 1993, by Timothy R. Garrelts as Executive Vice President, and Brian A. Peterson as Executive Vice President of Richmond Homes, Inc.

WITNESS my hand and official seal.

My commission expires: March 9, 1995

Susan M. Licht
Notary Public



JEFFERSON COUNTY AIRPORT
AUTHORITY

By: Edward N. Haase
Title: Chairman

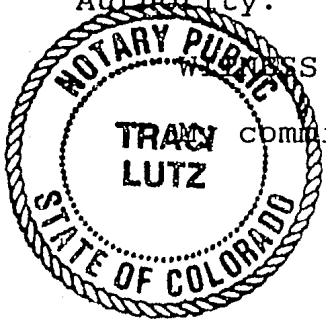
ATTEST:

BY: [Signature]
Title: Assistant Secretary

STATE OF COLORADO)
COUNTY OF Jefferson) ss.

5

The foregoing instrument was acknowledged before me this 29th day of July, 1993, by Edward H. Haase as Chairman and David C. Gordon as Assistant Secretary of the Jefferson County Airport Authority.



WITNESS my hand and official seal.

My commission expires: 2-4-94

Traci Lutz
Notary Public

(avigea.10)

THAT PORTION OF SECTION 30, TOWNSHIP 1 SOUTH, RANGE 69 WEST, OF THE SIXTH PRINCIPAL MERIDIAN IN THE TOWN OF SUPERIOR, COUNTY OF BOULDER, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 30 FROM WHICH THE WEST QUARTER CORNER OF SAID SECTION 30 BEARS SOUTH 89°17'51" WEST 81.34 FEET; THENCE ALONG SAID NORTH LINE NORTH 89°17'51" EAST 12.96 FEET TO THE SOUTHWEST CORNER OF ROCK CREEK RANCH FILING NO. 3, RECORDED AT RECEPTION NO. 1207111, BOULDER COUNTY RECORDS; THENCE CONTINUING ALONG SAID NORTH LINE, SAID NORTH LINE ALSO BEING THE SOUTHERLY BOUNDARY LINE OF SAID ROCK CREEK RANCH FILING NO. 3, NORTH 89°17'51" EAST 1178.13 FEET TO THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 30; THENCE CONTINUING ALONG SAID NORTH LINE AND ALONG SAID SOUTHERLY BOUNDARY LINE NORTH 89°17'51" EAST 617.65 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF INDIANA STREET, AS RECORDED IN ROCK CREEK RANCH DISTRICT STREETS FILING NO. 1 AT RECEPTION NO. 0000000, BOULDER COUNTY RECORDS, SAID POINT BEING ALSO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 840.00 FEET, A RADIAL LINE FROM SAID POINT BEARS SOUTH 81°34'42" EAST; THENCE SOUTHERLY AND SOUTHEASTERLY 354.83 FEET ALONG SAID CURVE AND ALONG SAID WESTERLY RIGHT-OF-WAY LINE THROUGH A CENTRAL ANGLE OF 24°12'09"; THENCE LEAVING SAID WESTERLY RIGHT-OF-WAY LINE NON-TANGENT TO SAID CURVE NORTH 74°13'09" EAST 80.00 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF SAID INDIANA STREET, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 760.00 FEET, A RADIAL LINE FROM SAID POINT BEARS NORTH 74°13'09" EAST; THENCE NORTHERLY AND NORTHEASTERLY 304.41 FEET ALONG SAID CURVE AND ALONG SAID EASTERLY RIGHT-OF-WAY LINE THROUGH A CENTRAL ANGLE OF 22°56'56" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 30.00 FEET, A RADIAL LINE FROM SAID POINT BEARS SOUTH 82°49'55" EAST, ON THE SOUTHERLY BOUNDARY LINE OF ROCK CREEK RANCH FILING NO. 13, RECORDED AT RECEPTION NO. 0000000 BOULDER COUNTY RECORDS; THENCE LEAVING SAID EASTERLY RIGHT-OF-WAY LINE NORTHEASTERLY, EASTERLY AND SOUTHEASTERLY 49.59 FEET ALONG SAID CURVE AND ALONG SAID SOUTHERLY BOUNDARY LINE THROUGH A CENTRAL ANGLE OF 94°42'52"; THENCE ALONG THE SOUTHERLY AND WESTERLY BOUNDARY LINE OF SAID ROCK CREEK RANCH FILING NO. 13 THE FOLLOWING COURSES: NON-TANGENT TO SAID CURVE SOUTH 78°07'03" EAST 268.91 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 192.00 FEET; THENCE SOUTHEASTERLY 10.26 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°03'41"; THENCE NON-TANGENT TO SAID CURVE SOUTH 14°56'38" WEST 94.99 FEET; THENCE SOUTH 20°56'16" EAST 24.33 FEET; THENCE SOUTH 56°49'11" EAST 49.29 FEET; THENCE SOUTH 33°50'22" EAST 57.97 FEET; THENCE SOUTH 12°28'48" EAST 68.77 FEET; THENCE SOUTH 05°46'42" EAST 546.02 FEET; THENCE SOUTH 27°08'50" EAST 137.64 FEET; THENCE SOUTH 33°51'47" EAST 99.10 FEET; THENCE SOUTH 39°16'16" EAST 217.84 FEET; THENCE LEAVING SAID WESTERLY BOUNDARY SOUTH 64°05'40" WEST 315.94 FEET; THENCE SOUTH 24°15'52" WEST 53.16 FEET; THENCE SOUTH 19°26'57" EAST 41.63 FEET; THENCE SOUTH 02°03'51" WEST 91.18 FEET; THENCE SOUTH 24°19'55" WEST 99.35 FEET; THENCE SOUTH 50°47'49" WEST 217.77 FEET; THENCE SOUTH 54°56'29" WEST 71.80 FEET; THENCE SOUTH 60°06'16" WEST 250.05 FEET; THENCE NORTH 89°42'53" WEST 231.71 FEET; THENCE SOUTH 00°17'07" WEST 309.30 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 460.00 FEET; THENCE SOUTHERLY 36.61 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04°33'37"; THENCE TANGENT TO SAID CURVE SOUTH 04°16'30" EAST 68.08 FEET; THENCE SOUTH 77°10'37" WEST 80.90 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 50.00 FEET, A RADIAL LINE FROM SAID POINT BEARS SOUTH 85°43'30" WEST; THENCE SOUTHERLY AND SOUTHWESTERLY 75.32 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 86°18'51" TO THE BEGINNING OF A TANGENT REVERSE CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 1350.00 FEET, A RADIAL LINE FROM SAID POINT BEARS SOUTH 07°57'39" EAST; THENCE SOUTHWESTERLY 375.77 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15°56'53" TO THE BEGINNING OF A TANGENT REVERSE CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 750.00 FEET, A RADIAL LINE FROM SAID POINT BEARS NORTH 23°54'31" WEST; THENCE SOUTHWESTERLY AND WESTERLY 298.13 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 22°46'31"; THENCE TANGENT TO SAID CURVE SOUTH 88°51'59" WEST 578.00 FEET; THENCE NORTH 86°33'35" WEST 150.48 FEET; THENCE SOUTH 88°51'59" WEST 152.84 FEET TO THE EASTERLY RIGHT-OF-WAY OF McCASLIN BOULEVARD, RECORDED AT RECEPTION NO. 760911 BOULDER COUNTY RECORDS; THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF McCASLIN BOULEVARD THE FOLLOWING COURSES: NORTH 00°16'01" EAST 1258.26 FEET; THENCE SOUTH 89°04'51" WEST 0.16 FEET; THENCE NORTH 00°17'07" EAST 1036.33 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 1593.30 FEET; THENCE NORTHERLY 285.87 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 10°16'48" TO THE POINT OF BEGINNING.

CONTAINING 125.084 ACRES, MORE OR LESS.

EXHIBIT E

Previous Avigation Easement For Zone 18

4-1

**AVIGATION EASEMENT AGREEMENT
ROCK CREEK RANCH FILING NO. 18**

01531881 07/19/95 09:04 AM REAL ESTATE RECORDS
F2063 CHARLOTTE HOUSTON BOULDER CNTY CO RECORDER

1-4

21

THIS AVIGATION EASEMENT AGREEMENT is made this 6th day of June, 1995, between RICHMOND HOMES, INC. I (the "Grantor"), and the JEFFERSON COUNTY AIRPORT AUTHORITY OF COLORADO, the governing body of the Jefferson County Airport (the "Airport"), hereafter called the "Authority".

WHEREAS, Grantor is the owner in fee simple of that certain parcel of land situated in the County of Boulder, State of Colorado, which is part of the property known as Rock Creek Ranch, more specifically described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the Grantor and the Authority desire to enter into this Agreement for the Property which is around and about the Airport boundaries; and

WHEREAS, the Authority has accepted, enacted and proposed a master plan for the Airport dated January, 1988, such plan having been prepared by Barnard Dunkelberg & Company URS Engineers ("Master Plan");

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), the mutual promises and agreements hereafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follow:

1. Easement. The Grantor for itself, its administrators, successors and assigns does hereby grant, bargain, sell and convey unto the Authority (the "Grantee"), its successors and assigns a non-exclusive easement and right of way appurtenant to the Airport for the passage of all aircraft by whomsoever owned and operated in the airspace above the surface of Grantor's property at a height which is regulated by the Federal Aviation Administration ("FAA") as of the date of this Avigation Easement Agreement to an infinite height above the Property (the "Airspace Easement") together with the right to cause in the Airspace Easement such noise, vibration and all other effects that may be caused by the operation of aircraft landing at or taking off from or operating at or on the Airport. To have and to hold said Easement and right of way and all rights pertaining thereto unto the Grantee, its successors and assigns until the Airport shall be abandoned or shall cease to be used for Airport purposes, or the occurrence of any of the contingencies set forth in Paragraph 2, then such easement shall revert back to Grantor, its successors and assigns, it being understood and agreed that this covenant and agreement shall run with the land.

2. Limitations. The Easement granted under Paragraph 1 shall remain in effect unless any of the following shall occur:

a. The Airport shall cease being used as a "General Aviation Reliever Airport" as those terms are defined as of the date of this Agreement, by the FAA Rules and Regulations, or any rules or regulations which may later be enacted which are more strict than current rules and regulations.

b. The type and size of aircraft using the Airport as permitted under the Master Plan shall be changed or become inconsistent with such Master Plan, if there is an increase in passenger usage over that disclosed in the Master Plan, or the Airport is used for freight delivery.

c. The Authority shall lengthen the existing runways, build additional runways or increase the load capacity of such runways beyond the proposed limits currently contained in the Master Plan.

2

d. The noise contours contained in the Master Plan are exceeded by the sustained operation of aircraft in the Airspace Easement.

e. The noise, vibration and all other effects of aircraft operation on the Property exceeds 60 ldn.

If any of the above shall occur this Easement shall terminate without further notice.

3. No Waiver. Nothing stated in the foregoing grant shall allow the unlawful operation or passage of any aircraft by any person over and across the Property in violation of applicable Federal, State and Local Laws or FAA Requirements, nor release any person from liability for damages, nor divest the Grantor, its successors or assigns from any right or cause of action for damages to any person or property for other claims resulting from such unlawful or negligent operation of any aircraft at any altitude over and across the Property.

4. Grantor Not Bound. The Parties acknowledge that the Property is or may be zoned residential. The Parties also acknowledge that the Master Plan designates certain "Instrument Critical Zones" and "Visual Runway Critical Zones" on the Property, which zones are not recommended by the Authority for residential use, and the Authority hereby acknowledges that portions of the Property as presently zoned are not consistent with the "Land Use Compatibility Matrix" contained in the Master Plan at Appendix 1. Notwithstanding the Instrument Critical Zones and the Visual Runway Critical Zones set forth in said Master Plan, Grantor shall not be bound by the Master Plan nor any other limitations as to zoning, use and development of the Property. Nothing in this Agreement is intended to grant the Authority any surface easements, surface controls, or other claims on or to the surface rights of the Property.

5. Grantee to Inform Users. As part of the consideration for the granting of this Easement, the Authority, together with its successors and assigns, shall use reasonable efforts to acquaint the Airport users with flight, noise, weight, and easement restrictions through its normal information dissemination process. The Authority shall not, however, be liable to any third party as a result of a failure to notify or otherwise disseminate such information unless such liability has occurred due to the gross negligence of the Authority.

6. Reservation of Rights. Grantor reserves the right to pursue any and all causes of action against the Grantee or any aircraft user, owner or operator arising from the Grantee's negligence or willful and wanton acts in operating aircraft or the Airport and nothing stated in the grant set forth above shall release any person from liability for damages nor shall divest Grantor, its successors and assigns from any right or cause of action for damages to any person or property resulting from the unlawful negligent or willful and wanton operation of any aircraft at any altitude over and across the Property.

7. Non-Exclusive Easement. Nothing herein shall be construed to be a prohibition to the granting or additional easements by Grantor to third parties in the Airspace Easement, which would not interfere with the use of the Airspace Easement by the Grantee or in the Property or the airspace below the Airspace Easement.

IN WITNESS WHEREOF, the Grantor and the Authority, by and through their duly authorized representatives, have hereunto set their hands this 6th day of June, 1995.

3

RICHMOND HOMES, INC. I, Grantor

By: Brian A. Peterson EVPS
Executive Vice President

ATTEST:

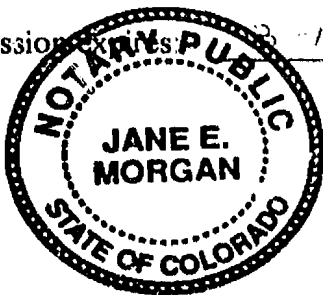
By: Gerri Sue Sichler
Assistant Secretary

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 1st day of June, 1995, by Brian A. Peterson as Executive Vice President and Gerri Sue Sichler as Assistant Secretary of Richmond Homes, Inc. I, a Delaware corporation.

WITNESS my hand and official seal.

My commission expires: 3-17-97



Jane E. Morgan
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

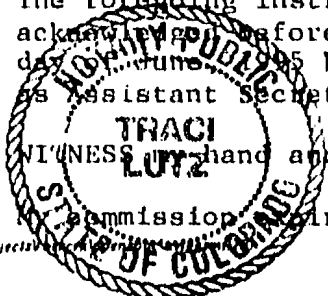
JEFFERSON COUNTY AIRPORT AUTHORITY

The foregoing instrument was acknowledged before me this 6th day of June, 1995 by David C. Gordon as Assistant Secretary of the Jefferson County Airport Authority.

By: David C. Gordon
Title: Assistant Secretary

WITNESS my hand and official seal.

My commission expires: 2-4-98



Traci Lutz
NOTARY PUBLIC

EXHIBIT "A"

4-4

Legal Description

A parcel located in the East half of Section 31, Township 1 South, Range 69 West of the Sixth Principal Meridian, County of Boulder, State of Colorado, more particularly described as follows:

4

Commencing at the Northeast corner of said Section 31;
thence S00°17'48"W along the East line of the Northeast quarter of said Section 31, 25.00 feet to the Point of Beginning;
thence continuing S00°17'48"W along said East line, 2520.09 feet;
thence S31°48'41"W, 370.99 feet;
thence N90°00'00"W, 1384.34 feet;
thence N00°00'00"E, 1300.00 feet;
thence N25°26'34"E, 654.99 feet;
thence N60°15'30"E, 340.00 feet;
thence N21°03'25"E, 80.00 feet;
thence S68°56'35"E, 104.97 feet to a point of curve;
thence along said curve to the left having a radius of 410.00 feet, a central angle of 32°34'40", 233.12 feet to a point of tangent;
thence N78°28'45"E along said tangent, 288.41 feet to a point of curve;
thence along said curve to the left having a radius of 310.00 feet, a central angle of 78°23'45", 424.16 feet to a point of tangent;
thence N00°05'00"E along said tangent, 79.61 feet;
thence N01°49'33"W, 180.10 feet;
thence N00°05'00"E, 50.20 feet to a point of curve;
thence along said curve to the left having a radius of 50.00 feet, a central angle of 90°00'00", 78.54 feet;
thence N00°05'37"W, 36.42 feet to the South right-of-way line of existing Coalton Road, said line being twenty-five (25) feet South of and parallel with the North line of the Northeast quarter of said Section 31;
thence N89°54'23"E along said South right-of-way line, 187.02 feet to the Point of Beginning containing 74.494 acres, more or less.

EXHIBIT F

Previous Avigation Easement For Zone 19

4-1
5-1
glo
X

**AVIGATION EASEMENT AGREEMENT
ROCK CREEK RANCH FILING NO. 19**

#01556192 10/19/95 09:11 AM REAL ESTATE RECORDS
F2084 CHARLOTTE HOUSTON BOULDER CNTY CO RECORDER

THIS AVIGATION EASEMENT AGREEMENT is made this 27th day of September, 1995, between RICHMOND HOMES, INC. I (the "Grantor"), and the JEFFERSON COUNTY AIRPORT AUTHORITY OF COLORADO, the governing body of the Jefferson County Airport (the "Airport"), hereafter called the "Authority".

WHEREAS, Grantor is the owner in fee simple of that certain parcel of land situated in the County of Boulder, State of Colorado, which is part of the property known as Rock Creek Ranch, more specifically described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the Grantor and the Authority desire to enter into this Agreement for the Property which is around and about the Airport boundaries; and

WHEREAS, the Authority has accepted, enacted and proposed a master plan for the Airport dated January, 1988, such plan having been prepared by Barnard Dunkelberg & Company URS Engineers ("Master Plan");

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), the mutual promises and agreements hereafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follow:

1. Easement. The Grantor for itself, its administrators, successors and assigns does hereby grant, bargain, sell and convey unto the Authority (the "Grantee"), its successors and assigns a non-exclusive easement and right of way appurtenant to the Airport for the passage of all aircraft by whomsoever owned and operated in the airspace above the surface of Grantor's property at a height which is regulated by the Federal Aviation Administration ("FAA") as of the date of this Avigation Easement Agreement to an infinite height above the Property (the "Airspace Easement") together with the right to cause in the Airspace Easement such noise, vibration and all other effects that may be caused by the operation of aircraft landing at or taking off from or operating at or on the Airport. To have and to hold said Easement and right of way and all rights pertaining thereto unto the Grantee, its successors and assigns until the Airport shall be abandoned or shall cease to be used for Airport purposes, or the occurrence of any of the contingencies set forth in Paragraph 2, then such easement shall revert back to Grantor, its successors and assigns, it being understood and agreed that this covenant and agreement shall run with the land.

2. Limitations. The Easement granted under Paragraph 1 shall remain in effect unless any of the following shall occur:

a. The Airport shall cease being used as a "General Aviation Reliever Airport" as those terms are defined as of the date of this Agreement, by the FAA Rules and Regulations, or any rules or regulations which may later be enacted which are more strict than current rules and regulations.

10-2-95

b. The type and size of aircraft using the Airport as permitted under the Master Plan shall be changed or become inconsistent with such Master Plan, if there is an increase in passenger usage over that disclosed in the Master Plan, or the Airport is used for freight delivery.

c. The Authority shall lengthen the existing runways, build additional runways or increase the load capacity of such runways beyond the proposed limits currently contained in the Master Plan.

d. The noise contours contained in the Master Plan are exceeded by the sustained operation of aircraft in the Airspace Easement

e. The noise, vibration and all other effects of aircraft operation on the Property exceeds 60 ldn.

If any of the above shall occur this Easement shall terminate without further notice.

3. No Waiver. Nothing stated in the foregoing grant shall allow the unlawful operation or passage of any aircraft by any person over and across the Property in violation of applicable Federal, State and Local Laws or FAA Requirements, nor release any person from liability for damages, nor divest the Grantor, its successors or assigns from any right or cause of action for damages to any person or property for other claims resulting from such unlawful or negligent operation of any aircraft at any altitude over and across the Property

4. Grantor Not Bound. The Parties acknowledge that the Property is or may be zoned residential. The Parties also acknowledge that the Master Plan designates certain "Instrument Critical Zones" and "Visual Runway Critical Zones" on the Property, which zones are not recommended by the Authority for residential use, and the Authority hereby acknowledges that portions of the Property as presently zoned are not consistent with the "Land Use Compatibility Matrix" contained in the Master Plan at Appendix 1. Notwithstanding the Instrument Critical Zones and the Visual Runway Critical Zones set forth in said Master Plan, Grantor shall not be bound by the Master Plan nor any other limitations as to zoning, use and development of the Property. Nothing in this Agreement is intended to grant the Authority any surface easements, surface controls, or other claims on or to the surface rights of the Property.

5. Grantee to Inform Users. As part of the consideration for the granting of this Easement, the Authority, together with its successors and assigns, shall use reasonable efforts to acquaint the Airport users with flight, noise, weight, and easement restrictions through its normal information dissemination process. The Authority shall not, however, be liable to any third party as a result of a failure to notify or otherwise disseminate such information unless such liability has occurred due to the gross negligence of the Authority.

6. Reservation of Rights. Grantor reserves the right to pursue any and all causes of action against the Grantee or any aircraft user, owner or operator arising from the Grantee's negligence or willful and wanton acts in operating aircraft or the Airport and nothing stated in the grant set forth above shall release any person from liability for damages nor shall divest Grantor, its successors and assigns from any right or cause of action for damages to any person or property resulting from the unlawful negligent or willful and wanton operation of any aircraft at any altitude over and across the Property.

5-4 4-4

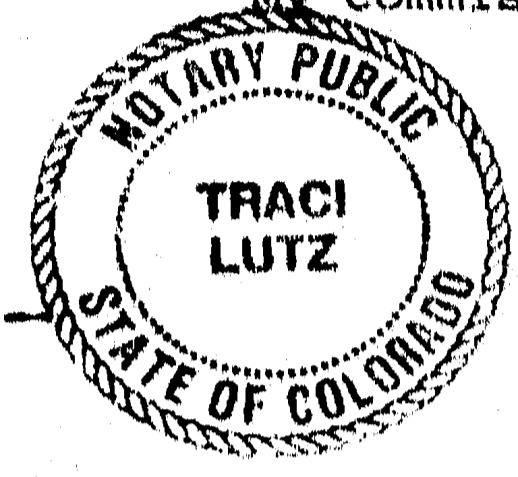
STATE OF COLORADO
COUNTY OF JEFFERSON

)
) ss.
)

The foregoing instrument was acknowledged before me this 28th day of September, 1995 by David C. Gordon as Airport Manager of JEFFERSON COUNTY AIRPORT AUTHORITY.

WITNESS my hand and official seal.

My commission expires 2-4-98.



Traci Lutz

Notary Public

THAT Richmond Homes, Inc. is a Delaware Corporation the owner of that real property situated in Superior, Colorado and lying within the exterior boundary of Rock Creek Ranch Filing No. 19, more particularly described as follows:

LEGAL DESCRIPTION

A parcel of land located in the South half of Section 30 and the North half of Section 31, Township 1 South, Range 69 West of the Sixth Principal Meridian, Town of Superior, County of Boulder, State of Colorado, more particularly described as follows:

Commencing at the Northeast corner of said Section 31;
 thence S89°54'23"W along the North line of the Northeast quarter of said Section 31, 1661.02 feet to the Point of Beginning;
 thence S01°07'32"E, 259.81 feet to a point of curve;
 thence along said curve to the left having a radius of 310.00 feet, a central angle of 67°49'03", 366.93 feet to a point of tangent;
 thence S68°56'35"E along said tangent, 800.99 feet to the Northwest corner of Rock Creek Ranch Filing No. 19;
 thence S21°03'25"W along the westerly line of said Rock Creek Ranch Filing No. 19, 80.00 feet;
 thence N68°56'35"W, 450.02 feet to a point of curve;
 thence along said curve to the left having a radius of 30.00 feet, a central angle of 88°46'02", 46.48 feet;
 thence N64°44'22"W, 60.08 feet to a point on a curve;
 thence along said curve to the left having a radius of 30.00 feet, a central angle of 81°47'13" (the chord of which bears N18°36'13"W, 39.28 feet), 42.82 feet to a point of reverse curve;
 thence along said curve to the right having a radius of 390.00 feet, a central angle of 26°05'21", 177.58 feet;
 thence S47°39'06"W, 925.93 feet;
 thence S56°28'36"W, 995.43 feet;
 thence S76°07'16"W, 286.24 feet;
 thence S72°51'03"W, 80.00 feet;
 thence N17°08'57"W, 162.72 feet to a point of curve;
 thence along said curve to the right having a radius of 1890.00 feet, a central angle of 01°44'23", 57.39 feet to a point of reverse curve;
 thence along said curve to the left having a radius of 30.00 feet, a central angle of 84°29'55", 44.24 feet;
 thence N19°20'25"W, 50.81 feet to a point on a curve;
 thence along said curve to the left having a radius of 30.00 feet, a central angle of 93°56'34" (the chord of which bears N34°41'21"E, 43.86 feet), 49.19 feet to a point of reverse curve;
 thence along said curve to the right having a radius of 1890.00 feet, a central angle of 01°59'25", 65.65 feet to a point of tangent;
 thence N10°07'31"W along said tangent, 101.46 feet to a point of curve;
 thence along said curve to the left having a radius of 260.00 feet, a central angle of 35°50'37", 177.65 feet to a point of tangent;
 thence N45°58'08"W along said tangent, 117.25 feet to a point of curve;
 thence along said curve to the right having a radius of 440.00 feet, a central angle of 33°54'42", 260.42 feet;
 thence S89°38'26"W, 19.14 feet to the West line of the Northeast quarter of the Northwest quarter of said Section 31;
 thence N00°21'34"W along said West line, 778.76 feet to the Northwest corner of the Northeast quarter of the Northwest quarter of said Section 31;
 thence S88°51'59"W along the North line of the Northwest quarter of the Northwest quarter of said Section 31, 71.78 feet to a point on a curve;
 thence along said curve to the left having a radius of 850.00 feet, a central angle of 03°01'31" (the chord of which bears N67°36'14"E, 44.86 feet), 44.88 feet to a point of reverse curve;
 thence along said curve to the right having a radius of 1250.00 feet, a central angle of 06°16'01", 136.72 feet;
 thence N80°22'46"E, 150.59 feet to a point on a curve;
 thence along said curve to the right having a radius of 1238.00 feet, a central angle of 02°08'59" (the chord of which bears N80°19'34"E, 45.37 feet), 45.37 feet to a point of compound curve;
 thence along said curve to the right having a radius of 50.00 feet, a central angle of 98°48'46", 81.61 feet;
 thence N76°17'06"E, 81.20 feet to a point on a curve;
 thence along said curve to the right having a radius of 50.00 feet, a central angle of 94°18'04" (the chord of which bears N42°52'32"E, 73.31 feet), 82.29 feet to a point of compound curve;
 thence along said curve to the right having a radius of 1250.00 feet, a central angle of 00°50'06", 18.22 feet to a point of tangent;
 thence S89°08'20"E along said tangent, 1482.66 feet;
 thence S84°33'54"E, 150.48 feet;
 thence S89°08'20"E, 50.82 feet to a point of curve;
 thence along said curve to the right having a radius of 50.00 feet, a central angle of 88°00'48", 76.81 feet;
 thence N84°45'13"E, 80.21 feet;
 thence S01°07'32"E, 15.83 feet to the Point of Beginning containing 68.842 acres, more or less.

That it has caused said real property to be laid out and surveyed as Rock Creek Ranch Filing No. 19, and does hereby dedicate to the Superior Metropolitan District No. 3 and set apart all of the streets, alleys, and other public ways and places as shown on the accompanying plat to the use of the public forever, and does hereby dedicate to the Superior Metropolitan District No. 3 those portions of said real property which are indicated as easements on the accompanying plat. Said easements and Tracts A, B, C, D, and F are to be owned by Superior Metropolitan District No. 3 unless and until such time as said District is dissolved or otherwise fails to comply with the terms of its service plan and upon such dissolution or failure, ownership in all streets, alleys and other public ways and all easements or tracts hereby dedicated shall vest in the Town of Superior.

EXHIBIT

'A'

EXHIBIT G

Previous Avigation Easement For Zone 21

**AVIGATION EASEMENT AGREEMENT
ROCK CREEK RANCH FILING NO. 21**

THIS AVIGATION EASEMENT AGREEMENT is made this 6th day of December, 1995, between RICHMOND HOMES, INC. I (the "Grantor"), and the JEFFERSON COUNTY AIRPORT AUTHORITY OF COLORADO, the governing body of the Jefferson County Airport (the "Airport"), hereafter called the "Authority".

JK

WHEREAS, Grantor is the owner in fee simple of that certain parcel of land situated in the County of Boulder, State of Colorado, which is part of the property known as Rock Creek Ranch, more specifically described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the Grantor and the Authority desire to enter into this Agreement for the Property which is around and about the Airport boundaries; and

WHEREAS, the Authority has accepted, enacted and proposed a master plan for the Airport dated January, 1988, such plan having been prepared by Barnard Dunkelberg & Company URS Engineers ("Master Plan");

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), the mutual promises and agreements hereafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follow:

1. Easement. The Grantor for itself, its administrators, successors and assigns does hereby grant, bargain, sell and convey unto the Authority (the "Grantee"), its successors and assigns a non-exclusive easement and right of way appurtenant to the Airport for the passage of all aircraft by whomsoever owned and operated in the airspace above the surface of Grantor's property at a height which is regulated by the Federal Aviation Administration ("FAA") as of the date of this Avigation Easement Agreement to an infinite height above the Property (the "Airspace Easement") together with the right to cause in the Airspace Easement such noise, vibration and all other effects that may be caused by the operation of aircraft landing at or taking off from or operating at or on the Airport. To have and to hold said Easement and right of way and all rights pertaining thereto unto the Grantee, its successors and assigns until the Airport shall be abandoned or shall cease to be used for Airport purposes, or the occurrence of any of the contingencies set forth in Paragraph 2, then such easement shall revert back to Grantor, its successors and assigns, it being understood and agreed that this covenant and agreement shall run with the land.

2. Limitations. The Easement granted under Paragraph 1 shall remain in effect unless any of the following shall occur:

a. The Airport shall cease being used as a "General Aviation Reliever Airport" as those terms are defined as of the date of this Agreement, by the FAA Rules and Regulations, or any rules or regulations which may later be enacted which are more strict than current rules and regulations.

b. The type and size of aircraft using the Airport as permitted under the Master Plan shall be changed or become inconsistent with such Master Plan, if there is an increase in passenger usage over that disclosed in the Master Plan, or the Airport is used for freight delivery.

c. The Authority shall lengthen the existing runways, build additional runways or increase the load capacity of such runways beyond the proposed limits currently contained in the Master Plan.

d. The noise contours contained in the Master Plan are exceeded by the sustained operation of aircraft in the Airspace Easement.

e. The noise, vibration and all other effects of aircraft operation on the Property exceeds 60 ldn.

If any of the above shall occur this Easement shall terminate without further notice.

3. No Waiver. Nothing stated in the foregoing grant shall allow the unlawful operation or passage of any aircraft by any person over and across the Property in violation of applicable Federal, State and Local Laws or FAA Requirements, nor release any person from liability for damages, nor divest the Grantor, its successors or assigns from any right or cause of action for damages to any person or property for other claims resulting from such unlawful or negligent operation of any aircraft at any altitude over and across the Property.

4. Grantor Not Bound. The Parties acknowledge that the Property is or may be zoned residential. The Parties also acknowledge that the Master Plan designates certain "Instrument Critical Zones" and "Visual Runway Critical Zones" on the Property, which zones are not recommended by the Authority for residential use, and the Authority hereby acknowledges that portions of the Property as presently zoned are not consistent with the "Land Use Compatibility Matrix" contained in the Master Plan at Appendix I. Notwithstanding the Instrument Critical Zones and the Visual Runway Critical Zones set forth in said Master Plan, Grantor shall not be bound by the Master Plan nor any other limitations as to zoning, use and development of the Property. Nothing in this Agreement is intended to grant the Authority any surface easements, surface controls, or other claims on or to the surface rights of the Property.

5. Grantee to Inform Users. As part of the consideration for the granting of this Easement, the Authority, together with its successors and assigns, shall use reasonable efforts to acquaint the Airport users with flight, noise, weight, and easement restrictions through its normal information dissemination process. The Authority shall not, however, be liable to any third party as a result of a failure to notify or otherwise disseminate such information unless such liability has occurred due to the gross negligence of the Authority.

6. Reservation of Rights. Grantor reserves the right to pursue any and all causes of action against the Grantee or any aircraft user, owner or operator arising from the Grantee's negligence or willful and wanton acts in operating aircraft or the Airport and nothing stated in the grant set forth above shall release any person from liability for damages nor shall divest Grantor, its successors and assigns from any right or cause of action for damages to any person or property resulting from the unlawful negligent or willful and wanton operation of any aircraft at any altitude over and across the Property.

EXHIBIT A

5-4

Legal Description

A parcel of land located in Section 31, Township 1 South, Range 69 West of the Sixth Principal Meridian, Town of Superior, County of Boulder, State of Colorado, more particularly described as follows:

Commencing at the Northeast corner of said Section 31 and considering the East line of the Northeast corner of said Section 31 to bear $S00^{\circ}17'48''W$ with all bearings contained herein relative thereto; thence $S51^{\circ}49'52''W$, 1295.10 feet to the Point of Beginning, said being on the boundary of Rock Creek Ranch Filing No. 18;

thence along the boundary of said Rock Creek Ranch Filing No. 18 the following four (4) courses:

1. thence $S60^{\circ}15'30''W$, 340.00 feet;
2. thence $S25^{\circ}26'34''W$, 654.99 feet;
3. thence $S00^{\circ}00'00''E$, 1300.00 feet;
4. thence $N90^{\circ}00'00''E$, 1386.34 feet;

thence $S31^{\circ}45'41''W$, 988.51 feet to a point of curve;
thence along said curve to the left having a radius of 3669.72 feet, a central angle of $08^{\circ}06'09''$, 518.95 feet to a point on a curve;
thence along said curve to the left having a radius of 1480.00 feet, a central angle of $50^{\circ}51'08''$ (the chord of which bears $S89^{\circ}10'14''W$, 1270.87 feet), 1313.56 feet to a point of compound curve;
thence along said curve to the left having a radius of 3769.90 feet, a central angle of $10^{\circ}44'40''$, 706.95 feet;
thence $N50^{\circ}06'06''W$, 452.16 feet;
thence $N49^{\circ}39'03''W$, 626.83 feet to a point on a curve;
thence along said curve to the right having a radius of 30.00 feet, a central angle of $85^{\circ}03'06''$ (the chord of which bears $N06^{\circ}38'24''W$, 40.56 feet), 44.53 feet to a point of reverse curve;
thence along said curve to the left having a radius of 856.32 feet, a central angle of $07^{\circ}14'29''$, 108.23 feet to a point of compound curve;
thence along said curve to the left having a radius of 1540.00 feet, a central angle of $39^{\circ}52'01''$, 1071.54 feet to a point of tangent;
thence $N11^{\circ}13'20''W$ along said tangent, 28.89 feet;
thence $S82^{\circ}20'08''W$, 80.15 feet to a point on a curve;
thence along said curve to the left having a radius of 30.00 feet, a central angle of $87^{\circ}57'55''$ (the chord of which bears $N55^{\circ}12'18''W$, 41.67 feet), 46.06 feet;
thence $N07^{\circ}50'58''W$, 80.02 to a point on a curve;
thence along said curve to the left having a radius of 30.00 feet, a central angle of $83^{\circ}31'02''$ (the chord of which bears $N39^{\circ}03'14''E$, 39.96 feet), 43.73 feet to a point of reverse curve;
thence along said curve to the right having a radius of 590.00 feet, a central angle of $13^{\circ}07'31''$, 135.16 feet to a point of tangent;
thence $N10^{\circ}25'14''E$ along said tangent, 206.61 feet to a point of curve;
thence along said curve to the left having a radius of 960.00 feet, a central angle of $27^{\circ}34'11''$, 461.94 feet to the Southwest corner of Rock Creek Ranch Filing No. 19;

thence along the southerly boundary of said Rock Creek Ranch Filing No. 19 the following nine (9) courses:

1. thence N72°51'03"E, 80.00 feet;
2. thence N76°07'16"E, 286.24 feet;
3. thence N56°28'36"E, 995.43 feet;
4. thence N47°39'06"E, 925.93 feet to a point on a curve;
5. thence along said curve to the left having a radius of 390.00 feet, a central angle of 26°05'20" (the chord of which bears S46°27'09"E, 176.05 feet), 177.58 feet to a point of reverse curve;
6. thence along said curve to the right having a radius of 30.00 feet, a central angle of 81°47'12", 42.82 feet;
7. thence S64°44'22"E, 60.08 feet to a point on a curve;
8. thence along said curve to the right having a radius of 30.00 feet, a central angle of 88°46'02" (the chord of which bears N66°40'24"E, 41.97 feet), 46.48 feet to a point of tangent;
9. thence S68°56'35"E along said tangent, 450.02 feet to the Point of Beginning containing 167.424 acres, more or less.

EXHIBIT H

**Bench Trial Order
dated December 23, 2021**

DISTRICT COURT, COUNTY OF BOULDER, STATE OF COLORADO 1777 Sixth Street, Boulder, CO 80306 (303) 441-3750	DATE FILED: December 23, 2021 8:55 AM CASE NUMBER: 2020CV30837
Plaintiff: ROCK CREEK MASTER HOMEOWNERS ASSOCIATION, INC. v. Defendant: JEFFERSON COUNTY, COLORADO , as successor in interest to the Jefferson County Airport Authority	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<i>Attorney(s) for Plaintiff:</i> Mark Davis <i>Attorney(s) for Defendant:</i> Eric Butler and Jason Soronson	Case Number: 2020CV30837 Division: COC Courtroom: H
BENCH TRIAL ORDER	

On October 25-26, 2021, the following actions took place in the above captioned case. The Clerk is directed to enter these proceedings in the register of actions:

COURT REPORTER: FTR

APPEARANCES:

1. Diane Marsella, as representative for Rock Creek Master Homeowners Association, Inc. (“Plaintiff” or “HOA”).
2. Mark Davis appears on behalf of Plaintiff.
3. Brian Bishop, as representative for Jefferson County, Colorado (“Defendant” or “County”).
4. Eric Butler appears on behalf of Defendant.
5. Jason Soronson appears on behalf of Defendant.

SWORN WITNESSES:

1. Diana Marsella
2. Brian Bishop
3. Matt Sneddon
4. Troy Stover

EXHIBITS:

Plaintiff's: 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 19, 21, 23, 25 (limited), 26, 27, 28, 29, 30, 32, 33, 36, 38, 43, 55

Defendant's: A, B, C, D, E, F, G, H, J, K, L, M, O, Q, R, S

FINDINGS AND ORDERS

I. The Court's Findings on the History of the Case

Jefferson County ("County") operates the Rocky Mountain Metropolitan Airport, formerly the Jefferson County Airport ("Airport"). County is the successor in interest of the Jefferson County Airport Authority which first opened the Airport in 1960 and owned and operated the Airport until 1998 when it was transferred to County.

Rock Creek Ranch ("Rock Creek") is a Planned Unit Development containing approximately 2,800 different residential units located in the Town of Superior, Boulder County, Colorado. Each residential property owner in Rock Creek is a member of HOA. Rock Creek is generally located west and northwest of the Airport.

Richmond Homes ("Developer") was the property owner and developer of Rock Creek. No later than 1986, Developer¹ began the process of developing the tract of land that would eventually become Rock Creek. As part of development, Developer went through the process of having the land annexed into the Town of Superior, rezoned from agricultural property, and placed into a Planned Unit Development.

¹ It appears from Exhibit D that the rezoning request was made by "Rock Creek Ranch Partnership, et al." There was no other evidence presented concerning Rock Creek Ranch Partnership, but the parties have referred to Richmond Homes as the party submitting the rezoning request and proposed development of the Rock Creek property, and the Avigation Easement Agreements received into evidence (Exhibits 1 and 6) identified the owner of the Rock Creek Ranch property as "Richmond Homes, Inc. I." The Court concludes that Richmond Homes was either affiliated with, or a successor of, Rock Creek Ranch Partnership, and will refer to all such entities as Richmond Homes or "Developer."

Airport expressed several concerns to the Town of Superior about the proposed development. One of the concerns identified by the Airport was that the proposed development fell entirely within the “Airport Influence Area.” To address this concern, Airport requested that Developer be required to grant an Avigation Easement to the Airport over the entirety of the property to be developed into Rock Creek to “better inform future dwelling owners of the noise, vibration levels, nuisance and safety hazards that they can expect during the day and night from the overflight of aircraft.”

The Final Development Plan for Rock Creek is dated January 22, 1987. Paragraph 1.2 references the Airport as located 1.5 miles east of the southeast boundary of Rock Creek. The Final Development Plan states that the current data from the 1986 Master Plan “indicates that the 60 and 65 Ldn noise impact zones do not infringe upon the Rock Creek Ranch property at any point.”

Paragraph 11 of the Final Development Plan begins: “The continued success and viability of the Jefferson County Airport will provide a positive effect on the development of Rock Creek Ranch into the future.” The Paragraph goes on to list several conditions to “insure [sic] that incompatible development does not occur adjacent to the Airport and that the health, safety, and welfare of the residents of Rock Creek Ranch are maximized.” Among the conditions listed is a restriction precluding residential uses on certain parcels without the consent of the Jefferson County Airport Authority, an agreement by Developer to abide by FAA regulations to determine if the uses proposed in the final plat were compatible with the Airport, and an agreement by Developer to grant an Avigation Easement over the entirety of the Rock Creek property.

The Town of Superior approved the Final Development Plan and rezoned the Rock Creek property in January 1987.²

An Airport Master Plan (“Master Plan”) is a guiding document that serves a variety of purposes, including making recommendations for the development of the airport and surrounding property. An airport is required to create a Master Plan and provide updates thereto to secure FAA funding for airport development and improvements.

Airport published its updated Master Plans in 1988, 2000 and 2011, each of which was admitted as evidence. The Final Development Plan for Rock Creek refers to a 1986 Master Plan for the Airport that was not finalized. It appears the 1988 Master Plan is the finalized version of the 1986 Master Plan.

Per the requirement in the Final Development Plan, a series of Avigation Easements (“Easements”) were entered into between Developer and the Airport beginning in 1991. The Easements are recorded with the Boulder County Clerk and Recorder, with Reception Numbers: 01085091, 01085092, 01085093, 01116214, 01116862, 01147931, 01151011, 01151012, 01154166, 01168504, 01168505, 01227934, 01323785, 01377920, 01531879, 01531880, 01531881, 01551661, 01551662, 01556192, 01556193, 01567720, 01578794. The parties stipulated that the operative provisions of the Easements are essentially identical.

² The date of the ordinance approving the Final Development Plan is earlier than the date of the Final Development Plan, but this discrepancy is immaterial to the issues in this case.

The parties negotiated the terms of the Easements, which differed significantly from the form aviation easement attached to the 1988 Master Plan. The Easements granted by Rock Creek give the Airport the non-exclusive right for passage of aircraft in the airspace above Rock Creek, together with the right to cause “such noise, vibration and all other effects that may be caused by the operation of aircraft” at the Airport.

Paragraph 2 of the Easements states:

Limitations. The Easement granted under Paragraph 1 shall remain in effect unless any of the following shall occur:

- a. The Airport shall cease being used as a “General Aviation Reliever Airport” as those terms are defined, as of the date of this Agreement, by the Federal Aviation Administration Rules and Regulations or any rules or regulations which may later be enacted which are more strict than current rules and regulations.

- b. The type and size of aircraft using the Airport as permitted under the Master Plan shall be changed or become inconsistent with such Master Plan, if there is an increase in passenger usage over that disclosed in the Master Plan, or the Airport is used for freight delivery.

- c. The Authority shall lengthen the existing runways, build additional runways or increase the load capacity of such runways beyond the proposed limits currently contained in the Master Plan.

d. The noise contours contained in the Master Plan are exceeded by the sustained operation of aircraft in the Airspace Easement.

e. The noise, vibration and all other effects of aircraft operation on the Property exceeds 60 ldn.

If any of the above shall occur this Easement shall terminate without further notice.

II. *The Court's Analysis of the Parties's Rights Under the Easements*

For purposes of clarity, this Order will refer to the above Easement Limitations as "Limitations" when referenced collectively, and to any specific Limitation using the letter designated in the Easement ("Limitation A," "Limitation B," and so on).

The Easements were intended to assure that people acquiring lots in Rock Creek would have notice that use of their lots would likely be impacted by Airport activity. The Limitations were intended to limit increases in the impact of Airport activities on Rock Creek property owners. References in the Limitations to noise and vibration are particularly important in limiting the impact of Airport activity on Rock Creek property owners because the greatest amount of aircraft noise and vibration is produced during takeoff, and the primary flight path for Airport takeoffs is to the northwest of the Airport and therefore directly over parts of Rock Creek.

The Limitations refer to a “Master Plan,” which is described as “a master plan for the Airport dated January 1988, such plan having been prepared by Barnard Dunkelberg & Company URS Engineers.” It is undisputed that this is the document received into evidence as the 1988 Master Plan.

HOA asserts that several limitation events have occurred and that the Easements have therefore terminated. Avigation easements, including the Easements at issue, run with the land. HOA brings this action on behalf of the common interests of its property owners, who are the real parties in interest, to address issues concerning the Easements. HOA has standing to assert all claims made in this action.

The Easements were created by agreement and so are properly interpreted under the law of contracts. To the extent ambiguities exist in the Easements, the Court must interpret the Easements to give effect to the intentions of the parties as shown by the evidence presented. In this case, the description in the Limitations is brief and references the “Master Plan.” The Court finds there are ambiguities which require the Court to determine the intention of the parties from the extrinsic evidence presented.

The Court will address each of the Limitations in turn.

A. Limitation A

No issues have been raised by HOA concerning Limitation A.

B. Limitation B

HOA asserts several of the Limitation B events have occurred. Initially, HOA contends that Limitation B actually contains three different limitation events, any one of which would trigger termination of the Easements: (1) “the type and size of aircraft using the Airport as permitted under the [1988] Master Plan shall be changed or become inconsistent with such Master Plan”; (2) “there is an increase in passenger usage over that disclosed in the [1988] Master Plan”; and (3) “the Airport is used for freight delivery.” County contends that Limitation B is triggered only if the type and size of aircraft using the Airport is changed or becomes inconsistent with the 1988 Master Plan, either as a result of an increase in passenger usage over that disclosed in the 1988 Master Plan or as a result of the Airport being used for freight delivery.

The Court agrees with County’s interpretation of Limitation B.

The interpretation urged by HOA would cause the Easements to lapse if there was a reduction in the size of aircraft using the Airport or if a new type of aircraft used at the Airport caused less noise and fewer vibrations. Clearly the intent of Limitation B is to address changes in Airport usage likely to increase the impact of Airport activities on Rock Creek, which would be likely in the event of an increase in passenger usage of the Airport over that disclosed in the 1988 Master Plan or use of the Airport for freight delivery. Admittedly, an increase in the size of aircraft or the introduction of a more intrusive type of aircraft could increase the impact of Airport activities on Rock Creek, but that language was not used in Limitation B.

Under the Court's interpretation of Limitation B, any change in the aircraft using the Airport is irrelevant unless there is also an increase in passenger usage of the Airport over that disclosed in the 1988 Master Plan or the Airport is used for freight delivery.

The term "passenger usage" is not defined in the 1988 Master Plan. The 1988 Master Plan states as an assumption that no air carrier service was contemplated in the planning period for the 1988 Master Plan, which was from 1987-2007. Otherwise, the 1988 Master Plan did not address passenger usage.

"ATADS" Reports are prepared by air traffic controllers to show the level of operations at an airport, and these Reports are used by airports and the FAA. An ATADS Report was admitted into evidence as Exhibit 36, which shows an increase in air carrier operations, primarily beginning in 2012, as well as an increase in air taxi operations beginning around 2000. The 2011 Master Plan reports that the overwhelming majority of operations at the Airport relate to General Aviation, air carrier operations were infrequent and related to charter activity, and commuter operations grew considerably starting in 1990. For a period of time beginning in 2006, there were daily commercial flights to Grand Junction, Colorado using aircraft with a 19-passenger capacity, which would be classified as a commuter carrier rather than an air carrier.³ The 2011 Master Plan also states that the number of enplaned passengers grew from near zero in the 1990s to 2,700 in 2008, and that when enplanement levels reach 2,500 an airport is considered by the FAA to be a Non-Primary Commercial Service Airport rather than a General Aviation Airport.

³ An air carrier has a capacity of more than 60 seats or a cargo payload capacity of more than 18,000 pounds and carries passengers or cargo for hire or compensation.

Troy Stover testified that he worked at the Airport from 1987-2005. He said there were no commercial air carriers using the Airport during his employment, but that the Airport had numerous charter flights involving planes of all sizes. He also testified that there are increased air carrier operations shown on ATADS Reports because the FAA changed the ATADS reporting requirements to include overflights to reflect the workload demands placed on air traffic controllers. However, Mr. Stover provided no basis for any knowledge of the extent of passenger usage of the Airport after 2005.

The 1988 Master Plan forecasts that by 2007 the Airport would have 286,000 aircraft operations annually. The 2011 Master Plan sets forth the historical operations of the Airport. Although the 2011 Master Plan does not specifically provide data for every year after 1988, the highest number of Airport operations listed for any one year is 186,000. In 2019, the number of operations increased to 191,533, still far less than the 1988 Master Plan forecast.

The evidence establishes that, although the total number of annual operations was substantially less than the number of operations forecasted in the 1988 Master Plan, there has been an increase in passenger usage of the Airport over that disclosed in the 1988 Master Plan.

The parties disagree about whether the Airport has been used for “freight delivery” as that term is used in Limitation B . HOA asserts that Limitation B precludes all use of the Airport for freight purposes, and that the evidence presented establishes that air taxi operations at the Airport include air freight activity. County argues that the intent of Limitation B is not to disallow aircraft from carrying any cargo because the majority of aircraft using the Airport are likely to carry some cargo.

Instead, County argues that the intention of Limitation B is to preclude commercial freight operations, such as FedEx or United Postal Service, from using the Airport.

The 1988 Master Plan discusses in detail the types of aircraft operating at the Airport but does not address freight or cargo in any way. The 1988 Master Plan also does not address use of the Airport by air taxis. Aircraft operations, including those occurring at the Airport prior to the execution of the Easements, would undoubtedly have involved some freight. For example, the 1988 Master Plan recognizes various types of aircraft using the Airport, including business jets. There is no reason to think business jets using the Airport would have avoided transporting any freight. Instead, the most reasonable interpretation of “freight delivery” in Limitation B is operations that primarily involved freight delivery. The 2011 Master Plan states that the Airport had such minimal air cargo operations that the Airport had no buildings dedicated to cargo operations. No evidence was presented of any change in freight operations since the preparation of the 2011 Master Plan. Accordingly, the Court concludes that the Airport has not been used for freight delivery as that term is used in Limitation B.

The finding that passenger usage increased over that disclosed in the 1988 Master Plan triggers a limitation event under Limitation B if the type and size of aircraft using the Airport changed or became inconsistent with the 1988 Master Plan. Limitation B’s reference to “[t]he type and size of aircraft using the Airport” is directed at the physical characteristics of aircraft, not the purpose for which the aircraft are used, since it is the physical characteristics of the aircraft that are relevant to possible increases in impact on Rock Creek property owners from Airport activity.

Although Limitation B refers to the type and size of aircraft using the Airport as that permitted under the 1988 Master Plan, there is nothing in the 1988 Master Plan that could reasonably be read to restrict the operation of other types of aircraft at the Airport. The 1988 Master Plan identifies four categories of aircraft using the Airport, and it also refers to helicopter activity at the Airport. The evidence establishes that many types and sizes of aircraft have used the Airport since before the 1988 Master Plan or the Easements were created. Furthermore, the 1988 Master Plan forecasts a gradual decrease in the percentage of Airport use by single engine planes and a gradual increase in the percentage of Airport use by other types of planes. The Court finds that there has been some increase in larger planes' use of the Airport, which would be consistent with the forecast presented in the 1988 Master Plan, but that the general character of Airport use has not changed.⁴ Therefore, notwithstanding the increase in passenger use at the Airport, the limitation events set forth in Limitation B have not occurred and termination of the Easements has not been triggered under Limitation B.

C. Limitation C

The next issue raised by HOA concerns Limitation C, the restriction on lengthening the existing runways, building additional runways, or increasing the load capacity of the runways “beyond the proposed limits currently contained in the [1988] Master Plan.” HOA does not claim that a

⁴ The 2011 Master Plan anticipated that the Airport's critical design aircraft, the largest aircraft with at least 500 operations in a year, would change by 2015 from a Type D-II aircraft to a type D-III aircraft. A “Categorical Exclusion Form” submitted by the Airport to the FAA in 2013 set forth a proposal to strengthen the primary runway to provide adequate pavement strength for D-III aircraft and stated that the Airport had over 500 operations exceeding the D-II standard. However, it is not clear that any one D-III aircraft had over 500 operations in a year as required to change the Airport's critical design aircraft. In any event, such an increase is permitted under the 1988 Master Plan.

limitation event occurred because of any lengthening of existing runways⁵ or any building of additional runways, but instead asserts that the strengthening of the Airport's primary and secondary runways constitutes a limitation event under Limitation C.

The 1988 Master Plan lists the existing length and weight-bearing capacities of the Airport's runways and proposes six different development alternatives featuring different runway lengths and locations. None of the alternative development proposals addressed runway weight-bearing capacity. HOA is correct that the 1988 Master Plan contains no proposal to increase runway load capacity, but the 1988 Master Plan also contains no proposed limits on runway load capacity. Nothing in the 1988 Master Plan suggests that the reference to the existing load capacity should be treated as a proposed limit. Therefore, the Court finds the Easements do not limit the load capacity of the runways.

The weight-bearing capacity of the primary runway reported in the 2000 and 2011 Master Plans is somewhat higher than that reported the 1988 Master Plan, but there is no evidence that any changes to the primary runway occurred during this time span.

The 2011 Master Plan recommends that the primary runway dual wheel capacity be increased from 75,000 pounds to 100,000 pounds. The 2013 "Categorical Exclusion Form" submitted by the Airport to the FAA proposed a project to "rehabilitate the runway to extend its useful life and provide adequate runway pavement strength of 100,000 pounds dual wheel gear." The proposal involved "removing 1.5 inches of existing asphalt and replacing it with 2 to 5.5 inches of new

⁵ The secondary runway was extended in approximately 1994. This extension apparently was completed consistent with a proposal provided in the 1988 Master Plan.

asphalt.” However, when runway renovation was undertaken in 2014, three inches of existing asphalt were removed and replaced with three inches of new asphalt. As a result, in 2020 the Airport reported the primary runway as having a dual wheel weight capacity of 105,000 pounds.

The 1988 Master Plan reports the secondary runway as having a weight capacity of 12,000 pounds. An overlay of the secondary runway was completed sometime during 2015-2016. In 2020, the Airport reported the secondary runway as having a dual wheel capacity of 61,000 pounds.⁶ Mr. Bishop testified that the reported increased strength of the runways was due to a change in the calculation methodology used to calculate runway strength. However, Mr. Bishop provided no supporting documentation nor did he explain the change in methodology or say why the changed methodology would result in such an increase in weight capacity.

The Court concludes that most, if not all, of the increased weight capacity resulted from the refurbishing of the runways. Runways need periodic refurbishing because over time they do not function as they initially had, and it is reasonable to expect that the refurbished runways would be stronger due to advancements in refurbishing technology over time. The Court finds the work on the primary runway was limited to replacing the existing asphalt. The work on the secondary runway was described as an overlay, but the Court was provided no further explanation of the scope or reason for this work. Even if Limitation C intended to limit any increase in the load capacity of Airport’s runways (which the Court has found is not the case because there is no load capacity limit in the 1988 Master Plan), Limitation C should not be construed to preclude replacing existing runway asphalt, even if replacement asphalt is of a higher quality capable of supporting

⁶ The testimony discussed an increase in the reported capacity to 47,000 pounds, but it appears that capacity was the single wheel capacity.

more weight. As previously stated, the purpose of the Limitations is to limit the impact of Airport operations on Rock Creek property owners. Increased weight capacity of the runway, by itself, is not relevant to the consideration of the Airport's impact on Rock Creek.

D. Limitation D

The real crux of the dispute between the parties concerns the noise generated by Airport operations and its impact on the Rock Creek property owners. A limiting event under Limitation D takes effect if the noise contours ("Contours") in the 1988 Master Plan are "exceeded by the sustained operation of aircraft in the Airspace Easement." A diagram included in the 1988 Master Plan captioned "Existing Noise Contours" depicts the Airport and the immediately surrounding area. It contains three Contour lines labeled Ldn 60, Ldn 65 and Ldn 70. The 2000 and 2011 Master Plans also contain Contour lines.

County objected before and during the trial to the admissibility of the Master Plans' Contours for purposes of determining noise levels, claiming they constitute inadmissible hearsay and expert testimony in violation of Rule 705, C.R.E. The Contours contained in each of the Master Plans were developed by third-party consultants under contracts with the Airport – Barnard Dunkelberg & Company for the 1988 and 2000 Master Plans; and Reynolds, Smith and Hills, Inc. for the 2011 Master Plan. County contends the Contours contained in these Master Plans are out-of-court statements offered for the truth of the matter asserted.

The work of these third-party consultants was not limited to preparing the Contours, as the 1988, 2000, and 2011 Master Plans were prepared in their entirety by these consultants in their work

with the Airport. As discussed previously, Master Plans are long-term strategic documents required by the FAA for an airport to receive federal funds to support airport development and improvements. Airports generally hire third-party consultants to prepare planning studies used in the creation of Master Plans. Master Plans are funded by the FAA and must be periodically updated. The FAA provides detailed guidance for developing Master Plans. The FAA's Advisory Circular provides that, for noise studies, the area of consideration in a Master Plan "may be set at the DNL 65dB contour." Airport has received multiple substantial federal grants from the FAA based upon its 1988, 2000, and 2011 Master Plans, all of which were developed for and published by the Airport.

In addition to being used by airports to secure funding, the publication of Master Plans is intended to provide information to surrounding jurisdictions and property owners considering zoning and development issues. For example, the 1988 Master Plan states that its recommended land use plan "is intended to present a clear, simple and concise statement of policy and recommendations regarding the development of land within the airports environs to developers, builders, homeowners and buyers, and representatives of the various entities having land use control within the airport environs."

The 1998 and 2011 Master Plans were made available to the public on the Airport and Jefferson County websites. The absence of the 2000 Master Plan from the Jefferson County and Airport websites was apparently an oversight. Diana Marsella testified that the 2000 Master Plan was added to the websites in 2020 after she brought its absence to County's attention. The 2000 and 2011 Master Plans were adopted and approved by the Jefferson County Commissioners. The fact

that the 1988 Master Plan was on the Jefferson County website suggests that it may also have been approved by the County Commissioners, but there was no direct evidence to that effect. Furthermore, the Airport agreed to the Easements, stating that “the Authority has accepted, enacted and proposed a master plan for the Airport dated January 1988,” and also agreed to the tying of limitation events to the Contours in the 1988 Master Plan. Therefore, the Airport agreed to have the Easements governed by the Contours in the 1988 Master Plan.

Rule 801 of the Colorado Rules of Evidence defines hearsay. C.R.E. 801(d)(2) says that an admission of a party opponent is not hearsay. The 1988, 2000, and 2011 Master Plans, including the Contours featured therein, were adopted, approved, and published by the Airport with the expectation that others would rely on them. Therefore, the Court finds these Contours are not hearsay under subsections (B), (C) and (D) of C.R.E. 801(d)(2).

HOA contends that the Contours are not hearsay because they are computer-generated reports and therefore are not statements of a person. However, the Court heard evidence that the Contours were measured and developed using numerous data inputs from human actors. The 1988 Master Plan describes a requirement for input “of the physical and operation characteristic of the airport,” including runway coordinates, airport altitude, temperature, aircraft mix, flight tracks, and approach profiles, as well as optional departure profiles, approach parameters, and aircraft noise curves. This evidence shows the Contours constitute statements, so they cannot be admitted solely under the exception to the hearsay rule for computer-generated reports.

HOA also claims that the Contours are admissible under the business records and public records and reports exceptions to the hearsay rule under C.R.E. 803(6) and (8). Having found that the Contours are not hearsay, the Court need not address these claims.

County also argues that the Contours are inadmissible under rules governing expert testimony. However, the case authority cited by County concerns the admissibility of expert opinions under the business records exception to the hearsay rule. Since the Court found the Contours are not hearsay, this authority does not apply to the Court's evaluation in this case.

The next issue is whether the evidence demonstrates that a limitation event under Limitation D concerning the Contours has occurred. County argues that there is no evidence the Contours have been exceeded by the sustained operation of aircraft because the Contours only provide an estimation of noise levels at a particular point in time in the distant past, and there is no evidence that these noise levels were sustained over time.

As stated above, the 1988 Master Plan contains Contours labeled "Ldn 60," "Ldn 65," and "Ldn 70." The 2000 Master Plan contains Contours labeled "DNL 60," "DNL 65," "DNL 70," and "DNL 75." The only Contour found in the 2011 Master Plan is "DNL 65."

DNL and Ldn are different terms for the same sound measurement and refer to day-night sound level, so the Court will use them interchangeably. The basic unit used to calculate DNL is the Sound Exposure Level ("SEL"), which is computed by adding the decibel level for each one-

second reading of a noise event above a certain threshold. DNL is then computed by adding, weighting, and averaging the SELs over a one-year time period.

The 1988 Master Plan established its Contours using the Integrated Noise Model (“INM”) Version 3.8, which is a large computer program developed by the FAA to plot noise contours for airports. The Contours in the 2000 Master Plan were developed using INM Version 6. The INM calculation method was used by the airline industry at the time the Master Plans were developed. There was no evidence presented that any serious flaw in the INM calculations exists. Though it is not clear how the Contour for the 2011 Master Plan was developed, the 2011 Master Plan was accepted in its entirety by the FAA, which suggests an approved method for developing the Contour was used.

The 1988 Master Plan states:

the area between the 60 Ldn and 65 Ldn contour is an area within which most land uses are compatible but signifies that noise levels are such that some land use incompatibility may exist in the future and that the situation should be monitored. The Ldn 65 contour identifies areas of significant noise exposure where many types of land uses are normally unacceptable and where land use compatibility controls are recommended.

Appendix 12 to the 1988 Master Plan states that “the Ldn 60 contour is usually regarded as the critical contour at general aviation airports.” The Court heard other testimony that the Ldn 65 contour is the critical contour.

The 1988 Master Plan provides that the Contours represent the most severe conditions for both present and future development of the Airport. Mr. Bishop testified that the Contours were designed to represent noise levels that would never be exceeded. The existing 60 Ldn Contour and the proposed future 60 Ldn Contour provided in the 1988 Master Plan both extend beyond Airport property to the northwest but do not demonstrate an impact on Rock Creek property. The existing 65 Ldn Contour provided in the 1988 Master Plan appeared to be largely within Airport property.

The existing 60 DNL Contour provided in the 2000 Master Plan extends well beyond the existing and proposed future 60 Ldn Contour provided in the 1988 Master Plan, as well as beyond the entirety of the Rock Creek property. The existing 60 DNL Contour in the 2000 Master Plan covers approximately 39 acres of residential property, all of which appear to lie within Rock Creek.

“Sustained operation of aircraft” is not defined in Limitation D or anywhere else in the Easements. The evidence establishes that the Contours are computed using sound events accumulated over the course of a year. Although the terminology used to describe the limitation event in Limitation D is quite vague, the most reasonable interpretation of “sustained operation,” when used in a sentence that addresses the exceeding of Contours, is noise that produces Contours that exceed those provided in the 1988 Master Plan in a way that impacts Rock Creek.

Limitation D refers generally to “noise contours” rather than to any specific Contour. It appears that at the time the 2000 Master Plan was prepared, Rock Creek was not impacted by noise represented by the Contour levels, other than that represented by the 60 DNL Contour. The limitation event under Limitation D requires that there be “sustained operation of aircraft in the

Airspace Easement,” which implies that any such sustained operation must impact use of the property below the Easement airspace.

The 1988 Master Plan recognizes the 60 Ldn Contour as the critical contour. Thus, the fact that the 60 Ldn Contour provided in the 2000 Master Plan exceeds the proposed future 60 Ldn Contour provided in the 1988 Master Plan is sufficient to trigger the limiting event under Limitation D because Rock Creek property falls within the 60 Ldn Contour provided in the 2000 Master Plan, but not within the 60 Ldn Contour provided in the 1988 Master Plan.

The Court recognizes that there may appear to be some inconsistency in finding that the limitation event in Limitation D was triggered by the sustained operation of aircraft when the number of total aircraft operations at the Airport is substantially less than forecasted in the 1988 Master Plan. However, the Court is bound by the language of the Easements, which renders the triggering of Limitation D independent of the number of Airport operations, except to the extent that these operations impact the Contours.

The trial brief filed by County argues that HOA’s interpretation of the Easements is contrary to public policy and that HOA’s claims are barred by its unreasonable delay in enforcing its rights. The County’s argument about public policy relies on grant assurances which it was required to give the FAA to obtain funding. These grant assurances require the County to make the Airport available for public use without discrimination against any type of airport use. The Court finds this argument does not apply to the noise issue of Limitation D, so it need not be addressed. The Rock Creek Final Development Plan contains language which states: “The continued success and

viability of the Jefferson County Airport will provide a positive effect on the development of Rock Creek Ranch into the future.” However, the Court has taken this public policy concern into account by only considering limitation events that substantially impact Rock Creek. As to latches, the only Rock Creek property owner who testified at trial did not own property for an extended period of time and was unaware of the existence of the Easements. There is no evidence as to what knowledge other Rock Creek property owners may have had that would have enabled them to previously terminate the Easements, and no evidence was presented that the Airport relied on the Rock Creek owners’ inaction to its detriment. Therefore, latches does not apply.

County also argues that there was no evidence presented as to which, if any, of the approximately 20 Easements are affected by the sustained operation of aircraft at the Airport. The limitation event under Limitation D, as interpreted by the Court, only applies to property within the 60 DNL Contour of the 2000 Master Plan. Given that this 60 DNL Contour extends entirely beyond Rock Creek, although not as wide as Rock Creek, it appears likely that all Easements are impacted. However, the evidence presented is insufficient for the Court to make that finding. Under the circumstances, the Court will exercise its discretion to reopen the evidence for the limited purpose of determining which Easements are within the 60 DNL Contour provided in the 2000 Master Plan if the parties are unable to reach an agreement on this issue.

E. Limitation E

The final limiting event in the Easements, Limitation E, refers to noise and other effects of aircraft operation on the property covered by the Easements exceeding 60 Ldn. Because Ldn is a noise calculation, the Court finds that effects other than noise do not apply to Limitation E. To the extent

that Limitation E requires a noise measurement, there has been no evidence presented of any such measurement, thus the Court finds a limitation event under Limitation E has not occurred. Finally, to the extent the noise level can be determined by Contours, limitation events triggered by noise levels have already been addressed in the preceding section of this Order, and the Court finds no further analysis is needed.

CONCLUSION

WHEREFORE, the Court finds that the Contours of the 1988 Master Plan have been exceeded by the sustained operation of aircraft as shown by the Contours provided in the 2000 Master Plan, thus triggering a limiting event for at least some of the Easements. The Court orders the parties to contact the Court with available dates for a status conference within 14 days to address whether the parties are able to agree as to which Easements are within the 60 DNL Contour provided in the 2000 Master Plan and are therefore terminated, or if a hearing will be necessary to consider additional evidence on this issue. HOA's remaining claims are denied, and judgment is entered in favor of County and against HOA on those claims.

DATE: December 23, 2021

BY THE COURT:



Stephen Enderlin Howard
Senior District Court Judge

EXHIBIT I

**Supplemental Order and
Final Judgment
dated March 24, 2022**

DISTRICT COURT, BOULDER COUNTY, STATE OF COLORADO 1777 6 th Street Boulder, CO 80302	DATE FILED: March 24, 2022 2:03 PM CASE NUMBER: 2020CV30837
Plaintiff: ROCK CREEK MASTER HOMEOWNERS ASSOCIATION, INC. v. Defendants: JEFFERSON COUNTY, COLORADO, as successor in interest to the Jefferson County Airport Authority	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case No: 2020CV30837 Division: COC
SUPPLEMENTAL ORDER AND FINAL JUDGMENT	

Following the trial on October 25-26, 2021, the court issued its Bench Trial Order on December 23, 2021, stating its Findings of Fact and Conclusions of Law and requesting additional information from the parties necessary to implement the court’s rulings prior to entering judgment.

Subsequently, the Plaintiff has filed an Unopposed Motion to Amend the Complaint and Supplementation of the Record, adding six (6) additional avigation easements with identical limitation events which are the subject of this matter. This amendment and supplementation have been accepted by the court.

Also in response to the court’s request, the parties have filed a Stipulation identifying the avigation easements which were impacted by the 60 Ldn (DNL) contour line found in the 2000 Jefferson County Airport Master Plan.

It is hereby ordered that the December 23, 2021 Bench Trial Order is supplemented as follows:

Pages 1-2 exhibits: Plaintiff’s exhibit 56 is received into evidence in addition to the exhibits previously listed.

Page 4: The following additional easements were filed with the Boulder County Clerk and Recorder – Reception number 1081940, 1081941, 1220832, 1585331, 1567719. In addition, an avigation easement was only filed with the Jefferson County Clerk and Recorder – Reception number 92051546.

The court finds that some portion of the following avigation easements lies within the 60 Ldn (DNL) contour line contained in the 2000 Jefferson County Airport Master Plan.

Associated Filing Number	Boulder Reception Number	Jeffco Reception Number
3	N/A	92051546
10	N/A	92051546
13	01227934	N/A
15	01323785	93113570
17A	01531880	F0066440
18	01531881	N/A
19	01556192 & 01551661	N/A
20	01556193 & 01551662	N/A
21	01567720	N/A

JUDGMENT

Pursuant to C.R.C.P. 105(a), 54 and 58, this court enters an Order finding that the following avigation easements granted in favor of the Jefferson County Airport Authority, now owned by Defendant Jefferson County, Colorado, have terminated pursuant to their terms and enters Judgment vacating the following avigation easements and orders them removed from the title record of the subject properties within each of the following avigation easements to quiet title in the property owners:

Avigation Easement Agreement for Rock Creek Ranch Filing No.'s 3 and 10 dated May 1, 1992, recorded with the Jefferson County Clerk and Recorder on May 4, 1992, reception number 92051546.

Avigation Easement Agreement for Rock Creek Ranch Filing No. 13 dated October 6, 1992, recorded with the Boulder County Clerk and Recorder on October 9, 1992, reception number 01227934.

Avigation Easement Agreement for Rock Creek Ranch Filing No. 15, dated July 29, 1993, recorded with the Boulder County Clerk and Recorder on August 10, 1993, reception number 01323785, and also recorded with the Jefferson County Clerk and Recorder on July 30, 1993, reception number 93113570.

Avigation Easement Agreement for Rock Creek Ranch Filing No. 17A, dated June 6, 1995, recorded with the Boulder County Clerk and Recorder on July 19, 1995, reception number 01531880, and also recorded with the Jefferson County Clerk and Recorder on June 7, 1995, reception number F0066440.

Avigation Easement Agreement for Rock Creek Ranch Filing No. 18, dated June 6, 1995, recorded with the Boulder County Clerk and Recorder on July 19, 1995, reception number 01531881.

Avigation Easement Agreement for Rock Creek Ranch Filing No. 19, dated September 27, 1995, recorded with the Boulder County Clerk and Recorder on October 19, 1995, reception number 01556192, and also recorded with the Boulder County Clerk and Recorder on October 10, 1995, reception number 01551661.

Avigation Easement Agreement for Rock Creek Ranch Filing No. 20, dated September 27, 1995, recorded with the Boulder County Clerk and Recorder on October 19, 1995, reception number 01556193, and also recorded with the Boulder County Clerk and Recorder on October 2, 1995, reception number 01551662.

Avigation Easement Agreement for Rock Creek Ranch Filing No. 21, dated December 6, 1995, recorded with the Boulder County Clerk and Recorder on December 7, 1995, reception number 010567720.

The court denies the Plaintiff's request to terminate and vacate the remaining avigation easements which were received into evidence.

Pursuant to C.R.C.P 54(c), this court finds that neither party substantially prevailed in this matter and the court awards no costs.

DATED this 24th day of March, 2022

BY THE COURT:



Stephen Enderlin Howard
District Court Judge

EXHIBIT J

Court of Appeals Opinion

22CA0602 Rock Creek v Jefferson 06-15-2023

COLORADO COURT OF APPEALS

Court of Appeals No. 22CA0602
Boulder County District Court No. 20CV30837
Honorable Stephen E. Howard, Judge

Rock Creek Master Homeowners Association, Inc.,

Plaintiff-Appellant and Cross-Appellee,

v.

Jefferson County, Colorado, as successor in interest to the Jefferson County
Airport Authority,

Defendant-Appellee and Cross-Appellant.

JUDGMENT AFFIRMED

Division V
Opinion by JUDGE YUN
Navarro and Brown, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)

Announced June 15, 2023

Jachimiak Peterson Kummer, LLC, Mark R. Davis, Lakewood, Colorado, for
Plaintiff-Appellant and Cross-Appellee

Kimberly Sorrells, County Attorney, Eric T. Butler, Deputy County Attorney,
Jason Soronson, Assistant County Attorney, Golden, Colorado, for
Defendant-Appellee and Cross-Appellant

¶ 1 The plaintiff, Rock Creek Master Homeowners Association, Inc. (Rock Creek), appeals the district court’s judgment terminating nine of twenty-nine avigation easements¹ in favor of the defendant, Jefferson County, Colorado (the County), the successor-in-interest to the Jefferson County Airport Authority, following a bench trial. The County cross-appeals the admissibility of certain evidence. We affirm the judgment of the district court.

I. Background

¶ 2 The Jefferson County Airport — now the Rocky Mountain Municipal Airport — opened in 1960 in Superior, Colorado. In 1998, ownership of the airport transferred from the Jefferson County Airport Authority to the County.

¶ 3 Rock Creek is the homeowner’s association for a neighborhood that lies just northwest of the airport and today includes about 2,800 homes. In the late 1980s, the neighborhood was rezoned from agricultural to mixed residential, commercial, and residential use and annexed into the Town of Superior. To address the

¹ An avigation or flight easement “permits free flights over the land in question.” *United States v. Brondum*, 272 F.2d 642, 645 (5th Cir. 1959).

airport's concerns that property owners in the neighborhood might complain about noise and vibration levels, the developer agreed, among other things, "to grant an Avigation Easement over the entire Rock Creek Ranch boundary."

¶ 4 Accordingly, between 1991 and 1996, the developer and other property owners granted twenty-nine avigation easements to the Jefferson County Airport Authority. Each easement covers a discrete piece of land, but the parties agree that the terms of the easements are otherwise identical. The easements give the airport the nonexclusive right to use the airspace above Rock Creek for the passage of aircraft, as well as the right to make "such noise, vibration and all other effects that may be caused by the operation of aircraft" at the airport. Each easement states that it "shall remain in effect" until and unless any of five "limitation" events occurs. The pertinent limitations are:

[Limitation B] The type and size of aircraft using the Airport as permitted under the Master Plan shall be changed or become inconsistent with such Master Plan, if there is an increase in passenger usage over that disclosed in the Master Plan, or the Airport is used for freight delivery.

. . . .

[Limitation D] The noise contours contained in the Master Plan are exceeded by the sustained operation of aircraft in the Airspace Easement.

[Limitation E] The noise, vibration and all other effects of aircraft operation on the Property exceeds 60 ldn.^[2]

¶ 5 The easements identify the “Master Plan” as “a master plan for the Airport dated January 1988, such plan having been prepared by Barnard Dunkelberg & Company URS Engineers.” The Federal Aviation Administration (FAA) requires airports to create master plans to receive funding, and these documents “serve[] a variety of purposes, including making recommendations for the development of the airport and surrounding property.”

¶ 6 In October 2020, Rock Creek — on behalf of property owners in the neighborhood — sued Jefferson County as the successor-in-interest to the Jefferson County Airport Authority. Rock Creek argued that “[o]ne or more of the limitation events set forth in the aviation easements have occurred, and as a result

² “Ldn” and “DNL” are abbreviations for the day-night sound level, a measure of the average sound level, in decibels, over a one-year time period.

the . . . avigation easements have all terminated pursuant to their terms.”

¶ 7 The district court held a two-day bench trial in October 2021. Over the County’s hearsay and CRE 705 objections, the court admitted the airport’s 1988, 2000, and 2011 Master Plans. Each Master Plan includes diagrams of “noise contours” around the airport, which were developed with modeling software to connect all the points on a map with a similar noise level. According to the 1988 Master Plan, noise contours “appear similar to topographical contours and form concentric ‘footprints’ about [sic] a noise source.”

¶ 8 The 1988 Master Plan includes 60, 65, and 70 Ldn noise contours based on the airport’s physical characteristics — like the runway coordinates, airport altitude, and temperature — and its operational characteristics, like departure profiles, approach parameters, and aircraft noise curves. The 1988 Master Plan states,

The area between the 60 Ldn and 65 Ldn contour is an area within which most land uses are compatible but signifies that noise levels are such that some land use incompatibility may exist in the future and

that the situation should be monitored. The Ldn 65 contour identifies areas of significant noise exposure where many types of land uses are normally unacceptable and where land use compatibility controls are recommended.

¶ 9 The 2000 Master Plan, in turn, includes 60, 65, 70, and 75 Ldn contours created using data from 1998 and a newer version of the software used in 1988. (The 2011 Master Plan, which was prepared by different consultants, includes a 65 Ldn noise contour based on 2009 data, but it is not clear what software the consultants used.)

¶ 10 The assistant director of the airport, Brian Bishop, testified as the County's representative. Mr. Bishop said that the airport made the Master Plans available to the public for "planning purposes." Mr. Bishop also agreed with Rock Creek's counsel that, based on the 1988 Master Plan, "the Ldn 60 contour is usually regarded as a critical contour at general aviation airports" and that "anybody developing in the area [should] use the 60 Ldn contour [for] the development of residential property." He added that the contours were based on the "worst-case scenario" and the "most severe" conditions — i.e., the noisiest that the airport thought it would get. And Bishop said that the noise contours in the 2000 Master Plan

exceeded those in the 1988 Master Plan, which the County did not dispute.

¶ 11 Two months later, the court ruled that Limitation D had occurred but that it had insufficient evidence to determine which of the easements had been affected. None of the other limitations, according to the court, had occurred. So the court reopened the evidence, and the parties stipulated that, under the court's interpretation of Limitation D, nine of the twenty-nine easements had terminated. The court then issued a supplemental order vacating those nine easements.

¶ 12 Rock Creek now appeals, and the County cross-appeals.

II. Analysis

¶ 13 Rock Creek challenges the district court's interpretation of the terms of the avigation easements, arguing that the court should have terminated all of them. The County, in turn, argues that the court correctly interpreted the easements but reversibly erred by relying on inadmissible evidence — the Master Plans' noise contours — to find that Limitation D had occurred. We begin by addressing the County's arguments about the admissibility of the

noise contours. We then address Rock Creek's arguments about the meaning of the easements.

A. Evidentiary Issues

¶ 14 The County contends that the district court erred by overruling its objections to the admission of the noise contours in the 1988, 2000, and 2011 Master Plans. After describing in more detail the admission of the Master Plans and defining the applicable standard of review, we address each of the County's evidentiary objections.

1. Additional Background

¶ 15 The County objected to the admission of the Master Plans for the purpose of determining noise levels on the grounds that they (1) constituted inadmissibility hearsay and (2) contained improper expert testimony under CRE 702, 703, and 705.

¶ 16 The court began by acknowledging that the airport hired third-party consultants to prepare the 1988, 2000, and 2011 Master Plans: Barnard Dunkelberg & Company for the 1988 and 2000 Master Plans; and Reynolds, Smith and Hills, Inc., for the 2011 Master Plan. But it noted that the consultants prepared the

Master Plans “in their entirety”; their work was not limited to the noise contours.

¶ 17 The court also found that (1) the FAA requires airports to prepare and update a Master Plan to secure funding, and it provides guidance for doing so; (2) the 1988 Master Plan states that it “is intended to present a clear, simple and concise statement of policy and recommendations regarding the development of land within the airport[']s environs to developers, builders, homeowners and buyers, and representatives of the various entities having land use control within the airport environs”; (3) the 1988, 2000, and 2011 Master Plans are available on the County’s website; (4) the 2000 and 2011 Master Plans were adopted and approved by the Jefferson County Board of Commissioners³; and (5) by signing the easements, the Jefferson County Airport Authority (the County’s predecessor-in-interest) had agreed that the noise contours in the 1988 Master Plan governed the easements.

³ The district court noted that, because the 1988 Master Plan was on the County’s website, it “may also have been approved by the County Commissioners,” though the court found “no direct evidence to that effect.”

¶ 18 Based on these findings, the court concluded that the 1988, 2000, and 2011 Master Plans — including the noise contours — “were adopted, approved, and published by the Airport with the expectation that others would rely on them.” The court thus concluded that they were admissions of a party opponent and not hearsay under CRE 801(d)(2). Accordingly, the court did not address Rock Creek’s alternative arguments for admitting the Master Plans, including that they were business records admissible under CRE 803(6).

¶ 19 Turning to the County’s improper-expert-testimony argument, the court observed that the County had cited only authority concerning the business records hearsay exception, CRE 803(6). And because the court had concluded that the Master Plans were not hearsay under CRE 801(d)(2), it rejected that argument.

2. Standard of Review

¶ 20 We review the district court’s evidentiary rulings for an abuse of discretion. *People v. Hamilton*, 2019 COA 101, ¶ 12. In determining whether the court abused its discretion, we consider not only whether the court’s ruling was manifestly arbitrary, unreasonable, or unfair, but also whether its ruling was contrary to

the law. *People v. Dominguez*, 2019 COA 78, ¶ 13. Thus, we review the court’s decision on whether a statement constitutes hearsay — a legal conclusion — de novo. *Dominguez*, ¶ 13; *Hamilton*, ¶ 12.

¶ 21 We may uphold the court’s decision to admit evidence on any ground supported by the record, even if the court did not consider that ground. *People v. Phillips*, 2012 COA 176, ¶ 63.

3. Hearsay

¶ 22 The County contends that the district court erred by overruling its hearsay objections to the noise contours in the Master Plans. We disagree.

a. Governing Law

¶ 23 Hearsay is a statement other than one made by the declarant while testifying that is offered to prove the truth of the matter asserted, and it is generally inadmissible. *People v. Quillen*, 2023 COA 22M, ¶ 15 (citing CRE 801(c), 802).

¶ 24 A statement is not hearsay, however, if it is offered against a party and is “a statement of which the party has manifested an adoption or belief in its truth.” CRE 801(d)(2)(B); *see also People v. Quinn*, 794 P.2d 1066, 1069 (Colo. App. 1990) (a letter from an inmate to the defendant was the defendant’s adopted admission

because the defendant “told the investigators that they could rely” on the letter and “thereby acknowledged the truth of the inmate’s statements”); *cf., e.g., Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.*, 262 F. Supp. 2d 251, 259 (S.D.N.Y. 2003) (“An entity’s printing, publishing and dissemination of a document or a report that contains statements that pertain in some way to the organization or company can constitute an adoptive admission” under Fed. R. Evid. 802(d)(2)(B).).

b. Discussion

¶ 25 The County contends that, because third-party consultants created the noise contours, those contours “are inadmissible as hearsay to the extent Rock Creek offered them to demonstrate actual noise levels at the Airport.”⁴ We agree with the district court,

⁴ The County does not contest that the Master Plans “may be generally regarded as business records admissible under the exception found in CRE 803(6).” But it asserts that, because third-party consultants prepared the noise contours, those contours are inadmissible “hearsay within hearsay.” We decline to address these issues because (1) the district court did not rule on whether the Master Plans were admissible as business records or whether the noise contours constituted another layer of hearsay and (2) despite Rock Creek’s assertion on appeal that a proper foundation was laid to admit the Master Plans under CRE 803(6), it did not provide any record citations supporting its assertion. *See* C.A.R. 28(e); *O’Quinn v. Baca*, 250 P.3d 629, 632 (Colo. App. 2010).

however, that the noise contours were admissible as the adopted admissions of the County under CRE 801(d)(2)(B).

¶ 26 Though third-party consultants prepared the three Master Plans, including the noise contours, they did so pursuant to contractual agreements with the County and guidelines from the FAA. And as the district court found, the County posted all three Master Plans, including the noise contours, on its website. According to the testimony at trial, the County posted the Master Plans, including the noise contours, so that the public could rely on them for “planning purposes.” The court also found that the Jefferson County Board of County Commissioners had adopted and approved the 2000 and 2011 Master Plans. Given this evidence, the court correctly determined that the County “manifested an adoption or belief in [the] truth” of the noise contours in the Master Plans. CRE 802(d)(2)(B); *see also Quinn*, 794 P.2d at 1069; *Penguin Books U.S.A., Inc.*, 262 F. Supp. 2d at 259.

¶ 27 We acknowledge that the County did not own the airport when the 1988 Master Plan was issued (rather, the Jefferson County Airport Authority did). But as the district court noted, the fact that the County put the 1988 Master Plan on its website suggests that

the Board of County Commissioners likely approved it. More importantly, however, the easements expressly state that they are governed by the noise contours in the 1988 Master Plan, and when the County bought the airport, it succeeded to the Jefferson County Airport Authority's interests in the easements. Thus, the noise contours in the 1988 Master Plan were not hearsay because they were not admitted for their truth — i.e., to show the actual noise levels at the airport — but, instead, as evidence of the terms of the parties' agreement. *Cf. Gordon Neon Co. v. L.N. Crim*, 528 P.2d 950, 951 (Colo. App. 1974) (not published pursuant to C.A.R. 35(f)) (concluding that a contract on which the parties' settlement was based was not hearsay); *see also Deep Keel, LLC v. Atlantic Priv. Equity Grp., LLC*, 773 S.E.2d 607, 613 (S.C. Ct. App. 2015) ("Written contracts 'offered in court not for the truth of any facts stated in [them] but to prove the existence of a contractual right or duty' should not be excluded as hearsay.") (alteration in original) (citation omitted).

¶ 28 Accordingly, the court did not err by overruling the County's hearsay objections to the admissibility of the 1988, 2000, and 2011 Master Plans.

4. Expert Testimony

¶ 29 Next, the County asserts that the noise contours constitute inadmissible expert testimony. We decline to address this issue.

a. Additional Background

¶ 30 When the County moved to exclude the noise contours as inadmissible expert testimony, it did so based on authorities holding that the business records hearsay exception does not exempt third-party statements from the rules governing opinion testimony. *See People v. N.T.B.*, 2019 COA 150, ¶ 26 (“Courts do not grant the . . . presumption of reliability to [third-party] statements [in business records] because the third party does not have a duty to the business to report the information accurately.”); *see also United States v. Gwathney*, 465 F.3d 1133, 1141 (10th Cir. 2006) (“Any information provided by another person, if an outsider to the business preparing the record, must itself fall within a hearsay exception to be admissible.”); *Van Der AA Invs., Inc. v. Comm’r of Internal Revenue*, 125 T.C. 1, 6 (2005) (“Like the Court of Claims in *Forward Communications Corp. v. United States*, 221 Ct.Cl. 582, 608 F.2d 485, 510 (1979), we do not view the business record rule found in Fed. R. Evid. 803(6) as overriding the

rules governing opinion testimony.”); *Annett v. Univ. of Kansas*, 93 F. Supp. 2d 1135, 1139 (D. Kan. 2000) (“The memoranda are business records, but the declarations . . . they contain are hearsay within hearsay.”).

¶ 31 And because the district court determined that the noise contours in the Master Plans were not hearsay — they were admissions of a party opponent — it concluded that the County’s authorities did not apply to its analysis.

b. Discussion

¶ 32 In its reply brief on appeal, the County argues, for the first time, that a “party admission does not overcome the requirements of expert testimony.” Citing, among other authorities, *Grace United Methodist Church v. City Of Cheyenne*, 451 F.3d 643, 667-69 (10th Cir. 2006), and *Aliotta v. National Railroad Passenger Corp.*, 315 F.3d 756, 763 (7th Cir. 2003), the County’s reply brief asserts that “[t]he requirements of Rules 702 and 705 should not be bypassed where a party seeks to use an alleged party admission against a government entity and where a third-party business created the alleged admission.”

¶ 33 Because our review of the record indicates that the County did not present this argument to the district court or raise it in its opening brief, we decline to address it. *Gold Hill Dev. Co., L.P. v. TSG Ski & Golf, LLC*, 2015 COA 177, ¶ 18; see also *Am. Fam. Mut. Ins. Co. v. Allen*, 102 P.3d 333, 340 n.10 (Colo. 2004) (“Arguments not raised before the trial court may not be raised for the first time on appeal.”); *Peña v. Am. Fam. Mut. Ins. Co.*, 2018 COA 56, ¶ 21 n.4 (“We do not . . . consider arguments raised for the first time in a reply brief.”).

B. Terms of the Easements

¶ 34 Rock Creek argues that the district court erred in its interpretation of Limitation D, Limitation E, and Limitation B. After describing the standard of review and the law governing the interpretation of easements, we address each limitation in turn.

1. Standard of Review and Governing Law

¶ 35 The interpretation of the avigation easements presents a question of law that we review de novo. See *Moeller v. Ferrari Energy, LLC*, 2020 COA 113, ¶ 13.

¶ 36 “The extent of an expressly created easement (i.e., the limits of the privileges of use authorized by the easement) is determined by

interpreting the conveyance instrument.” *Lazy Dog Ranch v. Telluray Ranch Corp.*, 965 P.2d 1229, 1235 (Colo. 1998). Our aim in interpreting the instrument is to ascertain the intentions of the parties. *Id.* To do so, we look at the language of the instrument in light of the surrounding circumstances. *Id.* at 1235-36; *see also Hess v. Hobart*, 2020 COA 139M2, ¶ 13. If the instrument is unambiguous, then we will presume that it expresses the intent of the parties and enforce its plain meaning as written. *Hess*, ¶ 13; *see also Moeller*, ¶ 14.

¶ 37 In determining whether the instrument is ambiguous, we may look to extrinsic evidence and the circumstances surrounding its creation. *Lazy Dog Ranch*, 965 P.2d at 1236-37 (citing *O’Brien v. Vill. Land Co.*, 794 P.2d 246, 249 n.2 (Colo. 1990); and Restatement (Third) of Prop.: Servitudes § 4.1 cmt. c (Am. L. Inst., Tentative Draft No. 4, 1994)). But after determining the meaning of the language, we must “give effect to it, regardless of any contrary view reflected by extrinsic evidence.” *Id.* at 1237. Thus, though extrinsic evidence may be useful to “explain and give context to the language” of an instrument, it may *not* be used to “contradict” the instrument’s plain language. *Id.*

¶ 38 Extrinsic evidence that may be relevant in interpreting the language of an instrument conveying a servitude includes

the location and character of the properties burdened and benefited by the servitude, the use made of the properties before and after creation of the servitude, the character of the surrounding area, the existence and contours of any general plan of development for the area, and consideration paid for the servitude.

Id. (quoting Restatement (Third) of Prop.: Servitudes § 4.1 cmt. c).

2. Limitation D

¶ 39 Rock Creek contends that the district court misinterpreted the term “sustained operations” in Limitation D. We disagree.

a. Additional Background

¶ 40 Limitation D occurs if “[t]he noise contours contained in the Master Plan are exceeded by the sustained operation of aircraft in the Airspace Easement.”

¶ 41 The district court concluded that “the most reasonable interpretation of ‘sustained operation,’ when used in a sentence that addresses the exceeding of Contours, is noise that produces Contours that exceed those provided in the 1988 Master Plan in a way that impacts Rock Creek.” The court tied the impact on Rock Creek to the 60 Ldn contour line, noting that the 1988 Master Plan,

as well as the testimony at trial, identified the 60 Ldn contour as “the critical contour at general aviation airports.”

¶ 42 According to the court, neither the existing 60 Ldn contour nor the proposed future 60 Ldn contour in the 1988 Master Plan impact Rock Creek. The 60 Ldn contour in the 2000 Master Plan, however, “covers approximately 39 acres of residential property, all of which appear to lie within Rock Creek.” The court concluded that the fact “Rock Creek property falls within the 60 Ldn Contour provided in the 2000 Master Plan, but not within the 60 Ldn Contour provided in the 1988 Master Plan,” means that the noise contours in the 2000 Master Plan exceeded those in the 1988 Master Plan such that Limitation D had been triggered.

¶ 43 After the parties stipulated that the 60 Ldn contour line in the 2000 Master Plan covered parts of nine of the twenty-nine easements, the court therefore terminated those easements.

b. Discussion

¶ 44 Rock Creek argues that the court “unilaterally invent[ed] the requirement that, for a limitation event to take place, the easement area must be ‘impacted,’” a term that does not appear in the easements. Rock Creek asserts the fact that the noise contours in

the 2000 Master Plan exceeded those in the 1988 Master Plan established that a limitation event occurred in *all* the easements. But this argument ignores the plain language of Limitation D, under which a limitation event occurs if the noise contours in the 1988 Master Plan are “exceeded by the sustained operation of aircraft *in the Airspace Easement.*” (Emphasis added.) Each easement describes different property, so the court was correct to consider them separately. Further, as we interpret the easements, Limitation D describes an event that occurs if the noise contours *in the airspace easement* exceed those in the 1988 Master Plan.⁵ Thus, the court was correct to conclude that Limitation D had occurred for those easements located within the 60 Ldn noise

⁵ We acknowledge that, arguably, the phrase “the sustained operation of aircraft in the Airspace Easement” refers to the operation of aircraft in a particular easement. Under that interpretation, an easement terminates if, due to “the sustained operation of aircraft” in that particular easement, the noise contours exceed the level forecast in the 1988 Master Plan. But neither side has argued that the parties intended this meaning, nor has either side presented evidence that any “sustained operation of aircraft” has occurred in any given easement and that such operation caused noise exceeding the noise counters in the 1988 Master Plan. Further, when read in context with its reference to noise contours, the better interpretation of Limitation D is that an easement terminates if the noise contours in that easement exceed those in the 1988 Master Plan.

contour in the 2000 Master Plan but not for those easements that remain outside that noise contour.

¶ 45 Even so, Rock Creek contends that, as a matter of logic, “contour lines would stretch out to the 50, 40, and 30 Ldn contours whether they are depicted on a noise contour map or not,” and when the 60, 65, and 70 Ldn noise contours expanded outward, these lower-level contours necessarily did, too. As a result, the argument goes, the court’s finding that only the 60 Ldn contour shows “impact” on Rock Creek lacks record support. But Rock Creek’s public policy arguments about the “significant and impactful” noise pollution from airports fail to acknowledge that it is the language of the easements that controls their meaning. Limitation D speaks specifically of the noise contours in the 1988 Master Plan, the lowest of which is the 60 Ldn contour, which is accepted as the “critical contour” for airports. And even if we were to accept that lower-level noise contours exist, nothing in the record shows where they were situated in 1988 or where they might lie now. Because the record does not show where these lower-level noise contours are, we cannot discern, for any given easement lying outside the 60 Ldn contour, whether the noise contour in that

easement has been exceeded. By contrast, because the 1988 and 2000 Master Plans show where the 60 Ldn noise contour is, we can determine which easements were outside that contour (and necessarily within a lower-level contour) in 1988 but now lie within that contour. For those easements, the noise contours set in 1988 have been exceeded. Thus, the court did not err by not considering evidence of the negative impacts of noise levels below 60 Ldn.

¶ 46 Finally, Rock Creek argues that the court’s interpretation of Limitation D conflates it with Limitation E, which occurs if “[t]he noise, vibration and all other effects of aircraft operation on the Property exceeds 60 ldn.” But the court did not do so. Instead, Rock Creek tried to use the same evidence — noise contours — to establish limitation events under both Limitation D and Limitation E. Because Rock Creek did not offer evidence of noise other than the contours, the court observed, in analyzing Limitation E, that it had already addressed noise contours and concluded that “no further analysis [wa]s needed.” The court did not err by doing so.

¶ 47 In sum, we conclude that the court did not err by concluding that Limitation D was triggered only for those nine easements that,

according to the parties' stipulation, lay within the 60 Ldn noise contour in the 2000 Master Plan.

3. Limitation B

¶ 48 Rock Creek also contends that the district court misinterpreted Limitation B. We again disagree.

a. Additional Background

¶ 49 Limitation B occurs if

The type and size of aircraft using the Airport as permitted under the Master Plan shall be changed or become inconsistent with such Master Plan, if there is an increase in passenger usage over that disclosed in the Master Plan, or the Airport is used for freight delivery.

¶ 50 The district court rejected Rock Creek's proposed interpretation of Limitation B: that it contains three separate limitation events, including any change in the type or size of aircraft using the airport. The court concluded that "the intent of Limitation B [wa]s to address changes in Airport usage likely to increase the impact of Airport activities on Rock Creek, which would be likely in the event of an increase in passenger usage of the Airport over that disclosed in the 1988 Master Plan or use of the Airport for freight delivery." The court therefore concluded that

Limitation B is triggered only if the type and size of aircraft using the Airport changes or becomes inconsistent with the 1988 Master Plan “either *as a result of* an increase in passenger usage over that disclosed in the 1988 Master Plan *or as a result of* the airport being used for freight delivery.” (Emphases added.)

¶ 51 Applying this interpretation to the evidence of freight delivery presented at trial, the court found that (1) aircraft operations at the time of the execution of the easements “would undoubtedly have involved some freight,” like cargo on business jets; (2) the 2011 Master Plan states that the airport had such minimal air cargo operations that the airport had no buildings dedicated to cargo; and (3) Rock Creek had presented no evidence of any change in freight operations since the preparation of the 2011 Master Plan. Accordingly, the court concluded that the airport had “not been used for freight delivery as that term is used in Limitation B.”

¶ 52 As to “passenger usage,” the court noted that “the total number of annual operations was substantially less than the number of operations forecast by the 1988 Master Plan” — a peak of 191,533 operations in 2019 compared to a forecast of 286,000. But the court found that “passenger usage” of the airport had

increased over that disclosed in the 1988 Master Plan. For example, (1) “commuter operations grew considerably starting in 1990”; (2) “air taxi operations” began to increase after 2000; and (3) in 2006, a nineteen-passenger plane began daily commercial flights to Grand Junction, Colorado.

¶ 53 The court then noted that, based on its interpretation of Limitation B, the increase in passenger usage triggered a limitation event only “if the type and size of aircraft using the Airport changed or became inconsistent with the 1988 Master Plan.” The court concluded that Limitation B’s reference to “[t]he type and size of aircraft using the Airport” means “the physical characteristics of aircraft, not the purpose for which the aircraft are used, since it is the physical characteristics of the aircraft that are relevant to possible increases in impact on Rock Creek property owners.” But according to the court, “nothing in the 1988 Master Plan . . . could reasonably be read to restrict the operation of other types of aircraft at the Airport.” And though the court found “some increase in larger planes’ use of the Airport, which would be consistent with the forecast presented in the 1988 Master Plan,” it concluded that “the general character” of the airport’s use had not changed. The court

therefore concluded that, “notwithstanding the increase in passenger use at the Airport, the limitation events set forth in Limitation B ha[d] not occurred.”

b. Discussion

¶ 54 Rock Creek asserts that the district court erred by interpreting Limitation B to include an introductory, conjunctive clause followed by two disjunctive clauses. According to Rock Creek, this interpretation “is at odds with the [easements’] established intent” — “to terminate the easements in the event of changes outside the 1988 Master Plan,” such as the increase in passenger usage that the court found.

¶ 55 Rock Creek argues that the better interpretation of Limitation B — the one the parties intended — is that it contains three independent, disjunctive clauses, “the violation of any of which creates a violation of the whole.” In support of this interpretation, Rock Creek points us to *Gatrell v. Kurtz*, 207 P.3d 916, 917 (Colo. App. 2009), in which the division interpreted a statute providing, “The contractor may remove an inmate from the general prison population during an emergency, before final resolution of a disciplinary hearing, or in response to an inmate’s

request for assigned housing in protective custody.” See § 17-1-203(1)(c), C.R.S. 2022. The *Gatrell* division concluded that the legislature’s “use of the term ‘before’ does not convert the clause ‘before final resolution of a disciplinary hearing’ into a subordinate clause modifying the phrase ‘during an emergency.’ Rather, the commas, which separate several distinct actions, the last of which is preceded by the disjunctive ‘or,’ demarcate different categories.” 207 P.3d at 918; cf. *Woellhaf v. People*, 105 P.3d 209, 216-17 (Colo. 2005) (a list separated by the disjunctive “or” at the end creates separate categories). Rock Creek urges us to substitute the “before” at issue in *Gatrell* with the “if” in Limitation B and, applying the *Gatrell* division’s reasoning, to conclude that each clause in Limitation B describes an independent limitation event.

¶ 56 In our view, however, Rock Creek’s interpretation ignores the plain meaning of the word “if.” As the County notes, “[g]rammatically, ‘if’ is widely understood to introduce a conditional clause, which is a clause that ‘state[s] a condition or action necessary for the truth or occurrence of the main statement of a sentence.’” *United States v. Flores*, 664 F. App’x 395, 399 (5th Cir. 2016) (second alteration in original) (citations omitted). We agree

with the County that the parties intended the word “if,” placed after the first clause about the type and size of aircraft and before the conditional clauses about passenger usage and freight delivery, to qualify the first clause. This interpretation accords with the plain meaning of Limitation B. *See Hess*, ¶ 13; *Moeller*, ¶ 14. It also better reflects the parties’ intent than does Rock Creek’s interpretation, which, as the district court noted, “would cause the Easements to lapse if there was a reduction in the size of aircraft using the Airport or if a new type of aircraft used at the Airport caused less noise and fewer vibrations.” *Cf. EnCana Oil & Gas (USA), Inc. v. Miller*, 2017 COA 112, ¶ 28 (“[A] contract should never be interpreted to yield an absurd result.” (quoting *Atmel Corp. v. Vitesse Semiconductor Corp.*, 30 P.3d 789, 793 (Colo. App. 2001))); *see also Khalil v. Motwani*, 871 A.2d 96, 101 (N.J. Super Ct. App. Div. 2005) (refusing to interpret language in an easement that would “lead to absurd results”).

¶ 57 Accordingly, we conclude that the district court did not err by finding that Limitation B had not occurred.⁶

4. Limitation E

¶ 58 Last, Rock Creek argues that the district court misinterpreted Limitation E. We discern no reversible error.

a. Additional Background

¶ 59 Limitation E occurs if “[t]he noise, vibration and all other effects of aircraft operation on the Property exceeds 60 ldn.”

¶ 60 The district court concluded that, “[b]ecause Ldn is a noise calculation, . . . effects other than noise do not apply to Limitation E.” And because Rock Creek had presented no evidence of any noise measurements, the court found that “a limitation event under Limitation E” had not occurred. To the extent that the noise contours could be considered noise measurements, the court noted that it had already addressed them in considering Limitation D and that “no further analysis [wa]s needed.”

⁶ Because we conclude that the district court correctly interpreted Limitation B, we need not address the County’s alternative argument that the court erred by finding that “an increase in passenger usage over that disclosed in the Master Plan” had occurred.

b. Discussion

¶ 61 We will not disturb the court’s judgment in a civil case unless its error affected the substantial rights of the parties. *Bernache v. Brown*, 2020 COA 106, ¶ 26 (citing C.R.C.P. 61); *see also* C.A.R. 35(c). An error affects a party’s substantial right only if “it can be said with fair assurance that the error substantially influenced the outcome of the case or impaired the basic fairness of the trial itself.” *Bly v. Story*, 241 P.3d 529, 535 (Colo. 2010) (quoting *Banek v. Thomas*, 733 P.2d 1171, 1178 (Colo. 1986)); *see also* *Laura A. Newman, LLC v. Roberts*, 2016 CO 9, ¶ 24.

¶ 62 Rock Creek acknowledges that any error in the court’s interpretation of Limitation E “may be harmless.” It raised the issue only in case we chose to “nullify” the district court’s ruling as to Limitation D. Because, as discussed above, we conclude that the district court was correct to vacate nine of the avigation easements based on the occurrence of Limitation D, we agree with Rock Creek that any error in the court’s interpretation of Limitation B was harmless. We therefore decline to address the meaning of Limitation B. *See* C.A.R. 35(c), *Roberts*, ¶ 24.

III. Disposition

¶ 63 We affirm the judgment of the district court.

JUDGE NAVARRO and JUDGE BROWN concur.