

**20100126000084130 01/26/2010 03:52:57 PM FD 1/81**

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
AERO COUNTRY EAST**

**Riddle & Williams, P.C.  
3710 Rawlins Street, Suite 1400  
Dallas, Texas 75219**

## Table of Contents

	Page
<b>ARTICLE I</b>	
<b>DEFINITIONS.....</b>	<b>1</b>
Section 1.1 "Access Agreement" .....	2
Section 1.2 "Airport Access Fee" .....	2
Section 1.3 "Airport Association" .....	2
Section 1.4 "Area of Common Responsibility" .....	2
Section 1.5 "Articles of Formation" or "Articles" .....	2
Section 1.6 "Association" .....	2
Section 1.7 "Base Assessment" .....	2
Section 1.8 "Board of Directors" or "Board" .....	2
Section 1.9 "Bylaws" .....	2
Section 1.10 "Certificate Occupancy" .....	2
Section 1.11 "Class 'A' member(s)" .....	2
Section 1.12 "Class 'B' Control Period" .....	2
Section 1.13 "Class 'B' Member" .....	3
Section 1.14 "City" .....	3
Section 1.15 "Common Area" .....	3
Section 1.16 "Common Expenses" .....	3
Section 1.17 "Community-Wide Standard" .....	3
Section 1.18 "Declarant" .....	3
Section 1.19 "Eligible Mortgage Holder" .....	3
Section 1.20 "First Mortgage" .....	4
Section 1.21 "First Mortgagee" .....	4
Section 1.22 "Governing Documents" .....	4
Section 1.23 "Hangar" .....	4
Section 1.24 "Land Plan" .....	4
Section 1.25 "Lot" .....	4
Section 1.26 "Member" .....	4
Section 1.27 "Mortgage" .....	4
Section 1.28 "Owner" .....	4
Section 1.29 "Person" .....	4
Section 1.30 "Plat" .....	5
Section 1.31 "Property" or "Properties" .....	5
Section 1.32 "Rules and regulations" or "Rules" .....	5
Section 1.33 "Special Assessment" .....	5
Section 1.34 "Specific Assessment" .....	5
Section 1.35 "Supplemental Declaration" .....	5
Section 1.36 "Townhome" or "Townhouse" .....	5
<b>ARTICLE II</b>	
<b>PROPERTY RIGHTS.....</b>	<b>5</b>
Section 2.1 Common Area.....	5

### **ARTICLE III**

<b>MEMBERSHIP AND VOTING RIGHTS .....</b>	<b>6</b>
Section 3.1 Membership .....	6
Section 3.2 Voting .....	6

### **ARTICLE IV**

<b>RIGHTS AND OBLIGATIONS OF THE ASSOCIATION.....</b>	<b>7</b>
Section 4.1 Common Area.....	7
Section 4.2 Personal Property and Real Property for Common Use .....	7
Section 4.3 Rules and Regulations .....	7
Section 4.4 Compliance and Enforcement.....	7
Section 4.5 Implied Rights.....	8
Section 4.6 Governmental Interests .....	9
Section 4.7 Indemnification.....	9
Section 4.8 Dedication of Common Areas .....	9
Section 4.9 Security .....	9
Section 4.10 Construction Activities .....	10
Section 4.11 View Impairment .....	10
Section 4.12 Provisions of Services.....	10
Section 4.13 Use of Technology .....	10

### **ARTICLE V**

<b>MAINTENANCE.....</b>	<b>11</b>
Section 5.1 Association Responsibility .....	11
Section 5.2 Owner Responsibility .....	12
Section 5.3 Standard of Performance .....	13
Section 5.4 Party Walls and Party Fences.....	13
Section 5.5 Rights of the City .....	14

### **ARTICLE VI**

<b>INSURANCE AND CASUALTY LOSSES.....</b>	<b>15</b>
Section 6.1 Association Insurance .....	15
Section 6.2 Policy Requirements .....	15
Section 6.3 Individual Insurance.....	16
Section 6.4 Damage and Destruction.....	16
Section 6.5 Disbursement of Proceeds .....	17
Section 6.6 Repair and Reconstruction.....	17

### **ARTICLE VII**

<b>NO PARTITION.....</b>	<b>17</b>
--------------------------	-----------

### **ARTICLE VIII**

<b>CONDEMNATION .....</b>	<b>17</b>
---------------------------	-----------

Section 8.1	Condemnation.....	17
Section 8.2	Disbursement .....	17
<b>ARTICLE IX</b>		
	<b>MORTGAGEE PROVISIONS.....</b>	<b>18</b>
Section 9.1	Notices of Action.....	18
Section 9.2	No Priority .....	18
Section 9.3	Notice to Association.....	18
Section 9.4	Special FHLMC Provision.....	18
Section 9.5	Other Provisions for Mortgagees .....	19
Section 9.6	Amendments to Documents.....	19
Section 9.7	Failure of Mortgagee to Respond .....	20
Section 9.8	Applicability of Article IX.....	21
<b>ARTICLE X</b>		
	<b>ASSOCIATION FINANCES.....</b>	<b>21</b>
Section 10.1	Assessment .....	21
Section 10.2	Base Assessment.....	22
Section 10.3	Reserve Budget and Capital Contribution .....	23
Section 10.4	Special Assessments .....	23
Section 10.5	Specific Assessments.....	23
Section 10.6	Access Assessments.....	24
Section 10.7	Lien for Assessments .....	24
Section 10.8	Date of Commencement of Assessments.....	25
Section 10.9	Capitalization of the Association.....	25
Section 10.10	Exempt Property .....	25
<b>ARTICLE XI</b>		
	<b>ARCHITECTURAL STANDARDS .....</b>	<b>26</b>
Section 11.1	General.....	26
Section 11.2	Architectural Review.....	26
Section 11.3	Guidelines and Procedures.....	26
Section 11.4	No Waiver of Future Approvals .....	28
Section 11.5	Variances .....	28
Section 11.6	Limitation of Liability.....	28
Section 11.7	Fees; Assistance .....	28
Section 11.8	Enforcement.....	28
Section 11.9	Notice of Violation .....	29
<b>ARTICLE XII</b>		
	<b>USE RESTRICTIONS .....</b>	<b>29</b>
Section 12.1	General.....	29
Section 12.2	Occupants Bound .....	29
Section 12.3	Signs .....	29
Section 12.4	Parking and Prohibited Vehicles.....	30

Section 12.5	Animals and Pets .....	30
Section 12.6	Quiet Enjoyment .....	30
Section 12.7	Unsightly or Unkept Conditions .....	31
Section 12.8	Antennas .....	31
Section 12.9	Clotheslines, Garbage Cans, Tanks, etc.....	31
Section 12.10	Subdivision and Time Sharing.....	31
Section 12.11	Firearms .....	32
Section 12.12	Pools .....	32
Section 12.13	Irrigation .....	32
Section 12.14	Tents, Mobile Homes and Temporary Structures .....	32
Section 12.15	Grading, Drainage and Septic Systems.....	32
Section 12.16	Removal of Plants and Trees .....	32
Section 12.17	Utility Lines .....	33
Section 12.18	Air-conditioning Units.....	33
Section 12.19	Lighting.....	33
Section 12.20	Artificial Lakes, Exterior Sculpture and Similar Items .....	33
Section 12.21	Playground and Recreational Equipment.....	33
Section 12.22	Fences .....	33
Section 12.23	Business Use .....	33
Section 12.24	Leasing of Lots .....	34
Section 12.25	Laws and Ordinances .....	34
Section 12.26	Single Family Occupancy .....	34
Section 12.27	Taxiway Use by Aircraft.....	34
Section 12.28	Airport Ground Rules .....	34
Section 12.29	Aircraft Rules.....	34

### **ARTICLE XIII**

<b>EASEMENTS.....</b>	<b>35</b>
Section 13.1 Easements of Encroachment.....	35
Section 13.2 Easements for Utilities, etc.....	35
Section 13.3 Right of Entry .....	36
Section 13.4 Certain Easements for Owners .....	36
Section 13.5 Easements to Serve Additional Property .....	37

### **ARTICLE XIV**

<b>ANNEXATION AND WITHDRAWAL OF PROPERTY .....</b>		<b>37</b>
Section 14.1	Annexation Without Approval of Membership .....	37
Section 14.2	Annexation With Approval of Membership .....	37
Section 14.3	Withdrawal of Property.....	38
Section 14.4	Additional Covenants and Easements.....	38
Section 14.5	Amendment.....	38

### **ARTICLE XV**

<b>DISPUTE RESOLUTION .....</b>	<b>38</b>
Section 15.1    Consensus for Association Action.....	38

Section 15.2	Alternative Method for Resolving Disputes .....	39
Section 15.3	Claims.....	39
Section 15.4	Mandatory Procedures .....	39
Section 15.5	Amendment of Article .....	41

## **ARTICLE XVI**

<b>ADDITIONAL RIGHTS RESERVED TO DECLARANT .....</b>		<b>41</b>
Section 16.1	Assignment .....	41
Section 16.2	Marketing and Sales Activities .....	41
Section 16.3	Additional Covenants .....	42
Section 16.4	Use of Name of Development .....	42
Section 16.5	Termination of Rights .....	42

## **ARTICLE XVII**

<b>GENERAL PROVISIONS.....</b>		<b>42</b>
Section 17.1	Term.....	42
Section 17.2	Amendment.....	42
Section 17.3	Severability .....	43
Section 17.4	Perpetuities .....	43
Section 17.5	Notice of Sale or Transfer of Title.....	43
Section 17.6	Disclosures.....	43

**EXHIBIT "A"**- Property Subject to Declaration

**EXHIBIT "B"**- Property Subject to Annexation

**EXHIBIT "C"**- Bylaws of Aero Country East Association, Inc.

**EXHIBIT "D"**- Articles of Formation of Aero Country East Association, Inc.

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
AERO COUNTRY EAST**

STATE OF TEXAS           §  
                                      §       **KNOW ALL MEN BY THESE PRESENTS:**  
COUNTY OF COLLIN       §

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR AERO COUNTRY EAST** (this "Declaration") is made this \_\_\_\_ day of January, 2010, by **HEAVY VENTURES, LLC**, a Texas limited liability company (hereinafter referred to as "Declarant").

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of the real property described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"). Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of real property within the Property. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Property, and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Property as is now or hereafter subjected to this Declaration.

**NOW, THEREFORE**, the Declarant hereby declares that the real property described in Exhibit "A" to this Declaration and any additional property which is hereafter subjected to this Declaration by Supplemental Declaration (as hereinafter defined) shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration. This Declaration shall be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

This Declaration does not and is not intended to create a condominium within the meaning of the Texas Uniform Condominium Act, Tex. Prop. Code Ann. §82.001 (Vernon 1995) (the "Condominium Act").

**ARTICLE I**

**DEFINITIONS**

The terms in this Declaration and the exhibits to this Declaration shall generally be given their ordinary, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

Section 1.1 "Access Agreement" shall mean and refer to that certain Airport Access License Agreement dated July \_\_, 2009, by and among Aero Country Property Owners' Association, Aero Country East Association, Inc. and Heavy Ventures LLC.

Section 1.2 "Airport Access Fee" shall mean and refer to any fees required to be paid by the Association to the Airport Association under the Access Agreement for the right of the Owners, and their guests and invitees, to access and use the Aero Country Airport. Airport Access Fees shall be allocated among the Owners of Lots within the Property as set forth in Section 10.6 of this Declaration.

Section 1.3 "Airport Association" shall refer to Aero Country Property Owners' Association, a Texas non-profit corporation, its successors or assigns.

Section 1.4 "Area of Common Responsibility" shall mean and refer to the Common Area, together with those areas, if any, which the Association has or assumes responsibility pursuant to the terms of this Declaration, or other applicable covenants, contracts, or agreements.

Section 1.5 "Articles of Formation" or "Articles" shall refer to the Articles of Formation of Aero Country East Association, Inc., as filed with the Secretary of State of the State of Texas.

Section 1.6 "Association" shall refer to Aero Country East Association, Inc., a Texas non-profit corporation, its successors or assigns.

Section 1.7 "Base Assessment" shall refer to assessments levied on all Lots subject to assessment under Article X to fund Common Expenses for the general benefit of all Lots.

Section 1.8 "Board of Directors" or "Board" shall be the body responsible for administration of the Association, selected as provided in the Bylaws and generally serving the same role as the board of directors under Texas corporate law.

Section 1.9 "Bylaws" shall refer to the Bylaws of Aero Country East Association, Inc. attached hereto as Exhibit "B" and incorporated by reference, as they may be amended from time to time.

Section 1.10 "Certificate of Occupancy" shall refer to a certificate or other similar document issued by the City of McKinney or other applicable governmental authority certifying or authorizing a Townhome or Hangar for occupancy.

Section 1.11 "Class 'A' Member(s)" shall be all Owners who are subject to membership in the Association except the Class "B" Member until such time as the Class "B" membership terminates and is converted to Class "A" membership at which time the Class "B" Member shall become a Class "A" Member for each Lot, if any, which it owns.

Section 1.12 "Class 'B' Control Period" shall refer to the period of time during which the



Class "B" Member is entitled to appoint a majority of the members of the Board. The Class "B" Control Period shall expire upon the first to occur of the following:

- (a) 90 days after the date as of which one hundred percent (100%) of the Lots have Certificates of Occupancy issued thereon and have been conveyed to Class "A" Members;
- (b) December 31, 2014; or
- (c) when, in its discretion, the Class "B" Member so determines.

Section 1.13 "Class 'B' Member" shall be the Declarant until such time as the Class "B" membership terminates and is converted to Class "A" membership at which time the Declarant shall become a Class "A" Member for each Lot, if any, which it owns.

Section 1.14 "City" shall mean the City of McKinney, Texas.

Section 1.15 "Common Area" shall mean all real and personal property, including easements and licenses (including, without limitation, the access and use rights under Airport Access License Agreement), which the Association owns, leases or otherwise holds possessory or use rights in and for the common use and enjoyment of the Owners.

Section 1.16 "Common Expenses" shall mean the actual and estimated expenses incurred, or anticipated being incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find to be necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not include expenses incurred during the Class "B" Control Period for initial development or other original construction costs unless approved by Members representing a majority of the total Class "A" votes of the Association.

Section 1.17 "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Property, or the minimum standards established pursuant to the Governing Documents, whichever is a higher standard. Such standard shall be established initially by the Declarant and may include both objective and subjective elements. The Community-Wide Standard may evolve and change as development progresses and as the needs and desires within the Property change. Any determination or interpretation regarding the Community-Wide Standard, including, without limitation, whether the Community-Wide Standard has been met in a particular situation, shall be made by the Board.

Section 1.18 "Declarant" shall refer to Heavy Ventures, LLC, a Texas limited liability company, or any successor or assign who takes title to any portion of the real property described on Exhibit "A" or Exhibit "B" hereof for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

Section 1.19 "Eligible Mortgage Holder" shall refer to those holders of First Mortgages secured by Lots in the Property who have requested notice of certain items as set forth in this

Declaration.

Section 1.20 "First Mortgage" shall refer to any Mortgage which is not subject to any lien or encumbrance except the taxes or other liens which are given priority by statute or agreement.

Section 1.21 "First Mortgagee" shall refer to the beneficiary or holder of a First Mortgage.

Section 1.22 "Governing Documents" shall refer to this Declaration, the Bylaws, the Articles of Formation, any rules and regulations, the Access Agreement and the Design Guidelines (as adopted pursuant to Article XI), as each may be supplemented and amended from time to time.

Section 1.23 "Hangar" shall mean a structure having a roof, supported by walls and intended for the shelter, housing or enclosure of aircraft.

Section 1.24 "Land Plan" shall refer to the master concept plan for the development of the Property prepared by the Declarant, as approved by the appropriate zoning and planning authority, as it may be amended from time to time, which includes all of the property described in Exhibit "A" and all or a portion of the property described in Exhibit "B". Inclusion of property on the Land Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall exclusion of property described on Exhibit "B" from the Land Plan bar its later annexation, as provided in Article XIV.

Section 1.25 "Lot" shall mean a portion of the Property, whether improved or unimproved, which may be independently owned and is intended for development, use and occupancy as a residence for a single family and/or as a Hangar for the housing of aircraft. The term shall refer to the land, if any, which is part of the Lot, as well as any improvements thereon. In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain a single Lot until such time as a plat is recorded subdividing all or a portion thereof. Thereafter, the portion encompassed by such plat shall continue to be treated in accordance with this section. A Lot on which a Townhome is to be constructed shall be referred to herein as a "Townhome Lot" and a Lot on which a Hangar is to be constructed shall be referred to herein as a "Hangar Lot".

Section 1.26 "Member" shall refer to a Person subject to membership in the Association.

Section 1.27 "Mortgage" shall refer to a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed. A "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

Section 1.28 "Owner" shall refer to one or more Persons who hold the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

Section 1.29 "Person" shall mean a natural person, a corporation, a partnership, a trustee, a limited liability company or any other legal entity.

Section 1.30 "Plat" shall mean the recorded subdivision plat of the Property, as the same may be amended from time to time.

Section 1.31 "Property" or "Properties" shall mean and refer to the real property described in Exhibit "A" attached hereto and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions of Article XIV.

Section 1.32 "Rules and Regulations" or "Rules" shall mean any written rules or regulations adopted, implemented or published by the Association or its Board of Directors at any time and from time to time, as may be amended, with respect to the use and enjoyment of the Common Area and the conduct of its members and their guests, invitees, agents and contractors within the Property.

Section 1.33 "Special Assessment" shall mean and refer to assessments levied against all Owners to cover unanticipated expenses or expenses in excess of those budgeted, as described in Section 9.4.

Section 1.34 "Specific Assessment" shall mean assessments levied in accordance with Section 10.5.

Section 1.35 "Supplemental Declaration" shall mean an instrument recorded pursuant to Article XIV which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.

Section 1.36 "Townhome" or "Townhouse" shall mean the residential structure located on a Lot which shares a common wall or walls, and/or roof and/or foundation with another residential structure.

## **ARTICLE II**

### **PROPERTY RIGHTS**

Section 2.1 Common Area. Every Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to the Common Area, subject to:

(a) This Declaration and the Access Agreement and any other applicable covenants, as they may be amended from time to time, and subject to any restrictions or limitations contained in any deed conveying such property to the Association;

(b) the right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules limiting the number of vehicles which may be parked on the Common Area;

(c) the right of the Board to suspend the right of an Owner to use electronic (as opposed to manual) controlled-access gate opening devices and the right to access and use the Aero Country Airport pursuant to the Access Agreement (i) for any period during which any assessment or other charge against such Owner's Lot remains delinquent, and (ii) for a period not to exceed thirty (30)

days for a single violation or for a longer period in the case of any continuing violation of the Governing Documents after notice and a hearing pursuant to the Bylaws;

(d) the right of the Board to dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration; and

(e) the right of the Board to mortgage, pledge or hypothecate any or all of the Association's real or personal property as security for money borrowed or debts incurred.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees and social invitees, as applicable, subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessees of such Lot.

### **ARTICLE III**

#### **MEMBERSHIP AND VOTING RIGHTS**

Section 3.1 Membership. Every Owner is a Member of the Association; provided, there is only one membership per Lot. In the event a Lot is owned by more than one Person, all co-Owners shall be entitled to the privileges of membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.2 and in the Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners hereunder. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner, or trustee, or by the individual designated from time to time by the Owner in writing provided to the Secretary of the Association.

Section 3.2 Voting. The Association shall have two classes of membership, Class "A" and Class "B".

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall be entitled to one equal vote for each Lot in which they hold the interest required for membership under Section 3.1, except that there shall be only one vote per Lot. Notwithstanding the foregoing, Class "A" Members owning Lots for which a Certificate of Occupancy has not been issued shall be entitled to only one-half ( $\frac{1}{2}$ ) of one vote for each such Lot.

Where there is more than one Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine between themselves and advise the Secretary of the Association in writing prior to the vote being cast. In the absence of such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The Class "B" Member shall be entitled to appoint a majority of the members of the Board during the Class "B" Control Period, in the manner specified in the Bylaws. The Class "B" Member shall have a right to disapprove any action of the Board and/or committees as provided in the Bylaws. Additional rights

of the Class "B" Member are specified in the relevant sections of the Governing Documents.

The Class "B" membership shall terminate and become converted to Class "A" membership upon the earlier of:

(i) upon sale of one hundred percent (100%) of the Lots shown on the Plat have been conveyed to Class "A" Members; or

(ii) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

## **ARTICLE IV**

### **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

Section 4.1 Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including, without limitation, furnishings, equipment and common landscaped areas), and shall keep it in good, clean, attractive and sanitary condition, order and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard.

Section 4.2 Personal Property and Real Property for Common Use. The Association may acquire, hold and dispose of tangible and intangible personal property and real property, subject to such restrictions as are set forth in the Governing Documents. The Declarant and its designees may convey to the Association personal property and fee title, leasehold, or other interests in any improved or unimproved real estate located within the Property. Upon conveyance or dedication by the Declarant to the Association, such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed of conveyance. Upon written request of the Declarant, the Association shall reconvey to Declarant for no or nominal monetary consideration any unimproved portions of the Property originally conveyed by Declarant to the Association for no or nominal monetary consideration, to the extent conveyed in error or needed by Declarant to make minor adjustments in property lines.

Section 4.3 Rules and Regulations. The Board may make and enforce reasonable rules and regulations governing the use of the Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Such regulations and use restrictions shall be binding upon all Owners, occupants, invitees and licensees, if any, until and unless overruled, canceled or modified in a regular or special meeting of the Association by the vote of a majority of the Class "A" Members and the consent of the Class "B" Member, so long as such membership shall exist.

Section 4.4 Compliance and Enforcement. Every Owner and occupant of a Lot shall comply with the Governing Documents. The Association shall be authorized to impose sanctions for

violations of the Governing Documents. Sanctions may include, without limitation, the following:

- (a) Imposing reasonable monetary fines, which shall constitute a lien upon the violator's Lot;
- (b) suspending an Owner's right to vote;
- (c) suspending any Person's right to access and use the Aero Country Airport pursuant to the Airport Access License Agreement; provided, however, nothing herein shall authorize the Board to prevent ingress or egress to or from a Lot;
- (d) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association;
- (e) exercising self-help (specifically including, but not limited to, towing of vehicles that are parked or stored in violation of the Governing Documents, removing nonconforming structures and/or improvements pursuant to Section 11.8 and performing maintenance on an Owner's Lot pursuant to Section 5.2);
- (f) recording a Notice of Violation pursuant to Section 11.9;
- (g) levying a Specific Assessment pursuant to Section 10.5; and
- (h) taking any other action to abate a violation of the Governing Documents.

The Board shall afford a violator notice and an opportunity to be heard in accordance with the Bylaws prior to the imposition of any sanction (except the Board may exercise self-help pursuant to subsection 4.4(e) without any such notice and hearing), unless the Board determines that an emergency situation exists. In addition to any other enforcement rights, the Association may bring suit in law or in equity, or both, to enjoin any violation or to recover monetary damages, or both. All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. If the Association prevails in any action to enforce the Governing Documents, it shall be entitled to recover all costs, including, without limitation, attorney's fees and court costs reasonably incurred in such action. Failure by the Association to enforce any the foregoing or any other right or remedy of the Association shall in no event be deemed a waiver of the right to so thereafter.

The Association, through the Board, by contract or other agreement, shall have the right, but not the obligation, to enforce applicable county and city ordinances, and may, but shall not be obligated to, permit Collin County and the City to enforce ordinances on the Property for the benefit of the Association and its Members.

Section 4.5 Implied Rights. The Association may exercise any other right or privilege given to it expressly by the Governing Documents. The Association may also exercise every other right or privilege reasonably implied from or reasonably necessary to effectuate any such right or

privilege.

Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

Section 4.6 Governmental Interests. For so long as the Declarant owns any property described on Exhibit "A", the Association shall permit the Declarant to designate and redesignate sites within the Property for water and sewer facilities and other public facilities. The sites may include Common Areas owned by the Association, and in such case no membership approval shall be required and the Association shall dedicate and convey the designated site as requested by the Declarant.

Section 4.7 Indemnification. The Association shall indemnify each and every officer, director and committee member to the full extent permitted by Section 1396-2.22.A of the Texas Non-Profit Corporation Act, as amended (but, in the case of any such amendment, only to the extent that such amendment permits broader indemnification than permitted prior to such amendment). Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association.

Section 4.8 Dedication of Common Areas. Subject to such approval requirements as may be set forth in this Declaration, the Association shall have the power to dedicate portions of the Common Areas to Collin County, Texas, or to any other local, state or federal governmental entity.

Section 4.9 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to enhance the security of the Property, including, without limitation, the installation of controlled-access gates. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY, NOR SHALL SUCH PARTIES BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.

THE ASSOCIATION, DECLARANT, ANY SUCCESSOR DECLARANT, AND ARCHITECTURAL REVIEW COMMITTEE MAKE NO REPRESENTATION OR WARRANTY THAT ANY SYSTEMS OR MEASURES, INCLUDING ANY MECHANISM, DEVICE OR PERSON EMPLOYED TO LIMIT OR RESTRICT ACCESS TO THE PROPERTY CANNOT BE COMPROMISED OR CIRCUMVENTED; OR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ANY CASE PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND ALL TENANTS, GUESTS AND INVITEES OF ANY OWNER, ACKNOWLEDGE AND UNDERSTAND THAT THE ASSOCIATION, ITS BOARD, COMMITTEE MEMBERS,

DECLARANT OR ANY SUCCESSOR DECLARANT, ARE NOT INSURERS AND THAT EACH PERSON WITHIN THE PROPERTY ASSUME ALL RISKS FOR PERSONAL INJURY AND LOSS OR DAMAGE TO PROPERTY, INCLUDING LOTS AND THE CONTENTS THEREOF, RESULTING FROM ACTS OF THIRD PARTIES.

Section 4.10 Construction Activities. All Owners are hereby placed on notice that Declarant, any affiliate of Declarant and/or its agents, contractors, subcontractors, licensees and other designees, successors or assignees, may be, from time to time, conducting excavation, construction and other activities within or in proximity to the Property. By the acceptance of a deed or other conveyance or Mortgage, leasehold, license, easement or other interest, and by using any portion of the Property, each Owner automatically acknowledges, stipulates and agrees (a) that none of the aforesaid activities shall be deemed nuisances or noxious or offensive activities, under any applicable covenants or at law generally, (b) not to enter upon, or allow their children or other Persons under their control or direction to enter upon (regardless of whether such entry is trespass or otherwise) any property within or in proximity to any portion of the Property where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours), (c) Declarant, any affiliate of Declarant and all of their agents, contractors, subcontractors, licensees and other designees, successors and assignees, shall not be liable but, rather, shall be held harmless, for any and all losses and damages (compensatory, consequential, punitive or otherwise), injuries or deaths arising from or relating to the aforesaid activities, and (d) any purchase or use of any portion of the Property has been and will be made with full knowledge of the foregoing.

Section 4.11 View Impairment. Neither the Declarant or the Association guarantees or represents that any view from a Lot will be preserved without impairment. Any such additions or changes to the Property may diminish or obstruct any view from a Lot and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

Section 4.12 Provision of Services. The Association may provide or provide for services and facilities for the Members and their Lots, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use and service fees for any services and facilities provided at the option of an Owner, or may include the costs thereof in the Association's budget as a Common Expense if such services are provided to all Lots or include such costs as a Specific Assessment if provided to less than the entire Property. By way of example, such services and facilities might include pest control service, cable television or satellite service, security, fire protection, utilities, and similar services and facilities. Nothing herein shall be construed as a representation by the Declarant or the Association as to what, if any, services or facilities shall be provided. In addition, the Board shall be permitted to modify or cancel existing services or facilities, unless otherwise required by the Governing Documents.

Section 4.13 Use of Technology. In recognition of the opportunities offered through computers and continuing advancements in the high technology fields, the Association may, as a Common Expense, provide for or offer services which make use of computers and other technological opportunities. For example, to the extent Texas law permits, and unless otherwise



specifically prohibited in the Governing Documents, the Association may send required notices by electronic means; hold Board or Association meetings and permit attendance and voting by electronic means or via the web; send and collect assessment and other invoices electronically over the computer; sponsor a community cable television channel; create and maintain a community intranet or internet home page offering interactive participation opportunities for users; and maintain an "online" newsletter or bulletin board.

## **ARTICLE V**

### **MAINTENANCE**

Section 5.1 Association Responsibility. Except as may be otherwise provided by this Declaration, the Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. The Area of Common Responsibility shall include, but need not be limited to:

(a) All portions of and all landscaping, structures and improvements situated upon the Common Area, including, without limitation, (i) the controlled-access gate, (ii) all entry features, fountains and monuments including the expenses for water and electricity, if any, provided to all such items, (iii) any irrigation or sprinkler systems located on the Common Area (v) any perimeter screening walls or fences (iv) the private streets, exterior parking areas and sidewalks, if any, and (vii) any detention ponds and wetlands. The maintenance required of any detention pond will include, but not be limited to: (i) periodic inspection of detention facility for conditions that may affect operation or structural integrity; (ii) periodic removal of debris, i.e., brush, leaves, or trash that may become lodged in the outlet control structure; (iii) removal of sediment that accumulates within the detention pond (accumulation shall be removed once the depth of accumulation is 6" over the original constructed grades); and (iv) repair of any damaged areas;

(b) All irrigation systems and landscaping and other flora situated upon an Owner's Lot, except irrigation systems and landscaping and other flora located within an enclosed fence or wall of such Owner's Lot;

(c) All exterior portions of the Townhomes, including the exterior walls, downspouts, gutters, roofs and foundations, but excluding any patios within an enclosed fence or wall of such Owner's Lot, and all exterior glass surfaces and all windows and window frames forming an exterior surface of the buildings containing the Townhomes;

(d) All driveways and sidewalks installed by the Declarant or the Association on a Lot;

(e) All fences and walls installed by the Declarant or the Association on a Lot;

(f) all exterior glass surfaces and all windows and window frames forming an exterior surface of the Townhomes;

(g) all utility lines, chutes, flues, pipes, ducts, wires, vents and conduits serving more than one Townhome or Hangar or the Common Area, to the extent that such utility lines, chutes, flues, pipes, ducts, wires, vents and conduits are not maintained by public, private or municipal utility companies;

(h) Landscaping and other flora within public rights-of-way within or abutting the Property, and landscaping and other flora within any public utility easement within the Property (subject to the terms of any easement agreement relating thereto); and

(i) Such portions of any additional property as may be dictated by this Declaration, any covenant to share costs, or any contract or agreement for maintenance thereof entered into by the Association.

The Association shall have the right to enter upon, for the purpose of maintaining, and may maintain, other property which it does not own, including, without limitation, Lots, or property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. In addition, the Association may enter into contractual agreements or covenants to share costs with other properties or facilities for maintaining and/or operating shared or mutually beneficial properties or facilities.

The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods of maintenance or repairs or unless Members representing 75% of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation. Except as provided hereinabove, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the City and the Declarant as long as Declarant owns any property described in Exhibit "A" of this Declaration.

The costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, a covenant to share costs, other recorded covenants, or agreements with the owner(s) thereof.

Section 5.2 Owner Responsibility. Each Owner shall maintain his or her Lot and all landscaping, structures and other improvements within the boundaries of the Lot, unless the Association has been assigned the maintenance responsibility therefor pursuant to Section 5.1. The responsibility of the Owner shall include, but not be limited to, the maintenance, repair and replacement of all exterior portions of the Hangars, and all fixtures and equipment installed in his or her Townhome and/or Hangar, all utility fixtures and equipment (including, without limitation, individual HVAC units) which exclusively serve a Lot; and all utility lines, chutes, flues, pipes, ducts, wires, vents and conduits which exclusively serve a Lot whether located wholly within or outside the boundaries of the Lot. An Owner shall not paint or otherwise decorate or change the appearance of any portion of the exterior of any Townhome or Hangar without the prior written approval of the Association pursuant to Article X hereof. Each Owner shall promptly report to the

Association or its agent any defect or need for repairs for which the Association is responsible. No Owner shall do anything with respect to the Lot which would or might jeopardize or impair the safety or soundness of any Townhome or Hangar without first obtaining the written consent of the Board and all Owners and Mortgagees of the Lots affected, nor impair any easement without first obtaining written consent of the Association and of the Owner and their Mortgagees for whose benefit such easement exists. Each Owner shall also be responsible for the cost of repairing, replacing or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Owner, his or her family, tenants or guests, with the cost thereof to be assessed against the Lot and the Owner as a Specific Assessment.

In addition to any other enforcement rights available to the Association, if any Owner fails properly to perform his or her maintenance responsibilities, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a Specific Assessment in accordance with Section 10.5. However, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when immediate entry is required due to an emergency situation.

**Section 5.3 Standard of Performance.** Unless otherwise specifically provided in the Governing Documents, responsibility for maintenance shall include responsibility for repair and replacement necessary to maintain the property to a level consistent with the Community-Wide Standard. Repair and replacement shall include improvement, if necessary to comply with applicable building codes or other regulations or if otherwise deemed appropriate, in the Board's reasonable discretion. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on such Owner's Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article X. Alternatively, the Owner shall clear the Lot and maintain it in a neat and attractive, and landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance.

**Section 5.4 Party Walls and Party Fences.**

(a) **General Rules of Law to Apply.** Each wall, fence or driveway built as a part of the original construction on a Lot which shall serve and/or separate any two adjoining Lots shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

(c) **Damage and Destruction.** If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the party structure may restore it. If other Owners thereafter use the party structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other

users under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) Arbitration. In the event of any dispute arising concerning a party structure, each party shall appoint one arbitrator. Should any party fail and/or refuse to appoint an arbitrator within ten (10) days after written request by the other party, the requesting party shall appoint an arbitrator for the refusing party. The arbitrators appointed shall appoint one additional arbitrator. The decision by a majority of all three arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other. The Association and/or the Declarant shall have no responsibility in resolving any disputes between Owners concerning a party structure.

Section 5.5 Rights of the City. In the event that the City determines that the Association has failed or refused to discharge properly the Association's maintenance obligations hereunder, the City may cause such maintenance to be performed at the Association's sole cost and expense, subject to the following procedures: Except in an emergency situation, the City shall give the Association prior written notice of the City's intent to provide such necessary maintenance, repair or replacement at the Association's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs or replacement deemed necessary. The Association shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair or replacement or, in the event that such maintenance, repair or replacement is not capable of completion within a ten (10) day period, to commence such work within the ten (10) day period, and diligently pursue completion of such work. If the Association fails to do so, the City may provide such maintenance, repair or replacement without further notice to the Association or its members. Upon assuming such maintenance obligations, the City may levy an assessment upon each Lot on a pro rata basis for the entire cost of such maintenance, notwithstanding any other provisions contained in this Declaration, which assessment shall constitute a lien upon the Lots against which each assessment is made. During the period the City has a right and assumes the maintenance obligations set forth herein, the Association shall have no obligation or authority with respect to such maintenance. The right and authority of the City to maintain the Common Area shall cease and terminate when the Association, its successors or assigns, shall present to the City reasonable evidence of its willingness and ability to resume such maintenance. In the event the City assumes the duty of performing the maintenance obligations of the Association as provided herein, the City, its agents, representatives and employees shall have right of access to and over the Common Area and the Lots (except as to any residences) for the purpose of maintaining, improving and preserving the same; and in no event, and under no circumstances, shall the City be liable to the Association or any Owner, Resident or Member, or their respective heirs, executors, administrators, devisees, personal representatives, successors and assigns for (i) any acts or construction relating in any manner to maintaining, improving and preserving the Common Area or (ii) failure to perform such maintenance.

## ARTICLE VI

## **INSURANCE AND CASUALTY LOSSES**

Section 6.1 Association Insurance. The Association shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(a) Blanket "all-risk" property insurance for all insurable improvements on the Common Area and on the Townhome Lots, except betterments and improvements to a Lot installed by or at the request of the Owner thereof. If such coverage is not generally available at reasonable cost, then at a minimum an insurance policy providing fire and extended coverage, including coverage for vandalism and malicious mischief shall be obtained. The face amount of such insurance shall be sufficient to cover the full replacement cost of the insured property under current building codes and ordinances;

(b) commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents or contractors while acting on its behalf. If generally available at reasonable cost, such policy shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury and property damage;

(c) commercial crime insurance, including fidelity insurance, covering all persons responsible for handling Association funds in an amount determined in the Board's best business judgment, but not less than an amount equal to one-sixth (1/6) of the annual Base Assessments on all Lots plus reserves on hand. Fidelity insurance policies contain a waiver of all defenses based upon the exclusion of persons serving without compensation;

(d) workers' compensation insurance and employer's liability insurance, if and to the extent required by law;

(e) directors' and officers' liability coverage;

(f) such additional insurance as the Board, in its business judgment, determines advisable.

Premiums for all insurance on the Area of Common Responsibility shall be a Common Expense.

Section 6.2 Policy Requirements. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines that the loss is the result of the negligence or willful conduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Lot (s) as a Specific Assessment.

Section 6.3 Individual Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket "all-risk" property insurance for all insurable improvements on the Hangar Lots, personal property insurance covering liability for damage to the Owner's personal property and shall carry a liability insurance in the amount of at least \$500,000.00 for each occurrence covering liability for damage to persons or property of others located within the Lot, within another Lot, the Common Areas, or in any portion of the Property. Each Owner shall furnish a copy of such insurance policy or policies to the Association within 10 days of the Association's written request for same. Authority to adjust losses under policies obtained by an Owner shall be vested in the Owner. If an Owner fails to provide evidence of such insurance or fails to obtain such insurance, the Association may assume responsibility for obtaining such insurance coverage on behalf of the Owner, and the premiums for such insurance shall be levied as a Specific Assessment against the Owner.

Section 6.4 Damage and Destruction.

(a) In the event of damage to or destruction of Common Area, or other property insured by the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damage or destroyed property to substantially the same condition in which it existed prior to the fire or other peril, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Any damage to or destruction of the Common Area shall be repaired or reconstructed unless Members representing at least seventy-five percent (75%) of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within sixty (60) days after the loss not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such funds or information shall be made available. However, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

(c) If it is determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Owner thereof in a neat and attractive landscaped condition consistent with the Community-Wide Standard.

(d) Any damage to or destruction of all or any portion of a structure on a Lot shall be repaired by the Owner thereof within 75 days after such damage or destruction or, where repairs cannot be completed within 75 days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within 75 days after such damage or destruction.

Section 6.5 Disbursement of Proceeds. Any insurance proceeds remaining after paying the costs of repair or reconstruction to the Common Area or other property insured by the Association, or such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and its Members and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee of a Lot and may be enforced by such Mortgagee.

Section 6.6 Repair and Reconstruction. If the insurance proceeds are insufficient to cover the costs of repair or reconstruction to the Common Area or other property insured by the Association, the Board may, without the vote of the Members, levy a Special Assessment to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.2.

## **ARTICLE VII**

### **NO PARTITION**

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action seeking judicial partition without the written consent of all Owners and Mortgagees. This Article shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

## **ARTICLE VIII**

### **CONDEMNATION**

Section 8.1 Condemnation. If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least sixty-seven percent (67%) of the total Class "A" votes in the Association and of the Declarant, as long as the Declarant owns any property described on Exhibit "A" or Exhibit "B") by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as set forth in this Article.

Section 8.2 Disbursement. If the taking involves a portion of the Common Area on which improvements have been constructed, then the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) days after such taking, Declarant, so long as the Declarant owns any property described in Exhibit "A" or Exhibit "B", and Members representing at least seventy-five percent (75%) of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions in Article VI hereof regarding the disbursement of funds for the repair of casualty damage or destruction shall apply.

If the taking or conveyance does not involve any improvements on the Common Area



or a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

## ARTICLE IX

### MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of First Mortgages on Lots in the Property. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

Section 9.1 Notices of Action. An institutional holder, insurer or guarantor of a First Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer or guarantor and the Lot number, therefore becoming an "Eligible Holder") will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is a First Mortgage held, insured or guaranteed by such Eligible Holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a First Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; or

(c) any lapse, cancellation or material modification of any insurance policy maintained by the Association.

Section 9.2 No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the First Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

Section 9.3 Notice to Association. Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

Section 9.4 Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven percent (67%) of the First Mortgagees or Class "A" Members representing at least sixty-seven percent (67%) of the total Class "A" votes and the Class "B"



Member, if any, consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner of a Lot;

(c) By act or omission change, waive or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of Lots and the Common Area (the issuance and amendment of architectural standards, procedures, rules and regulations or use restrictions shall not constitute a change, waiver or abandonment within the meaning of this provision);

(d) Fail to maintain insurance, as required by this Declaration; or

(e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement or reconstruction of such property.

First Mortgagees may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and First Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 9.5 Other Provisions for Mortgagees. To the extent possible under Texas law:

(a) Any restoration or repair of the Property after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders of First Mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of First Mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

Section 9.6 Amendments to Documents. The following provisions do not apply to amendments to the constituent documents or termination of the Association made as a result of destruction, damage or condemnation pursuant to Sections 9.5(a) and (b) of this Article or to the addition of land in accordance with Article XIV.

(a) The consent of Members representing at least sixty-seven percent (67%) of the Class "A" votes and of the Declarant, so long as it owns any land subject to this Declaration, and the approval of the Eligible Holders of First Mortgages on Lots to which at least sixty-seven percent (67%) of the votes of Lots subject to a Mortgage appertain shall be required to terminate the Association.

(b) The consent of Members representing at least sixty-seven percent (67%) of the Class "A" votes and of the Declarant, so long as it owns any land subject to this Declaration, and the approval of Eligible Holders of First Mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to a Mortgage appertain shall be required to materially amend any provisions of the Declaration, Bylaws or Articles of Incorporation or to add any material provisions thereto which establish, provide for, modify, govern or regulate any of the following:

- (i) voting;
- (ii) assessments, assessment liens or subordination of such liens;
- (iii) reserves for maintenance, repair and replacement of the Common Area;
- (iv) insurance or fidelity bonds;
- (v) rights to use the Common Area;
- (vi) responsibility for maintenance and repair of the Property;
- (vii) expansion or contraction of the Property or the addition, annexation or withdrawal of Property to or from the Association;
- (viii) boundaries of any Lot;
- (ix) leasing of Lots;
- (x) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer or otherwise convey his or her Lot;
- (xi) establishment of self-management by the Association where professional management has been required by an Eligible Holder; or
- (xii) any provisions included in the Governing Documents which are for the express benefit of holders, guarantors or insurers of First Mortgages on Lots.

Section 9.7 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request; provided such request is delivered to the Mortgagee by

certified or registered mail, return receipt requested.

Section 9.8 Applicability of Article IX. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws or Texas law for any of the acts set out in this Article.

## ARTICLE X

### ASSOCIATION FINANCES

#### Section 10.1 Assessment.

(a) Personal Obligation. Each Owner, by accepting a deed for any portion of the Property, is deemed to covenant and agree to pay all assessments authorized by the Governing Documents. All assessments, together with interest (at a rate not to exceed eighteen percent (18%) per annum, or such higher rate as the Board may establish by resolution, subject to the limitations of Texas law), late charges as determined by Board resolution, costs and reasonable attorney's fees, shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Except as provided in Section 10.7, upon the transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments or charges due at the time of conveyance.

(b) Estoppel Certificate. The Association shall, within ten (10) days of the receipt of a written request from an Owner, Owner's agent, or title insurance company or its agent acting on behalf of the Owner, furnish to such Person, in addition to any other information that may be required by law, a certificate in writing signed by an officer of the Association, or a duly authorized agent, setting forth the amount of any unpaid assessments against the Owner's Lot. Such certificate shall be conclusive evidence of such Owner's assessment obligation as of the date of the certificate. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(c) Time of Payment. Assessments shall be paid in such manner and on such dates as may be fixed by the Board. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and Access Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

(d) No Exemption. No Owner may waive or otherwise exempt himself from liability for any assessments by non-use of Common Area, abandonment of the Lot or any other reason. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association or for inconvenience or discomfort arising from the making of repairs or improvements, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority or for any other action taken or

failed to be taken by the Association.

(e) Budget Deficits. For so long as the Declarant has the right to unilaterally additional property pursuant to Article XIV hereof, the Declarant may satisfy its assessment obligations of its Lots either by electing to pay assessments on its unsold Lots in the same manner as any other Owner or by electing to pay the difference between the amount of assessments (exclusive of reserve contributions) levied on all other Lots subject to assessment and the amount of actual expenditures (exclusive of reserve contributions) incurred by the Association during the fiscal year (the "budget deficit"). Regardless of such election, the Association shall have a lien against all Lots owned by the Declarant to secure the Declarant's obligations under this Section, which lien shall have the same attributes and shall be enforceable in the same manner as the Association's lien against other Lots under this Article X. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" Membership, Declarant shall pay assessments on its unsold Lots in the same manner as any other Owner.

#### Section 10.2 Base Assessment.

(a) Budget. At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses of the Association during the coming year, including any contributions to a reserve fund.

(b) Computation. The Base Assessment shall be levied equally against all Lots and shall be set at a level which is reasonably expected to produce the total income of the Association equal to the total budgeted Common Expenses, including reserves; provided, however, that Lots for which a Certificate of Occupancy has not been issued shall be assessed at a rate equal to fifty percent (50%) of the assessment rate for other Lots. In determining the level of assessments, the Board may consider other sources of funds available to the Association.

(c) Notice; Disapproval. The Board shall send notice of the amount of the Base Assessment to be levied pursuant thereto, to each Owner at least thirty (30) days prior to the effective date of such budget. The Base Assessment shall automatically become effective unless the proposed Base Assessment exceeds one hundred twenty percent (125%) of the prior fiscal year's Base Assessment. In the event the proposed Base Assessment exceeds this percentage, the Base Assessment shall automatically become effective unless disapproved at a meeting by Members representing at least fifty-one percent (51%) of the total Class "A" votes in the Association and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering a Base Assessment except on petition of the Members as provided for special meetings in the Bylaws, which petition must be presented to the Board within ten (10) days after delivery of the notice of the Base Assessment.

In the event a proposed Base Assessment is disapproved or the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined, the budget and Base Assessment most recently in effect shall continue in effect until a

new budget and Base Assessment is determined.

(d) Budget Revisions. The Board may revise the budget and adjust the Base Assessment from time to time during the fiscal year, subject to the notice requirements and the right of the Members to disapprove the revised Base Assessment as set forth above.

(e) Declarant Subsidy. The Declarant may reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 10.1(e)), which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in the Declarant's absolute discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy in any year shall not otherwise obligate the Declarant to continue payment of such subsidy in future years, unless provided in a written agreement between Declarant and the Association.

Section 10.3 Reserve Budget and Capital Contribution. The Board shall annually prepare reserve budgets for the Area of Common Responsibility. The budgets shall take into account the number and nature of replaceable assets, the expected life of each asset and the expected repair or replacement cost. The Board may set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, with respect both to amount and timing of annual Base Assessments over the period of the budget.

Section 10.4 Special Assessments. In addition to other assessments authorized hereunder, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of the amount budgeted. Any such Special Assessment shall be levied against the entire membership. Except as otherwise provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent, or any combination thereof, of Members representing at least fifty-one percent (51%) of the total votes of the Association, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special assessments may be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

Section 10.5 Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Lot as follows:

(a) To cover costs incurred in bringing a Lot into compliance with the provisions of the Governing Documents;

(b) to cover the costs of providing benefits, items or services not provided to all Lots, such as additional landscape maintenance, pest control service, security and transportation services; such assessments may be levied in advance of the provisions of the requested benefit, item or service as a deposit against charges to be incurred;

(c) for fines levied pursuant to the Governing Documents;

(d) for any other cost or expense authorized by the Governing Documents to be levied

against an Owner and his or her Lot.

Section 10.6 Access Assessments.

(a) Annual Access Assessments. The Association shall have the power to levy an Annual Access Assessment against each Lot which is subject to assessment pursuant to Article V of the Access Agreement. The Annual Access Assessment to be levied against each Owner's Lot shall be determined by multiplying the total amount levied by the Airport Association against the Association as an annual assessment under Section 5.2 of the Access Agreement by a fraction, the numerator of which is the total Buildable Square Foot (as defined in the Access Agreement) applicable to the Owner's Lot and the denominator of which is the total Buildable Square Feet of Lots in the Development Phase (as defined in the Access Agreement) in which the Lot is located.

(b) Special Access Assessments. The Association shall have the power to levy from time to time a Special Access Assessment against each Lot which is subject to assessment pursuant to Article V of the Access Agreement. The Special Access Assessment to be levied against each Owner's Lot shall be determined by multiplying the total amount levied by the Airport Association against the Association as a special assessment under Section 5.3 of the Access Agreement by a fraction, the numerator of which is the total Buildable Square Foot (as defined in the Access Agreement) applicable to the Owner's Lot and the denominator of which is the total Buildable Square Feet of all Lots located in the Development Phase (as defined in the Access Agreement) in which the Owner's Lot is located.

Section 10.7 Lien for Assessments. The Association shall have a lien against each Lot to secure payment of delinquent assessments, as well as interest (subject to the limitations of Texas law), late charges, and costs of collection (including attorney's fees and costs). Such lien shall be prior and superior to all other liens, except (a) the liens of all taxes, bonds, assessments and other levies which by law would be superior thereto, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment and judicial or non-judicial foreclosure in accordance with Texas law.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Lot, the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not, to any extent, affect the validity, enforceability or priority of the lien. The lien may be foreclosed through judicial or, to the extent allowed by law, non-judicial foreclosure proceedings in accordance with Section 51.002 et seq. of the Texas Property Code (the "Foreclosure Statute"), as it may be amended from time to time, in like manner of any deed of trust on real property. In connection with the lien created herein, each Owner of a Lot hereby grants to the Association, whether or not it is so expressed in the deed, the contract for sale or other conveyance to such Owner, a power of sale to be exercised in accordance with the Foreclosure Statute. At any foreclosure proceeding, any Person may bid for the Lot at foreclosure sale and acquire, hold, lease, mortgage and convey the Lot. While the Association owns the Lot following

foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue to recover a money judgment for unpaid assessments and other charges without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any post-sale assessments. However, the sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien as to any installments of such assessments which became due prior to such sale or transfer. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Lot obtains title pursuant to judicial or non-judicial foreclosure of the Mortgage, it shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses, collectible from Owners of all Lots, including such acquirer, its successors and assigns.

Section 10.8 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Lot on the first day of the month following the month in which the Board first determines a budget and levies assessments pursuant to this Article X. The first annual Base Assessment and Annual Access Assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

Section 10.9 Capitalization of the Association. Upon each transfer of record title to a Lot other than a transfer by Declarant to an affiliated Person or the transfer of Declarant's interest as the Declarant under this Declaration, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth (1/6th) of the annual Base Assessment per Lot for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment levied on the Lot and shall not be considered an advance payment of any portion thereof. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the Bylaws.

Section 10.10 Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of Base Assessments and Special Assessments:

- (a) All Common Area;
- (b) all property dedicated to and accepted by any governmental authority or public utility;
- (c) all property owned by persons qualifying for tax exempt status under Section 501(c) of the Internal Revenue Code of 1986 so long as such person owns property subject to this Declaration for purposes listed in Section 501(c) and who has been given a written exemption from assessment by the Association.

## ARTICLE XI



## **ARCHITECTURAL STANDARDS**

Section 11.1 General. No structure shall be placed, erected or installed upon any Lot and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration or modification of existing improvements, and planting or removal of landscaping materials) (collectively, the "Work") shall take place except in compliance with this Article XI and the Design Guidelines. Notwithstanding the above, an Owner may rebuild in the event of a casualty loss in accordance with originally approved plans and specifications without first seeking approval. No approval shall be required to remodel, repaint or redecorate the interior of a Townhome or Hangar. However, modifications to the interior of a Townhome or Hangar visible from outside the Lot shall be subject to approval.

This Article XI shall not apply to the activities of the Declarant or to the original construction of the Townhomes or Hangars by the Declarant nor to improvements to the Common Area by or on behalf of the Association.

This Article XI may not be amended without the Declarant's written consent so long as the Declarant owns any portion of the Property.

Section 11.2 Architectural Review. Responsibility for administration of the Design Guidelines, as defined below, and review of all applications for construction and modifications under this Article XI shall be handled by the Architectural Review Committee (the "Committee"). The members of the Committee may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Committee shall consist of three persons. Until one hundred percent (100%) of the Lots shown on the Plat have been conveyed to Class "A" Members and each such Lot has been issued a Certificate of Occupancy, the Declarant retains the right to appoint all members of the Committee who shall serve at the discretion of the Declarant. There shall be no surrender of this right prior to that time except in a written instrument executed by Declarant and recorded in the Collin County Deed Records. Upon the expiration of such right, the Board shall appoint the members of the Committee, who shall serve and may be removed at the discretion of the Board.

### Section 11.3 Guidelines and Procedures.

(a) Design Guidelines. The Declarant shall prepare the initial design and development guidelines and application and review procedures (the "Design Guidelines") which shall be applicable to all construction activities within the Property. Declarant shall have the sole and full authority to amend them as long as it owns any portion of the Property unless Declarant assigns such right to the Board at an earlier time. Thereafter, the Board shall have the authority to amend the Design Guidelines. Any amendments to the Design Guidelines shall be prospective only and shall not apply or require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; Declarant or the Board, as appropriate, is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive. The Design Guidelines may contain general



provisions applicable to all of the Property, as well as specific provisions which vary from one portion of the Property to another depending upon location and unique characteristics.

The Association shall make the Design Guidelines available to Owners who seek to engage in construction within the Property, and all such Persons shall conduct their activities in accordance with such Design Guidelines.

(b) Procedures. No Work shall commence on any Lot until an application for approval has been submitted to and approved by the Committee in writing. Such application shall be in the form required by the Committee and shall include plans and specifications ("Plans") showing the site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefor, and other features of proposed construction, as applicable. The Committee may require the submission of such additional information as it deems necessary to consider any application. The Plans shall be in such form and shall contain such information as may reasonably be required pursuant to the Design Guidelines. The Committee may permit a set of plans to be submitted for consideration and approval with respect to multiple Lots at one time.

In reviewing each submission, the Committee may consider (but shall not be limited to consideration of) visual and environmental impact, ecological compatibility, natural platforms and finished grade elevations, the quality of workmanship and design, harmony of external design with surrounding structures and environment, location in relation to surrounding structures and plant life, architectural merit and compliance with the general intent of the Design Guidelines and the general scheme of development for the Property. Decisions of the Committee may be based on purely aesthetic considerations.

A schedule and procedures outlining the specified Plans to be submitted at specific times shall be established by the Committee and may be set forth in the Design Guidelines. The Committee shall, within forty-five (45) days after receipt of each required submission of Plans, advise the party submitting the same, in writing, at an address specified by such party at the time of submission of (i) the approval of Plans or (ii) the disapproval of Plans, specifying the segments or features of the Plans which are objectionable and suggestions, if any, for the curing of such objections. In the event the Committee fails to advise the submitting party by written notice within the time set forth above of either the approval or disapproval of the Plans, the applicant may give the Committee written notice of such failure to respond, stating that, unless the Committee responds within ten (10) days of receipt of such notice, approval shall be deemed granted. However, no Plans, whether expressly approved or deemed approved pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing pursuant to Section 11.5.

Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed and postage prepaid, is deposited with the United States Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall also be sufficient and shall be deemed to have been given at the time of delivery.

Owners shall commence construction of the Hangars within one (1) year of acquiring title to a Hangar Lot. All work shall be completed within one (1) year of commencement of construction or such shorter period as the Committee may specify in the notice of approval, unless completion within such time is delayed due to causes beyond the reasonable control of the Owner, as determined in the sole discretion of the Committee.

Section 11.4 No Waiver of Future Approvals. The Committee's approval of any Plans for any Work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar Plans or other matters subsequently or additionally submitted for approval.

Section 11.5 Variances. The Committee may authorize variances from compliance with the Design Guidelines and any required procedures when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations so require. Such variances shall not, however, (i) be effective unless in writing; (ii) be contrary to the restrictions set forth in this Declaration; or (iii) estop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not constitute hardships.

Section 11.6 Limitation of Liability. Review and approval of any application pursuant to this Article XI is made on the basis of aesthetic considerations only, and the Committee shall not bear any responsibility for ensuring (i) structural integrity or soundness of approved construction or modifications, (ii) compliance with building codes and other governmental requirements, or (iii) conformity of quality, value, size or design among Lots. Neither the Declarant, the Association, the Board, the Committee nor member of any of the foregoing, shall be held liable for soil conditions, drainage or other general site work, or for any defects in Plans revised or approved hereunder, or for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Lot.

Section 11.7 Fees; Assistance. The Committee may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals, although nothing shall be construed herein as requiring the review of applications by such professionals.

Section 11.8 Enforcement. Any Work performed in violation of this Article XI or the Design Guidelines shall be deemed nonconforming. Upon written request from the Board, the Declarant or the Committee, Owners shall, at their own cost and expense, cure such nonconforming Work or remove such structure or improvement and restore the Lot to substantially the same condition as existed before the nonconforming Work. Should an Owner fail to remove or restore as required hereunder, the Declarant, the Association or their designees, shall have the right to enter the Lot and remove or cure the violation. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the nonconforming Lot and collected as a Specific Assessment pursuant to Section 10.5.

In the event that any Person fails to commence and diligently pursue to completion all approved Work, Declarant or the Association shall be authorized, after providing notice and an opportunity to cure to the Owner, to enter upon the Lot and remove or complete any incomplete Work and to assess all costs incurred against the Lot and the Owner thereof as a Specific Assessment pursuant to Section 10.5.

In addition to the foregoing, the Association and Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article XI and the decisions of the Committee.

Section 11.9 Notice of Violation. To evidence any violation of the Governing Documents by any Owner, the Board may file, but is not required to file, in the Deed Records of Collin County, Texas, a notice of violation setting forth (i) the violation, (ii) the name of the Owner and Lot, and (iii) a sufficient legal description of the Lot. Such notice shall be signed and acknowledged by an officer or duly authorized agent or attorney of the Association. The cost of preparing and recording such notice may be assessed against the non-conforming Lot and collected as a Specific Assessment pursuant to Section 10.5.

## **ARTICLE XII**

### **USE RESTRICTIONS**

Section 12.1 General. The Property shall be used only for private aviation and single-family residential and related purposes (which may include, without limitation, an information center and/or a sales office for any real estate broker retained by Declarant to assist in the sale of any portion of the Property, offices for any property manager, or business offices for Declarant or the Association) consistent with the Governing Documents.

Section 12.2 Occupants Bound. All provisions of the Governing Documents which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Lot. Every Owner shall cause all occupants of his or her Lot to comply with the Governing Documents. Every Owner shall be responsible for all violations and losses to the Common Area caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any such violation or loss.

Section 12.3 Signs. No sign, flag, banner of any kind shall be erected within the Property without the written consent of the Board, except (i) entry, directional and advertising signs installed by Declarant (ii) one professional sign of not more than three square feet in area per side advertising a Lot for sale (iii) political signs advocating the election of one or more political candidates or the

sponsorship of a political party, issue or proposal provided that such signs shall not be erected more than a reasonable period of time (in no event to exceed sixty (60) days in advance of the election to which they pertain and are removed within fifty (15) days after the election); (iv) personal signs indicating school affiliations, birth announcements and similar type signs; (v) contractors' signs used for advertising work performed on a Lot provided that such signs shall not be erected more than ninety (90) days following completion of the work; and (vi) signs indicating that a Townhome or Hangar is monitored by a security company. The Board reserves the right to restrict the size, color, lettering and placement of all permitted signs.

Section 12.4 Parking and Prohibited Vehicles. Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, golf carts, stored vehicles, inoperable vehicles, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and watercraft trailers shall be parked only in enclosed garages or Hangars. Parking of daily-use vehicles and operational and air worthy aircraft is permitted outside an enclosed garage or Hangar. No vehicle may be parked so as to block or obstruct use of the taxiways or streets. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for fourteen (14) consecutive days. For purposes of this Section, a vehicle shall be considered "inoperable" if it is obviously not capable of being operated as a vehicle or if it does not have current registration or operating licenses. Notwithstanding the above, service and delivery vehicles may be parked in the Property for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Areas. Any vehicle parked in violation of this Section or parking rules promulgated by the Board may be towed at the vehicle owner's expense.

Section 12.5 Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any portion of the Property, except that a reasonable number of dogs, cats or other usual and common household pets may be permitted on a Lot. Notwithstanding the above, those pets which are permitted to roam free or, in the sole discretion of the Board, endanger the health, make objectionable noise or constitute a nuisance or inconvenience to the occupants of other Lots shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined whenever outside the Townhome or Hangar or the enclosed portion of the Lot.

Section 12.6 Quiet Enjoyment. Nothing shall be done or maintained on any part of a Lot which emits foul or obnoxious odors outside the Lot or creates noise or other conditions which tend to disturb the peace, quiet, safety, comfort or serenity of the occupants of other Lots. There shall not be maintained any plants or animals or device or things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Property.

No noxious, illegal or offensive activity shall be carried on upon any portion of the Property, which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance or nuisance to persons using the Common Area or to the occupants of other Lots. No outside burning of trash or garbage shall be permitted within the Property. No speaker, horn,

whistle, bell or other sound device, except alarm devices used exclusively for security purposes, shall be installed or operated on any Lot. The use and discharge of firecrackers and other fireworks is prohibited within the Property.

Section 12.7 Unsightly or Unkempt Conditions. All portions of a Lot outside of enclosed structures shall be kept in a clean and tidy condition at all times. Nothing shall be done, maintained, stored or kept outside of enclosed structures on a Lot which, in the determination of the Board, causes an unclean, unhealthy or untidy condition to exist or is obnoxious to the senses. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any part of the Property. Notwithstanding the above, the disassembly and assembly of aircraft to perform routine aircraft maintenance and/or repair work shall be permitted provided such activities are not conducted on a regular or frequent basis and are either conducted entirely within an enclosed structure or, if conducted outside, are begun and completed within twenty-four (24) hours.

No person shall dump grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances in any drainage ditch, street or gutter, or anywhere on the Common Areas. Such materials shall not be disposed of on any portion of the Property without the prior permission of the Owner thereof.

Section 12.8 Antennas. No exterior antennas, aerials, satellite dishes or other apparatus for the transmission of television, radio, satellite or other signals of any kind shall be placed, allowed or maintained upon any portion of the Property. Notwithstanding the foregoing (i) antennas or satellite dishes designed to receive video programming services via multi-point distribution services which are one meter or less in diameter or diagonal measurement; (ii) antennas or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; or (iii) antennas or satellite dishes designed to receive television broadcast signals [(i), (ii) and (iii) are collectively referred to as "Permitted Devices"] shall be permitted to be placed on a Lot provided that any such Permitted Device is placed in the least conspicuous location on the Lot at which an acceptable quality signal can be received and such Permitted Device is not visible from neighboring property or is screened from the view of adjacent Lots in a manner consistent with the Community-Wide Standard and the Design Guidelines.

Section 12.9 Clotheslines, Garbage Cans, Tanks, etc. Permanent clotheslines and clothesline supports are not permitted. No garbage cans, above-ground storage tanks, mechanical equipment or other similar items shall be located outside of a Hangar or Townhome. All rubbish, trash and garbage shall regularly be removed from the Property and shall not be allowed to accumulate. No outside storage is allowed. No hazardous material or fuel may be stored in or around a Hangar or Townhome. No exterior fuel service is allowed.

Section 12.10 Subdivision and Time Sharing. No Lot shall be subdivided into two or more Lots, nor shall two or more Lots be combined into a single Lot, nor shall a Lot have its boundary lines changed after the Plat has been approved and recorded except with the prior written approval of the Board. Declarant, however, hereby expressly reserves the right to subdivide, change the

boundary line of and replat any Lot(s) owned by Declarant. Notwithstanding the combination of two or more Lots into a single Lot, the Owner of the combined Lot(s) shall be obligated to pay the Base Assessment or any Special Assessment based upon the number of Lots originally comprising the Lot as shown on the original approved and recorded Plat of the portion of the Property including such Lots.

No Lot shall be made subject to any type of timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years.

Section 12.11 Firearms. The discharge of firearms and use of bows and arrows within the Property is prohibited. The term "firearms" includes "B-B" guns, pellet guns and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained in the Governing Documents, the Association shall not be obligated to take action to enforce this Section.

Section 12.12 Pools. No above-ground swimming pools shall be erected, constructed or installed on any Lot. Jacuzzis, whirlpools or spas approved pursuant to Article XI shall not be considered an above-ground pool for the purposes of this Section.

Section 12.13 Irrigation. No sprinkler or irrigation systems of any type shall be installed, constructed or operated within the Property unless prior written approval has been received from the Board or its designee.

Section 12.14 Tents, Mobile Homes and Temporary Structures. Except as may be permitted by the Declarant or the Committee during initial construction within the Property, no tent, shack, mobile home, storage shed or structure of a temporary nature shall be placed upon a Lot or any part of the Property without prior approval pursuant to Article XI hereof, except that party tents or similar temporary structures may be erected for a limited period of time for special events with prior written approval of the Board.

Section 12.15 Grading, Drainage and Septic Systems. No Person shall alter the grading of any Lot without prior approval pursuant to Article XI of this Declaration. No Person other than Declarant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers or storm drains. The Declarant hereby reserves for itself and the Association a perpetual easement across the Property for the purpose of altering drainage and water flow. However, the exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any adjacent property without the Owner's consent. Septic tanks and drain fields, other than those installed by or with the consent of the Declarant, are prohibited within the Property.

Section 12.16 Removal of Plants and Trees. No trees or shrubs, except for those which are diseased or dead or create a safety hazard, shall be removed except in strict compliance with the Design Guidelines and upon prior approval in accordance with Article XI of this Declaration. In the event of an intentional or unintentional violation of this section, the violator may be required by the Committee to replace the removed tree with one or more comparable trees of such size and number

and in such locations as the Committee may determine necessary, in its sole discretion, to mitigate the damage.

Section 12.17 Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Property, except for temporary lines as required during construction and high voltage lines.

Section 12.18 Air-conditioning Units. No window air-conditioning units may be installed in any Townhome or Hangar.

Section 12.19 Lighting. Except for traditional holiday decorative lights, which may be displayed for one (1) month prior to and one (1) week after any commonly recognized holiday for which such lights are traditionally displayed, all exterior lights must be approved in accordance with Article XI of this Declaration.

Section 12.20 Artificial Lakes, Exterior Sculpture and Similar Items. No artificial vegetation, permanent or temporary flagpoles, exterior sculpture, fountains, flags, birdhouses, birdbaths, other decorative embellishments, or similar items, shall be permitted unless approved in accordance with Article XI of this Declaration.

Section 12.21 Playground and Recreational Equipment. No jungle gyms, swing sets, basketball hoops and backboards, similar playground equipment, tennis courts or such other recreational equipment shall be erected or installed on any Lot without prior written approval in accordance with Article XI hereof.

Section 12.22 Fences. No hedges, walls, dog runs, animal pens or fences of any kind shall be permitted on any Lot except as approved in accordance with Article XI.

Section 12.23 Business Use. No business, trade or similar activity may be conducted in or from any Lot, except that an Owner or resident may conduct business activities within the Townhome or Hangar so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Townhome or Hangar, (ii) the business activity conforms to all zoning requirements for the Property, (iii) the business activity does not noticeably increase the level of vehicular or pedestrian traffic or the number of vehicles parked in the Property, (iv) the business activity does not involve door-to-door solicitation of residents of the Property, and (v) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

The terms "business" and "trade" as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (i) such activity is engaged in full or part time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.



Notwithstanding the above, the leasing of a Lot shall not be considered a business or trade within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant with respect to its development and sale of the Property or its use of any Lots which it owns within the Property.

Section 12.24 Leasing of Lots. "Leasing", for purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person, other than the Owner or a person related by blood, marriage or adoption to the Owner for which the Owner receives any consideration or benefit, including, but not limited to, rent, a fee, service, gratuity or emolument. All Leases shall be in writing and on the lease form provided by the Board. Lots may be leased only in their entirety. No fraction or portion may be leased. There shall be no subleasing of Lots or assignment of leases unless prior written approval is obtained from the Board. No transient tenants may be accommodated in a Lot. All leases shall be in writing and shall be for an initial term of no less than six (6) months, except with the prior written consent of the Board. Prior to leasing a Lot, the Owner shall submit a completed rental application for each prospective lessee of the Lot to the Board who shall request the management company to conduct an appropriate background check. The Owner shall pay all costs of the background check at the time the application is submitted to the Association. The Board may approve or disapprove of the prospective lessee(s). The Owner must make available to the lessee copies of the Governing Documents and the Owner shall be responsible for ensuring that the lessee complies with the Governing Documents and the lease. The lease may be enforced by either the Owner, the Board, management company or Declarant, and such enforcement shall include the right to evict any lessee who violates the Governing Documents or lease. The Owner shall pay all costs of eviction, including reasonable attorney's fees and court costs. The Board may adopt reasonable rules regulating leasing and subleasing.

Section 12.25 Laws and Ordinances. Every Owner and occupant of any Lot, their guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Property. Any violation may be considered a violation of this Declaration. However, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

Section 12.26 Single Family Occupancy. No Lot shall be occupied by more than a single family. For purposes of this restriction, a single family shall be defined as any number of persons related by blood, adoption or marriage living with not more than one person who is not so related as a single household unit, or no more than two persons who are not so related living together as a single household unit, and the household employees of either such household unit; provided, however, that nothing herein shall be interpreted to restrict the ability of one or more adults meeting the definition of a single-family from residing with any number of persons under the age of eighteen (18) over whom such persons have legal authority.

Section 12.27 Taxiway Use by Aircraft.

(a) Only Owners and their guests and invitees shall have the right to use the private streets and taxiways with aircraft. The Association shall have the right to deny the use of Common Area to



any Owner, his or her family, guests, tenants and invitees in the event of a violation of the Governing Documents, a default in the payment of any obligation to the Association, or a violation of the rules and restrictions governing the use of the Aero Country Airport by the Owner, his family, guests, tenants or invitees.

(b) Each Owner and Person who accesses the Aero Country Airport from the Common Area, by the action of using the taxiways with the Person's aircraft, agrees to indemnify and hold the Declarant and the Association harmless from and against all liability for injuries to persons or damage to property caused by such person's negligence in the use of the taxiways; provided, however, that such persons shall not be liable for injury or damage caused by the negligence of the Declarant, its agents or employees, or the Association, its agents or employees.

(c) The Association may adopt, amend and enforce from time to time rules and regulations governing the use and access to the Aero Country Airport from the Property which are consistent with or more restrictive than the rules and regulations of the Aero Country Airport and the rules and ordinances of the Federal Aviation Administration with respect to civil aircraft operations on landing fields.

**Section 12.28 Airport Ground Rules.** The following rules shall apply to any person using the Aero Country Airport and are subject to change by the Airport Association:

(a) The only motorized vehicles within the Aero Country Airport shall be (i) golf carts, aircraft tugs, and emergency vehicles, and (ii) other vehicles operated by a person who holds a license issued by the FAA.

(b) All motorized vehicles within the Aero Country Airport must be operated by a licensed driver, must yield to aircraft and the maximum speed limit shall be 20 miles per hour.

(c) Persons under 16 years of age are not permitted within the Aero Country Airport unless accompanied by a person over the age of 21.

(d) Aircraft have the right-of-way at all times.

(e) The Association shall prevent vehicular access to the Property via Aero Country Road and the Aero Country Airport runway and taxiways.

**Section 12.29 Aircraft Rules.** The following rules apply to the use and operation of aircraft within the Aero Country Airport and are subject to change by the Airport Association:

(a) All persons operating radio-equipped aircraft must announce his or her intentions.

(b) Downwind takeoffs and landings are prohibited.

(c) Runway 17 must be used when there is no predominant North-South wind direction.

(d) The maximum gross weight of any aircraft using the Aero Country Airport is 7,000 pounds.

(e) Transient touch-and-go landings are prohibited.

(f) Transient flight training is prohibited.

(g) Transient operations between 10:00 PM and 6:00 AM local time are prohibited.

(h) The aircraft traffic pattern for piston aircraft is 1,000 feet above ground level.

(i) The aircraft traffic pattern for turbine aircraft is 1,500 feet above ground level.

(j) Each aircraft owner shall take such additional actions as may be reasonably necessary to prevent or meaningfully reduce the creation of blowing of dust and debris by prop-wash especially into hangars, whether initiated by the owner or his or her guests.

### **ARTICLE XIII**

#### **EASEMENTS**

Section 13.1 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of the Person claiming the benefit of such easement.

Section 13.2 Easements for Utilities, etc. There are hereby reserved unto Declarant, so long as the Declarant owns any property described on Exhibit "A", the Association and the designees of each (which may include, without limitation, Collin County, Texas, and any utility) access and maintenance easements upon, across, over and under all of the Property (but not through a structure) to the extent reasonably necessary for the purpose of replacing, repairing and maintaining cable television systems, master television antenna systems, security and similar systems, roads, walkways, drainage systems, street lights, signage and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas and electricity and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of the Property. Notwithstanding anything to the contrary herein, these easements shall not entitle the holders to construct or install any of the foregoing systems, facilities or utilities over, under or through any existing Townhome or Hangar on a Lot and any damage to a structure on a Lot resulting from the exercise of these easements shall promptly be repaired by, and at the expense of, the Person exercising these easements. The exercise of these easement shall not unreasonably interfere with the

use of any Lot.

Without limiting the generality of the forgoing, there are hereby reserved for the local water supplier, electric company, and natural gas supplier easements across all the Common Area for ingress, egress, installation, reading, replacing, repairing and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the Townhome or Hangar on any Lot. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines or other utilities may be installed or relocated on the Property except as may be approved by the Board or as provided by Declarant.

Section 13.3 Right of Entry. The Association shall have the right, but not the obligation, to enter upon any structure on a Lot for emergency, security and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with the Governing Documents. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon a Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any Townhome or Hangar without permission of the Owner except by emergency personnel acting in their official capacities. The easement granted hereunder shall not create an obligation or duty on the part of Declarant or the Association to provide for the safety or security within the Property.

Section 13.4 Certain Easements for Owners. There is hereby reserved to each Lot reciprocal appurtenant easements for access over, across and upon the adjacent Lot (exclusive of Townhomes or Hangars) and the adjacent Common Area for the construction, maintenance and repair of Townhomes or Hangars or party structures to a distance of not more than five feet (5'), as measured from any point on the common boundary along a line perpendicular to such boundary. The use of said easement by an Owner shall not exceed a total of thirty (30) days each year for maintenance unless approved in writing by the Board. Any landscaping or irrigation systems damaged by the Owner during the construction, maintenance or repair of his or her Townhome or party structure shall be repaired or replaced, if necessary, at the expense of the Owner causing such damage. If the Owner fails properly to perform such repairs or replacements, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a Specific Assessment in accordance with Section 10.5. However, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when immediate entry is required due to an emergency situation.

There is also hereby reserved to each Lot reciprocal appurtenant easements of encroachment over, across and upon the adjacent Lot and adjacent Common Area for water drainage from the roof of the Townhomes or Hangars or other structures. Owners shall not attach any object to a Townhome or Hangar of an adjacent Lot or disturb the grading of the area located between the adjacent Townhomes or Hangars or otherwise act with respect to such area in any manner which would damage the adjacent Lot. In the event of a dispute arising out of the rights and obligations created under this Section 13.4, the parties agree to resolve the dispute in accordance with Section 5.4(e).

Section 13.5 Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access and development of the property described in Exhibit "B", whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such property.

#### **ARTICLE XIV**

#### **ANNEXATION AND WITHDRAWAL OF PROPERTY**

Section 14.1 Annexation Without Approval of Membership. The Declarant shall have the unilateral right, privilege and option, from time to time at any time until the Declarant no longer owns property for development and/or sale in the Property or until December 31, 2015, whichever is earlier, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the real property described on Exhibit "B". The Declarant shall have the unilateral right to transfer to any other Person the right, privilege and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the owner of at least a portion of the real property described in Exhibit "A" and Exhibit "B" and that such transfer is memorialized in a written, recorded instrument executed by the Declarant. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the property set forth in Exhibit "B" in any manner whatsoever.

Such annexation shall be accomplished by filing a Supplemental Declaration annexing such property in the County Clerk official records of Collin County, Texas. Such Supplemental Declaration shall not require the consent of Members but shall require the consent of the owner of such property, if other than Declarant, and the approval of the City. Any such annexation shall be effective upon the filing for record of such supplemental declaration unless otherwise provided therein.

Section 14.2 Annexation With Approval of Membership. Subject to the consent of the owner thereof, the Association may annex real property other than that described on Exhibit "B" and following the expiration of the right in Section 14.1, any property described on Exhibit "B", to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of Members representing a majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose.

Annexation shall be accomplished by filing a supplemental declaration describing the property being annexed in the County Clerk official records of Collin County, Texas. Any such

supplemental declaration shall be signed by the President and the Secretary of the Association and by the owner of the property being annexed. Any such annexation shall be effective upon filing unless otherwise provided therein.

Section 14.3 Withdrawal of Property. The Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to expand the Property pursuant to Section 14.1 of this Article XIV without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Property then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Property desired to be effected by the Declarant.

Section 14.4 Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the property submitted to this Declaration initially or by supplemental declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through assessments. Such additional covenants and easements shall be set forth in a supplemental declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant.

Section 14.5 Amendment. This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property described in Exhibit "A" or Exhibit "B".

## **ARTICLE XV**

### **DISPUTE RESOLUTION**

#### **Section 15.1 Consensus for Association Action.**

(a) Except as provided in this Article, the Association may not commence a legal proceeding or an action under this Article without the approval of at least a majority of the Class "A" Members who are present and voting at a duly called meeting of the Association and the consent of the Declarant, if any. This Article shall not apply, however, to (i) actions brought by the Association to enforce any of the Governing Documents (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of assessments; (iii) proceedings involving challenges to *ad valorem* taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it.

(b) Prior to the Association or any Member commencing any proceeding to which Declarant is a party, including but not limited to an alleged defect of any improvement, Declarant shall have the right to be heard by the Members, or the particular Member, and to access, inspect, correct the condition of, or redesign any portion of any improvement as to which a defect is alleged or otherwise correct the alleged dispute.

## Section 15.2 Alternative Method for Resolving Disputes.

Declarant, its officers, directors, employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Declaration; and any person not otherwise subject to this Declaration who agrees to submit to this Article (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 15.3 (collectively, "Claims") to the procedures set forth in Section 15.4.

## Section 15.3 Claims.

Unless specifically exempted below, all Claims between any of the Bound Parties regardless of how the same might have arisen or on what it might be based including, but not limited to Claims (a) arising out of or relating to the interpretation, application or enforcement of the Governing Documents or the rights, obligations and duties of any Bound Party under the Governing Documents; (b) relating to the design or construction of improvements; or (c) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party shall be subject to the provisions of Section 15.4.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 15.4:

(a) any suit by the Association against any Bound Party to enforce the provisions of Article X;

(b) any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions of Articles X, XI, or XII;

(c) any suit between or among Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and

(d) any suit in which any indispensable party is not a Bound Party.

## Section 15.4. Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and Respondent referred to herein being individually, as a "Party", or, collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises;

(iii) the proposed remedy; and

(iv) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation and Mediation.

(i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(ii) If the Parties do not resolve the Claim within 30 days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have to days to submit the Claim to mediation under the auspices of the American Arbitration Association ("AAA") in accordance with the AAA's Commercial or Construction Industry Mediation Rules, as appropriate.

(iii) If Claimant does not submit the Claim to mediation within such time, or does not appear for mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(iv) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation Notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 15.4 and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 15.4. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party,

from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

(c) Binding Arbitration.

(i) Upon Termination of Mediation, Claimant shall thereafter be entitled to initial final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Arbitration Rules, as appropriate. Such Claims shall not be decided by or in a court of law. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. If the claimed amount exceeds \$250,000, the dispute shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the Parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

(ii) Each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting Party shall be awarded reasonable attorneys' fees and expenses incurred in defending such contest. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator(s).

(iii) The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both Parties.

Section 15.5 Amendment of Article.

Without the express prior written consent of Declarant, this Article may not be amended for a period of twenty (20) years from the effective date of this Declaration.

**ARTICLE XVI**

**ADDITIONAL RIGHTS RESERVED TO DECLARANT**

Section 16.1 Assignment. Any or all of the special rights and obligations of the Declarant set forth in the Governing Documents may be transferred to other Persons; provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in the Governing Documents. Furthermore, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the County Clerk Official Records of Collin County, Texas.

Section 16.2 Marketing and Sales Activities. Declarant may construct and maintain and carry on upon portions of the Common Area, or upon Lots owned by Declarant, such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient or incidental to the construction or sale of Townhomes and Hangars, including, but not limited to, business offices, signs, sales offices and model residences. Declarant and authorized Builder(s) shall



have easements for access to and use of such facilities.

Section 16.3 Additional Covenants. No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without Declarant's review and written consent. Any attempted recordation without compliance herewith shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the public records.

Section 16.4 Use of Name of Development. No Person shall use the name "Aero Country East" or any derivative of such name in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "Aero Country East" in printed or promotional material where such term is used solely to specify that particular property is located within the Property and the Association shall be entitled to use the words "Aero Country East" in its name.

Section 16.5 Termination of Rights. The rights contained in this Article shall not terminate until the earlier of (i) thirty (30) years from the date this Declaration is recorded, or (ii) upon recording by Declarant of a written statement that all sales activity has ceased.

## **ARTICLE XVII**

### **GENERAL PROVISIONS**

Section 17.1 Term. The covenants and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Property, their respective legal representatives, heirs, successors and assigns for a term of thirty (30) years from the date this Declaration is recorded. After such time, the covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

#### **Section 17.2 Amendment**

(a) By Declarant. Notwithstanding Section 17.1 and in addition to the specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" membership, Declarant may unilaterally amend this Declaration for any purpose; provided, however, that any amendment pursuant to this paragraph shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing and any such amendment must be approved by the City.

(b) By Class "A" Members. Except as provided above and otherwise specifically provided in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing sixty-seven percent (67%) of the total Class "A"

votes in the Association, the consent of the Declarant, so long as the Declarant owns any property subject to this Declaration, and the consent of the City.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. To be effective, any amendment must be recorded in the County Clerk Official Records of Collin County, Texas. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted.

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

Section 17.3 Severability. Invalidation of any provision or portion of a provision of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 17.4 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 17.5 Notice of Sale or Transfer of Title. In the event that any Owner desires to sell or otherwise transfer title to his or her Lot, such Owner shall give the Board at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot coming due prior to the date upon which such notice is received by the Board, including assessment obligations, notwithstanding the transfer of title to the Lot.

Section 17.6 Disclosures. Each Owner and resident acknowledges the following:

- (a) The Property is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved or widened in the future.
- (b) The views from an Owner's residence can change over time due to, among other things, additional development and the addition or removal of landscaping.
- (c) No representations are made regarding the uses of adjacent property, or that the present uses of adjacent property may not change in the future.
- (d) No representations are made regarding which schools may now or hereafter serve the Property.
- (e) No representations are made that a residence is or will be soundproof or that sound may not be transmitted from one residence to another.

**IN WITNESS WHEREOF**, the undersigned duly authorized officer of the Declarant has executed this Declaration on the 13 day of January, 2010.

**DECLARANT: HEAVY VENTURES, LLC**

By: Michael D Shell  
Its: Member

**ACKNOWLEDGMENT**

**STATE OF TEXAS**

**COUNTY OF COLLIN**

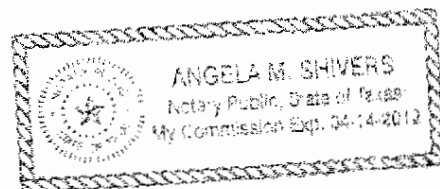
§  
§  
§

**BEFORE ME**, the undersigned, a Notary Public in and for the State of Texas, on the 13 day of January, 2010, personally appeared Michael D Shell, Member and Manager of HEAVY VENTURES, LLC, a Texas limited liability company, and acknowledged that he executed the foregoing document on behalf of said company.

Angela M. Shivers  
Notary Public in and for the State of Texas

**AFTER RECORDING RETURN TO:**  
Riddle & Williams, P.C.  
3710 Rawlins Street, Suite 1400  
Dallas, Texas 75219

G:\PUD.RES\AEROCOUNTRYEAST.FINAL



**EXHIBIT "A"**

**Property Subject to Declaration**

DESCRIPTION, of a 9.5457 acre tract of land situated in the John R. Burrows Survey, Abstract No. 70, Collin County, Texas; said tract being part of that certain tract of land described in Special Warranty Deed (With Vendor's Lien) to Heavy Ventures, LLC recorded in County Clerk's File No. 20090715000887450 of the Deed Records of Collin County, Texas; said 9.5457 acre tract being more particularly described as follows:

BEGINNING, at a 5/8-inch iron rod with "Pogue Eng & Dev" cap set for corner in the northerly right-of-way line of Virginia Parkway (a variable width right-of-way, 120 feet wide at this point); said point also being the southeast corner of the said Heavy Ventures tract and the southwest corner of Common Area "B-1" as shown on the plat of Virginia Hills Addition Phase Two, an addition to the City of McKinney, Texas recorded in Cabinet M, Page 517 of the Plat Records of Collin County, Texas;

THENCE, along the said northerly line of Virginia Parkway, the following two (2) calls:

South 89 degrees, 13 minutes, 28 seconds West, a distance of 77.56 feet to a 5/8-inch iron rod with "Pogue Eng & Dev" cap set at the beginning of a tangent curve to the left;

In a westerly direction, along said curve to the left, having a central angle of 00 degrees, 17 minutes, 48 seconds, a radius of 1560.00 feet, a chord bearing and distance of South 89 degrees, 04 minutes, 34 seconds West, 8.08 feet, an arc distance of 8.08 feet to a point for corner at the end of said curve; said point also being the most southerly southwest corner of said Heavy Ventures tract and the southeast corner of that certain tract of land described in Special Warranty Deed (With Vendor's Lien) to Heavy Ventures, LLC recorded in County Clerk's File No. 20090715000887430 of the said Deed Records;

THENCE, departing the said northerly line of Virginia Parkway and along the common line between the first and second referenced Heavy Ventures tracts, the following eight (8) calls:

North 00 degrees, 36 minutes, 16 seconds West, a distance of 34.24 feet to a 5/8-inch iron rod with "Pogue Eng & Dev" cap set for corner;

North 44 degrees, 23 minutes, 44 seconds East, a distance of 24.88 feet to a 5/8-inch iron rod with "Pogue Eng & Dev" cap set for corner; said point being the beginning of a non-tangent curve to the right;

In a northerly direction, along said curve to the right, having a central angle of 06 degrees, 56 minutes, 06 seconds, a radius of 475.00 feet, a chord bearing and distance of North 03 degrees, 51 minutes, 20 seconds East, 57.46 feet, an arc

distance of 57.49 feet to a 5/8-inch iron rod with "Pogue Eng & Dev" cap set at the end of said curve;

North 07 degrees, 19 minutes, 23 seconds East, a distance of 32.77 feet to a 5/8-inch iron rod with "Pogue Eng & Dev" cap set at the beginning of a tangent curve to the left;

In a northerly direction, along said curve to the left, having a central angle of 05 degrees, 17 minutes, 11 seconds, a radius of 425.00 feet, a chord bearing and distance of North 04 degrees, 40 minutes, 47 seconds East, 39.20 feet, an arc distance of 39.21 feet to a 5/8-inch iron rod with "Pogue Eng & Dev" cap set at the end of said curve; said point being the beginning of a compound curve to the left;

In a northwesterly direction, along said curve to the left, having a central angle of 84 degrees, 16 minutes, 15 seconds, a radius of 8.00 feet, a chord bearing and distance of North 40 degrees, 05 minutes, 56 seconds West, 10.73 feet, an arc distance of 11.77 feet to a 5/8-inch iron rod with "Pogue Eng & Dev" cap set at the end of said curve; said point being the beginning of a reverse curve to the right;

In a northwesterly direction, along said curve to the right, having a central angle of 80 degrees, 18 minutes, 46 seconds, a radius of 50.00 feet, a chord bearing and distance of North 42 degrees, 04 minutes, 41 seconds West, 64.49 feet, an arc distance of 70.09 feet to a 5/8-inch iron rod with "Pogue Eng & Dev" cap set for corner at the end of said curve; said point also being the northeast corner of the second referenced Heavy Ventures tract;

South 89 degrees, 13 minutes, 28 seconds West, a distance of 395.65 feet to a 5/8-inch iron rod with "Pogue Eng & Dev" cap set for corner in the east line of that certain tract of land described in Special Warranty Deed to Heavy Ventures, LLC recorded in County Clerk's File No. 20080402000389800 of the said Deed Records; said point also being the most westerly southwest corner of the first referenced Heavy Ventures tract and the northwest corner of the second referenced Heavy Ventures tract;

THENCE, North 00 degrees, 40 minutes, 44 seconds West, departing the said common line between the first and second Heavy Ventures tracts and along the said east line of Heavy Ventures tract and the west line of the first referenced Heavy Ventures tract, a distance of 735.33 feet to a 5/8-inch iron rod with "Pogue Eng & Dev" cap set for corner;

THENCE, North 89 degrees, 23 minutes, 44 seconds East, departing the said east line and said west line of said Heavy Ventures tracts, a distance of 296.59 feet to a 5/8-inch iron rod with "Pogue Eng & Dev" cap set for corner;

THENCE, North 00 degrees, 36 minutes, 16 seconds West, a distance of 139.00 feet to a 5/8-inch iron rod with "Pogue Eng & Dev" cap set for corner;

THENCE, North 89 degrees, 23 minutes, 44 seconds East, a distance of 150.00 feet to a 5/8-inch iron rod with "Pogue Eng & Dev" cap set for corner;

THENCE, North 00 degrees, 36 minutes, 16 seconds West, a distance of 34.00 feet to a 5/8-inch iron rod with "Pogue Eng & Dev" cap set for corner;

THENCE, North 89 degrees, 23 minutes, 44 seconds East, a distance of 55.00 feet to a 5/8-inch iron rod with "Pogue Eng & Dev" cap set for corner; said point being in the west line of Virginia Hills Addition, Phase One according to the plat recorded Cabinet L, Page 883 of the said Plat Records;

THENCE, South 00 degrees, 36 minutes, 16 seconds East, along the east line of the first referenced Heavy Ventures tract and the said west line of Virginia Hills Addition, Phase One, at a distance of 224.07 feet passing the southwest corner of said Virginia Hills Addition, Phase One and the northwest corner of said Virginia Hills Addition, Phase Two, continuing along the said east line of the first referenced Heavy Ventures tract and the west line of said Virginia Hills Addition, Phase Two, in all a total distance of 1144.07 feet to the POINT OF BEGINNING;

CONTAINING, 415,809 square feet or 9.5457 acres of land, more or less.

**EXHIBIT "B"**

**Property Subject to Annexation**

**Residential Tract:**

DESCRIPTION, of a 37.4687 acre tract of land situated in the John R. Burrows Survey, Abstract No. 70, Collin County, Texas; said tract being part of that certain tract of land described in General Warranty Deed to Virginia 100 LP recorded in Volume 5047, Page 3059 of the Deed Records of Collin County, Texas; said 37.4687 acre tract being more particularly described as follows:

BEGINNING, at a 5/8-inch iron rod with "Pogue Eng & Dev" cap set for corner in the northerly right-of-way line of Virginia Parkway (a variable width right-of-way, 120 feet wide at this point); said point also being the southwest corner of Common Area "B-1" as shown on the plat of Virginia Hills Addition Phase Two, an addition to the City of McKinney, Texas recorded in Cabinet M, Page 517 of the Plat Records of Collin County, Texas;

THENCE, along the said northerly line of Virginia Parkway, the following two (2) calls:

South 89 degrees, 13 minutes, 28 seconds West, a distance of 77.56 feet to a 5/8-inch iron rod with "Pogue Eng & Dev" cap set at the beginning of a tangent curve to the left;

In a westerly direction, along said curve to the left, having a central angle of 00 degrees, 17 minutes, 48 seconds, a radius of 1560.00 feet, a chord bearing and distance of South 89 degrees, 04 minutes, 34 seconds West, 8.08 feet, an arc distance of 8.08 feet to a 5/8-inch iron rod with "Pogue Eng & Dev" cap set at the end of said curve;

THENCE, North 00 degrees, 36 minutes, 16 seconds West, departing the said northerly line of Virginia Parkway, a distance of 34.24 feet to a 5/8-inch iron rod with "Pogue Eng & Dev" cap set for corner;

THENCE, North 44 degrees, 23 minutes, 44 seconds East, a distance of 43.33 feet to a 5/8-inch iron rod with "Pogue Eng & Dev" cap set for corner;

THENCE, North 00 degrees, 36 minutes, 16 seconds West, a distance of 116.03 feet to a 5/8-inch iron rod with "Pogue Eng & Dev" cap set at the beginning of a tangent curve to the left;

THENCE, in a northwesterly direction, along said curve to the left, having a central angle of 82 degrees, 04 minutes, 19 seconds, a radius of 8.00 feet, a chord bearing and distance of North 41 degrees, 38 minutes, 25 seconds West, 10.50 feet, an arc distance of 11.46 feet to a 5/8-inch iron rod with "Pogue Eng & Dev" cap set at the end of said curve; said point being the beginning of a reverse curve to the right;

THENCE, in a northwesterly direction, along said curve to the right, having a central angle of 80 degrees, 45 minutes, 17 seconds, a radius of 50.00 feet, a chord bearing and distance of North 42

degrees, 17 minutes, 56 seconds West, 64.78 feet, an arc distance of 70.47 feet to a 5/8-inch iron rod with "Pogue Eng & Dev" cap set at the end of said curve;

THENCE, South 89 degrees, 13 minutes, 28 seconds West, a distance of 395.65 feet to a 5/8-inch iron rod with "Pogue Eng & Dev" cap set for corner in the west line of said Virginia 100 LP tract; said point also being in the east line of that certain tract of land described in Special Warranty Deed to Heavy Ventures, LLC recorded in County Clerk's File No. 20080402000389800 of the said Deed Records;

THENCE, in a northerly direction, along the said west line of Virginia 100 tract and said east line of Heavy Ventures tract, the following two (2) calls:

North 00 degrees, 40 minutes, 44 seconds West, a distance of 1100.00 feet to a 1/2-inch iron rod with "J. E. Smith RPLS #3700" cap found at an angle point ;

North 00 degrees, 23 minutes, 44 seconds West, a distance of 1652.00 feet to a 1/2-inch iron pipe found at an angle point; said point also being the northeast corner of said Heavy Ventures tract;

THENCE, North 00 degrees, 57 minutes, 48 seconds West, continuing along the said west line of Virginia 100 tract and along the east line of that certain tract of land described in Special Warranty Deed to Chihuahua Airport Partners, L.P. recorded in County Clerk's File No. 20061103001581370 of the said Deed Records, a distance of 631.99 feet to a 1/2-inch iron rod found for corner; said point also being the northwest corner of said Virginia 100 tract and the southwest corner of that certain tract of land described in Warranty Deed to 380 Ranch Joint Venture recorded in Volume 2217, Page 146 of the said Deed Records;

THENCE, North 89 degrees, 14 minutes, 27 seconds East, departing the said west line of Virginia 100 tract and said east line of 380 Ranch Joint Venture tract and along the north line of said Virginia 100 tract and the south line of said 380 Ranch Joint Venture tract, a distance of 373.23 feet to a 5/8-inch iron rod with "Pogue Eng & Dev" cap set for corner from which a 5/8-inch iron rod with "KHA" cap found bears South 87 degrees, 59 minutes West, a distance of 9.0 feet; said point also being the northwest corner of Lot 14, Block N, Virginia Hills Addition Phase Five, an addition to the City of McKinney, Texas according to the plat recorded in Cabinet N, Page 661 of the said Plat Records;

THENCE, South 00 degrees, 36 minutes, 16 seconds East, departing the said north line of Virginia 100 tract and said south line of 380 Ranch Joint Venture tract and along the west line of said Lot 14, Block N, at a distance of 437.48 feet passing the southwest corner of said Lot 14, Block N and the northwest corner of Virginia Hills Addition Phase Four, an addition to the City of McKinney, Texas according to the plat recorded in Cabinet N, Page 596 of the said Plat Records, continuing along the west line of said Virginia Hills Addition Phase Four, in all a total distance of 481.19 feet to a 5/8-inch iron rod with "Pogue Eng & Dev" cap set for corner;



THENCE, South 30 degrees, 33 minutes, 22 seconds East, continuing along the west line of said Virginia Hills Addition Phase Four, a distance of 253.92 feet to a 5/8-inch iron rod with "Pogue Eng & Dev" cap found for corner;

THENCE, South 00 degrees, 36 minutes, 16 seconds East, continuing along the said west line of Virginia Hills Addition Phase Four, at a distance of 306.73 feet passing the southwest corner of said Virginia Hills Addition Phase Four and the northwest corner of Virginia Hills Addition Phase Three, an addition to the City of McKinney, Texas according to the plat recorded in Cabinet M, Page 610 of the said Plat Records, continuing along the west line of said Virginia Hills Addition Phase Three, at a distance of 1439.52 feet passing the southwest corner of said Virginia Hills Addition Phase Three and the northwest corner of Virginia Hills Addition Phase One, an addition to the City of McKinney, Texas according to the plat recorded in Cabinet L, Page 883 of the said Plat Records, continuing along the west line of said Virginia Hills Addition Phase One, at a distance of 1999.52 feet passing the southwest corner of said Virginia Hills Addition Phase One and the northwest corner of said Virginia Hills Addition Phase Two, continuing along the west line of said Virginia Hills Addition Phase Two, in all a total distance of 2919.52 feet to the POINT OF BEGINNING;

CONTAINING, 1,632,123 square feet or 37.4687 acres of land, more or less.

I,  
EXHIBIT 'C',  
TO THE

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
AERO COUNTRY EAST

BY LAWS

OF

AERO COUNTRY EAST OWNERS ASSOCIATION, INC.

## Table of Contents

	Page
<b>Article I <u>Name, Principal Office and Definitions</u></b> .....	1
Section 1.1. Name.....	1
Section 1.2. Principal Office.....	1
Section 1.3. Definitions .....	1
<b>Article II <u>Association: Membership, Meetings, Quorum, Voting, Proxies</u></b> .....	1
Section 2.1. Membership.....	1
Section 2.2. Place of Meetings .....	1
Section 2.3. Annual Meetings .....	1
Section 2.4. Special Meetings .....	2
Section 2.5. Notice of Meetings .....	2
Section 2.6. Waiver of Notice .....	2
Section 2.7. Adjournment of Meetings .....	2
Section 2.8. Voting.....	2
Section 2.9. Proxies .....	2
Section 2.10. Majority .....	3
Section 2.11. Quorum.....	3
Section 2.12. Conduct of Meetings .....	3
Section 2.13. Action Without a Meeting.....	3
<b>Article III <u>Board of Directors; Number, Powers, Meetings</u></b> .....	3
A. Composition and Selection.....	3
Section 3.1. Governing Body; Composition.....	3
Section 3.2. Number of Directors.....	3
Section 3.3. Directors During Class "B" Control Period.....	4
Section 3.4. Nomination and Election Procedures .....	4
Section 3.5. Election and Term of Office.....	4
Section 3.6. Removal of Directors; Vacancies.....	5
B. Meetings.....	5
Section 3.7. Organizational Meetings .....	5
Section 3.8. Regular Meetings.....	5
Section 3.9. Special Meetings .....	5
Section 3.10. Waiver of Notice .....	6
Section 3.11. Telephonic Meetings .....	6
Section 3.12. Quorum of Board.....	6
Section 3.13. Compensation .....	6
Section 3.14. Conduct of Meetings .....	6
Section 3.15. Open Meetings.....	7
Section 3.16. Action Without a Formal Meeting.....	7

C.	Powers and Duties .....	7
	Section 3.17. Powers .....	7
	Section 3.18. Duties.....	7
	Section 3.19. Right to Disapprove Actions .....	8
	Section 3.20. Management .....	9
	Section 3.21. Accounts and Reports.....	9
	Section 3.22. Borrowing.....	10
	Section 3.23. Rights of the Association.....	10
	Section 3.24. Enforcement.....	10
<b>Article IV</b>	<b><u>Officers</u></b> .....	11
	Section 4.1. Officers .....	11
	Section 4.2. Election and Term of Office.....	11
	Section 4.3. Removal and Vacancies.....	11
	Section 4.4. Powers and Duties .....	11
	Section 4.5. Resignation .....	12
	Section 4.6. Agreements, Contracts, Deeds, Leases, Checks, etc.....	12
	Section 4.7. Compensation .....	12
<b>Article V</b>	<b><u>Committees</u></b> .....	12
	Section 5.1. General.....	12
	Section 5.2. Covenants Committee.....	12
<b>Article VI</b>	<b><u>Miscellaneous</u></b> .....	12
	Section 6.1. Fiscal Year.....	12
	Section 6.2. Parliamentary Rules.....	12
	Section 6.3. Conflicts.....	12
	Section 6.4. Books and Records.....	12
	Section 6.5. Notices.....	13
	Section 6.6. Amendment .....	13

**BYLAWS  
OF  
AERO COUNTRY EAST OWNERS ASSOCIATION, INC.**

**Article I**

**Name, Principal Office and Definitions**

Section 1.1. Name. The name of the Association shall be **Aero Country East Owners Association, Inc.** (the "Association").

Section 1.2. Principal Office. The principal office of the Association in the State of Texas shall be located in Collin County. The Association may have such other offices, either within or outside the State of Texas, as the Board may determine or as the affairs of the Association may require.

Section 1.3. Definitions. The words used in these Bylaws shall be given their ordinary, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in the Declaration of Covenants, Conditions and Restrictions for Aero Country East (said Declaration, as amended, renewed or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), unless the context shall otherwise require.

**Article II**

**Association: Membership, Meetings, Quorum, Voting, Proxies**

Section 2.1. Membership. The Association shall have two classes of membership, Class "A" and Class "B", as more fully set forth in the Declaration. The provisions of the Declaration pertaining to membership are specifically incorporated herein by reference.

Section 2.2. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate.

Section 2.3. Annual Meetings. The first meeting of the Association, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association. Subsequent regular annual meetings shall be set by the Board so as to occur during the first quarter of the Association's fiscal year on a date and at a time set by the Board.

Section 2.4. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of a majority of the Board or upon a petition signed by Members representing at least ten percent (10%) of the total Class "A" votes of the Association.

Section 2.5. Notice of Meetings. Written or printed notice stating the place, day and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Association, with postage thereon prepaid.

Section 2.6. Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member shall be deemed waiver by such Member of notice of the time, date and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

Section 2.7. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting, or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for special meetings.

The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that any action taken is approved by Members representing at least a majority of the Class "A" votes required to constitute a quorum and by the Class "B" Member, if such exists.

Section 2.8. Voting. The voting rights of the Members shall be as set forth in the Declaration and these Bylaws, and the Declaration's voting rights provisions are specifically incorporated herein.

Section 2.9. Proxies. Members may vote in person, by written consent or by proxy, except as specifically provided otherwise in the Governing Documents. All proxies shall be in writing, dated and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of such

Member's Lot, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member, or of written revocation, or upon the expiration of eleven (11) months from the date of the proxy.

Section 2.10. Majority. As used in these Bylaws, the term "majority" shall mean those votes, owners or other group, as the context may indicate, totaling more than fifty percent (50%) of the total number.

Section 2.11. Quorum. Except as otherwise provided in these Bylaws or in the Declaration, the presence in person or by proxy of Members representing at least twenty-five percent (25%) of the total Class "A" votes in the Association and, so long as the Class "B" membership exists, the presence of a duly appointed representative of the Class "B" Member, shall constitute a quorum at all meetings of the Association.

Section 2.12. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

Section 2.13. Action Without a Meeting. Any action required by law to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting if written consent setting forth the action so taken is signed by a sufficient number of Members as would be necessary to take that action at a meeting at which all of the Members were present and voted, and any such consent shall have the same force and effect as a unanimous vote of the Members. Such consents shall be signed within sixty (60) days after receipt of the earliest dated consent, dated and delivered to the Association. Such consents shall be filed with the minutes of the Association and shall have the same force as a vote of Members at a meeting. Each written consent shall bear the date of the signature of each Member who signs the consent. Within ten (10) days following authorization of any action by written consent, the Association shall give notice to all Members of the material features of the authorized action.

### **Article III**

#### **Board of Directors; Number, Powers, Meetings**

##### **A. Composition and Selection.**

Section 3.1. Governing Body; Composition. The affairs of the Association shall be governed by a Board, each of whom shall have one vote. Except with respect to directors appointed by the Class "B" Member, the directors shall be Members or spouses of such Members; provided, however, no person and his or her spouse may serve on the Board at the same time. In the case of a Member which is not a natural person, the person designated in writing to the Secretary of the Association as the representative of such Member shall be eligible to serve as a director; provided, no Member may have more than one representative on the Board at the same time, except directors appointed by the Class "B" Member.

Section 3.2. Number of Directors. The Board shall consist of three (3) directors, as provided in Section 3.5. The initial Board shall consist of the three (3) directors identified in the Articles of Formation.

Section 3.3. Directors During Class "B" Control Period. The directors appointed by the Class "B" Member pursuant to Section 3.5 shall be appointed by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member.

Section 3.4. Nomination and Election Procedures.

(a) Nominations. Nominations for election of Class "A" Members to the Board, if any, may be made from the floor or by a Nominating Committee. The Nominating Committee, if any, shall consist of a chairman, who shall be a director, and two (2) or more Members. The Nominating Committee, if any, shall be appointed by the Board not less than thirty (30) days prior to each annual meeting of the Members to serve a term of one (1) year or until their successors are appointed, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but in no event less than the number of directors to be filled by the Class "A" Members, if any. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes. The Board may adopt rules governing the procedures for the nomination of directors.

(b) Election Procedures. Each Member may cast all votes attributed to the Lots which such Member represents for each vacancy to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled and who receive the greatest number of votes shall be elected. The directors elected by the Members shall hold office until their respective successors have been elected and qualified. Directors may be elected to serve any number of consecutive terms.

(c) Class "B" Member. The provisions of this Section 3.4 shall not apply to directors appointed by the Class "B" Member.

Section 3.5. Election and Term of Office. Notwithstanding any other provision contained herein:

(a) Within thirty (30) days after the time that Class "A" Members own seventy-five percent (75%) of the Lots shown on the Plat for the property described in Exhibit "A" and Exhibit "B" to the Declaration, or whenever the Class "B" Member earlier determines, the President shall call for an election at which Members representing the Class "A" Members shall be entitled to elect one (1) of the three (3) directors, who shall be an at-large director. The remaining two (2) directors shall be appointees of the Class "B" Member. The director elected by the Class "A" Member shall not be subject to removal by the Class "B" Member and shall be elected for a term of two (2) years or until the happening of the event described in Subsection (b) below, whichever is shorter. If such director's term expires prior to the happening of the event described in Subsection (b) below, a successor shall be elected for a like term.



(b) Within ninety (90) days after termination of the Class "B" Control Period or whenever the Class "B" Member earlier determines, the President shall call for an election at which Class "A" Members shall be entitled to elect three (3) directors. At such election, two (2) directors shall be elected for a term of two (2) years and one (1) director shall be elected for a term of one (1) year. The director receiving the fewest number of votes shall serve the initial one year term. Directors elected by the Class "A" Members shall hold office until their respective successors have been elected and qualified. At the expiration of the initial term of office of each such member of the Board of Directors and at each annual meeting thereafter, a successor shall be elected to serve for a term of two (2) years.

Section 3.6. Removal of Directors; Vacancies. Any director elected by the Class "A" Members may be removed, with or without cause, by the vote of the Class "A" Members holding a majority of the votes entitled to be cast for the election of such director. Directors appointed by the Class "B" Member shall not be subject to removal by the Class "A" Members. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall then and there be elected by the Class "A" Members to fill the vacancy for the remainder of the term of such director.

Any director elected by the Class "A" Members who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of any assessment or other charge due the Association for more than thirty (30) days, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board to fill the vacancy for the remainder of the term.

In the event of the death, disability or resignation of a director elected by the Class "A" Member, a vacancy may be declared by the Board, and it may appoint a successor to serve for the remainder of the term of such director. Alternatively, the Board may call for an election for the purpose of electing a successor to fill any such vacancy on the Board. In such case, the Class "A" Members shall be entitled to elect a successor to serve for the remainder of the term of such director.

B. Meetings.

Section 3.7. Organizational Meetings. The first meeting of the Board following each annual meeting of the Membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

Section 3.8. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the time and place of the meeting shall be communicated to directors no less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

Section 3.9. Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the President or by any two (2) directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (i) by personal delivery; (ii) written notice by first-class mail, postage prepaid; (iii) by telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) by electronic mail, facsimile, computer, fiberoptics or other communication device. All such notices shall be given at the director's telephone number, facsimile number, electronic mail address, or sent to the director's address as shown on the records of the Association. Notices sent by first-class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone or other device shall be delivered or transmitted at least seventy-two (72) hours before the time set for the meeting.

Section 3.10. Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 3.11. Telephonic Meetings. Members of the Board or any committee may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can simultaneously communicate with one another. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

Section 3.12. Quorum of Board. At all meetings of the Board, a majority of the directors, including at least one Class "B" Member-appointed director, if any, shall constitute a quorum for the transaction of business, and the directors present at a meeting at which a quorum is present shall constitute the decision of the Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have transacted at the meeting originally called may be transacted without further notice.

Section 3.13. Compensation. No director shall receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total Class "A" vote of the Association at a regular or special meeting of the Association; provided any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors.

Section 3.14. Conduct of Meetings. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of meetings of the Board, recording therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings.

Section 3.15. Open Meetings. Subject to the provisions of Section 3.16, all meetings of the Board shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, excluding Members, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc., or matters that are to remain confidential by request of the affected parties and agreement of the Board. The general nature of any business to be considered in executive session must first be announced at the open meeting.

Section 3.16. Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by a sufficient number of directors as would be necessary to take that action at a meeting at which all of the directors were present and voted, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

Section 3.17. Powers. The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do or cause to be done all acts and things as are not by the Governing Documents or by law directed to be done and exercised exclusively by the Members or the membership generally.

Section 3.18. Duties. The duties of the Board shall include, without limitation, the following:

(a) preparation and adoption, in accordance with Article IX of the Declaration, of annual budgets in which there shall be established the contribution of each Owner to the Common Expenses;

(b) making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment; provided, unless otherwise determined by the Board, the annual assessment for each Lot's proportionate share of the Common Expenses shall be payable on January 1 of each year;

(c) providing for the operation, care, upkeep and maintenance of all of the Area of Common Responsibility;

(d) designating, hiring and dismissing the personnel necessary for the operation of the Association and the maintenance, operation, repair and replacement of its property and the Area of Common Responsibility and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies and materials to be used by such personnel in the performance of their duties;

(c) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve and using the proceeds to operate the Association; provided, any reserve fund may be deposited in the directors' best business judgment, in depositories other than banks;

(f) making and amending rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions and improvements to or alterations of the Area of Common Responsibility in accordance with the other provisions of the Declaration and these Bylaws after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the owners concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(k) paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Owners;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred;

(m) making available to any prospective purchaser of a Lot, any Owner of a Lot, any First Mortgagee, and the holders, insurers and guarantors of a First Mortgage on a Lot, current copies of the Governing Documents and all other books, records and financial statements of the Association; and

(n) permitting utility suppliers to use portions of the Area of Common Responsibility reasonably necessary to the ongoing development or operation of the Property.

Section 3.19. Right to Disapprove Actions. So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any action, policy or program of

the Association, the Board and any committee which, in the judgment of the Declarant, would tend to impair rights of the Class "B" Member under the Declaration or these Bylaws, or interfere with development, construction of any portion of the Property, or diminish the level of services being provided by the Association.

No such action, policy or program shall be valid, effective or implemented until and unless the following subsections have been met and the Class "B" Member has not exercised its right to disapprove:

(a) The Class "B" Member shall have been given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee thereof. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies with Sections 3.8, 3.9 and 3.10 and which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) Class "B" Member shall have been given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy or program. The Class "A" Member, its representatives or agents, shall make its concerns, thoughts and suggestions known to the Board and/or the members of the subject committee. Class "B" Member may exercise its right to disapprove at any time within ten (10) days following the meeting at which the action was proposed or, in the absence of a meeting, within ten (10) days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

Section 3.20. Management. The Board may employ for the Association a professional management agent or agents at a compensation established by the Board to perform such duties and services as the Board shall authorize. The Board may delegate to its managing agent or manager, subject to the Board's supervision, all of the powers granted to the Board by these Bylaws. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

Section 3.21. Accounts and Reports. The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting

principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts or otherwise; anything of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;

(f) an annual report consisting of at least the following shall be made available to all Members within one hundred twenty (120) days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income statement); and (iii) a statement of changes in financial position for the fiscal year. The annual report referred to above shall be prepared on an audited, reviewed or compiled basis, as determined by the Board, by an independent public accountant; provided, upon written request of any holder, guarantor or insurer of any First Mortgage on a Lot, the Association shall provide an audited financial statement.

Section 3.22. Borrowing. The Association shall have the power to borrow money for any legal purposes; provided the Board shall obtain Member approval in the same manner provided in Section 9.4 of the Declaration for special assessments in the event that the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed twenty percent (20%) of the budgeted gross expenses of the Association for that fiscal year. During the Class "B" Control Period, no Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of Members representing at least fifty-one percent (51%) of the Class "A" Members.

Section 3.23. Rights of the Association. With respect to the Area of Common Responsibility, and in accordance with the Articles of Incorporation and the Declaration, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational or other agreements with trusts, condominiums, cooperatives and other owners or residents associations, both within and without the Property. Such agreements shall require the consent of a majority of the total number of directors of the Association.

Section 3.24. Enforcement. The Association shall have the power to impose sanctions for violations of the Governing Documents. The failure of the Board to enforce any provision of the Governing Documents shall not be deemed a waiver of the right of the Board to do so thereafter or of the right to enforce any other violation.

(a) Notice. Except as provided below, prior to suspending an Owner's right to use a Common Area, filing suit against an Owner (other than a lawsuit to collect an assessment or related charge or to foreclose the Association's assessment lien), charging an Owner for property damage, or levying a fine for a violation of the Governing Documents, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than thirty (30) days from the Owner's receipt of this notice within which the alleged violator may present a written request to the Covenants Committee, if any, or Board, for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within thirty (30) days of the Owner's receipt of the notice; provided that the Board or the Covenants Committee, if any, may suspend any proposed sanction if the violation is cured within the 30-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

The notice and hearing provisions of this Section 3.24 do not apply if the Association files a suit seeking a temporary restraining order or temporary injunctive relief or files a suit that includes foreclosure as a cause of action.

(b) Hearing. If a hearing is requested within the allotted thirty (30) day period, the hearing shall be held before the Covenants Committee, if any, or the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the Person who delivered such notice.

The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Appeal. Following a hearing before the Covenants Committee, if any, the violator shall have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the manager, President or Secretary of the Association within thirty (30) days after the hearing date.

(d) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking restrictions or rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the notice and hearing procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred. Any entry onto a Lot for purposes of exercising this power of self-help shall not be deemed a trespass.

## Article IV

### Officers

Section 4.1. Officers. The officers of the Association shall be a President, Vice President, Secretary and Treasurer, to be elected from among the members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board. Any two or more offices may be held by the same person, except the offices of President and Secretary.

Section 4.2. Election and Term of Office. The officers of the Association shall be elected annually by the Board at the first meeting of the Board following each annual meeting of the Members, as set forth in Section 3.7.

Section 4.3. Removal and Vacancies. Any officer may be removed by the Board whenever in its judgment the best interests of the Association will be served thereby. A vacancy in any office arising because of death, resignation, removal or otherwise may be filled by the Board for the unexpired portion of the term.

Section 4.4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time specifically be conferred or imposed by the Board. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent or both.

Section 4.5. Resignation. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.6. Agreements, Contracts, Deeds, Leases, Checks, etc. All agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board.

Section 4.7. Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.13.

## Article V

### Committees

Section 5.1. General. Committees are hereby authorized to perform such tasks and to



serve for such periods as may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. Each committee shall cooperate in accordance with the terms of the resolution of the Board designating the committee or with rules adopted by the Board of Directors.

Section 5.2. Covenants Committee. In addition to any other committees which may be established by the Board pursuant to Section 5.1, the Board may appoint a Covenants Committee consisting of three (3) members. Acting in accordance with the provisions of the Declaration, these Bylaws and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.24.

## Article VI

### Miscellaneous

Section 6.1. Fiscal Year. The fiscal year of the Association shall be set by resolution of the Board. In the absence of a resolution, the fiscal year shall be the calendar year.

Section 6.2. Conflicts. If there are conflicts between the provisions of Texas law, the Articles of Incorporation, the Declaration and these Bylaws, the provisions of Texas law, the Declaration, the Articles of Incorporation and the Bylaws (in that order) shall prevail.

Section 6.3. Books and Records.

(a) Inspection by Members and Mortgagees. The Governing Documents, the membership register, books of account, and the minutes of meetings of the Members, the Board and Committees, shall be made available for inspection and copying by any holder, insurer or guarantor of a First Mortgage on a Lot, a Member, or by the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in the Lot. Such inspection shall take place at the office of the Association or at such other place within the Property as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the

physical Property owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and a copy of relevant documents at the expense of the Association.

Section 6.4. Notices. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first-class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member or Member; or

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

Section 6.5. Amendment.

(a) By Declarant. In addition to the specific amendment rights granted elsewhere in these Bylaws, until termination of the Class "B" membership, Declarant may unilaterally amend these Bylaws for any purpose; provided, however, that any amendment pursuant to this paragraph shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing.

(b) By Class "A" Members. Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing at least a majority of the total Class "A" votes in the Association, and the consent of the Class "B" Member, if such exists. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the County Clerk Official Records of Collin County, Texas.

If an Member consents to any amendment to these Bylaws, it will be conclusively presumed that such Member has the authority so to consent and no contrary provision in any Mortgage or contract between the Member and a third party will affect the validity of such amendment.

No amendment may remove, revoke or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant or the Class "B" Member, or the assignee of such right or privilege.

**EXHIBIT "D"**

**Articles of Formation**

UNOFFICIAL



## Office of the Secretary of State

### CERTIFICATE OF FILING OF

Aero Country East Association, Inc.  
File Number: 801144805

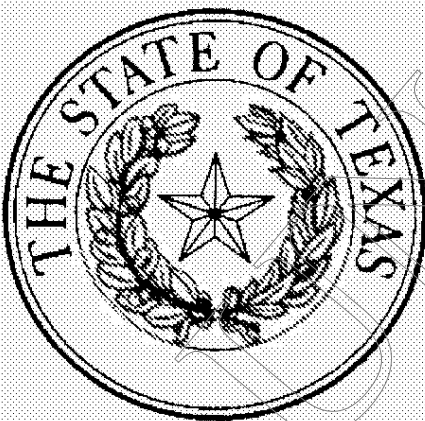
The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Nonprofit Corporation has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 07/09/2009

Effective: 07/09/2009



A handwritten signature in black ink, appearing to read "Hope Andrade".

Hope Andrade  
Secretary of State

**FILED**  
In the Office of the  
Secretary of State of Texas

JUL 09 2009

**Corporations Section**

**CERTIFICATE OF FORMATION**

**OF**

**AERO COUNTRY EAST ASSOCIATION, INC.**

I, the undersigned, being of the age of eighteen years or more, acting as organizer of a non-profit corporation under Chapter 22 of the Texas Business Organizations Code, Tex. Civ. Stat. Ann. § 22.001 et seq., as it may be amended, do hereby adopt the following Certificate of Formation for such corporation:

Article 1. Name. The name of the non-profit corporation is **Aero Country East Association, Inc.** ("Corporation" or "Association").

Article 2. Duration. The Corporation shall have perpetual duration.

Article 3. Applicable Statute. The Corporation is a non-profit corporation organized pursuant to the provisions of Chapter 22 of the Texas Business Organizations Code, § 22.001 et seq.

Article 4. Purposes and Powers. The Corporation does not contemplate pecuniary gain or benefit, direct or indirect, to its members. In way of explanation and not of limitation, the purposes for which it is formed are:

(a) to be and constitute the Association to which reference is made in the **Declaration of Covenants, Conditions and Restrictions for Aero Country East to be recorded in the Real Property Records of Collin County, Texas**, as it may be amended from time to time (the "Declaration"), to perform all obligations and duties of the Association, and to exercise all rights and powers of the Association, as specified therein, in the Bylaws and as provided by law; and

(b) to provide an entity for the furtherance of the interests of the owners of property subject to the Declaration.

In furtherance of its purposes, the Corporation shall have the following powers, which, unless indicated otherwise by the Declaration or Bylaws, may be exercised by the Board of Directors:

(a) all of the powers conferred upon non-profit corporations by common law and the statutes of the State of Texas, in effect from time to time;

(b) all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in this Certificate of Formation, the Bylaws or the Declaration, including, without limitation, the following:

(i) to fix, levy, and collect dues, assessments and other charges to be levied against the property subject to the Declaration and to enforce payment thereof by any lawful means;

(ii) to manage, control, operate, maintain, preserve, repair and improve the common area and facilities, and any property subsequently acquired by the Corporation, or any property owned by another, for which the Corporation, by rule, regulation, Declaration or contract, has a right or duty to provide such services;

(iii) to enforce covenants, conditions or restrictions affecting any property to the extent the Association may be authorized to do so under the Declaration or Bylaws;

(iv) to engage in activities which will actively foster, promote and advance the common interests of all owners of property subject to the Declaration;

(v) to buy or otherwise acquire, sell or otherwise dispose of, mortgage, or otherwise encumber, exchange, lease, hold, use, operate and otherwise deal in and with real, personal, and mixed property of all kinds and any right or interest therein for any purpose of the Corporation;

(vi) to borrow money for any purpose and assign its right to future income, including the right to receive dues, assessments and other charges from its Members;

(vii) to enter into, make, perform and enforce contracts of every kind and description and to do all other acts necessary, appropriate or advisable in carrying out any purpose of the Association, with or in concert with any other association, corporation or other entity or agency, public or private;

(viii) to act as agent, trustee or other representative of other corporations, firms or individuals and, as such, to advance the business or ownership interests in such corporations, firms or individuals;

(ix) to adopt, alter and amend or repeal such Bylaws as may be necessary or desirable for the proper management of the affairs of the Association; provided, however, such Bylaws may not be inconsistent with or contrary to any provisions of the Declaration; and

(x) to provide or contract for services benefiting the property subject to the Declaration, including, without limitation, garbage removal and any and all supplemental municipal services as may be necessary or desirable.

The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers which may now or hereafter be allowed or permitted by law; provided, none of the objects or purposes herein set out shall be construed to authorize the Corporation to do any act in violation of the Texas Business Organizations Code, and all such objects or purposes are subject to said Code.

The powers specified in each of the paragraphs of this Article 4 are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph or provision of this Article 4.

Article 5. Definitions. All capitalized terms used in this Certificate of Formation shall be defined in the same manner as defined in the Declaration, which definitions are incorporated herein by this reference.

Article 6. Membership. The Corporation shall be a membership corporation without certificates or shares of stock. All Owners (as defined in the Declaration), by virtue of their ownership of Lots in the Association, are members of the Association. The members shall be entitled to a vote in accordance with the Declaration and Bylaws.

Article 7. Board of Directors. The business and affairs of the Corporation shall be conducted, managed and controlled by a Board of Directors (the "Board"). The Board may delegate such operating authority to such companies, individuals or committees as it, in its discretion, may determine. The Board shall consist of no less than three (3) and no more than five (5) members. The initial Board shall consist of the following three (3) members:

<u>Name</u>	<u>Address</u>
Mike D. Shell	230 Aero Country Road McKinney, Texas 75071
Dwayne Clemens	230 Aero Country Road McKinney, Texas 75071
John Roach	230 Aero Country Road McKinney, Texas 75071

The method of election, removal and filling of vacancies, and the term of office and number of directors shall be as set forth in the Bylaws and/or Declaration

Article 8. Liability of Directors. To the fullest extent permitted by Texas statutes, as the same exist or as they may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits broader limitation than permitted prior to such amendment), a director of the Corporation shall not be liable to the Corporation for monetary damages for an act or omission in the director's capacity as a director. Any repeal or amendment of this Article 8 by the Corporation shall be prospective only and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or amendment.

Article 9. Dissolution. The Corporation may be dissolved only as provided in the Declaration, Bylaws, and by the laws of the State of Texas. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created, or shall be granted, conveyed and assigned to a non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

Article 10. Amendments. This Certificate of Formation may be amended pursuant to the Texas Business Organizations Code. No amendment shall conflict with the Declaration nor shall any amendment be effective to impair or dilute any rights of members that are granted by the Declaration.

Article 11. Indemnification. Subject to the limitations of Chapter 8 of the Texas Business Organizations Code, the Association shall indemnify a person who was, or is threatened to be a named defendant or respondent in a proceeding because the person is or was an officer or director of the Association. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent or attorney of the Association, against any liability asserted against him and incurred by him in such capacity and arising out of his status as such a person.

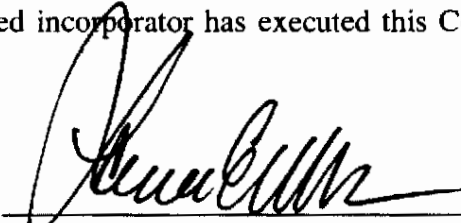
Article 12. Action Without a Meeting. Any action required by the Texas Business Organizations Code to be taken at a meeting of the members or directors of the Corporation or any action that may be taken at a meeting of the members or directors or of any committee may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by a sufficient number of members, directors or committee members as would be necessary to take that action at a meeting at which all of the members, directors or members of the committee were present and voted.

Article 13. Registered Agent and Office. The initial registered office of the Corporation is 3710 Rawlins Street, Suite 1400, Dallas, Texas 75219, and the initial registered agent at such address is Lance E. Williams.

Article 14. Incorporators. The name and address of the incorporator is as follows:

Lance E. Williams  
Riddle & Williams, PC  
3710 Rawlins Street, Suite 1400  
Dallas, Texas 75219

**IN WITNESS WHEREOF**, the undersigned incorporator has executed this Certificate of Formation this 8th day of July, 2009.

  
Lance E. Williams



Aero Country Property Owners' Association, Inc.

P.O. Box 1196, McKinney, Texas 75071

July 7, 2009

Texas Secretary of State  
Business & Public Filings Division  
Corporations Section  
1019 Brazos Street  
Austin, Texas 78701

Dear Madam:

Please allow this letter to serve as Aero Country Property Owners' Association Inc.'s consent to the use of the name "Aero Country East Association, Inc." by Lance E. Williams as its incorporator.

Please contact Dale Smith at 214-762-2351 with any questions.

Sincerely,

*G. Dean Clubb*

G. Dean Clubb  
President



Filed and Recorded  
Official Public Records  
Stacey Kemp, County Clerk  
Collin County, TEXAS  
01/26/2010 03:52:57 PM  
\$336.00 TKING  
20100126000084130

*Stacey Kemp*