

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE BIG SOUTH FORK AIRPARK**

This **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE BIG SOUTH FORK AIRPARK** is made as of this 3rd day of October, 2007 by **THE BIG SOUTH FORK AIRPARK, LLC**, a Florida limited liability company ("Fee Owner"), owner of the real property described on Exhibit "A", attached hereto and incorporated by reference ("Property").

**W I T N E S S E T H :**

**WHEREAS**, Fee Owner has entered into a Development Agreement with its Manager, **PEGASUS REAL ESTATE MANAGEMENT, INC.**, a Florida corporation (the "Developer"), for the development of the Property, which described Property, together with certain additional land as may be added from time to time as hereinafter provided, is referred to as "The Big South Fork Airpark" or the "Airpark";

**WHEREAS**, Developer intends to develop and create the Airpark as a planned residential community with an emphasis in aviation and equestrian related uses;

**WHEREAS**, Fee Owner by this Declaration imposes the covenants, conditions and restrictions contained herein upon the Property for the mutual benefit and enjoyment of all subsequent owners;

**WHEREAS**, Developer has caused or will cause the formation of an Association and an HCOA and there has been or will be delegated and assigned certain powers and duties of operation, administration, maintenance and repair of portions of the Property to each association and the collection of assessments and disbursement of expenses all as more particularly set forth herein and in the Charter and Bylaws of the Association and the charter and bylaws of the HCOA;

**WHEREAS**, there are certain additional burdens associated with owning property adjacent or close to an airport, and each Owner acknowledges and assumes those burdens as well as waives certain rights each Owner might otherwise have as further set forth herein; and

**WHEREAS**, there are certain additional burdens associated with owning property adjacent or close to equestrian uses, and each Owner acknowledges and assumes those burdens as well as waives certain rights each Owner might otherwise have as further set forth herein.

**NOW, THEREFORE**, Fee Owner declares that the Property is and shall be owned, used, sold, conveyed, encumbered, developed, demised and occupied subject to the provisions of this Declaration which shall run with the Property and thus be binding on all parties having any right, title or interest in the Property or any part thereof, including their respective heirs, successors and assigns, and inure to the benefit of each Owner. All recitations contained herein are true and correct and are incorporated in this Declaration as though set out in full below.

## **ARTICLE I**

### **DEFINITIONS**

As used in this Declaration and in any Document, the terms set forth below shall have the meanings as set forth herein:

1.1 **“Accessory Structure”** shall mean those (i) garages, pool houses, guest cottages, garage apartments, and similar residential type appurtenances, and (ii) hangars, barns, stalls and plane ports which are residential appurtenances unique to this Development, and (iii) those accessory structures which may from time to time be allowed by County or city ordinances and pursuant to this Declaration within The Big South Fork Airpark. This Declaration establishes the threshold requirements and limitations for Accessory Structures, however, the Board (or the ARC, if so designated) may establish reasonable additional requirements and conditions on any Accessory Structure pursuant to Design Guidelines.

1.2 **“Additional Land”** shall mean such real property, if any, which is not now part of the Property and which by filing a Supplement, Fee Owner may add to and which shall become part of the Property subject to this Declaration. Nothing contained in this Declaration shall obligate or require Developer or Fee Owner to convey any Additional Land to The Big South Fork Airpark.

1.3 **“Additional Owner”** shall mean the owner of Additional Land, their successors, heirs, executors and assigns.

1.4 **“Airpark Taxiway”** shall have the meaning as defined in Article 3.

1.5 **“Airport”** shall mean that certain general use, public airport currently consisting of a 5,000 foot runway, more or less, together with all related facilities, appurtenances and taxiways, located on property contiguous to a portion of the Airpark and which is commonly referred to as the Scott County Airport.

1.6 **“Airport Authority”** shall mean the Scott County Airport Authority or its successors or assigns, which has the authority to oversee the management of the Airport pursuant to any enabling statute, resolution, regulation, order, or other appropriate authority granted by the relevant agency, municipality, law, regulation or governmental body.

1.7 **“Annual Assessment”** — See “Assessment.”

1.8 **“Architectural Review Committee”** or **“ARC”** shall mean the body with the authority to administer the Design Guidelines; regulate the initial design and location of all Structures, landscaping and appurtenances; and regulate all alterations and modifications to existing Structures and improvements within the Property.

1.9 **“Assessment”** shall mean fees periodically levied against and payable on behalf of Lots in amounts established by the Developer, as may be changed from time to time, and after Turnover, by the Association, unless otherwise delegated to the HCOA or a Local Area Association pursuant to this Section 1.9. Assessments may include, as applicable and without limitation, an Initial Assessment, Annual Assessment, Special Assessment, Recreational Assessment, Enforcement Assessment, Local Area Association Assessment or Capital Improvement Assessment. There shall be six (6) types of Membership: Class A (Residential Lots), Class B1 (Hangar Lots), Class B2 (Hangar Condo Lots) (Class B1 and B2 sometimes collectively referred to herein as “Class B”), Class C (Equestrian Lots), Class D (Townhouses) and Class E

(Developer controlled Lots). Each class of Membership may be subject to different Assessments as determined by the Board; provided, however, that (i) prior to Turnover, Class E Membership shall not be subject to any Assessments so long as such Class E Lot is neither occupied nor has constructed thereon any permanent Structure (except for the Welcome Center); (ii) assessments to Class B2 Lots (Hangar Condo Lots) shall exclusively be determined by the HCOA and the term "HCOA" and "HCOA board" shall be substituted for any reference to "Association" or "Board" used in this Declaration in any provision setting forth the method, manner, rights, remedies, powers or duties related to Assessments; and (iii) assessments to any Lots which are, or which later become, subject to a Local Area Association shall be determined pursuant to the applicable Local Area Association and related Local Area Documents and not this Declaration to the extent so provided in such Local Area Documents. All Assessments are subject to increase and shall be levied pro rata based on the number of Lots subject to such Assessment pursuant to this Declaration at the date of adoption of such Assessment. (For example, if there are 100 Lots which are owned by persons other than the Developer, then each Lot shall be subject to 1/100<sup>th</sup> of the Assessment). A change in Assessments shall not require the filing of an amendment or Supplement and Developer may change Assessments at anytime prior to Turnover.

1.9.1 **"Annual Assessment"** shall be as set by Developer until Turnover, provided that the Developer has the right to amend the Annual Assessment at any time prior to Turnover. After Turnover, the Board shall determine the Annual Assessment subject to the provisions of Article 9 below entitled Assessments and Liens. The Annual Assessment shall be the amount determined by the Board to be necessary for the operation of the Association and the performance by the Association of its obligations. In addition to any other applicable Assessments, Class B1 Lots (Hangar Lots) and Class B2 Lots (Hangar Condo Lots) shall pay, in addition to the usual Annual Assessment, an Initial Assessment as such may be amended from time to time. Class B2 Lots (Hanger Lots) shall pay the Association Annual Assessment and the HCOA Annual Assessment..

1.9.2 **"Capital Improvement Assessment"** is an assessment for the construction of capital improvements which has been approved by two-thirds (2/3) of Members other than the Developer after Turnover and solely by the Developer prior to Turnover.

1.9.3 **"Enforcement Assessment"** is any amount due from a Member as the result of efforts relating to the enforcement of the Documents or the imposition of a fine.

1.9.4 **"Local Area Assessment"** is any amount due from a Member for the operation and administration of Local Area Common Areas pursuant to Sections 2.2 or 2.4 of this Declaration.

1.9.5 **"Recreational Assessment"** is an assessment for recreational amenities which may be authorized by the Developer or the Board pursuant to this Declaration.

1.9.6 **"Special Assessment"** means an assessment for construction or reconstruction, unexpected repairs or replacement to Common Areas, Easement Areas, areas that are outside the Airpark but significantly impact the use and enjoyment of the Airpark, or improvements thereon, and related fixtures and personal property or to meet other unforeseen expenditures by the Association which cannot be met in a timely fashion or satisfied from Annual Assessments. The Association shall have the right to levy Special Assessments upon all Members or only upon the Members of a particular class for items directly attributable to such class. By way of explanation but not limitation, a Special Assessment may be levied on Class B1 Members for items directly attributable only to the Taxiway, on Class D Members for items directly

attributable to the Townhouses, or on Class C Members for items directly attributable to equestrian use of the Property.

1.10 “**Association**” shall mean The Big South Fork Airpark Owners Association, Inc., a Tennessee nonprofit corporation, its successors and assigns.

1.11 “**The Big South Fork Airpark**” or “**Subdivision**” shall mean the real property, including easements, submitted to this Declaration within The Big South Fork Airpark development, as increased or decreased from time to time pursuant to a Supplement, together with all improvements located thereon.

1.12 “**Board of Directors**” or “**Board**” shall mean the governing body of the Association.

1.13 “**Budget**” shall mean the annual operating budget adopted by the Board.

1.14 “**Bylaws**” shall mean the Bylaws of the Association, as amended from time to time.

1.15 “**Charter**” shall mean the Charter of the Association, as amended from time to time.

1.16 “**Common Areas**” shall mean all real property, including but not limited to roads, rights of way, trails, taxiways and easements, including any improvements and fixtures thereon, owned by, leased to, or dedicated to the use of or which has been, or is, hereafter primarily or exclusively granted (i) to the Association pursuant to the terms of this Declaration, any Supplement, or otherwise dedicated by plat or deed; or (ii) to the HCOA or another Local Area Association pursuant to the terms of this Declaration, any Supplement, or otherwise dedicated by plat or deed. THE DESIGNATION OF ANY PROPERTY, LAND OR IMPROVEMENTS AS COMMON AREAS SHALL NOT MEAN OR IMPLY THAT THE PUBLIC AT LARGE ACQUIRES ANY EASEMENT OR RIGHT TO USE OR ENJOYMENT THEREFROM. Notwithstanding the foregoing, Developer, or the Board after Turnover, has the right, but not the obligation, to seek public dedication of the roads later in time. **Common Areas** shall also mean all real property, roads, easements, rights of way, trails and other areas within the Airpark which, at Turnover, will be conveyed by the Fee Owner to (i) the Association, or (ii) the HCOA or another Local Area Association, including any improvements and fixtures thereon, owned by, leased to, or the use of which has been primarily granted for the common use and enjoyment of the Owners. Common Areas may be limited or restricted to some Owners or classes pursuant to this Declaration, any Supplement, or otherwise dedicated by plat or deed.

1.17 “**County**” shall mean Scott County, Tennessee.

1.18 “**Declaration**” shall mean this document as amended from time to time.

1.19 “**Design Guidelines**” shall mean any and all documents designed to guide or control the improvements or any other proposal in question as established from time to time, by the Developer and/or the ARC concerning the size, shape, configuration or materials, site plans, excavation and grading plan, foundation plan, elevation drawings, floor plan specifications on all building products and construction techniques, samples of exterior doors, drainage plans, landscaping and fencing plans, plans for utility services, and all other documentation or information relevant to the location, appearance and other aesthetic considerations, construction and maintenance of all Structures, and other work within the Property.

1.20 “**Developer**” shall mean Pegasus Real Estate Management, Inc., a Florida corporation, and any person to which it may assign its rights hereunder in part or in whole, on a temporary or a permanent basis. The assignment of either (i) any particular right(s), or (ii) all of Developer’s rights to less than all of the Property shall not constitute or empower the assignee to the rights or interest of the Developer unless all of the rights and interests are specifically stated in the assignment. The Association shall succeed to all rights of the Developer after Turnover except as otherwise provided in this Declaration.

1.21 “**Director**” shall mean a member of the Board of Directors elected or designated as set forth in the Bylaws of the Association.

1.22 “**Documents**” shall mean this Declaration, the Charter, Bylaws, or a Supplement, all as may be amended from time to time.

1.23 “**Development Agreement**” shall mean that agreement between the Fee Owner and Developer for the development of the Property.

1.24 “**Dwelling Unit**” shall mean any residential Dwelling Unit intended as an abode for one family and constructed on a portion of the Property including, without limitation, a detached, single-family home or a Townhouse and which has received a certificate of occupancy from the applicable governmental authority.

1.25 “**Easement Areas**” shall mean all real property, rights-of-way, taxiways, including any improvements and fixtures thereon, owned by, leased to, or dedicated to the use of, which has been or is hereafter primarily or exclusively granted to the Association (or the HCOA) pursuant to the terms of this Declaration or otherwise dedicated by plat or deed, including without limitation, easement for utilities, maintenance, drainage, ingress and egress, roads, rights-of-way, and Common Areas.

1.26 “**Enforcement Assessment**” – See “Assessment.”

1.27 “**Environmental Area**” shall mean jurisdictional wetlands (including upland buffers), if any, conservation easements and other areas as designated by Developer to remain in their natural state; provided, however, the term does not include Natural Areas.

1.28 “**Exempt Persons**” shall mean the Developer, and all Volume Builders (if any).

1.29 “**Formal Notice**” shall mean written notice provided pursuant to Article 15.10.1 of this Declaration.

1.30 “**Hangar Condo Owners Association**” or “**HCOA**” shall refer to The Big South Fork Airpark Hangar Condominium Owners Association, Inc. a Tennessee nonprofit corporation, its successor or assigns, that shall be created to own, maintain and operate the hangars to be located on HCOA Property.

1.31 “**Hangar Condo Lot**” shall have the meaning set forth in Section 2.7 and constitute Class B2 Lots.

1.32 “**Hangar Lot**” shall have the meaning set forth in Section 2.7 and constitute Class B1 Lots.

1.33 **“HCOA Property”** shall mean the real property designated on one or more plats of the Airpark as the site of Class B2 hangars to be constructed and sold to Owners, the Taxiway and related aprons or tie down areas or which may be conveyed by the Fee Owner to the HCOA, including any improvements and fixtures thereon, owned by, leased to, or the use of which has been primarily granted for the common use and enjoyment of the Class B Members.

1.34 **“Home Occupations”** shall mean those professions or occupations which may from time to time be allowed within The Big South Fork Airpark by County or by city ordinance so long as such ordinance does not conflict with the Rules, this Declaration or any amendments, or a Supplement. A zoning ordinance will establish threshold requirements, but the Board may establish additional reasonable requirements and conditions. The purpose of this limitation is to provide accommodations for limited office or studio needs for certain professional services or skills contained entirely within a residence and not requiring customers or clients to physically meet at the home office. No external evidence of use of a home occupation, such as signs, parking areas or notices shall be permitted.

1.35 **“Informal Notice”** shall mean notice provided pursuant to Section 15.10.2 of this Declaration.

1.36 **“Institutional Mortgagee”** shall mean (a) any generally recognized lending institution having a first mortgage lien upon a Lot, Dwelling Unit, or any other improvements on a Lot, including, but not limited to any of the following institutions: a Federal or state savings and loan or building and loan association; a national, state, or other bank or real estate investment trust or mortgage banking company doing business in the State of Tennessee; or a life insurance company; or a subsidiary of a holding company owning any of the foregoing or (b) any “Secondary Mortgage Market Institution” including the Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA), Federal Home Loan (FHA) and Veterans Administration (VA) and such other secondary mortgage market institutions as the Board shall hereafter approve in writing which have acquired a first mortgage upon a Lot, Dwelling Unit or any other improvements on a Lot or (c) any and all investors or lenders which have loaned money to Developer to acquire or to construct improvements upon the Property and who have a mortgage lien or a deed of trust on all or a portion of the Property securing such loan or (d) such other lenders as the Board shall hereafter approve in writing which have acquired a first mortgage lien upon a Lot, Dwelling Unit or any other improvements on a Lot.

1.37 **“Local Area”** shall mean one or more subdivisions designated as a Local Area by Developer in a Supplement.

1.38 **“Local Area Assessments”** - See “Assessment.”

1.39 **“Local Area Association”** shall mean any property owners association, nonprofit association whether incorporated or not, homeowners association, (including an association organized pursuant to the Tennessee Horizontal Property Act), or other such entity, their successors and assigns, responsible for maintaining specified Common Areas. The Association is not deemed a Local Area Association. A Local Area Association, once established, shall continue to be governed by the provisions of this Declaration to the extent such provisions do not conflict with any provisions set forth in applicable Local Area Documents. In the event of a conflict, the provisions of the Local Area Documents shall control pursuant to Section 2.8. The HCOA may be a separate association from the Association.

1.40 **“Local Area Declaration”** shall mean the covenants, conditions, restrictions and other provisions, if any, imposed by a recorded instrument approved by Developer and made applicable to one or more specific Local Areas.

1.41 **“Local Area Developer”** shall mean an unplatted tract Owner or the Owner of all Lots in a Local Area designated as a Local Area by the Developer who subjects the unplatted tract or all platted Lots in the Local Area to a Local Area Declaration. The designation as a Local Area Developer by the Developer shall remain in effect for such period of time as any part of the unplatted tract or any Lot in the Local Area is owned by the Local Area Developer.

1.42 **“Local Area Documents”** shall mean collectively the Local Area Declaration and the articles of incorporation or charter, bylaws and rules by which a Local Area Association shall administer a Local Area.

1.43 **“Lot”** shall mean a subdivided or described parcel of land designated as a Lot on any recorded, final, Subdivision plat, or as described in a Supplement, including any Hangar Condo Lot.

1.44 **“Member”** shall mean an Owner entitled to a class of Membership in the Association as provided in the Charter and ByLaws.

1.45 **“Member Lot”** shall mean a Lot owned by a Member, and each Lot shall be entitled to one vote; provided, Class B2 Lot (Hangar Condo Lot) Members will not be voting Members of the Association and will not be subject to Association Assessments based on ownership of a Class B2 Lot (Hangar Condo Lot). Pursuant to Section 4.2, Owners of Class B2 Lots must also own one other residential Lot, and such Owner, pursuant to the ownership of the residential Lot, will be subject to the Assessments of the Association and will be a voting Member of the Association.

1.46 **“Membership”** shall mean the state of being a Member. Each Lot shall have one (1) Membership. Membership may be subject to a specific class as set forth in Exhibit B.

1.47 **“Natural Area”** shall mean those areas designated as such by the Developer, if any, which are subject to a landscaping management plan (which plan may include leaving the area in its natural state) developed by the Developer or the Association after Turnover.

1.48 **“Operating Expenses”** shall generally mean the costs and expenses incurred by the Association in (i) fulfilling its obligations under the Documents and under applicable law, (ii) administering, operating and owning the Common Areas, (iii) maintaining the Airpark, and (iv) satisfying obligations to and maintaining its relationship with the Airport, as further set forth in this Agreement or in any other applicable Document or Supplement.

1.49 **“Original Assessment”** - See “Assessment.”

1.50 **“Owner”** shall mean the record owner or owners of a fee interest in a Lot and shall not include any person having any other interest in a Lot as security for the performance of any obligation through a Security Agent or Deed of Trust.

1.51 **“Person”** shall mean any individual, corporation, limited liability company, governmental entity, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest or any other legal entity other than the Developer and the

Association.

1.52 **“Property”** shall mean the real property subject to this Declaration as legally described on **Exhibit “A”** and such Additional Land as may hereafter be specifically declared to be subject to this Declaration by filing a Supplement. The Property may, by filing a Supplement from time to time, be reduced in size by Withdrawn Property and increased by Additional Lands. Nothing contained herein obligates or otherwise requires Fee Owner, Developer or the Association to create or designate any property as public property although Fee Owner, Developer or Association may seek to dedicate the roadways in the Subdivision as public roads prior to Turnover. The development will occur in phases, and this Declaration shall only apply to that Property which has expressly been made subject to this Declaration as provided in this Section 1.52.

1.53 **“Public Property”** shall mean any real property dedicated or conveyed by Fee Owner, Developer or the Association to public use but does not include Common Areas which have not been so conveyed. Developer makes no representations or warranties that any roads, rights-of-way, property or parcel will be so dedicated to public use, or will be accepted by the relevant public planning commission or organization for such use.

1.54 **“Residential Use”** shall mean any Lot, Dwelling Unit and improvement associated with residential purposes and uses including, but not limited to, Accessory Structures, Home Occupations, hangars, streets, drives, driveways, taxiways, sidewalks, entrance ways, open spaces, parking spaces, tie-down spaces, lawn areas, landscaping, swimming pools, tennis courts, other recreational facilities and other areas or amenities appurtenant to any Lot or Dwelling Unit; provided, however, that facilities and other improvements related to construction, marketing, development, sales and rental activities shall be permitted Residential Use with the approval of the Developer. Structures shall not be used for commercial purposes but shall be used for such purposes appurtenant to residential use as befits such specific structure.

1.55 **“Rules”** shall mean the rules and regulations promulgated by the Developer or Board.

1.56 **“Scott County Airport”** shall have the same meaning as “Airport” in Section 1.5.

1.57 **“Similar Adjacent Development”** shall mean any development adjacent to, adjoining, or contiguous to The Big South Fork Airpark which is owned or under development by Developer and which has a similar or comparable use or theme as The Big South Fork Airpark.

1.58 **“Special Assessment”** - See “Assessment.”

1.59 **“Structure”** shall mean any improvement within the Property which is built or constructed or any work artificially built up or composed of parts joined together in some manner the use of which requires a permanent or temporary location on or attachment to the ground. The term shall be construed as if followed by the words “or part thereof” and shall include “Accessory Structure”.

1.60 **“Subdivision”** – See “The Big South Fork Airpark” Section 1.1.

1.61 **“Supplement”** shall mean an instrument executed by Fee Owner or Developer and recorded in the public records of the County, and used for the following possible purposes: (i) subjecting Additional Land to this Declaration, or (ii) withdrawing tracts, property, parcels or lots



from the Property, or (iii) amending current restrictions, covenants and conditions, or (iv) imposing additional or separate restrictions, covenants and conditions applicable to the Property as a whole or in part, or on a specific piece of property.

1.62 **“Surface Water System” or “SWMS”** means a Surface Water or Storm Water Management System which is designed, constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse the water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution otherwise affecting the quantity and quality of discharge of the water.

1.63 **“Turnover”** shall mean a date no later than either (i) three (3) months after Developer has conveyed ownership of not less than eighty percent (80%) of the Lots in all phases currently contemplated for The Big South Fork Airpark (as of the date of this Declaration there are approximately 130 Lots in multiple phases, not including the Hangar Condo Lots (Class B2 Lots) or Townhouse Lots (Class D Lots), or (ii) an earlier date if Developer so chooses in its sole discretion. Developer may own, operate or develop other Similar Adjacent Development(s) and such parcels may provide certain amenities to Members or be allowed use of or access to easement rights over the Airpark amenities, so long as an Amenities Agreement is entered into; however, Developer is not obligated to convey such parcels to The Big South Fork Airpark and unless such parcels are conveyed and constitute Additional Land, such parcels will not be included in the computation for purposes of determining Turnover.

1.64 **“Volume Builder”** shall mean a Person who acquires multiple Lots who is licensed as a contractor with the intent to build within one (1) year or a time period agreeable to Developer and who is so designated by the Developer.

1.65 **“Withdrawn Property”** shall mean that portion of the Property which is from time to time, deleted from the Declaration by the Developer for any reason pursuant to a Supplement.

**ARTICLE 2**  
**GENERAL PLAN FOR DEVELOPMENT PROPERTY;**  
**ADDITIONAL LANDS; PUBLIC PROPERTY**

2.1 **Multiple Uses.** Fee Owner has all of the rights and powers, including any property rights, necessary to effectuate the intent or purposes of this Declaration. In some cases, Fee Owner has granted or will grant to Developer certain rights and powers, including any property rights incidentally necessary to effectuate the purposes and intent of the Documents. Developer presently plans to develop all or a portion of The Big South Fork Airpark as a multiphased, planned community comprising residential, recreational, equestrian and aviation uses. Developer plans to divide the Airpark into several areas, to develop some areas, and at Developer’s option, to dedicate some areas as Common Areas or Easement Areas in accordance with a master plan for development which is subject to change. It is contemplated that the Airpark will be developed pursuant to such master plan, as it may from time to time be amended or modified. As each area is developed or dedicated, Fee Owner, Developer, or Local Area Developer, if such Local Area is owned by a Local Area Developer, may record one or more Supplements or Local Area Declarations which will refer to and incorporate the Declaration and may supplement it with additional covenants, conditions and restrictions as Developer may deem appropriate for that area or Local Area. Such Supplements or Local Area Declarations may, but need not, provide for the establishment of a Local Area Association to be comprised of the Owners of the Local Area. Any

Supplement may provide its own procedures for amendment of any provision thereof, as, for example, by a specified vote of only the Owners of some of the property within the area subject to such Supplement. Developer also reserves the right not to develop any portion of the Property as now or hereafter described for residential or residential-related airpark or equestrian uses, in which case the property may be withdrawn by Developer by filing an instrument declaring the Withdrawn Property. Also, portions of the property may be withdrawn by the Developer with the consent of the owner of the Withdrawn Property (if the Owner is different from Fee Owner) to correct minor technical errors in legal descriptions or surveys such as overlaps or gaps or to make minor adjustments in boundary lines with adjacent properties such as public rights of way to or from the Airport or to make any such other de minimis changes in the Property to facilitate platting or development.

**2.2 Local Areas.** Developer intends to develop in phases and may group together certain parts of the Property in Local Areas. Some Common Areas within the Local Area will be administered by the relevant Local Area Association, to the extent a Local Area Association is created with respect to such Local Area. Otherwise, such Local Area shall be administered the Association. Any Local Area Association shall assess its members for its Local Area common expenses as applicable pursuant to its Local Area Documents. Nothing contained herein requires Developer to create Local Areas or Local Area Associations other than the HCOA. Developer may at any time add Additional Lands by recording a Supplement. At the time of recording such Supplement, the covenants, conditions and restrictions as contained in this Declaration shall apply to such Additional Lands in the same manner as if the Additional Lands had originally been subject to this Declaration. Because the Airpark will be developed in phases, some of the provisions contained in this Declaration will not apply to every Lot or Common Area on the Property. By way of example, but not limitation, the Property does not contain open space Common Areas or a taxiway although the Declaration deals with such portions of the development. It is anticipated, but not required, that such portions will be added as Additional Lands.

**2.3 Local Area Associations.** The owners of Lots in a Local Area may also be members of a Local Area Association formed by or with the consent of the Developer and which may operate and administer Local Area Common Areas owned or used by such Local Area Association.

**2.4 Operations without Local Area Associations.** When a Local Area has Local Area Common Areas and does not have a Local Area Association to operate and administer such Local Area Common Areas, the Association may operate and administer such Local Area Common Areas on behalf of the Owners in the Local Area and establish, collect, and enforce an assessment relating thereto from the Owners in that Local Area, which assessments as to those particular Owners shall be in addition to all other Assessments. Nothing herein shall preclude the Developer from directly performing any of the above maintenance-related functions or from contracting for their performance.

**2.5 Non-Condominium Status; No Retroactive Legislation.** The Association is not a condominium association and therefore shall not be governed by the Tennessee Horizontal Property Act. This Declaration is not a declaration of a condominium association; however, portions of the Property or Additional Lands may be submitted to the condominium form of ownership and one or more Members of the Association may become members of another association which will be governed by the Tennessee Horizontal Property Act. Further, the express intent of the Documents is that the rights and procedures in the Documents shall not be retroactively affected by legislation, ordinances, rules or regulations enacted or taking effect after the date of the execution of this Declaration.

**2.6 Flexible Provisions.** Because of the size of The Big South Fork Airpark and because the master plan is based on phases of development, it is contemplated that various portions of the Property shall be subject to additional covenants, conditions and restrictions which are different from, vary from, or enlarge or limit the restrictions of this Declaration as to use and construction. Nothing contained in this Declaration shall prohibit a Supplement or Local Area Declaration from further limiting, altering, regulating or prohibiting certain uses of, or certain types, styles and requirements of construction on a portion of the Property varying or different from the terms of this Declaration or from enlarging the provisions of this Declaration provided that such restriction, condition or covenant is applicable to at least all Owners subject to the Supplement or Local Area Declaration. Any such Supplement or Local Area Declaration must be approved by the Developer, exercising its reasonable judgment, so that changes do not substantially alter or modify the overall general development scheme of the Airpark unless such changes are deemed by the Developer to be in the best interest of the development. Because The Big South Fork Airpark will be developed in phases over an extended period of time, changes in the master plan; changes based on certain encumbrances to the development (e.g., leases related to the underground storage of natural gas, or oil and gas leases); changes or innovations in construction and designs of housing types, hangars or taxiways; changes in the state or federal regulations governing airports; and changes in demands and needs in The Big South Fork Airpark geographical area will occur. Additionally, because of the size of the development, the development has been designed to have separate distinct areas of development, some of which will be separated by distance, or by use, to function as an independent Local Area. Therefore, there is no guarantee that adjacent Local Areas will be similar to each other; in some instances, adjacent Local Areas may be intentionally dissimilar. In addition, non-residential uses may be interspersed throughout The Big South Fork Airpark subject, at all times, to the use limitations contained in this Declaration. Notwithstanding the foregoing, the Developer may request the County or city, as applicable, from time to time, to amend its "Comprehensive Land Use Plan "or zoning regulations to change land uses in The Big South Fork Airpark.

**2.7 Distinct Communities and Areas.** This Declaration and the Documents contain generic provisions meant to apply throughout The Big South Fork Airpark except to the extent that they specifically apply to distinct areas as set forth in this Declaration or are modified in particular Local Areas or for the purpose of allowing a Local Area to have its own unique design or use. Therefore, wherever a provision of Local Area Documents differs from the Documents, the Local Area Documents shall control, provided such Local Area Documents have been approved by the Developer as to the property affected by the Local Area Documents. Additionally, the Developer has the right to change the nature, design and character of the Property through any reasonable means, including changes resulting from adding Additional Lands or removing Withdrawn Property. The Property described on Exhibit A is made up of the Lots in the various classes as described on Exhibit B. There may be Rules or a Supplement which governs all or some of these Lots.

**2.8 Conflicts; Interpretations.** The various portions of the Property may not only be subject to the Declaration but also to Local Area Declarations. Under a provision of this Declaration, a Local Area Declaration approved by the Developer controls over the Declaration as to issues exclusive to Owners in the Local Area. To understand the relationship between the Declaration and a Local Area Declaration and apply this understanding in interpreting the various declarations, the following shall apply:

**2.8.1 Burdened Property.** Local Area Declarations do not burden all of the Property subject to the Declaration. A Local Area Declaration only burdens that portion of the

Property expressly described in the Local Area Declaration and has no effect on any other portion of the Property.

**2.8.2 Absence of Provision.** If the Declaration does not contain a provision regarding certain subject matter addressed in a Local Area Declaration agreed to by the Developer, any provision of the Local Area Declaration addressing the subject matter shall govern and control as to the property subject to that Local Area Declaration (“Local Area Association Restricted Property”). If a Local Area Declaration approved by the Developer does not contain a provision regarding a certain subject matter addressed in the Declaration, the Declaration shall govern and control the Local Area Association Restricted Property. The absence of a provision addressing a certain subject matter in any declaration shall be deemed to be an intentional omission or decision by that declarant not to address that subject matter and to allow the provisions of another association’s declaration on that subject matter to control the portion of the Property affected thereby.

**2.8.3 Subject Matter Addressed Differently.** If the Declaration and a Local Area Declaration address the same subject matter in a different manner and such difference is a conflict which can not be reconciled or construed to give meaning and effect to the provision in both declarations as to the Local Area Association Restricted Property, then the Local Area Declaration language shall apply to the fullest extent possible to the Local Area Association Restricted Property; however, outside of the Local Area Association Restricted Property, the Declaration provision shall apply. Notwithstanding the foregoing rule of construction, when a matter is permitted by the Local Area Declaration but the matter is prohibited or otherwise restricted under the Declaration and such matter has a meaningful impact outside of the Local Area Association Restricted Property (that is, if any such permitted use, activity, design or matter can be readily seen, heard or affect any other part of The Big South Fork Airpark, any public street or sidewalk, or the Airport), then the provision of the Declaration shall take effect to the extent necessary to limit or confine such matter to within the Local Area Association Restricted Property.

**2.8.4 Joint Resolution.** The Association and any Local Area Association (or before Turnover, solely the Developer) may jointly issue a resolution, statement or letter setting forth their mutual interpretation of (a) any provision of any Documents, (b) any provision of any Local Area Documents, (c) the interrelationship of any provisions of the Documents and any Local Area Documents, or (d) any of the above as applied in a specific case. The failure to provide such joint resolutions, statements, or letters shall not be deemed to be considered a reflection that no resolution has been reached.

**2.9 Natural Areas.** Developer may designate certain Common Areas or other areas as Natural Areas to be subject to a management plan to be developed by the Association after Turnover or by the Developer at any time. These areas may be seeded with native wildflowers and otherwise specially landscaped.

**2.10 Supplements.** Developer shall have the right, in its sole discretion and without the joinder and consent of any Owner(s) subject to this Declaration except as otherwise expressly provided elsewhere herein, to execute and record Supplements containing provisions which: (a) alter the applicability of any of the provisions of this Declaration to all or a portion of the Property (which alteration may, but does not have to, occur at the time Property is added as Additional Land); (b) add Additional Lands to the Property; (c) remove Withdrawn Property from the Property; or (d) declare part, but not all, of the Property owned by the Developer to be Public Property.

2.11 **Additional Land and Other Property.** Fee Owner and Developer shall have the right, in their sole discretion and without the consent of any Person except the Additional Owner if such Owner is different from the Fee Owner, to designate additional real property as Additional Land by executing and recording a Supplement or amendment to this Declaration (and any plat, if necessary) in the public records of the County. Developer makes no representation herein regarding the size of such real property. Nothing in this Declaration shall impose any duty or obligation upon Fee Owner or Developer to add Additional Land to the Property.

2.12 **Effects of Additional Land.** Some, but not all, of the effects of adding Additional Land to the Property may be (a) to increase (i) the size of the Property, (ii) the total number of Lots subject to this Declaration, (iii) the class of Members, (iv) the number of Persons using the Common Areas and any other property available to Members, (v) the size of the Association's Budget, and (vi) the total number of votes which may be cast by Members, and (b) to decrease the share of the costs borne by each Member.

2.13 **Withdrawn Property.** Except as provided in a Supplement or amendment, the Fee Owner or Developer shall have the right, in its sole discretion and without the consent of any Person except the owner of the Withdrawn Property, to execute and record in the public records of the County Register of Deed's Office, a Supplement or amendment which withdraws a portion of the Property and any Common Areas from the jurisdiction, force, effect, and encumbrance of this Declaration, and, from the moment of recording of such Supplement or amendment, no further act shall be necessary to nullify the effect of this Declaration on the Withdrawn Property and to fully release and discharge the Withdrawn Property from all of the covenants, conditions, restrictions, burdens, easements, terms and provisions of this Declaration and any Area Restrictions.

2.14 **Effects of Withdrawn Property.** Some of the effects of removing Withdrawn Property from the Property may be (a) to decrease (i) the size of the Property, (ii) the total number of Lots subject to the Association, (iii) the number of Members, (iv) the number of Persons using the Common Areas and any other property available to Members, (iv) the size of the Associations' Budget, (v) the total number of votes which may be cast by Members, and (b) to increase the share of the costs borne by each Member.

2.15 **Public Property.** Until Turnover, Developer shall have the right in its sole and absolute discretion to dedicate to the County, other public or appropriate entity, portions of the Property which are (i) not then sold to third parties or (ii) dedicated as Common Areas, as Public Property for uses to include, without limitation, aircraft-related uses, equestrian-related activities, rights-of-way, roadways, public parks, and other public and institutional uses. Public Property shall cease to be a part of the Property and shall cease to be subject to this Declaration upon its becoming Public Property. Persons who are not Members shall be entitled to use the Public Property. In spite of the fact Public Property is not part of the Property subject to this Declaration, the relevant association shall have the right or may be required by an appropriate governmental agency to maintain certain portions of such Public Property. For example and not by way of limitation, it may, from time to time be agreed between the relevant association and the appropriate governmental authority that publicly dedicated rights-of-way, or portions thereof, shall be maintained at a higher level than normal roadway and drainage facility maintenance. In such event, the relevant association may have to be responsible for maintaining all or a portion of such publicly dedicated rights-of-way in accordance with the terms of such agreement and the cost of same shall be assessed against the Members as an Operating Expense.

2.16 **Recreational Facilities.** Developer is considering the construction of tennis courts, common stables, a welcome center or other recreational facilities on The Big South Fork Airpark.

If such recreational facilities are constructed and Developer chooses for such construction to be an amenity, each Lot shall be subject to a Recreational Assessment. The Developer shall determine the amounts before Turnover or the Board of Directors after Turnover, as necessary for the operation and maintenance of the Recreational Facilities. The Class E Member shall not be subject to a Recreational Assessment.

**2.17 Restriction on Use of Adjoining Property.** No Member or other person, with the exception of the Association or the Developer or its successor in interest, shall be permitted to use any property adjacent to any Property subject to this Declaration in any way or in connection with or in conjunction with Property subject to this Declaration without the prior written consent of the Developer prior to Turnover or, after Turnover, without the prior written consent of the Association. However, in the event Developer, Fee Owner or their successor or assigns, develop Similar Adjacent Development(s), an adjacent or shared amenities use agreement with the owners or members of such Similar Adjacent Development may be entered into if reasonably practicable with either the Developer or, if after Turnover, with the Association. The Member's Assessment related to such shared amenities may be altered to reflect the use assessment of the members of the Similar Adjacent Development. The Class E Member shall not be subject to an Assessment related to shared amenities with any Similar Adjacent Development.

### **ARTICLE 3**

#### **AIRCRAFT**

**3.1 In General and Avigation Easement.** The Big South Fork Airpark is a private residential development primarily designed and intended to allow aircraft owners to taxi in and out of their residential community and keep their aircraft at or near their homes in approved hangars. All Owners, tenants, guests, invitees, and licensees into The Big South Fork Airpark acknowledge that this is an aviation community and accept the burdens and risks associated therewith, particularly the noise, vibrations, fumes, dust, fuel particles and other effects caused by the operation of aircraft. No Dwelling Units, Accessory Structures or other improvements may be constructed in violation of applicable Federal Aviation Administration ("FAA") regulations. Each Owner and Member, by acquiring a Lot in The Big South Fork Airpark, agrees, consents and provides as follows: THE OWNER ACKNOWLEDGES AND AGREES THAT THE AIRPARK PROPERTY AND THE LOT PURCHASED BY OWNER IS ADJACENT TO OR IN THE IMMEDIATE VICINITY OF A PUBLIC AIRPORT AND AS SUCH, THE OWNER MAY BE SUBJECT TO ACTIVITIES AND PURPOSES COMPATIBLE WITH AIRPORT OPERATION, INCLUDING LANDING AND TAKEOFF OF AIRCRAFT OPERATION, AERIAL APPROACH, AIRCRAFT SOUND AND NOISE, AIRCRAFT AVIGATION AND FLIGHT, HAZARD AND AIR SPACE INCLUDING BUT NOT LIMITED TO NOISE, VIBRATIONS, FUMES, DUST, FUEL PARTICLES AND ALL OTHER EFFECTS THAT MAY BE CAUSED BY THE WARMING-UP OF ENGINES, OR THE OPERATION OF AIRCRAFT LANDING AT, OR TAKING OFF FROM, THE AIRPORT, OR OPERATING AT OR ON THE AIRPORT OR THE AIRPARK, AND OWNERS DO, FOR THEMSELVES, THEIR GUESTS OR INVITEES AND ALL PURCHASERS, ADMINISTRATORS, EXECUTORS, SUCCESSORS AND ASSIGNS TO THE LOTS AT ANY TIME, AND IN PERPETUITY, DO HEREBY FULLY WAIVE, REMIT AND RELEASE ANY RIGHT OR CAUSE OF ACTION WHICH THEY MAY NOW HAVE OR WHICH THEY MAY OTHERWISE ACCRUE IN THE FUTURE AGAINST DEVELOPER, FEE OWNER, THEIR SUCCESSORS OR ASSIGNS, DUE TO SUCH NOISE, VIBRATIONS, FUMES, DUST, FUEL PARTICLES AND ALL OTHER EFFECTS THAT MAY BE CAUSED OR MAY HAVE BEEN CAUSED BY THE WARMING-UP OF ENGINES OR THE OPERATION OF AIRCRAFT LANDING AT OR TAKING OFF FROM THE AIRPORT, OR OPERATING AT ON THE AIRPORT OR THE AIRPARK.

OWNER HEREBY REPRESENTS AND WARRANTS THAT SUCH USE IS NOT INCOMPATIBLE TO THE OWNER'S INTENDED USE AND QUIET ENJOYMENT OF THE OWNER'S PROPERTY. The Property and each Lot is subject to an Avigation Easement recorded in the Scott County Register's Office.

**3.2 Easement.** The Fee Owner hereby grants and conveys as an appurtenance to each Hangar Lot and the HCOA Property a non-exclusive, perpetual avigation easement in, to, along and across the Taxiways as defined in this Declaration or as identified on any current plat of the Subdivision which provide access for aircraft traffic between the taxiway and the Airport taxiways and runways for aircraft access ("Airpark Taxiways"). Such easements shall be perpetual and shall run with the land relative to each Hangar Lot and the HCOA Property. The Fee Owner or Developer may convey the Airpark Taxiways to the HCOA before or upon Turnover.

**3.3 Continuity of Aircraft Operations.** Except as required by state, federal or local law, rules, regulations or by the Airport for reasons of safety or security, the Owners of the Airpark shall be allowed to use the Airport just as all other aircraft are allowed to use the Airport, nor shall access to the Airport be discontinued or suspended, without the affirmative vote of ninety percent (90%) of all Class B Members and the consent of the Airport Authority Board.

**3.4 Public Airport.** The Airport is a public airport and as such is open to members of the public. It is anticipated that access to the Airport from the Property will be through at least one security gate pursuant to an agreement entitled "Through the Fence Agreement" between the Developer or Association or HCOA and the Airport Authority ("Airport Access Agreement"). Such Airport Access Agreement shall contain a provision allowing for the assignment of the Airport Access Agreement to the Association and/or the HCOA on or before Turnover. The Airport Access Agreement provides for an initial fee and an annual fee per Hangar Lot (Class B1 membership) and Hangar Condo Lot (Class B2 membership) which has been sold by the Developer. Such fees will be collected by the Developer or Association as part of the Class B1 Annual Assessment or by the Developer or the HCOA as part of Class B2 Annual Assessment and will be paid to the Airport Authority pursuant to the Airport Access Agreement. Pursuant to Section 4.2 of this Declaration, Class B2 members, who are members of the HCOA, must also be an Owner of one (1) other Lot as further set forth in Section 4.2. Thus, Class B2 Members will be a Member of another class. The Airport Access Agreement is for a term of 20 years, and the Association and HCOA will be responsible for any negotiation with the Airport Authority after Turnover. The Airport Authority shall have the right to require each Owner and each aircraft operating in or out of The Big South Fork Airpark to be insured for liability purposes in an amount and manner as reasonably determined by the Airport Authority for similar aircraft operating in or out of the Airport. These insurance requirements may be in addition to the requirements for insurance under this Declaration. A "Through the Fence Agreement" has not yet been entered into. In the event the "Through the Fence Agreement" is not entered into at the time the first Lot is conveyed to a subsequent purchaser, Developer shall have the right, but not the obligation, to file a Supplement altering the Airpark development concept.

**3.5 Ground Traffic Rules and Regulations.** Notwithstanding anything contained herein to the contrary, the HCOA shall have the authority to adopt reasonable rules and regulations governing ground traffic of aircraft, any other vehicles or Persons on the Airpark Taxiways or within The Big South Fork Airpark including, but not limited to, the following: (i) impose weight restrictions on Taxiways; (ii) designate and restrict run-up areas for aircraft; or (iii) restrict and designate areas for tie down. No aerobatic, parachuting, gliders, hot air balloons, or remote-controlled aircraft shall be permitted to operate out of, over, or land upon any portion of

The Big South Fork Airpark without prior express approval of the Association and only for very limited and controlled purposes and events subject to the Avigation Easement and the Airport Access Agreement. The Association shall also have the authority to create and impose reasonable hours or rules regulating the maintenance, repair or servicing of aircraft on Airpark Property not directly related to an immediate take off or landing. Nothing contained herein is intended to deprive the Airport Authority of its rights and powers necessary to perform its obligations with regard to the Airport.

**3.6 Federal Aviation Administration Regulations.** All aircraft and pilots operating above, in or out of the Airport shall comply with all then current FAA rules and regulations. The HCOA, through its board of directors, shall have the authority to deem any violation of any such rules or regulations a violation of this Declaration that can result in fines, liens or forfeiture as set forth in this Declaration assessed against not only a Hangar Lot, but also any other Lot owned by the Member who is in violation of the rule or regulation.

**3.7 Airport Security.** A security fence which shall be a minimum of eight (8) feet in height shall be erected between the Property and the Airport. Access to the Airport from the Property shall be solely through designated gates in the security fence. Access by Owners, tenants, guests, invitees or licensees shall be in compliance with the Airport Access Agreement and this Declaration. Absent prior written approval by the Airport and the Association, no other vehicle will be permitted to use any gate which is designated as exclusive to aircraft.

**3.8 No Commercial Operations.** No commercial operations or enterprise related to aircraft or the Airport shall be permitted on the Property, with the exception of sale of food or beverages or other services related to any activity undertaken by the Developer, or special events approved by the Association. Commercial operations include, without limitation, fuel sales, maintenance or repair of aircraft for pay, or a fixed based operation. Nothing, however, shall prohibit Owners or their tenants, guests, invitees or licensees, from performing usual or routine maintenance or repairs on their own aircraft authorized by applicable FAA rules or regulations.

**3.9 Operational Aircraft.** Except on designated tie down areas, if any, at locations approved by the Developer, all aircraft shall be maintained and stored in enclosed hangars.

**3.10 Fuel Storage.** No fuel or other flammable materials including, without limitation, gasoline, diesel, fuel oil or aviation fuel, shall be permitted to be stored or maintained on a Hangar Lot or HCOA Lot other than fuel contained in an aircraft. Each Owner shall, however, be permitted to maintain propane tank(s) or fuel for home appliances or tools such as lawnmowers, string trimmers or the like on such Owner's Lot in a manner and location as approved by the ARC.

**3.11 Waiver of Claims.** Improvements, personal property and Persons on Lots in the Airpark may be subjected to noise or hazards associated with aircraft operations as more specifically set forth in [Section 3.1](#). Each Owner of a Lot hereby assumes all risks arising out of owning property in proximity to the Airport and any aircraft and waives any claim, demand or action which such person may hereafter have or assert against the County, Airport Authority, State of Tennessee, Department of Transportation, FAA, Fee Owner, Developer, Association, HCOA and Class B Members, Associations and their respective directors, officers, agents, employees and independent contractors from any claims, demands or actions which may hereafter be made or asserted by any member of Owner's family or any tenant, guest, invitee, licensee or other person whose person or property is injured or damaged while on the Property en route to or away from an Owner's Lot, for noise, nuisance or damage to property or injury to persons as a result of aircraft operation or for damage to property, including shrubbery and landscaping, as a result of any



aircraft-related activity. This release shall not diminish any right which the Owner may have against the aircraft owner or pilot causing the damage or injury.

**3.12 Security and Safety Committee.** The Board and the HCOA Board of Directors shall appoint and maintain a person who may serve on the Airport Authority Board if approved by the Airport Authority.

**3.13 Federal or State Action.** The use of the Airport may be restricted, limited or prohibited due to Federal or State of Tennessee action related to, among other things, terrorism or natural disaster. In such event, each Owner, its tenants, guests, invitees, licensees or other user of the Airport from The Big South Fork Airpark waives any claim, demand or action relating thereto against, and agrees not to sue, the County, Airport Authority, Fee Owner, Association, Developer, Area Developers and Area Associations and their respective directors, officers, agents, employees and independent contractors from any claims, demands or actions relating thereto.

**3.14. Insurance Requirements.** Each Owner of a Hangar Lot (Class B1 Lot) or a Hangar Condo Lot (Class B2 Lot) must maintain property and general liability insurance on any aircraft utilizing the Airpark Taxiway or going into or out of The Big South Fork Airpark and utilizing any hangar on the Property with limits in an amount as established by the HCOA from time to time. The HCOA has the right to require proof of such insurance on an annual basis or more or less regularly. An Owner shall be deemed in default of this Declaration if such insurance is not maintained or obtained for any aircraft. In the event of a default under this Article 3, the Association or HCOA may place a lien on either, or both, the defaulting Member's Lot which does not have a hangar, as well as the Member's Hangar Lot.

#### **ARTICLE 4** **HANGAR CONDO OWNERS ASSOCIATION**

**4.1 Hangar Condo Owner's Association.** A separate association for Class B2 Members, the HCOA, has been or will be created by Developer. The HCOA shall own several buildings containing T-hangars, each of which shall be designated as a Lot and are referred to in this Declaration as Hangar Condo Lot(s). The HCOA may own other forms or types of storage for aircraft that may or may not be designated as a Lot. It is anticipated, although not required, that the Hangar Condo Lots will be subjected to the Tennessee Horizontal Property Act and owned by Developer and or purchasers subject to the terms of this Declaration or any other declaration, a Master Deed, the Bylaws of the HCOA and any Rules adopted by the HCOA board of directors. After Turnover, the HCOA shall provide for the oversight of additional hangars located on the Property subject to the HCOA as well as maintenance and administration of the Airpark Taxiway. HCOA Local Area Documents and a Supplement may be filed setting forth the covenants, conditions and restrictions for such HCOA and HCOA Property and Common Areas.

**4.2 Minimum Requirements of HCOA.** Subject to any additional restrictions, the HCOA Local Area Documents, or any Supplement related thereto, shall contain, at a minimum, the following use restrictions: (i) any Owner of a Hangar Condo Lot is deemed a Class B2 Member of the Association, (ii) the owner of a Hangar Condo Lot must also be an Owner of one (1) other Lot, no more or no less, and such other Lot must be either a Class A Lot, a Class B1 Lot, a Class C Lot, or a Class D Lot, (iii) the HCOA and the Association will be responsible for negotiating, working with, cooperating and interacting with the Airport Authority as further set forth in Article 3 and the Through the Fence Agreement, (iv) the HCOA will be subject to Initial Assessments; and (v) the HCOA will be responsible for the Airpark Taxiway, including any maintenance or upkeep of the same.

4.3 **Reservation of Easements.** The Fee Owner hereby reserves in favor and for the benefit of Fee Owner, Developer, the Association, the Hangar Lots , their successors, assigns, invitees, visitors and guests a perpetual, non-exclusive easement and right-of-way across all of the taxiways within the Subdivision, including the HCOA Property, for aircraft maintenance vehicles and all aviation-related uses.

## **ARTICLE 5** **MASTER ASSOCIATION**

5.1 **Maintenance Responsibility.** The Association shall maintain and keep in good repair the Common Areas, Easement Areas, SWMS, roads, utilities and other property of the Association unless specifically stated otherwise. Except in the Natural Areas, the maintenance responsibility shall include, without limitation, landscaping and other flora, lighting, barns, fixtures, rights-of-way, retention ponds, parks, buffer strips, traffic control devices, and any other improvements which may be situated upon the Common Areas, unless such maintenance is specifically granted to a Local Area Association or the HCOA.

5.2 **Rules.** The Developer, prior to Turnover, or the Board, after Turnover, shall have the right to promulgate and impose reasonable Rules and thereafter modify, alter, rescind and augment any of the Rules with respect to the use, operation and enjoyment of all or parts of the Property and any improvements located thereon and such Rules may differ for each Member Class (including, but not limited to, establishing reasonable fees for the special event use of Common Areas and establishing hours and manner of operation.)

5.3 **Delegation.** The Declaration or the Association may delegate, in whole or in part exclusively or non-exclusively and on a permanent or temporary basis to a third party, any obligation of maintenance or repair created under this Declaration.

5.4 **Right of Entry to Cure Owner's Default.** In addition to typical maintenance upon the Common Areas, the Developer and/or the Association shall have the right to perform maintenance upon any vacant or improved Lot, Common Areas, Easement Areas, or Structure, in the event of the Owner's neglect, and a right of entry for such purpose is hereby reserved, subject however to the following provisions:

5.4.1 **Notice and Opportunity.** Prior to performing any maintenance on a Lot or Structure, the Developer or Board shall determine that the Lot or Structure is in need of repair or maintenance, is detracting from the overall appearance or use of the Subdivision or poses a risk of property damage or personal injury. Prior to commencement of any work, fifteen (15) days Formal Notice shall be provided to the Owner that unless specified repairs are made or maintenance is performed within said time period, the necessary repairs and/or maintenance shall be performed and the cost charged to Owner. This right includes, but is not limited to, the right to paint, repair, replace, and care for roofs, gutters, downspouts, exterior building surfaces, windows, doors, barns, hangars, trees, shrubs, grass, walks, as applicable, to make other exterior improvements as required, and to mow and keep free of litter and debris.

5.4.2 **Lien for Maintenance.** The cost of such repairs or maintenance may be assessed against the Lot upon which such maintenance is done and in such event shall be an obligation of the Owner and shall become a lien on the Owner's Lot and shall be enforceable and collectible in the same manner as an Enforcement Assessment in accordance with Article 9 of this

Declaration (Assessments and Liens).

5.5 **Successor to Developer.** Except as specifically otherwise provided, the Association shall, after Turnover, succeed to all rights and powers of the Developer. Prior to Turnover, Developer shall have all the power and rights granted to Association in this Declaration.

5.6 **Enforcement of Laws and Local Ordinances.** It shall not be a function of the Association to report violations of laws and local ordinances on behalf of Members. Each Member shall report violations of the same about which the Member is concerned to the appropriate entity rather than asking or expecting the Association to do so. This provision is not a waiver of the Association's right to report violations of laws and local ordinances which affect the Association's interest.

5.7 **Insurance.** The Association shall maintain:

(a) property and casualty insurance, so long as available at commercially reasonable rates, covering the Common Areas for damage or injury;

(b) general liability insurance for risks, including those resulting from the operation, maintenance or use of the Common Areas or caused by the negligence of any of its Members, employees, directors or agents;

(c) Directors and officers coverage, indemnifying those serving as directors or officers of the Association against alleged errors or omissions. The public liability policy shall be in amounts as shall be set from time to time by the Board; and

(d) The Association and the HCOA shall also maintain any insurance in an amount required under the Airport Access Agreement.

5.8 **Street Lighting.** The Association shall exclusively hold and administer the right to control the nature, type, placement, presence, timing and location of street lighting, if any, within the Property.

5.9 **Association Right of First Refusal.** The Association shall have a right of first refusal to purchase from the Fee Owner the Lot designated on the plat as the Welcome Center and commonly referred to as the "Welcome Center." Nothing contained herein shall require the Fee Owner or the Developer to sell the Welcome Center and Fee Owner reserves the right to designate the Welcome Center as Common Area and convey it to the Association, or otherwise use such Lot in the best interest of the Subdivision in Developer's sole discretion.

5.10 **Cooperation of Association and HCOA.** The HCOA may consult with the Association on matters related to the Airport or the Airpark Taxiway; provided, however, the HCOA shall have the primary responsibility and authority in determining matters subject to the HCOA documents.

## **ARTICLE 6** **MEMBERSHIP; VOTING RIGHTS**

6.1 **Membership.** Membership in the Association shall be established and the rights, powers, duties and privileges thereof shall be as set forth in the Charter and Bylaws of the Association. All Owners of Lots shall be either a Class A, Class B1, Class B2, Class C, Class D,

and/or a Class E Member. The Developer (or Fee Owner) shall be the only Class E Member. Class A, Class B1, Class B2, Class C and Class D Membership, once established, shall be appurtenant to and may not be separated from ownership of a Lot. Certain classes of Membership may be subject to different Rules or Assessments as set forth in this Article or elsewhere in this Declaration. Class B2 Members must own another Lot as set forth in Section 4.2. Class B2 Members will be non-voting Members of the Association as set forth in Section 1.45.

**6.2 Nature of Membership.** The interest of a Member in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner, except as an appurtenance to the related Lot. Said interest is not subject to anticipation, alienation, or the claims of any creditor or to the claims of any spouse for alimony or support or to legal process and may not be voluntarily or involuntarily alienated or encumbered or reached by any legal equitable or other process including bankruptcy in satisfaction of any debt or liability except as an appurtenance to the Lot.

## **ARTICLE 7 COMMON AREAS**

**7.1 Conveyance of Common Areas.** Fee Owner agrees that it shall convey (a) to the Association, and the Association agrees that it shall accept, fee simple title, dedications or easements to the Common Areas, and (b) to the HCOA, the HCOA Property, the Airpark Taxiway and related rights-of-way, roadways and easements to the HCOA Common Areas, and both (a) and (b) are subject to: (i) this Declaration, Supplements, amendments and all other documents; (ii) real estate taxes for the year of such conveyance; (iii) all applicable zoning ordinances and other land use regulations; (iv) such facts as an accurate survey would show; (v) any oil, gas, mineral or other reservations as set forth in oil, gas, mineral or other leases; (vi) the rights granted by the Tennessee Oil and Gas Board to Jarvis Drilling Company, its successors and assigns to the West Oneida Field for underground pressurized storage of natural gas; (vii) utility and other easements; (viii) the lack of an executed Through the Fence Agreement allowing access from the Airpark to and from the Airport; and (ix) and all other covenants, easements, restrictions and reservations of record. Fee Owner may convey all or portions of the Common Areas to the Association or the HCOA or other Local Area Association at such time prior to Turnover as Fee Owner or Developer may determine. At Turnover, Fee Owner shall convey to the Association all such portions of the Common Areas not previously conveyed to the Association, or such portions of HCOA Common Areas to the HCOA. ALL CONVEYANCES SHALL BE IN "AS IS" CONDITION AS TO BOTH LAND AND IMPROVEMENTS, AND THE ASSOCIATION AND THE HCOA AGREES TO ACCEPT "AS IS" THE CONVEYANCE OF THE COMMON AREAS AND THE PERSONAL PROPERTY AND IMPROVEMENTS APPURTENANT THERETO WITHOUT ANY REPRESENTATION OR WARRANTY EXPRESS OR IMPLIED IN FACT OR BY LAW AS TO THE CONDITION OR FITNESS OF THE COMMON AREAS OR PORTIONS THEREOF AND THE PERSONAL PROPERTY AND IMPROVEMENTS THEREON. Nothing herein shall abrogate the requirement for the Fee Owner's or Developer's written consent to the designation of property as a Common Area or a limited or restricted Common Area or its transfer to the Association or HCOA or the Developer's right to impose conditions upon safe transfer. The Association shall pay for all costs and expenses of such conveyance.

**7.2 Common Areas to Retain Status.** Once title to a Common Area or any portion thereof becomes vested in the Association (or the HCOA as the case may be) such Common Area shall not be abandoned, partitioned, alienated, released, conveyed, transferred, hypothecated or otherwise encumbered without first obtaining, if before Turnover, the written approval of Developer and the affirmative vote of not less than one-half (1/2) of the votes of all of

the classes which were entitled to use the Common Areas, or, if after Turnover, then the affirmative vote of not less than three-quarters (3/4) of all classes entitled to use the Common Areas, including the Class E Member. Nothing herein shall prohibit the Association from granting such easements as are reasonably necessary or appropriate for the Property in a manner consistent with the provisions of the Documents nor shall the foregoing prohibit the Association, after Turnover, from encumbering the Common Areas. Before Turnover, the Developer shall have the absolute right, but shall have no obligation, to withdraw, alter, abandon, amend, partition, alienate, convey, transfer, hypothecate or otherwise change the nature of any portion of the Property or the Common Area owned or controlled by Developer or Fee Owner with or without either notifying or obtaining the consent of any Owner.

**7.3 Access to Common Area.** Common Areas owned, leased or for the use of the Association are for the benefit and, where appropriate, the use of all Owners throughout the Property. The Developer has the right to designate all or any portion of the Common Area for the benefit of only certain classes of Members if such designation is reasonable.

**7.4 Other Property.** The Association may enter into easement agreements or other use or possessory agreements whereby the Association may obtain the use or possession on an exclusive or non-exclusive basis of property outside the Property for certain specified purposes. The Association may agree to maintain and pay for the taxes, insurance, administration, upkeep, repair replacement or maintenance of any property which, if before Turnover, the Developer, or after Turnover, the Association, determines to be desirable or beneficial for the development of the Property and the expenses of which shall be an Operating Expense. Prior to Turnover, Developer can enter into any arrangement for the use or possession of such property without the necessity of obtaining any consent of any Owner or Member.

**7.5 Maintenance.** All Common Areas shall be well maintained and kept in good order and repair. Except in the Natural Areas, all landscaping within Common Areas shall be well maintained, trimmed, and cut in a manner consistent with the adjacent or nearest portions of the Property.

**7.6 Owner's Property Rights.** Every Owner shall have a non-exclusive right of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with title to every Lot subject to all terms of the Declaration, the reservations to Developer contained herein, the Rules or any restrictions or limitations contained in any conveyance of the Common Areas (including limiting the use of benefit of the Common Areas to only certain classes or Owners) to the Association or the HCOA, any amendment or Supplement to this Declaration. The Common Areas are private property unless the same are conveyed and designated as Public Property in accordance herewith.

## **ARTICLE 8**

### **UNDERGROUND PRESSURIZED STORAGE FACILITY AND** **OIL AND GAS LEASES**

A portion of the Property or Additional Lands which Developer is contemplating developing may be subject to oil and gas leases or be part of the West Oneida Fort Payne Field Wide Unit which was created by the Tennessee Oil and Gas Board in an Order entered on May 2, 2007, and such Order grants the right to specific mineral developers to store, drill or mine certain mineral substances on portions of the Property or Additional Lands comprising or which might comprise the Airpark ("Prior Rights"). While Developer intends to obtain, to the extent practicable, agreements with any Prior Rights holder establishing that the surface of no Lot or Common Area

shall be disturbed, it is possible the holders of the Prior Rights may disturb an Owner's right to possession or quiet enjoyment of its Lot or Common Area or Easement Area rights and Developer makes no representation or warranty either express or implied, of any kind that any portion of the Property, or any Lot, Common Area, Easement Area or any improvement thereon, will be free from such Prior Rights. To the extent Developer or Fee Owner has the right to receive royalties or payments from (i) any Prior Right holder pursuant to any lease, order, regulation or agreement, or (ii) pursuant to the existence of any other mineral or other subterranean interest, ("Royalty and Other Rights") such Royalty and Other Rights shall be conveyed to the Association or HCOA, as may be appropriate, no later than Turnover.

## **ARTICLE 9**

### **ASSESSMENTS AND LIENS**

9.1 **Covenant for Assessments.** Every Lot shall be subject to, and every Owner covenants and agrees, to pay to the Association, as applicable: (a) the initial Assessment; (b) Annual Assessments; (c) Recreational Assessments; (d) Special Assessments; (e) Enforcement Assessments; and (f) any other Assessments to be fixed, established and collected from time to time as herein provided. Notwithstanding any provision herein to the contrary, Lots owned by Fee Owner and Developer shall not be subject to any Assessment prior to conveyance to an individual Lot Owner, nor shall Fee Owner or Developer be liable for Assessments generally, and, further, Class B2 Lots (Hangar Condo Lots) shall only be subject to those Assessments set forth in the HCOA Local Area Documents.

9.2 **Developer Reservation of Right.** Developer reserves the right to change the amount of the Assessments in subsequent Supplements or amendments.

9.3 **Use of Assessments.** The Assessments levied by the Association shall be used exclusively for the purpose of maintaining the Association's property. Subject to the HCOA Local Area Documents, the HCOA Assessments shall be used for the HCOA Property including, but not limited to, maintenance, improvement and operation of the Airport Taxiways and a portion of such HCOA assessment will be paid to the Airport Authority on an annual basis. The Assessments shall be used primarily for operating and maintaining the Common Areas, promoting the use and enjoyment of the Property by the Owners including, but not limited to:

9.3.1 **Operating Expenses.** The costs associated with the maintenance and operation of the Association and the performance of its duties established under the Documents.

9.3.2 **Lighting, Streets, Signage.** Lighting, maintaining, repairing and/or improving streets, roads (paved or unpaved) and access ways, medians and their unpaved areas within the rights-of-way, and easement areas and costs of controlling and regulating traffic on the streets and access ways (subject to such regulations and rules as may be imposed by governmental authorities). The roads must be maintained in accordance with County requirements.

9.3.3 **Common and Easement Areas.** Maintenance, improvement and operation of the Common Areas and Easement Areas. Making such additions, replacements and repairs to the Common Areas and Easement Areas and constructing new or additional improvements on the Common Areas and Easement Areas as the Association shall determine necessary or desirable.

9.3.4 **Authentic Improvement, Safety.** Taking necessary and/or appropriate action to maintain and/or improve the beauty of the Property to preserve and enhance the value of

the Property; to eliminate fire, health, or safety hazards; or to generally benefit the Owners, based on the judgment of the Association.

**9.3.5 Repayment.** Repayment of funds borrowed by the Association and interest thereon.

**9.3.6 Maintenance Reserve.** No reserves are required to be established or maintained by the Developer nor are reserves required to be maintained from Assessments. After Turnover, the Association shall establish and maintain reserve funds for the periodic maintenance and repair of and to the Common Areas. Reserves may be maintained for maintenance, repair or improvement to facilities or properties outside of the Airpark such as the Airport or roadways so long as such facilities or properties are deemed to significantly contribute to the use and enjoyment of the Airpark by the Developer, before Turnover, or the relevant HCOA board of directors or the Association Board, after Turnover.

**9.4 Special Assessments.** Special Assessments shall be levied by the Board of Directors of the Association with or without approval of the Membership of the Association. Special Assessments shall be levied by the board of directors of the HCOA with or without approval of the membership of the HCOA. In either case, Special Assessments shall be due and payable within thirty (30) days of the Assessment being levied.

**9.5 Personal and Transferee Liability.** All Owners of a particular Lot, except any Lot under a temporary exemption as provided herein, shall be jointly and severally liable for all Assessments coming due during their ownership. Any Person acquiring a Lot shall be jointly and severally liable with the grantor for all unpaid Assessments accruing prior to the time of transfer, without prejudice to any right the Person acquiring title may have to recover from the grantor amounts paid by the acquiring Person.

**9.6 Institutional Mortgagee Protection.** Every lien created under this Article 9 or under any other Article of this Declaration, or under any provision of the Charter of the Association or Bylaws, or under any Supplement or HCOA Local Area Document, shall be subordinate to any first mortgage of record or first deed of trust of record, of any Lot, made in good faith and for value. However, after the foreclosure of any such first mortgage or first deed of trust, or after the cancellation or forfeiture of the same, or deed in lieu of foreclosure, such Lot shall remain subject to this Declaration and any and all other restrictions, conditions or covenants and shall be liable for all Assessments levied prior to or subsequent to completion of such foreclosure, or cancellation or forfeiture, or delivery of such conveyance in lieu of foreclosure, and falling due after the completion, cancellation or forfeiture, or delivery. Nothing contained herein shall extinguish, toll or otherwise affect the personal obligation of an Owner to pay all Assessments.

**9.7 Certification of Payment.** Upon written request, the Association shall furnish a certificate in writing signed by an officer of the Association setting forth whether the Assessment against a particular Lot has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. The Association may assess a reasonable charge to an Owner to or for whom more than two (2) certificates are furnished in any twelve (12) month period.

**9.8 Lien for Assessments.** Any Assessment or installment thereof which is not paid (meaning received by Association on the due date) is delinquent. Any Assessment or installments thereof remaining delinquent for ten days shall be subject to a delinquency charge of \$10.00 or such greater amount as may be established from time to time by the Board. If the Assessment or

installment thereof together with the delinquency charge is not paid within thirty (30) days after the due date, the Assessment shall bear interest at the rate of ten percent (10%) per annum, but in no event shall interest be higher than the highest rate allowed by law from the date of delinquency. Such Assessment, together with interest, attorneys fees and court costs as provided for in the section of this Declaration entitled "Enforcement" shall be not only a personal obligation of the Owner (jointly and severally if more than one Owner) but also shall be a continuing lien on the Lot, binding upon such Lot in the hands of the then Owner, the Owner's heirs, devisees, personal representative, grantees and successors. A Notice of Lien may be recorded in the public records of the County, which lien shall also include and protect all Assessments coming due after the date of its recordation and until it is paid or its foreclosure is completed. If the lien is not paid within thirty (30) days after the due date, the Association may bring an action against the Owner personally obligated to pay the same or may foreclose the lien against the Lot, or both. However, the personal obligation of the then Owner to pay such Assessment, together with interest, attorney's fees and court costs as provided for in the Section of this Declaration entitled "Enforcement" shall remain the personal obligation of such Owner. In the event an Owner owns multiple Lots or both a Lot and Hangar Condo Lot (Class B2 Lot), the Notice of Lien may be recorded against either the Lot(s) or the Hangar Condo Lot, or both, at the discretion of the Association.

9.9 **Exempt Property.** The following property subject to this Declaration shall be permanently exempt from the Assessments including any reserves, charges and liens created by this Declaration: (a) Public Property; (b) the Common Areas; and (c) the SWMS

9.10 **Association Bidding Rights.** The Association or HCOA shall have the power to bid for a Lot or a Hangar Lot, as applicable, at a foreclosure or judicial sale, and to acquire, hold, lease, mortgage and convey the same provided that the Association or HCOA does not violate any of the provisions in Article 3. During the period in which a Lot is owned by the Association or the HCOA following this type of acquisition of title: (a) no right to vote shall be exercised on its behalf; (b) no Assessment shall be assessed or levied on it; (c) each other Lot shall be charged, in addition to its usual Assessment, an equal *pro rata* share of the Assessment that would have been charged such Lot had it not been acquired by the Association or the HCOA. Further, in the event the HCOA leases a Class B2 Lot, it must lease the Lot to a Lot Owner in accordance with Section 4.2.

9.11 **Prohibited Uses of Assessments.** Notwithstanding anything to the contrary contained herein, expressly, by implication or otherwise, the Association shall not have the power or authority to use, make, levy, impose, enforce, or collect any Assessment for the purpose, in whole or part, or directly or indirectly, of financing the prosecution of or otherwise supporting actual or contemplated litigation against the Fee Owner or Developer or any of their respective officers, directors, owners, or employees, with respect to matters arising out of or relating to the Documents, Supplements, the development of the Airpark, Common Areas, or Easement Areas, or any improvements thereon. This protection shall extend to any assignee-transferee of the Developer. Any attempted Assessment for the foregoing purpose shall be null and void, and all Lots are hereby exempted and exonerated from same, and Developer or Fee Owner, or their successors or assigns, officers, directors, employees or owners shall have standing to assert this defense.

## **ARTICLE 10**

### **EQUESTRIAN USE AND OTHER USE RESTRICTIONS**

10.1 **Non Site-Specific Restrictions.** In order to preserve the values and amenities of



The Big South Fork Airpark, the following provisions shall be applicable:

**10.1.1 Alteration of Drainage.** Except for Developer's acts and activities in the development of the Property, no change in the condition of the soil or the level of the land of any portion of the Property shall be made which results in any permanent change in the flow of or drainage of surface water within the Property without the prior written consent of the Developer. No surface or lake water from the SWMS may be used for the irrigation of any Lot.

**10.1.2 Common Areas.** Nothing shall be stored, constructed upon, or removed from the Common Areas, except with the prior written approval of Developer or the Board, as appropriate. Any large group activities on Common Areas shall be coordinated with the relevant Association.

**10.1.3 Insurance Rates.** Nothing shall be done or kept on the Common Areas which will (i) increase the rate of insurance or (ii) cause a cancellation of an insurance policy on any property for which insurance is secured by the Association or the HCOA without the written consent of the relevant board, provided however, that equestrian and aviation uses do not require written consent of any board so long as an Owner is in compliance with this Declaration or any Supplement.

**10.1.4 Litter.** Except as permitted by the Developer in connection with construction or development, no garbage, trash, refuse or rubbish shall be deposited, dumped or kept upon any part of the Property except in closed containers, dumpsters or other garbage collection facilities deemed suitable by the ARC. Such facilities shall be screened from view in a manner approved by the ARC and kept in a clean condition with no obnoxious or offensive odors emanating therefrom.

**10.1.5 Mining, Drilling, Dredging and Hunting.** There shall be no commercial mining, quarrying or drilling for minerals, oil, gas or otherwise undertaken within any portion of the Property. There shall be no cutting, quarrying or harvesting of rocks, boulders, or similar geological formations within any portion of the Property. There shall be no cutting, logging or harvesting of timber or any natural woods, flora or fauna within any portion of the Property. There shall be no discharge of firearms, use of weapons, knives or setting of traps, nets or other processes to capture, kill, hunt or trap any animals including, but not limited to, fowl. Excepted from the foregoing shall be activities of Developer and Persons specifically designated in writing by the Developer in dredging lakes or water areas; creating, excavating or maintaining drainage or other facilities or easements; and installing roads, wells, pumps or sprinkler systems. Further excepted is excavation for swimming pools or spas constructed on the Property in accordance with this Declaration. Developer and Persons authorized by the Developer shall have the right to excavate and remove fill from portions of the Property. Further excepted is the trapping, capturing, killing, or hunting of an animal if such animal is deemed a nuisance or a danger by an Owner and the Board. AS FURTHER DESCRIBED IN ARTICLE 8, PORTIONS OF THE PROPERTY ARE SUBJECT TO CERTAIN OIL AND GAS LEASES AND THE RIGHT TO STORE PRESSURIZED UNDERGROUND STORAGE OF NATURAL GAS. CERTAIN LEASEHOLDERS OR THE HOLDER OF PRIOR RIGHTS MAY HAVE THE RIGHT TO GO ON PORTIONS OF THE PROPERTY AND DRILL, MINE OR STORE MINERALS IN ACCORDANCE WITH THEIR RIGHTS OR OTHERWISE DISTURB THE SURFACE RIGHTS.

**10.1.6 Nuisances.** No obnoxious, noxious, unpleasant, unsightly or offensive activity shall be carried on, nor may anything be done which can be reasonably construed to constitute a material nuisance. Motorcycles with working mufflers and motors shall not be

considered a nuisance so long as said motorcycle is used on designated areas. As long as their conduct is reasonable, children at play on a Lot or in Common Areas shall not be a nuisance. Aircraft taking off or landing at the Airport, or traveling to or from the Airport and over and on the Airpark on designated taxiways, or flying in air space above the Airpark or otherwise engaged in operations shall not be considered a nuisance as further set forth in Article 3. Equestrian use in accordance with this Declaration or with any Supplement or Rules and on designated areas shall not be considered a nuisance.

#### **10.1.6.1 Equine Related Activities: Release and Waiver.**

THE OWNER ACKNOWLEDGES AND AGREES THAT THE LOT CONVEYED HEREUNDER MAY BE ADJACENT TO, NEAR OR IN THE IMMEDIATE VICINITY OF EQUINE RELATED ACTIVITIES AND AS SUCH, THE OWNER, ITS SUCCESSORS, GUESTS, LESSEES, INVITEES OR ASSIGNS, MAY BE SUBJECT TO ACTIVITIES AND PURPOSES INCIDENT OR RELATED TO EQUINE ACTIVITIES, INCLUDING BUT NOT LIMITED TO SOUND, NOISE, ODORS, FUMES, DUST, MANURE MANAGEMENT, FLIES AND INSECTS, THE APPLICATION OF CHEMICAL PRODUCTS, AND THE OPERATION OF EQUIPMENT AND MACHINERY, AND OWNER ACKNOWLEDGES THERE ARE INHERENT RISKS IN EQUINE ACTIVITY INCLUDING BUT NOT LIMITED TO THOSE RISKS DESCRIBED IN TENNESSEE CODE ANNOTATED SECTION 44-20-102(6) AND OTHER APPLICABLE STATE AND FEDERAL LAWS. OWNER ACKNOWLEDGES AND AGREES, THAT BY ACQUIRING A LOT IN THE BIG SOUTH FORK AIRPARK, THE RISKS, HAZARDS AND DANGERS WHICH ARE ASSOCIATED WITH THIS ACTIVITY MAY INCLUDE, BUT NOT BE LIMITED TO, SEVERE BODILY INJURY, DISABILITY OR DEATH, OR DIMINUTION IN VALUE TO ANY LOT AND IT IS IMPOSSIBLE TO ELIMINATE THESE RISKS PARTICULARLY IN A WILDERNESS ENVIRONMENT. OWNER HEREBY RELEASES, WAIVES, DISCHARGES AND COVENANTS NOT TO SUE AND THE AND OWNERS DO, FOR THEMSELVES, THEIR LESSEES, GUESTS OR INVITEES AND ALL PURCHASERS, ADMINISTRATORS, EXECUTORS, SUCCESSORS AND ASSIGNS AT ANY TIME, AND IN PERPETUITY, DO HEREBY FULLY WAIVE, REMIT, RELEASE, AND DISCHARGE, ANY RIGHT OR CAUSE OF ACTION WHICH THEY MAY NOW HAVE OR WHICH THEY MAY OTHERWISE ACCRUE IN THE FUTURE AGAINST DEVELOPER, FEE OWNER, THEIR SUCCESSORS OR ASSIGNS, FROM ANY AND ALL LIABILITY TO THE OWNER, THEIR GUESTS OR INVITEES AND ALL PURCHASERS, ADMINISTRATORS, EXECUTORS, SUCCESSORS AND ASSIGNS, FOR ANY LOSS OR DAMAGE, AND FROM ANY CLAIM OR DEMANDS THEREFORE ON ACCOUNT OF ANY EQUINE RELATED ACTIVITY, WHETHER CAUSED BY THE NEGLIGENCE OF THE DEVELOPER, FEE OWNER, THEIR SUCCESSORS OR ASSIGNS OR OTHERWISE. OWNER HEREBY AGREES TO INDEMNIFY AND SAVE AND HOLD HARMLESS THE DEVELOPER, FEE OWNER, THEIR SUCCESSORS OR ASSIGNS AND EACH OF THEM FROM ANY LOSS, LIABILITY, DAMAGE OR COST (INCLUDING ATTORNEYS' FEES) THEY MAY INCUR DUE TO THE PRESENCE OF THE OWNER, THEIR LESSEES, GUESTS OR INVITEES AND ALL PURCHASERS, ADMINISTRATORS, EXECUTORS, SUCCESSORS AND ASSIGNS, IN, UPON OR ABOUT THE PREMISES OWNED OR OPERATED BY THE DEVELOPER, FEE OWNER, THEIR SUCCESSORS OR ASSIGNS OR THE OWNER, OR IN ANY WAY OBSERVING OR USING ANY OF THE FACILITIES OR EQUIPMENT OWNED OR OPERATED BY THE DEVELOPER, FEE OWNER, THEIR SUCCESSORS OR ASSIGNS OR THE OWNER, WHETHER CAUSED BY THE NEGLIGENCE OF THE DEVELOPER, FEE OWNER, THEIR SUCCESSORS OR ASSIGNS OR OTHERWISE.

OWNER FURTHER EXPRESSLY AGREES THAT THE FOREGOING RELEASE AND WAIVER OF LIABILITY AND INDEMNITY AGREEMENT IS INTENDED TO BE AS BROAD AND INCLUSIVE AS IS PERMITTED BY THE LAWS OF THE STATE OF TENNESSEE AND THAT IF

ANY PORTION THEREOF IS HELD INVALID, IT IS AGREED THAT THE BALANCE SHALL, NOTWITHSTANDING, CONTINUE IN FULL LEGAL FORCE AND EFFECT. Nothing contained herein constitutes acquiescence that Developer, Fee Owner or its successors or assigns meets the definition of "equine professional" under Tennessee Code Annotated Title 44, Chapter 20.

**WARNING: Under Tennessee Law, an equine professional is not liable for an injury to or the death of a participant in equine activities resulting from the inherent risks of equine activities, pursuant to Tennessee Code Annotated, Title 44, Chapter 20.**

**10.1.7 Protection of Archaeological and Historical Sites.** No Person shall damage, excavate, endanger, alter, or engage in construction upon any portion of the Property which has been determined by an appropriate governmental or quasi-governmental agency to be an actual or potential archeological or historical site without the prior approval of such governmental or quasi-governmental agency and the Developer or the Board.

**10.1.8 Protection of Wildlife and Plant Life.** No hunting of any type shall be permitted on the Property subject to the exception in Article 10.1.5. Neither the Developer, Fee Owner, nor the Association, shall be responsible for any damage or injuries caused by any wildlife anywhere within Subdivision or the Airport including, but not limited to, any damage to person or property caused by deer, coyote, mountain lions, bears, snakes, insects, and plants. The Association and Developer shall each be held harmless from any claim or loss arising from wildlife.

**10.1.9 Residential Uses Only.** All Lots, except for Hangar Condo Lots, and all Dwelling Units shall be for Residential Use unless otherwise designated by final Subdivision plat or Supplement recorded in the County Register's Office. Subject to any Design Guidelines and Rules, free-standing hangars shall be permitted only (i) on Class B1 Lots or (ii) on the HCOA Property. Hangar Condo Lots and Accessory Structures cannot be used as a residence, place of habitation or living quarter for either people or animals.

**10.1.10 Signs.** No sign, advertisement or notice shall be permitted on the Property without the prior written consent of the ARC, which shall, from time to time, promulgate Rules or Design Guidelines as to signage size, lighting, color and placement. No signs may be placed in windows or in or upon any vehicle. Home Occupations are permitted, but no Home Occupation signage shall be allowed (except in the case of a particular regulated profession or occupation, the smallest size possible to comply with any governmental lettering size regulation for such profession or occupation will be allowed so long as the Home Occupation otherwise meets the regulations in this Declaration or other applicable Supplement(s) or Rule(s)), or be located on other than the wall of the Dwelling Unit adjacent to the door. Rules regulating "For Sale" and "For Rent" signs shall be promulgated by the ARC. Developer reserves and shall have the right for itself and its designees to place and maintain signs in connection with construction, marketing, sales and rental of Lots and Dwelling Units and identifying or information signs anywhere on the Property, including within the public rights-of-way.

**10.1.11 Surface Water Management System.**

**10.1.11.1 Fillings.** No portion of the SWMS or other drainage areas on which the SWMS abuts may be filled without the approval of the Developer. No Person shall fill, dike, rip-rap, block, bulkhead, divert or change the established SWMS that has been or may be created by easement, plat or permit without the prior written consent of Developer.

10.1.11.2 **Swimming.** Except as specifically otherwise permitted by Association in writing, swimming in the SWMS is prohibited. PERSONS WHO SWIM IN OR OTHERWISE USE ANY PORTION OF THE SURFACE WATER OR STREAMS SHALL DO SO AT THEIR OWN RISK AND SHALL HOLD DEVELOPER AND THE ASSOCIATION HARMLESS FROM ANY CLAIM OR LOSS ARISING THEREFROM.

10.1.11.3 **Water Craft.** No power craft, jet skis, rafts, boats or other craft shall be allowed on any portion of the SWMS without the prior written consent of Developer, except that this prohibition shall not apply to craft used by the County, the Association or Developer or its designees or to craft used to provide maintenance and emergency services.

10.1.12 **Temporary Structure.** Without prior written approval of the Developer, no Structure of a temporary character (including, but not limited to, trailer, tent or shack, but excluding customary holiday decorations which conform to the Rules established for holiday decoration and for the various holiday seasons), shall be erected on any Lot at any time unless an exception or variance has been granted by the ARC. Temporary structures erected or maintained by the Developer and its designees are permitted if utilized for construction, sales, rental purposes or other uses.

10.1.13 **Time Share or Rental.** No Lot or Dwelling Unit may be sold or owned in time share or interval ownership or be used in such a manner to be substantially similar to time share or interval ownership. A Lot, Dwelling Unit, or Structure may be rented so long as such use is for a principal residence subject to the provisions of this section. Daily, weekly, monthly, or month-to-month rentals are strictly prohibited. A Lot with a Dwelling Unit may be rented under a written lease for a period of not less than one (1) year. If a tenancy ends for any reason within the term of a lease, the Lot or Dwelling Unit may not be re-let more than once during the original term of the lease under which the tenancy ended for whatever reason, including breach, termination or cancellation. No Lot, Dwelling Unit, Structure, or any improvement whatsoever and wherever located shall be used for the purpose of renting rooms as a hotel, motel, boarding house, bed and breakfast, motor court, inn or any type of transient accommodation. The Board may establish Rules regarding rentals. No signs may be placed on the Lots of the Property advertising or announcing that a property is available for rent or lease.

10.1.14 **Utilities, Wiring and Piping.** All utilities (excluding all electrical transmission, distribution and feeder lines and temporary lines during construction, or interim lines which will be placed underground at a future date) shall be located underground throughout the Property. Utilities include, without limitation, lighting, alarm systems, electric gas, CATV (cable television), telephone data lines, water, sewer, and any other utilities or services of like kind or purpose that may be developed and installed in the future.

10.1.15 **No Further Subdividing.** No Lot, Dwelling Unit or Hangar Lot shall be further divided or subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Board; provided, however, that when Developer is the Owner thereof, Developer may further divide and subdivide any Lot, Common Area, Easement Area and convey any easement or other interest less than the whole, all without the approval of the Board, the ARC, and any Owner or Member; and provided, further, that nothing herein shall be deemed to require the approval of the Board for the transfer or sale of any Lot, including improvements thereon, or Dwelling Unit to more than one person to be held by them as tenants in common or joint tenants, or for the granting of any mortgage or deed of trust.

**10.2 Site-Specific Use Restrictions.** To preserve and maintain the value of residential property within The Big South Fork Airpark, the following additional restrictions shall be applicable to all Property:

**10.2.1 Accessory Structures and Lots.** In areas where Accessory Structures are permitted, the Association may establish Rules and fees, as applicable, regarding the use of the Accessory Structures. Equestrian Lots (Class C Lots), may have stalls in a single Accessory Structure, so long as such Accessory Structure shall meet the applicable Design Guidelines and so long as the number of stalls located in the Accessory Structure shall be limited to one (1) stall for (i) each acre in a Class C Lot, and (ii) any remaining fraction of an acre which is equal to or greater than one half (1/2) of an acre. Thus, by way of example, but not by way of limitation, the Owner of a two and half (2 and 1/2) acre Class C Lot (Equestrian Lot), may construct a stall structure that has three (3) stalls. No barn or stall for the permanent or persistent boarding of any equine, and no pastures or other equestrian facilities may be constructed on an Equestrian Lot (Class C Lot). Notwithstanding the foregoing, an equine, including but not limited to a horse, may temporarily be boarded or housed on any Equestrian Lot (Class C Lot), assuming such Class C Lot has the appropriate Accessory Structure, for no more than seven (7) days in any month, based on a thirty (30) day month. No other Lot intended for a principal residence shall have a barn or stall for an equine, provided there may be a barn or stall as a limited amenity located on a Common Area if specifically designated as such on a final recorded plat. Only Class C (Equestrian Lots) shall be used to temporarily board or house equine in accordance with this Declaration and any Rules. Class B1 Lots (Hangar Lots) must have a free-standing hangar built on the Lot in addition to a Dwelling Unit and both the free-standing hangar and the Dwelling Unit must be in compliance with any Design Guidelines and Rules. Any Accessory Structure designed for an equine, is subject to a sixty (60) foot set back from all Lot boundary lines, subject to any variance granted by the ARC.

**10.2.2 Antennas.** Except as approved by the ARC for aviation purposes, no antennas, microwave or satellite dish antennas (which dishes may in no event be in excess of two (2) feet in diameter) for reception or transmission of audio, electronic, or visual signals are allowed on Lots unless they are concealed from view from streets, Common Areas and the first floor of any other Structures. The Association may establish Rules regarding antennas for aviation purposes.

**10.2.3 Insurance for Equestrian Uses.** Each Owner, and his invitee, guest, lessee, or licensee must maintain insurance of a type and in an amount sufficient to cover any equestrian related activity and as required by the Association.

**10.2.4 Casualty Damage to Structure.** In the event a Dwelling Unit or any part thereof or any other Structure or part thereof is damaged or destroyed by fire or other casualty, the Owner thereof shall with reasonable promptness clear the debris resulting therefrom and shall, within six (6) months of the fire or casualty, commence either to rebuild or repair damaged improvements or shall grass over and landscape the land previously underlying the improvements in a manner consistent with the surrounding area, unless the same is prohibited by a court in a then pending legal proceeding. The Owner of the damaged or destroyed Dwelling Unit or Structure shall have the right to reconstruct the same substantially in accordance with the plans, specifications and colors for the damaged or destroyed Dwelling Unit or Structure without approval of the ARC; however, reconstruction according to different plans, specifications or colors and any significant changes from the original plans, specifications and colors shall require the approval of the ARC.

**10.2.5 Electromagnetic Interference.** No radio, television or other electromagnetic or other type of radiation shall originate from any Lot which interferes with the reception of any aviation equipment used by the Airport or by a Member for aircraft purposes.

**10.2.6 Exterior Ornamentation.** No statuary, birdbaths, bird feeders, hanging plants, landscape delineators (bordering stones) or other exterior ornamentation shall be placed on any Lot so as to be visible from any streets, Common Areas, or the first floor of any other Structures without the prior approval of the ARC.

**10.2.7 Fences, Hedges, and Walls.** Except for use (i) as landscaped animal pens approved by the ARC or (ii) as perimeter security for the Airpark, if any, no chain link or wire fencing shall be allowed anywhere on a Lot. Any such allowed chain link fencing shall be vinyl clad or painted chain link with posts in a shape and configuration approved by the ARC. The Association or the ARC may promulgate additional Rules relating to fences, hedges and walls.

**10.2.8 Flags.** One reasonably sized pole-mounted flag of any one nation may be displayed on any Lot. All other flags or pennants must be approved by ARC except those displayed on a temporary basis for a holiday, festive event, or a party. Flags and pennants allowed on a temporary basis are subject to the Rules of the Association. Exempt Persons may, if approved by the Developer, use flags and pennants for sales or promotional purposes.

**10.2.9 Game Structures and Pools.** Any swimming pool, tennis court, basketball backboard, play structure, game area or court, and screening or fencing, lighting materials and location of same shall be subject to both the approval and the requirements of the ARC. No above ground pools are allowed but above ground spas may be approved by the ARC. No pools shall be permitted in the front yard unless within an enclosed courtyard shielded from front or side view. Basketball backboards and any other fixed games and play structures shall be located at the side or rear of the Dwelling Unit or, in the case of corner Lots, on the inside portion of the Lot within the setback lines. Tree houses or platforms of like kind or nature shall not be constructed on any part of a Lot located in front of the Dwelling Unit constructed thereon or, in the case of corner location, any portion of the Lot outside the setback lines. Tree swings may be located only in locations on a Lot approved by the ARC. Nothing herein shall preclude the disapproval of the ARC of any Structures mentioned in this section or the imposition of additional restrictions by the Local Area Association.

**10.2.10 Garage/Hangar Doors.** Garage/hangar doors may not be left open except when vehicles are entering or exiting the garage or hangar or except when the resident is actively engaged in activities consistent with home ownership that would be inconvenient, dangerous or unsafe if the garage or hangar door were left closed. Permanent or temporary screen doors, glass doors or screen enclosures may not be placed across the garage or hangar door openings.

**10.2.11 Mailboxes.** All mailboxes must comply with the Design Guidelines.

**10.2.12 Maintenance.** To preserve the quality of The Big South Fork Airpark and to assure the Property is maintained to the highest level possible, the following maintenance requirements are established:

**10.2.12.1 Landscape Maintenance.** The Airpark is intended to have a private and wooded ambiance. Certain portions of the Property may be designated as formed or manicured for purposes of creating an overall ambiance which is varied. The Lots shall be

landscaped in accordance with all such designations. No unsightly plant growth shall be permitted to grow or remain upon any portion of any Lot or in the Common Areas not maintained as Natural Areas, and no refuse or unsightly objects shall be allowed to be placed or permitted to remain anywhere thereon. All lawns, landscaping and sprinkler systems shall be kept in a good, clean, neat and attractive condition.

**10.2.12.2 Maintenance Adjacent to Facilities.** Owners must landscape, mow and otherwise maintain all that property lying between the Owner's lot line and the maintained edge of any Common Areas as maintained from time to time by the Association, provided that no Owner shall undertake any such action within any Environmental Areas or Natural Areas.

**10.2.12.3 SWMS Bank Maintenance.** Owners adjacent to a lake or retention area which is a portion of the SWMS shall sod and keep the bank mowed unless such maintenance is being regularly and routinely performed by another person.

**10.2.12.4 Swale Maintenance.** The Owner may have to construct a drainage swale upon a Lot for the purpose of managing and maintaining the flow of excess surface water, if any, found upon such Lot from time to time. Each Owner shall be responsible for the maintenance, operation and repair of such drainage swales on their Lot. Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow the swales to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted by the relevant governmental agency. Filling, excavation, construction of fences or otherwise obstructing the surface water flow is prohibited. No alteration of the drainage swales shall be authorized without the prior written approval of the relevant governmental agency and the Association and any modification, alteration, or damage to such drainage swales, whether caused by natural or human-induced phenomenon, shall be repaired, restored and returned to its former condition immediately by the Owner of such Lot.

**10.2.12.5 Fertilizer.** Only fertilizers, pesticides and fungicides approved by the United States Environmental Protective Agency and the Tennessee Department of Environmental Protection shall be used within the Property. Landscaping should be designed to make reasonable attempts to process out these chemicals before they enter the Environmental Areas or to attempt to use plantings which will not require such chemicals

**10.2.12.6 Maintenance of Structures.** Any Lots and any Dwelling Units or other Structures thereon, shall be kept in good, safe, clean, neat, finished, painted and attractive condition. Excepted from the foregoing shall be any portion of the Property owned by Developer or by Persons building with the approval of the ARC through the period of construction. Upon the failure to maintain the premises as aforesaid and upon Owners' failure to make such improvements or corrections as may be necessary within fifteen (15) days of giving of Formal Notice (except in an emergency, in which event the Association may directly and immediately remedy the problem without prior notice), the Association may enter upon such premises, make such improvements or corrections as may be necessary and the cost shall be paid by the Owner. If any Owner fails to make payment within fifteen (15) days after requested to do so, then the payment requested shall be a lien in accordance with the terms of this Declaration, and the Association may bring an action at law or in equity to collect such amount or enforce such lien. The entry by Association or its agents for the purpose described above shall not be a trespass, and by the acceptance of a deed for a portion of the Property, each Person has expressly given the Association the continuing permission to do so, which permission may not be revoked.

**10.2.13 Pets.** Except as authorized by the Association, no livestock or poultry shall be kept or raised upon any portion of the Property and no animals may be bred or kept for sale on any Lot. Other than stated herein, no animal which constitutes a health or safety hazard may be kept on any Lot. Pets which constitute a material nuisance shall be removed. Pets shall be prohibited from all portions of the Common Areas except where specifically designated by the Board. Exotic birds and other animals whose noise may be offensive to the other residents or users of the Common Areas shall be kept where such noise cannot be heard by anyone outside of the Owner's Dwelling Unit. All Owners will be responsible for immediately cleaning up after their pets. Equine animals shall be allowed as provided in this Declaration, a Supplement or Rules.

**10.2.14 Sight Lines.** Fences, walls, hedges, or other shrub plantings which obstruct motor vehicle sight lines shall not be placed or permitted to remain on any Lot at road or taxiway intersections or where bicycle, pedestrian or horse paths intersect a road.

**10.2.15 Solar Energy Devices and Green Technology.** Technology which is beneficial to the environment such as solar, wind or other technologies (whether or not such technologies are now known) shall be accommodated and encouraged and the Board or ARC may, but is not obligated to, make Rules for such technologies.

**10.2.16 Storage Tanks, Air Conditioners, Pool Equipment.** All storage tanks, air conditioners, and swimming pool equipment on any Lot shall be underground or placed in walled-in areas or landscaped so as not to be visible from any streets, Common Areas, or the first floor of any other Structures.

**10.2.17 Trash.** All residential trash containers shall be concealed from view from any streets, Common Areas, or first floor of any other Structures. Following initial clearing and construction of a Dwelling Unit, there shall be no burning of trash or any other waste material, except within an incinerator, the design and location of which shall be approved by the ARC. Non-noxious composting is allowed.

**10.2.18 Trucks, Commercial Vehicles, Buses, Recreational Vehicles, Mobile Homes, Boats, Campers and Trailers.**

**10.2.18.1 Trucks and Commercial Vehicles.** There shall be no parking of commercial vehicles on any residential Lot other than in a closed garage for a period of more than four (4) hours, unless the same is present and necessary in the actual construction or repair of improvements on a Lot. The definition of "commercial vehicles" shall include, but is not limited to, the following: (a) trucks and vans equal to or in excess of three-quarters (3/4) of a ton, any truck-tractor, semi-trailers, commercial trailers; and (b) any automobile or other vehicle which contains lettering or advertising thereon or which by visual recognition is identified with a business or commercial activity. There shall be no parking of commercial vehicles on any Lot other than in a closed garage except as necessary for such operations and as approved by the Association.

**10.2.18.2 Vehicle Storage Areas.** Developer shall have the right, but not the obligation, to designate certain portions of the Property, which may be relocated or discontinued from time to time, for the parking of commercial vehicles, buses, recreational vehicles, mobile homes, boats, campers and trailers. Neither Developer nor the Association shall be responsible for any damage to or theft of vehicles or the contents thereof placed in any such storage area.

**10.2.18.3 Trailers.** A horse trailer, house trailer, travel trailer, camper,



motor home, boat trailer, boat or similar vehicle shall not be permitted to remain or park on any Lot for a period of more than seven (7) days in a month based on a thirty (30) day month, unless hidden from view from any streets, Common Areas, or first floor of any other Structures. Unless prohibited by County ordinance, twice per year one of the aforesaid vehicles may be parked on a Lot for a period not to exceed one week, the purpose of which is to accommodate out-of-town guests. To enforce this provision and to control the use thereof, the relevant association may establish Rules in this regard. However, horse trailers are allowed on Equestrian Lots subject to the restrictions contained herein or in any Rules.

10.2.18.4 **Vehicles; Aircraft; Junk Cars, etc.** Inoperative or unlicensed cars, trucks, trailers, or other types of vehicles or aircraft shall not be allowed to remain on any Lot, street, or Common Area for a period in excess of three (3) consecutive days except in an enclosed garage or hangar. No major repair shall be performed on any motor vehicle or aircraft except in an enclosed residential garage, hangar or enclosed commercial structure. Operative, licensed vehicles of an Owner or Owner guest, employee, lessee or invitee, may be parked in parking areas on a Lot approved by the ARC but, in no event, on grassed or landscaped areas. If parked for more than twenty-four (24) consecutive hours, such vehicle shall be parked within the garage unless all parking spaces in the garage are occupied by operative motor vehicles, in which case the vehicle may be parked on the driveway or other approved parking area on the Lot.

10.2.19 **Yard or Garage Sales.** The relevant Association shall promulgate Rules to govern the duration, hours and other matters regarding yard or garage sales. Such Rules may establish dates during which garage or yard sales may not be held and may limit the number of such sales on any one date or the number of such sales any Person may have in one year.

10.3 **Compliance with Documents.** Each Owner and Owner's family members, guests, invitees, and lessees and their family members, guests and invitees, shall be bound by and abide by the Documents and any Rules. The conduct of the foregoing parties shall be considered to be the conduct of the Owner at whose invitation such Person is present on the Property. Such Owner shall be liable to the Association or the HCOA for any damages to the Association or the HCOA or the Common Areas resulting from the act of any of the foregoing parties (but only to the extent that such expense is not met by the proceeds of insurance carried by the relevant association) which shall be paid for by the Owner as an Enforcement Assessment. Failure of an Owner to notify any Person of the existence of the provisions of this Declaration shall not act to limit the right of enforcement of the provisions of the Documents and shall permit the Association to enforce any of the lessor's right thereunder. If these provisions are not specifically set forth in any lease, they nonetheless shall be deemed to be included by virtue of the provisions of this subparagraph. Each Owner, by acceptance of a deed to a part of the Property for himself, his heirs, personal representatives, successors and assigns hereby releases and discharges the Fee Owner, Developer, the Association and the ARC and their respective officers, directors, members, employees and agents (including those retained to provide management services), from any and all liability for interference with, prohibition or termination of, any lease or tenant arrangement. Each Owner, for himself, his heirs, personal representatives, successors and assigns, hereby agrees to indemnify and hold the Fee Owner, Developer, the Association and the ARC and their respective officers, directors, members, employees and agents (including those retained to provide management services) harmless from and against any claim by such Owner's lessee or tenant or any Person claiming by, through, or under Owner, for interference with or prohibition or termination or, any lease or tenant arrangement.

10.4 **No Implied Waiver.** The failure of Developer or Association to object to an Owner's or other Person's failure to comply with the covenants, conditions, or restrictions

contained herein or in any other Documents (including the Rules now or hereafter promulgated) shall, in no event, be deemed a waiver of the provisions of the Documents. An Owner may complain about any use in contravention of these provisions but the failure of Developer to pursue such complaint shall not be deemed a breach or violation of Developer under this Declaration.

## **ARTICLE 11**

### **THE ARCHITECTURAL REVIEW COMMITTEE**

**11.1 Approval of Plans, Specifications and Locations of Structures.** The following procedures and relations shall apply to any approvals under this Declaration by the ARC:

**11.1.1 Design Guidelines.** The relevant association and/or the Developer shall establish, and from time to time, modify Design Guidelines for the control of the design, materials, size, color and location of all Structures and other work including, without limitation, landscaping (including landscape delineators and statuary within the Property). Different Design Guidelines based on different design and other criteria may be established for different properties. In order to ensure compliance with such Design Guidelines, at the time plans and specifications are submitted pursuant to Section 11.1.4.1, Owner must deposit \$3,000 with the Developer, if before Turnover, or to the relevant association, if after Turnover, which amount will be refunded to Owner upon completion of construction of any improvement in accordance with this Article 11 and the Declaration.

**11.1.2 Approvals Required.** No Structure shall be commenced, erected, improved, or altered, nor shall any grading, excavation, tree removal, landscaping or change of exterior color or other work be commenced which in any way alters the exterior appearance of any Structure, landscaping, or other improvement on any Lot, Common Area, or unplatted tract made subject to this Declaration without the prior written approval of the ARC.

**11.1.3 Composition of the ARC.** The ARC shall consist of three to seven members as determined from time to time by Association, all of whom shall be appointed by the Board.

**11.1.4 Duties and Powers.** In order to carry out the intent of this Declaration, the ARC shall have the following duties and powers:

**11.1.4.1 Plans and Specifications.** To require each Owner or Volume Builder to submit a set of plans and specifications and, where requested, material samples and other material to the ARC prior to obtaining a building permit, if such building permit is required by the relevant governmental authority, or if not so required, prior to commencing construction, including exterior remodeling or similar activity within the Property, which plans and specifications and materials shall become the property of the ARC. The plans submitted shall include a survey, floor plan, elevations, site clearing and filling plan, site plan with all setbacks and specifications, including exterior materials and colors, shape, height, time of construction, landscape plans including the underground irrigation system and types of plants, trees, flowers, grass and other landscape materials, impervious surfaces, trees to be preserved, trees to be removed, finished floor elevations, grading and projected direction of drainage flow, fencing, and such other data as may reasonably be required and set forth in the Design Guidelines. The work contemplated must be performed substantially in accordance with the plans and specifications as approved, including the landscape plans and specifications so approved.

11.1.4.2 **Approval of Plans.** To approve, in writing, prior to the commencement of construction including exterior remodeling or similar activity, all plans and specifications, including lot grading and landscape plans, plans for buildings, fences, walls or other Structures which are to be erected or maintained upon the Property and to approve any exterior additions or changes and alterations thereto. All approvals of plans or specifications must be evidenced by the signatures of at least two-thirds (2/3) of the members of the ARC on the plans and specifications furnished, which shall be conclusive proof of the approval by the ARC of such plans or specifications. Notwithstanding anything to the foregoing contained herein, absent a specific written variance request to the provisions of this Association or the Design Guidelines approved in writing by the ARC, no approval shall be deemed to authorize any construction, improvement, repair or replacement which is in violation of this Declaration, the Design Guidelines or any Supplement, Rule or regulation.

11.1.4.3 **Fees.** To charge a standardized reasonable fee as part of its approval process hereunder to offset its costs and expenses incurred in connection with such approvals.

11.1.4.4 **Stop Work Orders.** To issue a stop work order during construction for which approval has not been given or for violations of or substantial variations from or work beyond the approved exterior improvements, landscaping plan, sizing or location of any Structure. Any Person receiving such an order shall immediately stop work on the relevant portion of work and not recommence that portion until the violation is resolved, which may include, but not be limited to, corrective work to bring construction into compliance within the approved plans and specifications or obtaining the approval of ARC for the changes in the plans and specifications.

11.1.4.5 **Building Permit Applications.** No Person shall make application to the governmental entity for a building permit for, or otherwise commence, any construction or exterior remodeling or similar activity unless and until the Person has obtained written approval of the plans or specifications from the ARC, if such approval by ARC is required herein.

11.1.4.6 **Enforcement.** The ARC, the Developer, and the relevant association or any one of them shall have the right to enforce the provisions of the Declarations and Design Guidelines as amended from time to time. Should any Person fail to comply with the requirements of the Declarations and Design Guidelines after thirty (30) days Formal Notice (or ten (10) days Formal Notice if during construction of a Dwelling Unit or Accessory Structure), the ARC, the Developer, or the relevant association shall have the right to enter upon the subject Lot, unplatted tract or Common Areas, make such corrections or modifications as are necessary, or remove anything in violation of the provisions of the Declarations and Design Guidelines and charge the cost thereof to the applicable Person. The ARC, the Fee Owner, the Developer, the relevant association, and their respective directors, officers, employees and agents, shall not be liable to the applicable Person for any damages or injury to the property or to any Person for any action taken provided that such acts are taken in good faith. The cost of such corrections, modifications or removal may be assessed against the Person and in such event shall be an obligation of the owner and shall become a lien on the affected Lot or unplatted tract, and shall be enforceable and collectible in the same manner as an Enforcement Assessment in accordance with the provisions of the Article of this Declaration entitled "Assessments and Liens."

11.1.5 **No Implication of Code Compliance.** The approval, rejection or withholding of any approval by the relevant association or the ARC of the plans, proposals and specifications and the location of all Structures and every alteration of any Structure shall not be

construed or interpreted as a representation or determination that any building, plumbing, electrical code or other applicable governmental regulations or requirements have or have not been properly met. Each Person shall be responsible for obtaining all necessary technical data and for making application to and obtaining the approval of the appropriate governmental agencies prior to commencement of any work or construction.

**11.1.6 Appeal.** If final construction approval is denied an Owner, Volume Builder, or the relevant association by the ARC, and any such applicant feels the decision is unlawful or improper, the applicant may appeal to the relevant Board. The appeal to the relevant Board shall be made not earlier than five (5) nor later than twenty (20) days after the issuance of the ARC decision which the applicant deems unlawful or improper. A hearing with the relevant Board will be held to enable the applicant to present the applicant's position to the Board. The relevant Board's decision shall be made by a quorum of those Board members present and must be announced in the meeting. If the applicant feels the decision of the relevant Board is unlawful or improper, the applicant may appeal to the Members by requesting, not earlier than five (5) days nor later than ten (10) days after the Board hearing, that a special meeting of the Members be called in accordance with the Bylaws to enable the applicant to present the applicant's position to the Members. Before Informal Notice is given, the estimated cost of preparing and delivering Informal Notice of the Special Meeting shall be paid by the applicant requesting the meeting and such cost shall be nonrefundable. The decision of the Members shall be by the affirmative vote of the required number thereof at any regular or special meeting of the Association called and held in accordance with the Bylaws.

**11.1.7 Exemptions.** No permission or approval shall be required to repaint, repair, or maintain a Structure in accordance with an originally approved plan or color scheme, or to rebuild in accordance with originally approved plans and specifications. Once a design, material, size or color is approved and construction commenced, the Person's right to utilize that design, material, size or color (including any variance) on and as to that Lot is vested. The Person has the right in perpetuity to repair and maintain the foregoing and, in the event of destruction, to reconstruct in accordance with the design, provided that such reconstruction is done in compliance with the ordinances of the relevant local governmental authority. Nothing contained herein shall be construed to limit the Owner's right to originally configure, remodel or reconfigure the interior of the Owner's Dwelling Unit or to paint the interior using any colors desired. The Developer is exempt from the ARC approval requirements.

**11.1.8 Exceptions.** The ARC may in writing grant temporary, nonpermanent exceptions for Structures which may not otherwise be permitted such as children's play structures, movable structures, temporary structures, golf nets, rehabilitation equipment and the like. Any Structure for which such a temporary exception has been granted shall not become vested or permitted even if the Owner neglects to remove it or the Association or ARC neglects to take action to have it removed upon expiration of the temporary period, the duration of which shall be set forth in the written approval of ARC and the Owner shall have a continuing duty to remove it.

**11.1.9 Variances.** The ARC may authorize variances from compliance with any of the provisions set forth herein or in the Design Guidelines when unique circumstances such as topography, natural obstructions, hardship or unique design aesthetics or environmental challenges exist. The Person seeking such variance must demonstrate that such a circumstance exists. Variances may be granted when unique challenges present themselves and no variance shall: (a) be effective unless in writing; (b) be contrary to the use restrictions set forth elsewhere in

this Declaration; and (c) prevent the ARC from denying or require the ARC to grant a variance in other situations.

**11.1.10 Automatic Approval.** The ARC is required to approve or disapprove submittals from an applicant within sixty (60) days after a complete application has been submitted or the application shall be deemed approved. An applicant may request written confirmation from the ARC that the submittal is complete and that the sixty (60) day approval period has commenced. In the event that the ARC fails to approve or disapprove or to request additional information reasonably required within sixty (60) days after submission of a complete application for approval, the application shall be deemed approved.

**11.1.11 Precedence of Approvals.** The approval by the ARC of any proposals, plans, designs, specifications or drawings for any work done or proposed shall not be deemed to constitute a waiver of the right to withhold approval or consent as to the same in the case of others who apply for same.

**11.1.12 Limitations and Liability.** Neither the Fee Owner, the Developer nor any individual representative thereof, nor the ARC, the Association, the HCOA, the Board, the HCOA board, nor any individual member thereof, shall be liable to the Association, the HCOA, or to any Person for any damage, delay, loss of prejudice suffered or claimed on account of: (a) the approval or disapproval or any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; or (c) any development within the Property; provided that the Developer, the ARC, the Association, the Board or Person has acted in good faith on the basis of information in its, his or her possession. Without in any way limiting the foregoing, the Developer, the ARC, the Association, the Board, or any individual member or representative thereof may, but is not required to, consult with or hear the views of any Member or Volume Builder with respect to plans, drawings, specifications, or any other proposal submitted; this consultation, while not required, is encouraged, in order to diminish and avoid disputes.

**11.2 Certain Rights of Developer.** Notwithstanding anything in this Declaration to the contrary, neither Developer nor any of Developer's activities shall in any way be subject to the control of or under the jurisdiction of the ARC. Without limitation by the following, the Developer shall have the following rights:

**11.2.1 Full Right.** Until the Developer no longer owns any part of the Property, Developer, its successors, designees and assigns shall have the right to make such use of the Property, as Developer shall, from time to time, determine. In recognition of the fact that Developer will have a continuing and substantial interest in the development and administration of the Property, Developer hereby reserves for the Fee Owner, itself, its successors, designees and assigns, the right to carry on construction and to enter and transact business, conduct and maintain models and sales and rental offices, hold special events and promotions, place signs, employ sales and rental personnel, show Lots and Dwelling Units and use portions of the Property owned by Fee Owner or the Association or the HCOA for purposes set forth above and for storage of construction materials and for construction and assembly of construction components without any cost to Developer and its successors, designees and assigns for such rights and privileges. In addition to its other rights to use the Common Areas, Developer, its successors, designees and assigns shall have the right to use all or any portion of any building thereon as a sales, rental or construction office. Any models, sales areas, sales or rental office(s), parking areas, construction office(s), signs and any other designated areas or property pertaining to the sale, construction, marketing, maintenance and repair efforts on the Common Areas shall suspend the rights of the

Owners and the relevant association to use the portion of Common Areas affected until the Developer has completed its activities thereon. Developer shall have the right to construct, maintain, and repair Structures and landscaping and other improvements on the unsold Property or, with the Owner's consent, on sold property as Developer deems necessary or appropriate for the development of the Property.

**11.2.2 Scope.** The rights and privileges of Developer, its successors, designees and assigns, as set forth in the Section above entitled "Full Right" are in addition to and in no way limit any other rights or privileges of Developer, its successors, designees and assigns under any Documents. The provisions of the Section above entitled "Full Right" like other provisions of this Declaration, grant or reserve rights to and for Developer and may not be superseded or modified in any manner without the written consent of Developer. The foregoing right of use and transaction of business, like Developer's other rights herein, may be assigned in writing by Developer in whole or in part on a temporary or permanent basis as Developer deems appropriate.

**11.3 Subdivision and Regulation of Land.** No portion of the Property (including any Lot) shall be divided or subdivided without the prior written consent of Developer, who may impose certain requirements on the Person as a condition of its consent. Before recording, all plats must be submitted to the Developer, along with plans and specifications for the corresponding subdivision improvements. In considering its approval of the plat, Developer shall have the right to approve or disapprove on a commercially reasonable basis any aspect of the proposed plat, including, but not be limited to street and Lot layouts, street names, subdivision names and signs.

**11.4 Limitations on Modification of Governmental Approvals.** No Person, including the Association, shall initiate or implement any variation from, modification to, or amendment of governmental regulations, land use plans, land development regulations, zoning or any other development orders or development permits applicable to Property without the prior written approval of Developer, until Turnover, and thereafter of the Board; provided that notwithstanding the foregoing, an Owner may seek a zoning variance applicable only to Owner's Lot or Dwelling Unit without the consent of the Developer.

**11.5 Completion of Construction-Remedy.** Once the construction of any Structure or subdivision improvements is begun within the Property by an Owner, work thereon must be prosecuted diligently and completed within eighteen (18) months or such other reasonable time as may be granted by the ARC or the Developer as applicable when the construction is approved, subject to any contract rights embodied in a purchase and sale contract for a Lot. If for any reason work is discontinued or there is not substantial progress toward completion for a continuous sixty (60) day period, the Association shall have the right to give Formal Notice to the Owner of the property on which the incomplete Structure stands that it intends to enter the Lot and, if necessary, any Dwelling Unit and to take such steps as may be required to correct the undesirable appearance or existence of the Structure including, but not limited to, demolition or removal thereof, or the relevant association may pursue any of the remedies under this Declaration. The reason for such correction may include, but not be limited to, aesthetic grounds. The Person owning the property shall be liable for all costs and attorneys' fees incurred in such action which shall be a continuing lien against said Lot or other property collectable in accordance with the section entitled "Enforcement Assessments." Developer shall have the right in its sole discretion to delegate its rights under this Article in whole or in part to the relevant association on a temporary or permanent basis. Nothing contained in this section shall apply to, or limit, Developer's, or its designee, when such Developer, or its designee, is causing the construction of the improvements on the Lot in accordance with any contract for the purchase and sale of the Lot.

**ARTICLE 12**  
**EASEMENTS AND OTHER RIGHTS**

**12.1 Easements and Cross-Easements.** Fee Owner or Developer, for itself, its designees, successors and assigns, and the Association reserve the right to grant to the county or any other governmental entity and, public or private utilities, or any other Person, easements and cross-easements over, above, under and upon the Common Areas, Airpark Taxiway, and Easement Areas for ingress and egress, maintenance flight patterns, and the installation, maintenance, construction, and repair of utilities and facilities including, but not limited to, electric power, telephone, cable television, security master antenna transmission, surveillance services, governmental and quasi-governmental purposes, sewer, water, refuse water, gas, drainage, irrigation, lake maintenance, storm water management, lighting, television transmission, garbage and waste removal, emergency services, and the like as it deems to be in the best interests of, and necessary and proper for the Property or any portion thereof. Should any entity furnishing a service covered by the general easements herein provided request a specific easement by separate recordable document, the Fee Owner, Developer or the Board, as appropriate, shall have the right to grant such easement without conflicting with the terms hereof.

**12.2 Use of Common Areas and Easement Areas.** Fee Owner declares that the Common Areas and Easement Areas are subject to, and hereby grants, a nonexclusive easement in favor of Developer, the Association and their designees, the Lots such use of the Common Areas and Easement Areas and facilities thereon as the same are reasonably intended in accordance with the terms of this Declaration, a Supplement or any other Document. Such easements shall run with the land relative to each Lot and cannot be modified by Supplement or amendment except as expressly provided herein without the consent of the Owners. If ingress or egress to any Lot is through any Common Areas and Easement Areas, any conveyance or encumbrance of such Common Area is subject to the Owner's easements. Notwithstanding the foregoing, use of Common Areas and Easement Areas is subject to such Rules as the Board may specify.

**12.3 Right of Association and Developer to Enter Upon the Property.** An easement(s) for ingress, egress and access is granted and reserved in favor of Developer, the Association, the ARC and all agents, employees or other designees of Developer, the Association or the ARC to enter upon Common Areas, Lots or other Property for the purpose of inspecting any construction, proposed construction, or improvements or for the purpose of fulfilling the rights, duties and responsibilities of ownership, administration, maintenance and repair by Developer, Association, ARC, and such Owner. Such easement(s) shall include an easement in favor of the Association, Developer and the ARC to enter upon the Common Areas and Easement Areas now or hereafter created to use, repair, maintain and replace the same for the purposes for which they are initially designated or for such purposes as they are hereafter redesignated or as Developer otherwise determines them to be reasonably suited. Notwithstanding the foregoing, nothing contained herein shall be interpreted as imposing any obligation upon the Association or Developer to maintain, repair, or construct improvements which an Owner or Area Association is required to maintain, construct or repair.

**12.4 Access for Emergency and Governmental Service.** An access easement over and upon the Common Areas and Easement Areas is granted for ingress and egress for emergency vehicles and governmental services.

**12.5 Surface Water Management System Easement.** Except as provided in a Supplement, a perpetual, nonexclusive easement is granted and reserved in favor of Developer and the Association, as necessary for access to any portion of the Property in order to construct, maintain or repair any SWMS or Drainage Areas and facilities thereon and appurtenances thereto. No Structure, landscaping, or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of drainage facilities or which may obstruct or retard the flow of water through the SWMS or otherwise interfere with any easement provided for in this Article or the use rights set forth in this Declaration.

**12.6 Drainage Areas.** Drainage areas or drainage easements (collectively "Drainage Areas") shall be kept and maintained for irrigation, drainage or beautification purposes in a manner consistent with applicable permits and in accordance with the requirements of applicable governmental authorities. The "drainage easements" shown on any plat or conveyance shall be used for the construction, repair and maintenance of drainage facilities and all appurtenances thereto. The location of the drainage pattern may not be modified or relocated without the prior written consent of the Developer, the ARC, and the appropriate governmental agencies. In the event of a dissolution or termination of the Association, the administration and maintenance of the Drainage Areas shall be transferred only to another nonprofit corporation or dedicated to an appropriate governmental agency agreeing to accept such conveyance or dedication.

**12.7 Additional Easements.** The Association, acting through its Board, shall have the right to execute, without further authorization, such grants of easement licenses or other rights of use as may, from time to time, be necessary to desirable over, under, across and upon the Common Areas, or Easement Areas owned by the Association. Such easements may be for the use and benefit of Persons who are not Members, for portions of the Property which are not Property hereunder, and for Additional Lands or other real property which is not part of the Property.

**12.8 Assignments.** The easements reserved hereunder to Fee Owner may be assigned by Fee Owner in whole or in part to any Person on a temporary or permanent basis.

**12.9 Association Right of Entry.** The Association has the irrevocable right of access over any Lot during reasonable hours and in a reasonable manner, when necessary for the maintenance, repair or replacement of any Common Areas, or for making emergency repairs which are necessary to prevent damage to the Common Areas, or to another Lot or Lots. Any damage done to a Lot by the Association in connection with the exercise of this right of access shall be repaired and restored to the same condition at the Association's expense.

### **ARTICLE 13** **NO PARTITION**

Except as is permitted in this Declaration or amendments hereto, there shall be no physical partition of any Common Area, Lot, or any part thereof, nor shall any Person acquiring any interest in any Common Area, Lot or any part thereof, seek any such judicial partition, except in the event it becomes necessary or desirable as a result of a governmental condemnation or taking of all or a portion of any Common Area, Lot or part thereof, or a decision not to repair or replace damage or destruction resulting from natural disaster. All Owners waive, release and relinquish any right of partition unless and except as expressly allowed herein. This provision shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property. No creditor or judgment creditor of any Owner shall have the right to reach, by partition or otherwise, less than all



of an Owner's Lot, or Owner's interest in the Association, the HCOA, or Common Area except as an appurtenance to such Owner's Lot. This provision shall not limit or prohibit the Developer from altering the Property in any way as provided in this Declaration.

**ARTICLE 14**  
**SECURITY SYSTEMS; INVITATION LIMITATION**

14.1 **Non-Liability of Developer.** DEVELOPER OR ASSOCIATION MAY ELECT TO INSTALL AND ESTABLISH SECURITY SYSTEMS, INCLUDING ROVING SECURITY PERSONNEL WITHIN THE AIRPARK. NOTWITHSTANDING THE APPROVAL OR ESTABLISHMENT BY DEVELOPER OR THE ASSOCIATION OF ANY SECURITY SYSTEM, NEITHER DEVELOPER NOR THE ASSOCIATION MAKES ANY REPRESENTATIONS WHATSOEVER AS TO THE SECURITY OF THE PROPERTY OR THE EFFECTIVENESS OF ANY SURVEILLANCE SYSTEM OR SECURITY SERVICES OR PERSONNEL WHICH MAY HEREAFTER BE PROVIDED. ALL OWNERS WAIVE ANY CLAIM FOR AND AGREE TO HOLD DEVELOPER AND THE ASSOCIATION HARMLESS FROM ANY LOSS OR CLAIM ARISING FROM THE OCCURRENCE OF ANY CRIME, VANDALISM OR CASUALTY.

14.2 **Privacy.** The Airpark is designed to be a private community in which the residents can reside with security and privacy without intrusion into their private lives, either by other persons residing or working within the Airpark or from persons outside the Airpark. In order to properly insure, protect and provide privacy within the Airpark, so as to protect and preserve the general plan for development of the Airpark, all Persons, guests, invitees, or trespassers shall be subject to the following restrictions regarding invitations:

14.2.1 **No Right To Invite.** No person including, without limitation, any member of the Association, Owner, resident, guest, tenant, invitee or employee of any such Person shall have any right to invite any Person, firm or entity, including, without limitation, Persons employed by or affiliated with newspapers, periodicals, magazines, publications, television stations, radio stations, publishers, or any other enterprises involved in print or electronic media, into or over the Airpark for the purpose of photographing, videoing, depicting, interviewing, questioning or inspecting any person or property within the Airpark, other than (i) if such member of the Association, resident, tenant, guest, invitee or employee extending the invitation to such Persons is the one whose person or property is being depicted, and (ii) such persons extending the invitation owns property within the Airpark. Any such persons entering into the Airpark upon an invitation agrees to abide by and be subject to this restriction.

14.2.2 **Trespass.** Any person, who in violation of this restriction, enters upon or remains in the Airpark after notice of trespass, shall be guilty of committing the offense of trespass. The Association, through its directors, managers or security personnel, is hereby authorized to issue or provide notice of trespass to any person trespassing within the Airpark.

**ARTICLE 15**  
**GENERAL AND PROCEDURAL PROVISIONS**

15.1 **Declaration Runs With Property; Term.** The covenants, reservations, restrictions and other provisions of the Declaration shall run with and bind the Property and shall inure to the benefit of Developer, Association, and all Owners, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is originally recorded, after which time this Declaration shall automatically be extended for successive periods of ten (10) years unless prior to any renewal date an instrument

signed by at least two-thirds (2/3) of Members (as of the date of recording) has been recorded agreeing to terminate this Declaration in whole or in part; provided, however, if the Developer owns any part of the Property, no such termination of this Declaration shall be effective without the consent of the Developer

**15.2 Re-recording by Board.** The Board is hereby given the right to re-record this Declaration and any amendments or Supplements thereto, from time to time, to assist in assuring that the terms, provisions, and covenants run with the land.

**15.3 Amendment of Declaration.** Subject to further restrictions in Article 3, the following provisions govern the amendments of this Declaration:

**15.3.1 By Developer.** In addition to any other right of amendment or modification provided for in this Declaration, Developer shall have the right before Turnover, in its sole discretion and by its sole act without the joinder or consent of any Person, by an instrument filed or record, to modify, enlarge, amend, delete, waive or add to provisions of this Declaration or to correct any scrivener's errors. The Association shall, within ten (10) days after request of Developer, join in any such amendments or modification and execute such instruments to evidence such joinder and consent as Developer shall, from time to time, request. Failure of the Association to so join and consent to an amendment or modification shall not be cause to prevent such modification or amendment from being made by Developer or to affect the validity thereof.

**15.3.2 After Turnover.** After Turnover, all amendments which affect Assessments, voting rights, or merger of the Association with any other association shall require the vote of two-thirds (2/3) of all voting Members. The aforementioned vote of the Members may be evidenced by an instrument in writing signed by the required number thereof or by the affirmative vote of the required number thereof at any regular or special meeting of the Association called and held in accordance with the Bylaws, evidenced by a certificate of the Secretary of the Association. All other amendments after Turnover may be adopted by a vote of a majority of the Board and a majority of the Owners present at a duly called meeting at which a quorum is present in person or by proxy.

**15.3.3 Notice of Amendments to Developer.** After Turnover, and so long as the Developer owns any of the Property, a true copy of any amendment to this Declaration shall be sent via certified mail by the Association to Developer within five (5) days after its adoption.

**15.3.4 Developer Rights.** Notwithstanding anything to the contrary herein contained, no amendment to this Declaration shall be effective which shall impair or prejudice the rights, privileges or priorities of Developer under any of the Documents without specific written approval of the Developer.

**15.4 Enforcement.** Developer reserves unto itself, its successors or assigns and its designees the right and the power to enforce the covenants, conditions, restrictions and other provisions imposed by this Declaration by any proceeding at law or in equity against any Person violating or attempting to violate such provisions, and to enforce any lien created by this Declaration. Failure by Developer or any Person to enforce any provisions shall not be deemed a waiver of the Developer's or any Person's right to do so thereafter. Developer may also delegate or assign, with the consent of the assignee or designee, exclusively or nonexclusively, on a temporary or permanent basis any or all of its rights, powers, duties or privileges hereunder to the Association, an Owner, or any other designee.

**15.4.1 Priority of Right to Enforce.** If Developer does not enforce the covenants, conditions, restrictions or other provisions of this Declaration, then the Association may enforce, and shall have the same right to enforce, the same to the same extent as the Developer. If the Association desires to enforce this Declaration, then the Association must first give thirty (30) days Formal Notice to the Developer that the Association intends to initiate enforcement upon the expiration of such thirty (30) day period and if during such period the Developer does not initiate enforcement procedures then the Association may initiate such enforcement procedures. By not initiating enforcement procedures, the Association shall incur no liability whatsoever for such non-enforcement.

**15.4.2 Attorney's Fees and Costs.** The costs and attorney's fees incurred by the prevailing party in any action, including any appeal, to enforce the Documents shall be levied against the non-prevailing party, which shall result in an Enforcement Assessment, if necessary.

**15.5 Fines.** In addition to all other remedies provided for in this Declaration, the Developer or Association shall have the right, after proper notice and opportunity for hearing, to impose a fine on an Owner for failure of an Owner, his family members, guests, invitees, tenants and licensees, to comply with any provisions of the Documents or rules and regulations promulgated thereto. The Board shall provide Formal Notice to the Person against which the fine may be assessed of the specific nature of the alleged violation. The Formal Notice shall specify that each reoccurrence of the alleged violation for each day during which it continues may be deemed a separate offense subject to a separate fine as determined by the Board not to exceed the maximum permitted by law (if any such limitation is applicable) per day for each offense. The Board shall, from time to time, establish in the Rules a system for imposing and administering fines. The lien created pursuant to this Section shall be created and foreclosed in the same manner as liens for nonpayment of other Assessments. Informal Notice of the date, time, place of the hearing and alleged violation will be mailed to the Owner, the Board and members of the hearing panel a minimum of three days before such hearing shall take place and such notice shall be posted in the same manner as notices of meetings of the Board. If an Owner commits the same violation, or a substantially similar violation, within 90 days following the hearing, or if no hearing is requested 90 days following the panel's determination regarding the original violation, such shall be construed as noncompliance on the first offense and upon Formal Notice by the Board, a fine on the re-occurrence shall immediately become effective upon the majority vote of the Board. If the Board determines the violation gives rise to a safety or security concern, the Board may not provide any opportunity for the Owner to cure or correct the violation and the Board may cure the Owner's violation and assess the Owner for any costs, expenses or charges incurred in such cure. A fine pursuant to this Section shall be assessed against the Owner of a Lot which the violator occupies or was visiting at the time of the violation, whether or not the violator is an owner of the Lot, or, if the violation is by an agent, employee, contractor, subcontractor or material man, then against the Owner of the Lot who retained the agent or employee or from whose property the contractor or subcontractor was going at the time the offense was committed. The fine shall be collectible in the same manner as any other Assessment, including by enforcement of the Association's lien rights. Nothing herein shall be construed as a prohibition of or limitation on the right of the Board to pursue other means to enforce the provisions of the various Association Documents including, but not limited to, legal action for damages or injunctive relief.

**15.6 Suspension of Rights.** In addition to all other remedies provided for in this Declaration and subject to limitations, if any, imposed by law, the Association shall have the right after proper notice and opportunity for hearing to suspend an Owner, Owner's family members, guest invitees, tenants and licensees right to use all or any portions of the Common Areas, or the

Airport Taxiway, as a result of continued violation of failure to comply with any provisions of the Documents or rules, regulations, procedures for enforcement promulgated pursuant thereto. If such person whose rights are suspended fails to comply with such suspension the Association shall be entitled to a temporary or permanent injunction enforcing such suspension.

**15.7 Suspension of Voting Rights.** The Association may suspend the voting rights of a Member for the non-payment of Assessments that are delinquent in excess of ninety (90) days.

**15.8 Severability.** If any provision of this Declaration is held to be invalid in whole or in part by any court of competent jurisdiction such holding shall in no way affect the validity of the remaining provisions of this Declaration all of which shall remain in full force and effect and such holding shall be limited to the most narrow application possible.

**15.9 Dissolution.** In the event of dissolution of the Association, each Lot shall continue to be subject to the Assessments specified in this Declaration and each Owner shall continue to be personally obligated to Developer or the successors or assigns of the Association, as the case may be, for such Assessment to the extent that such Assessments are required to enable Developer or any such successors or assigns acquiring any real property previously owned by the Association to properly maintain, operate and preserve it. The provisions of this Section shall only apply with regard to the Common Areas that continues to be so used for the common use and enjoyment of the Owners.

**15.10 Notices.** Formal Notice and Informal Notice under this Declaration shall be given as follows:

**15.10.1 Formal Notice.** Formal Notice shall be delivered by one of the following means and such notice shall be deemed sufficient and complete: (a) upon delivery by prepaid overnight courier service to the recipient at the recipient's address as then registered with the Secretary of the Association; (b) upon delivery by prepaid certified U.S. Mail, return-receipt requested; (c) by actual hand delivery of the notice to the recipient with an impartial witness present or the obtaining of a receipt from the recipient. In the event all of the above methods of Formal Notice fail, Formal Notice may be given by posting the notice on the Lot with an impartial witness present.

**15.10.2 Informal Notice.** Informal Notice shall be delivered by one of the following means, and such notice shall be deemed sufficient and complete: (a) upon mailing by prepaid first class uncertified U.S. Mail; (b) by fax transmission to the recipient with a copy of any evidence of receipt of the transmission; (c) by electronic mail (E-Mail) if available and agreed to in writing between the Association and the Member; (d) by posting on any community cable television (CATV) information channel, or (e) by posting the notice on the Person's property. Posting by other than electronic means shall mean "posting in a conspicuous place on Association property." If any Person desires to change that Person's mailing address, fax number, or e-mail address, it is that Person's duty to accurately provide the Association with the new address, fax, or e-mail information. Until proper written notice of change is given by any Person, each Person's address, facsimile (fax) or e-mail address shall be as originally recorded between the Owner, the ARC, or the Association as the relevant relationship may be.

**15.10.3 Presumption of Notice.** If the Declaration or any other Document does not specify whether Formal Notice or Informal Notice is required, it shall be deemed to mean that such notice shall be by Informal Notice.

**15.11 Notices of Mortgages or Deeds of Trust.** Upon receipt by the Association from any Institutional Mortgagee of a copy of the deed of trust held by such Institutional Mortgagee on a Dwelling Unit or Lot, together with a written request from such Institutional Mortgagee specifying the address to which the following items are to be sent, the Association shall timely send to such Institutional Mortgagee the following:

15.11.1 A copy of any financial statement of the Association which is sent to the Owner of such Dwelling Unit or Lot; and

15.11.2 Informal Notice of any termination by the Association of any professional management of the Common Areas, and the assumption by the Association of the self-management of the Common Areas; and

15.11.3 Thirty (30) days prior Informal Notice of the cancellation or termination by the Association of the self-management of the Common Areas; and

15.11.4 Informal Notice of any damage or destruction to the improvements located on the Common Areas which affects a material portion of the Common Areas; and

15.11.5 Informal Notice of any condemnation or eminent domain proceeding or proposed acquisition arising therefrom with respect to the Common Areas; and

15.11.6 Informal Notice of any material amendment to, or the abandonment or termination of, this Declaration; and

15.11.7 Informal Notice of any failure by an Owner owning a Dwelling Unit or Lot encumbered by a first mortgage held by such Institutional Mortgagee to perform such Owner's obligations under the Documents, including, but not limited to any delinquency in the payment of any Assessments where such failure or delinquency has continued for a period of sixty (60) days.

15.11.8 The Association may bill the Owner of the Lot for the cost of providing such notice(s) to the Owner's Mortgagee(s).

15.11.9 The failure of the Association to send any such Informal Notice to any such Institutional Mortgagee shall have no effect on any meeting, act or thing which was to have been the subject of such Informal Notice, nor affect the validity thereof, nor shall the Association be liable to any Institutional Mortgagee or any Owner for any damages arising from the unintentional failure of the Association to furnish any such information.

**15.12 Priority of Documents.** In the event of any express conflict among the Documents, the following documents shall control in the order stated; this Declaration, Amendments pursuant to Section 15.16 below, Supplements, the Charter, the Bylaws, Design Guidelines and the Rules.

**15.13 Condemnation.** If the Association receives any award or payment arising from any taking of the Common Areas or any part thereof as a result of the exercise of the right of condemnation or eminent domain, the net proceeds thereof shall first be applied to the restoration of the remaining Common Areas and improvements thereon to the extent deemed advisable by the Association and the remaining balance of such net proceeds, if any, shall then be held or disbursed or used to offset any assessments by the Association as the Board may determine.

15.14 **Gender.** Wherever in this Declaration the context so requires, the singular number shall include the plural, and the converse; and the use of one gender shall be deemed to include all genders.

15.15 **Table of Contents.** In an effort to make this Declaration as convenient to use as possible, a table of contents is provided. These items are a matter of convenience, not a substantive part hereof. These items have been prepared in good faith, but it is possible that some sections were omitted in the table of contents, and some words, phrases or concepts were either not included or incorrectly included. Any such omissions shall not affect the validity or enforceability of the text in the Declaration. Purchasers and Owners are charged with the full knowledge of the contents of this Declaration regardless of whether a matter is contained in the table of contents.

15.16 **Special Rights Reserved by Developer.** In recognition of the fact that Developer and each Member has a continuing interest in the implementation by Developer of its plan of development of the Property and in recognition of the fact that the property values of the Property are dependent upon the proper implementation of such plan by Developer, Developer hereby reserves the right, after Turnover as long as Developer or Fee Owner shall own a Lot, to approve any and all actions of the Association in its sole and absolute discretion including, but not limited to, the following: (1) the enforcement or non-enforcement by any Person or any of the remedies provided hereunder; (2) the Budget; (3) the Rules; (4) maintenance and services on the Property; (5) Special Assessments; (6) any improvement of the Common Areas and changes or modifications in services being furnished to the Property or to the Owners.

15.16.1 **Amendments to Comply.** Developer may, in its sole discretion, unilaterally amend this Declaration if necessary to do so for purposes of fulfilling the requirements of any governmental entity or quasi-governmental entity, including, but not limited to, the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC) the Department of Housing and Urban Development (HUD), the Veterans Administration (VA), the Federal Housing Administration (FHA), and the FAA. Nothing contained herein, however, shall require Developer to make an amendment to this Declaration for any purpose whatsoever.

15.17 **Venue, Governing Law and Waiver of Federal Jurisdiction.** All Persons waive jurisdiction in Federal Court based upon diversity of citizenship. This Declaration shall be governed by and all questions relating to the interpretation, validity, performance, meaning, intention and enforcement hereof shall be governed by the laws of the State of Tennessee. Venue for all such matters shall be in the County.

15.18 **Headings.** The headings used herein are to facilitate locating the subject matter covered by various provisions and are not intended to be used to construe this Declaration or to ascertain the intentions of the parties.

15.19 **Locator Map.** For convenience, the Developer has attached hereto locator maps. The locator maps are for illustration purposes only and in the event of a conflict between the locator maps and the metes and bound legal descriptions for the Property, the metes and bounds legal descriptions shall control.

15.20 **Invalid Provisions.** If any provision of this Declaration shall be, become or be declared invalid, unenforceable or illegal, the remaining provisions hereof shall be and continue in full force and effect and the invalid, unenforceable or illegal provision shall be construed to the maximum extent possible to effectuate its intent and the intent of the rest of the Declaration. In

the event a provision is invalid, illegal or unenforceable under law at any given time, it shall not be permanently stricken but rather shall be suspended and in the event that a later change in law makes that provision valid, legal or enforceable at such later time, then such provision automatically comes back into full force and effect contemporaneously with said change in the law.

## **ARTICLE 16** **INDEMNIFICATION; LIABILITY**

**16.1 Indemnification.** Without limiting applicable general law and except for intentional or gross negligence, the Association shall indemnify every officer, director, and ARC member against any and all expenses, including trial and appellate attorney's fees and costs, reasonably incurred by or imposed upon any such officer, director or ARC member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding if approved by the then Board) to which they are made a party by reason of being or having been such an officer, director, or ARC member, whether or not said individual still holds such capacity at the time such claim is made or expenses incurred. The officers, directors and ARC members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful malfeasance, misconduct, or bad faith. The officers, directors and ARC members shall have no personal liability with respect to a mistake of judgment, or any contract or other commitment made by them, in good faith, on behalf of the Association, and Association shall indemnify and forever hold each such officer, director or ARC member harmless (including attorney's fees and court costs) from and against any and all liability to others and any and all costs and attorney's fees incurred on account of any such mistake of judgment, contract or commitment, whether or not said individual is still in such capacity at the time such claim is made or expenses incurred. Any right to indemnification provided for herein shall not be exclusive of any other right of indemnification to which any officer, director or ARC member, or former officer, director or ARC member may be entitled by common law, statute or otherwise. The Association shall, as an operating expense, maintain adequate insurance for this purpose, if such insurance is available for a reasonable price. Notwithstanding anything contained herein to the contrary, in instances where an officer, director, or ARC member admits or is adjudged guilty of willful malfeasance in the performance of his or her duties, the indemnification provisions contained herein shall not apply. In suits where willful malfeasance is alleged as a cause of action and the suit is proposed to be settled, the indemnification provisions set forth herein shall not be automatic and shall apply only when the Board approves their application to the settlement.

**16.2 Discharge of Personal Liability.** The Owners and the Association acknowledge and agree that in dealing with the Developer or Fee Owner they are dealing with a corporate entity, not a human being. All Persons acknowledge and agree (by acceptance of the rights, property ownership interest, deeds, and benefits created and provided hereby) that the individuals who act for, represent, or work for the Developer or Fee Owner do so on behalf of the Developer or Fee Owner in their capacity as corporate representatives and not personally and individually. All Persons acknowledge and agree that in their present and future dealings with Developer or Fee Owner they are each dealing with a corporate entity in the following matters: this Declaration or the preparation of this Declaration and all matters arising out of and relating hereto; the sale and purchase of any portion of the Property and representations made therein; the Design Guidelines and decisions made based thereon; the construction or management of the Common Areas; the Developer's dealings with the Owners; and future negotiations and performance of this Declaration and matters arising out of and relating hereto. All of these matters and all matters reasonably inferable from the matters expressly set forth in this paragraph are referred to hereinafter in this paragraph as "the discharged matters" and wherever that phrase

appears in this paragraph it shall be taken to mean and include all of such matters. The provisions of this paragraph are fundamental to this Declaration, and no Lots or unplatted tracts would be conveyed or Association created, without acceptance of the provisions of this paragraph. Therefore, in consideration for the making of this Declaration the conveyance of Lots, unplatted tracts and the Common Areas, and the acceptance of the benefits, the aforesaid individuals are released and discharged forever of and from any and all rights, claims, damages, demands, actions, causes of action, or suits in equity, of whatever kind or nature, and whether accruing now or in the future, and whether known or unknown to the parties, arising out of or relating to the discharged matters.

**16.3 Notice of Special Conditions and Release. IN ADDITION TO THE OTHER OWNER RELEASES CONTAINED ELSEWHERE IN THIS DECLARATION, INCLUDING BUT NOT LIMITED TO THOSE CONTAINED IN ARTICLE 3 AND ARTICLE 10, OWNER AGREES AS FOLLOWS:** Each Owner has sought to acquire an interest in land or property in the Airpark because it offers a style of life not available in other locations. Specific to that style of life is the presence of conditions created or maintained to enhance the aesthetic appeal of the Development including, but not limited to, aircraft, taxiways, the Airport signage, monuments and other structures or obstructions in the rights-of-way; streams; barns or pastures; trees that invite climbing; trees or other vegetation located in the rights-of-way; narrow lanes and roadways; tight road curves; high elevations and cliffs, and unfenced bodies of water. Other potential hazards include naturally maintained or unmaintained trees, plants, and other vegetation, including those with thorns or toxic varieties; snakes, insects, bears, bobcats, deer or any other wildlife; atypical or non-conforming methods of road signage and construction; structures that invite climbing; bridges; natural gas lighting; certain abandoned wells; pressurized underground storage facilities for gas or oil; equine activity; odors, noise, fumes and related conditions arising from activities on the Airpark. These conditions are potentially dangerous and may be the cause of injury or death, with or without reasonable care in their creation, maintenance or use. The provisions of this paragraph are fundamental to this Declaration, and no Lots or unplatted tracts would be conveyed or Association or HCOA created, without acceptance of the provisions of this paragraph. Therefore, in consideration for the making of this Declaration the conveyance of Lots, unplatted tracts and the Common Areas, and the acceptance of the benefits, the Developer, Fee Owner, Association, HCOA, and the respective employees, contractors, agents, officers, directors, owners, successors and assigns are released and discharged forever of and from any and all rights, claims, damages, demands, actions, causes of action, or suits in equity, of whatever kind or nature, and whether accruing now or in the future, and whether known or unknown to the parties, arising out of or relating to the special conditions.

**16.4 Self Reliance; Assumption of Duty.** By electing to acquire an interest in land or property in the Airpark, each Owner does and hereby agrees to assume the risk of injury, death or loss to person or property arising out of or related to or caused by or on account of the conditions described in this Declaration or elsewhere including, but not limited to, pressurized underground storage of natural gas, oil and gas leases, equine activity, aviation activity and the condition of the property and improvements throughout the Airpark, and to assume the duty to be solely responsible for inspecting or relying upon the safety of the premises and services provided, including but not limited to the safety and fitness of the lands, streams, ponds or waterways, runways, taxiways, roads, improvements, structures, barns, Common Areas, pathways, landscaping, oil and gas and the sufficiency of any security or security patrols provided and to be self-reliant in the exercise of that duty.

**16.5 Release.** Each Owner, by act of acquiring interest in land or property, does and hereby, for himself/herself/itself, and for his/her/its principals, agents, employees, heirs, personal



representatives, statutory beneficiaries, assigns, or successors in interest, minor children, wards, or incompetents for whom the Owner is the legal or natural guardian, releases the Developer, Fee Owner, the Association, and the HCOA and their principals, agents, employees, assigns, and successors in interest from any and all claims, demands, damages, liens, losses, subrogated interests, costs, actions, causes of action, or suits of any kind or nature whatsoever arising out of, related to, caused by, or on account of any and all injuries or claims known or unknown, occurring in the past or future, both to person or property, arising out of, related to, or caused by or on account of any act, omission, incident, or occurrence, including, but not limited to, that arising from, related to caused by or on account of any negligence of these entities, their principals, agents, employees, assigns or successors in interest, or acts or omissions for which they are jointly or vicariously liable.

***[SIGNATURES ON FOLLOWING PAGE]***

**IN WITNESS WHEREOF**, Fee Owner has executed this Declaration on the day and year first above written.

**THE BIG SOUTH FORK AIRPARK, LLC**,  
a Florida limited liability company,

By its Manager: Pegasus Real Estate  
Management, Inc., a Florida corporation

By: \_\_\_\_\_  
William M. Armstrong, President

STATE OF TENNESSEE     )  
  ) ss.  
COUNTY OF SCOTT        )

Personally appeared before me, \_\_\_\_\_, a Notary Public of said County and State, William M. Armstrong, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the President of Pegasus Real Estate Management Company, Inc., the Manager of The Big South Fork Airpark, LLC, a Florida limited liability company, and that he, as such officer, being authorized so to do, executed the within instrument for the purposes therein contained by signing the name of the company by himself as such officer.

Witness my hand, at office, this \_\_\_\_\_ day of October, 2007.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**IN WITNESS WHEREOF**, Fee Owner and Developer have executed this Declaration on the day and year first above written.

**PEGASUS REAL ESTATE MANAGEMENT, INC.**,  
A Florida corporation, as Developer of The Big  
South Fork Airpark, LLC, a Florida limited liability  
company

By: \_\_\_\_\_  
William M. Armstrong, President

STATE OF TENNESSEE     )  
  ) ss.  
COUNTY OF SCOTT        )

Personally appeared before me, \_\_\_\_\_, a Notary Public of said County and State, William M. Armstrong, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the President of Pegasus Real Estate Management Company, Inc., a Florida corporation, and that he, as such officer, being authorized so to do, executed the within instrument for the purposes therein contained by signing the name of the company by himself as such officer.

Witness my hand, at office, this \_\_\_\_\_ day of October, 2007.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

## EXHIBIT A

### DESCRIPTION OF PROPERTY

Being all the property reflected on Slide 2, Slide 3, Slide 4, Slide 5, Slide 6 and Slide 7 of the Phase 1 Final Plat Plan survey map of Jim Reed (TN. R.L.S. #1372) which is recorded in Plat Cabinet D on July 18, 2007, in the Office of the Scott County Register.

EXHIBIT B  
Classes

CLASSES:

Phase I:

Class A (Residential Lots) : Lots 17 through 36 and Lots 99 through 103

Class B1 (Hangar Lots): None

Class B2 (Hangar Condo Lots): None

Class C (Equestrian Lots): Lots 1 through 16

Class D (Townhouse Lots): None

THIS INSTRUMENT PREPARED BY:

Tammy Kaousias  
Kaousias Law, PLLC  
507 S. Gay Street, Suite 1220  
Knoxville, Tennessee 37902

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**SUPPLEMENT AND FIRST AMENDMENT  
OF  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE BIG SOUTH FORK AIRPARK**

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This Supplement and First Amendment of Declaration of Covenants, Conditions and Restrictions for The Big South Fork Airpark ("First Amendment") is made this \_\_\_\_\_ day of December, 2008, by The Big South Fork Airpark, LLC, a Florida Limited Liability Company ("Fee Owner"), to add Additional Lands and to amend and correct certain provisions of the Declaration of Covenants, Conditions and Restrictions for The Big South Fork Airpark ("Declaration") which is dated October 3, 2007, and is recorded in Book 162, Page 750 of the Office of the Register of Deeds of Scott County, Tennessee.

**WHEREAS**, Fee Owner has entered into a Development Agreement with its Manager, PEGASUS REAL ESTATE MANAGEMENT, INC. ("Developer"), for the development of the Property, which described Property, together with certain Additional Lands as may be added from time to time, is referred to as "The Big South Fork Airpark" or the "Airpark;" and

**WHEREAS**, Section 2.10 of the Declaration grants to the Developer the right in its sole discretion, and without the joinder or consent of any Owner(s) subject to the Declaration except as otherwise expressly provided elsewhere in the Declaration, to execute and record Supplements containing provisions which add Additional Lands to the Property; and

**WHEREAS**, Section 15.3.1 of the Declaration grants to the Developer the right in its sole discretion to modify, enlarge, amend, delete, waive or add to provisions of the Declaration or to correct any scrivener's errors, without joinder or consent of any person; and

**WHEREAS**, Developer desires to submit the HCOA Property to the Declaration and correct or clarify certain provisions of the Declaration which deal with the HCOA Property; and

**WHEREAS**, the Fee Owner wishes to attach for clarification the Final Plat for Phase I of the Airpark which is and has been of record in the Office of the Register of Deeds of Scott County.

**NOW, THEREFORE**, the Fee Owner and Developer do hereby declare that the Declaration is hereby amended and supplemented pursuant to the authority cited above and Fee Owner and Developer declares that the Additional Property set forth in this First Amendment is and shall be owned, used, sold, conveyed, encumbered, developed, demised and occupied subject to the provisions of the Declaration as amended or supplemented which shall run with the Additional

Land and thus be binding on all parties having any right, title or interest in the Additional Land or any part thereof, including their respective heirs, successors and assigns, and inure to the benefit of each Owner. All recitations contained herein are true and correct and are incorporated in this First Amendment as though set out in full below.

1. That certain parcel of real property comprised of 8.97 acres, more or less, as designated on Phase 2 final plat plan titled "The Big South Fork Hangar Condominium Owner's Association, Inc., survey map of Jim Reed (TN R.L.S. 1372 132) ("Plat") which is recorded as Slide 45 in Plat Cabinet D on September 30, 2008 in the Office of the Scott County Register is hereby declared as Additional Land and is specifically declared to be subject to the Declaration, as may be amended or restated from time to time. Exhibit "A" of the Declaration, Description of Property, is hereby amended and said amended Exhibit "A" is attached hereto and incorporated herein by reference. A copy of the Plat is attached hereto and incorporated herein by reference as Exhibit "A-1".

2. It is anticipated that the Fee Owner and Developer will submit the Additional Land to the provisions of the Tennessee Horizontal Property Act, by and through a Master Deed ("Master Deed") for The Big South Fork Hangar Condominium Owners Association, Inc. ("HCOA"). Pursuant to such Master Deed, the Additional Land shall become HCOA Property as such term is defined and used in the Declaration, together with all the property and space comprising the Additional Land, all buildings, structures and other improvements now or hereafter erected, constructed or contained therein or thereon, including without limitation, any buildings, units, Airpark Taxiway on the Additional Land, and all other taxiways, current or future, as same may be relocated, expanded or otherwise modified, related aprons or tie-down areas, drives, access roads, parking areas, right-of-ways, and open spaces, easements, rights, privileges and appurtenances belonging or in any way pertaining thereto, and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit or enjoyment of the HCOA Property Owners.

3. Section 1.31 and Section 1.32 of the Declaration are amended and restated as follows:

Section 1.31 "**Hangar Condo Lot**" shall have the meaning set forth in Section 1.9 and constitute Class B2 Lots.

Section 1.32 "**Hangar Lot**" shall have the meaning set forth in Section 1.9 and constitute Class B1 Lots.

4. Section 1.9.6 of the Declaration shall be amended and restated as follows:

Section 1.9.6 "**Special Assessment**" means an assessment for construction or reconstruction, unexpected repairs or replacement to Common Areas, Easement Areas, areas that are outside the Airpark but significantly impact the use and enjoyment of the Airpark, or improvements thereon, and related fixtures and personal property or to any other unforeseen expenditures by the Association which cannot be met in a timely fashion or satisfy from Annual Assessment. The Association shall have the right to levy

Special Assessments upon all Members or the Association or a Local Area Association, including but not limited to the HCOA, shall have the right to levy upon only the Members of a particular class for items directly attributable to such class. By way of explanation but not limitation, a Special Assessment may be levied on Class B Members for items directly attributable to the Taxiway, on Class D Members for items directly attributable to the Townhouses, or Class C Members for items directly attributable to equestrian use of the Property.

5. Subject to the Airport Access Agreement, recorded on October 3, 2007, in Book 162, Page 806, in the Office of the Scott County Register, any fees required to be paid to the Airport Authority will be collected by the HCOA as part of the Class B Annual Assessment or Airport Access Fee as further provided in the Local Area Documents for the HCOA Property including the Use and Access of Taxiway Facilities Agreement which will be recorded in the Office of the Scott County Register.

6. The third paragraph of Section 3.5 of the Declaration shall be amended to reflect as follows:

“The HCOA shall also have the authority to create and impose reasonable hours or rules regulating the maintenance, repair or servicing of aircraft on Airpark Property not directly related to immediate takeoff or landing.”

The remainder of Section 3.5 shall remain in full force and effect.

7. Capitalized terms used in this First Amendment have the meaning assigned to them in the Declaration.

8. Notwithstanding anything contained herein, the Developer and Fee Owner specifically reserves to itself, its successors and assigns, each and every one of the rights and privileges reserved in and by any of the covenants, conditions and provisions in the Declaration, this First Amendment or in any other document or filing.

9. If any one or more of the provisions of this First Amendment, or the applicability of any such provisions for a specific situation, shall be held invalid or unenforceable, such provisions shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this First Amendment and Supplement and all other applications of any such provisions shall not be effected thereby.

**[SIGNATURES ON FOLLOWING PAGE]**



IN WITNESS WHEREOF, the Fee Owner has executed this First Amendment on the day and year first above written.

THE BIG SOUTH FORK AIRPARK, LLC  
a Florida limited liability company,

By its Manager: Pegasus Real Estate  
Management, Inc., a Florida corporation

By: [Signature]  
William M. Armstrong, President

STATE OF TENNESSEE )  
 ) :ss  
COUNTY OF SCOTT )

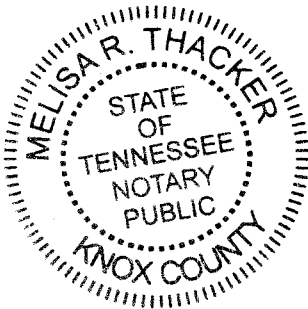
Personally appeared before me, Melisa R Thacker, a Notary Public of said County and State, **William M. Armstrong**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the President of Pegasus Real Estate Management Company, Inc., the Manager of The Big South Fork Airpark, LLC, a Florida limited liability company, and that he, as such officer, being authorized so to do, executed the within instrument for the purposes therein contained by signing the name of the company by himself as such officer.

Witness my hand, at office, this 22nd day of December, 2008.

[Signature]  
Notary Public

My Commission Expires Feb. 6, 2012

My Commission expires: \_\_\_\_\_



IN WITNESS WHEREOF, Fee Owner and Developer have executed this First Amendment on the day and year first above written.

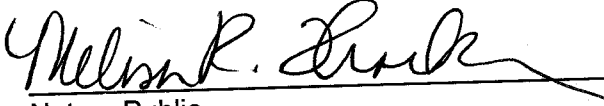
**PEGASUS REAL ESTATE MANAGEMENT, INC.**  
A Florida corporation, as Developer of The Big South Fork Airpark, LLC, a Florida limited liability company

By:   
William M. Armstrong, President

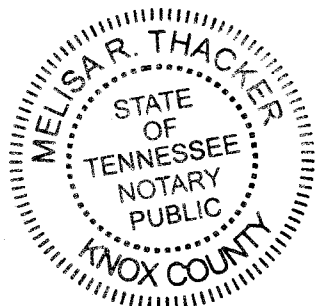
STATE OF TENNESSEE     )  
  ):ss  
COUNTY OF SCOTT        )

Personally appeared before me, Melisa R. Thacker, a Notary Public of said County and State, William M. Armstrong, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the President of Pegasus Real Estate Management Company, Inc., a Florida corporation, and that he, as such officer, being authorized so to do, executed the within instrument for the purposes therein contained by signing the name of the company by himself as such officer.

Witness my hand, at office, this 2nd day of December, 2008.

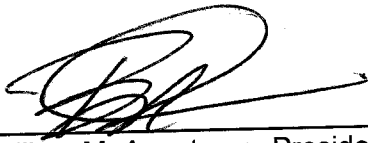
  
Notary Public

My Commission expires: Feb. 6, 2012



IN WITNESS WHEREOF, the Association has executed this First Amendment on the day and year first above written to reflect its joinder and consent to the First Amendment but the Association hereby recognizes that such joinder and consent is not necessary or required.

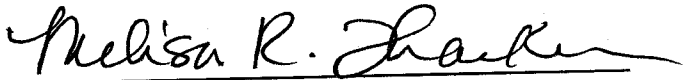
THE BIG SOUTH FORK OWNERS ASSOCIATION, INC.  
A Tennessee corporation

By:   
William M. Armstrong, President

STATE OF TENNESSEE    )  
  ):ss  
COUNTY OF SCOTT        )

Personally appeared before me, Melisa R. Thacker, a Notary Public of said County and State, William M. Armstrong, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the President of The Big South Fork Owners Association, Inc., a Tennessee corporation, and that he, as such officer, being authorized so to do, executed the within instrument for the purposes therein contained by signing the name of the company by himself as such officer.

Witness my hand, at office, this 22<sup>nd</sup> day of December, 2008.

  
Notary Public

My Commission Expires Feb. 6, 2012  
My Commission expires: \_\_\_\_\_



**Exhibit "A"**  
**Description of Property**

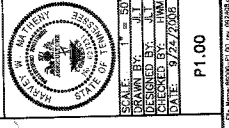
1. Being all the property reflected on Slide 2, Slide 3, Slide 4, Slide 5, Slide 6 and Slide 7 of the Phase 1 Final Plat Plan survey map of Jim Reed (TN R.L.S. #1372 132) which is recorded in Plat Cabinet D on July 18, 2007, in the Office of the Scott County Register.

Being a surveyed portion of the real property described in a general warranty deed conveyed from the Swain Family Limited Partnership to The Big South Fork Airpark, L.L.C., as recorded in Deed Book 259, at page 155 in the Office of the Register for Scott County, Tennessee.

2. Being the property reflected on the Phase 2 final plat plan titled "The Big South Fork Hangar Condominium Owner's Association, Inc.", survey map of Jim Reed (TN R.L.S. # 1372 132) ("Plat") which is recorded in Slide 45, Plat Cabinet D on September 30, 2008 in the Office of the Scott County Register.

Being a surveyed portion of the real property described in a general warranty deed conveyed from the Swain Family Limited Partnership to The Big South Fork Airpark, L.L.C., as recorded in Deed Book 259, at page 155 in the Office of the Register for Scott County, Tennessee.

**Exhibit "A-1"**  
**Plat**



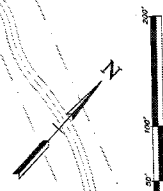
**BIG SOUTH FORK AIRPARK**  
ONEIDA, TENNESSEE

**THE BIG SOUTH FORK HANGAR ASSOCIATION, INC.**

**Kimley-Horn and Associates, Inc.**  
2175 Lakota Park Boulevard  
Greenville, SC 29615-4258  
Phone: 803-797-9111  
Fax: 803-797-9113

REVISIONS

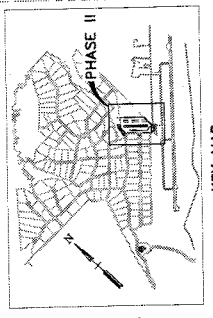
NO.	DATE	DESCRIPTION



**BIG SOUTH FORK AIRPARK  
A PEGASUS COMMUNITY**  
BIG SOUTH FORK AIRPARK PRELIMINARY PLAT PLAN  
APPROVED BY THE SCOTT COUNTY REGIONAL  
PLANNING COMMISSION  
MARCH 16, 2007

**TOTAL = 392.17 ACRES±**  
W.D. BK: 231 PG: 324  
W.D. BK: 243 PG: 153  
TAX MAP: 76 PARCEL: 5  
(PORTION)

**PHASE II = 8.97 ACRES±**  
THE BIG SOUTH FORK  
HANGAR CONDOMINIUM  
HANGAR ASSOCIATION, INC.



**FUTURE PHASES**

**FUTURE PHASES**

**HANGAR BUILDING "A"**  
380,867.63 SQ. FT.  
8.97 AC.

**POTENTIAL FUTURE HANGAR AREA**

**POTENTIAL FUTURE HANGAR BUILDING**

**EDGESET: CEDES**

UNIT - HANGAR CONDO LOTS/CLASS B2  
LOTS UNITS 1-24  
UNITED COMMON ELEMENTS - AREAS A-A  
AND A-B  
COMMON ELEMENTS - ALL OTHER AREAS  
WITHIN PHASE II PREVIOUSLY PLANNED  
ELEMENTS AND POTENTIAL FUTURE ITEMS  
AS SHOWN

THE BIG SOUTH FORK HANGAR CONDOMINIUM  
OWNERS ASSOCIATION, INC. PROPERTY IS PART OF  
THE BIG SOUTH FORK AIRPARK AND IS SUBJECT TO  
THE COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
THE BIG SOUTH FORK AIRPARK PLANNED COMMUNITY  
DRAFT MAP #20 ON OCTOBER 3, 2007, IN  
THE REGISTER'S OFFICE, SCOTT COUNTY,  
TENNESSEE.

**POTENTIAL FUTURE HANGAR AREA**



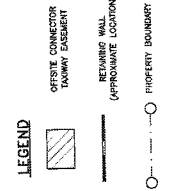
NOTE:  
THE PROPOSED OFF-SITE CONNECTION  
SCOTT COUNTY AIRPORT AUTHORITY FOR  
ADDRESS/ACCESS TO THE BIG SOUTH FORK  
AIRPARK ARE SUBJECT TO THE SCOTT  
COUNTY AIRPORT AUTHORITY THROUGH THE  
FENCE ENCLOSURE HAS RECORDED ON  
OCTOBER 3, 2007 IN THE REGISTER'S  
OFFICE, SCOTT COUNTY, TENNESSEE.

**LINE TABLE**

LINE	BEARING	LENGTH	AREA
L1	17.30°	102.40	10.40
L2	37.85°	115.20	12.80

**CURVE TABLE**

CURVE	BEARING	LENGTH	AREA	PERCENT
C1	47.80°	32.50	4.20	29.48
C2	97.80°	35.50	4.60	29.48



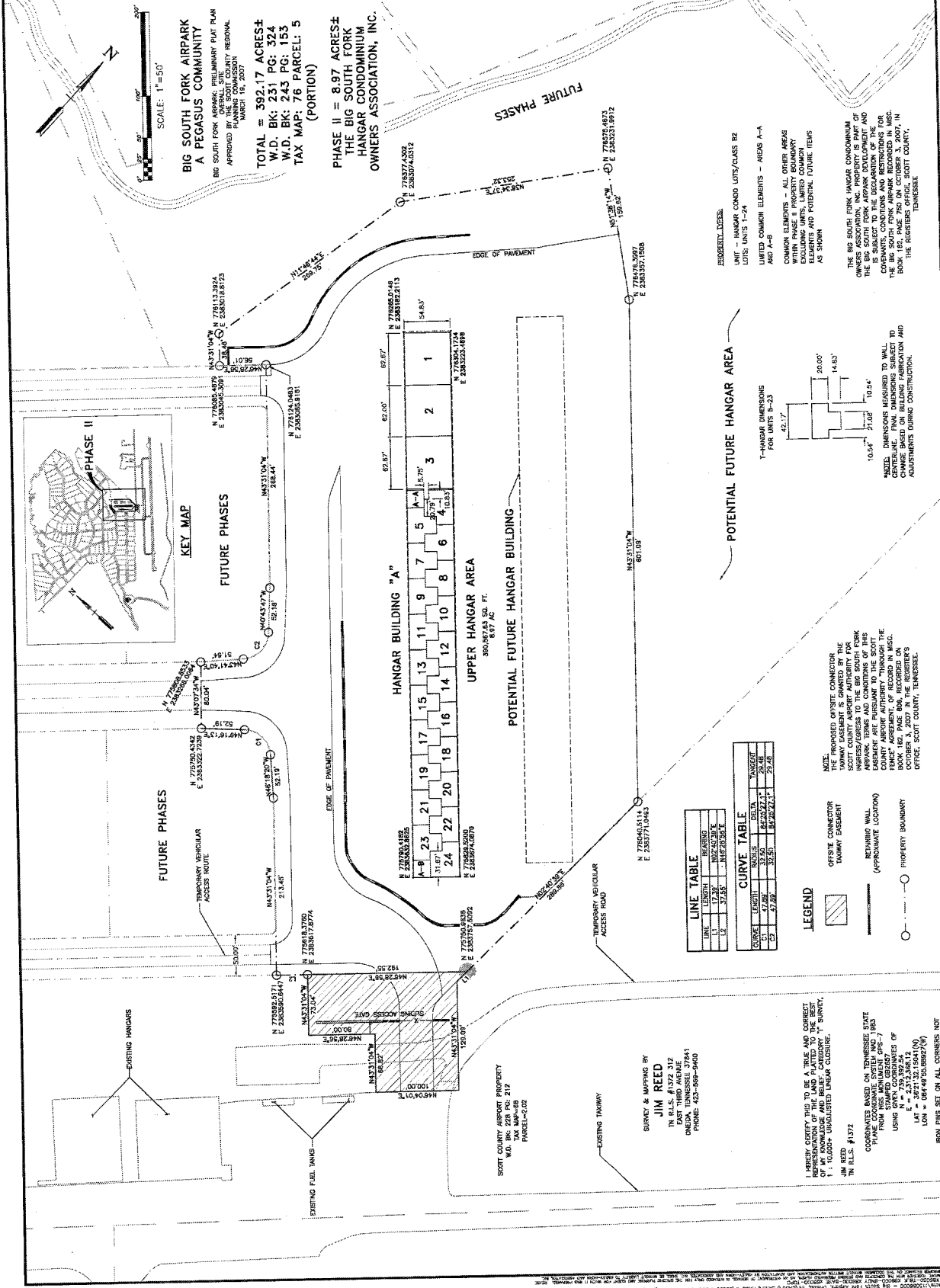
**SURVEY & MAPPING BY**  
**JIM REED**  
1000 EAST THIRD AVENUE  
ONEIDA, TENNESSEE 37341  
PHONE: 423-509-9400

LIBRARY COUNTY FILED IN A PUBLIC AND ADDRESS  
OF MY KNOWLEDGE AND BELIEF, CATEGORY "A" SURVEY,  
I, TUGGER UNLAWFUL UNDER CATEGORY "A" SURVEY,  
IN FILED #1372

COPIES BASED ON TENNESSEE STATE  
COPIES COORDINATE SYSTEM AND BLD  
FROM HIS MONUMENT (SPE-7)  
USING QUAY COORDINATES OF  
E = 2312.38112  
N = 964.9321907  
LMA = 964.9321907

IRON PINS SET ON ALL CORNERS, NOT  
OTHERWISE IDENTIFIED

SCOTT COUNTY AIRPARK PROPERTY  
W.D. BK. 228 PG. 212  
W.D. MAP-88  
PARCEL-020



This Instrument Prepared By:  
John A. Beaty  
Attorney at Law  
447 Baker Highway, Suite 3  
Huntsville, TN 37756

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**THIRD AMENDMENT AND SUPPLEMENT TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR THE BIG SOUTH FORK AIRPARK**

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This Third Amendment and Supplement to the Declaration of Covenants, Conditions and Restrictions for the Big South Fork Airpark is executed and made this 21<sup>st</sup> day of May, 2021.

**RECITALS:**

WHEREAS, Fee Owner (the Big South Fork Airpark, LLC) entered into a Development Agreement with its Manager, Pegasus Real Estate Management, Inc. (“Developer”), for the development of the property, which described property, together with certain additional lands as may be added from time to time, is referred to as “The Big South Fork Airpark”, or the “Airpark;” and

WHEREAS, on October 3, 2007, the Declaration of Covenants, Conditions and Restrictions for the Big South Fork Airpark (“CCR’s”) was executed, and was subsequently recorded in Misc. Book 162, page 750, in the Scott County Register’s office; and

WHEREAS, the CCR’s, in part, govern the permitted activities at the Big South Fork Airpark and set certain restrictions and prohibitions that apply to the airpark lots collectively; and

WHEREAS, Section 15.3.1 of the CCR’s grants to the Developer the right in its sole discretion to modify, enlarge, amend, delete, waive or add to provisions of the agreement or to correct any scrivener’s errors, without joinder or consent of any person; and

WHEREAS, a Supplement and First Amendment to the CCR’s was executed in December of 2008; and

WHEREAS, a Supplement and Second Amendment to the CCR’s was executed in May of 2019; and

WHEREAS, the Developer desires to execute this instrument to further amend the CCR’s pursuant to its authority to do so.

NOW THEREFORE, the Developer declares and establishes that the CCR’s shall be amended as follows:

1. Paragraph 1.0 shall be deleted and substituted with the following:

Declaration in any provision setting forth the method, manner, rights, remedies, powers or duties related to Assessments; and (ii) assessments to any Lots which are, or which later become, subject to a Local Area Association shall be determined pursuant to the applicable Local Area Association and related Local Area Documents and not this Declaration to the extent so provided in such Local Area Documents. All Assessments are subject to increase and shall be levied pro rata based on the number of Lots subject to such Assessment pursuant to this Declaration at the date of adoption of such Assessment. (For example, if there are 100 Lots which are owned by persons other than the Developer, then each Lot shall be subject to 1/100<sup>th</sup> of the Assessment). A change in Assessments at any time prior to Turnover.

2. The last sentence **only** shall be deleted in **paragraph 1.20**.

3. **Paragraph 5.11** shall be added as a supplemental provision:

**5.11. Any sales or conveyances, whether or not by consideration, of Airpark or Hangar Lots shall require prior written notice to the HCOA and shall require an Assessment to the HCOA of \$500.00/lot charged to the Seller of the subject lot.**

4. The following sentence shall be added as a supplement to the end of **paragraph 9.1**.

**Class B1 lot owners shall be subject to HCOA Assessments upon completion of hangar construction or hangar acquisition.**

5. **Paragraph 9.9** shall be amended, as follows:

**The following property subject to this Declaration shall be permanently exempt from the Assessments including any reserves, charges and liens created by this Declaration: (a) Public Property; (b) the Common Areas; (c) the SWMS; and (d) any owner of a designated Class E Lot.**

6. **Paragraph 9.10** shall be amended in its heading and first sentence to read as follows:  
**Developer/ Association Bidding Rights. The Developer, the Association or the HCOA shall have the power to bid for a Lot or a Hangar Lot, as applicable, at a foreclosure or judicial sale, and to acquire, hold, lease, mortgage and convey the same provided that the Association or HCOA does not violate any of the provisions in Article 3.**

7. The following sentence shall be added as a supplement to **paragraph 10.1.15**.

**Notwithstanding these provisions, any owner(s) of adjoining or contiguous lots or hangar lots, as applicable, are permitted to combine more than one or more lots for county assessment purposes, after which assessments and fees shall be payable per county designated parcel or parcels. However, the above-stated prohibitions and requirements regarding subdivisions shall apply to any lot or lots which have been previously combined into one parcel for county assessment purposes.**

8. The next to the last sentence of **paragraph 10.2.1** shall be amended as follows:

**Class B1 Lots (Hangar Lots) must have a hangar built on the Lot in addition to a Dwelling Unit and both the Hangar and the Dwelling Unit must be in compliance with any Design Guidelines and Rules.**

9. **Paragraph 10.2.6** shall be amended as follows:

No statuary, birdbaths, landscape delineators (bordering stones) or other exterior ornamentation shall be placed on any Lot so as to be visible from any streets, common areas, or the first floor of any other structures without prior approval of the ARC.



