

**TO THE PUBLIC:**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COMFORT FALLS AVIATION ESTATES SUBDIVISION**

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

This Declaration of Covenants, Conditions and Restrictions (“Declaration”) is made this \_\_\_ of \_\_\_\_\_, 2008 by COMFORT FALLS DEVELOPMENT LP, a Texas limited partnership (hereinafter referred to as “Declarant”).

WHEREAS, Declarant is representing the owner of that certain real property referred to in Article II of this Declaration, which property shall be developed as a Master Community Development known as “Comfort Falls Aviation Estates.” Declarant desires to take advantage of the presently existing unique geographical features of the subject property and proposes to establish and implement plans for a residential living subdivision with fly-in access to Fletcher Airport owned by Comfort Falls Real Estate, L.L.C., recreation and aesthetic considerations. Declarant discloses to each and every purchaser of property within Comfort Falls Aviation Estates, that Comfort Falls Aviation Estates is a fly-in community, designed and developed for use and enjoyment by aircraft owners and pilots, and that an airport, including runway and taxiways, is included within the development. In order to create and maintain harmony, camaraderie and neighbors with common interest within Comfort Falls Aviation Estates, Declarant requires that at least one Owner purchasing a lot be a pilot, as defined herein. By purchasing or otherwise accepting legal or equitable title to property within Comfort Falls Aviation Estates, which is subject to the Covenants and Restrictions set forth below, any owner of property within Comfort Falls Aviation Estates forever waives any objection, complaint, or cause of action related to the existence of the airport, the airport facilities and aviation activities within Comfort Falls Aviation Estates. In view of the features of the Declarant’s long range plans, Declarant desires to impose these restrictions on the subject property and yet retain reasonable flexibility to respond to changing unforeseen circumstances so as to control and maintain the quality and distinction of the Comfort Falls Aviation Estates community project.

NOW, THEREFORE, Declarant hereby declares that the real property referred to in Article II and described on Exhibit “A” and such additions thereto as may hereafter be made pursuant to Article II hereof is, and shall be, held transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens (sometimes collectively referred to as “Covenants and Restrictions”) hereinafter set forth.

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## **ARTICLE I DEFINITIONS**

The following words when used in this Declaration, or any amendment or supplement thereto (unless context shall otherwise clearly indicate or prohibit), shall have the following meanings:

(a) “Association” shall mean and refer to Comfort Falls Aviation Estates Homeowners Association, Inc., a Texas non-profit corporation, which has the power, duty and responsibility of maintaining and administering the Common Properties and collectively the assessments and charges hereafter prescribed and has the right of administering and enforcing the Covenants and Restrictions.

(b) “Common Property” shall mean and refer to any and all areas of land within the property which are known, described or designated as the runway, taxiways, common areas, recreational easements, green belts, open spaces, private streets or access easements on any recorded subdivision plat of the Property or intended for or devoted to the common use and enjoyment of the members of the Association, together with any and all improvements that are now or may hereafter be constructed or installed thereon and including all equipment, accessories, common machinery used in the operation or maintenance of any such Common Properties and any additions to or replacements of such Common Properties. The common areas now within the Comfort Falls Aviation Estates residential community generally consist of the runway, taxiway, private streets or access easements, open recreational spaces and a pecan orchard which is maintained for the aesthetic improvement and enjoyment of the development as a whole.

Declarant proposes to hold record title to the Common Properties consistent with the objectives envisioned herein and subject to the easement rights herein of the Members to use and enjoy the Common Properties for the indefinite period of time and a point in time deemed appropriate and reasonable by Declarant but prior to January 1, 2016 record title to the Common Properties will be formally transferred from the Declarant to the Association. Declarant reserves the right to effect minor or redesigns or reconfigurations of the Common Properties and execute any open space declarations applicable to the Common Properties which may be permitted by law in order to reduce property taxes.

(c) “Declarant” shall mean and refer to Comfort Falls Development LP and the successors and assigns (if any) of Comfort Falls Development LP with respect to the voluntary disposition of all (or substantially all) of the assets of Comfort Falls Development LP and/or voluntary disposition of all (or substantially all) of the right, title and interest of Comfort Falls Development LP in and

to the Property prior to the completion of the development thereon. No person or entity purchasing one or more Lots from Comfort Falls Development LP in the ordinary course of business shall be considered as “Declarant.”

(d) “Existing Property” shall mean and refer to the real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration pursuant to Section 2.01 of Article II hereof.

(e) “Lot” shall mean and refer to any plot or tract of land shown on any recorded subdivision map(s) or plat(s) of the Property as amended from time to time which is designated as a lot therein in which is or will be improved with a residential dwelling in conformity with the building restrictions herein set forth, although some portions of the Common Properties may be platted as a “Lot.” On the subdivision plat these lots will be excluded from the definition of “Lot,” as used herein. “Adjoining Lot” shall mean and refer to a Lot which is adjacent to any other Lot as shown on any recorded plat of the property.

(f) “Member” shall mean and refer to each owner of a Lot.

(g) “Owner” shall mean and refer to every person or business entity who or is a record owner of a fee or undivided fee interest in any Lot subject to these Covenants and Restrictions. However, the word “Owner” shall not include person(s) or entity(ies) who hold a bona fide lien or interest in a Lot as security for the performance of an obligation.

(h) “Pilot” shall mean a holder of any FAA issued airman certificate

(i) “Property” shall mean and refer to all such existing properties and any additions thereto as are subject to this Declaration or any amendment or supplement thereto prepared and filed of record pursuant to the provisions of Article II hereof. Declarant presently envisions that additional properties may be added to the scheme of this Declaration.

## **ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION: ADDITIONS THERETO**

**2.01 Existing Property.** The Existing Property is located in the John P. Smith Survey No.21, Abstract No. 470, Kendall County, State of Texas and is not located within any presently existing incorporated city or municipality. The Existing Property is more particularly described as follows:

Being all of Comfort Falls Aviation Estates, as shown and describe in Volume 6, Pages 65 – 68, Kendall County Plat Records

**2.02 Additions to Existing Property.** Additional land(s) may be subject to this Declaration in any of the following manners:

(a) Declarant may add or annex additional real property to the scheme of this Declaration by filing of record a supplementary declaration of covenants, conditions and restrictions, which will extend the scheme of the covenants, conditions and restrictions of this Declaration to such property provided, however, that such supplementary declaration shall contain such complimentary additions and modifications of the Covenants and Restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and are not inconsistent with the concept of this Declaration.

(b) In the event any person or entity other than Declarant desires to add or annex additional residual and/or common areas to the scheme of this Declaration, such proposed annexation must have the prior written consent and approval of the majority of the outstanding votes within each voting class of the Association.

(c) Any additions made pursuant to paragraphs (a) and (b) of this Section 2.02 when made, shall automatically extend the jurisdiction functions, duties and membership of the Association to the properties added.

### **ARTICLE III MEMBERSHIP AND VOTING RIGHTS**

**3.01 Membership.** Every Owner of a Lot shall automatically be and must remain a Member of Association in good standing. The Board of Directors may declare that an Owner is not a Member in good standing because of past unpaid dues, fines, late charges, interest, legal fees, and/or other assessments of any nature. The Board of Directors may temporarily suspend the voting rights of any Member who is not in good standing until such past, unpaid amounts are paid in full. Every member in good standing shall have the right at all reasonable times during business hours to inspect the books and records of the Association.

**3.02 Voting Rights.** The Association shall have three classes of voting membership.

Class A - Class A members shall be all members other than Class B and C members. Class A members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one person holds such interests or interest in any Lot, all such persons shall be deemed Members and the vote for such lots shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any such Lot. Any member who fails to exercise voting rights in three or more consecutive member voting actions may have their voting rights suspended by the Board of Directors. Any member whose voting rights have been suspended by the Board of Directors may have them reinstated by a vote of the majority of the Board of Directors. Voting rights are automatically reinstated upon sale of property to a new owner.

Class B - Class B members shall be any bona fide Owner who is engaged in the process of constructing a residential dwelling on any Lot for sale to consumers. Class B members shall be non-voting members of the Association. The Class B membership shall cease and each Class B member shall become a Class A member:

- i. when the total number of votes outstanding in the Class A membership equals the total number of votes outstanding in the Class C membership, or
- ii. on the tenth anniversary of the date hereof, whichever occurs first in time.

Class C - Class C members shall be Declarant. The Class C members shall be entitled to three (3) votes for each Lot which it owns and for each Lot owned by all Class B members.

Notwithstanding the foregoing voting rights within the Association and consistent with the provisions Section 12.02 hereafter, until:

(a) Declarant no longer owns:

- i. record title to any Lot, and
- ii. a lien interest in a Lot, and
- iii. title to any adjoining acreage intended to be developed as an additional section or phase of Comfort Falls Aviation Estates, or

(b) January 1, 2016.

whichever occurs first in time, neither the Association or the members shall take any action or inaction with respect to any matter whatsoever without the consent and approval of the Declarant, which shall not be unreasonably withheld or delayed.

**3.03 Quorum Notice and Voting Requirements.** The quorum notice and voting requirements pertaining to the Association are set forth in the Articles of Incorporation and Bylaws of the Association as the same may be amended from time to time. Subject to the provisions of Section 3.02 above, any action by or on behalf of the Association may be taken with the assent given in writing and signed by Members who collectively hold or control more than sixty percent (60%) of the outstanding votes of the Association.

#### **ARTICLE IV GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS**

**4.01 Powers and Duties.** The affairs of the Association shall be conducted by its Board of Directors (hereinafter referred to as the "Board"). The Board shall be selected in accordance with the Articles of Incorporation and Bylaws of the Association. The Board, for the benefit of the Common Properties and Owners shall provide and pay for out of the maintenance fund(s) provided for in Article VI below, the following:

- (a) Care and preservation of the Common Properties and the furnishing and upkeep of any desired personal property for use in the Common Properties;
- (b) Any private trash and garbage collection services and security arrangements;

(c) Taxes, insurance and utilities (including without limitation electricity, gas, water and sewage charges) which pertain to the Common Properties only;

(d) Services of a person or firm (including Declarant and any affiliates of Declarant) to manage the Association or any separate portion thereof to the extent being divisible by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by a manager designated by the Board;

(e) Legal and accounting services; and

(f) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, taxes, assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration, or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

The Board shall have the following additional rights, powers and duties:

(g) To execute all declarations of ownership for tax assessment purposes with regard to any of the Common Properties owned by the Association;

(h) To enter into agreements or contracts with insurance companies, taxing authorities, and holders of first mortgage liens on the individual Lots with respect to:

- i. taxes on the Common Properties;
- ii. insurance coverage (if any) on Common Properties as they relate to the assessment, collection and disbursement process envisioned by Article V hereof; and
- iii. utility installation, consumption and service matters.

(i) To borrow funds to pay costs of operations secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit or secured by such assets of the Association as deemed appropriate by the lender and the Association;

(j) To enter into contracts, maintain one or more bank accounts and generally have all the powers necessary and incidental to the operation and management of the Association;

(k) To protect or defend the Common Properties from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Association and to provide adequate reserves for repairs and replacements;

(l) To make reasonable rules and regulations for the operation of the Common Properties and to amend them from time to time; provided, however, that any rule or regulation may be amended or repealed by a written instrument signed by 75% of the then eligible member votes.

Notwithstanding the rights of the Members to amend or repeal a rule or regulation, no such amendment or repealing of a rule or regulation shall be permitted if it would violate an applicable law, or governmental regulation.

(m) To make available to each Owner within ninety (90) days after the end of each year an annual report;

(n) Pursuant to Article VII herein, to adjust the amount, collect and use any insurance proceeds for repair of damage or replace lost property and if proceeds are insufficient to repair damage or replace lost property, to assess the Members in proportionate amounts to cover the deficiency;

(o) To enforce the provisions of this Declaration and any rules made hereunder and to find, enjoin and/or seek damages from any Owner for violation of such provisions or rules.

**4.02 Board Powers Exclusive.** The Board shall have the exclusive right to contract for all goods, services and insurance and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein. In the event or if for any reason the Board is not deemed authorized to act for or on behalf of the Association and the Members, then Declarant may exercise its power and authority under Section 12.02 hereof to act for and on behalf of the Association and the Members and the Association shall reimburse Declarant for any and all reasonable expenses incurred in so acting.

**4.03 Contracts with Owners.** The Board, on behalf of the Association, shall have full power and authority to contract with any Owner (including without limitation Declarant) for the performance, on behalf of the Association of services which the Board is otherwise required to perform pursuant to the terms hereof, such contracts to be on such terms and conditions and for such consideration as the Board may deem proper, available and in the best interest of the Association.

**4.04 Liability Limitation.** Neither any Member, the Board, any director or any officer of the Association shall be personally liable for debts contracted for, or otherwise incurred by the Association, or for a tort of another Member, whether such other Member was acting on behalf of the Association or otherwise. Neither the Declarant, the Association, its directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect premises, improvements or any portion thereof, or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or corporation liable to make such repairs or replacements shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portion thereof.

**4.05 Reserve Funds.** The Board may establish reserve funds which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate irrevocable trust accounts in order to better demonstrate that the amounts deposited therein are capital contributions and not net income to the Association.

**4.06 Restrictions on Contracts.** Neither the Declarant nor the Association may directly or indirectly enter into any management agreement or other contract on behalf of the Association which extends beyond the date Class B membership ceases provided in Section 3.02 of this Declaration.

The Association may however following such date, enter into new management agreements or other contracts in accordance with this Declaration.

## **ARTICLE V PROPERTY RIGHTS IN THE COMMON PROPERTY**

**5.01 Members' Easements of Enjoyment.** Subject to the provisions of Section 5.03 of this Article, every Member and every tenant of every Member, who resides on a Lot, and each individual who resides with either of them on such Lots, shall have the right and easement of use, recreation and enjoyment in the Common Properties and such easement shall be appurtenant to and shall pass with the title of every Lot provided, however, such easement shall not give such persons the right to make alterations, additions or improvements to the Common Properties.

**5.02 Title to the Common Properties.** Declarant will hold record title to the Common Properties for an indefinite period of time subject to the easements set forth in Section 5.01 hereof. Declarant shall have the right and option (without the joinder and consent of any person or entity) to encumber, mortgage, design, redesign, reconfigure, alter, improve, landscape, and maintain the Common Properties. At some point in time (deemed reasonable and appropriate by the Declarant but prior to January 1, 2016), the Declarant will convey title to the Common Properties to the Association for the purposes herein envisioned. Declarant reserves the right to execute any open space declarations applicable to the Common Properties which may be permitted by law in order to reduce property taxes.

**5.03 Extent of Member's Easements.** The rights and easements of use, recreation, and enjoyment created hereby shall be subject to the following:

- (a) The right of Declarant or the Association to prescribe reasonable regulations and policies governing, and to charge fees and deposits related to the use, operation and maintenance of the Common Properties;
- (b) Liens on mortgages placed against all or any portion of the Common Properties with respect to monies borrowed by the Declarant to develop and improve the Property or by the Association to improve or maintain the Common Properties;
- (c) The right of the Association to enter into and execute contracts with any party (including without limitation Declarant) for the purposes of providing maintenance or such other materials or services consistent with the purposes of the Association;
- (d) The right of the Declarant or the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure;

(e) The right of Declarant or the Association to suspend the voting rights of any Member and to suspend the right of any individual to use or enjoy any of the Common Properties for any period during which any assessment (including without limitation “fines”) against a Lot resided upon by such individual remains unpaid, and for any period of time deemed reasonable by the Association for the infraction of the then existing rules and regulations;

(f) The right of Declarant and/or the Association to dedicate and transfer all or part of the Common Properties to any municipal corporation, public agency, authority or utility company for such purposes and upon such conditions as may be agreed upon by Declarant and the Members having a majority of the outstanding eligible votes of the Association;

(g) The right of Declarant and/or Association to convey, sell or lease all or part of the Common Properties upon such terms and conditions that may be agreed upon by Declarant and the Members having a majority of the outstanding eligible votes of the Association.

## **ARTICLE VI COVENANTS FOR ASSESSMENT**

**6.01 Personal Obligation of Assessments.** Each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed is deemed, as a part of the purchase money consideration for such deed and conveyance, to covenant and agree to pay to the Association (or to an independent entity or agency which may be designated by the Association to receive such monies):

(a) Regular assessments or charges for maintenance, taxes and insurance on portions of the Properties and the Common Properties (including without limitation those matters described in Section 4.01 hereof);

(b) Special group assessments for capital improvements or unusual or emergency matters such assessments to be fixed, established and collected from time to time as hereinafter provided;

(c) Special individual assessments levied against individual Owners to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts of the individual Owner or their guests and not caused by ordinary wear and tear; and

(d) Individual assessments and fines levied against individual Owners for violations of rules and regulations pertaining to the Association and/or the Common Properties;

Such assessments to be fixed, established and collected from time to time as hereinafter provided. The regular, special group and special individual assessments, together with such late charges, interest and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each such Lot against which such assessment IS made and shall also be the continuing personal obligation of the then existing Owner of such Lot at the time which the assessment fell due.

**6.02 Creation of Liens.** Declarant hereby reserves a vendor's lien against each Lot to secure the payment of any assessment which may be levied pursuant to the terms and provisions of Sections 6.05, 6.06, 9.13, and/or 12.06 hereof, and the expense occurred in the connection with the enforcement thereof, including without limitation, interest at the maximum rate permitted by law, costs and reasonable attorneys' fees. Such lien may be enforced by appropriate judicial proceedings and the amount secured thereby shall be the obligation of and chargeable to the Owner. Such liens shall be subordinate and inferior only to the following:

- i. Assessment liens and charges in favor of the State of Texas and any political subdivision thereof for taxes past due and unpaid on the Lot; and
- ii. Amounts due under first lien deed of trust duly recorded prior to the recordation of any lien assessment as provided in 6.03 of this Article VI.

**6.03 Assessment Lien.**

(a) All sums assessed but unpaid, including interest thereon, at the maximum rate permitted by law from the date such assessments are due until such assessments are paid (subject to the provisions hereof limiting the interest contracted for, charged or received to the maximum permitted by applicable law), shall constitute a lien on the Lot superior to all other liens and encumbrances except as provided in Section 6.02 of this Article VI. Declarant or the Board or its duly appointed agent may (but shall not be required to) prepare written notice setting forth the amount of such unpaid indebtedness, the name of Owner and a description of the Lot. Such notice shall be signed by the Declarant or the Board or its duly appointed agent and may be recorded in the office of the County Clerk of Kendall County, Texas. Such lien may be enforced by the foreclosure of it upon the Lot by the Declarant or the Board or its duly authorized agent. In any such proceeding, the Owner shall be required to pay the costs, expenses and attorneys' fees incurred in connection with filing the lien and in the event of any foreclosure proceeding, all additional costs, expenses and attorneys' fees incurred in connection with any such foreclosure proceeding. Declarant or the Board or its duly appointed agent shall have the power to bid on the Lot at foreclosure or other legal sale and to acquire and hold, lease, mortgage, convey or otherwise deal with the same. Any mortgagee holding a lien on the Lot may pay but shall not be required to pay any unpaid assessment owing with respect to the Lot, but such payment shall not be deemed a waiver of the Owner's default by either Declarant, the Board or such mortgagee;

(b) The amount of the assessments assessed against the Lot shall also be a personal obligation or indebtedness of the Owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the liens securing the same;

(c) Owner, by acceptance of the deed to the Property hereby expressly vests in Declarant, unto the Board or its agents the right and power to bring all actions against the Owner personally for the collection of such charges as a debt, and to enforce the aforesaid liens by all methods available for the enforcement of such liens. No Owner may waive or otherwise escape liability for the assessment provided herein by non-use of the Common Properties or by abandonment of his Lot;

(d) If any assessment remains unpaid at the expiration of fifteen (15) calendar days from and after the due date established by the Board, a late charge shall be assessed against the non-paying Owner for each month that any portion of the assessment remains unpaid. The late charge shall be in the amount of \$25.00 for all Class A and B members. A reasonable service charge in an amount established by the Board shall be charged for each check that is returned because of insufficient funds. The amount of late charges and service charges may be adjusted from time to time by the Board consistent with any change in the amount of the regular or special assessment; provided, however, that the amount of late charges assessed against Class B members shall be fifty percent (50%) of the amount a late charge is assessed against Class A members.

**6.04 Purpose of the Assessments.** The assessments levied by the Association will be used exclusively for the purpose of:

- (i) promoting health, recreation, safety and welfare of the residents of the property;
- (ii) improving and maintaining the runway, taxiways, aviation related fixtures and facilities, streets, access easements, walkways, recreational areas or other properties, services and facilities directly related to the use and enjoyment of the Common Properties;
- (iii) the payment of taxes on the Common Properties and insurance (if any) in connection with the Common Properties and the repair, replacement and additions thereto;
- (iv) the payment for electricity for street lights and exterior lights and the repair, replacement and additions of various items within the Common Properties;
- (v) trash and garbage collection and security arrangements as may be determined necessary and appropriate by the Association from time to time;
- (vi) paying the costs of labor, equipment (including the expense of leasing any equipment) and materials required for and the management and supervision of, the Common Properties;
- (vii) carrying out the duties of the Board as set forth in Article IV hereof envisioned or any amendment or supplement hereto; in any manner or thing in connection with any zoning, subdivision, platting, building or development requirements.

**6.05 Base and the Amount of Regular Maintenance Assessments.**

(a) Until and otherwise determined by the Board pursuant to Article 6.08 herein, maximum regular assessments shall be \$900.00 per Lot per year, assessed October 1 of each calendar year hereafter. For any Lot purchased after October 1, such assessment will be prorated for the balance of the year remaining in which the purchase was made.

(b) The Board may establish the maximum annual assessment for each Lot provided that the maximum annual assessment may not be increased more than thirty percent (30%) above the maximum annual assessment for the previous year unless otherwise approved by the Members of the Association as provided in Section 3.03 of Article III;

(c) After consideration of current maintenance costs and future needs of the Association, the Board may fix the actual annual assessments at an amount equal to or less than the then existing maximum annual assessment;

(d) The Board may establish a time price differential schedule for the payment of the regular assessment in which the lowest amount is the actual regular base assessment.

**6.06 Special Assessments for Capital Improvements.** In addition to the regular assessments authorized by Section 6.03 hereof, the Association may levy in any fiscal year a special assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties including any necessary fixtures and personal property related thereto provided that any such assessment shall have the affirmative approval of the Members of the Association as provided in Section 3.03 of Article III.

**6.07 Uniform Rate of Annual and Special Assessments.** Both regular and special capital assessments must be fixed at a uniform rate for all lots owned by Class A Members. Each lot owned by Class A Members shall be charged one hundred percent (100%) of the established per lot assessment while each Lot owned by a Class B member shall be charged with fifty percent (50%) of the established per lot assessment. Lots owned by Declarant shall not be charged with any portion of any assessment.

**6.08 Date of Commencement of Assessments and Due Dates.** The Board may prescribe from time to time that the regular base assessments are to be collected on an annual, semi-annual, quarterly, or monthly basis and accordingly to the Board shall prescribe the appropriate due dates and, if applicable, the time price differential **rates** and due dates. All regular base assessments shall be collected in advance. The due date or dates (if it is to be paid in installments) of any other assessment or special assessment under Section 6.05 and Section 6.06 hereof shall be fixed in the respective resolution authorizing such assessment.

**6.09 Duties of the Board with Respect to Assessments.**

(a) In the event of a revision to the amount or rate of the regular base assessment or establishment of a special group or special individual assessment, the Board shall fix the amount of the base assessment against each Lot and applicable due dates for each assessment at least sixty (60) days in advance of such date or period and the Board shall at that time prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association;

(b) Written notice of the assessment shall thereupon be delivered or mailed to every Owner subject thereto;

(c) The Board shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificate.

**6.10 Exempt Property.** The following property otherwise subject to this Declaration shall be exempted from the assessments, charges and liens created herein.

(a) All properties dedicated and accepted by a local public authority and devoted to public use;

(b) All Common Properties as defined in Article I hereof; and

(c) Any and all areas which may be reserved by the Declarant.

**6.11 Assessment for Use of Airport by Non-Member Aircraft.** Any Member who rents hangar space to a non-Member in accordance with the restrictions set forth herein, shall pay an additional assessment of \$25 per month for each such non-Member aircraft. Such non-Member aircraft assessment is payable without demand at the end of each calendar month during which such aircraft is stored at the Property and may be increased in accordance with the procedures set forth in this section. Non-Member aircraft must comply with the Aircraft Operations Rules and Regulations for Comfort Falls Aviation Estates.

## **ARTICLE VII INSURANCE, REPAIR AND RESTORATION**

**7.01 Right to Purchase Insurance.** The Association shall have the right and option to purchase and carry and maintain in force insurance covering any or all portions of the Common Properties, any improvements thereon, or appurtenant thereto, for the interest of the Association and all Members thereof in such amounts and with such endorsements and coverage as shall be considered good, sound insurance coverage for property similar in construction, location and use to the subject property. Such insurance may include, but need not be limited to:

(a) Insurance against loss or damage by fire and hazards covered by a standard extended coverage endorsement in the amount which shall be equal to the maximum insurable replacement value excluding foundation and excavation costs as determined by the insurance carrier;

(b) Public liability and property damage insurance on a broad form basis;

(c) Fidelity bond for all officers and employees of the Association having control over the receipt and disbursements of funds; and

(d) Officers and directors liability insurance.

**7.02 Insurance Proceeds.** The Association members shall use the net insurance proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of insurance shall be paid to the Association as required in this Article VII remaining after satisfactory completion of repair and replacement shall be retained by the Association as part of the general reserve fund for repair and replacement of the Common Properties.

**7.03 Insufficient Proceeds.** If the insurance proceeds are insufficient to repair or replace any loss or damage, the Association may levy a special assessment as provided for in Article VI of this Declaration to cover the deficiency.

## **ARTICLE VIII USE OF COMMON PROPERTIES**

The Common Properties may be used and enjoyed as follows:

**8.01 Restrictive Actions by Members.** No member shall permit anything to be done on or in the Common Properties which would violate any applicable public law or zoning ordinance or which will result in the cancellation or increase of any insurance carried by the Association or which would be in violation of any law or any rule or regulation promulgated by the Board.

**8.02 Damage to the Common Properties.** Each member shall be liable to the Association for any damage to any portion of the Common Properties caused by the negligence or willful misconduct of the member or his family and guests.

**8.03 Rules of the Board.** All members shall abide by any rules and regulations adopted by the Board. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies and a member determined to have violated said rules and regulations shall be liable to the Association for all damages and costs including reasonable attorneys' fees.

**8.04 Use of Common Properties.** Use of the Common Properties shall be limited to Members, their families, guests, and their families, Declarant's invitees and employees, and such other persons as may first be approved by the Association. **At least one adult Member must be present while any guests or invitees are using any portion of the Common Properties.** With the exception of regular business activities of Class B Members of the Association, no person or entity shall use any portion of the Common Properties to:

- (a) solicit, promote or conduct business, religious, political, or propaganda matters;
- (b) distribute handbills, newsletters, flyers, circulars, or other printed materials; without the prior written consent of the Association (which consent may be withheld and if so, with absolute discretion).

**8.05 Park Rules and Regulations.** The Common Properties utilized for recreation purposes by the Owners may be subject to Park Rules and Regulations established by the Developer and/or

the Association and as amended from time to time. All Owners and their guests are required to comply at all times with such Park Rules and Regulations. Violation of the Park Rules and Regulations may result in the suspension or termination of the use of such Common Properties.

**8.06 Private Streets.** The entry street, streets network within Comfort Falls Aviation Estates Residential Community are “private” and constitutes a portion of the Common Properties which are subject to the jurisdiction and administration by the Association. In addition to other provisions appearing in this Article VIII, the Board is specifically authorized to recommend, adopt, implement, and enforce rules, regulations, mechanisms, and procedures governing the use thereof covering such items as (but not necessarily limited to):

- (a) Identification entry programs for Members or respective immediate families or guests, vehicle or aircraft owned or driven by any of them;
- (b) Speed limits, designated parking areas, restrictive parking areas, and no parking areas;
- (c) Special traffic and safety rules for the handling of aircraft traffic on the ground, the utilization of streets and access easements by aircraft and other vehicles, the parking of aircraft, engine run-up and other activities peculiar to a flying community’s needs.
- (d) Signs and graphics to provide announcements to unauthorized personnel concerning potential criminal trespass matters;
- (e) A “fine” systems through which the Association can levy and collect fines from its Members for violation of the applicable rules and regulations; and
- (f) Disclaimers of liability for any known matters or occurrences on or related to the Common Properties.

**8.07 Waiver & Release of Liability; Indemnity.** MEMBER WAIVES ALL CLAIMS FOR INJURY TO OR DEATH OF PERSONS OR DAMAGE TO OR LOSS OF PROPERTY SUSTAINED BY MEMBER OR MEMBER’S GUESTS OR INVITEES ARISING FROM THE USE OF THE COMMON PROPERTIES. FURTHERMORE, EACH MEMBER AGREES TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD HARMLESS DECLARANT, THE FLETCHER FAMILY, THE BOARD, THE ASSOCIATION, AND THEIR AGENTS, INSURORS, EMPLOYEES, PARENT COMPANIES, RELATED HOLDINGS AND ENTITIES, HEIRS, SURVIVORS, BENEFICIARIES, OR ASSIGNS, FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, PENALTIES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO ATTORNEY’S FEES AND COURT COSTS, ARISING OUT OF OR RESULTING FROM THE USE OF THE COMMON PROPERTIES, AND FROM ANY CLAIM, DAMAGE, LOSS OR EXPENSE WHICH (1) IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE, DEATH, INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, AND (2) IS CAUSED IN WHOLE OR IN PART BY ANY ACTS, OMISSIONS OR NEGLIGENCE OF MEMBER OR ANYONE FOR WHOSE ACTS MEMBER MAY BE LIABLE INCLUDING, BUT NOT LIMITED TO GUESTS OR CHILDREN, REGARDLESS OF WHETHER IT IS CAUSED IN WHOLE OR IN PART BY THE ACTS, OMISSIONS OR NEGLIGENCE OF A PARTY INDEMNIFIED HEREUNDER. THIS RELEASE OF SUCH OBLIGATIONS SHALL NOT BE

CONSTITUTED TO NEGATE, ABRIDGE, OR OTHERWISE REDUCE ANY OTHER RIGHT OR OBLIGATION OF INDEMNITY WHICH WOULD OTHERWISE EXIST AS TO ANY PARTY OR PERSON DESCRIBED IN THIS PARAGRAPH.

## **ARTICLE IX CONSTRUCTION AND IMPROVEMENTS AND USE OF LOTS**

The Property (and each Lot situated therein) shall be subject to the Comfort Falls Aviation Estates Architectural and Construction Design Guidelines attached hereto as Exhibit "B", and shall be occupied and used as follows:

**9.01 Residential Use.** All Lots in designated residential areas (excluding Lots W, X and Y, on which certain Common Properties will be located) shall be used for single family residential purposes only. Certain lots not within the defined residential areas as described herein shall be reserved for commercial purposes. No building or structure shall be erected, altered, placed or permitted to remain on any Lot other than a single family dwelling, approved hangar, approved horse barn and/or an approved "mother-in-law" apartment that may be located in a garage, hangar or barn. A stand alone "mother-in-law" apartment may not exceed 1100 square feet. No hangar or out building will be constructed prior to the construction of the primary residence for said Lot. However, all lot development plans must include an airplane hangar and an airplane hangar must be completed within 12 months of completion of any home. The finished floor elevation of any residential structure must be set at least two (2) feet above the Base Flood Elevation (BFE) shown on the Plat or the most recent regulatory reports approved by FEMA whichever is higher. It is the responsibility of the Owner of the property or his or her builder to contact the local FEMA flood plain administrator for Kendall County to review the latest flood maps or reports available. It is recommended that the finished floor elevation for any hangar to be set at a similar elevation, but such election may be made at the Owner's discretion. In no case shall the finished floor elevation of a hangar be below the most recent regulatory report approved by FEMA. Prior to the initiation of construction upon any Lot, the Owner thereof shall first submit to the Architectural Review Committee (the "Committee"), as defined in Section 10, below, a complete set of plans and specifications for the proposed improvements, including site plans, grading plans, landscape plans, floor plans depicting room sizes and layouts, exterior elevations, specifications of materials and exterior colors, and any other information deemed necessary by the Committee for the performance of its function. In addition, the Owner shall submit the identity of the individual or company intended to perform the work and projected commencement and completion dates. Upon receipt by the Committee of all of the information required by this Article, it shall have thirty (30) days in which to review said plans. The proposed improvements will be approved if, in the sole opinion of the Committee:

- (i) the improvements will be of an architectural style and material that are compatible with the other structures in the Property;
- (ii) the improvements will not violate a restrictive covenant or encroach upon any easement or cross platted building set back lines;
- (iii) the improvements will not result in the reduction in property value or use of adjacent property;

- (iv) the individual or company intended to perform the work is acceptable to the Committee; and
- (v) the improvements will be substantially completed, including all cleanup, within fourteen (14) months of the date of commencement for dwellings (including garages) and hangars, and within six (6) months for all other improvements.

In the event that the Committee fails to issue its written approval within forty-five (45) days of its receipt of the last of the materials or documents to complete the Owner's submission, the Committee's approval shall be deemed to have been granted without further action.

**9.02 Height of Structures.** No building or structure on any Lot shall exceed two (2) stories in height. For those Lots abutting Fletcher Airport and the runway situated thereon, namely, all even numbered lots, excluding Lots 6, 8, 14, 16, 30, 32, 40, 42 and 44, these Lots are further restricted to prohibit any building or structure or any planting exceeding eight (8) feet in height for a distance of 130 feet from the CENTER LINE of the paved runway.

**9.03 Minimum/Maximum Floor Space.** The main structure of each Lot shall contain a minimum square footage of at least 2,300 square feet for a one-story residence, and at least 2,800 square feet for a two-story residence, exclusive of basements, porches, garages, aircraft hangars and other outbuildings. The main structure of each Lot less than 3 acres in size shall contain no more than 6,000 square feet, exclusive of porches, garages, aircraft hangars and other outbuildings. The main structure of any lot 3 acres or more in size shall contain no more than 8,000 square feet, exclusive of porches, garages, aircraft hangars and other outbuildings.

**9.04 Garages and Aircraft Hangars.** Each single family residential dwelling erected on any Lot shall provide garage space for a minimum of two (2) conventional automobiles and, all aircraft parked or stored on the Lot shall be hangared. The hangar shall have a minimum area of 1,200 square feet, shall be detached from the residence, and shall be of sufficient size to hangar all aircraft parked or stored on the Lot. No garage or aircraft hangar shall directly face a residential street. Any variation from the foregoing requirements must be approved, in writing, by the Architectural review Committee. In addition, Lots 2 and 3 shall not have hangars facing FM 1621. Open sided carports or plane ports are expressly prohibited and all garages or hangars must be equipped with doors. The exterior surface of the side of any attached garage or aircraft hangar, where approved by the Architectural Review Committee, facing a residential street shall be comparable with the exterior surface of the residential dwelling on the Lot and shall be subject to the requirements of 9.16 of this Article IX. The exterior surface of any detached aircraft hangar must be designed and clad to appear similar to the primary residence, a historic building or barn with roofline designed to disguise typical metal roofline, all subject to the approval of the ARC.

**9.05 Building Lines.** All residences or dwellings erected or placed on any Lot shall face the street adjacent to the Lot as shown in the recorded plat of the Property. No portion of such dwelling or residence or any building erected thereon shall be located nearer to any street or easement than the minimum building setback lines as shown on the recorded plat of the Property.

No structure or improvement of any kind shall be constructed or placed on any Lot outside of any perimeter fencing upon such Lot. Lots 5, 7, 9, 11, 13 and 15 shall include a Natural Vegetation Preserve, which consists of the area within 75 feet of the Eastern boundary (rear) of such Lots. No living vegetation of any kind, including trees, shrubs, grasses or any other plants, shall be removed, cut or damaged in any way within the Natural Vegetation Preserve without approval of the Architectural Review Committee. The Natural Vegetation Preserve may be enhanced with plants indigenous to the Texas Hill Country, and damaged plants may be removed.

**9.06 Fences.** All fencing must comply with the Comfort Falls Aviation Estates Architectural and Construction Design Guidelines. No chain link fences or other similar type fences, and no wooden plank fences shall be erected or located on any Lot so as to be visible from the front of the Lot. No fence, wall or hedge shall be placed or erected on any Lot nearer to any street than the minimum building setback line. No fence, wall or hedge shall exceed eight (8) feet in height.

**9.07 Signs.** No sign or signs shall be displayed to the public view on any Lot except that:

- i. Any builder during the applicable initial construction and sales period may utilize one professional sign (not more than nine (9) square feet in size) per Lot for advertising and sales purposes;
- ii. Thereafter, a dignified “For Sale” or “For Rent” sign (of not more than nine (9) square feet in size) may be utilized by the Owner of the respective Lot for the applicable sale or rental of the residence.

**9.08 Easements; Utilities; Taxilanes.** All streets, alleys and easements shown on the recorded plat of the Property have been reserved for the purposes indicated. No Owner may erect any structure of any type whatsoever in these easement areas, nor may the Owner use the surface of the easement area for any private use. No Owner may plant or cultivate any tree, shrubbery or other vegetation or maintain any other vertical obstruction over 1-foot in height within any utility easement area. With respect to these easement areas as well as any other areas described within recorded easement documents in the Common Properties, any and all bona fide public utility service companies shall have the right of access, ingress, egress, regress and the use of the surface estate for the installation and maintenance of the utility facilities. Lots 32 and 35 contain existing wells which will be used exclusively and managed by the HOA for livestock watering in the common areas. Easements to and around these wells will be kept clear and accessible for use and maintenance. **NO STRUCTURE, PLANT, TREE, OR VEGETATION SHALL EXCEED A TRIMMED HEIGHT OF ONE FOOT FOR EACH EIGHT FEET OF DISTANCE FROM THE CENTERLINE OF ANY TAXILANE UP TO 40’ FROM CENTERLINE.**

**9.09 Temporary Structures.** No temporary structure of any kind will be erected or placed upon any Lot. Temporary structures will include but not limited to any garage, aircraft hangar, or other improvement erected more than one hundred twenty (120) days prior to the completion of the main portion of a single family dwelling. However, any Class B Member may maintain a temporary construction office provided such construction office is removed within forty-five (45) days after completion of construction.

**9.10 Vehicles.** Any truck, bus, boat, boat trailer, trailer, mobile home, motor home, camp mobile, camper, motorcycle, aircraft or any motorized vehicle other than a conventional automobile shall be stored, placed or parked within the garage or hangar of the appropriate Owner or so as to be completely hidden from view.

**9.11 Parking.** No vehicle or aircraft shall be permitted to park on the streets or easements within the Property at any time. The Owner of each Lot must provide sufficient off street parking for guests or other invitees of the Owner of such Lot.

**9.12 Garbage and Weeds.** No Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. All garbage shall be kept in containers approved by the Association. The Association shall determine the appropriate location for such garbage containers for collection. If after ten (10) days prior written notice an Owner shall fail to:

- i. control weeds, grass and/or unsightly growth;
- ii. remove trash, rubble, building and construction debris; or
- iii. exercise reasonable care or conduct to prevent or remedy an unclean, untidy or unsightly condition;

then the Declarant, the Board, or the Association shall have the authority and right to go on to said Lot for the purpose of mowing and cleaning said Lot and shall have the authority and right to assess and collect from the Owner of such Lot a sum sufficient to cover the cost for mowing and cleaning of said Lot on each respective occasion of such mowing or cleaning. The assessments, together with interest (at the highest permitted lawful rate per annum) thereon and any costs of collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest thereon and the costs of collection thereof shall also be the continuing personal obligation of the Owner of such Lot at the time when the assessment occurred. The lien securing any such assessment shall be subordinate and inferior to the lien of any mortgage and any renewals and extensions thereof existing prior to the assessment date.

**9.13 Construction Completion Time - Option of Declarant to Repurchase.** The initial purchaser of a Lot following the recording of this Declaration must commence construction of a residential dwelling thereon within sixty (60) months following the date of the purchase of such Lot and proceed with diligence to complete the same. If the initial purchaser of a Lot should sell the same prior to the expiration of sixty (60) months following the date of purchase of such Lot without constructing a residence on such Lot, a subsequent purchaser shall be obligated to commence construction of a residential dwelling on such Lot within twenty four (24) months following the date of the purchase of such Lot and to proceed with diligence to complete the construction of the residential dwelling thereon. In the event the Owner of a Lot shall not commence construction in a timely manner as provided in this Section 9.13 or fails to complete the construction of a residential dwelling within fourteen (14) months following the timely commencement of construction, the Owner of such Lot shall be deemed to have granted to

Declarant and its successors and assigns an option to repurchase such Lot for cash for a purchase price which shall be equal to the original purchase price of the Lot to the Owner less twenty percent (20%) with such option to repurchase to be exercisable by Declarant at any time thereafter on thirty (30) days written notice to such Lot Owner. Owner agrees Declarant shall be entitled to a right of specific performance together with any other legal or equitable remedies available to Declarant to enforce the provisions of this repurchase option. In the event that a residence is partially or totally damaged by fire or other causes, the Owner of such residence must either rebuild the residence or completely clear the Lot. In the event the Owner desires to rebuild, the construction or restoration of the damaged residence or portion thereof must commence within one hundred twenty (120) days after the occurrence causing the damage and complete the same within fourteen (14) months thereafter. No construction or restoration shall commence, however, until plans and specifications have been submitted to the Committee (and are subsequently approved as required in Article X(b) hereof). In the event the Owner does not desire to rebuild, the Owner must clear away all the many debris and restore the Lot to the condition in which it existed prior to the initial construction of the damaged residence. Under no circumstances shall any burned structure or unsightly debris (from any source) remain on the Property more than 120 days after such structure is burned or debris is generated.

**9.14 Offensive/Noxious Activities and Animals.** No noxious or offensive activities including but not limited to, odors, vibrations, noise/sound or light shall be conducted on any Lot nor shall anything be done thereon which is or may become an annoyance or a nuisance within the Property or any portion thereof. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that horses, dogs, cats or other household pets may be kept; provided, they are not kept, bred or maintained for commercial purposes. Any other type of animal requires approval of the Home Owners Association. Horses may be kept at a rate of 1 horse per acre lot, with a maximum of 2 horses for any single lot. (Example: a 1.8 acres Lot may contain one horse.) If 2 or more lots are combined under single ownership, the maximum number of horses may be increased by 2 horses for each lot combined (Example: two 3.1 acre lots, if combined, may contain up to 4 horses.) Other horses may be kept in the orchard equine area (Lot X) fenced for such use. Space availability will be on a “first-come, first-served” basis as determined by the Association, and charges for this will be set by the Association. Funds from these charges will be used to upkeep the equine area. The Association shall establish reasonable and specific guidelines to harmonize the fair use of all lots, with the intent to avoid the occurrence of activities that may be offensive to other property owners. All exterior lighting must comply with the Architectural and Construction Design Guidelines attached hereto.

**9.15 Exterior Surface.** The exterior surface of all residential dwellings shall be constructed of brick, brick veneer, stone or stone veneer, masonry or wood siding or any combination thereof approved by the Committee. Porches, outdoor rooms & natural materials common to the Texas Hill Country are encouraged. Bricks and logs may be used as trim only, not for primary exterior cladding. All exterior surfaces, especially any painted or stained and wood surfaces (including without limitation garage or hangar doors) must be maintained in good condition. Installation of all types of exterior items and surfaces such as address numbers or external ornamental lights, exterior paint or stain shall be subject to the prior written approval of the Committee. The installation of solar panels on any roof or other portion of a residence which is visible from any street or adjoining Lot is expressly prohibited. All exterior lighting must comply with the

Architectural and Construction Design Guidelines attached hereto. Exterior Christmas or holiday lights and decorations may be erected on or after November 1 of each year and must be removed by January 15 of the following year. All tinfoil and newspaper window coverings are expressly prohibited.

**9.16 Antennas and Aerials.** All television antennas and other antennas and aerials shall be located inside the attic or under the roof so as to be completely hidden from view. Satellite dishes shall be permitted only if they are not visible from any street or adjoining Lot and do not extend above the height of the fence located on the Lot where such satellite dish is situated. No towers shall be permitted. No antenna or aerial shall violate any rules, regulations or recommendations of the Federal Aviation Administration or the Federal Communications Commission.

**9.17 Landscaping.** Each residence shall be fully landscaped within one hundred twenty (120) days after the date upon which the main structure is ninety-five percent (95%) complete. No landscaping plans shall be implemented until approval of the Committee has been obtained. In order to preserve the character and quality of the overall development, no tree may be removed until the plans and other submittals, if any, required under the Architectural and Construction Design Guidelines have been submitted, reviewed and approved by the Architectural Review Committee. No trees may be removed from a lot more than 60 days prior to the start of construction of a home. Any trees or brush cleared on a lot must be removed from the lot or burned within 20 days. However, all burn piles must comply with County regulations and must be approved by the board.

**9.18 Retaining Walls.** Retaining walls shall be faced with stone or other material approved by the Architectural Review Committee in accordance with the Architectural and Construction Design Guidelines.

**9.19 Gazebos, Greenhouses, Storage Sheds, Clotheslines, Basketball Goals and Flagpoles.** No gazebo, greenhouse, storage shed, clothesline or basketball goal or any other similar structure shall be erected, constructed, or placed upon any Lot that is visible from any street without the prior written approval of the Committee. No more than two (2) flagpoles may be erected on a Lot, subject to written approval by the Architectural Control Committee, but in no case may any flagpole height exceed 75% of the height of the residence located on such Lot. Any flag illuminated at night must have lighting mounted above the flag on top of the pole and must comply with the Exterior Lighting and Antennae Section of the Architectural and Construction Design Guidelines attached hereto.

**9.20 Mail Boxes and Address Numbers.** All mail boxes shall be furnished and installed by Declarant and shall be located in the common properties in a common mail box area. Decorative address numbers or signs for each Lot shall be furnished and installed only by Declarant. Addresses are assigned by the Rural Addressing Department of Kendall County, Texas when a driveway permit is issued. Owner or his/her Builder is responsible for contacting Rural Addressing, paying any required fee, obtaining address numbers and proper installation of the county issued address numbers.

**9.21 Pools/Pool Equipment.** No pool may be erected, constructed or installed without the prior written consent of the Architectural Review Committee in accordance with the Architectural and Construction Design Guidelines. All above ground pools are expressly prohibited. ALL SWIMMING POOLS SHALL BE CONTAINED WITHIN A CHILD-SAFE FENCE AS REQUIRED UNDER COUNTY, STATE, OR FEDERAL LAW. All pool service equipment shall be fenced, placed within a low retaining wall or pool house equipment structure and located in either (a) a side yard between the front and rear boundaries of the dwelling, or (b) in the rear yard adjacent to the dwelling and shall not be visible from any street or adjoining Lot.

**9.22 Lots Abutting Seasonal Cougar Creek.** All Lot Owners whose Lots are traversed by the seasonal creek as depicted on the recorded plat establishing Comfort Falls Aviation Estates and who desire to construct a vehicle access structure across the creek shall retain a qualified, registered professional engineer to prepare, design/study to accommodate the crossing and submit the same to the Architectural Review Committee for approval. Irrigation from the seasonal creek by any Lot Owner is prohibited.

**9.23 Utility Meters and Air Conditioning Compressors.** All utility meters, equipment, air conditioning compressors, evaporated coolers and similar items must be located in areas designated by the Committee and must be screened from view as required by the Architectural Review Committee.

**9.24 Firearms.** There shall be no discharging of firearms or hunting on the Property.

**9.25 Wells/Private Water Systems/Water Service Lines.** The drilling of water, oil, and gas wells, or extracting minerals by any means from any portion of the Property, is prohibited. Construction of any private water system on any lot without the prior written approval of Aqua Texas or any other water service provider of CFAE is prohibited. The Owner of each lot shall maintain, repair and replace water service lines for their lot.

**9.26 Outside Storage.** No aircraft, boats or other vehicles or disassembled parts thereof shall be kept, parked or stored on any Lot except inside a fully enclosed hangar or garage. Commercial facility including land on LOT 45, west of runway is excluded from this article.

**9.27 Fuel Storage.** Bulk storage (greater than 50 gallons) of gasoline or other motor fuels on any Lot is expressly prohibited. (Refer to Airport Rules and Regulations.)

**9.28 Use of Runway.** Qualified Owners of Lots owning aircraft are granted permission to use the runway lying adjacent to the Property which is a Common Area as defined above, subject to the Airport Rules and Regulations attached hereto as Exhibit "C". Vehicles other than aircraft may not use aircraft runways at any time. Such Rules & Regulations may, among other things limit the hours of use of the runway, the maximum gross takeoff weight of aircraft using the runway, the maximum noise rating at takeoff for aircraft using the runway, may establish noise abatement procedures and may prohibit use of the runway by certain types of aircraft (i.e. aircraft equipped with ejection seats, experimental category turbojet aircraft, and restricted category aircraft). Additionally, any use of the runway must comply with the Federal Aviation Regulations at all times. Comfort Falls Aviation Estates operates the runway and taxiway for the

benefit of each Owner and their invitees. However, the runway and taxiway are not designed nor built to meet all or any industry standards or Federal Aviation Administration Advisory Circulars.

**9.29 Non-aviation use prohibited.** It is expressly understood that Comfort Falls Aviation Estates is a fly-in community and is intended to remain so in perpetuity. Accordingly, at least one Owner of each Lot must hold an airman's certificate of some type issued by the FAA, unless a variance to this requirement is specifically granted by the Association. The loss of certification, or death of the member that holds such certification, shall not require the sale of any property in Comfort Falls Aviation Estates. In addition, testamentary transfers of such property will not be subject to the airman's certification requirement. However, when any Lot is sold, such sale shall conform to the requirements of this provision. **A copy of the purchaser's Airman's Certificate must be provided to the Homeowner's Association upon execution any of earnest money contract.**

**9.30 Commercial Aircraft Activity.** No business, commercial enterprise shall be allowed or conducted on or from any residential lot, except allowable home offices, including specifically any commercial enterprise utilizing Owner aircraft or hangaring of more than two non-Lot Owner aircraft per hangar, except as otherwise specifically set forth herein.

**9.31 Sanitary Waste Systems.** All residences shall be connected to a septic system of approved construction in Accordance with the requirements of the State Department of Health of the State of Texas and any regulatory authority having jurisdiction over the sewage systems.

**9.32 Drainage.** The owner of each Lot shall design the improvements to be erected on such Lot to accommodate the owner's drainage requirements and not to the detriment of any other Lot. No damming of water, redirection of runoff or draining design which will create a drainage problem for any other Lot will be allowed.

**9.33 Permitted Commercial Activity.** Lot 45, which is not within the residential Area, as defined herein, shall be reserved and used for aviation-related commercial activities, which may include, but is not limited to, an aircraft repair and component manufacturing business, a fly-in bed & breakfast, a fly-in restaurant, a community meeting house and a fixed base operator. Additionally, if Declarant subsequently adds additional property to the development, lots within such additional property may be designated for aviation-related commercial purposes. Lot 45 is specifically granted an easement to use all Common Property, including the runway and taxiways for as long as the common areas are owned by Declarant or the Association. Should the Association ever transfer ownership of any portion of the Common Property, whether by voluntary or involuntary sale, dedication, grant, foreclosure, or otherwise, Declarant is granted a right of first refusal to purchase Lot W and all then-existing aviation improvements for \$10,000.00. Lot 45 shall pay an annual assessment as set by the Board, which shall not exceed 150% of the then current assessment for residential lots.

**9.34 No Liability.** Neither Declarant, the Association, the Committee, the Board of Directors of the Association nor the officers, directors, members, employees and agents of any of them, shall be liable in damages to anyone submitting plans and specifications to any of them for approval,

or to any Owner affected by the Declaration by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every owner agrees that it will not bring any action or suit against Declarant, the Association, the Committee, the Board of Directors of the Association, or the officers, directors, members, employees and agents of any of them, to recover any such damages and hereby releases, and waives all claims, demands and causes of action arising out of or in connection with any act, mistake, judgment, negligence or nonfeasance and hereby further waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

**9.35 Maintenance of Property.** Each Owner shall properly maintain the property and all improvements on it in a manner that preserves the integrity and quality of Comfort Falls Aviation Estates. Upon 30-day notice of correction, Declarant reserves the right to enter any Lot to perform such maintenance as necessary to repair or remove any unsightly conditions with the costs of such maintenance to be levied against the offending Owner. Owner will be invoiced with payment due in 30 days. Any unpaid invoices may cause a lien to be filed against property.

## **ARTICLE X ARCHITECTURAL CONTROL**

**10.1 Architectural Review Committee.** Architectural controls shall be supervised by an architectural review committee, hereinafter called the “Committee” consisting of either the Construction Group, as hereinafter described, or the Board in the following manner:

(a) The Construction Group shall consider and may act as the Committee only with respect to requests for approvals or variances made by or on behalf of Class B Members. Any request for approval of variances made by or on behalf of Class A Members must be considered and acted upon only by the Board under which circumstances the Board will be acting as the Committee. Provided, however, that for purposes of this section, a Class B Member shall be treated as a Class A Member commencing upon occupancy of the residence constructed on such Class B Member’s Lot.

The Construction Group shall be composed of three (3) or more individuals selected and appointed by the Declarant. The Construction Group shall use its best efforts to promote and ensure a high level of quality, harmony and conformity throughout the Property. A majority of the Construction Group’s members may act on behalf of the entire Construction Group. In the event of the death or resignation of any member of the Construction Group, the remaining members shall have full authority to designate and appoint a successor. No member of the Construction Group shall be entitled to any compensation for services performed hereunder and neither the Construction Group nor any of its members shall be liable to any Owner for any claims, causes of action or damages of whatever kind (except where occasioned by gross negligence) arising out of services performed, actions taken, or inaction in connection with any undertaking, responsibility or activity hereunder or request for same.

(b) The Board shall function as a representative of the Owners of the Lots for purposes herein set forth as well as for all other purposes consistent with the creation and preservation of a

first class residential development. The Board shall use its best efforts to promote and ensure a high level of quality, harmony and conformity throughout the Property. The Board shall:

- i. Regulate the external design, appearance, and location of the structures and improvements on the lots;
- ii. Enforce architectural guidelines consistent with the Covenants hereinafter referred to as architectural standards, and bulletins;
- iii. Insure pilots and aircraft have convenient access to the runway, formulate, review and control a comprehensive landscape plan, runway lighting (if any), signs, fencing, parking and site improvements of all types as set fourth in architectural standards, bulletins;
- iv. Inspect for compliance with these guidelines;
- v. Adopt procedures for the exercise of its duties;
- vi. Maintain complete and accurate records of all actions taken; and
- vii. Employ any staffmembers (e.g., administrative assistants) who, in the sole discretion of the Board, will assist in the performance of the Board's duties.

A majority of the members of the Board may act on behalf of the entire Board or the Board may appoint an advisory committee to act on behalf of the Board. No member of the Board or any advisory committee shall be entitled to any compensation for services performed hereunder and neither the Board, any of its members nor the members of any advisory committee shall be liable to any Owner for any claims, causes of action or damages of whatever kind (except where occasioned by gross negligence) arising out of services performed, action taken, or inaction in connection with any undertaking, responsibility or activity hereunder or request for same. Any expenses incurred by the board will be paid for by the Association.

(c) No building, structure, fence, wall or improvement of any kind or nature shall be erected, placed or altered on any Lot until all plans and specifications and/or a plot plan have been submitted to and approved in writing by the Committee as to;

- i. Quality of workmanship and materials;
- ii. Adequacy of site dimensions; adequacy of structural design; proper facing of main elevation with respect to nearby streets; conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping;
- iii. Location with respect to topography and finish grade elevation and effect of location and use on neighboring Lots and improvements situated thereon to prevent or limit obstruction of views from neighboring lots and reflectivity of metal roofs and accommodate any drainage arrangement;

- iv. The other standards set forth within the Declaration (and any amendments thereto), or as may be set forth within bulletins promulgated by the Committee on matters in which the Committee has been vested with authority to render a final interpretation and decision.

(d) Final plans and specifications shall be submitted in duplicate to the Committee for approval or disapproval. At such time as the plans and specifications meet the approval of the Committee, one completed set of plans and specifications will be retained by the Committee and the other complete set of plans will be marked "Approved" and returned to the Owner or his designated representative marked "Approved," and accompanied by a statement of complete approval or approval based upon certain conditions and specification. If found not to be in compliance with these Covenants and Restrictions, one set of plans and specifications shall be returned marked "Disapproved," accompanied by a reasonable statement of the items found not to comply with these Covenants and Restrictions. Any modification or change to the approved set of plans and specifications must again be submitted to the Committee for its inspection and approval. The approval or disapproval of the Committee as required herein shall be narrative and in writing. If the Committee, or its respective designated representative, fails to approve or disapprove such plans and specifications within forty five (45) days after the date of submission, then approval shall be presumed.

(e) On submission of a written narrative request for same, the Committee may, from time to time in its sole discretion, permit Owners to construct, erect or install improvements which are in variance from the Covenants of the Restrictions which are provided in this Declaration or which may be promulgated in the future. In any case, however, such variance shall be in basic conformity with and shall blend effectively with the general architectural style and design of Comfort Falls Aviation Estates. No member of the Committee shall be liable to any Owner or other person claiming by, through or on behalf of the Owner, for any claims, causes of action or damages arising out of the granting or denial of, or other action or failure to act upon any variance request by any Owner or any person acting for or on behalf of any Owner. Each request for variance submitted hereunder shall be reviewed separately and apart from any other request and the grant of a variance to any Owner shall not constitute a waiver of the Committee's right to strictly enforce these Covenants and Restrictions against any other Owner. Each such written request must identify and set forth in narrative detail the specific restriction or standard from which a variance is sought and describe in complete detail the exact nature of the variance sought. Any grant of a variance by the Committee must be in writing and must identify in narrative detail both the standard from which the variance is being sought and the specific variance being granted. Any variance granted by the Committee shall be considered a rule made under this Declaration.

(f) The Committee may from time to time publish and promulgate architectural standards, and/or bulletins that shall be fair, reasonable and uniformly applied and shall carry forward the spirit and intention of these Covenants and Restrictions; provided, however, that the Construction Group may publish such bulletins only with respect to Class B Members and the Board may do so only with respect to Class A Members. Such bulletins shall supplement these Covenants and Restrictions that are incorporated herein by reference. Although the Committee shall not have

unbridled discretion with respect to taste, design and any absolute standard specified herein, the Committee shall be responsive to technological advances or general changes in architectural designs and related conditions in future years and use its best efforts to balance the equities between matters of taste and design (on the one hand) and use of private property (on the other hand).

## **ARTICLE XI EASEMENTS**

**11.01 Utilities.** Easements for installation, maintenance repair and removal of utilities and drainage facilities over, under and across the Property are reserved as set forth in Section 9.09 above. Full rights of ingress and egress shall be had by Declarant and any bona fide utility company at all times over the easement areas for the installation, operation, maintenance, repair and removal of any utility together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easement or with the use, maintenance, operation or installation of such utility.

**11.02 Ingress, Egress and Maintenance by the Association.** Full rights of ingress and egress shall be had by the Association at all times over and upon the Common Properties and for the purpose of maintaining the Common Properties as set forth herein.

**11.03 Police Power Easement.** With respect to the Common Properties and streets, easements and rights of way within the Property, all governmental agencies and authorities shall have full rights of ingress, egress, regress and access for personnel and emergency vehicles for maintenance, police and fire protection, drainage and other lawful police powers designed to promote the health, safety and general welfare of the residents within the Property.

**11.04 Common Driveway. Shared Taxi Easement.** Neighboring property owners may be permitted to enter into a common driveway/shared taxiway easement agreement along their common boundary line. Such agreements must be approved by Developer and/or the Association, and must be memorialized in a written, binding easement agreement, properly recorded in the Official Records of Kendall County. The costs of construction and maintenance of such common driveways/shared taxiways shall be born by the respective Lot Owners, and such common driveways/shared taxiways shall not interfere with any existing drainage or utility easements.

**11.05 Avigation and Hazard Easement.** The Declarant, for each Lot owned within the Property, hereby covenants and agrees to the acceptance and placement of a perpetual Avigation and Hazard Easement upon the Property. The purpose and scope of the Avigation and Hazard Easement shall be for providing free and uninterrupted right-of-way for the passage of all aircraft by whomsoever owned and operated, in the air space above the Property over Fifty feet (50') above ground level to an infinite height, together with the right to cause in such air space above the Property such noise, vibration, fumes, odor or visual, and all other effects that may be caused by the operation of aircraft landing at or taking off from, or operating at, in, above, around, near or on the Property. During the life of such Avigation and Hazard Easement, any Owner of any Lot shall not erect, permit the erection or growth of, or permit or suffer to remain upon any

property under Owner's control, any building, structure, tree, or other object extending into the airspace above said Lot over Fifty feet (50') above ground level. Additionally, any Owner of any Lot shall not hereafter use or permit or suffer the use of Owner's property in such a manner as to create electrical interference with radio communication between aircraft or between any radio upon said airport and aircraft, or as to make it difficult for flyers to distinguish between airport lights or others, or to impair visibility in the vicinity of the airport, or as otherwise to endanger the landing, taking off or maneuvering of aircraft. The duration of the Avigation and Hazard Easement is perpetual.

## **ARTICLE XII GENERAL PROVISIONS**

**12.01 Registration with the Association.** In order that the Declarant and the Association can properly acquaint every Lot purchaser and every Owner with these Covenants and Restrictions and the day to day matters within the Association's jurisdiction, each and every Owner shall have an affirmative duty and obligation to originally provide and thereafter revise and update within fifteen (15) days after a material change has occurred in various matters of information to the Association such as:

- (a) The full name and address of the Owner;
- (b) The full name of each individual family member who resides within the residential dwelling of the Owner;
- (c) The business address, occupation and telephone numbers of each Owner;
- (d) The name, address and telephone number of other local individuals or family who can be contacted (in the event the Owners cannot be located) in case of an emergency; and
- (e) Such other information as may be reasonably requested from time to time by the Association.

**12.02 Power of Attorney.** Each and every Owner hereby makes, constitutes and appoints Declarant as his/her true and lawful attorney-in-fact coupled with an interest and irrevocable, for his/her and in his/her name, place and stead for his/her use and benefit to do the following:

- (a) To exercise, do or perform any act, right, power, duty or obligation whatsoever in connection with, arising out of, or relating to any matter whatsoever involving this Declaration and the Property;
- (b) To sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the terms within this Declaration, or any part thereof, with such clause(s), recital(s), covenant(s), agreement(s), and restriction(s) as Declarant shall deem necessary, proper and expedient under the circumstances and conditions as may be then existing; and

(c) To sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the subdivision plat(s) of the Property, or any part thereof, with any easements and rights of way to be therein contained as the Declarant shall deem necessary, proper and expedient under the conditions as may then be existing.

(d) The rights, powers and authorities of said attorney-in-fact to exercise any and all of the rights and powers herein granted shall commence and be in full force and effect upon recordation of this Declaration in the Kendall County Clerk's Office and shall remain in full force and effect thereafter until the tenth (10th) anniversary after the recording of this Declaration.

**12.03 Duration.** The Covenants and Restrictions of this Declaration shall run with and bind the land subject to this Declaration and shall inure to the benefit of and be enforceable by the Association and/or the Owners subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term ending January 1, 2036, after which time said covenants shall be automatically extended for two (2) successive periods of ten (10) years each unless an instrument signed by not less than seventy-five percent (75%) of the then Owners has been recorded agreeing to abolish the Covenants and Restrictions in whole or in part; provided, however, that no such agreement to abolish shall be effective unless made and recorded thirty (30) days in advance of the effective date of such change; and unless written notice of the proposal agreement to abolish is sent to every Owner at least ninety (90) days in advance of any action taken.

**12.04 Amendments.** Except as provided in Section 12.03 of this Article XII, the Covenants and Restrictions of this Declaration may be amended and/or changed in whole or in part only with the consent of Declarant and seventy-five percent (75%) of the other Owners evidenced by a document in writing bearing each of their signatures and duly recorded in the Real Property Records of Kendall County, Texas; or by a resolution passed by the majority of the Board evidencing the consent of seventy-five percent (75%) of the Owners and authorizing the president of the Association to execute such document.

**12.05 Enforcement.** Enforcement of these Covenants and Restrictions shall be by proceeding initiated by any Owner, any Member of the Construction Group, or by the Board against any person or persons violating or attempting to violate any Covenant or Restriction contained herein, either to restrain or enjoin violation or to recover damages for the violation, or both, or to enforce any lien created by this instrument. The Construction Group and each of its appointed members shall have an election and right, but not an obligation or duty to enforce the Covenants and Restrictions by a proceeding or proceeding at law or in equity. Notwithstanding any provision to the contrary in this Declaration, Declarant shall not have any duty, obligation or responsibility to enforce any of these Covenants and Restrictions. Failure by any party to enforce any Covenant or Restriction herein contained, shall in no event be deemed a waiver of the right to do so thereafter. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees from the non-prevailing party. Further, with respect to any litigation brought against the Construction Group, the Board, or any of their Members or representatives arising out of any action, failure to act or performance or non-performance of duties imposed hereby by the Construction Group, the Board or their Members or representatives, the Construction Group, the Board and/or their Members or representatives, so

sued shall be entitled to recover their reasonable attorneys' fees from the person or entity bringing such action against it or them unless the Construction Group, the Board or their Members or representatives shall specifically be adjudicated liable to any such claimant.

**12.06 Imposition of Violation Fines.** In the event that any person fails to cure or fails to commence and proceed with diligence to completion, the work necessary to cure any violation of the Covenants and Restrictions contained herein within ten (10) days after receipt of written notice from the Board designating the particular violation, the Board shall have the power and authority to impose upon that person a fine for such violation (the "Violation Fine") not to exceed five hundred dollars (\$500.00). If after the imposition of the Violation Fine, the violation has not been cured or the person has still not commenced the work necessary to cure such violation, the Board shall have the power and authority upon ten (10) days written notice to impose another Violation Fine which shall also not exceed five hundred dollars (\$500.00). There shall be no limit to the number or the aggregate amount of Violation Fines which may be levied against a person for the same violation. The Violation Fines together with interest at the highest lawful rate per annum and any costs of collection including attorneys' fees, shall be a continuing lien upon the Lot against which such Violation Fine is made.

**12.07 Severability.** If any one of these Covenants and Restrictions is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining Covenants and Restrictions shall not be affected thereby.

**12.08 Headings.** The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

**12.09 Notices to Owners.** Any notice required to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly delivered and deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the last known address of the person who appears as the Owner on the records of the Association at the time of such mailing.

**12.10 Proposals of Declarant.** The proposals of Declarant as set forth in the various provisions hereinabove to develop additional parcels of property for residential purposes and/or expand the commercial or common properties (not only geographically but also in the terms and types of amenities available for use) and items of related nature are mere proposals and expressions of existing good faith, intentions and plans of Declarant and shall not be deemed or construed as promises, solicitations, inducements, contractual commitments, or material representations by Declarant upon which any person or entity can or should rely.

**12.11 Disputes.** Matters of dispute or disagreement between Owners with respect to the interpretation or application of the provisions excluding Article IX and the issues concerning "Substantial Completion" of this Declaration, or the Association Bylaws shall be determined by the Board. Matters pertaining to Article IX and issues concerning "Substantial Completion" shall be determined by the Committee. These respective determinations (absent arbitrary and capricious conduct or gross negligence) shall be final and binding upon all Owners.

IN WITNESS WHEREOF, Comfort Falls Development LP, being the Declarant herein, has caused this instrument to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

COMFORT FALLS DEVELOPMENT LP, a Texas Limited Partnership

By:\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, Secretary

THE STATE OF TEXAS    §  
                                          §  
COUNTY OF KENDALL   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2008 by \_\_\_\_\_, President of COMFORT FALLS DEVELOPMENT LP, a Texas limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public -- State of Texas