

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ROCKY MOUNTAIN AIRPARK ESTATES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this day ____ of _____, 200 ____, by EVERITT AIRFIELD, LLC, hereinafter referred to as the "Declarant".

RECITALS:

WHEREAS, Declarant is the owner of real property described in Exhibit "A", attached hereto and incorporated herein by reference (hereinafter referred to as the "Subdivision") that Declarant plans to develop as a residential subdivision. Said subdivision shall be known as "ROCKY MOUNTAIN AIRPARK ESTATES"; and

WHEREAS, Declarant desires to submit the real property herein above set forth and any improvements thereon to the Declaration of Covenants, Conditions and Restrictions and make any subsequent transfer of lots within ROCKY MOUNTAIN AIRPARK ESTATES subject to the covenants, restrictions and conditions.

WHEREAS, the subdivided real property known as ROCKY MOUNTAIN AIRPARK ESTATES was subdivided and the plat thereof was recorded in the Office of the Clerk and Recorder, Elbert County, Colorado, on the ____th day of _____, 200 ____ at Reception No. _____.

WHEREAS, Declarant desires to create thereon a residential community, to insure the attractiveness of the Property, to prevent nuisances, and to protect the value and amenities of the Property.

WHEREAS, the following conditions, covenants, reservations and restrictions shall henceforth apply to all lots within ROCKY MOUNTAIN AIRPARK ESTATES and any amendments thereto.

NOW, THEREFORE, Declarant hereby declares that all of the property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of and which shall run with the real property and be binding on all parties having any right, title and/or interest in the described Property, or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1.1 "Additional Property" shall mean and refer to any real property lying adjacent to or in close proximity with the Property (but which does not presently comprise any part of the Subdivision that Declarant may from time to time submit and add to the provisions of this Declaration.

Section 1.2 "Air Strip" shall mean Tract B of property in the Subdivision and designated as a runway and taxi area for aircraft. Said Air Strip is owned by Everitt Airfield, LLC. **Said Air Strip is a part of the Subdivision and except as to the license to use, as may be granted by Everitt Airfield, LLC to individual owners of lots within the Subdivision, said Air Strip is not subject to these Covenants and Restrictions.**

Section 1.3 "Association" shall mean and refer to the ROCKY MOUNTAIN AIRPARK ESTATES HOMEOWNERS ASSOCIATION, its successors and assigns.

Section 1.4 "Board of Directors" shall mean and refer to the Board of Directors of the Association and their duly elected successors.

Section 1.5 "Bylaws" shall mean and refer to the bylaws of the Association, as the same may be amended from time to time.

Section 1.6 "Common Areas" shall mean and refer to all real and personal property, whether fee simple or some lesser interest, now or hereafter owned by the Association for the common use and enjoyment of the Owners. The Common Areas shall include all the recreational areas, and the walking trails within the Subdivision and any other areas or Improvements on or within the Subdivision that are designated as Common Areas by Declarant from time to time.

Section 1.7 "Declarant" shall mean and refer to EVERITT AIRFIELD, LLC, their successors or assigns.

Section 1.8 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions and all amendments, modifications, and supplements thereto as may be from time to time recorded in the Public Land Records of Elbert County, Colorado.

Section 1.9 "Governmental Authority" shall mean and refer to any and all city, county, state, and federal governmental or quasi-governmental agencies, bureaus, departments, divisions, or regulatory authorities having jurisdiction over any portion of the Subdivision.

Section 1.10 "Hangar" shall mean and refer to any building or structure designed primarily for the purpose of storing aircraft therein but shall also include all space within said Hangar that may be allocated for any other purpose such as restroom facilities, workshop, automobile garage or other equipment storage.

Section 1.11 "Improvement" shall mean and refer to any building, structure, or device constructed, erected, or placed upon any portion of the Property, which in any way affects the exterior appearance of any Lot or Common Area. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, covered patios, underground utilities, roads, driveways, walkways, paving, curbing, parking areas, trees, shrubbery, landscaping, fences, screening, walls, signs, and any other artificial or man-made changes or alterations to the natural condition of any Lot or Common Area. "Improvements" shall also mean any contiguous area of excavation or fill.

Section 1.12 "Institutional Mortgagee" The term "Institutional Mortgagee" shall mean and refer to any federal or state chartered bank, trust company, life insurance company, federal or state savings and loan association, real estate investment trust, or other recognized lending institution which normally and customarily engages in the business of making mortgage loans and shall include any institutional or governmental purchaser of mortgage loans in the secondary market, such as the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, which holds a first mortgage on any Lot or Improvement thereon, which has been duly and properly recorded in the Public Real Estate Records of Elbert County, Colorado.

Section 1.13 "Living Space" shall mean and refer to the enclosed and covered areas within a dwelling which are heated and cooled by heating, ventilating, and air conditioning equipment, exclusive of Hangars, garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics, and basements.

Section 1.14 "Lot" shall mean and refer to any portion of the Property upon which it is intended that a structure be constructed. Upon the recordation of any subdivision plat covering any portion of the Property, each lot indicated thereon shall be deemed a Lot for purposes of this Declaration. A parcel of land shall be deemed an "Unimproved Lot" until the Improvements constructed thereon are sufficiently complete to permit issuance of a Certificate of Occupancy there for. Upon such issuance, such Lot and the Improvements thereon shall collectively be considered to be an "Improved Lot" for purposes of this Declaration. In the event Declarant resubdivides any Lot, the resubdivided Lots shall constitute the number of Lots that remain after such division or combination of Lots.

Section 1.15 "Member" shall mean any person who is a member of the Association. Every person or entity who is an "owner" shall automatically be a member of the Association.

Section 1.16 "Occupant" shall mean, refer to and include any Owner, the family members, guests, tenants, agents, servants, employees, and invitees of any Owner and their respective family members, guests, tenants, agents, servants, employees, invitees, and any other person who occupies or uses any Lot within the Property. Any action or omission of any Occupant is and shall be deemed the action or omission of the Owner.

Section 1.17 "Owner" shall mean and refer to the record owner, including Declarant, of fee simple title to any Lot located within the Property, whether a corporation, partnership, proprietorship, association, or other entity of any nature, including natural persons, but shall not include (i) any mortgagee unless and until such mortgagee has foreclosed on its mortgage and purchased such Lot at the foreclosure sale held with respect to the foreclosure of such mortgage or (ii) any lessee, purchaser, contract purchaser, or vendor who has an interest in any Lot solely by virtue of a lease, contract, installment contract, or other agreement.

Section 1.18 "Property" shall mean and refer to the property which is subject to this Declaration and shall further refer to such additional property as may hereafter be annexed by Subsequent Amendment to this Declaration.

Section 1.19 "Single Family Lot" shall refer to any platted lot on which there may be constructed only one single family dwelling unit.

Section 1.20 "Subsequent Amendment" shall mean and refer to an amendment to this Declaration that adds additional property to that covered by this Declaration.

Section 1.21 "Taxiways" shall mean and refer to rights of way and/or easements as shown on the Plat whose purpose is to provide access for civil aircraft to and from the Air Strip; a Taxiway may also be over or along a street within the Subdivision, if so designated.

ARTICLE II

PROPERTY SUBJECT TO DECLARATION

Section 2.1 General Declaration. The Declarant, its successors and assigns, declares that the Property is a planned development. A portion of this planned development will include various amenities such as designated trails, walking areas, and common amenities that shall be open to all Owners of any lot within the Subdivision. The ownership of a Lot in the Subdivision shall entitle the Owner to a license of access and use in the Air Strips of the Subdivision as owned by Everitt Airfield, LLC, therefore, each Owner shall be required to enter into the Airfield Use Agreement. This license is for private civil aircraft in a residential community with aircraft-related activities. As indicated by respective sections hereof, the Property shall be subject to the easements, covenants, conditions, restrictions, charges, liens, and regulations of this Declaration and the Property and any portion thereof and each Lot and Common Area shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon, and otherwise used, improved and maintained subject to the terms of this Declaration and all of the above shall run with the title to the Property and shall be binding upon and inure to the benefit of the Declarant and upon all Owners and Occupants of the Property, inclusive.

Section 2.2 Additional Property. Declarant reserves the right in its absolute discretion, at any time, to add any Additional Property to the provisions of this Declaration. The Additional Property need not be consented to or approved by any Owner or Occupant of any Lot and Declarant shall subject any Additional Property to this Declaration by an instrument executed by Declarant in the manner required for the execution of deeds and duly and properly recorded, which instrument shall be deemed an amendment to this Declaration and shall contain an exact description of Additional Property, state any differences that Declarant, in its sole discretion, specifies to regulate and control the use of said Additional Property, and contain a statement that the Additional Property is

conveyed subject to the provisions of this Declaration. Any added property must comply with and be approved by Elbert County. After submission of any Additional Property to the terms and provisions of this Declaration, the number of Lots or Improved Lots within the Additional Property shall increase the number of votes in the Association so that there shall continue to be one vote in the Association per Lot within the Property.

Section 2.3 Development and Subdivision of the Property as a Whole. Subject to the Subdivision ordinances of Elbert County, the Declarant has the right to combine and redivide any Lots owned by Declarant, and to record, amend, revise, and otherwise add to a subdivision plat, including, without limitation, locations and dimensions of all Lots, Common Areas, Additional Property, public or private roads, utility and drainage systems, utility, drainage and access easements, set-back line restrictions, lakes, retention ponds, and drainage basins. Any and all amendments shall be binding on the portions of the Property so indicated as if such subdivision plat were incorporated into this Declaration.

ARTICLE III

EASEMENTS

Section 3.1 Grant of Nonexclusive Easements to Owners.

Section 3.1(a) The Property is hereby made subject to the terms and conditions and encumbrances upon the Property as set out in the certain Avigation and Hazard Easement as granted by EVERITT AIRFIELD, LLC and as recorded in the Public Land Records of Elbert County, Colorado. In brief, said document waives the right of protest and suit by any person owning property within this Subdivision as a result of the operation of aircraft in the vicinity of, or over, the property of the Lot Owner resulting from run-ups of the aircraft, the taxi to or from, or the landing or takeoffs from, the Airstrip known as Everitt Airfield Airstrip, located adjacent to the Property.

Section 3.1(b) Declarant does hereby grant to each Owner and Occupant of a Lot within the Subdivision, their heirs and assigns, the nonexclusive easement of access to and the use and enjoyment of the Common Areas, Private Streets, Taxiways, and Amenities as contained within the Subdivision, subject to terms and conditions of this Declaration and the rules, regulations, fees, and charges that may be established from time to time for the maintenance and care of such.

Section 3.1(c) The nonexclusive easement as granted to the Owners for use of the Common Areas, Private Streets, Taxiways and Amenities within the Subdivision shall each be permanent and perpetual and shall pass with title to the respective Lot within the Subdivision. The Association shall have the right to adopt and enforce rules and regulations for use of such, provided that such rules and regulations do not conflict with this declaration and provided further that such rules and regulations shall be consistent with good safety practices and with all Federal, state and local statutes, rules, regulations and ordinances with respect to civil aircraft operations on private airport facilities.

Section 3.2 Reservation of Easements to Common Areas. There is reserved unto the Declarant, the Association and their respective agents, employees, representatives, invitees, heirs, successors, and assigns, without obligation, a permanent and perpetual nonexclusive easement appurtenant over, across, through and upon each Common Area for the purpose of Improvements, maintenance, installation, repair, and replacement as necessary for the Common Areas and inspection of Lots in order to determine compliance with the provisions of this Declaration. With reference to access to the Common Areas, Declarant shall not exercise such right so as to unreasonably interfere with the rights of the Owners to use and enjoy the same.

