

RESTATED DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND
RESTRICTIONS AFFECTING THE REAL PROPERTY OF WAVERLY ACRES

THIS DECLARATION, made on the date hereinafter set forth by JT Venture, L.L.C., James W. Vial and Ted A. Criel, Jr., hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is presently the owner of all of the real property described in Article I hereof and is desirous of subjecting said property to the protective covenants, restrictions, reservations and servitude's hereinafter set forth, each and all of which is and are for the benefit of said property and of each present and future owner thereof, or of any part thereof, and shall inure to the benefit of and pass with said property and each and every part thereof, and shall apply to and bind every present and future owner of said property, or any part thereof, and their and each of their heirs, successors and assigns.

NOW, THEREFORE, Declarant hereby creates, declares and establishes in the herein described properties in Walker County, Texas, the following protective covenants, conditions and restrictions upon the lands within said subdivision, which protective covenants, easements, conditions and restrictions shall run with the land, and remain in full force and effect in perpetuity.

ARTICLE I
PROPERTY

The real property which is and shall be held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions, restrictions, servitude's and easements with respect to the various portions thereof set forth in the various paragraphs and subdivisions of this Declaration is located in Walker County, Texas, and is more particularly described as follows: 186.9801 acres of land being in the Miles Whitley League, A Junior Survey Within The J.M. DeLaGARZA GRANT, Abstract #22.

All lots as described herein, being lots 1 through 33 and lots L through X of said Re-plat of WAVERLY ACRES SUBDIVISION according to the Plat recorded in Volume 3, Page 44 of the Plat Records of Walker County, Texas.

ARTICLE II

PROTECTIVE COVENANTS, GENERAL CHARACTER AND INTENT

Section 1. General Purpose of Protective Covenants, Conditions Restrictions and Easements.

The real property described in Article I hereof is subject to the protective covenants, restrictions, conditions, servitude's and easements hereby declared to insure the best and the most appropriate development and improvement of each lot thereof; to protect the owners of lots against such improper use of surrounding lots as will depreciate the value of their property; to insure the development of said property into an aerodrome community populated with residents interested in the promotion, development and participation in the skill and sport of flying aircraft and matters incidental thereto; to encourage and secure the erection of attractive homes thereon; to secure and maintain proper setbacks from streets, taxiways, runways and adequate free spaces between structures; to maintain and control all common areas for the benefit and enjoyment of all residents as described herein; and, in general, to provide adequately for a high type and quality of improvement in said property and thereby enhance the value of investments made by purchasers of lots therein.

Section 2. General Character and Intent.

WAVERLY ACRES is hereby established first and foremost as a live in fly-in community for individuals who enjoy the hobby and sport of aviation, while maintaining a country style atmosphere. All home sites are adjacent to a private airport and are within the traffic

pattern. There will be continual and various flying and flying oriented activities connected with all facets of aviation. All purchasers of lots in the subdivision shall be deemed by their acquisition of such lot to agree to the perpetual operation of the airport for the benefit of all owners of lots within the development

The development taxiways, runway and other improvements and common areas within the development will be owned and maintained by the WAVERLY ACRES HOMEOWNERS ASSOCIATION, INC., of which each lot owner will be a member. Use of this concept will help ensure the lot owners the utmost in security and continual beautification and upkeep of the community. In return, each owner will be expected to participate in their fair share of maintaining the community to these high standards.

Section 3. Aviation Activities Waiver.

All purchasers of property in WAVERLY ACRES acknowledge that they are aware this is a fly-in community and that a private airport is contained within this community and buyer / occupant hereby waives all and any objections to aviation activities carried out on or connected with the airport.

Section 4. Acceptance of Protective Covenants, Conditions and Restrictions.

Every purchaser, lessee or grantee of any interest in any property now or hereafter subject to this declaration, by acceptance of a deed, lease or other conveyance thereof, thereby accepts and agrees to abide by the protective covenants, conditions and restrictions of this Declaration or any Supplemental Declaration.

Section 5. Assurance of Continued Operation and Maintenance as a Private Airport.

Inasmuch as WAVERLY ACRES is developed for individuals involved in the sport and hobby of aviation, every purchaser, lessee or grantee of any interest in any property now or hereafter subject to this declaration, by acceptance of a deed, lease or other conveyance thereof, thereby agrees that, so long as any individual with any interest in any property within this community desires to pursue the sport and hobby of aviation and notifies the Association in writing of such intent, the runway and taxiways shall remain and be maintained as such.

ARTICLE III

Definition of Terms

Section 1. Dwelling, Building, Outbuilding.

The words "Dwelling", "Building" and "Outbuilding" wherever used in this Declaration shall be deemed and construed to include both the main portion of such structure and all projections therefrom, including any garages, hangars, porches, stoops, porticoes, exterior chimneys and the like, incorporated in or forming a part thereof.

Section 2. Lot.

The words "Lot" wherever used in this Declaration mean and refer to one of the numbered lots or blocks of land described in Article I hereof, as shown on the plat herein above referred to. The numbers following the word "Lot" refer to the particular lot or lots, block or blocks so numbered on the aforesaid plat.

Section 3. Said Plat.

The words "Said Plat" wherever used in this Declaration mean and refer to the Plat referred to in Article I hereof.

Section 4. Said Property.

The words "Said Property" wherever used in this Declaration mean and refer to the property described in the aforesaid Article I hereof.

Section 5. Setback.

The term "Setback" wherever used in this Declaration means the distance between dwellings or other structures referred to and the

street, side, taxiway and runway or real lines of the particular lot.

Section 6. Street, Road or Dual Use Street or Road.

The term "Street", "Road" or "Dual Use Street" or "Dual Use Road" wherever used in this Declaration means and refers to any street, road or other thoroughfare shown on said Plat, or contiguous to the real property designated on said plat which shall be designated as dual use for the purposes of automobile traffic, and aircraft taxiing to or from a lot owners property to any taxiway or runway.

Section 7. Association.

The term "Association" wherever used in this Declaration means and refers to WAVERLY ACRES HOMEOWNERS ASSOCIATION, INC.

Section 8. Board of Directors.

The term "Board of Directors" wherever used in this Declaration means and refers to the Board of Directors of the Association.

Section 9. Common Area.

The term "Common Area" wherever used in this Declaration means and refers to all real property, personal property and the total area dedicated to and maintained by the Association and other improvements, including all surface water management system drainage swales, catchment areas, culverts and control structures.

Section 10. Runway.

The term "Runway" wherever used in this Declaration means and refers to the total common area dedicated to the Association for the exclusive use of aircraft taking off and landing.

Section 11. Taxiway.

The term "Taxiway" wherever used in this Declaration means and refers to the total common area dedicated to the Association for the exclusive use of taxiing aircraft.

Section 12. Hangar.

The term "Hangar" wherever used in this Declaration means and refers to the building designed primarily for the purpose of storing aircraft therein but shall also include all space therein allocated for any other purpose such as restroom facilities, workshop, automobile garage or other equipment storage.

Section 13. Fuel.

The term "Aviation Fuel" wherever used in this Declaration shall mean any fuel used to propel an aircraft whether such fuel be strictly aviation fuel or automobile gasoline or otherwise.

Section 14. Utility Easement.

The term "Utility Easement" wherever used in this Declaration shall mean and refer to an easement over, under, through and across an area identified on the recorded plat for the purpose of maintaining utilities, including but not limited to, water, electric, sewer, telephone, cable television and natural gas.

ARTICLE IV

PROPERTY OWNERS ASSOCIATION

Section 1. Creation and Establishment.

There shall be created and established a non-profit Texas corporation known as the WAVERLY ACRES HOMEOWNERS ASSOCIATION, INC.

Section 2. Purposes of the Association.

The purpose of the Association shall be all of the purposes set forth in the Articles of Incorporation of the Association. The Association shall provide an entity for all execution, performance, administration and enforcement of all of the terms and conditions of this Declaration and specifically to provide for the care and maintenance of the entire common areas and equipment, such as runways, taxiways, and drainage systems.

Section 3. Membership.

Each owner of a lot, as defined by this Declaration, by virtue of such ownership, shall be a member of the Association and by acceptance of a deed or instrument of conveyance for the acquisition of title in any manner, accepts such membership and acknowledges the authority of the Association to act as provided herein and as provided in the Articles and Bylaws of the Association.

Section 4. Voting Rights.

The Association shall have two classes of voting membership.

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one person or entity holds an interest in any Lot, all such persons or entities shall be members. The vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. Class B members shall be the Declarant and shall be entitled to three (3) votes for each lot owned. For purposes of determining the number of lots owned by the Declarant, Declarant shall be deemed to own forty-six (46) Lots less the number of Lots previously conveyed.

Section 5. Control of Association.

Control of the Association shall be held by a majority vote of its members as said votes are set out in Section 4 of Article IV.

Section 6. Common Areas Dedicated to the Association.

All taxiways, runways, easements, overrun areas and all other common areas are to be dedicated to the Association and non-lot owners may be charged fees for the use of said facilities by the Association. Declarant shall dedicate and convey the fee simple title to the Common Area(s) to the Association free and clear of all encumbrances and liens, except utility easements and other matters of record.

Section 7. Non Compliance.

The failure of any owner to comply with the provisions of this declaration, the By-Laws, and the Articles of Incorporation of the Association, as amended from time to time, will give rise to a cause of action in the Association and any aggrieved owner for the recovery of damages, or for injunctive relief, or both.

Section 8. Development by Declarant.

The Association at no time shall interfere or prevent the Declarant or its assigns from any construction, sales, promotion, or utilization of a temporary sales office or any other function necessary or convenient for the Declarant to completely develop and sell Said Property in accordance with this Declaration.

ARTICLE V

SITES AND DWELLINGS - USES PERMITTED AND PROHIBITED

Section 1. Lots for Single Family Residences Only.

No Lot shall be used for any purpose other than single family residence purposes, except as permitted herein for the Association on Common Areas. There shall not exist on any Lot at any time more than one residence and one hangar, and all residences constructed thereon shall be permanent, and no Lot shall be used by more than one family. This does not prohibit an apartment contained within a dwelling for the exclusive temporary use of guests or servants.

Section 2. Temporary Residences Prohibited in General.

No owner, or his heirs or assigns, shall at any time use as a residence, temporarily or permanently, a trailer, camper, mobile home, tent, shack, garage, hangar, barn, car, street car, truck, bus or other outbuilding.

Section 3. Hangar And Tie-Down Space for Private Use Only

The airplane hangar or tie-down space on each Lot shall be limited to strictly private use and only by the owner of the property on which the hangar or tie-down space is located except as permitted herein. No person who is not a member of the Association shall be permitted to store, tie down or hangar any aircraft on Said Property without the express written permission of the Association. The Association shall have the authority to specify the terms and conditions under which a non member's aircraft may be stored, hungared or tied down. The above applies to any aircraft not solely owned by a member of the Association.

Section 4. Airworthy Aircraft Permitted Outside Tie-Down.

Lot owners shall have the right to tie down an aircraft owned by them outside of a hangar only if it is in airworthy condition as defined by current Federal Aviation Regulations (FARs), except as permitted by the Association in writing.

Section 5. Fuel Storage.

On-site storage of fuel (aviation or automotive fuels), other than home heating fuel or fuel in vehicles, in excess of five (5) gallons in individual aircraft hangers, shelters or on individual residential Lots is prohibited.

Section 6. Parking of Any Vehicle on Common Areas Prohibited.

No motor vehicle or aircraft of any kind shall at any time be parked or tied down on any of the taxiways, overruns, runway, roadways or rights-of-way, except as permitted by the Association in writing.

Section 7. Association Shall Control Runway Use.

The Association shall have the right to control the use of the runway and taxiways and may prohibit the use of the runway or taxiways by any aircraft deemed unsafe to either the life or health of individuals or the condition and maintenance of the field by virtue of its size, design or state of repair.

Section 8. Lot Owner to Maintain Their Property.

Each owner, his heirs or assigns will maintain each Lot owned by him in a clean and sightly condition at his own expense in such a manner as to conform with the maintenance of the surrounding lots and established level of quality of improvement within the community. Appropriate action may be taken by the Association to protect homeowners where necessary.

Section 9. Association to Make Rules Affecting Airport Grounds and Operation

The Association shall have the right to make rules and regulations relative to the easements, taxiways, runway, air traffic patterns around the airport, grounds and related facilities, affecting the use of said premises, and all Lot owners agree to comply with said rules and regulations and are subject thereto, including any such rules and regulations that may be added from time to time.

Section 10. Changes to Lot Grade or Elevation.

In order to preserve and maintain proper drainage in the subdivision, no changes in grade or elevations of any Lot, including the swale and catchment areas shall be made without prior written permission of the Association.

Section 11. All Buildings to Be Properly Maintained.

All buildings, including hangars, must be kept painted and properly maintained and free of junk and other unsightly accumulations by the owner.

Section 12. Antennae Heights Shall Not Exceed 50 Feet.

No wires, antenna aeriels or other equipment shall be installed upon the exterior of any building or freestanding at a height of more than 50 feet from ground level. Said antennae or equipment shall in any event be subject to FAA and FCC regulations concerning obstructions placed in the vicinity of airports.

Section 13. Nuisances Prohibited.

There shall not be erected, constructed, suffered, permitted, committed, maintained, used or operated on any of Said Property any nuisance of any kind or character.

Section 14. Unsightly Materials Prohibited.

No rubbish, garbage, debris, junk, junk vehicles or unsightly material shall be deposited on any of the Lots at any time except building material during the course of construction on the site.

Section 15. Annoying Activities Prohibited.

Noxious or offensive activities shall not be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance to the neighborhood. Outside toilets or privies are expressly prohibited, except where required for construction purposes.

Section 16. Commercial Businesses Prohibited.

No commercial business of any type shall be permitted on residential Lots; however, nothing herein contained shall be construed as preventing the Association from erecting and maintaining facilities of a recreational or community nature or facilities incident to the use, care and maintenance of the runway, taxiways, common areas and easements. The Association shall be permitted to construct and maintain facilities for the sale of fuel to homeowners. No one may use the airport or runway for commercial activity or for self-enterprise, for example, but not limited to, student pilot training, crop dusting, aircraft charter, and freight operations.

Section 17. Animals.

No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except as provided herein. It is understood however, that this restriction shall not be construed to prohibit the keeping of a reasonable number of domestic animals for family pleasure, provided that the domestic animals must be restrained by fence or other appropriate protective restraint, and all such animals must be stabled at the farthest possible point from the adjoining property, and all appropriate measures must be taken by the Lot owner to eliminate and prevent offensive odors and any unsightly accumulation from said animals. Horses will be permitted only on Lots L through X and will be limited in number, to one (1) for the first three (3.0) acres and one (1) for each subsequent two (2.0) acres.

Section 18. All Animals to Be Kept From Runway.

Notwithstanding the provisions of Section 17 of this Article, at no time are any domestic animals or pets allowed on the runways, taxiways and overruns. Horses and riders shall, in all cases, yield right-of-way to taxiing aircraft. All appropriate measures must be taken by said animals' owners to eliminate and prevent any unsightly accumulations from said animals.

Section 19. Lot Owners Bound By Common Area Insurance Policy Terms.

All lot owners agree to be bound by and to abide by the terms of any and all provisions of any insurance policies upon the roads, easements, runway, taxiways and other common areas.

Section 20. Exposed Vehicles and Aircraft.

Parking and keeping of travel trailers, motor homes, boats or trailers, large tractor trucks, or other such recreational vehicles or other equipment of similar nature and use shall be permitted to be parked or stored inside a fully enclosed garage or hangar. No disassembled aircraft shall be kept, parked or stored in any open area

Section 21. Driveway and Taxiway Turnouts and Culverts.

All driveway and taxiway connections from any Lot to roads and taxiways, respectively, in order to provide access to individual home sites, shall first be approved by the Association according to

Section 6 of Article VI of this Declaration. All culverts and end walls or slope ends required to be installed in the right of-way shall meet and generally conform to specifications as provided by the Association as to location, configuration and quality.

Section 22. Well and Septic Tank Locations.

No wells, septic tanks or other devices may be used to penetrate the ground surface for the purpose of obtaining ground water or providing a sewage system without the express prior written approval of the Association as to size and location on Lot of well and septic tank or sewage system. All installations shall be in strict accordance with local governing regulations and all septic systems shall be of the aerobic type.

Section 23. Fences.

Fencing shall be installed so as to prevent and discourage unauthorized entry to the property, runway, taxiways and trespassing by outside persons, but not obstruct natural views or be considered unsightly by the Association. No fence shall be erected along any street line, runway line, or taxiway line nearer than the utility easement along the road line or nearer than fifteen (15) feet along the runway or taxiway line. In no case shall any fence or wall be constructed without the Association approval as to type, size and color as provided for in this Declaration.

Section 24. Outdoor Lighting.

Any outdoor lighting positioned and installed by a Lot owner shall be of such a nature and type so as not to present a hazardous or confusing condition to night air operations which may be conducted from said airport.

Section 25. Re-subdivision.

The Declarant shall be entitled to the right to subdivide or resubdivide Lots as they see fit so as not to be any smaller than six tenths (.6) of an acre. No Lot shall be otherwise divided or re subdivided by any Lot owner unless both portions of said Lot shall be used to increase the size of an adjacent Lot.

Section 26. On-Site Disposal of Environmentally Sensitive Substances Prohibited.

Disposal on site of Said Property of any substances which may be considered toxic or environmentally sensitive is expressly prohibited. Disposal of any substances which may contaminate the ground water of the subdivision or the surrounding area is prohibited. These substances include, for example, but are not limited to, paints, solvents, cleaning fluids, paint strippers, fuels and oils.

Section 27. Dedication of Roads and Utility Easements.

All roads and utility easements within the recorded subdivision as indicated on the Partial Replat of Waverly Acres Subdivision as described herein will be dedicated to the use of the public forever. Said roads will be designated as dual use roads for the purposes of aircraft taxiing to or from a Lot owner's property to any runway or taxiway and for automotive traffic. Moving aircraft shall have the right-of-way at all times. Automotive traffic must yield to aircraft on dual use roads or streets and at all taxiway crossings.

ARTICLE VI

SIZE AND LOCATION OF STRUCTURES AND APPROVAL OF PLANS

Section 1. Single Family Dwellings to Be 2500 Square Feet Minimum.

All single family dwelling houses erected, constructed or maintained upon any of the lots herein described shall have a square foot area exclusive of porches, terraces, porticoes, patios and garages of at least two thousand five hundred (2500) square feet.

Section 2. Maximum Hangar Size to Be 5000 Square Feet; Structure to be Permanent.

All aircraft hangars are subject to the architectural review provisions provided herein. All hangars erected, constructed or maintained upon any of the Lots shall be fully enclosed permanent structures and shall not exceed 5000 interior square feet, which size shall include any space allocated for workshop, restroom facilities, storage area or any other purpose. The Association may reject any design feature of the hangar for any reason whatsoever.

Section 3. Hangar Construction- Before Dwelling House.

Hangars, which are unattached, may not be built before the dwelling house.

Section 4. Structures to Be Completed Within One Year.

Any structure started on this subdivision must be completed within one (1) year from the commencement thereof. For the purposes of this Section "commencement" shall mean the digging of footers or the placing of foundation forms in the preparation for pouring of the foundation. Completion of construction shall, as to any residential structure, be evidenced by issuance of a certificate of occupancy, and as to any accessory structure, shall mean visible exterior completion, including painting or other final finishing, such that the buildings shall appear to be complete to a reasonable observer. Anything herein above to the contrary notwithstanding, the one year limitation as to completion shall not apply to any commercial lender which acquires title by foreclosure of a mortgage or deed in lieu of foreclosure; and any purchaser of a Lot from such mortgagee shall have one year from the date of the transfer of title from such mortgagee within which to complete any construction commenced prior to transfer, but incomplete at the time of transfer.

Section 5. Establishment of Architectural Review Committee.

WAVERLY ACRES is designed as an intimate residential aviation community with strict architectural controls which allows aircraft owners and pilots convenient access to their aircraft. To insure that the property will be developed harmoniously and that consistency is maintained throughout the Development, an Architectural Review Committee will be established to review, control and approve all site improvements including structures of all types.

The initial Architectural Review Committee shall consist of at least three (3) members but not more than seven (7), designated by Declarant, or its designees. At such time as the Development is substantially completed (at least 75%), Declarant or its designees, may relinquish the powers of the Architectural Review Committee to the Association. At such time, the Board of Directors shall appoint a committee of at least three, but not more than seven persons, to constitute the Architectural Review Committee and shall promulgate such guidelines as may be necessary to implement the architectural review process not inconsistent with established practice.

The Architectural Review Committee shall regulate the external design, appearance, and locations of the Properties and improvements thereon in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

Section 6. Architectural Review Committee Building Approval Required.

No building, outbuilding, fence, wall, retaining wall or other structure of any type shall be constructed, erected, placed or permitted to remain on Said Property, nor shall construction or erection commence, unless the Architectural Review Committee established herein shall have approved in writing the detailed drawings, plans, specifications, exterior colors, materials, plat plan, drainage plan, layout and landscaping plan of such proposed building or buildings and building site. Likewise, once a building has been constructed according to plans approved by said Architectural Review Committee, no structure, alteration or addition shall change the external elevations, design, or appearance of said building unless detailed plans and specifications for such structure, alteration or addition have been approved in writing by said Committee. The refusal by the

Architectural Review Committee to approve plans submitted hereunder may be based upon any grounds including purely aesthetic, which in the sole and uncontrolled discretion of said Committee may seem sufficient provided, however, that said Committee shall have a period of forty-five (45) days after any plans and specifications have been last submitted under the terms of this declaration within which to examine such plans and specifications and render its approval or disapproval. Should the Architectural Review Committee fail to approve or disapprove such plans and specifications within said forty-five (45) day period then such approval shall not be required, provided that the proposed building may not violate any of the other restrictions set forth herein, or any provisions of the building and zoning ordinances of Walker County.

Section 7. Preliminary Plans Approval to Facilitate Ultimate Final Approval.

In order to facilitate preparations and ultimate approval of the final plans and specifications hereunder, said Committee shall review preliminary drawings, plot plans, elevations, exterior colors, materials, and specifications in advance of their submission for final approval and indicate its objections or recommendations. Thereafter, as more detailed plans and specifications are developed, said Committee may not refuse approval of same as long as the final product conforms substantially with the preliminary plans and specifications previously approved. No structural alterations in the exterior appearance of buildings or structure, whether existing or proposed, shall be made without like approval.

Section 8. Two Sets of Plans and Specifications Required.

Two sets of complete plans and specifications for any building or structure planned on this subdivision and two plot plans indicating and fixing the exact location of such structures or such altered structure on the lot with reference to the street and side lines thereof shall be first submitted in writing for approval and approved in writing by the Association.

Section 9. Association Shall Endorse Both Sets of Plans.

Approval of plans, specifications and location of buildings by the Association shall be endorsed on both sets of said plans and specifications, and one set shall forthwith be returned by the Association to the person submitting the same.

Section 10. Association Approval Not Waiver of Features in Subsequent Plans.

The approval of the plans or specifications submitted for approval, as herein specified, shall not be deemed to be a waiver by the Association of the right to object to any of the features or elements embodied in such plans or specifications if and when the same features and elements are embodied in any subsequent plans and specifications submitted for approval for use on other Lots.

Section 11. Structures Shall Be Erected in Accordance With Approved Plans.

After such plans and specifications and other data submitted have been approved by the Association, no building, outbuilding, fence, wall, retaining wall, or other structure of any kind shall be erected, constructed, placed, altered or maintained upon said property unless the same shall be erected, constructed or altered in conformity with the plans and specifications and plot plans theretofore approved by the Association. If any building, outbuilding, fence, wall, retaining wall, or other structure of any kind shall be erected, constructed, placed, altered or maintained upon said property other than in accordance with the plans and specifications and plot plans theretofore approved by the Association, such erection, construction, placing, alteration and maintenance shall be deemed to have been undertaken without the approval of the Association ever having been obtained as required by this Declaration.

Section 12. Compliance With Plans Approvals.

After the expiration of one year from the date of completion

of any structure or alteration, such structure or alteration shall be deemed to comply with all of the provisions of Article VI hereof unless notice to the contrary shall have been recorded in the Office of the Clerk of the County Court, in and for Walker County, Texas, or legal proceedings shall have been instituted to enforce such compliance.

Section 13. Association Inspection Of Structure Under Construction.

The Association may at any reasonable time enter and inspect any building or property under construction or on or in which the Association may believe that a violation of the covenants, restrictions, reservations, servitude's or easements is occurring or has occurred.

ARTICLE VII

OTHER DECLARATIONS AND RESTRICTIONS

Section 1. Setbacks and Free Spaces of Buildings.

No building and no addition to any building and no structure shall be erected, placed or maintained on any Lot nearer than fifty (50) feet to the main runway line, twenty five (25) feet to the taxiway or road right of way line, twenty (20) feet to the side or rear Lot lines. Anything in this Section to the contrary notwithstanding, in the event one Lot, or a portion thereof, and the whole or a portion of a contiguous Lot, all in one ownership shall be used as one building site for one structure and its appurtenant outbuildings permitted by this Declaration, then while so owned and used, the side lines and the rear line of such site shall, for the purposes of this Article be deemed to be the side Lot line and the rear Lot line of such site.

Section 2. Easements.

The Declarant reserves unto itself, its successors and assigns, or designated representative, a perpetual, alienable or releasable easement for roadway slopes, drainage, sewers, water, cable television, electricity, telephone, and other utilities along, under, around, adjacent to, and across the Lots which are subject to these restrictions. Such shall include the right to excavate for, place, cover, repair, and do everything necessary or desirable to maintain the same in a workmanlike manner and proper condition. This right shall be exercised in such a manner as to preserve the greatest amount of natural growth and vegetation and do the least amount of injury to the Lots, consistent with the most feasible location of, and proper construction of any improvements to, said easements. The location of these easements and the construction of any improvements thereto shall be as shown on the subdivision plat. Within these easement areas, no structure, plants, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities. The easement areas of each Lot and all improvements on it shall be maintained continuously by the owner of said Lot. Declarant may further cut drain ways for surface water wherever and whenever such action may appear to Declarant to be necessary in order to maintain standards of health, safety and appearance. Such rights may be exercised by Declarant, but this reservation shall not be considered an obligation of the Declarant to provide or maintain any such utility or service.

In addition to easements shown on the recorded plat, the Declarant specifically reserve a ten (10) foot easement running along all the Lot lines bordering a runway and taxiway to help ensure adequate wing clearance for taxiing aircraft.

Section 3. Access of Easements Reserved.

No dwelling house, garage, outbuilding, or other structure of any kind shall be built, erected or maintained upon any easements, reservations or rights-of-way, and easements, reservations or rights-of-way shall, at all times, be open and accessible to public and quasi-public utility corporations, and other persons erecting, constructing or servicing such utilities and quasi-public utilities, and to Declarant, its successors and assigns, all of whom shall have the right of ingress and egress thereto, and

therefrom, and the right and privilege of doing whatever may be necessary in, under and upon said locations for the carrying out of any of the purposes for which said easements, reservations and rights-of-way are reserved, or may hereafter be reserved.

Section 4. Signs.

No signs or other advertising device of any character shall be erected, posted, pasted, displayed or permitted upon or about any part of a Lot except as permitted herein: one sign of not more than three (3) feet square in area advertising the property for sale; the owner may display on his Lot a name and address sign referring only to the premises on which displayed; nothing contained herein shall preclude Declarant and/or the Association from erecting such signs as may be deemed necessary and proper incident to the utilization of the easements, taxiways and runway and related facilities; nothing contained herein shall preclude the Declarant and Developer from erecting signs and lot markers for the purposes of selling said Lots.

Section 5. Firearms.

There shall be no discharging of firearms on Said Property at any time.

Section 6. Aircraft Operations and Visiting Pilots.

The runway will be private, restricted and all aircraft, except as provided in Section 7 of this Article, based at Waverly Acres shall be registered to the Lot owners or a corporation, all of the stock of which is owned by a Lot owner. Moving aircraft shall have the right-of-way at all times. Automotive traffic must yield to aircraft on dual use streets or roads and at all taxiway crossings. Aircraft shall "run-up" only in areas designated by the Association. But in any event the run-up shall not be done in such a manner as to cause inconvenience or damage to the property of others. In any event, no low-level flying stunts nor other hazardous activities will be permitted about the Subdivision. Each owner is required to strictly observe all Federal, State and Local Statutes, Regulations or Ordinances relative to the operation of civil aircraft. The designated unicom frequency will be used for takeoffs and landings by all aircraft equipped with radios.

Visiting aircraft pilots, together with the occupants of their aircraft shall comply with all the provisions of this Declaration with respect to aircraft and otherwise. All pilots, except as provided in Section 7 of this Article, wishing to visit Waverly Acres for the first time should request liability waiver forms, sign and return said forms to the Association before beginning a flight to Waverly Acres. All visiting pilots must check on current runway conditions and status before flying into Waverly Acres.

Section 7. Lifelight, Law Enforcement and Emergency Services Usage.

Use of the runway and taxiways for Lifelight, Law Enforcement and Emergency Services is permitted and encouraged to support the community's medical and emergency needs.

Section 8. Runway and Taxiway Vehicular Traffic.

With the exception of motorized equipment necessary to maintain the runway and taxiways, no motorized vehicle, to include but not limited to cars, trucks, all terrain vehicles, motorcycles, go carts, or tractors are allowed on the runway or taxiways.

ARTICLE VIII
INSURANCE

Section 1. Association.

The Board of Directors or its duly authorized agent shall have the right and power to obtain insurance to the extent reasonably available for all improvements on the Common Areas against loss or damage in an amount sufficient to cover 100 percent (100%) of the replacement cost of any repair or reconstruction work in the event of damage or destruction from any reasonable hazard, and shall also obtain a broad form public liability policy covering all Common

Areas and activities of the Association. In the event of damage or destruction to property insured by the Association by fire or other casualty, the Board of Directors shall, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the property to as good condition as formerly enjoyed. In the event the insurance proceeds are insufficient to pay all costs of repairing or rebuilding of such destroyed improvement, the Board of Directors shall levy a special assessment against all owners to make up such deficiency. In the event the insurance proceeds exceed the cost of repair, the excess proceeds shall be distributed to the respective owners and mortgagees as their interests appear.

Section 2. Homeowners.

It shall be the individual responsibility of each owner to provide, as he sees fit, insurance on the improvements on his Lot in the event of damage or destruction from all reasonable hazards. Each owner shall provide as he sees fit homeowners liability insurance, theft and other insurance covering personal property damage or personal liability loss.

Section 3. Aircraft Liability Insurance.

Every owner or user of a licensed aircraft, which is based on Said Property, shall provide the Association with a current Certificate of Insurance for aircraft liability. Failure to provide the Certificate of Insurance and to maintain such insurance shall result in the automatic suspension of the owner or user's right to use the Common Area.

ARTICLE IX.

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

The Declarant, for each Lot owned within said Property, hereby covenants and each owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

Annual assessments or charges which shall be mandatory for the maintenance and repair of Common Areas and facilities; and

Special assessments for capital improvements; such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest at the maximum rate allowable by law, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Any such lien will be subordinate to the lien or equivalent security interest of any first mortgage on the Lot recorded prior to the date any such common expense assessments become due. Each such assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. Annual and special assessments are levied by the Association and shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Areas. Annual assessments shall include, and the Association shall acquire and pay for, out of the funds derived from annual assessments, the following:

- (a) Maintenance and repair of the Common Areas, Equipment and related expenses.
- (b) Acquisition of furnishings and equipment for the Common Areas as may be Determined by the Association.
- (c) Maintenance and repair of drainage ditches within the confines of the Property.

- (d) Fire insurance covering the full insurable replacement value of the Common Areas and improvements with extended coverage.
- (e) Liability insurance insuring the Association against any and all liability to Public, to any owner, or to the invitees or tenants of any owner arising out of their occupation and /or use of the common area. The policy limits shall be set by the Association.
- (f) Workman's compensation insurance to the extent necessary to comply with Applicable law, and any other insurance deemed necessary by the Board of Directors of the Association.
- (g) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Association is required to secure or pay pursuant to the terms of this Declaration or by law or which shall be necessary or proper in the opinion of the Board of Directors of the Association for the operation of the Common Areas for the benefit of Lot owners or for the enforcement of these restrictions.

Section 3. Maximum Allowable Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum allowable annual assessment shall be \$500.00 per Lot per year.

- (a) From and after January 1 of the year immediately following the sale of the first Lot to an owner, the maximum allowable annual assessment may be increased by the Association each year not more than six percent (6%) above the maximum allowable annual assessment for the previous year without a vote of the membership.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum allowable annual assessment may be increased above six percent (6%) by an affirmative vote of two-thirds (2/3) of all members. Voting shall be in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to the year only for the purpose of defraying, in whole or part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, provided that any such assessment shall have the affirmative vote of two-thirds (2/3) of all members, provided, however, the affirmative vote of 90% of all members shall be required to levy an assessment to pave the airfield or any part thereof. Voting shall be in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At such meeting called, the presence of members or of proxies entitled to cast two-thirds (2/3) of all the votes of membership (90% in case of a vote for paving the runway) shall constitute a quorum. If the required quorum is not present the members entitled to vote there at shall have the power to adjourn the meeting from time to time without notice other than announcement at the meeting until a quorum as aforesaid shall be present or represented, provided, however, no

such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at uniform rate for all Lots and may be collected on a monthly or annual basis as determined by the Board. After consideration of current maintenance costs and future needs of the Association, the Board of Directors may levy the annual assessments at an amount not in excess of the maximum. As long as any Lots are owned by Declarant the annual assessment of each such Lot until the conveyance of said Lot by Declarant to an owner shall not exceed ten percent (10%) of the then current annual assessment.

Section 7. Commencement and Collection of Assessment: Remedies of the Association. Annual assessments shall be payable in advance. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Areas. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot and give notice thereof to each Lot owner at least thirty (30) days in advance of the due date thereof. Assessments may be made payable monthly or annually. The Association shall, on demand and for reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment against a specific lot has been paid, and shall, annually and no later than February 15th of each year (and more often if the Association shall deem necessary), cause to be recorded in the office of the County Clerk of Walker County, Texas, a list of delinquent assessments as of the date of recordation.

Section 8. Effect of Non - Payment of Assessment : Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the maximum rate allowable by law, and the Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of such action shall be added to the amount of such assessments. Each owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association or its agents the right and power to bring all actions against such owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and such owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Lot owners. The Board of Directors may request a Trustee to proceed with foreclosure, and in such event, Trustee is hereby authorized and empowered, and it shall be his special duty, upon such request of the Board of Directors, to sell the mortgaged property, each such sale to be made to the highest bidder or bidders for cash at public auction at the courthouse door of the county where the mortgaged property to be sold is situated on the first Tuesday in any month between the hours of 10:00 a.m. and 4:00 p.m., after Trustee (or some other person or persons acting for him) has first posted written or printed notice of the time, place and terms of such sale at the courthouse door of said county where the mortgaged property to be sold is situated, for at least 21 days successively next before the day of such sale, and, in addition to such posting, the Association, or its authorized representative, shall, at least 21 days preceding the date of sale, serve written notice of the proposed sale by certified mail on each owner obligated to pay the assessment hereby secured according to the records of the Association, or its authorized representative. Service of such notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to the owners at their most recent address or addresses as shown by the records of the Association in a post office or official depository

under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service. All owners agree that no notice of any sale other than as set out in this paragraph need be given by the Association or any other person.

Section 9. Subordination of the Lien to Mortgages.

The Assessment lien provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments from the lien securing payment thereof. No sale, transfer, or conveyance of any kind shall relieve any Lot owner from the liability for any fees, dues, charges or assessments from the lien for any such sums.

Section 10. Affects of Foreclosure. Each holder of a first mortgage lien on a Lot who comes into possession of the Lot by virtue of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, will take the Lot free of any claims for unpaid assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot.

ARTICLE X

SCOPE, DURATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

All of the protective covenants, conditions, restrictions, and easements set forth in this Declaration are imposed upon Said Property for the direct benefit thereof and of the owners thereof as a part of the general plan of development, improvement, building, equipment and maintenance of Said Property. Each grantee or purchaser under a contract of sale or agreement of purchase, accepts the same subject to the protective covenants, conditions, restrictions, and easements set forth in this Declaration, and agrees to be bound by each such protective covenant, condition, restriction, and easement. Said protective covenants, conditions, restrictions, and easements shall run with the land and continue to be in full force and effect, except as hereinafter provided, in perpetuity.

Said protective covenants, conditions, restrictions, and easements remain in perpetuity unless a written agreement executed by the then record owners of not less than seventy-five percent (75%) of the Lots in the property subject to this Declaration shall be placed on record in the Office of the Clerk of the County Court of Walker County, Texas, in which agreement any of the protective covenants, conditions, restrictions, and easements may be changed, modified, waived or extinguished in whole or in part, as to all or any part of the property then subject thereto in the manner and to the extent therein provided.

In the event that any such written agreement of change or modification be fully executed and recorded, the original protective covenants, conditions, restrictions, and easements as therein modified shall continue in force in perpetuity, unless and until further changed, modified or extinguished in the manner herein provided.

Damages are hereby declared not to be adequate compensation for any breach of the protective covenants, conditions, restrictions, or easements of this Declaration, but such breach and the continuance thereof may be enjoined, abated and remedied by appropriate proceedings by the Declarant, the Association, or by an owner of any Lot in Said Property.

ARTICLE XI

SUBORDINATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

All of the protective covenants, conditions, restrictions, and easements set forth in this Declaration shall be subject to and subordinate to any recorded mortgage or deed of trust in good faith and for value at any time heretofore or hereafter executed covering

any part of Said Property, and the breach of any such protective covenants, conditions, restrictions and easements, shall not defeat the lien or encumbrance of any such mortgage or deed of trust; provided, however, that the purchaser at any foreclosure sale under any such mortgage or deed of trust, his or its successors and assigns, shall take and thereafter hold the title subject to all of the covenants, restrictions, reservations and easements set forth in this Declaration.

ARTICLE XII
VIOLATIONS OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS

A breach or violation of any of the protective covenants, conditions, restrictions, and easements shall give to the Association the right to immediate entry upon the property upon which such violation exists, and summarily to abate and remove, at the expense of the owner thereof, any erection, structure, building, thing or condition that may be or exist thereon contrary to this Declaration, and to the true intent and meaning of the provisions hereof, and the Association shall not be liable for any damages occasioned thereby. The result of every act of omission or commission or the violation of any protective covenant, condition, restriction, and easement hereof, whether such protective covenant, condition, restriction, and easement is violated in whole or in part, is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against any such owner of any lot, and may be prohibited and enjoined by injunction. Such remedy shall be deemed cumulative and not exclusive.

Where an action, suit or other judicial proceeding is instituted or brought for the enforcement of these protective covenants, conditions, restrictions, and easements, the losing party in such litigation shall pay all expenses, including a reasonable attorney's fee, incurred by the other party in such legal proceeding.

ARTICLE XIII
RIGHT TO ENFORCE

Section 1. Provisions to Bind.

The provisions contained in this Declaration shall bind and inure to the benefit of and be enforceable by the Association, or by the owner or owners of any portion of Said Property, their and each of their legal representatives, heirs, successors and assigns, and failure by the Association, or by the owner or owners of any portion of Said Property or their legal representatives, heirs, successors and assigns, to enforce any of such protective covenants, conditions, restrictions, and easements herein contained shall, in no event, be deemed a waiver of the right to do so thereafter, unless otherwise herein provided.

Section 2. Assignment of Powers

Any and all rights and powers and reservations of the Declarant herein contained may be deeded, conveyed or assigned to another corporation, co-partnership or individual and upon such corporation, co-partnership or individual evidencing its consent in writing to accept such assignment and to assume such duties and powers, it shall, to the extent of such deed, conveyance or assignment, have the same rights and powers, and be subject to the same obligations and duties as are given to and assumed by Declarant herein and thereupon Declarant shall be relieved of the performance of any further duty or obligation hereunder to the extent of such deed, conveyance or assignment.

In the event Declarant shall convey all of its right, title and interest in and to Said Property and shall assign all of its rights, powers and privileges under this Declaration to another corporation, co-partnership or individual and such assignee should, by instrument in writing duly executed, acknowledged and recorded in the Office of the Clerk of the County Court of Walker County, Texas, accept such conveyance and assume and agree to be bound by each and all of the obligations and duties hereby imposed upon the Declarant, then and in that event the Declarant shall be relieved of the performance of any further duties or obligations hereunder, and such other corporation, co-partnership or individual shall

duties as though such other party had originally been named as Declarant instead of Declarant.

Section 3. Headings of Sections

The headings as to the contents of particular sections are inserted only as a matter of convenience and for reference and in no way are, or are they intended to be, a part of this Declaration, or in any way define, limit or describe the scope or intent of that particular paragraph to which they refer.

Section 4. The Various Parts of this Declaration are Severable.

In the event of any clause, subdivision, term, provision or part of this Declaration being adjudicated by final judgment of any court of competent jurisdiction to be invalid or unenforceable, then disregarding the paragraph, subdivision, term, provision or part of this Declaration as adjudicated to be invalid or unenforceable, the remainder of this Declaration, and each and all of its terms and provisions not so adjudicated to be invalid or unenforceable shall remain in full force and effect, and each and all of the paragraphs, subdivisions, terms, provisions or parts of this Declaration are hereby declared to be severable and independent of each other.

EXECUTED this 26 day of May, 2000.

JT VENTURE, L.L.C.

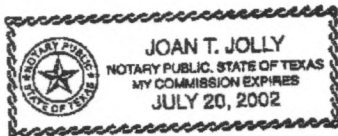
By: [Signature]
James W. Vial, Member

By: [Signature]
Ted A. Criel, Jr., Member

THE STATE OF TEXAS §

COUNTY OF WALKER §

This instrument was acknowledged before me on the 26 day of May, 2000, by James W. Vial, member of JT Venture, L.L.C., on behalf of the limited liability company.

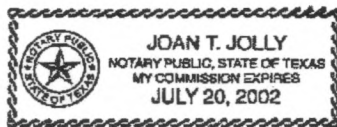


[Signature]
Notary Public, State of Texas

THE STATE OF TEXAS §


COUNTY OF WALKER §


This instrument was acknowledged before me on the 26 day of May, 2000, by Ted A. Criel, Jr., member of JT Venture, L.L.C., on behalf of the limited liability company.



[Signature]
Notary Public, State of Texas

The undersigned, being the previous owners of the property and the Declarants under the original declaration of protective covenants, conditions and restrictions affecting the real property of Waverly Acres, dated August 10, 1998 and recorded in volume 360, page 43, of the official public records of Walker County, Texas, hereby join in the execution hereof for the purpose of evidencing their approval of and consent to the above and foregoing restated declaration of protective covenants, conditions and restrictions affecting the real property of Waverly Acres.

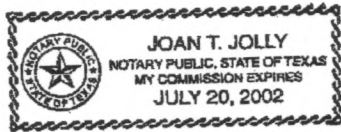

James W. Vial


Ted A. Criel, Jr.

THE STATE OF TEXAS §

COUNTY OF WALKER §

This instrument was acknowledged before me on the 26 day of May, 2000 by James W. Vial.

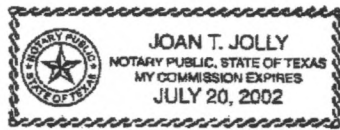



Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF WALKER §

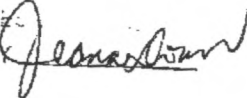
This instrument was acknowledged before me on the 26 day of May, 2000 by Ted A. Criel, Jr.




Notary Public, State of Texas

FILED FOR RECORD
COUNTY CLERK
WALKER COUNTY, TEXAS

MAY 26 11 12 AM

JAMES D. PATTON
DEPUTY 

THE STATE OF TEXAS
COUNTY OF WALKER
James D. Patton, County Clerk In and for Walker County, Texas do hereby certify that this instrument was filed for record in the volume and page of the indexed record and at the time and date as stamped hereon by me.



JAMES D. PATTON, CLERK
WALKER COUNTY, TEXAS

OFFICIAL PUBLIC RECORDS