



2005-00456

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Requested By: STATE TITLE
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01-24-2005 03:51 PM Recording Fee \$32.00

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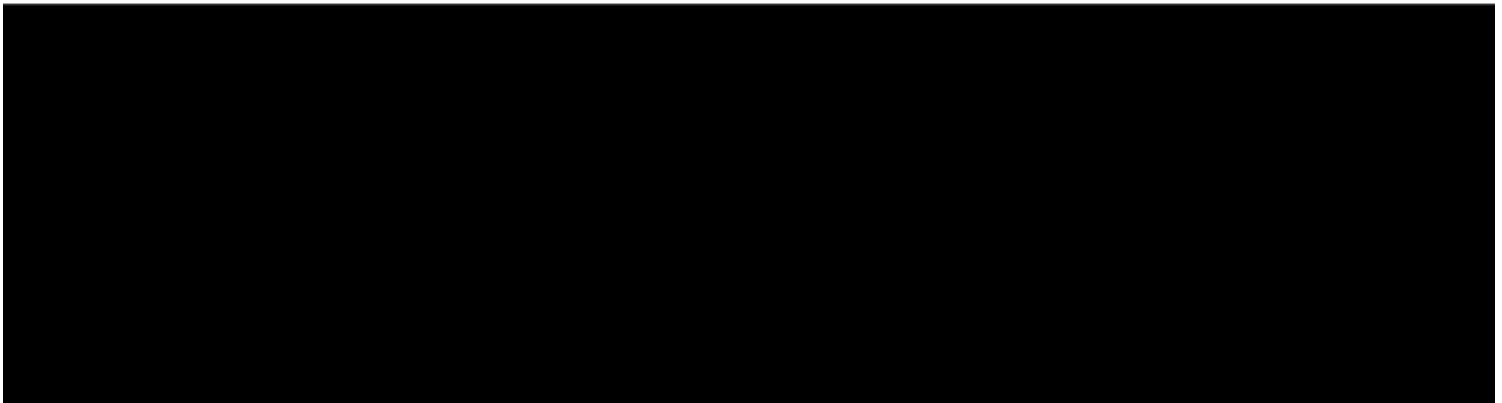
STATE TITLE AGENCY

When recorded mail to:

DONALD MILLER
P. O. BOX 280
SALOME, AZ 85348

**RERECORD DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
WESTERN SKY AIRPARK**

*THIS DOCUMENT IS BEING RERECORD FOR THE SOLE PURPOSE OF INCLUDING THE
LEGAL DESCRIPTION*





2004-05574

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Requested By: DONALD MILLER

PATRICIA L WALL, RECORDER

OFFICIAL RECORDS OF LA PAZ COUNTY, AZ

11-03-2004 03:32 PM Recording Fee \$26.00

DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR
WESTERN SKY AIRPARK

WHEREAS, Declarant is the owner of certain real property (hereinafter the "property") located within La Paz County, Arizona, described on Exhibit "A," attached hereto and by this reference incorporated herein and desires to submit and subject the property, including the improvements constructed and to be constructed thereon, and all easements, rights and appurtenances belonging thereto, to the provisions of this Declaration;

WHEREAS, Declarant desires to develop the property as an aviation-related residential and commercial center and to impose upon the property these covenants, conditions and restrictions for the benefit of the property, the improvements thereon, and the owners thereof; and whereas the provisions contained within this Declaration are intended to benefit the owners and their successors in interest who hold an ownership interest in all or any portion of the property.

NOW THEREFORE, Declarant herein declares that the property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, used and improved subject to the following limitations, restrictions, covenants, conditions, easements and equitable servitudes, all of which shall run with the property, shall be binding upon all parties having or acquiring any right, title or interest therein, shall inure to the benefit of and bind each owner thereof and their respective successors in interest, and shall be enforceable as hereinafter provided.

1. DEFINITIONS: Unless otherwise expressly set forth herein, the following terms shall be defined for purposes of this Declaration as follows:

- A. "Airport Facilities" shall mean the Western Sky Airpark runway, primary surface areas, taxiways and roadways located within the Western Sky Airpark Subdivision Plat, which facilities shall be common area, together with all facilities now or hereafter constructed thereon or otherwise subject to the control of Declarant and Declarant's successors including, without limitation, the Western Sky Airpark Association.
- B. "Architectural Committee" shall mean the Architectural Committee as formed pursuant to Section 3 of this Declaration.
- C. "Assessment" shall mean the following:

1. "Regular Assessment" shall mean any assessment or charge against a lot or owner(s) thereof, authorized by this Declaration, by the Western Sky Airpark Association or any agent thereof including, specifically, the amount to be paid by each lot owner or owners as a proportionate share of the common expenses of the association as provided herein.
 2. "Special Assessment" shall mean a charge against a particular owner or owners or lot, directly attributable to such owner(s) and/or lot(s), to reimburse the Association for costs incurred in bringing the owner or lot into compliance with or otherwise enforcing the provisions of this Declaration, the Articles, Bylaws or Rules, or any other fines or charges designated as a Special Assessment in this Declaration or the Articles, Bylaws or Rules, together with attorneys fees, costs and other charges payable pursuant to the provisions of this Declaration.
 3. "Reconstruction Assessment" means the amount which is to be paid by each lot owner representing that owner's proportionate share of the cost to the Association for the reconstruction and/or repair of any portion of the common areas.
 4. "Capital Improvement Assessment" means the amount which is to be paid by each lot owner representing such lot owner's proportionate share of the cost to the Association for the installation or construction of any capital improvement on, to, or appurtenant to any of the common areas.
- E. "Aviation Fuel" or "avgas" shall mean any fuel used to propel an airplane whether such fuel be strictly aviation fuel, automobile gas or otherwise.
- F. "Common Areas" means all real property and the improvements or amenities thereon which may from time to time be owned or leased by the Association expressly for the common use and enjoyment of the Members or owners. The common areas include or shall include, but are not limited to, the runways, primary surface areas, taxiways, and roadways and any extensions or enlargements thereof, or additions thereto.
- F. "Declarant" shall mean Western Sky Airpark, LLC, an Arizona Limited Liability Company, its successors and assigns. All powers of the Declarant may be assigned to such successors or assigns by a reference to such powers in the conveyance document or in such other document executed by Declarant which specifically references such powers.
- G. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Western Sky Airpark Subdivision, as and if amended.
- H. "Improvement" shall mean any building, fixture, concrete pad or sidewalk, well, paving, landscaping, flagpoles, or other similar improvement or change from the natural undisturbed condition or a lot including additions, alterations or replacements thereof,

now or hereafter constructed on the property.

- I. "Junk" shall mean and include, but not necessarily be limited to, any old or scrap metal, rope, rags, batteries, paper, trash, wood (excluding wood used for heating purposes), debris, plastics, dismantled or wrecked motor vehicles or aircraft or parts thereof, old buildings, iron, steel and other scrap materials, trailers (other than permissibly occupied or occupiable recreational vehicles), brush piles, wrecked or dismantled mobile homes and appliances. Motor vehicles which have been inoperable or unregistered for six (6) months, are hereby designated junk.
- J. "Landscaping" shall mean any trees, bushes, rock, decorative bricks or similar materials, or any combination thereof, now or hereafter placed on the property.
- K. "Lot" shall mean a subdivided lot within the property. "Lot" shall not include common area. "Lot" shall include any improvements located upon or within a lot.
- L. "Owner" shall mean any person or entity now or hereafter owning an interest, whether legal, equitable, under deed, contract for sale, trust, or otherwise, in the property or any portion thereof; provided, however, that "Owner" does not mean a person or entity whose interest in the property or any portion thereof is limited to that of holder of a lien or encumbrance.
- M. "Plat" means the plats(s) of the subdivision of the property as first recorded in the official records of the county, and as thereafter from time to time amended or supplemented, together with all subsequent plats of the subdivision and any for real property annexed or added to the Property.
- N. "Primary Surface," alternately referred to as the "clear zone" on the Plat Drawings, shall mean a surface longitudinally (lengthwise) centered on the runway portion of the airport facilities. The Primary Surface shall extend two hundred (200) feet beyond each end of that runway and shall be deemed to have a minimum width of one hundred and twenty five (125) feet from the center of the runway. The elevation of any point on the Primary Surface shall be deemed to be the same as the elevation of the nearest point on the centerline of the runway.
- O. "Runway Easement" shall mean any easement dedicated by the Declarant for the purposes of ingress and egress and other aircraft operations and aviation activities otherwise generally associated with a private airport. It shall not be construed as an easement for non-aircraft ground traffic unless so dedicated.
- P. "Taxiway" shall mean the following ways dedicated on the recorded Western Sky Airport Subdivision Plat:

- | | |
|------------------|----------------------------|
| 1. Citation Lane | 2. Kit Fox Blvd |
| 3. Bonanza Lane | 4. Twin Comanche Boulevard |

- Q. "Transition Zone" shall mean the and include the runway dedicated on the Plat of record of Western Sky Airpark Subdivision, as extended or enlarged, and a 200 foot extension on each end of the runway and shall include airspace above places beginning at the edge of the runway hereby designated as a "clear zone" extending east and west of the runway, rising one foot for each seven (7) feet (7:1) of horizontal distance, and shall include airspace above places beginning at the south and north ends of the 200 foot extension of the ends of the runway and extending south and north respectively, rising one foot for each twenty feet of horizontal distance (20:1). The "Transition Zone" and "clear zone" may include property of the individual lot owners subject to the applicable provisions of this Declaration.
- R. "Violation" shall mean any violation or attempted violation of, failure to comply with, or other breach or attempted breach of any provision in this Declaration or any instrument executed in conjunction with or under authority of this Declaration, including but not limited to Articles of Incorporation, Bylaws and rules and regulations of the Association whether by any owner of all or any portion of the property or tenants, guests, invitees or other occupants of the property or any other party subject to this Declaration, their respective successors and assigns.
- S. "Western Sky Airpark Association " or "Association," shall mean and refer to Western Sky Airpark Association, an Arizona non-profit corporation or similar entity, its successors and assigns.
1. "Board" means the Board of Directors of the Association. The Board shall have all of the power accorded to the Association unless given to the members, or otherwise limited by this Declaration, the Articles of Incorporation, or the Bylaws.
 2. "Member" means every person who holds a membership in the Association pursuant to the terms of this Declaration.
 3. "Owner" means the actual owner of a lot.
 4. "President" shall mean the duly elected or appointed president of the Association. "President" shall be synonymous with the chairman of the Board.
 - 5 "Proxy" shall mean a person in possession of a written authorization, duly authorized and not revoked, or expired, which gives that person the specific authority to represent and vote for an owner whose voting rights have not been revoked or suspended. A proxy can only be given to an owner whose voting rights remain intact and in a form acceptable to the Association. No proxy shall be valid for more than one year.

2. **USE OF PROPERTY:** Except as otherwise set forth herein, the use and improvement of the property shall be strictly in accordance with covenants, conditions and restrictions herein set forth, as amended. In no event shall such use violate the zoning ordinances of the County of La Paz and rules and regulations of the Federal Aviation Authority, as they may be amended from time to time. In the event that any term, covenant, condition, or restriction in this Declaration is more restrictive than a county, state or federal law or regulation, the term, covenant or restriction of this Declaration shall control.

A. The Western Sky Airpark runway shall have a weight limitation of twelve (12,000) pounds manufacturer's gross weight, piston-driven, fixed wing aircraft, helicopters and ultralights. Emergency and/or government vehicles are exempted from this restriction. Although the runway and associated taxiways shall be private, they shall be open to public use. Helicopters shall land on a pad specifically designated for that purpose and shall thereafter be towed to and from said pad to its parking or storage location.

B. Lots C-1 through lots C-14 are designated commercial (C-2) lots and their use shall be restricted to those uses permitted by La Paz County zoning regulations for such zoning, as otherwise restricted herein. Any residential use or occupancy on or of a commercial lot or other lot (excepting, specifically, those lots located within that portion of the subdivision declared to be recreational vehicle park) shall, regardless of its zoning or other use, cause such lot to be subject to the residential restrictions of this Declaration including, but not limited to, those restrictions set forth in Section C, D, E and F, below. In no event may a recreational vehicle be used as a dwelling at any time, on any lot, except on those lots specifically designated as recreational vehicle park.

C. All residential lots shall be used for single family residential purposes only, and only one dwelling may be occupied at any time. Not more than one permanent dwelling (manufactured or constructed) may be placed on any lot. Not more than one permanent dwelling and one recreational vehicle may be present on any lot. In no event may a recreational vehicle be used as a dwelling at any time, on any lot, except on those lots specifically designated as recreational vehicle park. If a recreational vehicle is parked or stored on a lot, it shall either be stored or parked within the hangar or stored immediately adjacent to a hangar in a roofed enclosure (which enclosure may be connected to the hangar) which screens or otherwise completely obscures the recreational vehicle's presence with an opaque material, wall or door on three sides, ie; two in addition to the hangar wall. Unless otherwise designated by Declarant, all lots shall be single family residential lots and the type of residence on each lot shall be limited and restricted to the following, and none other: A manufactured home or a constructed home as otherwise restricted herein. A recreational vehicle may be occupied only on that portion of the subdivision designated as Recreational Vehicle Park.

D. Prior to the installation of a manufactured home or the construction of a constructed home, the owner of a lot shall cause to be constructed on the lot a hangar 45 feet wide by 40 feet

deep, and not less than 14 feet high as measured at the eaves and not more than 30 feet in height, as approved by the Architectural Committee. Each hangar shall have installed a bifold door not less than forty two (42) feet wide. Sliding doors shall not be permitted. A hangar may not be used as a dwelling or otherwise occupied in any way as a residence, nor may an owner occupy or otherwise use as a dwelling an recreational vehicle within a hangar, adjacent to a hangar, or elsewhere on a lot.

E. Manufactured homes:

a. No more than one manufactured home may be placed on any one lot. Such manufactured home shall be not less than 24 feet in width and not more than one year old at the time of actual placement on the lot.

b. No manufactured home may contain less than 1200 square feet of living space. Patios, "Arizona rooms," carports, garages and the like shall not be considered "living space."

c. All manufactured homes moved onto a lot shall be affixed to a permanent foundation, including, at a minimum, cement runners for jacks and concrete or cement block skirting. All skirting shall be installed in a manner so that no airspace is visible between the ground and the bottom of the manufactured home and such installation shall be complete not later than six (6) months after the date the manufactured home is moved onto a lot. All plans are subject to Architectural Committee approval as is set forth herein.

d. All manufactured homes moved onto a lot shall have exteriors of fir, decorative exterior plywood, painted hardboard (Masonite or equivalent) or stucco or equivalent.

e. All manufactured homes are required to have tile or composition roofs - no cedar or wood roofs are permitted.

F. Constructed homes:

1. Any constructed home placed on a lot within this subdivision shall have a minimum square footage of 1200 square feet, a minimum width of twenty-four (24) feet and a length or not less than fifty (50) feet, and be compatible with the manufactured homes and other permanent residences in the subdivision. All plans are subject to prior approval by the Architectural Committee as is set forth herein.

G. Building setbacks on all lots within Western Sky Airpark shall be, at a minimum, in compliance with La Paz County Zoning regulations then in effect. The following additional restrictions shall apply:

1. No building shall be constructed, nor manufactured home shall be placed, no improvement or structure of any kind may be constructed or placed, nor shall a vehicle, aircraft

or thing be parked, stored or placed less than one hundred twenty five feet (125') from the centerline of the runway or within thirty-seven and one half (37 ½) feet from the centerline of any taxiway.

2. No building, structure, landscaping, improvement, vehicle, or object of any kind shall be constructed, stored, placed, or kept in the proximity of a runway or taxiway which would in any way impede or restrict use thereof.

3. No building shall be constructed less than seven (7) feet from the side property line of any adjoining lot nor less than ten (10) feet from the rear property line of any adjoining lot.

4. No fence or wall on or within a lot on the property shall be constructed to a height of greater than three (3) feet.

5. All lot owners shall, prior to occupancy and/or use of a lot, construct and maintain a concrete apron and driveway between the residential or commercial improvements and the roadway and taxiways for the purpose of ingress and egress to and from such improvements and parking and/or storage on the lot.

H. It is the intention and purpose of the Declarant that the airpark be developed as an aviation oriented subdivision and that the residential and commercial uses of the lots be so oriented. In no event may the commercial uses of the lots be detrimental to the other lot owners as determined by the Board. It is specifically contemplated, however, that non-aviation uses of the residential property may include the restoration and/or repair of aircraft or motor vehicles provided, however, that in no event shall the restoration or repair of a motor vehicle or aircraft be visible to other property owners except during the opening and closing of hangar or garage door. In no event may a motor vehicle, vehicle or aircraft in any state of disrepair be placed or stored on a lot unless it is inside of a hangar or garage and out of sight of other lot owners.

I. No use/storage of dangerous and/or hazardous materials (except the storage of gasoline/avgas in the tanks of motor vehicles and aircraft themselves) or not more than ten gallons in temporary storage containers with ten gallons maximum capacity within a hangar, shall be permitted.

J. Notwithstanding any language to the contrary herein no lot, commercial or residential, may be used to conduct any business which is not beneficial to the Airpark as determined by the Board of Directors prior to the proposed use.

K. Rental of lots: An owner may rent his or her lot subject to the following provisions:

- a. No owner may rent less than the entire lot.
- b. Each rental agreement shall be in writing, in a form approved by the association, shall be for a period of not less than one month, and such agreement shall expressly provide that it is subject in all respects to the provisions of this Declaration, the Articles, Bylaws

and Association rules, and that any failure by a tenant or a tenant's guests or invitees to comply therewith shall be a default under this Declaration and the rental agreement.

c. No rental of any vehicle or structure on wheels is permitted.

d. The owner(s) of the lot rented shall be and remain fully responsible and liable for the tenant's compliance with this Declaration and the Association bylaws and rules, together with damages cause by the tenant or tenants guests or invitees, together with any assessments, fines, penalties, dues, costs, attorneys fees and other charges incurred.

L. Guests and invitees: Each owner is fully responsible for the conduct of all guests and invitees of such owner and for ensuring that they comply with this Declaration and the Association rules. Each owner is responsible for any damages caused by any guest or invitee of owner to the property or any other owner, any common area or any other property controlled by the Association.

M. No timeshares: No lot may have more than three owners. The intent of this restriction is to prevent persons from creating a timeshare or ownership arrangement similar to a timeshare by agreement, or otherwise, among them.

N. Compliance with laws: No portion of the property or lot thereon shall be improved, maintained or used in such a manner as to violate any applicable statute, ordinance or regulation of the United State, the State of Arizona, the County of La Paz, or any other governmental entity having jurisdiction over the matter.

O. Construction, Maintenance and Repairs: All construction, maintenance and repair work of any kind on any lot shall be prosecuted diligently from commencement until completed and shall be conducted in such a manner as to minimize any interference with the use and enjoyment of other owners and other portions of the property. Construction and/or placement shall be completed on any dwelling or other improvement on a lot not later than one year after construction and/or placement is commenced.

Q. No Subdivision: No lot may be subdivided or separated into smaller lots by any owner except Declarant.

3. ARCHITECTURAL CONTROL

A. No improvement, construction, placement of a manufactured home, or landscaping shall be commenced or erected on any lot until plans showing plot plan and proposed construction, placement, improvements, and landscaping including, but not limited to, paved areas, landscaping details, building and storage areas, screening, parking and loading areas, design and type of construction and/or placement,, elevation, roof design, exterior color scheme, fence and barrier design, lot dimension and size and/or all other pertinent engineering and/or exterior features (the "plans") are first approved and recommended to the Board by the

Architectural Committee. Prior to commencing such construction, or improvement of any lot, the owner of the lot shall deposit with the Board a refundable \$500.00 construction clean-up fee and also submit plans providing the foregoing information to the Architectural Committee for approval and recommendation. The Architectural Committee shall be notified in writing of each proposed project and a request for approval thereof and, prior to 30 days after the proper submission of a plan, shall either recommend approval or disapproval to the Board. If the Architectural Committee disapproves of plans, or fails to recommend its approval or its disapproval of said plans within 30 days after a proper submittal (which would include the construction clean-up deposit and a written request to the Architectural Committee to recommend its approval or disapproval thereof to the Board), the owner may submit its plans for approval directly to the Board. The Board shall approve or disapprove of any plans submitted to it for approval by the Architectural Committee or directly by an owner after an owner has directly submitted plans to the Board after the disapproval or the failure of the Architectural Committee to approve or disapprove properly submitted plans within 30 days after such submission), and the Board shall approve or disapprove of the plans within thirty days after such submission, and shall be deemed to have approved such plans if it has not specifically disapproved the plans within 30 days after receipt of plans so submitted (or if properly submitted initially by the owner to the Board while the Board is acting as the Architectural Committee) provided, however, that any construction, placement, or improvement shall nonetheless be in strict conformity with the plans, the provisions of this Declaration and applicable law and no improvements shall be constructed contrary to this Declaration. After Architectural Committee approval and recommendation to the Board and/or direct Board approval of plans, the construction, improvement or subdividing contemplated thereby may be commenced and, once commenced, shall be expeditiously prosecuted to completion; provided, however, that such construction, placement or improvement shall be in strict conformity with the approved plans, the provisions of this Declaration and applicable law. Further, no construction, equipment, structure, improvement, dwelling, vehicle, object, thing or landscaping shall be constructed, placed on or allowed to grow on or into the transition airspace.

B. The members of the Architectural Committee shall be designated/appointed by, and serve at the pleasure of, Declarant until all lots within the property have been sold by the Declarant. Thereafter, the Board of Directors may, but is not required to, appoint an Architectural Committee, and unless the Board of Directors of the Association appoints or at any given time continues to appoint an Architectural Committee, the Board shall act as the Architectural Committee. Any Architectural Committee appointed by the board shall serve at the pleasure of the Board as shall any appointee thereof, and the Architectural Committee may at any time be disbanded or terminated by the Board as may any appointment of a committee member be terminated in the unlimited discretion of the Board.

C. Except for the Architectural Committee appointed by Declarant pursuant to Paragraph 3 (B) above, the Architectural Committee shall be subject to the following:

- (1) Members of the Architectural Committee shall serve until they resign, are no longer

able to serve, their appointment is terminated by the Board, or until the next appointment of members to the Architectural Committee.

(2) A member of the Architectural Committee appointed by the Board need not be, but may be, a member of the Board of Directors of or a member of the Airpark Association. No member of the Architectural Committee shall be required to be an architect or to meet any other particular qualifications for membership.

(3) Except as otherwise set forth in this Declaration, the procedural provisions, including, but not limited to, the calling of meetings, quorums, record keeping, voting, action without meeting, waiver of notice of meetings, vacancies and compensation which govern the Board of Directors of the Airpark Association, as set forth in the Articles of Incorporation and Bylaws for the Airpark Association shall also apply to and govern the Architectural Committee.

(4) The approval by the Architectural Committee of any matter requiring its approval pursuant to the provisions of this Declaration shall not be deemed to constitute a waiver of any requirement or restriction imposed by this Declaration or of any right of the Architectural Committee to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for its approval.

(5) Neither the Board or the Architectural Committee nor any member thereof shall be liable to any owner, or to any other party for any damage, loss or prejudice claimed on account of : (1) the approval or disapproval of any plans, drawings specifications or similar matters by the Architectural Committee, whether or not defective; or (2) the construction or performance of any work, whether approved by the Architectural Committee; provided, however, that with respect to the liability of a member of the Architectural Committee, such member has acted in good faith on the basis of such information as may be possessed by him. No Director, officer or designated representative of the Association shall be personally liable to any Owner, the Association, or any other party for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, or any other representative or employee of the Association or the Board, provided that such person has acted in good faith and without willful, wanton or grossly negligent conduct on the basis of such information possessed by him or her at the time.

D. Development: The completion by Declarant of the development and sale of all Lots is deemed essential to the establishment and welfare of the Property as an airpark community. In order that such development and sale may be completed, nothing in this Declaration shall require the Association's approval of any construction or other activities of Declarant, its successors and assigns, nor shall it prevent or limit Declarant from doing any of the following on property owned or controlled by Declarant: Constructing and maintaining such structures and improvements as Declarant deems reasonably necessary or appropriate, conducting the business of development and sale of Lots, and, maintaining signs for the development, sale or disposition of lots by sale or otherwise.

4. LIMITATIONS ON IMPROVEMENTS: Any and all improvements now or hereafter constructed or placed on the lots or any portion thereof, including any additions, alterations or replacements thereto, shall be constructed, repaired and maintained in accordance with the following:

A. **AIRSPACE EASEMENT:** An airspace easement is created and imposed upon the property as follows: No improvements shall exceed Thirty (30) feet in height above the highest point on the unimproved grade level of the building envelope commencing at the one hundred twenty five (125) foot building setback line from the center line of the runway, provided, however, that such improvement shall not at any point project above a line sloping upward at a ratio of one foot up for seven (7) feet out (7:1), beginning at the edge of that portion of the transition zone which commences thirty three (33) feet from the runway center line, and extends outward to the edge of said transition zone, which edge shall be one hundred and twenty five (125) feet from the centerline of the runway, and in no case shall any improvement project into said airspace easement. Normal aircraft operations are permitted within said airspace easement.

B. Notwithstanding the provisions of Paragraph 4 (A) above, no improvement, structure, or landscaping, object or thing shall be constructed, repaired, placed, maintained or permitted to grow in the transition zone to a height in excess of a line established by sloping seven (7) feet outward for each foot upward, commencing at the sides of the clear zone and extending to a height of thirty (30) feet above the highest point of a unimproved grade level; provided, however, that the foregoing shall not be deemed or construed to prohibit construction or maintenance of any improvement, or growth of any landscaping to the height of not more than thirty (30) feet, provided that such does not intrude into the transition zone airspace or airspace easement.

C. All signs or similar items shall be in conformity with applicable law, including but not limited to the sign ordinances for the County of La Paz, as amended. The placing of a sign or similar item on a lot shall be deemed to constitute an improvement for purposes of this Declaration and shall be subject to the prior approval of the Architectural Committee in accordance with Section 3, above. No sign shall be placed which will impede flight or taxiing operations of any aircraft. No signs may be placed or present on a residential lot other than a "For Sale" sign not exceeding six square feet in size.

D. All outside storage shall be in a storage building approved by the Architectural Committee.

E. Any dock and/or loading facilities on a lot shall be designed and placed on the side or rear of the lot and major improvements thereon (in relation to adjacent streets) shall be subject to screening in accordance with paragraph D.

G. All flood, spot or other lights placed on each lot shall be placed so that the direct, indirect or reflected light therefrom shall not unreasonably disturb the owners or occupants of other property or lots. No light shall be so placed or arranged as to interfere with the operation of

aircraft taxiing, landing or taking off.

H. The exterior of all improvements requiring paint (based on the nature of the surface material utilized and excluding decorative materials not customarily painted) shall be painted and maintained to provide a neat appearance at all times. Any change in exterior color scheme shall require prior approval of the Architectural Committee in accordance with Paragraph 3 (A). Metal hangar facilities need not be painted provided they are at all times maintained to provide a neat appearance.

I. All aprons, ramps, parking, taxiway and similar areas on lots shall be paved with a hard-surface material made of concrete or black top/asphalt and shall be maintained in a dust-free and clean condition.

J. No parking is permitted on streets or taxiways. Off-street parking areas shall be included on each lot as required by applicable law, including but not limited to the Building Ordinance imposed by the County of La Paz, as amended from time to time. The Architectural Committee shall have the right, as a condition of a plan for improvements, to require an increase in the amount of parking on a lot should the existing and/or intended use of that lot warrant such increased parking. The Association is hereby granted the power to remove any obstacle, thing, or parked vehicle from the primary surface or taxiways upon a finding that it is a hazard to aircraft operation and may charge a reasonable fee for such removal to a safe location. Any fee or cost incurred by the Association which is unpaid fifteen (15) days after written demand therefore shall become a special assessment against the owner of the offending object.

K. The drainage berms, ditches, and other provisions in the Subdivision provided for drainage shall not be modified or altered by any lot owner or owners. No owner may erect, construct, maintain, permit or allow any fence or other improvement or obstruction of any kind which would interrupt or interfere with the normal drainage of the land or drainage into an area designated as a drainage easement. The Board shall have the power to determine if any provision of this paragraph has been violated and to require necessary remedial work at the cost of the violating lot owner. If a lot owner fails or refuses to correct a violation after reasonable written notice thereof and a right to be heard (except in the event of an emergency) the Board may cause remedial work to be performed and the cost thereof, if unpaid by the lot owner after demand therefor, shall become a special assessment.

5. LOT DIMENSIONS, COMBINATIONS: Lot dimensions and combinations shall be in accordance with the following:

- A. Minimum lot street frontage shall be one hundred (100) feet.
- B. Minimum lot size shall be twelve thousand (12,000) square feet.
- C. Any two (2) or more lots may be combined into one (1) lot provided the resulting lot is

not less than the minimum lot size pursuant to Paragraph 5.B and in all other respects satisfies and fully complies with the terms, conditions, provisions and requirements of this Declaration. The combination of a lot or lots shall not in any way reduce the lot owner's assessments and the lots shall continue to be assessed as if they had not been combined.

6. **USE AND MAINTENANCE:** All lots and the improvements and landscaping thereon shall be used and maintained in accordance with the following:

A. **Lots and Improvements to be Maintained in Good Condition:** Each lot and any improvements there including, without limitation, all building exteriors, lawns, landscaping and the visible interior of all garages and other improvements, shall at all time be maintained by the owner thereof in a neat, clean and pleasantly appearing condition. Without limiting the generality of the foregoing, all lawns and other landscaping shall be kept in a neat and trimmed condition, all dead and dying landscaping shall be promptly removed and replaced, all weathered or peeling painted surfaces shall be repainted, and all worn out, bent, or otherwise damaged materials or things shall be repaired or replaced. All damage to a lot or improvements thereon shall be promptly repaired. No lot shall be maintained or used in such a manner as to lower the property value of the property or any lot, nor shall any lot or activity or thing on a lot constitute a nuisance or unreasonable annoyance to, or endanger the health or safety of any owner, resident or tenant. The Board shall make all determinations with respect to compliance with this Declaration, and any determination by the board shall, after notice and an opportunity to be heard, be final and binding. The Board may enter property at reasonable times during daylight hours to determine compliance with this paragraph. Upon at least fifteen (15) days written notice, the Board, or another at the board's request, may enter a lot and perform any such required maintenance an owner has failed to do. The owner shall reimburse the Association for any costs and fees incurred by the board in performing such maintenance and any such costs and fees, if unpaid 30 days after demand therefor, shall become a special assessment.

B. No lot or portion thereof shall be used for any purpose or business which is dangerous or unsafe, which constitutes a nuisance, or is in any way obnoxious or offensive by reason of emission of dust, odor, gas, smoke, fumes or noise. Normal aircraft operations by Association members shall not be deemed a nuisance.

C. The owner and /other occupant of each lot will remove at its own expense any rubbish or junk of any character whatsoever which accumulates on a lot.

D. During the course of any placing of landscaping on or construction of improvements on a lot, including additions, alterations or repairs thereto, such placing or construction shall be conducted in a manner which does not interfere with the use and possession of other lots within the property, nor shall it interfere with aircraft operations; all landscaping and construction materials and equipment shall be stored and operated in a neat and orderly fashion. Upon conclusion of any placing or construction, all excess landscaping and constructing materials, equipment and debris shall be promptly removed from the construction site.

E. Owners and/or other occupants of lots shall require their respective employees, tenants or customers to park in the parking area on each lot and not on streets within the property.

F. Except on that lot or lots upon which a fixed base operator is conducting aviation fixed base operations, aviation fuel not be kept, stored or dispensed on any residential or commercial lot for commercial sale, whether at wholesale or retail or otherwise. Notwithstanding this restriction, aviation fuel may be stored and dispensed on a lot solely for the private use of the lot owners(s) in that lot owner's aircraft provided, however, that such fuel may only be stored in tanks installed in the lot owner's aircraft for the purpose of gas storage and use during flight or not more than ten gallons within temporary gas storage tanks not exceeding ten gallons capacity.

G. The Runway Primary Surface and taxiways shall be considered as Airport Facilities and shall at all times be accessible for improvements and maintenance by the Association.

H. No owner of any lot in the Airpark or their respective successors in interest, shall voice objections to the operation of the Airpark for its intended purpose as a residential airpark with aircraft operations as desired by the residents within the limitations of paragraph 2(A) of this Declaration.

7. WESTERN SKY AIRPARK ASSOCIATION: The Western Sky Airpark Association shall have the responsibility to maintain, repair, replace, operate, and otherwise provide for continued use and operation of airport facilities and other common areas, to the extent permitted by and consistent with the provisions of the applicable laws and this Declaration. The Western Sky Airpark Association shall be formed and operated in accordance with, and shall enjoy the powers of, the following:

A. Declarant will incorporate the Association as a non-profit corporation at or prior to the time of the first sale of an airpark lot by Declarant. Owners of airpark lots shall, by virtue of their ownership thereof, automatically become Association members upon their acquisition of a lot in the Western Sky Airpark Subdivision and liable for assessments for each lot and shall automatically cease to be Airpark members when they cease to be an owner. The Association shall own the airport facilities, roads, drainage improvements, and such other common areas as are set forth on the plat or otherwise conveyed to it by Declarant or lot owners. No partition of the common areas shall be permitted.

B. There shall be one membership in the Association for each lot, and the membership shall be appurtenant to the lot and shall automatically transfer with a transfer of ownership of the lot. There shall be one (1) vote per membership (ie; one vote per lot, including one vote for each lot which has been combined with other lots) on Association matters not reserved to the Board of the Association, except that the Declarant shall have five votes per lot for each lot then owned by the Declarant (or Declarant's successor or assigns) for any purpose, which voting power shall be specifically assigned by Declarant in the conveyance document or such other document as is thereafter executed by Declarant. The Association shall have all powers and purposes set forth in

this Declaration and all actions and approvals to be made by the Association shall be reserved to and made by the Board of Directors (the "Board") unless specifically reserved to the members herein. The Association shall have all of the purpose and powers set forth in this Declaration and all actions and approvals accorded to the Association under this Declaration are reserved to and shall be made by the Board. The Association shall own, operate and maintain the common areas and shall have the power to annex onto or otherwise increase, or decrease the common areas. The Association shall, as well, have the power to enforce any and all of the provisions of this Declaration against any of the lots, the lot owners, or the lot owner's tenants, guests, invitees or other person or entity and to create a system of fines and penalties for violations thereof. The Association shall serve as the governing body for all of the owners and members for the protection, improvement, alteration, maintenance repair, replacement administration and operation of the Property, to acquire, sell and own real and personal property, and shall have the power to assess and to fine, to acquire and dispose of casualty and other necessary or appropriate insurance, and to effectuate all other matters as provided in the Declaration, the Articles, Bylaws, Association rules including the enforcement of this Declaration. The Association shall also have the power to hire attorneys, accountants, engineers, and other professionals to assist and advise the Association. The Association shall, at all times, keep or cause to be kept true and accurate records of account in accordance with accepted accounting principles. The records of the Association shall be audited at the discretion of the board. The Association records shall, upon reasonable written request and during reasonable business hours, make available for inspection by each Owner and member the books, records and financial statements of the Association together with current copies, as amended from time to time, of this Declaration and the Articles, Bylaws and Association Rules.

C. The Association shall consist of not less than three directors and not more than five directors. The Association may enter into agreements with the Declarant, affiliates of the Declarant, or a professional management company to provide all or any services or activities otherwise accorded to the Association herein or to provide additional services or amenities to the members. Except as is otherwise set forth herein, the owners shall annually elect the Board at the annual meeting of the Association in conformance with the bylaws of the Association provided, however, that the Declarant shall have the exclusive right to establish and amend the bylaws until the date the Declarant owns no lots. Except for the directors appointed by the Declarant, each Director shall be an owner or the spouse of an owner or, if the owner is a corporation, partnership, trust or other legal entity, an officer, director, beneficiary of a trust, or duly authorized agent may be a Director. Notwithstanding any provision in this Declaration to the contrary, until such time as the last of the Declarant's lots are sold, unless such power is earlier conveyed to the members and the Association, Declarant shall have the power to appoint all directors to the Board and shall exclusively possess all of the powers which are otherwise given to the Board and the Association herein including, specifically, any lots which are annexed or added to the subdivision or otherwise subject to any supplemental Declaration.

D. The right to vote a membership vote shall be governed by this Declaration and the bylaws of the association and the Board shall specifically have the power to suspend the right of a Member who has failed to pay any assessment to vote. If a lot is owned by a corporation, trust,

partnership, limited liability company or similar entity, or more than one owner, the owners of such lot shall designate in writing to the Association an individual who shall be the voting member with respect to that lot. The person so designated shall be the only person authorized to vote that member's vote. An owner may designate another member or members otherwise authorized to vote to vote on that member's behalf by proxy on a form acceptable to the Board, but no such proxy shall be effective for more than one year.

E. The Board shall have the authority to adopt bylaws, rules and regulations necessary to carry out its duty to maintain and operate the common areas and to otherwise use the powers granted the Association in this Declaration and to effectuate the purposes of this Declaration. Toward those ends, the Association shall have the power to determine and collect assessments and, as well, to assess fines for the failure of an owner to comply with the provisions of this Declaration which fines, if unpaid, shall become special assessments.

F. Owners of each lot in the Subdivision, whether residential or commercial, shall bear responsibility for, and shall from time to time be assessed through a Association assessments, an equal portion of the regular, reconstruction and capital improvement assessments. Owners shall also bear responsibility for special assessments, if any, assessed against them. Any unpaid assessment shall become a lien on a lot, as is set forth in this Declaration.

G. Subsequent to the sale of the last lot owned by the Declarant, unless previously transferred, the Association shall be controlled by Association members in accordance with Arizona law applicable to property owner associations, the articles of incorporation, bylaws, rules and regulations. In the event of a conflict between the articles of incorporation, bylaws, and Association rules, regulations, county, state or federal law or administrative regulations and this Declaration, the provisions of this Declaration shall control to the maximum extent permitted by law.

8. **RIGHT TO ENFORCE:** As long as Declarant retains an interest of any kind, whether ownership, lienholder or other right, Declarant shall, without liability for failure to do so, have the right to enforce any of the provisions of this Declaration. The Association shall have the concurrent power to enforce all provisions of this Declaration and shall have and retain the power to enforce if, or when, the Declarant does not enforce, or no longer enforces, the provisions of this Declaration. Any accommodation of owner or forbearance to strictly enforce a provision of this Declaration or Association rule shall not be deemed waiver of the Declarant's and the Association's power to enforce this Declaration and Association rules for or against a continuing or additional violation, failure to comply or failure to pay.

9. **ENFORCEMENT:** The provisions of this Declaration, including any violation of or failure to comply with the provisions of this Declaration, may from time to time be enforced in accordance with the following:

A. Appropriate proceeding at law or in equity against any person or entity violating or

attempting to violate any provisions of this Declaration including, but not limited to, proceedings to enjoin, restrain and/or recover damages.

B. In the event any owner or other occupant of a lot shall commit a violation, including, but not limited to, failure to comply with any provision of Section 6 of this Declaration, or otherwise fails to comply with the covenants, restrictions, conditions or terms of this Declaration, or with any Association rule properly adopted, and such violation is not corrected within fifteen (15) days (or sooner in emergent circumstances) after written notice thereof from Declarant or the Association, the Declarant, the Association, their respective agents or representatives shall have the right, power and privilege to enter upon such lot and make any and all corrections or improvements that may be necessary to correct such violation; to assess that owner a fine; to charge the owner of such lot for the expense incurred in such correction through a special assessment by Declarant or the Association and within ten (10) days after demand for reimbursement to pursue any and all available rights and remedies against such owner and/or lot pursuant to this Declaration and/or applicable all, including the right to lien such lot for such special assessment. Any special assessment so charged may include the attorneys fees and costs incurred by the Association in any way related to the enforcement of the provisions of the Declaration, the imposition of a special assessment and the collection thereof, which attorneys fees and costs shall become a part of that special assessment.

C. If any assessment is not paid within fifteen (15) days after the date after a request for payment thereof has been made in writing, the unpaid balance shall bear interest from the date of the delinquency until paid, at the highest legal rate allowed by law. The amount of such unpaid assessment, together with interest thereon and attorneys' fee and other costs incurred in the enforcement of this Declaration and/or in the collection of the assessment shall become and remain a lien upon the lot against which assessments were made [i.e.; "the lien lot"] as of the time a notice of such lien is recorded in the Office of the La Paz County Recorder, Arizona and shall, as well, be and remain the personal obligation of the owner of the lien lot at the time the lot was lien.

1. Except as set forth in Paragraph (C), above, the lien for any assessment shall be subordinate to the lien of any prior deed of trust or mortgage then existing upon any lot.

2. In addition to all other legal and equitable rights and remedies available hereunder, an action at law may be brought against any owner who is obligated to pay any sum due hereunder, and/or a lien lot may be judicially foreclosed against in the manner provided by law for the foreclosure of realty liens or mortgages, and the attorneys fees and costs incurred in any such action or foreclosure proceeding there shall be added to the amount of such unpaid sum or any portion thereof, the interest thereon and all costs and expenses including reasonable attorneys' fees incurred in collecting the delinquent assessment.

D. The Board shall be authorized to serve any lot owner notice to remove or properly dispose of junk or debris of any kind which has accumulated on a lot. If the lot has not been

cleaned and otherwise brought into compliance with this Declaration to the satisfaction of the Board within thirty (30) days from the date the notice is received by the lot owner the Board, or its representative, shall have the right, power and privilege to enter upon such lot, without liability therefor, to remove and dispose of any and all junk or debris which initiated the notice. All expenses incurred as a result of such action shall be reimbursed by the lot owner and shall, if not reimbursed within 30 days after written request therefor, become a special assessment. The Board may immediately remove any thing or vehicle placed on the taxiways or landing area which constitutes a hazard to aircraft operation and may charge a reasonable fee for the removal of such thing or vehicle to a safe storage place without further liability therefor. Any such fee or expense incurred by the Association shall, if unpaid by the offending owner, shall become a special assessment which, if unpaid, shall be come a lien on the offending owner's lot.

E. Additional Remedies: The Board may establish a schedule of late fees and interest on any assessment, penalty or other amount not paid to the Association withing 15 days after its due date under this Declaration or the Rules. During such time as any owner is not in compliance with any obligation of such owner to the Association under this Declaration or the Rules, the Board may assess the Owner a monetary penalty and/or suspend the voting privileges of said owner.

1. Any unpaid assessment, fine, or penalty shall become, in the discretion of the Board, a special assessment. Any special assessment, regardless of its source or cause shall, if unpaid, become a lien on the owner's lot. The Association may bring an appropriate action to enforce any special assessment which has become a lien upon an owner's lot.

2. In addition to the forgoing rights and remedies of the Association, the provisions of this Declaration may be enforced by any Owner, by Declarant while the Declarant is an owner of any lot or otherwise interested in the property, including a security interest, or by the Association. The provisions of this Declaration may be enforced by an action ro recover money damages, attorneys fees and costs, to seek an injunction, or to seek specific performance of any affirmative covenant. The prevailing party shall be entitled to recover its attorneys fees and costs in connection with any enforcement action including, but not limited to, notice of violations or default, demands for compliance, negotiations, and legal proceedings or arbitration proceedings related to the enforcement of this Declaration. Each owner, the Declarant and the Association shall have all rights and remedies available to it under this Declaration or applicable law, and all such rights and remedies are cumulative and not exclusive.

10. BLANKET EASEMENT: There is hereby created a blanket easement upon, across, over and under the property for airport operations, ingress, and egress over existing roadways, taxiways and runways, and for installing, constructing replacing, repairing, maintaining and operating all utilities including, but not limited to, water, sewer, gas, telephone, electricity, television and other cable, security systems, and communication lines and systems, and as well, for the use of emergency vehicles of all types. It shall be expressly permissible for the Declarant or a providing utility company to erect and maintain the necessary facilities, pipes, lift stations, wires, circuits, conduits, cables, and related appurtenances, facilities and equipment on the Property. The

Board may, in its discretion, require any utility company, prior to the installation, maintenance or repair of any utility, to deposit with the Board a sufficient bond or other security to enable the Board to cause any damage to the common areas caused by such utility company, its agents or activities (including but not limited to malfeasance or nonfeasance) to be repaired and the common areas affected placed in a condition equivalent to that which existed prior to the installation, maintenance or repair. Notwithstanding anything to the contrary herein, no easements shall be created nor shall any sewers, electrical lines, water lines or other provisions for utilities be installed or relocated except as initially created and approved by the Declarant or as thereafter created or approved by the Association. This provision shall not affect any other recorded easements specifically recorded on the property.

11. **USE OF COMMON AREAS:** Except as otherwise specifically limited herein, each owner shall have the non-exclusive right to use the common areas in common with all other owners and members as required for the purposes of such common area. Such right to use the common areas for such purposes shall be subject to this Declaration and the Association rules, which shall extend to each owner, member, occupant and the agents, servants, tenants, family members and guests or invitees of each owner or member.

10. **PRIORITIES:** No violation of this Declaration shall restrict, impair or defeat the lien of any mortgage or deed of trust or other encumbrance now existing or hereafter made in good faith and for value of any encumbrance now existing or hereafter made in good faith and for value of any lot or portion thereof, or restrict, impair or defeat any right or power of sale or other remedy contained therein, or limit or prevent the foreclosure thereof; however, that:

A. Any lien against a liened lot made a matter of record prior to the recording of any such mortgage, deed of trust or other encumbrance shall be entitled to all priorities provided by applicable law; and

B. Any subsequent owner of any lot or interest therein shall be subject to and bound by all provisions of this Declaration regardless of whether such ownership interest was acquired by foreclosure, trustee sale, deed in lieu of foreclosure or otherwise.

11. **BINDING EFFECT:** The provisions of this Declaration shall run with the land and the title thereto, and shall extend to and be binding upon all persons, legal entities, grantees, their successors and assigns, and any owner or lessee of any person or legal entity having an interest in the property of any lot. This Declaration shall remain in full force and effect for a period of twenty (20) years from the date this Declaration is recorded in the office of the La Paz County Recorder, and shall be deemed renewed for successive ten (10) year periods unless amended as provided herein.

12. **WAIVER OR ABANDONMENT:** The waiver of, or failure to enforce, any breach or violation of any provision contained in this Declaration, shall not be deemed a waiver or abandonment of such provisions, or a waiver of the right to enforce any subsequent breach or

violation of such provisions. The foregoing shall apply regardless of whether any person affected hereby, or having the right to enforce these provisions had knowledge of the breach or violation. No provision contained herein shall be deemed to have been waived or abandoned unless this Declaration is amended to delete such provision pursuant to Paragraph 17.

13. **EQUAL TREATMENT OF OWNERS:** This Declaration shall be applied to all owners without discrimination.

14. **SEVERABILITY:** The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the remaining portions of this Declaration or any part thereof, all of which are inserted conditionally upon their being held valid in law. In the event that one or more of the phrases, sentences, clauses, paragraphs or sections contained herein should be invalid, ambiguous or otherwise unenforceable, in whole or in part, such phrase, sentence, clause or paragraph shall be deemed amended so as to most closely effectuate the purposes of the Declarant as set forth herein.

15. **GENDER:** The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities, or individuals, men or women, shall in all cases be assumed as through in each case fully expressed.

16. **HEADINGS:** The marginal or topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of this Declaration.

17. **AMENDMENT:** Any amendment, modification or revocation of this Declaration shall require a writing executed and notarized by not less than seventy five percent (75%) of the lot owners of the Property, which writing shall not become effective until it has been recorded in the La Paz County Recorder's Office, Parker, Arizona.

18. **VIOLATION OF LAW:** Any violation of any federal, state, municipal or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any property subject to this Declaration is hereby declared to be in violation of this Declaration and subject to any or all of the enforcement procedures set forth herein. Nothing in this Declaration shall abrogate any unequivocal right reserved to Association members under Arizona law.

19. **GOVERNING LAW:** This Declaration and the rights and obligations of the parties hereunder shall be construed in accordance with, and be governed by, the laws of the State of Arizona. Venue for any proceeding regarding the interpretation, enforcement or violation of this Declaration shall be in the La Paz County, Arizona.

20. **APPLICABLE LAW:** In the event any provision of this Declaration conflicts with or is inconsistent with any law of the County of La Paz or other governmental authority having jurisdiction over the property ["applicable law"], such applicable law shall be deemed to control to

the extent of such conflict or inconsistency, in the event any revision of this Declaration is consistent with, but more restrictive than, applicable law, such provision of this Declaration shall apply.

IN WITNESS WHEREOF, the undersigned has executed this Declaration on the date shown.

Western Sky Airpark, LLC, an Arizona Limited Liability Company, by:

Donald H. Miller
it managing member.

Date: 11/3/04

STATE OF ARIZONA)
)
County of La Paz)

The foregoing Declaration of Covenants, Conditions and Restrictions was acknowledged before me this 3 Day of Nov, 2004, by DONALD H. MILLER as managing member of Western Sky Airpark, LLC, an Arizona Limited Liability Company.

My commission expires: 6/16/07

[Signature]
Notary Public



EXHIBIT "A"

PARCEL NO. 1:

The East half (E $\frac{1}{2}$) of the Northwest quarter (NW $\frac{1}{4}$) of Section 17, Township 5 North, Range 13 West of the Gila Salt River Base and Meridian, records of Yuma (now La Paz) County, Arizona.

EXCEPT the North 33.00 feet thereof;

PARCEL NO. 2:

The Southwest quarter (SW $\frac{1}{4}$) of the Northwest quarter (NW $\frac{1}{4}$) of Section 17, Township 5 North, Range 13 West of the Gila and Salt River Base and Meridian, Yuma (now La Paz) County, Arizona.

PARCEL NO. 3:

The North half (N $\frac{1}{2}$) of the Southwest quarter (SW $\frac{1}{4}$) of Section 17, Township 5 North, Range 13 West, of the Gila Salt River Base and Meridian, records of Yuma (now La Paz) County, Arizona.

