

DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS, DISCLOSURES AND EASEMENTS
OF
STEARMAN ESTATES 2nd

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS OF STEARMAN ESTATES 2nd (“Declaration”), made and entered into this _____ day of _____, 2008, by STEARMAN ESTATES L.L.C., a limited liability company created under the laws of the State of Kansas (“Declarant”).

RECITALS:

A. Declarant is the owner of certain property in Benton, Butler County, Kansas which is described herein as the “Property”;

B. In order to ensure the proper development thereof and adequate maintenance and government of the Common Area (as defined below) and the rights of Owners, it is necessary to establish binding covenants, conditions and restrictions applicable to the Property; and

C. It is the purpose and intention of the Declarant that the Property shall be held and /or conveyed subject to the provision of this Declaration; and

D. There shall be established the Stearman Estates 2nd Owners’ Association (the “Association”), consisting of the Owners of the Lots included, the principal purpose of which will be to enforce the provisions of the Declaration.

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

ARTICLE 1

Additional Definitions

Section 1.01. “Board” shall mean the Board of Directors of the Association (as defined in the recitals above).

Section 1.02. “Building” shall mean any structure having a roof, supported by columns or by walls and intended for shelter, housing or enclosure of any person, animal or chattel.

Section 1.03. “Building Height” shall mean the vertical distance measured from the established ground level to the highest point of the structure. Chimneys and ornamental architectural projections shall be included in calculating the height.

Section 1.04. “Declarant” shall mean Stearman Estates, L.L.C, a Kansas Limited Liability Company, and its successors and assigns; provided any such successors or assigns shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the Property, and provided further, in the instrument of conveyance to any such successor or assign, such successor or assign is designated as the “Declarant” hereunder at the time of such conveyance; provided, further, upon such designation of successor Declarant, all rights and obligations of the former Declarant in and to such status as “Declarant” hereunder shall cease, it being understood that as to all of the Property, there shall be only one person or legal entity entitled to exercise the rights and powers of the “Declarant” hereunder at any one time.

Section 1.05. "DRC" shall mean the design review committee referenced in Section 6.01 hereof.

Section 1.06. "Hangar" shall mean a structure having a roof, supported by walls or columns and shall be known and described as single family residential and intended for the shelter, housing or enclosure of any person, aircraft, vehicle, animal or chattel.

Section 1.07. "Lot" shall mean each platted lot located within Block C of Stearman Estates 2nd, plus the portion, if any, of any platted reserve within Block C conveyed by the Declarant or the Association to an Owner; provided, that where land has been attached or detached from any Lot, the enlarged or diminished Lot shall be deemed to be a "Lot" and two or more Lots which are combined into a single building site shall be deemed one "Lot" hereunder.

Section 1.08. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to a Lot, excluding Owners who have sold their interest under an executory contract; during the term of such a contract, the purchaser shall be considered the Owner hereunder.

Section 1.09. "Property" shall refer to the Lots and the Common Area.

Section 1.10. "Structure" shall mean anything erected or constructed, the use of which requires more or less permanent location but may include a mobile object, on or in the ground, or attached to something having a permanent location on or in the ground.

ARTICLE 2

Association Membership and Voting Rights

Section 2.01. Formation of the Association. The Association shall be organized as a nonprofit corporation for a perpetual term under the laws of the State of Kansas.

Section 2.02. Membership. Membership in the Association shall be mandatory for each Owner. All Owners shall, upon becoming such, be deemed automatically to have become members, and there shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from, the ownership of a Lot.

Section 2.03. Voting Rights. All Owners, so long as they shall qualify under this Article 2, shall be entitled to vote on matters submitted to a vote at a meeting of the members. Each member of the Association shall have two (2) votes for each Lot owned by such Owner subject to the following exceptions and conditions.

A. The Association shall have one class of voting membership.

i. Class A. Class A Members shall be all of those owners in Stearman Estates 2nd defined in Section 2.02 of this Article 2, its successors and assigns.

B. When any Lot is owned or held by two Owners, as tenants in common, joint tenancy, or any other manner of joint or common ownership or interest, an Owner may cast one vote and the other the second vote; when a Lot is owned by more than two Owners, such Owners shall collectively be entitled to only two votes relative to such Lot, and if such Owners

cannot jointly agree as to how that vote should be cast, no vote shall be allowed with respect to such Lot.

C. Any Owner who is in violation of the Declaration, as determined by the Board, shall not be entitled to vote during any period during which such violation continues. Any Owner who fails to pay any assessments established pursuant to the terms hereof shall not be entitled to vote during the period in which such assessments are due and unpaid. The Board shall be the sole judge of the qualification of each Owner to vote and the right to participate in meetings and proceedings of the Association; and

D. Notwithstanding the foregoing, Declarant shall be entitled to nine (9) votes for each single Lot owned by it.

E. The Board shall adopt such bylaws, consistent with the terms hereof, the articles of incorporation and the laws of the State of Kansas, as it deems advisable for any meeting of Owners with regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Owners for voting purposes, voting by proxy and such other matters concerning the conduct of meetings and voting as it shall deem proper.

Section 2.04. Initial Operation. Notwithstanding the provisions of this Declaration, the operation of the Association and the Board shall be within the absolute and exclusive control of the Declarant until such time as Declarant fully and completely transfers its rights pursuant to Section 8.01 B below, written notice of which transfer shall be given to the Association by Declarant. During the initial operation of the Association and the Board by Declarant, Declarant may perform and exercise any and all rights and obligation hereunder related to the Association and the Board, and shall appoint and remove in its discretion the members of the Board. Each Owner, by acceptance of a deed to a Lot, vests Declarant with the authority to fully exercise its rights under this Section 2.04 and in Sections 8.01 B and 6.07 hereof. Further, the appointment of the members of the DRC, pursuant to Section 6.07 hereof, shall be made by Declarant until such time as Declarant specifically assigns such right by written instrument to the Association, separately and apart from the transfer of Declarant's rights under Section 8.01 B hereof.

Section 2.05. Board of Directors. After Declarant has turned over operation of the Association to the Members, all actions of the Association shall be taken by the Board of Directors, except for (a) when a vote of the members is specifically required by the Declaration, the Articles of Incorporation, or the Bylaws, and (b) the initial operation thereof by Declarant as referenced herein.

ARTICLE 3

Provisions Concerning the Common Area

Section 3.01. Easements in Common Area. There shall be conveyed to the Association certain reserves to be held as "Common Area", said term to describe such property held by the Association, as the context requires. Declarant hereby dedicates and conveys to each Member a right and easement of enjoyment in and to the Common Area and hereby covenants for itself, its successors and assigns, that it will convey a fee simple title to the Common Area to the Association subject to liens and encumbrances of record. The Association shall be responsible for the payment of taxes and insurance on the Common Area and for the proper maintenance of the open spaces and for compliance with this Agreement. The title to the common Area shall be

subject to the rights and easement of enjoyment in and to such Common Area by its Members. Said easement shall not be personal but shall be considered to be appurtenant to said Lots, whether specifically set forth in deeds to the Lots or not.

Section 3.02. Regulation. The Association shall have the authority to make and enforce regulations pertaining to the use of and maintenance of the Common Area, which regulations shall be binding upon the Members and all residents of the property subject to the Declaration.

Section 3.03. Description of Common Area. The Common Area to be conveyed to the Association and the use thereof are associated appurtenances, drainage and landscaping areas, and utilities confined to easements within and only in Reserve C as described on the plat of Stearman Estates 2nd, recorded in the Office of the Register of Deeds in Butler County.

Section 3.04. Reservation of Rights in the Common Area. Notwithstanding any other provision of this Declaration, Declarant reserves for itself and the Association the right to grant easements within the Common Area for the installation, repair, and maintenance of taxiway access, walkways, water mains, sewers, drainage courses, and other utilities; provided that such access, walkways and utilities shall be installed in such manner as to minimize damage to the natural features of the Common Area. Declarant reserves the right and declares that a Taxi Access exists in the Common Area and that a Taxi Easement Right has been granted to owners of property adjoining Stearman Estates 2nd to the East. Additionally, Declarant specifically reserves for itself, its successors and assigns, and for the Association, a perpetual, non-exclusive easement and right-of-way to enter upon any Lot as reasonably necessary in order to construct, install, erect, maintain, improve, repair and/or replace any landscaping, sprinkler systems, electric meters and lines and water meters and lines associated therewith or any utility and/or drainage easement shown on the current or any future plat of the Property, or located on any Lot due to oversight.

Section 3.05. Maintenance and Other Common Expenses. The Association shall maintain and keep in good repair and appearance the Common Area, including, without limitation, all landscaping and improvements, all grass, trees, shrubbery or other plantings, walls, informational and directional signage installed by Declarant within the Common Area, and any other property such as the taxiway access easement as described on the plat of Stearman Estates 2nd, that the Declarant or the Association designates as a maintenance obligation of the Association. Further, the Association shall bear the responsibility for all utility charges incurred because of fountains, lights, and sprinkler systems or other equipment that are installed on or about the Common Area, and shall pay all insurance premiums attributable to or connected with any portion of the Common area or the activities of the Association.

Section 3.06. No Security Assurances. The Declarant makes no assurances that the community will be secure from access by nonresidents or undesirable persons. Each owner and his or her family should be aware that entry into the Property may be gained by multiple means.

ARTICLE 4

Assessments

Section 4.01. General Assessments. Except as specifically provided in this Article, all Lots shall be subject to a charge to be assessed under this Declaration, which assessments are to be paid by the respective Owners thereof to the Association, in advance, on the 1st day of January, in each year; provided, the Board may permit the general assessment charge to be paid annually,

semiannually, or quarterly. The obligation of any Owner to pay such assessments shall commence upon purchase of a Lot (or such later date as may be designated by Declarant), and is not dependent upon there being improvements erected thereon. Suspension of the right to use the Common Area or voluntary non-use thereof shall not relieve any Owner of the obligation to pay assessments. Neither shall any Owner have any right to withhold payment of assessments hereunder by virtue of the non-payment thereof by any other Owner or the violation of these covenants, conditions, and restrictions or any rule or regulation promulgated by the Declarant, Association or any other Owner. The amount of the initial general assessment shall be established by Declarant and shall commence on the date specified by Declarant upon notice given to the Owners. In the event a Lot is initially transferred by Declarant other than the 1st day of any calendar year, the general assessment for such year shall be prorated and paid at the time of such transfer.

Section 4.02. Determination of General Assessments. Each year the Board or the Declarant on behalf of the Board shall, prior to January 1, (or as soon thereafter as practicable), determine the total amount to be raised by the general assessment charges for the next succeeding year. Subject to any exemptions permitted by this Declaration, each Lot shall be assessed an equal amount for general assessments. Should the Board at any time determine, in its sole discretion, that the assessments levied are or may prove to be insufficient to pay the costs of operation and maintenance of the Association, or in the event of emergencies, the Board shall have the authority to levy such additional assessment or assessments as it shall deem necessary.

Section 4.03. Basis of Assessment; Exemption; Proration.

A. Assessments for the maintenance and upkeep of the Stearman Field runway and taxiways shall be separately levied on each Owner. Owners shall pay the Association who shall then pay Benton Airpark, Inc. the full monthly assessment and who then shall be entitled to all the privileges of such membership. An assessment of \$50.00 per month is currently set by Benton Airpark, Inc. for each Lot. Benton Airpark, Inc. shall have the right, in its sole discretion, to increase or decrease said assessment annually as it shall deem necessary but not to exceed twenty percent (20%) above the previous year assessment.

B. All general assessments shall be made against the Owners on an equal basis for each Lot or fraction thereof owned by the Owner or Owners, except that Declarant shall be exempt from imposition of any assessment, whether general or special, with respect to any Lot so long as Declarant holds legal title thereto.

C. In the event any Lot would be subject to a general or special assessment in any calendar year, if it were not for an exemption available under subparagraph B immediately above, at such time as such exemption is no longer in effect during such calendar year, the applicable general or special assessment shall be prorated for such year (based on the remaining portion of such year) and be paid by the then Owner.

Section 4.04. Maximum General Assessment.

A. From and after the year in which the initial general assessments are established by Declarant pursuant to Section 4.01 above, the general assessments assessed pursuant to this Article 4 may be increased for any subsequent year to an amount which is no more than twenty percent (20%) above the maximum permitted general assessment for the previous year without a vote of the Owners.

B. The general assessments assessed pursuant to this Article 4 for any year may be increased to any amount greater than that permitted by subsection "A" of the Section only by an affirmative vote of two-thirds (2/3) of the votes of the Owners in attendance, who are voting in person or by proxy, at a meeting duly called for such purpose or at an annual meeting of the Association.

C. The Board may fix the annual assessment at an amount not in excess of the maximum amount set forth in this Section.

Section 4.05. Use of General Assessment Funds. The Association general assessment fund, shall be used for such of the following purposes as the Board or the Declarant on behalf of the Board shall determine necessary and advisable: for the use, benefit and enjoyment of the Owners, including improving, maintaining, repairing and replacing the Common Area and improvements thereon, except as otherwise provided herein, which shall, include, but are not limited to, expenses incurred in connection with: the proper operation and maintenance of any facilities and improvements located within the Common Area; collecting and disposing of garbage and rubbish; removing grass or weeds; snow removal; constructing, purchasing, maintaining, or operating any community service including publishing a directory of the membership of said Association; payment of insurance premiums; expenses incidental to the enforcement of this Declaration, the articles of incorporation, bylaws, and rules and regulations established by the Board or DRC; the payment of operating expenses of the Association; social activities involving the members of the Association; doing any other thing necessary or advisable in the opinion of the Board for the general welfare, safety, and enjoyment of the Owners and/or for any other purpose within the purposes for which the Association is incorporated. The Board shall expend such portion of the assessment fund as shall be necessary in order to maintain the Common Area in a good quality condition and shall not have the authority to reduce standards of maintenance below such level without the vote of two thirds (2/3) of the votes of the Owners of the Association who are in attendance, in person or by proxy, at a meeting duly called therefor.

Declarant shall construct or install roads, walls, fences and equipment and appurtenances within the Common Area as Declarant may in its sole discretion determine. Upon the installation of such, the future maintenance, repair and replacement thereof, shall be the responsibility of the Association.

Section 4.06. Damage by Owner. Notwithstanding anything to the contrary appearing elsewhere herein, in the event that any wall, fence, hedge, landscaping or other improvements within the Common Area is damaged or destroyed through the negligence of an Owner, including, but not limited to failing to correct faulty drainage or improper use of weed killer, such Owner shall be responsible for the cost of replacement thereof.

Section 4.07. Special Assessments for Capital Improvements. In addition to the other assessments authorized by this Article 4, the Association may levy, in any assessment year, a special assessment against the Lots not owned by Declarant applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Owners in attendance, who are voting in person or by proxy, at a meeting duly called for such purpose or an annual meeting of the Association.

Section 4.08. Interest on Delinquent Assessments. All assessment charges hereunder which shall remain due and unpaid thirty (30) days after they are due shall thereafter be subject to interest at the rate as established from time to time by the Board but in no event less than eighteen percent (18%) per annum or the maximum rate permitted by applicable law, whichever is lower.

Section 4.09. Lien for Delinquent Assessments. Delinquent assessment charges hereunder (whether general or special) shall be a lien and encumbrance on the Lot with respect to which said charge is made, as well as the personal obligation of the Owner. By the acceptance of title to a Lot, the Owner (not including thereby any mortgagee as long as it is not the Owner) from the time of acquiring title thereto shall be held to have covenanted and agreed to pay to the Association all such charges which were then due and unpaid to the time of acquiring the title thereto and all such charges thereafter falling due during such owner's ownership thereof. A certificate in writing issued by the Association or its agent setting forth the status of said charges shall be given on demand to any Owner or prospective purchase, which certificate shall be binding upon said parties.

Section 4.10. Subordination of Assessment Lien. The liens provided for herein shall be superior to all other charges, liens, or encumbrances which may thereafter in any manner arise or be imposed upon the Lot, whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, or other instrument, saving and excepting only such liens for taxes and other public charges as are applicable law made superior. Sale or transfer on any Lot shall not affect the assessment lien; provided, the sale or transfer of any Lot, which is subject to any mortgage, pursuant to a decree of foreclosure under such mortgage or any conveyance in lieu of foreclosure thereof, however, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 4.11. Right of Association to Enforce Payment of Assessment. By the acceptance of title, each Owner shall be held to vest in the Association the right and power to prosecute all suits, legal, equitable, or otherwise, which may be necessary or advisable for the collection of such charge or charges, and the Association shall have the right to sue for and collect a reasonable sum to reimburse it for its attorneys' fees and any other expenses reasonably incurred in enforcing its rights hereunder. At any time after an assessment (whether general or special) against any Lot has become a lien and delinquent, the Association may record in the office of the Register of Deeds, Butler County, Kansas, a Notice of Delinquency as to such Lot, which notice shall state therein the amount of such delinquency and that it is a lien and the interest, costs (including attorney's fees) and penalties which have accrued thereon, and description of the Lot against which the same has been asserted and the name of the Owner thereof, and such notice shall be signed by an officer of the Association. Each lien established pursuant to the provisions of this Declaration and which is specified in a Notice of Delinquency as hereinabove provided, may be foreclosed in a like manner as a mortgage on real property as provided by the laws of Kansas at any time within twenty (20) years following recording the Notice of Delinquency. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration or documentation associated therewith (whether such liens are now in existence or are created at any time in the future) the benefit of any redemption, homestead or exemption laws of the State of Kansas now in effect, or in effect from time to time hereafter.

Section 4.12. Personal Liability. In addition to the covenants and agreements theretofore set forth herein, each Owner, by the acceptance of a deed for a Lot, whether or not it shall be so expressed in such deed, shall be deemed to have agreed to be personally liable for the payment of

each assessment levied hereunder (whether general or special) against such Lot during the period of ownership (subject to the exemptions specified in Section 4.03 above).

ARTICLE 5

Covenants for Maintenance; Enforcement

Each Owner shall keep each Lot owned by it, in good order and repair. Each Owner's obligation hereunder shall commence upon the acquisition of such Owner's Lot.

If in the opinion of the DRC, any Owner fails to perform such duties, or otherwise breach such Owner's obligations as specified in this Declaration, the Association, upon approval by the Board and after fifteen (15) days written notice to such Owner to remedy such default, shall have the right (in addition to any other rights and remedies available hereunder or at law or equity), through its agents and employees, to enter upon the Lot or Lots involved and to repair, maintain, repaint, remove, and restore such Lot or Lots or such improvements, or otherwise bring such Lot or such improvements into conformity herewith and the cost thereof (hereinafter sometimes called the "Compliance Charge") shall be a binding personal obligation of such Owner which may mature into a lien enforceable in the same manner as a mortgage upon the Lot(s) in question in the following manner: The Association may record an Affidavit of Nonpayment of Compliance Charge in the Office of the Register of Deeds of Butler County, Kansas, stating (a) the legal description of the property upon which the lien is claimed, (b) the names(s) of the Owners(s) of said property as last known to the Association, and (c) the amount of the Compliance Charge which is unpaid. The lien may be foreclosed in the like manner as a mortgage on real property as provided by the laws of Kansas at anytime within twenty (20) years following recordation of the Affidavit of Nonpayment of Compliance Charge. In any action to foreclose any such lien, the Association shall be entitled to recover its cost, including reasonable attorney's fees, and such penalties for delinquent charges and assessments as shall have been established by the Association. The lien referenced herein shall be created at the time of the filing and recording of the Affidavit and such lien shall be superior to all other charges, liens, or encumbrances which may thereafter in any manner arise or be imposed upon the Lot, whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, or other instrument, saving and excepting only such liens for taxes and other public charges as are by applicable law made superior. The Compliance Charge shall accrue interest at the rate established from time to time by the Board, but in no event less than eighteen percent (18%) per annum or such lesser rate as permitted by law.

ARTICLE 6

Architectural Control; Builder Approval

Section 6.01. Approval Required. No Hangar, Building, Structure, fence, wall, projection from a Structure, or improvement shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein or thereto be made, until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing by the design review committee (hereafter the "DRC"), its agents, assignees, or successors, as to (a) harmony of external design and location in relation to and effect upon surrounding Structures, topography and the overall community design of the Property; (b) the character and color of the exterior materials and lighting; (c) the quality of the exterior workmanship; and (d) the location thereof on the Lot.

Section 6.02. Form of Plans and Specifications. Any Owner seeking approval of the DRC shall, at such Owner's expense, submit plans and specifications in such form and shall contain such information as may be required by the DRC, but in any event shall include a site plan of the Lot or Lots showing the nature, exterior color scheme, kind, shape, height, materials, and location with respect to the particular Lot or Lots (including proposed front, rear, and side set-backs) of all Structures.

Section 6.03. Retention of Approved Plans and Specifications. Upon approval by the DRC of any plans and specifications submitted hereunder, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the Association, and a copy of such plans and specification bearing such approval in writing, shall be returned to the applicant submitting the same.

Section 6.04. Removal and Alteration of Structures, Liens.

A. If any Structure shall be altered, erected, placed, or maintained upon any Lot, or any new use commenced on any Lot, otherwise than in accordance with plans and specifications approved by the DRC pursuant to the provisions of this Article, such alteration, Structure, maintenance, or use shall be deemed to have been undertaken in violation of this Article and without the approval required herein, and, upon written notice from the DRC, any such Structure so altered, erected, placed, or maintained upon any Lot in violation hereof shall be removed or altered, and any such use shall be terminated by the Owners(s) of such Lot within a reasonable period of time established by the DRC, so as to extinguish such violation.

B. If fifteen (15) days after notice of such a violation the Owner of the Lot upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same, and continued the pursuit thereof with diligence, the Association or the DRC shall have the right, through their agents and employees, to enter upon such Lot and to take such steps as may be necessary to extinguish such violation, and the cost of such removal and alteration shall be a binding, personal obligation of such Owner and, if not paid in full by such Owner on demand by the Board, the cost shall mature into a lien upon the Lots(s) in question in the following manner: The Association or the DRC shall record an Affidavit of Nonpayment of Removal or Alteration Charges in the Office of the Register of Deeds of Butler County, Kansas, stating (i) the legal description of the property upon which the lien is claimed, (ii) the names(s) of the Owners(s) of said Lot as last known to the Association, and (iii) the amount of the removal and alteration charges which are unpaid. The lien shall be created at the time of the filing and recording of the affidavit and such lien shall be superior to all other charges, liens, or encumbrances which may thereafter in any manner arise or be imposed upon the Lot whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, or other instrument, saving and excepting only such liens for taxes or other public charges as are by applicable law made superior. The lien may be foreclosed in the like manner as a mortgage on real property as provided by the laws of Kansas at anytime within twenty (20) years following recordation of an Affidavit of Nonpayment of Removal or Alteration Charges. In any action to foreclose any such lien, the Association shall be entitled to recover its costs, including reasonable attorney's fees, and such penalties for delinquent charges and assessments as shall have been established by the Association. The lien referenced herein shall be created at the time of the filing and recording of the affidavit and such lien shall be superior to all other charges, liens, or encumbrances which may thereafter in any manner arise or be imposed upon the Lot, whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, or other instrument, saving and excepting only such liens for taxes and other public charges as are by applicable law made superior. The costs incurred by the Association shall accrue interest at the

rate established from time to time by the Board, but in no event less than eighteen (18%) per annum or such lesser rate as permitted by law.

C. In the event a lien is created pursuant to this Section and thereafter the Removal or Alteration Charges, plus accrued interest and penalties and other costs and expenses shall be fully paid, the Association or the DRC shall, within ten (10) days following payment, file with the Register of Deeds of Butler County, Kansas, an Affidavit of Payment or Removal or Alteration charges, which affidavit shall (i) refer to and identify the Affidavit of Nonpayment of Removal or Alteration Charges which created the lien which has been satisfied, (ii) state the legal description of the Lot affected, and (iii) state the names(s) of the Owners(s) of the Lot.

Section 6.05. Certificate of Compliance. Upon completion of the construction or alteration of any Structure in accordance with plans and specifications approved by the DRC, it shall, upon written request of the Owner thereof; issue a Certificate of Compliance in form suitable for recordation, identifying such Structure and the Lot on which such Structure is placed, and stating that to the best knowledge of the DRC without extensive review or inspection of the Structure, the plans and specifications, the location of such Structure, and the use or uses to be conducted thereon have been approved and that such Structure complies therewith. Preparation and recording of such Certificate shall be at the expense of such Owner. All costs and expenses incurred by the DRC in evaluating compliance with such plans, specifications and other matters and in preparation and recordation of the Certificate of Compliance, shall be paid by the requesting party and the time specified by the DRC. Any Certificate of Compliance issued in accordance with the provisions of this Section shall be prima facie evidence of the facts therein stated, and, as to any purchaser or encumbrance in good faith and for value, or as to any title insurer or title examiner, such Certificate shall be conclusive evidence that all Structures on the Lot, and the use or uses described therein comply with all the requirements of this Declaration as to which the DRC exercises any discretionary or interpretive powers.

Section 6.06. Right of Inspection. A representative of the Board or DRC or any of its agents thereof may, at any reasonable time or times, enter upon and inspect any Lot or any improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration of Structures thereon are in compliance with the provisions thereof; and neither the DRC, the Association, nor any such agent, shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

Section 6.07. Membership of DRC. The original member(s) of the DRC shall be one or more persons appointed by Declarant. Upon the death or resignation of any member of the DRC, or the removal of a member by Declarant, Declarant shall appoint a successor, unless at such time, Declarant has relinquished its rights hereunder as hereinafter provided. In such event, the Association shall have full authority to designate a successor. The act of a majority of the committee shall be binding and the majority of the committee may designate a representative to act for it. Declarant shall retain its rights hereunder until the same are relinquished by Declarant to the Association by written instrument. At such time as Declarant desires to do so, Declarant shall relinquish its rights or any portion thereof under this Section to the Association by advising the Association in writing of its intent to do so.

Section 6.08. Initial Policy Guidelines. The following initial policy guidelines have been established and the same may be changed from time to time pursuant to the provisions of Section 6.01 hereof but without the necessity of filing any formal amendment to this Declaration. Accordingly, inquiry should be made of the DRC to determine current policy guidelines.

A. It is expressly understood that Stearman Estates 2nd is an Aviation Community and is intended to remain so in perpetuity. The primary purpose of a Hangar is to shelter, house or enclose any aircraft, vehicle and/or person. Other purposes are permitted pursuant to the provisions of the Declarations set forth in this document so long as an aircraft is being stored in the Hangar. Testamentary transfers of such property will not be subject to this requirement until such time as said title transfer has been executed, however, when any Hangar is sold, such sale shall conform to the requirements of this provision.

B. No Outside storage of any type will be permitted without written approval of the Declarant. When such approval is given, the outside storage area shall be totally enclosed with a screening approved by the Declarant so that storage is not visible from the neighboring Hangars.

i. No outside storage is permitted on Lots 1 through 5.

ii. Outside storage areas approved on Lots 6 through 29 are restricted to those portions of the Lot situated behind the Hangar that is oriented towards the east.

C. Outside storage sheds are not permitted.

D. All Hangar, Structure and Building plans and specifications showing the size, shape, materials, color, location of same and exterior lighting shall be submitted to and approved in writing by the DRC.

E. No window shall contain any reflective material such as aluminum foil.

F. No structure constructed on a lot will be more than the height of a slope seven (7) feet horizontally for each one (1) foot vertically beginning at the side of the Stearman Field Airport paved runway nearest the Lot. The sole responsibility for conformance rests with the lot owner.

G. All owners are responsible for keeping their family and guests from trespassing on the Stearman Field Airport runway.

H. Vehicles and personnel must yield to aircraft.

I. Professional or Business activity shall not be conducted in or on any part of a Lot or in any improvements thereon unless specific written approval of the Declarant is given.

J. No hazardous material may be stored in or around hangar.

K. No off-airport fuel service is allowed on the property.

L. No hangar may be used for painting or paint stripping.

M. No noxious, offensive, or dangerous activity or noise or thing shall be carried on or permitted on any Lot, nor shall anything be done which may be or may become an annoyance or nuisance to the property or to others.

N. There shall be no blocking of taxiways.

Section 6.09. Master Drainage Plan – Violation and Enforcement. As part of the platting process, there has been established for the Property and all other portions of the Addition and adjoining real estate a master drainage plan which plan includes appropriate surface water drainage. Construction which impairs the drainage or violates the master drainage plan must be remedied forthwith by such Owner at such Owner's expense. It shall not be Declarant's responsibility to enforce compliance with the master drainage plan and all other Owners in the Property as well as the Association shall have the right to enforce the same against any other Owner.

Section 6.10. Disclaimer as to DRC Approval. Plans and specifications are not reviewed for all systems, mechanical, plumbing, electrical, engineering, or structural design, or quality of materials, and by approving such plans and specifications neither the DRC, the members thereof, nor the Association assumes any liability or responsibility therefore, nor for any defect in any Structure constructed from such plans and specifications. Neither Declarant, the Association, the DRC, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the DRC, the Board, or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, quitclaims, and covenants not to sue for any claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance, and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

Section 6.11. Approved Builder. Notice is hereby given to each Owner that the initial construction and completion of the hangar and related improvements on the Lot shall only be performed by the Declarant, except as provided hereinafter, a general building contractor may be approved in writing in advance by the Declarant, which approval shall be made in Declarant's sole discretion. Each approved builder may be required to execute a builder's agreement on terms satisfactory to Declarant prior to commencement of construction.

ARTICLE 7

General Covenants and Restrictions

Section 7.01. Structures. No previously approved Structure located on any Lot shall be used for any purpose other than that for which it was originally designed.

Section 7.02. Division of Lots. No Lot shall be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise without prior approval of the Board.

Section 7.03. Poles and Antennas. No poles or flagpoles or facilities, including poles and wires for the transmission of electricity, telephone messages, and the like shall be placed or maintained above the surface of the ground on any Lot, and no external or outside antennas of any kind including satellite receiving antennas may be so maintained upon any Lot unless completely enclosed within the attic of the residence. Notwithstanding the foregoing, certain

satellite receiving antennas of the approximate size of eighteen inches (18”) in diameter or less, if appropriately screened and or landscaped so that the same are unobtrusive and not readily apparent from adjacent property, may be permitted if previously approved in writing by the DRC. Neither the Declarant nor the DRC shall interpret or apply this Section 7.03 in any way, or adopt any rules or regulations pursuant hereto, that unreasonably delays or prevents the installation, maintenance or use, unreasonably increases the cost of installation, maintenance or use, or precludes reception of an acceptable quality signal with respect to any television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services in violation of applicable law or governmental regulations.

Section 7.04. Aircraft, Vehicles and Trailers. Except as authorized by the Board, no aircraft, automobile, truck, motorcycle, motorbike, boat, house trailer, boat trailer or trailer or any other vehicle of any type or description may be stored or regularly or frequently parked in the open on any Lot or portion of the property; provided, the foregoing shall not be construed to prevent contractors or others performing work or services on a Lot or Structures thereon from parking so as not to block aircraft in connection with performing work or services.

Section 7.05. Fences.

- A. No fence shall be permitted around the perimeter of any Lot.
- B. No fence shall be installed or constructed without the prior approval in writing by Declarant or the DRC.
- C. Notwithstanding the foregoing, no fencing or walls may be constructed within the drainage easement portions (as shown on the Plat of the Property) of any Lot.

Section 7.06. Right of Governmental Authorities. The Common Area is to be conveyed to the Association, which shall be responsible for the maintenance and upkeep thereof. Until such conveyance, Declarant, shall be responsible for such maintenance and upkeep on behalf of the Association. In the event the Declarant or the Association, their respective successors or assigns, shall fail at any time to maintain the Common Area or fail in any manner to fulfill its obligations relating to the Common Area, the appropriate governmental authority may serve a written notice of delinquency upon the Declarant or the Association setting forth the manner in which it has failed to fulfill the obligation. If said obligation is not fulfilled with the time specified, the appropriate governmental authority, in order to preserve the taxable value of the properties within the Property and to prevent the Common Area from becoming a nuisance, may enter upon said Common Area and perform the obligations listed in the notice of delinquency. All costs so incurred in carrying out the obligations of the Declarant or the Association, may be assessed equally against all the Lots within the Property in the same manner as provided by law for special assessments, and said assessments may be established as liens upon said Lots. Should either the Declarant or the Association, their successors or assigns, upon receipt of said notice of delinquency believe that the obligations described in said notice are not proper for any reason, it may, within the twenty (20) day period to be provided in said notice, apply for a hearing before the appropriate governmental authority to appeal said obligation, and any further proceedings under said notice shall be suspended pending the outcome of any proceedings with respect to such appeal.

Section 7.07. Animals. No birds, reptiles, animals, livestock or insects shall be kept or maintained on any Lot except for domestic purposes. Under no circumstances shall any commercial or agricultural business enterprise involving the use or breeding of animals be

conducted without the express written consent of the Association. The Association may, from time to time, publish and impose reasonable regulations setting forth the type and number of animals that may be kept on any Lot. Dogs and other animals shall be confined at all times to the Lot site and must be kept on a leash when outside the Lot. No dogs or other animals shall be continually or regularly staked or chained in the open on any Lot. All domestic pets must be properly immunized as required by applicable ordinances, codes and laws.

Section 7.08. Signs. No sign or other advertising device of any nature shall be placed upon any Lot except any sign or device (a) installed by Declarant, (b) approved by the Declarant or the Board, and (c) for the usual and customary real estate broker signs advertising a Lot as “for sale” or “sold”. The Board may, in its discretion, adopt and promulgate rules and regulations relating to signs. The Declarant, Board, or Association may remove non-conforming signs upon three (3) days notice to the Owner, such removal to be at the cost of said Owner.

Section 7.09. Temporary/Modular Buildings. No temporary or modular building, trailer, garage, basement, tent, outbuilding, barn, or building in the course of construction shall be used temporarily or permanently as a residence on a Lot.

Section 7.10. No Storage; Trash. No lumber, metals, bulk materials, refuse, or trash shall be kept, stored, or allowed to accumulate on any Lot or on the Common Area, except building materials may be stored on a Lot during the course of construction of any approved Structure or on the common Area. All trash containers used for a person or persons occupying a hangar shall be stored inside the hangar or other trash container storage area which prevents such container from being seen by neighbors.

Section 7.11. Utilities; Lines; Pipes. All utilities within any Lot shall be installed below the surface of the ground. No water pipe, gas pipe, sewer pipe, or drainage pipe shall be installed or maintained on any Lot above the surface of the ground. No lines, pipes or wires for communication or the transmission of electric current or power shall be constructed, placed or permitted to be placed anywhere in Stearman Estates 2nd other than within buildings or structures or attached to their walls, unless same shall be contained in conduits or approved cables constructed, placed and maintained underground. No Lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth.

Section 7.12. Noxious, Offensive, Dangerous and Unlawful Conduct.

A. No noxious, offensive, or dangerous activity or thing shall be carried on or permitted on any Lot, nor shall anything be done which may be or may become an annoyance or nuisance to the Property.

B. No person shall commit any disorderly, obscene or unlawful act on the Property.

Section 7.13. Professions and Businesses. No profession or business activity shall be conducted in or on any part of a Lot or in any improvements thereon without the specific written approval of the Declarant. Under no circumstances shall there be any attempt to repair or perform maintenance of aircraft for others for profit. The Declarant, at its discretion, upon consideration of the circumstances in each case and particularly the effect on the safety and preservation of airport facilities and surrounding property, may permit a Lot or any improvement thereon to be used in whole or in part for the conduct of a profession or business so long as it meets the guidelines, rules, regulations and ordinances of the City of Benton. No such profession

or business shall be permitted, however, unless it is considered, by the Declarant, to be compatible with a good-quality airport hangar neighborhood. The Declarant shall have no liability to the Association or any Owner or occupant of a Lot as a result of authorizing or failing to authorize a profession or business activity hereunder.

Section 7.14. Land Use. None of the Lots may be improved, used, or occupied for other than the uses as designated by the recorded plat thereof; applicable zoning regulations; and this Declaration, the most restrictive thereof to control in the event of any conflict.

Section 7.15. Set-Back Requirements. Subject to any more restrictive provisions contained in this Declaration and the codes and ordinances of the City of Benton, no Structure or other improvements may be constructed or maintained on any Lot within the set-back areas or access easements or within Reserve "C" as shown on the plat of the Property; provided, such platted set-back requirements shall not be applicable to any pavement improvement constructed at or below the surface level of the ground.

Section 7.16. Restrictions Not Exclusive. The restrictions contained in this Declaration shall not be taken as permitting any action or thing prohibited by, applicable zoning laws, or the laws, rules, or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, deeds, leases, or this Declaration shall govern and control.

Section 7.17. Drainage. From and after the date of commencement of construction of improvements or landscaping on a Lot, the Owner of such Lot shall cause such Lot to be graded so as to strictly comply with the then current pad, drainage and grading plan relating to the Lot. Declarant has caused its engineering firm to prepare a master pad, drainage and grading plan for the Lots, which plan may be revised by such firm from time to time, and each Owner shall strictly comply with the same. No Owner shall place or install any Structures, including, but not limited to, trees, shrubbery, landscaping and retaining walls, in any drainage easement or channel. The DRC or persons designated by the DRC shall have the right to enter upon any Lot upon reasonable advance notice to the Owner thereof for the purpose of determining whether the Lot is in compliance with such drainage guidelines, standards and plans and shall be final and binding on all Owners. It is not the Declarant's or the Association's obligation to enforce compliance with the master drainage and grading plan. Neither the Association, DRC or the Declarant shall have any liability or responsibility to any builder, Owner or other party for the failure of a builder or Owner to final grade or maintain any Lot in accordance with the master drainage and grading plan referred to above or any approved lot drainage and grading plan. Each Owner shall maintain, mow, and keep in good repair and condition, in accordance with the master pad, drainage and grading plan, any drainage channels and swales located on any Lot owned by such Owner.

Section 7.18. Damage to Common Area, Etc., Prohibited. No Owner or Occupant shall do or allow to be done any act which causes or threatens to cause any damage or disrepair to the Common Area and no Owner or occupant of a Lot shall permit members of his family or guests to cause such damage or disrepair.

Section 7.19. No Excavations. No excavations, except such as are necessary for the construction of a hangar or improvements, shall be permitted on any Lot without written permission of the DRC.

Section 7.20. Used Houses; Trailers. No used, secondhand or previously erected hangar or building of any kind can be moved or placed, either in sections or as a whole, upon the Property, nor shall any trailer be moved, placed or permitted to remain upon a Lot.

Section 7.21. View. Subject to any specific provisions in this Declaration to the contrary, no Owner has any right to an unobstructed view beyond the boundaries of the Owner's Lot. No Owner shall be entitled to prevent the construction or location of any Structure, planting material or other item on any other part of the Property, which is permitted by this Declaration, because such Structure, planting material or other item obstructs any view from such Owner's Lot.

Section 7.22. Erosion; Water Pollution Control Permit and Related Matters. Each Owner shall comply strictly with any law or ordinance regarding erosion or runoff, including, if applicable, a Stormwater Pollution Prevention Ordinance, the Kansas Water Pollution Control General Permit and Authorization to Discharge Stormwater Run-Off from Construction Activities Under the National Pollutant Discharge Elimination System or similar ordinance or law adopted by the city or other governing body having jurisdiction over the Property. Each Owner agrees to conduct activities on his Lot strictly in accordance with the requirements now or hereafter in effect by reason of the aforesaid permit, regulations, rules and ordinances.

Section 7.23. Window Coolers. No window or wall type air conditioners or water coolers shall be permitted to be used, erected or maintained on or in any hangar or other Structure on any Lot.

Section 7.24. Water Encroachment. Notice is hereby given to anyone acquiring a Lot that due to the grading and drainage of such Lot, at times following considerable amounts of rainfall, water may encroach into the areas within such Lot. Water may accumulate in areas of the Lot, which has been graded at lower elevation to provide drainage. Depending upon how much water accumulates on the Lot and how long it remains, damage could occur to the Structure or other improvements or installations of Structures within the Lot. Neither Declarant nor the Association shall have any liability or responsibility for any such damage resulting from such water encroachment.

Section 7.25. Limitations Concerning Drainage Areas. Several Lots include appurtenant drainage easement areas as shown on the plat of the Property. Such drainage areas will not be owned or maintained by the Association, but by the Owner of each respective Lot. However, as a result of the master drainage plan within such areas, no change of grade may be made without the prior approval of the DRC.

Section 7.26. Tie-downs, Storage and Parking of Airplanes on Lots. Notice is hereby given that tie-downs, storage and parking of airplanes on vacant lots is prohibited. No unhangared derelict or non-airworthy airplanes shall be permitted on any Lot. No airworthy airplanes may be stored or regularly or frequently tied down in the open on any Lot.

Section 7.27. Address Plates. There shall be an address plate containing the address of the hangar visible from the front of the hangar.

Section 7.28. Use by Aircraft. Benton Airpark, Inc. shall have the right to deny the use by aircraft of the Stearman Field Airport, to any Owner or guest of an owner who uses his aircraft or vehicle on said Airport in a negligent manner.

Section 7.29. Prop-Wash.

A. In an effort to eliminate or reduce dust and the resulting damage caused by such debris, each Owner shall pave the area on their Lot surrounding their hangar and additionally from where an aircraft is usually and customarily parked on the Lot to the paved portion of the respective taxiway and/or access easement, following along the normal or customary access route.

B. Each Owner will take such additional actions as may be reasonably necessary to prevent or meaningfully reduce the creation or blowing of dust and debris by prop-wash, whether initiated by them or their guests.

Section 7.30. Smoking. No person shall smoke where it is dangerous to do so or where it is specifically prohibited. No smoking shall be permitted on the ramp within fifty (50) feet of a fuel truck, tank or aircraft.

ARTICLE 8

The Association

Section 8.01. Powers and Duties.

A. The Association shall have the rights and powers as set forth in its Articles of Incorporation and Bylaws, together with its general powers as a nonprofit corporation, and it shall perform each and every duty required of it by this Declaration, including, but not limited to, those enumerated in this Article. The initial Board shall consist of three (3) directors, each of whom shall be a designee of Declarant, and who shall be appointed, removed and replaced from time to time by Declarant, in its sole discretion, until Declarant has transferred such duties and powers as provided in paragraph B below.

B. Declarant may carry out all of the duties and powers herein delegated to the Association and the Board until such time as Declarant fully transfers its rights, after which time the same shall be turned over to the Association or Board, as the case may be, which shall then exercise the powers and duties herein set out; provided, however, that the Declarant may, at its option, at any earlier time, partially transfer any part of such duties and powers to the Association or the Board by written instrument. In the event of a transfer of a portion of such powers and duties by the Declarant to the Association or the Board, the Declarant shall retain all other powers and duties which are not so specifically transferred. The Association and Declarant shall cooperate fully in the transition of the powers and duties hereunder. Nothing herein shall be deemed as relinquishment of Declarant's right under Section 6.07 hereunder except strictly in accordance with Section 6.07.

C. The Association shall own, maintain, and keep clean the Common Area. It further shall maintain, repair and/or replace the fences(s) and walls if so erected and installed by Declarant or the Association within the Common Area.

D. The Association shall maintain such insurance on the Common Area and facilities thereon as it deems necessary and advisable.

E. The Association may improve the Common Area in any manner that it shall find it to be necessary, desirable or beneficial to the interest of the Common Area and Owners.

F. The Association shall have the right to create and establish financial reserves for the repair, restoration or replacement of any improvement it has the duty to repair, restore or replace hereunder.

G. The Association shall have the right to adopt such policies, rules and regulations as it may deem advisable for the maintenance, use, conservation and beautification of the Common Area and for the health, comfort, safety and general welfare of the Owners.

H. The Association shall be empowered to determine the manner and extent of operating, maintaining, improving, restoring, mowing, trimming and keeping clean the Common Area and caring for, watering, spraying, protection, and replacing trees, shrubbery, grass and sod within the Common Area.

I. The Association shall erect, maintain, repair and replace signage as the Board shall deem appropriate and necessary within the Common Area.

J. The Association shall pay the taxes and assessments applicable to the Common Area.

K. The Association shall have the right to levy and collect the assessments and charges provided for in this Declaration and to enforce the liens thereby created in the manner herein provided.

L. The Association shall have the right to mortgage any part, parts, or all of the Common Area in connection with the borrowing of money in the furtherance of any of its purposes authorized herein and shall have the right to take such steps as are necessary to comply with such mortgage and to prevent foreclosure and any similar proceedings thereunder; provided any such mortgage shall be subject to the rights of the Owners under Article 3 above.

Section 8.02. Operations and Expenses. The Association may establish committees and may engage a manager, secretaries, engineers, auditors, accountants, legal counsel and other employees or consultants as may be reasonably necessary for the discharge of its duties hereunder.

Section 8.03. Repair and Restoration of Improvements on Common Area. Should any improvements on the Common Area, or any part or portion thereof, be damaged or destroyed by fire or other casualty, the Board shall determine in its discretion whether or not the Association shall repair or restore the same.

ARTICLE 9

Enforcement

The Association and Declarant shall have the right to enforce, by any proceeding at law or in equity (including, but not limited to, obtaining an injunction, whether prohibitive or mandatory),

all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the provisions of this Declaration insofar as the same are for the benefit of the Association, or Declarant, respectively. The Association and Declarant shall have the right to include in their claim for relief a reasonable sum to reimburse them for their attorney's fees and any other expenses reasonably incurred in enforcing their rights hereunder. Failure by the Association and Declarant to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Neither shall failure by the Association or the Declarant to enforce the provisions hereof against any Owner shall be deemed a waiver of any provision hereof as to any other Owner.

ARTICLE 10

Additional Land

Declarant may, from time to time, annex additional real property, including additional Lots and Common Area, to the Property covered by this Declaration, and thereby subject the same to all of the terms, provisions, and conditions of this Declaration (as provisions hereof may be changed, altered, supplemented, deleted or modified solely as to the annexed land specifically by the document annexing such additional real property), by the execution and filing for recordation with the Register of Deeds of Butler County, Kansas, of an instrument expressly stating an intention so to annex and describing such additional real property to be so annexed. During the fifteen (15) year period commencing with the date of the recording of this Declaration, Declarant, its successors or assigns, may annex such additional real property in its absolute discretion. From and after the termination of said fifteen (15) year period, such additional real property may be annexed provided that each such annexation is approved in writing by two-thirds (2/3) of the votes of the Owners of the Association in attendance, in person or by proxy, at a meeting of the Association called for such purpose.

ARTICLE 11

Notice of Possible Special Assessments; Amenity Financing

Section 11.01. Assessments.

A. Notice is hereby given to each purchaser of a Lot that special assessments will be spread by:

- i. The City of Benton, Kansas to Lots due to the installation of the sanitary sewer system.
- ii. The Declarant to Lots due to the installation of utilities such as electric, natural gas, water and cable service.

B. Additionally, from time to time, the Lots may become subject to special assessments by reason of work performed by the City of Benton and/or Butler County, Kansas to arterial streets in the vicinity of the Property.

Section 11.02. Amenity Mortgage Financing. Notice is hereby given that Declarant, and/or the Association, may obtain, and renew and refinance from time to time, mortgage secured in order to pay the cost of installing or constructing amenities within the Common Area for the use and benefit of the Owners. All or any portion of the Common Area shall be mortgaged from

time to time to secure such loan(s). Assessments or funds collected by the Association under Article 4 hereof shall be utilized for repayment of the interest and principal from any such loan in accordance with the terms of such financing. Upon obtaining such financing (or any renewal or refinancing from time to time), Declarant shall not be required to give notice thereof to the Association.

ARTICLE 12

Miscellaneous; Limitation of Liability; Perpetuities; Certain Easements; Access and Permissions

Section 12.01. Assignment. No Owner shall have the right to assign, independently of a transfer of a Lot, any rights or obligations created by or arising under this Declaration and any such attempt at assignment shall not be merely voidable but shall be absolutely null and void.

Section 12.02. Limitation of Liability. Notwithstanding anything to the contrary contained herein, it is expressly agreed that neither the Declarant (including without limitation any assignee of the interest of Declarant hereunder) nor any member or shareholder in Declarant (or any such assignee) or any director, officer, employee, consultant agent or representative of Declarant thereof shall have any personal liability to the Association or any Owner or other person or entity, arising under, in connection with, or resulting from (including, without limitation) any action or failure to act with respect to this Declaration, the articles of incorporation or bylaws of the Association, or rules of the Association, the design guidelines of the DRC, or for any action taken, or not taken, pursuant to authority granted Declarant thereunder or with respect thereto. To the fullest extent permitted by law, neither the Declarant, the Association, their respective shareholders, members (or any assignee), the officers, employees, consultants or directors of the Association, any DRC member, nor any other members of committees of the Association shall be liable to the Association or any Owner or other person or entity for damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval of plans and specifications (whether or not defective), course of action, inaction, omission, negligence or the like made in good faith and which the Declarant or the Association, any member, director, officer, consultant or employee thereof, or member of any such committee reasonably believed within the scope of his duties.

Section 12.03. Perpetuities; Alienation. It is expressly provided that the rule of property known as the rule against perpetuities and the rule of property restricting unreasonable restraints against alienation shall not be applied to defeat any provisions of this Declarant.

Section 12.04. Easements in Favor of Declarant and Association. Declarant specifically reserves unto itself, its successors and assigns, and for the Association, in connection with the use, operation, construction of improvements and amenities, and maintenance of the portions of the Common Area to be maintained by it hereunder, as provided herein and improvements thereon or therein, a perpetual, nonexclusive easement and right-of-way over the Lots and Common Area, for the purpose of construction, maintaining, mowing, repairing, replacing and rebuilding water sprinkler systems including water lines, water wells, sprinkler controls, and electric meters and lines, underground pipelines, drains and/or mains for the purpose of transporting gas, water, sewage and electricity over, across and through such Lots and Common Area, together with the right to excavate and level ditches and/or trenches for the location of said wells, lines, pipes, drains and/or mains. Additionally, Declarant specifically reserves unto itself, its successors and assigns, and for the Association, a perpetual, non-exclusive easement and right-of-way to enter upon any Lot as reasonably necessary in order to construct, install, erect,

maintain, improve, repair and/or replace any entrance treatment, fence, wall, walkway, water sprinkler system (including water wells, sprinkler controls, and electric meters and lines associated therewith), or any signage pertaining to or serving the Common Area or the hangar development within any wall, utility and/or drainage easement shown on the current or any future plat of the Property, or located on a Lot but, due to oversight, not actually located in the appropriate easement area. Declarant may have installed a sign advertising the hangar development on a Lot or within the Common Area prior to the sale of such Lot or transfer of the Common Area to the Association. Declarant, its successors and assigns, hereby retain an easement for the placement, and replacement, of any such advertising sign until all Lots have been sold by Declarant or its successors and assign.

Section 12.05. Avigation Easement and Disclosure of Potential Noise Impacts. Stearman Field Airport is a privately owned public use airport and the Property is subject to various noise levels from aircraft using the airport. In addition, the Property is located within close proximity to McConnell Air Force Base, Beech Field and Colonel James Jabara Airport, and due to such proximity, is likely to experience aircraft over flights which could generate noise levels which may be of concern to some individuals.

A. The Declarant hereby declares and presents this easement and covenants, and each Owner of any Lot within Stearman Estates 2nd, by acceptance of a deed there of, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to the easement and to the knowledge of potential aircraft noise impacts. Regardless of whether any such reference is made in any deed or instrument, such covenants, easements and agreements shall extend to and be binding upon successors, transferees, and assigns, including but not limited to, future purchasers, mortgagees, occupiers, and users of such Lots. The easement and right to cause or create, or permit or allow to be caused or created within the Airspace, such noise, dust, turbulence, vibration, illumination, air currents, fumes, exhaust, smoke and all other effects as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in air.

B. The Declarant hereby declares and covenants the right to mark and light, or cause or require to be marked or lighted, as obstructions to air navigation, any and all buildings, structures, or other improvements, and trees or other objects now upon, or that in the future may be upon, Stearman Estates 2nd and that Parcel known as Stearman Field Airport, and which extend into the Airspace.

Section 12.06. Runway and Taxiway Easement: Each Lot in Stearman Estates 2nd is hereby granted runway and taxiway easement and right to use the Stearman Field Airport runway and taxiways, as it currently exists or as extended in the future, for the use and benefit of the Owners who are in compliance with Section 4.03 A hereof. Any Owner who is in violation of the Declaration, as determined by the Board or who fails to pay any assessments established pursuant to the terms hereof shall not be entitled to the terms hereof in which such assessments are due and unpaid.

Section 12.07. Air Rights. Each lot in Stearman Estates 2nd is hereby subjected to a permanent easement appurtenant to each adjoining lot to permit the construction, existence, maintenance and repair of structures located on such adjoining lot, including roof structures which overhang and encroach upon the servient lot, provided that the construction of such structures is permitted and approved as elsewhere herein provided.

Section 12.08. Some Easements Not Shown on Plat. Owners should not rely on the plat of the Property to determine the location of utility or other easements or rights-of-way. Such easements or rights-of-ways are often created by separate instruments not shown on the plat and are disclosed on each Owner's title insurance policy.

ARTICLE 13

Amendments; Term

Section 13.01. Covenants Running With The Land. The covenants and restrictions of this Declaration shall run with and bind the Property which is subject to this Declaration for a term of fifty (50) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless at least one (1) year prior to the expiration of such fifty year period or any applicable successive ten year period, there shall be recorded in the Butler County real estate records an instrument directing termination of this Declaration signed by the Owners of at least seventy-five percent (75%) of the Lots.

Section 13.02. Amendment by Declarant. Amendments, including waivers, modifications, alterations, removals, changes and additions to this Declaration, may be made by Declarant from time to time in its discretion prior to the date on which Declarant fully transfers its rights under Section 8.01. B hereof, which amendments shall become effective when executed by Declarant and recorded in the office of the Register of Deeds of Butler County, Kansas.

Section 13.03. Amendment. Amendments, including waivers, modifications, alterations, removals, changes and additions to this Declaration, other than those provided for in Section 12.02, shall be proposed and adopted in the following manner:

- A. *Notice*. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting of the Association at which a proposed amendment shall be considered.
- B. *Resolution*. A resolution adopting a proposed amendment may be proposed by either the Board and or by the membership of the Association. Unless otherwise specified in this Declaration, such proposed amendment must be approved by the Owners of not less than two-thirds (2/3) of the votes of Owners who are voting, either voting in person or by proxy, at an annual meeting or special meeting duly called for such purpose.
- C. *City of Benton*. Notwithstanding anything else in the Article 12 to the contrary, Section 7.06 shall not be amended without the prior approval of the Benton City Council.
- D. *Recording*. A copy of each amendment provided for in this Section shall be certified by the Board as having been duly adopted and shall be effective when filed of record in the office of the Register of Deeds of Butler County, Kansas.
- E. *Declarant's Consent*. Notwithstanding the foregoing, any such amendment (including, but not limited to, those modifying the "Initial Policy Guidelines" referenced in Section 6.08 above) shall require the written consent of Declarant in order to be effective.

ARTICLE 14

Miscellaneous

Section 14.01. Provisions Binding on Grantees. The Association and each grantee hereafter of any part or portion of the Property covered by this Declaration, and any purchaser under any grant, contract of sale or lease covering any part or portion of such Property, accepts the same subject to all of the restrictions, liens and charges and the jurisdiction rights and powers of the Association and Declarant provided for in this Declaration.

Section 14.02. Interpretations of Restrictions. In interpreting and applying the provisions of this Declaration, they shall be held to be minimum requirements adopted for the promotion of the health, safety, comfort, convenience and general welfare of the Owners of the Property. It is not the intent of this Declaration to interfere with any provisions of any law or ordinance or any rules, regulations or permits previously adopted or issued pursuant to law relating to the use of buildings or premises; nor is it the intention of this Declaration to interfere with or abrogate or annul easements, covenants or other agreements between parties; provided, however, that where this Declaration imposes a greater restriction upon the use or occupancy of any hangar or upon the construction of buildings or Structures, or in connection with any other matters that are imposed or required by such provision of law or ordinances or by such rules, regulation or permits, or by such covenants, easements and agreements, then, in that case, the provisions of this Declaration shall control.

Section 14.03. Construction and Validity of Restrictions. All of the restrictions, conditions, covenants, liens and charges contained in this Declaration shall be construed together, but if it shall at any time be held that any one or more of such restrictions, conditions, covenants, liens or charges, or any part thereof, are invalid or for any reason become unenforceable, no other restriction, condition, covenant, reservation, lien or charge, or any part thereof, shall be affected or impaired.

Section 14.04. Assignment of Powers. Any and all rights and powers of Declarant provided for in this Declaration and any modification or amendment thereof may be delegated, transferred, assigned, conveyed or released by Declarant to any third party and/or to the Association. The Declarant's assignee shall accept that same upon the recording of a notice thereof, and the same shall be effective for the period and to the extent stated therein. Upon the effective date of such assignment, the assigning party shall be released of any and all liabilities of whatever nature arising out of acts or omissions prior to the effective date of the assignment.

Section 14.05. Waiver and Exceptions. The failure by the Association, Declarant, any Owner or any other person to enforce any of the restrictions, conditions, covenants, liens or charges to which the Property or any part thereof is subject, shall in no event be deemed a waiver of the right to do so thereafter or to enforce any other restriction, condition, covenant, reservation, lien or charge.

Section 14.06. Titles. All titles used in this Declaration are intended solely for convenience of reference, and the same shall not affect that which is set forth in the terms and conditions of this Declaration nor the meaning thereof.

Section 14.07. Singular and Plural, Masculine and feminine. The singular shall include the plural and the plural the singular, unless the context requires the contrary, and the masculine,

feminine and neuter shall each include the masculine, feminine and neuter, as the context requires.

Section 14.08. Successors-in-Interest. Reference herein to either the Association or Declarant shall include its respective successor, and each such successor shall succeed to the rights, powers and authority hereunder of its predecessor, whether by appointment or otherwise.

Section 14.09. Mortgage Protection Clause. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any mortgage made in good faith and for value, but all of these covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure sale or deed in lieu thereof.

Section 14.10. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 14.11. No Liability. Declarant has, using good faith, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot or possession of a Structure, acknowledges that Declarant shall have no such liability.

Section 14.12. Patio Home; Twin Home; Multifamily; Commercial and/or Industrial Development. Each Owner is hereby advised that real property in the vicinity of the Property may be developed and operated for patio homes, twin homes, apartments and other multifamily, commercial, office or industrial purposes or purposes other than for hangars. Each Owner is responsible to inform himself or herself concerning the possibility of such developments and no Owner shall rely on any statements made by sales persons concerning future development or uses of any such real property. Declarant does not have any responsibility to advise the Owners or the Association concerning any actual or proposed zoning or other land use proceedings relating to any real property located within or outside the Property.

Section 14.13. Limitation on Liability. TO THE EXTENT ALLOWED BY LAW AND EQUITY, NEITHER THE DECLARANT (OR ANY MEMBERS THEREOF, OR THE OFFICERS, EMPLOYEES OR MEMBERS OF SUCH) NOR THE ASSOCIATION SHALL HAVE ANY LIABILITY HEREUNDER TO ANY OWNER, FORMER OWNER OR PROSPECTIVE OWNER FOR CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES IN ANY EVENT.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

Declarant:
Stearman Estates, L.L.C.

Dwayne L. Clemens
Member

Gregory K. Largen
Member

ACKNOWLEDGMENT

STATE OF KANSAS)
)
BUTLER COUNTY) ss:

BE IT REMEMBERED, that on this ____day of _____, 2008, before me, a Notary Public within and in the County and State aforesaid, personally appeared _____ and _____ of Stearman Estates, L.L.C., Managing Members of Stearman Estates, L.L.C., a Kansas limited liability company, who are personally known to me and known to me to be the identical persons who subscribed the names of the maker thereof to the within and foregoing Declaration of Covenants, Conditions, Restrictions and Easements of Stearman Estates 2nd; and said persons acknowledge to me their execution thereof as and for their free and voluntary act and deed, and for and on behalf of and as the free and voluntary act and deed of said limited liability company, on behalf of said limited liability company, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal as of the date last above written.

My appointment expires:

Notary Public