

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
KELLY AIR PARK SUBDIVISION**

As Amended 12 May 2018 and filed in the County of Elbert, Colorado

THIS DECLARATION is made and entered into this 5th day of August, 1987, by BENJAMIN F. KELLY, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property in the County of Elbert, State of Colorado, which is more particularly described as:

Lots 1 through 57 and Tract A, Kelly Air Park Subdivision, Elbert County, Colorado, hereinafter "the Properties".

NOW, THEREFORE Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions which shall run with the land and be binding on all parties having any right, title, or interest in the above described properties, or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Section 1. "Association" and "KAPA" shall mean and refer to Kelly Air Park Association, Inc., a Colorado nonprofit corporation, its successors and assigns.

Section 2. "Board," "Directors," and "Director" shall mean and refer to those individuals, singly and collectively, that have been duly elected by the Members to serve on the Board of Directors of the Association.

Section 3. "Bylaws" shall mean and refer to the document entitled Bylaws, Kelly Air Park Association, Inc. Reference the Bylaws for information regarding the manner in which the property owners regulate the affairs of the Association and the behavior of its Members.

Section 4. "CCIOA" shall mean and refer to the Colorado Common Interest Ownership Act, as adopted and variously amended by the Colorado Legislature, and as it shall apply to Kelly Air Park Subdivision (planned unit development, established prior to 1992, less than 1000 units).

Section 5. "Committee" shall mean and refer to the Architectural Control Committee (ACC) as described in Article VI of the Declaration and to all committees duly established in these Bylaws or, at any time and for any duration, by the Board or Members of the Association.

Section 6. "Common Area" shall mean and refer to Tract A (including the improvements thereto), otherwise known as the runways and taxiways, and all right of way and access easements as recorded on the plat.

Section 7. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions of Kelly Air Park Subdivision, as recorded in the office of the Clerk and Recorder, County of Elbert, State of Colorado.

Section 8. "First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the office of the Clerk and Recorder of the County of Elbert, Colorado, having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

Section 9. "Lot" shall mean and refer to any plot of land shown upon the recorded subdivision map, including the Properties with the exception of the Common Area, but together with all appurtenances and improvements now or hereafter thereon.

(a) "Residential Lot" shall mean and refer to all lots except lot 8.

(b) "Commercial Lot" shall mean and refer to lot 8.

Section 10. "Member", "Members" or "Member of the Association" shall mean and refer to every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is now or hereafter subject to the Declaration, including contract purchasers. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

Section 11. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.

Section 12. "Properties" shall mean and refer to Lots 1 through 57 and Tract A, Kelly Air Park Subdivision.

Section 13. "USPS" shall mean and refer to the United States Postal Service.

Section 14. "BLS" shall mean and refer to the U.S. Bureau of Labor Statistics.

Section 15. "CPI" shall mean and refer to the Consumer Price Index.

ARTICLE II **PROPERTY RIGHTS IN THE COMMON AREA**

Section 1. Termination of Restrictions on Common Area.

(a) All restrictions on use of the common area provided by this Declaration of Covenants, Conditions and Restrictions and contained in the Development Plan and Guide for Kelly Air Park Subdivision, formerly known as the Black Forest Glider Park Subdivision, shall terminate as to the common area and be of no further force and effect upon either the dissolution of the Homeowners Association or transfer of ownership of the common area to the County of Elbert through tax sale or otherwise. Upon receipt of ownership of the common area by the County of Elbert for any reason, the Board of County Commissioners of Elbert County shall be authorized to re-zone the common area to provide for any use thereof which is determined by the Board of County Commissioners to be in the best interest of the residents of Elbert County.

(b) Runway Assurances and Operations. Inasmuch as Kelly Airpark Subdivision Inc. is developed for individuals involved in the sport and hobby of aviation, every purchaser, lessee or grantee of any property now or hereafter subject to this declaration, by acceptance of a deed, lease or other conveyance thereof, thereby agrees that the runways and taxiways shall remain and be maintained to a safe, operational level for all aircraft types, except those specifically prohibited in accordance with the Kelly Air Park Information and Operating Procedures, unless otherwise terminated as to the common area by Article II Section 1(a).

Section 2. Owners' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article, every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 3. Extent of Owners' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and, with written consent of sixty-seven percent (67%) the Membership entitled to vote, to mortgage said property as security for any such loan; and
- (b) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure; and
- (c) The right of the Association to promulgate and publish rules and regulations which each Member shall strictly comply with; and
- (d) The right of the Association, as provided in its Articles and Bylaws, to suspend the voting rights and the right to use the Common Area of a Member for any period during which any assessment against his/her lot remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations; and
- (e) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Membership, provided that no such dedication or transfer shall be effective unless an instrument agreeing to such a dedication or transfer signed by sixty-seven percent (67%) of the Membership has been recorded, and unless written notice of the proposed agreement and action thereunder is sent to every member at least thirty (30) days in advance of any action taken, and unless such dedication or transfer is approved by Elbert County, Colorado, or any successor governmental entity having jurisdiction over the properties, if required by resolutions or ordinances thereof, and provided further that the granting or permits, licenses and easements for public utilities and/or for other public purposes consistent with the intended use of the Common Area and reasonably necessary or useful for the proper maintenance or operation of the properties or the Association shall not be deemed a transfer within the meaning of this Subsection (e).
- (f) The right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements in the Common Area.

Section 4. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family or contract purchasers of his Lot.

Section 5. Payment of Taxes by First Mortgagees. First Mortgagees of Lots shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may become a lien against the Common Area, and any First Mortgagees making any such payment shall be owed immediate reimbursement therefore from the Association.

Section 6. Use of Common Area. The sole purpose for which the Common Area may be used is as an airfield where aircraft take off, land, and generally conduct flight operations and for the conduct of any other operations directly connected with the control of flight operations by lights, radio, signs, wind socks, control towers, instrument landing aids, and any other activity directly related to control of flight activities. Use of the Common Area does not include storage, repair and fueling, which activities may be conducted only on the various Lots, subject to the limitations contained herein.

ARTICLE III **MEMBERSHIP AND VOTING RIGHTS**

Every Member shall be entitled to one (1) vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect

to any such lot. All Members shall be entitled to vote on all matters, except any Member who is in default of any obligations to the Association. Cumulative voting is prohibited. Voting shall be conducted in accordance with procedures stipulated in the Bylaws.

ARTICLE IV **ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each owner of any lot by acceptance of a deed, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments. All such assessments are to be established and collected as hereinafter provided. The annual and special assessments, including utilities service charges, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. The lien may be enforced by foreclosure commenced by action of the Board of Directors on the defaulting Owner's Lot by the Association in like manner as a mortgage on real property. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorneys' fees. The Board of Directors may prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Lot and a description of the Lot. Such a notice shall be signed by the President or Vice-President of the Board of Directors and may be recorded in the office of the Clerk and recorder of the County of Elbert, Colorado. The lien for each unpaid assessment, including utilities service charges, attaches to the property at the beginning of each assessment period and shall continue to be a lien against the property until paid. The costs and expenses for filing any notice of lien shall be added to the assessment for which it is filed and collected as part and parcel thereof. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Homestead Exemption. The lien of the Association assessments, including utilities service charges, shall be superior to any homestead exemption as is now or may hereafter be provided by Colorado law. The acceptance of a deed to any lot subject to this Declaration shall constitute a waiver of the homestead exemption as against said assessment lien.

Section 3. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Members, and for the improvement, operation and maintenance of the Common Area and the operation of the Association.

Section 4. Annual Budget and Assessment. The annual budget shall be ratified by sixty-seven percent (67%) of the Members present and eligible to vote, in person or by proxy, at the Annual Meeting. The annual assessment shall be equal to the ratified budget, minus any contribution from the commercial lot, divided by 57. If the annual assessment will exceed 115% of the previous year's assessment, the approval of sixty-seven percent (67%) of all Members eligible to vote is required for budget ratification. **In the event that the proposed budget is rejected, the periodic budget last ratified by the lot owners must be continued until such time as the lot owners ratify a subsequent budget proposed by the executive board.**

Section 5. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment meeting the requirements of Section 3 of this Article, provided that any such assessment shall have the assent of sixty-seven percent (67%) of the votes of Membership eligible to vote at the time of the assessment. Special assessments shall be equal to the total value of the special

assessment divided by 57. Funds raised through special assessments shall be used strictly for the purposes for which the assessment was approved, with any portion of the funds thus approved and not so used returned to the Members in 57 equal shares.

Section 6. Notice for Any Action Authorized Under Sections 4 and 5. Notice of any meeting called for the purpose of taking any action authorized under Sections 4 or 5 of this Article shall be sent to all Members electronically or by USPS, to the address provided by each for purposes of such notification, not less than three (3) days in the case of a special Board meeting, or 14 days in the case of a membership meeting, nor more than fifty (50) days in advance of the meeting. Notification of an approved budget and/or assessment, annual or special, together with dates, payment schedules and conditions per Section 8 of this Article, shall be sent to each Member in the manner stated above.

Section 7. Date at Which Assessments Become Due and Payable. The annual assessments provided for herein shall commence and become due and payable on the first day of the month following the month in which the annual budget is ratified. The date at which any special assessment becomes due and payable shall be set at the time of the approval of such assessment. The Association may institute such payment schedules and conditions for full or partial payment of any assessment as the Members approve, provided such payment schedules and conditions are approved in conjunction with the approval of the assessment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment, or assessed fee, whether an annual or special assessment, not paid within thirty (30) days after the due date thereof shall bear interest from the due date at the rate of fifteen percent (15%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same. In addition to such action, or as an alternative thereto, the Association may file with the Clerk and Recorder of Elbert County, a Statement of Lien, setting forth the name of the Owner, the legal description of the Lot, the name of the Association, and the amount of delinquent assessments then owing, which Statement shall be duly signed and acknowledged by the President or Vice-President of the Association, and which shall be served upon the Owner of the Lot by mail to the address of the Lot or at such other address as the Association may have in its records for the Owner of the Lot. Thirty (30) days following the mailing of such notice, the Association may proceed to foreclose the Statement of Lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Colorado. (Such Statement shall be in favor of the Association and shall be for the benefit of all other Owners.) In either a personal or foreclosure action, the Association shall be entitled to recover as a part of the action, the interest, costs and reasonable attorneys' fees with respect to the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot shall not affect the lien for said assessment charges except that sale or transfer of any Lot pursuant to foreclosure of any such First Mortgage, or any proceedings in lieu of foreclosure, including deed in lieu of foreclosure, shall extinguish the lien of such assessment charges as to payments which became due prior to such sale or transfer, or foreclosure, or any proceeding in lieu thereof. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, shall relieve any Lot from liability for any assessments thereafter becoming due nor from the lien thereof.

ARTICLE V **INSURANCE**

Section 1. Insurance on Common Area. The Association shall maintain a comprehensive policy of public liability insurance covering all of the Common Area, insuring the Association in an amount not less than \$1,000,000 covering bodily injury, including death of persons, personal injury and property damage liability arising out of a single occurrence. Such coverage shall include, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Area.

Such policy of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Member of the Association and shall provide that the policy may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the insured, as well as to the First Mortgagees of each Lot. Duplicate originals of all policies and renewals thereof, together with proof of payment of premiums, shall be delivered to any First Mortgagee of a Lot upon written request. The insurance shall be carried in blanket forms naming the Association as the insured, as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policy with respect to liability arising out of any such Owner's membership in the Association.

Section 2. Annual Review of Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors of the Association in order to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association.

Section 3. Owner's Insurance. Owners shall be permitted to maintain casualty and liability insurance for their Lots, and the improvements thereon, but no insurance policy obtained by an Owner shall be permitted which would cause a reduction in the proceeds collectible under a policy obtained by the Association. Insurance coverage on the furnishings and other items of personal property belonging to an Owner and public liability insurance coverage upon each Lot shall be the responsibility of the Owner thereof.

ARTICLE VI **ARCHITECTURAL CONTROL COMMITTEE**

Section 1. Composition of Committee. The Architectural Control Committee shall consist of four (4) members designated by the Board of Directors and one member from the board who shall serve as chairman. The appointed members shall serve for three (3) year staggered terms. Should any member of said Committee die, move away from Colorado, be unable to serve on said Committee or resign, a successor shall be appointed by the remaining members of said Committee.

Section 2. Review by Committee. No building, fence, wall or other structure or attachment or change/addition/alteration to an existing structure, shall be commenced, or erected upon the property and no change in the final grade shall be performed, until the plans and specifications have been first submitted to and approved in writing by the Architectural Control Committee (ACC). Said plans and specifications are to show the shape, exterior design, height, materials, color, location of the structure or addition or change to the structure, platted horizontally and vertically, as well as the location and size of the driveways(s), general plan of landscaping, fencing, walls, windbreaks and the grading plan. The ACC shall exercise its best judgment to the end that all attachments, improvements, construction, general landscaping and alterations to structure and grade within the properties conform to and harmonize with surrounding structures and topography as to external design and location and will not interfere with flight activities conducted on the Common Area. The ACC shall also obtain evidence of the applicant's financial ability to complete any and all projects with a planned cost greater than \$50,295 (year 2016 dollar value incremented using the BLS generated CPI).

Section 3. Procedures. The Architectural Control Committee shall approve or disapprove all plans within thirty (30) days after submission. In the event that the Architectural Control Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted, approval will not be required and this Article will be deemed to have been fully complied with.

Section 4. Vote. A majority vote of the Architectural Control Committee is required to approve a proposed improvement.

Section 5. Records. The Architectural Control Committee shall maintain written records of all applications submitted to it and of all actions taken by it thereon, and such records shall be available to Members for inspection at reasonable hours of the business day.

Section 6. Liability. The Architectural Control Committee and the members thereof shall not be liable in damages to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, in regard to any matter within its jurisdiction hereunder.

Section 7. Variance. The Architectural Control Committee may grant reasonable variances or adjustments from the restrictions imposed by Article VII, Section 4 and Section 5 (paragraphs d, e, g, or h), hereof in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the application of the restrictions contained in Article VII, Section 4 and Section 5, paragraphs d, e, g, or h. Such variances or adjustments shall not be granted if their result is materially detrimental or injurious to other properties or improvements in the subdivision and will be limited to a maximum of six (6) months in duration but may be renewed two times.

ARTICLE VII **RESTRICTIONS**

Section 1. General. Restrictions at Kelly Air Park Subdivision exist to ensure compliance with the improvement, development, and proper use and occupancy of the Properties; in order to enhance the value, desirability, and attractiveness of the Properties; and to preserve the nature of the Common Area for the use of aircraft flight activities. The Association shall be the entity responsible for monitoring and enforcing the restrictions.

Section 2. Restrictions Imposed.

- (a) All of the Properties shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon, and hypothecated, and be subject to the provisions, conditions, limitations, restrictions, agreements, and covenants set forth in this Article VII.
- (b) Ultra-light aircraft flight activities are specifically not allowed on the Properties.

Section 3. Use of Common Area.

- (a) No use shall be made of the Common Area, which will in any manner violate the statutes, rules, or regulations of any governmental authority having jurisdiction over the Common Area.
- (b) No Owner shall place any structure whatsoever upon the Common Area, nor shall any Owner engage in any activity which will temporarily or permanently deny free access to any part of the Common Area to all Members.
- (c) The use of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.
- (d) The sole purpose for which the Common Area may be used is as an airfield where aircraft take off, land, and generally conduct flight operations and for the conduct of any other operations directly connected with the control of flight operations by lights, radio, signs, wind socks, control towers, instrument landing aids, and any other activity directly related to control of flight activities. Use of the Common Area does not include storage, repair, or fueling; such activities may be conducted only on the various Lots, subject to the limitations contained herein.

The Association shall establish and maintain a program for the control of noxious weeds on the Common Area.

Section 4. Restrictions on All Lots.

- (a) No building or obstructions shall be placed closer than sixty (60) feet from the edge of the road right of way or within any easement indicated on the plat.
- (b) With the exception of items, such as, neatly stacked firewood, BBQ's or patio furniture, nothing shall be stored, stockpiled or parked on a lot for more than 7 continuous days. Notwithstanding the allowances contained in Section 5, paragraph(h), this restriction includes but is not limited to operative, inoperative, wrecked, abandoned, dismantled or junked automobiles, aircraft and other vehicles, equipment or machinery unless stored or parked in a garage or hangar. This covenant shall not be applicable to equipment being used in construction of a residence or hangar upon a lot.
- (c) Nothing shall be done or permitted which may become an annoyance or nuisance. No noxious, illegal, dangerous or offensive activities shall be carried on upon any lot. No lot shall be used in whole or in part for the storage of any property or anything that will cause such lots to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material emit foul or obnoxious odors, or

cause any noise that disturbs the peace, quiet, comfort, or serenity of the occupants of surrounding property.

- (d) Rubbish, garbage, or other waste shall be kept and disposed of in a sanitary manner. No lot or easement shall be used or maintained as a dumping ground for rubbish. All containers or other refuse shall be kept in clean, sanitary condition and covered. Outdoor burning of trash shall not be conducted at any time.
- (e) Except for commercial lots, no sign of any character shall be displayed or placed upon any lot except flat, mounted, unanimated, non-flashing sign of not more than nine (9) square feet in area of the following types: (1) no more than two such signs advertising the property during any construction and sale periods, and (2) no more than one such sign in support of a person running for political office or in support of any one ballot issue that is contested in a pending election, with such political signs limited to display no more than 45 days prior to and 7 days past the election date. (3) each lot shall be permitted to display the red, county placed sign showing the lot address number and /or one (1) other sign displaying the lot address number. In addition, a personalized or security company sign may be placed. All must meet the guidelines listed above. Other than the county- placed signs, the top of others shall not exceed more than three (3) feet above the grade. Placement must be in a location that will not impede aviation or wheeled traffic.
- (f) One flood light is allowed per lot for exterior security lighting.
- (g) None of the lots shall at any time be divided, subdivided or re-subdivided unless said division, subdivision or re-subdivision is permitted by the Architectural Control Committee. In the event of said division, all property there under shall be subject to the provisions thereof.
- (h) No radio or television antenna or any structure may extend more than twenty-eight (28) feet above the ground.
- (i) No person shall be allowed to keep, breed or raise fowl, rabbits, chickens, horses, cows, cattle, sheep, or any other domestic farm or wild animals on any Lot or erect thereon any building to house the same. This restriction shall not be construed to prohibit any person from keeping cats, dogs, or other household pets provided they are not kept, bred, or raised for commercial purposes.
- (j) No oil drilling, quarrying, or mining operations of any kind will be permitted on any Lot.
- (k) The subdivision taxiways and runways are hereby reserved for aircraft use only. The taxiways and runways shall not be obstructed by any vehicle, fence, building, overhead utility line, or other man-made hazard to aircraft operation. Aircraft may not remain unattended on the taxiway, but shall have an aircraft operator present at all times.
- (l) The Association may suggest or require placement of taxiway fencing, gates, utility poles or other taxiway control devices in accordance with their decisions or, at the request or requirement of the Federal Aviation Administration.
- (m) A main electrical power line shall be constructed at the front, rear or side of all lots in the utility easements as shown on the plat. The individual service line to each lot shall be the responsibility of the individual lot owner. Water and other utilities are the sole responsibility of the individual Lot owner. Well permits must be obtained from the Colorado State Engineer's office in Denver, Colorado. All well casings shall be sealed to the first layer of sandstone by use of the Halliburton method to insure that such wells do not affect in any way the surface waters in the surrounding areas. Each lot owner at the time of purchase of lot shall be provided with a copy of the letter with respect to the water supply for the subdivision issued by the Office of the State Engineer, Division of Water Resources. Each lot owner, by acceptance of a deed to a lot, covenants and

agrees that in the event a water augmentation plan for the subdivision is approved which allows individual wells to be drilled into the Upper Dawson aquifer, each lot owner, upon issuance of a well permit for a well into the Upper Dawson aquifer for his lot, shall transfer to the homeowners association any rights, title or interest he may have in and to the Lower Dawson aquifer. All sanitary facilities shall have prior approval of the Elbert County Health Department. All utilities must be placed underground.

- (n) The display on any property of a single American flag is permitted, provided that any flagpole not exceed 28 feet in height nor any flag on a residential lot exceed 4 x 6 feet in dimension or on a commercial lot exceed 5 x 8 feet in dimension, that all such flagpoles and flags be confined within the building setbacks for any site, and that all such display be consistent with the federal flag code (see Public Law 94-344 for guidelines regarding respectful display of the flag); and the display on any property of a single Service Flag bearing a star denoting active service during time of war, for the owner or an immediate family member, is permitted upon a door or on the inside of a window of a residence.

Section 5. Residential Lots.

- (a) Each lot shall be used for one single-family dwelling. One aircraft hangar shall be permitted subject to the restrictions herein after contained.
- (b) Residences shall contain a minimum of twelve hundred (1,200) heated square feet of living area exclusive of garage, hangar, patio and deck areas. All residences shall have a garage.
- (c) The area surrounding all permanent dwellings shall be adequately landscaped to provide a neat appearance. Fences should be designed to complement landscaping, the exterior finish of the residence and should be well maintained. Only snow fences may be erected without prior approval providing they meet the following requirements:
 - i. They must be constructed of wood snow fence material maintained in good condition,
 - ii. They may not be erected prior to October 15 and must be dismantled no later than May 15
 - iii. When dismantled the fence posts(uprights) must be removed as well
 - iv. If the snow fence is damaged or blown down, it must be repaired or replaced within 21 days, weather permittingNo more than a maximum of 2,500 square feet of any lot shall be irrigated.
- (d) The exterior portions of all buildings except freestanding hangars shall be constructed of or finished with wood, stucco, natural stone or brick and shall be painted or stained earth tones upon completion so that all exposed surfaces shall have a finished appearance. Roof finish of all buildings shall be of homeowner discretion. Garages shall conform to the exterior of the dwelling. Aircraft hangars may be designed as an attached structure to a dwelling; however, it is suggested that all hangars be freestanding for safety reasons. Freestanding hangars shall be of standard type construction with painted exterior.
- (e) No structure of a temporary character, motor home, mobile home, tent, shack, garage, barn or hangar shall be used as a temporary or permanent residence. Motor homes or tents may, however, be used for short-term recreational purposes.
- (f) No commercial business or trade shall be carried on upon any Residential Lot, except such home businesses as are allowed by Elbert County codes. In no instance, shall a home business unreasonably interfere with its neighbors' enjoyment of their property.
- (g) No commercial vehicles, trucks or motor homes shall be stored or parked on any lot for more than forty-eight (48) total hours except in a closed garage, nor parked on any road or access way except when engaged in transportation to or from a residential dwelling,

with the single exception of one such vehicle, not to exceed 10,000 pounds gross weight and with an official emblem or other visible provider designation, that is required to be at a residence as a condition of employment with a bona fide volunteer fire department, or a company or agency providing emergency firefighting, law enforcement, ambulance or emergency medical services. For the purpose of these covenants, a 3/4 ton or smaller vehicle, commonly known as a pickup truck, shall not be deemed to be a commercial vehicle or truck.

- (h) No more than five (5) aircraft at a time shall be parked, tied down, stored or allowed to remain on any lot, whether in a hangar or outside, for more than forty-eight (48) total hours.

Section 6. Commercial Lots.

- (a) All business activities and uses of the lots shall comply with the restrictions set forth on the final plat of record and shall be in accordance with the zoning adopted by Elbert County, unless otherwise rezoned by proper application to and approval by Elbert County.
- (b) Only commercial activities which are directly related to aviation shall be conducted on Lot 8. Such activities include temporary and permanent storage of aircraft, aircraft rental and instruction, fueling and maintenance of aircraft, provision of food, lodging and transportation for persons on-site for aviation related reasons, club meetings for any purpose, and selling of aviation club membership, and other products or services offered by an aviation F.B.O. or aero club.
- (c) No commercial activity conducted upon the Lots shall interfere with or in any manner conflict with the aviation activities conducted from the Common Area.
- (d) Aviation fuel tanks and pumps may be maintained, and commercial fuel service operations conducted from the Commercial Lot.
- (e) There is no restriction on the number of aircraft, which may be hangared or tied down on the commercial lots other than reasonable safety requirements.

ARTICLE VIII **AMENDMENTS**

The Association shall not, unless it has obtained the prior written consent of at least sixty-seven percent (67%) of the votes of Membership:

- (a) by act or omission, change, waive, or abandon any scheme of architectural control, or enforcement thereof, as set forth in this Declaration, regarding the design or maintenance of the Lots, improvements thereon, or the Common Area,
- (b) by act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer any common property owned, directly or indirectly, by the Association for the benefit of the Owners (excluding the granting of permits, licenses and easements for public utilities and/or other purposes consistent with the intended use of such common property and reasonably necessary or useful for the proper maintenance or operation of the Properties or the Association),
- (c) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner, or,
- (d) add or amend any material provisions of this Declaration, the Articles of Incorporation or Bylaws of the Association.

ARTICLE IX **GENERAL PROVISIONS**

Section 1. Enforcement. The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 3. Conflicts of Provisions. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control.

Section 4. Condemnation. In the event proceedings are initiated by any government or agency thereof, seeking to take by eminent domain the Common Area, any part thereof or any interest therein, or any improvement thereon or any interest therein, with a value (including loss of value to the balance of the Common Area and improvements thereof) as reasonably determined by the Association in excess of \$10,000.00, the Association shall give prompt written notice thereof, including a description of the part of or interest in the Common Area or improvement thereon sought to be so condemned, to all First Mortgagees of lots and Members. The Association shall have full power and authority to enter into and to defend in said proceedings after giving all First Mortgagees of Lots and Members at least fifteen (15) days prior written notice thereof.

In the event, following such proceedings, there is such a taking in condemnation or by eminent domain of a part or all of the Common Area, the award made for such taking, if such award is sufficient to repair and restore any portion of such taken Common Area, shall be applied by the Association to such repair and restoration. If such award is insufficient to repair and restore any portion of such taken Common Area, or if the full amount of such award is not expended to repair and restore such taken Common Area, the Association shall retain the net proceeds of such award to be applied against future assessments on all Lots until such award is totally dissipated.

Section 5. Duration, Revocation, and Amendment. Each and every provision of this Declaration shall run with and bind the land for a term of twenty (20) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. Subject to the provisions of Article VIII, this Declaration may be amended or revoked during the first twenty (20) year period, and during subsequent extensions thereof, by an instrument approved in writing by not less than sixty-seven percent (67%) of the Membership. Such amendment or revocation shall be effective when duly recorded; provided, however, that any amendment or revocation must comply with the Statutes of Colorado and the resolutions and ordinances of the County of Elbert, Colorado, or of any successor governmental entity having jurisdiction over the Properties in existence at the time such amendment becomes effective.

Section 6. Registration by Owner of Mailing Address. Each Owner shall register his/her USPS and e-mail addresses with the Association. All meeting notices and standard correspondence may be sent electronically or by regular mail, to the address so designated by the Owner. All legal notices or demands intended to be served upon an Owner shall be sent by certified mail, postage prepaid, addressed in the name of the Owner at the USPS mailing address. All legal notices or demands intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid, to:

**24652 DAVID C JOHNSON LOOP
ELBERT, CO 80106-9512**

until such address is changed by a notice of change of address mailed to each Owner by the Association.

**End of the
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF KELLY AIR
PARK SUBDIVISION**

IN WITNESS WHEREOF, the undersigned being a member of the Board of Directors of Kelly Air Park Association, Inc. herein has hereunto set his hand and seal as of the day and year first above written.

(signature on file)

Victor M. Vennari
Secretary
(SEAL)

The foregoing instrument was acknowledged before me this 7th day of September, 2018 by Victor M. Vennari.

Witness my hand and official seal.

My commission expires: _____
(Date)

(Signed)
NAME _____
Notary Public

(SEAL)