

Protective Covenants  
of  
Alaska Airpark/Bluerock Creek Estates Subdivision

Part I. Preamble

- A. Whereas, the Declarant, Alaska Airpark, Inc., is a corporation duly organized in the State of Alaska and the Owner of all of the properties comprising Bluerock Creek Estates Subdivision consisting of 78.009 acres more or less situated in the north ½ of the northeast ¼ of Section 14, Township 5 North, Range 8 West, Seward Meridian, and the Kenai Peninsula Borough in the Kenai Recording District, Third Judicial District, State of Alaska, all according to the official plat thereof filed for record under Plat No. 2005-96 of the Kenai Recording District, Kenai Peninsula Borough, Alaska (hereinafter referred to as Subdivision).
- B. Whereas, the Declarant desires to create an airpark known as Alaska Airpark/ Bluerock Creek Estates Subdivision, on the land described above that will be subject to the provisions of this instrument.
- C. Whereas, easements and rights-of-way for an Airstrip, Taxiway, Private Access Road and Glideslope have been established within the Subdivision for the benefit and use of the present and future Owners of the Subdivision Tracts.
- D. Whereas, each Owner of a Tract shall have a right and easement in the Airstrip, Taxiway, Private Access Road and Glideslope in common with the other Owners and their lawful delegates, to the exclusion of all others and that such right is appurtenant to each Tract and shall pass with the title to each Tract and may not be separated from it.
- E. Whereas, Tract 6 of the Subdivision does not abut the Airstrip or Taxiway and the Declarant desires that the Owner of Tract 6 have Airstrip access.
- F. Whereas, the Owner of Tract 6 of the Subdivision shall have a right and an easement to the exclusion of all other Tract Owners to the Tract 9 Airplane Easement for purposes of parking airplanes and the construction and use of an airplane hangar. Such right is appurtenant to Tract 6 and shall pass with the title to Tract 6 and may not be separated from it.
- G. Whereas, the Declarant desires to protect the development of the Subdivision properties as a desirable, scenic, fly-in residential community for individuals who enjoy the avocation and sport of aviation for the benefit of present and future property Owners, to protect the property values of the Tracts, to place on the Tracts covenants and restrictions regarding the use and improvement of these properties and to provide protection running with the land to all future Owners.

H. Now, therefore, the Declarant hereby establishes and files for record the following declarations, reservations, protective covenants, limitations, conditions and restrictions (hereinafter referred to collectively as Protective Covenants) regarding the use of and improvements to the Subdivision.

Part II. Area of Application

A. General applicability

The Protective Covenants set forth herein apply to the real property described in Part I. A. above, comprising the Bluerock Creek Estates Subdivision.

B. Effective date

The provisions in this document shall be effective upon the recording of this document and the Plat for Bluerock Creek Estates Subdivision.

C. Definitions

1. Airstrip

The term "Airstrip" shall mean and refer to the real property described in Exhibit A attached hereto.

2. Front Tract Line

The term "Front Tract Line" shall mean and refer to the property line of a Tract that is abutting a street right-of-way.

3. Glideslope Easement

The term "Glideslope Easement" shall mean and refer to glideslope easements extending off the ends of the Airstrip as described in Exhibit A attached hereto.

4. Owner

The term "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to a Tract, excluding those having an interest in a Tract as security for the performance of an obligation. Unless indicated to the contrary, the term Tract Owner shall refer to all of the Owners of a single Tract as one Owner.

5. Plat

The term "Plat" shall mean and refer to the plat of the Subdivision, Plat No. 2005-96, filed for record in the Kenai Recording District, Third Judicial District, State of Alaska.

6. Private Access Road

The term "Private Access Road" shall mean and refer to the real property easement for access to the Airstrip and Taxiway as described in Exhibit A attached hereto.

7. Start of Construction

The term "start of construction" shall include the laying of foundation of the structure as well as erection of structural elements, whichever occurs first.

8. Taxiway

The term "Taxiway" shall mean the real property easement for access to the Airstrip as described in Exhibit A attached hereto.

9. Tract

The term "Tract" shall mean and refer to any plot of land indicated on the recorded Subdivision Plat and includes any easements thereon.

10. Tract 9 Airplane Easement

The term "Tract 9 Airplane Easement" shall mean and refer to the real property easement for purposes of parking airplanes and the construction and use of an airplane hangar by the Owners of Tract 6 of the Subdivision as more particularly described in Exhibit A attached hereto.

Part III. Covenants

A. Completion

All houses and other buildings constructed within the Subdivision shall be enclosed with exteriors finished (such as paint, log oil) within 12 months after the start of construction. Exterior finish shall not include any type of exposed tar paper, asphalt paper, Tyvek or similar products.

B. Structures

No trailer, Quonset hut, shack, or barn shall be placed on any Tract within the Subdivision with the following exception: one recreational vehicle, trailer or tent for temporary use shall be permitted on any Tract for a period of time not to exceed 12 months and solely for use during the construction period referred to in paragraph A. of Part III herein.

C. Land use and building type

1. No Tract shall be used except for residential or recreational purposes.
2. No buildings shall be erected, altered, placed, or permitted to remain on any Tract other than one single-family dwelling not to exceed 2 ½ stories in height or 35 feet above grade at the highest point around the perimeter of the building, one private garage and one airplane hangar. For this purpose, the Tract 9 Airplane Easement shall be considered to be part of Tract 6 of the Subdivision. The single-family dwelling and hangar may be combined into one unit. Each dwelling shall contain a minimum floor area of 1,200 square feet, exclusive of the garage, screened porches, open decks, patios and terraces. The garage shall be enclosed and shall contain a minimum floor area of at least 500 square feet, but not more than 2000 square feet, with an eaves' height of not more than 14 feet. The garage may be attached to the dwelling. In the event a separate single-family dwelling is constructed on the Tract Owner's Tract, then the hangar may contain a residential apartment not exceeding 1,200 square feet of floor area. The hangar (including any residential apartment located within the hangar) shall be enclosed and shall not exceed 4800 square feet of floor area with an eaves' height of not more than 16 feet. The hangar may be built of steel siding, aluminum siding, a combination of steel and aluminum siding or other siding material (but only if that other siding material is identical in type and color of the single-family dwelling located on the same Tract, except that the siding material that is not steel, aluminum or a combination thereof of any hangar located on the Tract 9

Airplane Easement shall conform to that of the single-family dwelling located on Tract 6.

3. No carports are allowed. However, each Tract may contain structures to provide cover for one recreational vehicle and one boat, provided that each structure's exterior is identical in type and color as that of the single-family dwelling or hangar located on the same Tract. Such structures are subject to the setback restrictions for buildings as set forth in paragraph D of Part III herein.
4. Commercial and industrial use is not permitted. No signs may be erected indicating a non-residential activity is being conducted except for one sign per Tract of not more than 5 square feet for the purpose of advertising the property for sale or rent and except for a sign or billboard of any size erected by the Declarant for the sole purpose of advertising Tracts in the Subdivision for sale.
5. Any taxes resulting from improvements located on the Tract 9 Airplane Easement shall be the responsibility of the Owner of Tract 6.

D. Building location

1. No permanent structure shall be constructed or placed within an easement that would interfere with the ability of a utility to use the easement.
2. No building shall be located on any Tract nearer than 25 feet to any side or rear Tract line and not closer than 75 feet from the Front Tract Line.
3. No hangar or other building shall be located on any Tract nearer than 50 feet from the Taxiway and Airstrip easements as shown on Exhibit A attached hereto.

E. Temporary structures

No temporary structure of any kind, boat, truck, trailer, camper, motor home, mobile home, recreational vehicle of any kind shall be used on any Tract as a living area except as provided in paragraph B of Part III herein. This restriction shall not be interpreted to limit the right of the Declarant or any builder to use trailers or outbuildings as sales offices, construction offices or during construction of permitted buildings as material storage facilities.

F. Landscaping and clearing of Tracts

No Owner shall be permitted to clear more than the greater of 1½ acres or fifty percent of the area in a Tract of trees and brush. Building sites may be cleared for construction and trees may be thinned so long as maximum natural beauty and aesthetics of trees are retained. No live standing trees may be cleared within 15 feet of any Tract line except to permit access to the Taxiway and Airstrip or to the extent necessary to eliminate interference with the use and enjoyment of the Airstrip, Taxiway or Glideslope Easement.

G. Driveways

Except as provided elsewhere in this document, access to all Tracts is restricted to access from a street or right-of-way within the Subdivision or public roadway. No direct access to publicly-owned right-of-ways is permitted unless approved by the appropriate public authority.

H. Sewage, garbage disposal and fuel facilities

1. All sewage disposal facilities shall be placed at least 25 feet back from the Tract lines. No refuse or garbage shall be dumped within the Subdivision or the surrounding areas. All burn barrels shall be kept out of sight from neighbors and from streets and rights-of-way and maintained in a clean and sanitary condition.
  2. No wells or septic tanks may be drilled or placed on a Tract without the prior approval of the Alaska Department of Environmental Conservation and shall meet all requirements of the Alaska Department of Environmental Conservation. Water supply and sewage disposal systems shall be permitted in conformance with applicable requirements of 18 AAC 72 and 18 AAC 80.
  3. Provided full compliance with all local, state and federal regulations governing the storage of fuel and monitoring thereof, each Tract may contain one above-ground fuel storage system not to exceed three tanks with a maximum capacity of 500 gallon each. Tract 6 of the Subdivision may have fueling tanks located on the Tract 9 Airplane Easement. All tanks, pumps and vent pipes to the fuel storage system must be concealed or attractively screened. No underground fuel system is permitted. Fuel may not be stored or dispensed on any Tract for commercial sale, whether at wholesale or retail.
  4. Fueling, refueling, and the changing of oil for any aircraft or any vehicle is prohibited on the streets or rights-of-way, or on the Airstrip and Taxiway, and is permitted only on each Owner's Tract to the extent not restricted by these Protective Covenants and provided that the Tract Owner complies with all applicable laws and regulations.
- I. Utilities  
All utilities, including but not limited to electrical, telephone, cable TV and natural gas, must be installed in accordance with the requirements of the utility companies and must be placed underground to least impact the scenic and aesthetic character of the Subdivision.
- J. External antennae, satellite dishes, radio towers and solar collectors  
No antennae, dish or any other type of electronic device which has as its purpose the sending of or receiving signals to any external source of any kind shall be located on any Tract or upon any part of any structure situated on any Tract subject to these covenants. Except, however, each Tract Owner may install on the exterior of the dwelling located on the Owner's Tract, one standard television antenna, which shall not exceed a total height of 10 feet above the dwelling roof line. Satellite dishes up to 5 feet in width and solar collectors are allowed provided they are not visible from any street right-of-way, are discretely located as to least impact the scenic and aesthetic character of the Subdivision, do not exceed 30 feet in height (above normal grade) and are located at least 50 feet from a Tract line, Taxiway, Airstrip and street right-of-way. Ham radio towers (antennae) are expressly prohibited.
- K. Livestock, poultry and other animals

1. No animals, livestock, horses or poultry of any kind shall be raised, bred, or kept on any Tract except that dogs, cats or other household pets (such as fish and caged birds) may be kept.
2. No more than two dogs and two cats may be maintained on any Tract. No animal may be kept, bred or raised for commercial purposes. No pit bulls, mastiffs, rottweillers or vicious dogs of any kind shall be kept on any Tract.
3. All pets located inside the Subdivision shall be kept under control at all times by the Owner of the animal.
4. Dog runs shall not be visible from any street right-of-way.

L. Nuisances

No obnoxious or offensive activity or pollution shall be carried on upon any Tract nor shall anything be done on a Tract that may be or may become an annoyance or nuisance to the neighborhood. Any noise or odor emitted by, and discharge or waste from any animal (including without limitation dogs and cats) which can be seen, heard or smelled outside the perimeter of an Owner's Tract shall be deemed noxious and offensive and is therefore prohibited.

M. Parking and vehicle restrictions and storage

1. All aircraft, cars, trucks, vans, campers, recreational vehicles, motorcycles, boats, trailers, snow machines, all-terrain vehicles, cross-country vehicles of any type, and all other similar types of property, whether operable or inoperable, and all spare parts and accessories thereto, shall be kept in a hangar or garage except that one recreation vehicle, one boat, one aircraft owned by a Tract Owner and based on the Tract Owner's Tract, and tied-down aircraft of guests of a Tract Owner are allowed to be parked outside. Also, snowmobiles may be parked outside of a building during the winter. For this purpose, the Tract 9 Airplane Easement shall be considered to be part of Tract 6 of the Subdivision. The purpose of this provision is to keep stored vehicles and equipment out of sight.
2. No Tract or street right-of-way may be used for the storage of any equipment, materials, or merchandise used or to be sold in a trade or business, except as provided in paragraph S.6. of Part III herein.

N. Non-commercial use

The uses and purposes of all Tracts within the Subdivision, including all structures thereon, shall be residential and recreational only with related uses thereto.

O. Owner's Easements of Enjoyment

1. Except as provided otherwise in this document, each Owner shall have a nonexclusive right and easement of use, recreation and enjoyment in and to the Taxiway, Airstrip and Private Access Road and such easements shall be appurtenant to and shall pass with the title of each respective Tract. The Owner of Tract 6 of the Subdivision shall have an exclusive right in the Tract 9 Airplane Easement for purposes of use, recreation and enjoyment in and to the Taxiway, Airstrip, and Private Access Road and

such easement shall be appurtenant to and shall pass with the title to Tract 6 of the Subdivision.

2. The Declarant shall have the right to reconfigure, add or delete properties in the course of the development of the Subdivision or relating to any amendment to the Plat of the Subdivision; provided, however, the Declarant may not delete properties from the Taxiway or Airstrip, or easements providing access to the Taxiway or Airstrip.
3. The Declarant shall have the right to dedicate and transfer all or any properties designated as a private easement for street right-of-way to any municipal corporation, public agency, government authority for purposes to be used as a public street and to grant utility easements on property located within the Subdivision.

P. Resubdivision

Once title has transferred from the Declarant, the Tracts in the Subdivision as originally platted may not be re-subdivided.

Q. Restrictions on alienation

No Tract may be conveyed pursuant to a time-sharing arrangement described in AS 34.08.990(31).

R. Aircraft

1. No helicopters shall be kept or operated within the Subdivision. Only small single-engine and multi-engine aircraft designed to safely land within the Airstrip are allowed. Each Tract Owner is permitted to use, operate and store on the Tract Owner's property no more than 5 aircraft. For this purpose, the Tract 9 Airplane Easement shall be considered to be part of Tract 6 of the Subdivision.
2. Owners of aircraft shall comply with all federal, state, and local laws concerning the registration, operation and use of their aircraft.
3. Take-offs, landings and other use of the Airstrip and Taxiway shall be limited to the time during daylight or civil twilight.

S. Airstrip and Taxiway

Each Tract in the Subdivision shall have access and use of the Airstrip and Taxiway located within the Subdivision and as shown and described in the attached Exhibit A

1. Access to the Airstrip is restricted to easements and rights-of-way created for the express purpose of use and enjoyment of the Airstrip.
2. Each and every Owner shall at all times comply with any and all FAA rules and regulations concerning the use of the Airstrip and Taxiway and shall not permit any activity on the Owner's Tract or easement in violation of FAA rules and regulations.
3. Any Owner of a Tract may delegate the Owner's right to use and enjoyment of the Airstrip and Taxiway to members of the immediate family of the Owner residing in the same household, tenants of the Owner actually residing on the Tract, and temporary guests of the foregoing. No other or further delegation is permitted.
4. No motor vehicles, snowmobiles, all-terrain vehicles, dirt bikes, bicycles or vehicles of any kind may be operated on the Airstrip or Taxiway,

except for the purpose of assisting aircraft or removing snow, trees and brush or cutting the grass in order to make the Airstrip operable and only in a safe and prudent manner. Also motor vehicles may be operated on the Airstrip and Taxiway, but only in a safe and prudent manner, for purposes of accessing a Tract abutting the Airstrip or Taxiway. Children shall not be permitted to play on the Airstrip or Taxiway.

5. No commercial air taxi service, commercial flight operations, guide service or other business may be conducted using the Airstrip or Taxiway. This prohibition does not prevent use of the property for aircraft used in commercial activities that are conducted entirely outside of the Subdivision. For example, the Airstrip and Taxiway may be used by a Tract Owner to fly the Owner's aircraft to another location outside of the Subdivision where commercial flight operations occur. No student operations or flight training is permitted.
6. Each Owner shall install tie-downs or erect an airplane hangar for the Owner's aircraft on the Owner's Tract. Tie-downs shall not be located on Taxiway or the Airstrip easements. For Tract 6 of the Subdivision, the Owner's Tract shall include the Tract 9 Airplane Easement. Rental or leasing of tie-downs is prohibited.
7. No aircraft or any other vehicle shall be parked, stored, or tied down any nearer than 5 feet from the Taxiway and Airstrip easement. Guests must abide by all rules established for the Airstrip and Taxiway. It is the responsibility of the Owner granting the visit to assure these rules are followed.
8. No Owner shall do or suffer to be done any thing that would impair or interfere with the intended use of or access to the Airstrip and Taxiway. No structure, building, fence, vegetation, or other thing shall be placed upon or allowed to remain upon the Airstrip, Taxiway or within 50 feet of either side of the Airstrip's extended centerline that would impair, interfere with, or in any way obstruct use of the Airstrip, Taxiway or Glideslope Easement. No trash or garbage shall be deposited or left on the Airstrip or Taxiway. Outdoor lighting shall not be positioned and installed on a Tract in such a manner, and be of a type, that will present a hazardous or confusing condition to air operations on the Taxiway, Airstrip or Glideslope Easement.
9. Tracts fronting the Airstrip and Taxiway shall not allow snow melt or rainwater to run onto the Airstrip and Taxiway due to landscaping or contouring of the Tracts. Trees shall not be permitted to grow to a height that will impair full use and enjoyment of the Airstrip or Glideslope Easement.
10. Any Owner may commence maintenance of the Airstrip and Taxiway but only in a safe and prudent manner. The Tract Owners may form an association for the purpose of maintaining and improving the Airstrip, Taxiway and Private Access Road. If such an association is formed by the Tract Owners, then a majority of the then existing Tract Owners may agree to set forth fees for maintenance, insurance and improvements to the

Airstrip, Taxiway and Private Access Road. Any major improvement will require the agreement of at least 2/3 of the then existing Tract Owners. These fees shall be assessable against the then existing Tract Owners on a pro rata basis per each Tract and, if unpaid by a Tract Owner, shall constitute a lien against that Tract Owner's Tract. For these purposes, each Tract shall constitute one vote in the association regardless of the number of Owners of said Tract.

11. No Owner shall be obligated to maintain or improve the Airstrip and Taxiway except where its use has been impaired or made dangerous due to acts or omissions of such Owner, or a delegate of an Owner, including tenants and guests. In such case the Owner shall cause the Airstrip and Taxiway to be restored to the condition it was in immediately prior to such act or omission as soon as possible.
12. Aviation and activity conducted adjacent to aviation has certain inherent risks. All property Owners by purchasing property in the Subdivision accept these risks and agree to hold the Declarant and planners of the Subdivision and any government agency involved in the approval and construction of the Subdivision harmless from actions which may result from these risks.
13. Approach and departure clearance from trees, power lines or other obstructions, wind indications (whether by natural or man-made means) and surface conditions of the Airstrip and Taxiway for any given aircraft at any given time is neither implied nor assured by the Declarant. All aircraft operations are at the sole discretion and responsibility of the pilot-in-command. The skill, judgment and capability of a pilot-in-command is neither implied nor assured by the Declarant.

#### Part IV. General Provisions

##### A. Term

These Protective Covenants shall run with the land and be binding on all parties and all persons subject to them for a period of ten years from the date of recordation, after which time the Protective Covenants shall be automatically extended for successive periods of five years. These Protective Covenants may be amended as provided in paragraph C. of Part IV herein. The purchase of any Tract in the Subdivision shall constitute an agreement on the part of such purchaser to be bound by the Protective Covenants in their entirety and abide by them.

##### B. Liability

Nothing contained in this instrument shall be deemed to expressly or impliedly establish an association of the Owners of the Tracts or any other relationship whereby an Owner could be held liable for injuries or other damages caused by the acts or omissions of one or more other Owners.

##### C. Amendment

This document may be amended (in whole or in part) by recording an instrument signed by at least two-thirds of the then Tract Owners of the Tracts within the Subdivision, setting forth the changes; except that any amendment

to terminate or vacate the easements for the Airstrip, Taxiway, Glideslope Easement or Private Access Road shall require the recorded agreement of all Tract Owners. For purposes of making any amendment, each Tract shall constitute one vote regardless of the number of Owners of said Tract.

Notwithstanding the foregoing, the Declarant reserves the right, prior to the closing of the sales of all of the Tracts within the Subdivision, all rights which may be necessary to deal with the Subdivision, including the right to vacate, amend or modify the Plat of the Subdivision and to grant utility easements on property located within the Subdivision.

D. Enforcement

Enforcement of the Protective Covenants may be by proceedings in law or in equity against any person or persons violating or attempting to violate any term herein to restrain or to recover damages. An action may be brought by the Owner or Owners of record of any Tract in the Subdivision.

E. Severability

Invalidation of any one of the Protective Covenants by court order or court judgment shall not affect any of the other Protective Covenants, which shall remain in full force and effect.