

STATE OF TEXAS  
COUNTY OF TARRANT

**FIFTH AMENDMENT OF DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR HICKS AIRFIELD, TARRANT  
COUNTY, TEXAS**

Hicks Airfield Pilots Association, a Texas non-profit corporation, of the County of Tarrant, State of Texas (the "Association") hereby amends that certain Declaration of Covenants, Conditions and Restrictions, executed by Hicks Airfield, Inc., a Texas corporation, as Declarant, and placed of record in Volume 8396, Page 1458, Deed Records, Tarrant County, Texas, as amended by that certain Amendment to Declaration of Covenants, Conditions and Restrictions, executed by Hicks Airfield, Inc., a Texas corporation, as Declarant (the "First Amendment"), and placed of record in Volume 9066, Page 259, of the Deed Records of Tarrant County, Texas, and as amended by that certain Second Amendment to Declaration of Covenants, Conditions and Restrictions, created by Hicks Airfield, Inc., a Texas corporation, as Declarant (the "Second Amendment"), and placed of record in Volume 10505, Page 1485, of the Deed Records of Tarrant County, Texas and as amended by that certain Third Amendment to Declaration of Covenants, Conditions and Restrictions, created by Hicks Airfield Pilots' Association (the "Third Amendment"), and placed of record in Volume 12795 Page 145, of the Deed Records of Tarrant County, Texas, and as amended by that certain Fourth Amendment to Declaration of Covenants, Conditions and Restrictions, created by Hicks Airfield Pilots' Association (the "Fourth Amendment") and placed of Record in Volume 1~~3275~~ Page 8 , of the Deed Records of Tarrant County, Texas (the Declaration of Covenants, Conditions and Restrictions, as so amended by the First, Second, Third and Fourth Amendments, is herein referred to collectively as the "Declaration").

**WITNESSETH:**

**WHEREAS**, the Association is exercising the right granted to it pursuant to Article VII 2 of the Declaration to amend the same in the particulars hereinafter set forth and, in accordance therewith, has obtained the written consent of sixty percent (60%) or more of the Owners of Lots of the Property described an Exhibit "A", attached hereto and made a part hereof for all purposes (the "Phase I Property"), and

**WHEREAS**, contemporaneously herewith, the Association is filing in the Deed Records of Tarrant County, Texas, a Correction Warranty Deed (the "Correction Warranty Deed") in the form attached hereto as Exhibit "B" and made a part hereof for all purposes to reform that certain General Warranty Deed, dated August 4, 1992, but effective May 18, 1992, executed by Hicks Airfield, Inc. ("Hicks"), as Grantor, to the Association, as Grantee, covering the property described in Exhibit "B" attached hereto; and

**WHEREAS**, it is the intention of this Amendment (the "Fifth Amendment") being executed today to ratify and confirm in its entirety the Third Amendment, to reinstate the easement which was revoked in the Fourth Amendment but only for use by airplanes and by airplanes and other vehicular traffic availing themselves of the services offered by the businesses operated by the Owner of Lot 6-3, 6-4 of the Phase I Property, to clarify certain provisions relating to the provisions of the Declaration which permit the Association or any other entity authorized by the Declaration to charge or collect a license fee for the purpose of landing, taking off or taxiing aircraft on the Property and to amend the same by this Fifth Amendment; and

**WHEREAS**, pursuant to Article TI of the Declaration, Hicks has the right, upon certain conditions contained therein, to permit additional land contiguous to the Phase I Property (hereinafter referred to as the "Contiguous Property") to become part of Hicks Airfield (the "Expansion Right"); and

**WHEREAS**, it is also the intention of this Fifth Amendment to clarify that only properties subject to the Expansion Right granted to Hicks in Article II of the Declaration are (i) the property described in Exhibit "C" attached hereto (the "Silverado Tract") and (ii) upon the satisfaction of the terms and conditions hereinafter set forth in Section 7 hereof, the property described in Section 7 hereof (the "Option Tract"), and that these two (2) tracts of land constitute all of the Contiguous Property referred to in Article II of the Declaration and no other property shall become a part of the Hicks Airfield, without the vote of 60% of the then Owners of Lots constituting a part of the Property; and

**WHEREAS**, Hicks has advised the Association that it has assigned the Expansion Right granted to it in Article II of the Declaration with respect to the Silverado Tract to Silverado Development Corporation ("Silverado") and Silverado has exercised the Expansion Right as to the Silverado Tract and has adopted that certain Declaration of Covenants, Conditions and Restrictions for Hicks Airfield Section 2, Tarrant County, Texas, dated September 26, 1996 (the "Silverado Declaration") with respect to the Silverado Tract; and

**WHEREAS**, contemporaneously with the execution and filing of this Fifth Amendment, Silverado on behalf of itself and the association created under the Silverado Declaration (the "Silverado Association") is executing and filing of record in the Deed Records of Tarrant County, Texas, a revocation in its entirety of the Silverado Declaration (the "Revocation") and a subordination of each lender who has liens against the Silverado Tract (the "Lender") of a subordination (the "Lender Subordination") of its liens to the covenants, conditions and restrictions set forth in the Declaration, as amended, with the exception that the Lender shall have a superior lien with respect to unpaid license fees and assessments on the Lots of the Silverado Tract of the nonpaying Owners of the Silverado Tract; and

**WHEREAS**, it is the intention of the parties that, upon the filing of this Fifth Amendment, the Revocation and the Lender Subordination in the Deed Records of Tarrant County, Texas, the term "Property" as used in the Declaration, as amended by the First, Second, Third, Fourth and Fifth Amendments, shall presently include only the (i) Phase I Property described in Exhibit "A", and (ii) the Silverado Tract described in Exhibit "C" attached hereto; and

**WHEREAS**, it is the further intention of the parties that the term "Property" as used in the Declaration, as amended by the First, Second, Third, Fourth and Fifth Amendments, shall include the Option Tract upon the exercise by Hicks, Silverado and/or a Silverado/Hicks Assignee (as that term is hereinafter defined), as the case may be, of the Expansion Right with respect to the Option Tract in accordance with the terms and conditions set forth in Section 7, hereof; and

**WHEREAS**, it is the further intention of this Fifth Amendment to provide notice to all present and future Owners of Lots of the Property as to the Declaration, as amended hereby, and their rights and obligations with respect to their use of the runway situated on the Phase I Property and the Common Areas situated on all of the tracts of land constituting a part of the Property; and

**WHEREAS**, Silverado, on behalf of itself and the Silverado Association, and Hicks, on behalf of itself and as the Declarant under the Declaration, intend, by their respective execution and delivery of this Fifth Amendment, to acknowledge on behalf of themselves and their respective successors and assigns and on behalf of, the Silverado Association and all other owners of the Silverado Tract, or any part thereof, that their respective use of the runway situated on the Phase I Property and the Common Areas situated on all of the tracts of land constituting a part of the Property shall be governed solely by the terms of the

Declaration, as amended hereby, and not by the Silverado Declaration; and

WHEREAS, it is the further intention of this Fifth Amendment to clarify and amend various other matters set forth in the Declaration and to grant to Silverado and Hicks certain rights and benefits, all of which rights and benefits may be assigned by Silverado and Hicks to a Silverado/Hicks Assignee (as that term is hereinafter defined), all and more particularly hereinafter set forth; and

WHEREAS, the term "Silverado Hicks Assignee" shall mean any and all persons or entities who have been assigned the rights and benefits granted to Hicks and/or Silverado hereunder, as the case may be, and who has assumed, in writing by deed thereto, the obligations imposed upon Hicks and/or Silverado hereunder, as the case may be. It is the intention herein that the term "Silverado Hicks Assignee" shall not include the purchaser of any one or more Lots constituting the Silverado Tract and/or the Option Tract unless such purchaser obtains all of the remaining Lots of the Silverado Tract and/or the Option Tract, as the case may be, then owned by Hicks, Silverado and/or the Silverado/Hicks Assignee, as the case may be.

**NOW, THEREFORE,** the Association hereby amends the Declaration as follows;

Section 1. The Association, Hicks Airfield, Inc. (the "Declarant" or "Hicks"), and Silverado Development Corporation ("Silverado"), by their respective execution and delivery of this Fifth Amendment, hereby ratify and confirm that the Second Amendment is hereby revoked in its entirety and that the right of the Association or any other entity authorized by the Declaration to charge or collect a license fee for the purpose of landing, taking off or taxiing aircraft on the Phase I Property have been reinstated by the Third Amendment in their entirety, as amended by this Fifth Amendment.

Section 2. Article II of the Declaration is hereby amended to include the following provisions, and in the event of a conflict between the provisions presently set forth in Article II and the following provisions, the following provisions shall control:

(a) Expansion Right. The Declarant was the sole owner of the exclusive right to permit additional land contiguous to the Property (the "Contiguous Property") to become part of Hicks Airfield, i.e., to use the runway situated on the Phase I Property together with the Common Areas located on the Phase I Property incident to the use of the runway (the "Expansion Right") created in Article II of the Declaration. The *only* properties which constitute Contiguous Property which are subject to the Expansion Right are: (i) the tract of land described in Exhibit "C" attached hereto (the "Silverado Tract") and (ii) upon the satisfaction of the terms and conditions hereinafter set forth in Section 7 hereof, the property described in Section 7 hereof (the "Option Tract"). No other property constitutes a part of the Contiguous Property.

(b) Exercise of Expansion Right. The Declarant, by its execution of that certain Declaration of Expansion of Hicks Airfield, dated September 27, 1996, and filed of record in Volume 12534, Page 201 of the Deed Records of Tarrant County, Texas, exercised the Expansion Right as to all of the Silverado Tract. Subsequent thereto, Silverado advised the Association that Silverado had acquired legal title to the Silverado Tract by Deed, dated September 4, 1996, from Van Zandt Jarvis Williams and wife, Vicki Williams, and Van Zandt Jarvis Williams, as Independent Executor and Testamentary Trustee under the

wills and estates of Bernard C. Williams and Priscilla Jarvis Williams, both deceased, recorded in Volume 12505, Page 0142 of the Deed Records of Tarrant County, Texas, and had acquired from Declarant the right to make the Silverado Tract a part of Hicks Airfield. In connection therewith, Silverado executed and filed of record the Silverado Declaration in Volume 12534, Page 213 of the Deed Records of Tarrant County, Texas. Contemporaneously with the filing of this Fifth Amendment, Silverado has filed a revocation of the Silverado Declaration (the "Revocation") in the Deed Records of Tarrant County, Texas, and, in substitution therefore, Silverado and the Association have filed the Declaration, the First Amendment, the Second Amendment, the Third Amendment the Fourth Amendment, and this Fifth Amendment against the Silverado Tract, it being the intention of the Declarant, Silverado and the Association that, from and after the date of the filing thereof, the Declaration, as amended by the First Amendment, Third Amendment, Fourth Amendment (as amended by this Fifth Amendment) and this Fifth Amendment shall apply in all respects to the Silverado Tract and that the Silverado Declaration shall cease to apply to the Silverado Tract. Accordingly, in all respects where the term Property is used from and after the date of filing of this Fifth Amendment, the term "Property" as used in the Declaration, as amended, shall include only the Phase I Property and the Silverado Tract, to the same intent and purposes as if the Silverado Tract was a part of the original property covered by the Declaration. Only Hicks, Silverado and/or a Silverado/Hicks Assignee, as the case may be, shall have the right to exercise the Expansion Right described in Article 11 of the Declaration and the only property subject to the Expansion Right is the Option Tract upon satisfaction of all of the terms and conditions hereinafter set forth in Section 7 hereof, which satisfaction shall be evidenced by a document or documents in writing to that effect, which is (are) filed of record in the Deed Records of Tarrant County, Texas, executed by the Association and Silverado, Hicks and/or a Silverado Hicks Assignee, as the case may be.

(c) Additional Property. In the event that the Declarant or any other person or entity desires, to make any other property adjacent to the Option Tract (the "Additional Property") a part of Hicks Airfield, i.e., to use the runway situated on the Phase I Property together with the Common Areas located on any tract of land constituting a part of the Property incident to the use of the runway, such action shall require the consent (the "Consent") of 60% of the then Owners of Lots of the Property (with one vote to be cast for each Lot so owned, except that with respect to any and all Lots owned by Silverado, voting shall be based upon the provisions of Section 5 hereinafter set forth) and evidenced by proxies or documents in writing bearing each of their signatures or by the signatures of holders of valid proxies exercised by them. Upon obtaining the Consent, the Association shall amend this Declaration to include the Additional Property as a part of the Property covered by this Declaration, as amended, and shall file such amendment in the Deed Records of Tarrant County, Texas. The owner of the Additional Property (the "Additional Property Owner") shall be required to consent to said amendment and to the filing of said amendment against the Additional Property in the Deed Records of Tarrant County, Texas. Thereafter, the Owners of the Lots of the Additional Property shall have the right to use the runway situated on the Phase I Property and the Common Areas situated on all of the tracts of land constituting the Property related thereto subject to all of the terms and conditions of the Declaration, as amended. For all purposes of this Amendment, the term "Additional Property Owner" shall include only the Owner of the Additional Property prior to the sale of Lots constituting a part of the Additional Property, and not the Owners of Lots of the Additional Property.

Section 3. Article III, Paragraph A, Subparagraph 2 of the Declaration is hereby amended to include the following provisions, and in the event of a conflict between the provisions presently set forth in Article III, Paragraph A, Subparagraph 2 or elsewhere in the Declaration and the following provisions, the following provisions shall control:

(a) License Fee. Notwithstanding anything contained in the Declaration to the

contrary, the Owners of Lots of the Property (which term shall specifically include the Phase I Property, the Silverado Tract, and upon satisfaction of the terms and provisions of Section 7 hereof, the Option Tract) shall be obligated to pay the license fee assessed by the Association, subject to all of the rules and regulations adopted by the Association with respect to the use of the runway and other Common Areas as from time to time adopted by the Association, acting through its Board of Directors which will entitle the Owners of Lots the use of the runway. The Association shall have the right, acting, through its Board of Directors, to charge such substitute and/or additional fees relative to the use thereof, as it, in its sole discretion, shall deem necessary or appropriate, and the Owners of Lots of the Property (as that term is herein defined) and their respective successors and assigns and all other persons and entities using the same shall be bound thereby. Notwithstanding the foregoing, the license fee and any and all other fees and charges relative to the use of the runway and other Common Areas shall be uniform, with the fees so charged by the Association per Lot being based upon the gross square footage of the Lot and the rate per gross square foot being the same for all Owners of Lots of the Property (as that term is herein defined). (b) Initial Fee, License Fee and Assessments Payable by Silverado.

Notwithstanding the foregoing, except as otherwise provided to the contrary in this Section 3(b) and/or in Section 5(b) hereof, Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, shall not be required to pay the Initial Fee (as hereinafter defined in Section 3(c) hereof), a license fee and/or any other fee or charge relative to the use of the runway and/or any assessment with respect to all Lots owned by it constituting a part of the Silverado Tract and/or the Option Tract which remain unimproved (i.e., Lots upon which a hangar or other building or structure has not been constructed thereon) and which are not used for aircraft storage or any other use; provided, however, that Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, may construct a sales office/hangar on one (1) Lot on the Silverado Tract and shall not be required to pay the Initial Fee and/or any license fee or assessment with respect thereto during the period of time that it owns said Lot and uses it for a sales office/hangar in connection with its efforts to sell other salable, unimproved Lots owned by Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be. Except as otherwise hereinabove specifically provided to the contrary, as to any Lot constituting a part of the Silverado Tract and or the Option Tract owned by Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, upon which there has been constructed a hangar, building or other improvement, or which is used for aircraft storage or any other use, whether said Lot is improved or unimproved, Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, shall pay the Initial Fee, the license fee as well as all other fees and charges relative to the use of the runway as well as all assessments as shall be charged by the Association to the other Owners of Lots of the Silverado Tract and/or the Option Tract as the case may be. The conditional rights and benefits hereinabove granted to Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, with respect to its obligations to pay the Initial Fee, the license fee and other fees, charges and assessments are personal to Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, and are not granted herein to any Owner of a Lot who acquires such Lot from Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, and do not run with the land. These conditional rights and benefits shall be available to Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, only as long as Silverado, Hicks and/or the Silverado/Hicks Assignee, as the case may be, continues to own unimproved salable Lots constituting a part of the Silverado Tract and/or the Option Tract, as the case may be, and such unimproved, salable Lots are not used for aircraft storage or any other use, except as otherwise hereinabove specifically provided with respect to one (1) sales office/hangar located on the Silverado Tract. These conditional rights and benefits are assignable by Silverado and Hicks, as the case may be; however, until such assignee shall assume in writing all of the obligations imposed upon Hicks and/or Silverado, as the case may be, hereunder, such assignee shall not be deemed a Silverado/Hicks Assignee and shall not have the rights and benefits herein granted to a Silverado/Hicks Assignee hereunder,

including but not limited to the rights and benefits granted in Sections 2(a), 3(b) and 5(b), and Article VIII hereof. In the event Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, shall sell such Lots, Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, or the Owner of the Lot, as the case may be, shall thereupon immediately pay the Initial Fee and commence to pay the license fee and other fees, charges and assessments due and owing with respect to the Lots so owned by it. All Owners of Lots of the Phase I Property and all Owners of Lots of the Silverado Tract and/or the Option Tract (other than Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, except as hereinabove provided) and/or any other property shall pay the Initial Fee, such license fee as well as all other fees and charges relative to the use of the runway and all assessments as shall be charged by the Association from the date they acquire such Lot, regardless of whether the Lot is improved or unimproved and regardless of whether the Lot was acquired before or after the date of execution and/or filing of record of this Fifth Amendment.

(c) Collection of License Fees. Assessment and Initial Fees. The Association reserves the right to collect the initial Fees and all license fees and other fees, charges and assessments due and owing with respect to Lots situated on the Property (which shall include the Phase I Property, the Silverado Tract and the Option Tract, upon satisfaction of the terms and conditions hereinafter set forth in Section 7 hereof) in such manner as it, in its sole discretion, shall from time to time determine. Contemporaneously with Silverado's execution and delivery of this Fifth Amendment, Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, agree to pay and deliver to the Association the Initial Fees which were due and payable hereunder by the Owners of Lots of the Silverado Tract at the time the Owners acquired such Lots and to supply the Association with a written notice setting forth therein a list of said Lot Owners, the date of their respective contracts of sale with Silverado, and the Initial Fees so collected with respect to each such Owner as of the date of Silverado's execution and delivery of this Fifth Amendment. Thereafter, in the event that Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, shall sell one or more of its Lots constituting a part of the Silverado Tract and/or the Option Tract, as the case may be, to a third party, then, in such event, Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, shall give the Association written notice thereof, setting forth therein the name and address of such Purchaser and the date of such purchaser's contract of sale with Silverado, within fifteen (15) days following the sale of such Lot and, within said fifteen (15) day period of time, Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, shall pay to the Association in full the Initial Fee which is due and payable hereunder by the Owner of the Lot at the time the Owner acquired such Lot. In the event that Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, shall become required to pay the Initial Fee, the license fee and/or any other fee, charge and/or assessment with respect to one (1) or more of its Lots as hereinabove provided in Section 3(b) hereof, then, in such event, Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, shall give written notice of the change of the use of the Lot to the Association within fifteen (15) days following the change of use of such Lot and, within said fifteen (15) day period of time, except as hereinafter provided to the contrary, Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, shall pay to the Association in full, the Initial Fee and the pro rata share of the license fees and other fees and charges relative to the use of the runway and assessments for that calendar year due with respect to that Lot from the date of such change of use to the end of that calendar year. In addition, unless Silverado, Hicks and/or the Silverado/Hicks Assignee have already paid to the Association the Initial Fee pursuant to the provisions of Section 3(b) or Section 5(b) hereof, Silverado, Hicks, and/or the Silverado/Hicks Assignee, agree to pay, or cause to be paid and collected, at each time a Lot is sold by Silverado, Hicks, and/or a Silverado/Hicks Assignee from the Silverado Tract (or from the Option Tract if Silverado, Hicks and/or a Silverado/Hicks Assignee, exercise the Expansion Right with respect to the Option Tract in accordance with, and upon satisfaction of, the terms and provisions of Section 7 hereof) which obligation shall commence from the date of the first sale, even though such first sale predates the date of execution and/or filing of this Fifth Amendment, the Initial Fee. The term "Initial Fee" shall mean the one-time fee to be paid by the first-time purchaser of

each Lot constituting a part of the Silverado Tract and/or the Option Tract, as the case may be, to the Association as a partial reimbursement to *the* Association for the cost of maintenance of the runway and the operation of the Association. The Initial Fee will be (i) \$300 per Lot for the first 23 Lots of the Silverado Tract sold by Silverado, Hicks and/or a Silverado/Hicks Assignee pursuant to a contract of sale, and (ii) \$500 per Lot for each Lot of the Silverado Tract and, if the Expansion Right is exercised, the Option Tract sold thereafter. Silverado hereby transfers and assigns all of its rights as Declarant and also all of the rights it holds in the Silverado Association by virtue of the Silverado Declaration to assess and collect all licenses and other fees, charges and assessments due and owing with respect to Lots situated on the Silverado Tract which relate to the period of time prior to the filing of record of the Revocation, which *assignment* shall survive the filing of the Revocation. The Association shall bill the Owners of the Lots constituting a part of the Silverado Tract for all license fees and other fees, charges and assessments due and owing with respect to the Lots situated on the Silverado Tract from the date of their respective acquisition of the Lots once the Fifth Amendment is filed of record. The Association, acting through its Board of Directors, shall have all rights, and may exercise any and all remedies, as it, in its sole discretion, shall deem necessary or appropriate in order to enforce its rules and regulations relating to the use, by the Owners of Lots of the Property including but not limited to the Silverado Tract and, if applicable, the Option Tract, and any and all other persons and entities (including but not limited to Silverado and its successors and assigns) of the runway and the other Common Areas, including but not limited to, the right to collect the Initial Fee, the license fee and any and all other fees and charges relative to the use thereof as well as any and all assessments which may be charged by it from time to time. If the Initial Fee, the license fee and/or any other fees, charges and/or assessments, or any part thereof, is not paid on the dates when due, then the unpaid amount of such Initial Fee, license fee and any other fees, charges and/or assessments shall become delinquent and shall, together with the interest thereon at the maximum legal rate and cost of collection thereof, become a continuing debt secured by a self executing lien (subject to non judicial foreclosure in the manner provided for non-judicial foreclosure of a deed of trust lien under the laws of the State of Texas, or subject to judicial foreclosure in accordance with the laws of the State of Texas) on the Lot of the non-paying Owner of such Lot of the Property, including but not limited to the Phase I Property, the Silverado Tract and, if applicable, the Option Tract, as the case may be, which shall bind such Lot in the hands of such person or entity, his or its heirs, executors, devisees, personal representatives, successors and assigns, all in accordance with the provisions of Article V(9) of this Declaration. In addition, the Association or its Board of Directors shall have the right to formulate rules and policies regarding the methods of enforcing the collection of unpaid Initial Fees, license fees, and/or assessments.

Section 4. Article I is hereby amended to include the following provisions which shall be in addition to, and not in lieu of, the provisions set forth in the Declaration:

Silverado agrees to complete development and construction of the unimproved Common Areas located on the Silverado Tract, including but not limited to completing the taxiway running the length of the Silverado Tract to the north end of the Silverado Tract (the "Taxiway"), at its sole cost and expense, in a good and *workmanlike* manner, in accordance with the plat previously filed by it with respect to the Silverado Tract, as the same may be amended from time to time pursuant to Section 6(b) of this Amendment. Silverado further agrees to execute and deliver to the Association a special warranty deed (the "Special Warranty Deed") wherein Silverado shall transfer and convey, for no additional consideration, all of the Common Areas located on the Silverado Tract to the Association, fully completed and constructed as hereinabove provided, free and clear of all liens and other encumbrances to the Association, no later than the earlier of (i) the expiration of two (2) years following the date of execution of this Fifth Amendment (the "Defined Period"), or (ii) the date that the Common Areas located on the Silverado Tract have been fully completed and constructed as hereinabove provided. If, at the expiration of the Defined Period, all or any part of the Common Areas located on the Silverado Tract have not been fully completed and constructed as hereinabove provided, the Association, at its option, may require Silverado to convey all or any portion of the Common Areas to the Association by Special Warranty Deed, for no additional consideration, and free and clear of all liens and other encumbrances to the

Association. The Association shall have no obligation to construct, complete and/or maintain any of the Common Areas located, or to be located, on the Silverado Tract, during the Defined Period, all which obligations shall remain the sole responsibility of Silverado, and Silverado hereby agrees to assume such obligations during the Defined Period. This obligation shall survive the execution and delivery of the Special Warranty Deed by Silverado. Silverado agrees to maintain all of the Common Areas located on the Silverado Tract during the Defined Period consistent with the standard of maintenance whereby the Association maintains the Common Area located on the Phase I Property, at Silverado's sole cost and expense, and Silverado shall not be entitled to receive any of the assessments and license fees received by the Association from the Owners of the Lots of the Property provided, however, nothing herein shall prevent Silverado from seeking reimbursement from any of the Owners or other individuals or entities that may be responsible for any damage to the Common Areas. In addition, until Silverado completes construction of the improvements on the Common Areas and executes and delivers to the Association the Special Warranty Deed, Silverado agrees, at its sole cost and expense, to pay all taxes and assessments of taxing authorization with respect to, and to maintain in full force and effect general public liability insurance in amounts consistent with that maintained by the Association on its Common Areas, and to pay the cost of insurance in connection with, such portions of the Common Areas located on the Silverado Tract. The Common Areas described in the Special Warranty Deed shall constitute, from and after Silverado's completion of construction of the improvements on the Common Areas and the filing of the Special Warranty Deed, part of the Common Areas, as that term is defined in Article I of the Declaration, and shall be subject to all of the other terms and provisions of the Declaration, as amended; however, notwithstanding the fact that Silverado has not fully completed and constructed the improvements on the Common Areas located on the Silverado Tract and executed and delivered the Special Warranty Deed to the Association with respect thereto, from and after the date of execution of this Fifth Amendment, the Association shall have the right, but not the obligation, to make rules and regulations, with respect to, and to extend the rules and regulations of the Association to those portions of the Common Areas which have been so completed and constructed, and to enforce the same, so as to assure the Owners of Lots of the Property and their invitees, ingress and egress in, to and within the Property, which rules and regulations shall be consistent with those adopted by the Association with respect to the Common Areas situated on the Phase I Property.

Section 5, Article V, Paragraph 3 of the Declaration is hereby amended to include the following provisions, and in the event of a conflict between the provisions presently set forth in Article V, Paragraph 3, or elsewhere in the Declaration and the following provisions, the following provisions shall control:

(a) Deletion of Class B Voting Membership. All references in the Declaration to Class B voting membership are hereby deleted, in view of the fact that Class B voting membership has ceased there under and has been converted to Class A voting membership, and any Lot of the Phase I Property which was owned by the Declarant which had not been sold to a third party has been converted to Class A voting membership. From and after the date of the filing of this Amendment, there shall no longer be any Class B voting membership.

(b) Class A Voting Membership. From and after the date of the filing of this Fifth Amendment, each Owner of a Lot of the Property (including the Phase I Property, the Silverado Tract, and, upon satisfaction of the terms and conditions hereinafter set forth in Section 7 hereof, the Option Tract) shall be entitled to one (1) vote per Lot owned by such member; provided, however, that except as hereinafter provided to the contrary,

Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, shall have only one (1) vote for any and all matters to be voted upon by the Association, regardless of the



number of Lots owned by it. It is expressly provided, however, that, notwithstanding the foregoing, Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, shall be entitled to one (1) vote for each Lot as to which Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, pays the Association, prior to exercising its voting rights with respect to such Lot(s), the Initial Fee and the license fees and other fees and charges relative to the use of the runway and all assessments which are charged by the Association to other Owners of Lots of the Property for the calendar year in which the vote is to be taken; provided, however, that for the first calendar year in which Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, shall seek to vote with respect to a Lot, they shall only be required to pay such portion of such license fees and other fees, charges and assessments for that portion of that calendar year that shall be due and owing from and after the date that the vote is to be taken to the end of said calendar year. Thereafter, Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, shall be required to pay, prior to exercising its voting rights with respect to such Lot(s), all such license fees and other fees, charges and assessments which are charged by the Association to Owners of Lots, for the calendar year in which the vote is to be taken, for as long as they own such Lots, within fifteen (15) days following the receipt of an invoice therefore.

Section 6. Article IV of the Declaration is hereby amended to include the following provisions, and in the event of a conflict between the provisions presently set forth in Article IV or elsewhere in the Declaration and the following provisions, the following provisions shall control:

- (a) Covenants, Conditions and Restrictions. Attached as Exhibits "C" and "D" to the Declaration are covenants, conditions and restrictions to be set forth in the deed to each Lot constituting a part of the Phase I Property. Similar covenants, conditions and restrictions shall be referenced in the deed to each Lot constituting a part of the Silverado Tract and, upon satisfaction of the provisions hereinafter set forth in Section 7 hereof, the Option Tract, which such modifications as shall be deemed appropriate by Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, and the Board of Directors of the Association to reflect that the improvements to be constructed on the Silverado Tract and, if applicable, the Option Tract may differ from the improvements constructed on the Phase I Property.
- (b) Development of Silverado Tract by Silverado. Notwithstanding anything contained in the Declaration, as amended, to the contrary, Silverado shall have the right, without the prior written consent of the Association, to replat portions of the Silverado Tract and to use the Common Areas located on the Silverado Tract and the Phase I Property in order to complete construction of ingress and egress to the Silverado Tract; provided, however, Silverado agrees that it will provide the Association with a copy of each proposed replat and at least five (5) days following the Association's Board of

Directors' receipt of same within which to make comments thereto prior to Silverado filing such replat of record. The cost of any replatting of the Silverado Tract shall be borne solely by Silverado. Silverado agrees to use its best efforts not to make use of the existing taxiway located on the Phase I Property in such construction-related activities. Silverado agrees to keep the Board of Directors of the Association advised of the status of its development of the Silverado Tract, including any replat of any portion of the Silverado Tract, and shall send the Board of Directors copies of all such replats, as hereinabove provided. In addition, Silverado shall have the right to exercise architectural control over the construction of hangars and other improvements to be located on the Silverado Tract and, in exercising architectural control over the construction of hangars and other improvements to be located on the Silverado Tract, it is the intention of this paragraph that Silverado shall be entitled to the same rights and shall be subject to the same restrictions with respect to architectural control as were afforded to the Declarant under Article V, Paragraph 12 of the Declaration with respect to the Phase I Property.

(c) Use of the Silverado Tract and Phase I. The Silverado Tract and Phase I may only be used for aircraft hangars, general office use, and airport related commercial business, and Common Areas related to the use thereof. The Association and Silverado acknowledge that certain Owners of Lots of Phase I and the Silverado Tract are presently using their Lots for other than aircraft hangars, general office use and airport related commercial businesses. With respect thereto, the existing Owners of those Lots shall have the right to continue to operate or use their Lots for their present purposes (i.e., the purposes for which said lots are presently being used as of the date of filing of this Fifth Amendment); however, this right shall be personal to the Owners of said Lots and upon the sale, lease, transfer or other disposition of any nature by the present Owner of such Lot to any other person or entity, such use shall be no longer be valid or in accordance with the provisions of this Fifth Amendment, and the Association shall have the right to require the new Owner or user of the Lot, as the case may be, to cease using the Lot for any purpose other than as herein permitted pursuant to this Section 6(c).

Section 7. Article VIII is hereby added to the Declaration and made a part thereof for all purposes, and in the event of a conflict between any other provision of the Declaration and Article VIII, the following provisions shall control:

**Article VIII**  
**Option Tract**

A. Definition of Option Tract. The Option Tract consists of that certain 26 acre (approximate) tract of land abutting the eastern boundary of the Silverado Tract which is presently held under option by Silverado.

B. Use of Option Tract. The Option Tract may be used only for aircraft hangars, general office use, airport related commercial business, and Common Areas related to the use thereof.

C. Exercise of Expansion Right with Respect to Option Tract. Only Silverado, Hicks and/or a Silverado/Hicks Assignee shall have the right to exercise the Expansion Right to make the Option Tract a part of Hicks Airfield. As a condition precedent to the exercise of the Expansion Right, Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, shall obtain a subordination (the "Lender Subordination") from the lender who has liens against the Option Tract (the "Lender") to the covenants, conditions and restrictions set forth in the Declaration, as so amended, with the exception that the Lender shall have a superior lien with respect to unpaid license fees and assessments on the Lots of the Option Tract of the nonpaying Owners of the Option Tract. In this regard, Silverado, Hicks and/or a Silverado/Hicks Assignee as the case may be, shall give written notice to the Board of Directors of the Association that it has exercised the option to acquire the Option Tract and has obtained legal title thereto, and that it has elected to exercise the Expansion Right with respect to the Option Tract. The Board of Directors shall thereafter have the right to file a copy of the Declaration, and all existing amendments thereto, against the Option Tract, within ten (10) days as the case may be, following its receipt of a copy of the recorded deed of the Option Tract into Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, the recorded Lender's Subordination, and evidence that Silverado, Hicks and/or the Silverado/Hicks Assignee, as the case may be, has exercised the Expansion Right, whereupon the Option Tract shall be subject to all of the covenants, conditions and restrictions set forth therein. The Association shall furnish Silverado, Hicks and/or Silverado/Hicks Assignee, as the case may be, with a file stamped copy of the Declaration and all existing amendments thereto which were filed of record against the Option Tract.

D. Common Areas. Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, shall, at their cost and expense, as soon as practicable after the date that the Declaration and all existing amendments thereto and the Lender Subordination have been filed of record, cause the Common Areas to be developed and constructed on the Option Tract in accordance with such reasonable standards as Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, may determine and in accordance with applicable laws, for their intended use, which Common Areas shall include grass covered open areas, taxi-roadways and safety zones, and upon completion of such construction, Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, shall convey title to the Common Areas to the Association, free and clear of all liens and other encumbrances, except those which have been approved by the Association- Following such conveyance, Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, shall agree to maintain all such Common Areas located on the Option Tract at its sole cost and expense for a period of one (1) year following the date of such conveyance. Notwithstanding anything contained in the Declaration, as amended, to the contrary, under no circumstances shall the Association have the obligation to construct or complete any of the Common Areas located, or to be located, on the Option Tract. In addition, Silverado, Hicks and/or Silverado/Hicks Assignee, as the case may be, shall have the right to plat and replat portions of the Option Tract consistent with the prior development of the Phase I Property and the Silverado Tract; provided, however, Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, shall provide the Association with a copy of the proposed plat and replats, as the case may be, and at least five (5) days following the Association's Board of Directors' receipt of same within which to make comments with respect thereto, and Silverado/Hicks Assignee will consider said comments prior to

filing the plat or replat of record. Silverado, Hicks/and or a Silverado/Hicks Assignee, as the case may be, shall also have the right to exercise architectural control over the construction of hangars and other improvements to be located on the Option Tract, and to use the Common Areas located on the Option Tract, Silverado Tract and the Phase I Property in order to complete construction of the ingress and egress to the Option Tract; provided, however, Silverado, Hicks and a Silverado/Hicks Assignee, as the case may be, agree to use their best efforts not to make use of the existing taxiway on the Phase I Property in such construction related activities. Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, agree to keep the Board of Directors of the Association advised of the status of the development of the Option Tract, including any replat of any portion of the Option Tract, and shall send the Board of Directors copies of all such replats. In exercising architectural control over the construction of hangars and other improvements to be located on the Option Tract, it is the intention of this Paragraph that Silverado, Hicks and/or a Silverado/Hicks Assignee shall be entitled to the same rights and shall be subject to the same restrictions with respect to architectural control as were afforded to the Declarant under Article V, Paragraph 12 of the Declaration with respect to the Phase I Property.

E. License Fees, Assessments and Initial Fees. The provisions hereinbefore set forth in Section 3(a), (b), and (c) of this Fifth Amendment shall be applicable with respect to the payment obligations imposed upon each Lot Owner of the Option Tract and upon Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be.

F. Voting; and Membership. The provisions hereinbefore set forth in Section 5(a) and (b) of this Fifth Amendment shall be applicable to each Lot Owner of the Option Tract and to Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be.

Section 8, Article VII, Paragraph 2 of the Declaration is hereby amended to include the following provisions, and in the event of a conflict between the provisions presently set forth in Article VII, Paragraph 2 and the following provisions, the following provisions shall control:

Notwithstanding anything contained in this Declaration to the contrary, the provision set forth in this Article VII, Paragraph 2, which permits the Declarant, until such time as the First Lot Sale (as defined in Article VII, Paragraph 2 takes place, to abolish or amend the Declaration, is hereby deleted in its entirety. In addition, notwithstanding anything contained in Article VII, Paragraph 2 of the Declaration to the contrary, all voting shall be in accordance with the provisions set forth in Article V, Paragraph 3, as amended by this Fifth Amendment. The consent of 60% of the then Owners of Lots (which voting shall be in accordance with the provisions of Article V, Paragraph 3, as amended by this Fifth Amendment) evidenced by a document in writing bearing each of their signatures shall be required in order to amend this Declaration or change the covenants, conditions and restrictions in whole or in part, which document may be a written proxy, written ballot or any other written instrument signed by the Owner of a Lot evidencing consent to such amendment or to such change in the covenants, conditions and restrictions, as the case may be, it being the intention that the actual amendment or other document evidencing such change shall not need to bear the signatures of the Owners of each Lot in order to evidence consent of the then Owners of Lots; provided, however, that the following amendments will require the approval of 90% of the then Owners of Lots (which voting shall be in accordance with the provisions of Article V, Paragraph 3, as amended by this Fifth Amendment):

(a) Any amendment which materially changes the use to be made of any portion of the Common Areas;

(b) Excluding Article VIII, Paragraph E regarding License Fees and assessments, any amendment which changes in any material respect the provisions of Article VIII with respect to the Option Tract; and/or

(c) Any amendment which changes in any material respect the rights and obligations of the Association, Hicks, Silverado, and a Silverado/Hicks Assignee, and/or each Owner of a Lot of the Property relating to the Easement/Leased Area set forth in

Article X, Paragraph F.

(d) Any amendment which changes in any material respect the rights and obligations of the Association, Hicks, Silverado, and a Silverado/Hicks Assignee as it pertains to this Fifth Amendment only.

Section 9. The Fourth Amendment is hereby amended to read and be as follows: "NOW

THEREFORE, the Declaration is amended as follows:

Article III is amended by adding the following sentence to the end of Subsection (A) (3):

Notwithstanding the foregoing, the easement described in this Subsection (A) that is reserved or shall exist over that portion of Lot 6-3, 6-4, 5-2, or 5-1, Block 1, Hicks Airfield, an Addition to Tarrant County, Texas, as described in the Revised Plat recorded in Volume 388-205, page 50, Plat Records of Tarrant County, Texas, and that portion of Lot 11-R & 12 R , Block 2 Hicks Airfield Section two an Addition to Tarrant County, Texas, as described in the Revised Plat Recorded in Volume *Cabinet A Slide 3515*, Plat Records of Tarrant County, Texas, shall be limited to airplanes and to airplanes and other vehicular traffic availing themselves of the services offered by businesses operated by the Owner of Lot 6-3, 6-4 the Property described on Exhibit "A" attached hereto and for no other vehicular traffic."

Section 10 Article X is hereby added to the Declaration and made a part hereof for all purposes, and in the event of a conflict between of any of the provisions of the Declaration and Article X, the following provisions shall control:

**ARTICLE X**  
**Miscellaneous Provisions**

A. Headings. The headings in this Amendment are for convenience of reference only and shall not affect the interpretation of this Amendment.

B. Notices. All notices or other communications pursuant to this Amendment shall be in writing and shall be considered properly given to the Declarant or Silverado or the Additional Property Owner, as the case may be, by facsimile transmission ("Fax") or if mailed, by registered or certified United States mail, postage-prepaid, or by recognized carrier, such as Federal Express, addressed to them at the following addresses:

**If to the Declarant or Silverado:**

Silverado Development Corporation  
Hicks Airfield, Inc.  
c/o D, Kent Davis, Esq.  
White, Davis and Fleischer, L.L.P.  
9001 Airport Freeway, Suite 920  
North Richland Hills, TX 76180  
Fax: 817/514-0380

**If to the Additional Property Owner:**

To such person at such location as the Additional Property Owner shall advise at the time the Additional Property becomes a part of the Property.

Notices to the Association shall be sent to the following address, unless the Association gives a change of notice to the Declarant, Silverado, or the Additional Property Owner:

Hicks Airfield Pilots' Association 2290 W. Hicks Road, Unit 38 Fort Worth, TX 76131  
NO FAX NUMBER

Where notice is required to be given, waiver in writing signed by the person or persons to which the notice is to be given, whether before or after the time stated in it, is equivalent to the giving of notice.

The Association shall not be required to recognize any change with respect to the notice unless the same is given to the Association by recognized carrier or by registered or certified United States mail. Except as otherwise provided herein with respect to personal delivery or by Fax or by delivery by recognized carrier, such as Federal Express, to the address of the Declarant, Silverado, the Additional Property Owner or the Association, any such notice shall be deemed to be given three (3) days following deposit in a regularly maintained receptacle for deposit of United States mail addressed and sent aforesaid. Notice given by Fax or by personal delivery or by delivery by recognized carrier, such as Federal Express, shall be deemed to be given upon receipt by the addressee, or confirmation of receipt of such Fax transmission.

C. Inspection of Books and Records. The Association agrees to allow Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, the right to inspect the Association books, and records with relation to the computation of any fee and/or assessment due and payable by Silverado, Hicks and/or a Silverado/Hicks Assignee, as the case may be, at the offices of the Association during normal working hours, upon reasonable prior written notification to the Association.

D. No Additional Runway. No runway shall be constructed on the Silverado Tract (or the Option Tract, if the Expansion Right is exercised by Silverado pursuant to the provisions of this Amendment) without the affirmative vote of 60% or more of the Owners of lots of the Property, as evidenced by an instrument in writing executed by them,

E. Uses. All rights to use the Common Areas of Hicks Airfield, including but not limited to the runway, are strictly reserved to the Association and shall be restricted in accordance with the operation of a private airfield, with such uses being restricted to the owners of lots of the Property and not to any other person or entity, unless the Association votes to expand the right so as to permit other persons and entities to use the Common Areas, including but not limited to the runway, by the affirmative vote of sixty percent (60%) or more of the Owners of lots of the Property, in accordance with the provisions of Article V142, of the Declaration. Notwithstanding anything contained in the Declaration to the contrary, the Owners of Lots of the Property (which shall include the Phase I Property, the Silverado Tract, and upon satisfaction of the terms and conditions hereinbefore set forth in Section 7 hereof, the Option Tract) shall have the right to use their Lots for general office use and for all airport related commercial businesses, provided, however, that such uses are consistent with the maintenance of the Property as a first class private airfield.

F. Easement/Leased Area. Hicks, Silverado, and a Silverado/Hicks Assignee, and each Owner of a Lot of the Property, the Association and their respective agents, customers, invitees, successors-in-interest and assigns, forever, shall have, the non-exclusive right and easement (the "Easement") over, upon, and across that certain property (the "Easement/Leased Area") located at, and constituting a part of, the south entrance to Hicks Airfield, said property being held pursuant to a lease between the Declarant, as Lessee, and Burlington Northern Railroad Company, as Leaser (the "Lease") in consideration for the Association paying one-half (1/2) of all costs and expenses relating to the maintenance of the Easement Area, which shall include one-half (1/2) of the rental due and payable to the Leaser pursuant to the Lease. Hicks agrees to execute and deliver to the Association appropriate documents of conveyance (collectively, "Documents of Conveyance") in order to make the Association an additional lessee with Hicks of the Lease, subject, however, to the prior approval of the Leaser, which Documents of Conveyance shall grant Hicks the right to approve all signage and the location of such signage on the Easement/Leased Area, the determination by Hicks of the signage location and approval shall not be unreasonably withheld; provided, however, Hicks shall permit one sign identifying Hicks Airfield to be located in a prominent position on the Easement/Leased Area.

G. Definitions. The terms which are defined in this Fifth Amendment shall have the meanings accorded to them in this Fifth Amendment, and unless a contrary intent is expressly provided in this Fifth Amendment, the definitions set forth in this Fifth Amendment shall control

in the event a conflict with the same terms as defined in the Declaration. In addition, the following terms shall have the meanings ascribed to them herein, and shall control over the definitions used in the Declaration:

(i) Lot. The term "Lot" shall mean *each* separate portion of the Property developed as an aircraft hangar, for commercial development, or for residential development, as the case may be.

(ii) Owner. The term "Owner" as used herein shall mean the owner from time to time of portions of the Property.



H. Remedies. It is hereby agreed that the sole and exclusive remedy of the Association, each Owner of a Lot, Silverado/Hicks, or the Silverado/Hicks Assignee with respect to any breach hereof by the Association, each Owner of a Lot, Silverado/Hicks, or the Silverado/Hicks Assignee, as the case may be, shall be to seek monetary damages and/or specific performance in connection with the obligation breached. No breach of any of the terms hereof by Silverado/Hicks, or the Silverado/Hicks Assignee, shall prejudice, limit or impair the rights of Silverado/Hicks, or the Silverado/Hicks Assignee, as the case may be, with respect to the Expansion Rights as otherwise provided herein and/or the rights of Silverado/Hicks, or the Silverado Hicks Assignee, to develop the Property.

Except as expressly modified and amended hereby, the Declaration, as amended by the First Amendment, the Third Amendment and the Fourth Amendment (as amended by this Fifth Amendment), is ratified, approved and confirmed. Upon execution of this document by all parties hereto, the term "Declaration" as used in Sections I through 10 herein above shall mean the Declaration of Covenants, Conditions and Restrictions recorded in Volume 8396, Page 1458, Deed Records, Tarrant County, Texas, as amended by the First Amendment, the Third Amendment, the Fourth Amendment (as amended by this Fifth Amendment) and this Fifth Amendment.

IN WITNESS WHEREOF, Hicks Airfield Pilots' Association has caused this instrument to be executed this 17th day of December 1998.

***HICKS AIRFIELD PILOTS' ASSOCIATION***

STATE OF TEXAS           §  
COUNTY OF DALLAS       §

By:   
Name: Rick C. Raesz  
Title: President  
  
By:   
Title: Secretary

This instrument was acknowledged before me on this 17 day of December 1998, by RICK C. RAESZ, President of Hicks Airfield Pilots' Association, a Texas non-profit corporation, on behalf of said corporation.

   
My Commission Expires: 7-8-98



STATE OF TEXAS  
COUNTY OF TARRANT

This instrument was acknowledged before me on this day 17th day of December  
1998, by Jacque Boyd, Secretary of Hicks Airfield Pilots' Association, a Texas non-profit  
corporation on behalf of said corporation.

