

TOP FLIGHT LANDING, PHASE 1A
LOTS 1A THROUGH 7A

DECLARATION OF REGULATIONS, COVENANTS,
CONDITIONS AND RESTRICTIONS

This DECLARATION OF REGULATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS, for TOP FLIGHT LANDING, PHASE 1A, LOTS 1A THROUGH 7A, INCLUSIVE, is made and entered into on this ~~7th~~ ^{4th} day of March, 2004 by **THE SPENCER CO. GROUP, LLC**, a Kentucky limited liability company, hereinafter referred to as "DECLARANT".

WITNESSETH:

WHEREAS, the Declarant is the owner and developer of certain property in Spencer County, Kentucky, known as TOP FLIGHT LANDING, Phase 1A, Lots 1A - 7A, inclusive, a plat of which is recorded in Plat Cabinet 3, Slide 303 in the Office of the Spencer County Court Clerk, and FURTHER BEING a part of the same land conveyed to The Spencer Co. Group, LLC, a Kentucky limited liability company, by Deed of record in Deed Book 156, Page 660 in the Office of the Spencer County Court Clerk; and

WHEREAS, the Declarant will convey the said properties, subject to certain protective regulations, covenants, conditions, restrictions and reservations as hereinafter set forth;

NOW THEREFORE, Declarant hereby declares that all of the properties described hereinabove shall be held, sold and conveyed subject to the following restrictions, regulations, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real estate. These covenants, restrictions, regulations and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties, or any part thereof, and shall inure to the benefit of each owner thereof.

NOTE: References to "Developer" in this paragraph shall include any entity, person or association to whom Developer may assign the right of approval. Any assignment shall be in writing. References to "structure" in this paragraph shall include, but not be limited to, any buildings or structure (including an attached or detached garage), fence, wall, pools, antennae, microwave and other receivers and transmitters (including those currently called "satellite dishes"). Any approval of satellite dishes, antennae, microwave dishes and etc. shall require construction such that the equipment may not be seen from the street.

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NOTE: These restrictions provide herein an easement to the Willow Island Runway for the benefit of the Lot owners. However, the use of the Willow Island Runway is restricted to members of the Willow Island Flight Club. Therefore, a Lot owner must become a member of the Willow Island Flight Club, pay all attendant membership fees and comply with all rules and regulations of the Willow Island Flight Club in order to use the Runway.

RESTRICTIONS

The DECLARANT, intending to establish a general plan for the use, occupancy and enjoyment of said subdivision, hereby declares that for the mutual benefit of its present and future owners, all lots therein shall be subject to the following restrictions.

1. **Primary. Use Restrictions.**

(a) Said real estate shall be used exclusively for single family, private dwelling or patio home purposes. No structure shall be erected, placed or altered or permitted to remain on any lot except one single family dwelling designed for the occupancy of one family and not to exceed two and one-half stories in height and containing a private, minimum two-car attached garage for the sole use of the owner and occupants of the lot. No log homes, underground or berm homes will be allowed. No structure may be moved to or relocated on any lot within the subdivision known as Top Flight Landing, Phase 1A. No pre-fabricated, modular and/or manufactured homes may be placed on any lot in the subdivision and all homes must be built by conventional construction methods.

(b) Garages and Garage Units shall be used only for the parking of vehicles and other customary uses and shall not be used for or converted into living area, e.g., family room(s), bedroom(s), office(s), recreational room(s), etc., without the express written approval of the Developer or such entity, person or association to whom it may assign such right as set forth herein, in its sole discretion. No building or structure shall be used for any commercial use.

2. **Subdivision of Lots, Easements, Extensions and Approval of Construction and Landscape Plans.**

Lots may not be further subdivided from that configuration set forth in the plat of record in Plat Cabinet 3, Slide 303 in the Office aforesaid. However, the Developer reserves the right to further subdivide any lot so long as the divided lots are consolidated with the adjacent lots, with such division and consolidation approved by the Taylorsville-Spencer County Joint Planning and Zoning Commission.

No easements, extensions or utility services including water, sewer, electric or roadway shall be extended unless approved in writing by the Developer.

The following easements are reserved for the benefit of the lot owners of Top Flight Landing, Phase 1A, for purposes of providing runway access for small aircraft to the Willow Island Runway:

1. A fifty foot (50') wide easement between Lots 3A and 4A, centered on and running parallel to the boundary line between the two lots, with twenty five foot (25') of the easement located on each lot for runway/taxiway access. The runway/taxiway access easement may not be blocked or used in any way which would prevent its intended use.
2. A twenty five foot (25') wide easement along the rear of Lots 1A through 7A inclusive, running parallel to the boundary line for use as a taxiway/runway to access the Willow Island Runway. The runway/taxiway access easement may not be blocked or used in any way which would prevent its intended use.
3. Each lot owner affected by the easement shall maintain same in such condition that will permit its use as a runway/taxiway for small aircraft.
4. All small aircraft must be located, stored, parked and kept on the Lot owner's individual lots. No small aircraft may be located, stored, parked or kept on any portion of the runway access easements.

No structure may be erected, placed or altered on any lot until the construction plans and building specifications and a plat survey have been approved in writing by the Developer. The construction plan, building specifications and plat survey shall show at a minimum the following: (a) location of improvements on the lot; (b) the grade elevation of the proposed top of foundation, wall, basement and top of curb; (c) the type of exterior material; (d) the square footage of the improvements; (e) the roof pitch; and (f) the location and size of the driveway. All driveways must be composed of asphalt or concrete.

3. **Building Materials, Roof and Builder.**

(a) The exterior building material of all structures (including storage buildings, detached garages and/or pool houses) shall extend to ground level and shall be either brick, stone, brick veneer or stone veneer or a combination of same. However, Developer recognizes that the appearance of a minimal amount of other exterior building materials (such as wood, vinyl siding, manufactured masonry, drivet, or other products) may be attractive and innovative, and reserves the right to approve in writing the use of other exterior building materials in limited quantities.

(b) The roof pitch of any residential structure shall not be less than 6 inches vertical for every 12 inches horizontal for structures with more than one story, and 6 inches vertical for every 12 inches horizontal for one story structures. A 5 inch vertical for every 12 inch horizontal pitch may

be granted on a rear roof section (second story only) of the house (i.e.: cape cod style) with Developer's written approval. Front and rear porch pitches may be reduced subject to the style of house with Developer's written approval. (i.e.: wrap around style houses).

(c) Any flue, chimney or chase is to be constructed of the same material as a majority of the house's exterior product.

(d) The construction work on any building shall be completed within one (1) year from the initial start. Such work shall not be considered complete until and unless the building is finished in every respect in its interior and exterior including garage, driveway, sidewalks, landscaping, etc.

4. **Architectural Control And Lot Maintenance.**

(a) No house, building, drive, hangar or improvements shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved in writing by the Developer. The builder shall re-grade all drainage ditches and swales that have washed prior to the rough and finish grading of the lot. All grading shall be subject to the supervision and approval of Developer and shall conform to the approved construction plans of the subdivision. Silt control is required at all times during construction. Drainage of each lot shall conform to the general drainage plans of Developer for the subdivision. No storm drains, roof down spouts or ground water shall be introduced into the sanitary sewage system. Connections on each lot shall be made with watertight joints in accordance with all applicable plumbing code requirements.

(b) Each lot owner and/or builder shall construct, or cause to be constructed, and maintain a swale between each side and rear property line.

(c) No fence, building, fill dirt, or any obstruction may be erected within three (3) feet of the side or rear property line without the prior written approval of the Developer. Developer or government authority shall have the right to remove any obstruction erected within the three (3) foot area on each side of the side or rear property line if said obstruction impedes drainage flow. All cost for said removal of obstruction shall be chargeable to and reimbursable from the property owner.

(d) Each lot owner or builder shall mow and maintain all areas of said lot from property line to property line, including the front yard to the curb.

(e) From and after the date of deed conveying the property to the lot owner, it shall be the duty of each lot owner to keep the grass on the lot properly cut, to keep the lot free from weeds and trash, and to keep it otherwise neat and attractive in appearance. Should any lot owner fail to do so, the Developer, or any entity, person or association to whom it may assign the right, may take such action as it deems appropriate, including mowing, in order to make the lot neat and attractive. The

lot owner shall immediately upon demand, reimburse Developer or other performing party for all expenses incurred in so doing, together with interest at fifteen percent (15%) per annum thereon, in addition to a late fee penalty as determined by the Developer, after demand has been made, and the Developer or other such entity, person or association to whom it may assign such right, shall have a lien on that lot and the improvements thereon to secure the repayment of such amounts. Such lien may be enforced by foreclosure against that lot and the improvements thereon, but such lien shall be subordinate to any first mortgage (but not to any other mortgage) thereon. Developer may perform all mowing if not done by the owner.

5. Setbacks.

No structure shall be located on any lot nearer to the front lot line or side street line than the minimum building setback lines shown on the recorded plat of Top Flight Landing, Phase 1A. Developer shall have the right, power and authority to vary the established building lines, in its sole discretion, when not in conflict with applicable zoning regulations or the record plat.

6. Minimum Dwelling Size.

(a) Finished basement areas, garages, attics, and open or closed porches shall not be included in computing the floor area of any residential structure.

(b) The total above ground floor area of each residential structure erected or placed on Lots 1A through 7A shall not be less than:

- (1) One story - 1,800 square feet
- (2) Two story - 1,800 square feet -- with at least 1,000 square feet on the first floor with the balance as required on the second floor
- (3) Cape Cod - 1,800 square feet - at least 1,000 square feet on the first floor with the balance as required on the second floor. Areas on the second floor can be included if completely finished (including mechanicals) and have knee walls at least five feet high at all wall locations.
- (4) Other styles and designs may be permitted with Developer's written approval.

7. Approval Of Hangar Required.

In addition to the attached garage provided in paragraph 1(a) herein, an airplane for small aircraft hangar may be erected on Lots 1A through 7A inclusive. No hangar shall be erected, placed or suffered to remain upon said premises until the location, plans and specifications for such hangar shall have first been approved in writing by said Developer or its designee. No living quarters shall be allowed in or above the hangar. The exterior material of the hangar must be approved by the Developer or its designee but may be constructed of metal. A hangar is the only permitted detached building that may be erected on a lot.

8. Builder's Responsibility for Street Cleaning During Construction.

During the course of construction, mud and dirt shall be cleaned from the tires of construction vehicles before they travel on the streets of the subdivision. All mud and dirt shall be removed from the street by the builder. Under no circumstances shall a motor vehicle cross a lot to reach construction on another lot. The builder shall make any repairs necessary, and shall be responsible for the cost to repair same, should this occur. Materials and/or overruns (concrete, etc) shall not be placed or dumped on another lot. Removal of said materials and/or overruns will be at the builder's expense.

9. Builder's Responsibility for Inspection of Roadway.

Before commencing construction of a dwelling on any lot, the builder shall inspect the roadway and if any defect is found, immediately notify Developer in writing of such defect. The builder shall be responsible for damages done to the roadway by tractors, trucks, equipment etc., in his employ and shall make repairs at his expense within thirty (30) days after completion of the dwelling.

The builder shall insure that all cuts made by the utility companies in the roadway in front of the lot are properly repaired by said companies or by the builder.

10. Use of Other Structure and Vehicles.

(a) No structure of a temporary character shall be permitted on any lot, except temporary tool sheds or field offices used by a builder or Developer, which shall be removed when construction or development is completed.

(b) No outbuilding, trailer, basement, tent, shack, garage, barn or structure other than the completed main residence erected on a lot shall at any time be used as a residence, temporarily or permanently.

(c) No trailer, truck, motorcycle, commercial vehicle, camper trailer, motor home, camping vehicle, boat or other similar vehicle shall be parked or kept on any lot at any time, unless housed in a garage or basement. No automobile which is inoperable shall be habitually or repeatedly parked or kept on any lot (except in the garage) or on any street in the subdivision. No trailer, boat, truck or other vehicle, except an automobile, shall be parked on any street in the subdivision for a period in excess of twenty-four hours in any one calendar month. None of the above vehicles shall be continuously or habitually parked on any street or public right-of-way.

(d) Without the prior written consent of the Developer, or except in case of temporary loading

or unloading, no part of the subdivision (except garages) shall be used for the parking and/or storage of any trailer, truck, boat, motorcycle, scooter, equipment or anything other than operational, currently licensed automobiles. Vehicles parked in violation of any part of this Declaration or in violation of any rules or regulations promulgated by the Developer, shall be towed away and stored at the owner's risk and expense.

11. Nuisance and Animals.

(a) No noxious or offensive trade or activity shall be conducted on any lot, nor shall anything be done which may be or become an annoyance or nuisance to the neighborhood.

(b) No animals, including reptiles, livestock, or poultry of any kind shall be raised, bred or kept in the subdivision, except that dogs, cats or other household pets may be kept in residential Units, provided that (1) they shall not be permitted to run loose; and (2) they are not kept, bred or maintained for any commercial purpose nor for breeding purposes. All household pets, including dogs and cats, shall at all times be confined to the lot occupied by the owner of such pet and/or controlled by the pet owner when not confined to the lot. Barking dogs or pets may be a nuisance. Any pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the subdivision upon seven (7) days written notice from the Developer. Pets permitted as above shall be leashed or restrained during walking or exercise within the common area. An owner shall be responsible for cleaning up after his pet.

12. Landscaping; Driveways; Trees.

(a) No portion of the within-described premises nearer to any highway than the building lines as hereinabove fixed, shall be used for any purpose other than that of a lawn. Nothing herein contained, however, shall be construed as preventing the use of such portion of said premises for walks and drives, the planting of trees or shrubbery, the growing of flowers or ornamental plants or for statuary and similar ornamentation for the purpose of beautifying said premises. Vegetables, or grains of the ordinary garden variety may be grown upon such portion of the premises but no weeds, underbrush, or other unsightly growths shall be permitted to grow or remain anywhere upon said premises and no unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon.

(b) Each lot owner shall expend a minimum amount of \$500.00 on landscaping with plantings placed at least along the front exterior of the residence.

(c) After the construction of a residence, the lot owner shall grade and either sod or seed and straw that portion of the lot between the front and street side walls of the residence and the pavement of any abutting streets. The remaining sides and rear yards shall be seeded or sodded.

(d) All driveways must be composed of asphalt or concrete. A lot owner must complete the driveway to the principal residence within six months after a certificate of occupancy has been issued.

13. Clothes Lines; Fences; Walls and Pools.

(a) No permanent outside clothes lines shall be erected or placed on any lot.

(b) All fencing and walls for fencing must be approved by Developer or by an entity, person or association to whom it may assign the right. Plans must be submitted to the Developer showing type, size and location of proposed fence. (See Paragraph 4 herein.)

(c) No swimming pools shall be erected or placed on any lot, unless its design and placement, including fencing, are first approved in writing by Developer or by an entity, person or association to whom it may assign the right.

(d) All windows shall receive window treatments so as not to be unsightly from any street.

(e) No large satellite dishes or radio towers may be erected on any lot. Only small television satellite dishes are permitted and must be located such that they are not visible from the street and the front of the residence.

14. Business; Home Occupations.

No trade or business of any kind (including the practice of medicine, dentistry, chiropractic and like endeavors) shall be conducted on any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the subdivision. Notwithstanding the provisions hereof or of Paragraph 1, a new house may be used by a builder thereof as a model home for display including the builder's own office, provided said use is terminated within eighteen months from completion of the house or upon such additional period of time as may be expressly agreed to in writing by Developer or any entity, person or association to whom it may assign such right.

15. Signs.

No sign for advertising or for any other purposes shall be displayed on any lot or a building or a structure of any lot, except one sign for advertising the sale or rent thereof, which shall not be greater in area than nine square feet; provided however, Developer shall have the right (1) to erect larger signs when advertising the Subdivision; (2) to place signs on lots designating the lot number of the lots; and (3) following the sale of a lot, to place signs on such lot indicating the name of the purchaser of that lot. This restriction shall not prohibit placement of occupant name signs and lot numbers as allowed by applicable zoning regulations. A builder may erect a construction sign (only

during construction) of no more than 32 square feet which must be removed when the owner moves in.

16. Disposal of Trash.

No lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. Trash or garbage or other waste shall not be kept except in sanitary containers. The subdivision shall be kept free and clear of rubbish, debris and other unsightly materials.

17. Duty to Repair and Rebuild.

Each owner of a lot shall, at its sole cost and expense, repair his residence, keeping the same in condition comparable to the condition of such residence at the time of its initial construction, excepting only normal wear and tear.

If all or any portion of a residence is damaged or destroyed by fire or other casualty, then the owner shall, with all due diligence, promptly repair, rebuild or reconstruct such residence in a manner which will substantially restore it to its apparent condition immediately prior to the casualty. Alternatively, the Owner shall completely raze the residence and sod the entire Lot until such time as construction of a new dwelling is begun.

18. Restrictions Run With Land.

Unless canceled, altered or amended under the provisions of this paragraph, these covenants and restrictions are to run with the land and shall be binding on all parties claiming under them for a period of thirty years from the date this document is recorded, after which time they shall be extended automatically for successive periods of ten years, unless an instrument signed by a majority of the then owners of all lots in Top Flight Landing, Phase 1A has been recorded, within sixty (60) days of an anniversary date aforesaid, agreeing to change these restrictions and covenants in whole or in part. Failure of any owner to demand or insist upon observance of any of these restrictions, or to proceed for restraint of violations, shall not be deemed a waiver of the violation, or the right to seek enforcement of these restrictions.

19. Enforcement.

Each Lot owner shall comply strictly with the covenants, conditions and restrictions set forth in this Declaration. Failure to comply with same shall be grounds for an action to recover sums due for damages and/or for injunctive relief. Such action may be maintained by a Lot owner and/or the Developer on its own behalf or on behalf of the Lot owners aggrieved, or by any person or entity who is aggrieved by such noncompliance. The Lot owner and/or Developer may recover all of its costs of enforcement, including court costs and reasonable attorney's fees; and all of such costs shall be

a continuing lien upon the Property involved.


20. **Invalidation.**

Each of the above restrictions and covenants shall be independent of every other. Invalidation of any of the above provisions by judicial proceedings or any other means shall in no way effect the validity of the others. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions hereof which shall remain in full force and effect.

IN TESTIMONY WHEREOF, witness the signature of the Declarant, by and through its members, this 4th day of March, 2004.

THE SPENCER CO. GROUP, LLC

BY: THE SEASONS, LLC, MEMBER

BY: 
JOHN HENSLEY, MANAGER

BY: 
JOHN KNASEL, MANAGER

BY: CHANCE ONE, INC., MEMBER

BY: 
R. W. HOLLAN, PRESIDENT

STATE OF KENTUCKY
COUNTY OF SPENCER

I, the undersigned Notary Public, for and in the County and State aforesaid hereby certify that the foregoing instrument was produced before me in said County and State acknowledged by **JOHN HENSLEY and JOHN KNASEL, as the sole Members of THE SEASONS, LLC, a Kentucky limited liability company, member of THE SPENCER CO. GROUP, LLC, party thereto, to be his true act and deed and the true act and deed of said company.**

Witness my hand this 4th day of March, 2004.

My commission expires: 7/24/2004.


NOTARY PUBLIC, KENTUCKY STATE AT LARGE

STATE OF KENTUCKY
COUNTY OF SPENCER

I, the undersigned Notary Public, for and in the County and State aforesaid hereby certify that the foregoing instrument was produced before me in said County and State acknowledged by **R.W. HOLLAN, as President of CHANCE ONE, INC.**, a Kentucky corporation, member of THE SPENCER CO. GROUP, LLC, party thereto, to be his true act and deed and the true act and deed of said corporation.

Witness my hand this 4th day of March, 2004.

My commission expires: 7/21/2004.



NOTARY PUBLIC, KENTUCKY STATE AT LARGE

Instrument drafted by:



PORTER & ASSOCIATES
Linda S. Bouvette, Esq.
P.O. Box 509
Taylorsville, Kentucky 40071
502/477-6412

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