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Salem OR 97308-0749



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**AMENDMENT TO
INDEPENDENCE STATE AIRPORT
INGRESS/EGRESS AGREEMENTS**

This Amendment to Independence State Airport Ingress/Egress Agreements ("Amendment") is entered into by and between the following parties, effective January 1, 2009 (the "Effective Date"):

AVIATION:

State of Oregon, Department of Aviation
3040 25th Street SE
Salem, Oregon 97302

PERMITTEE:

Independence Airpark Homeowners Association, Inc.
P. O. Box 31
Independence, Oregon 97351

RECITALS:

- A. AVIATION owns and operates Independence State Airport for the benefit of the public.
- B. PERMITTEE is an incorporated private non-profit airpark homeowner's association authorized by the underlying Covenants, Conditions and Restrictions associated with the Independence Airpark development whose members own lots on the Adjacent Property from which private aircraft access the airport for personal use. PERMITTEE is recognized by AVIATION as a unique private non-commercial airpark homeowner's association. PERMITTEE maintains and owns the common area of the Adjacent Property. PERMITTEE is the successor in interest of James E. Preuit and Thomas W. Combest, the original Airpark developers and Grantees (the "Grantees") under the Independence State Airport Ingress and Egress Permit dated June 13, 1974 ("Original Permit").
- C. The development of Independence Airpark community was supported and encouraged by the City of Independence, Polk County and the predecessor to AVIATION, the Aeronautics Division of the State Department of Transportation. Development of an aviation-based community was seen as a way of improving the Independence Airport as an asset for the economy of the City and the County and as an asset for the State airport system. Accordingly, AVIATION recognizes the importance of maintaining access to the Independence State Airport by PERMITTEE and its members. The Original Permit was granted to the Grantees without an access fee in part as recognition of the potential importance of the Airpark development to the further development of the Airport.

AVIATION also accepted as partial consideration for access Grantees paying approximately \$180,000 of funds, which were used by AVIATION for the cost of improving the airport by paving the parallel taxiway and parking ramp. These funds were also used by AVIATION as matching money for a federal grant which was used to improve the runway from a grass strip to a paved runway.

- D. AVIATION has granted PERMITTEE access to and egress from the Independence State Airport in Polk County, Oregon, under the Independence State Airport Ingress and Egress Permit dated June 13, 1974 (recorded at Book 59, pages 259 through 269, Polk County records), as amended April 2, 1979 and June 17, 2004 (recorded on June 17, 2004 at Instrument No. 2004-009749, Polk County records) (the "2004 Ingress/Egress Agreement").
- E. AVIATION also granted to PERMITTEE the rights of ingress to and egress from the Independence State Airport, Polk County, Oregon (the "Airport"), under an Independence State Ingress/Egress Agreement dated April 14, 1992 (the "Stearman Street Ingress/Egress Agreement").
- F. Under this Amendment, the parties wish to incorporate the Stearman Street Ingress/Egress Agreement under the 2004 Ingress/Egress Agreement.
- G. Under this Amendment, the parties wish to provide that all developed lots within the Independence Airpark Homeowners Association shall pay an airport access fee.
- H. Under this Amendment, PERMITTEE wishes to grant Aviation a license for ingress and egress to Skylane Taxiway located on real property owned by PERMITTEE, in the form of a License Agreement attached as **Exhibit "A"**, as long as PERMITTEE and its Members have access to all the existing Points of Ingress/Egress to the airport.
- I. In the interest of ongoing cooperation in partnership with AVIATION, PERMITTEE has expended significant time and money to develop this Amendment as a convenience to AVIATION to ensure compliance with Federal and State Requirements.

NOW, THEREFORE, in consideration of the mutual promises, warranties and representations of the parties contained herein, the parties enter into the following:

A G R E E M E N T

- 1. **Incorporation of Recitals.** The above recitals are incorporated herein by reference.
- 2. **Combine Agreements.** This Amendment hereby incorporates the Stearman Street Ingress/Egress Agreement into the 2004 Ingress/Egress Agreement. This Amendment hereby amends and updates the language in the 2004 Ingress/Egress Agreement, and the 2004 Ingress/Egress Agreement shall stay in full force and effect, as amended herein, and the amended 2004 Ingress/Egress Agreement shall replace and supersede the Stearman Street Ingress/Egress Agreement.

3. **Amendment of 2004 Ingress/Egress Agreement.**

3.1. The 2004 Ingress/Egress Agreement, under Section "Definitions", shall be amended to include a definition for "Developed Lot" as follows:

"Developed Lot" – A lot with infrastructure that supports the use permitted by the existing zone and ready for issuance of building permits by the land use jurisdiction."

3.2. The 2004 Ingress/Egress Agreement, under Section 1.1, shall be amended and replaced to provide the following:

"1.1 **Grant.** AVIATION grants to PERMITTEE and MEMBERS non-exclusive rights of ingress and egress at the Points of Ingress/Egress (including all points of ingress and egress under this Agreement and the Stearman Street Ingress/Egress Agreement) to and from the public use area of the airport; provided, however, that AVIATION, reserves the rights to (i) temporarily close or relocate any one or more of PERMITTEE'S and MEMBERS' Points of Ingress/Egress if it reasonably determines in good faith that the access poses a risk to the safe operation of the Airport, and (ii) relocate any Point of Ingress/Egress upon sixty (60) days' written notice to PERMITTEE, including for the purpose of accommodating third parties or others to whom AVIATION grants ingress/egress rights. This grant is contingent upon the continued ownership and operation of the Airport by AVIATION, and upon the continued compliance by PERMITTEE with all of the conditions of this agreement.

In the event of relocation of any of the Points of Ingress/Egress for good cause Aviation shall make a determination regarding relocating the Points of Ingress/Egress in a manner which would afford PERMITTEE access to the Public Use Area from the Adjacent Property. If AVIATION offers a substitute Point of Ingress/Egress not agreeable to PERMITTEE, PERMITTEE shall have 30 days to either accept or reject such offer in writing and, if it accepts, this Agreement shall remain in full force and effect and a proportionate amount of PERMITTEE'S obligation to pay any fee under this Agreement shall be waived for the amount of time PERMITTEE or MEMBERS did not have use of that Point of Ingress/Egress. Access at such relocated area shall be made available at the fee which is in effect at that time under this Agreement on the date relocation is completed."

4. **Hangar License Agreement.** PERMITTEE shall grant Aviation a license for ingress and egress to SkyLane Taxiway, located on real property owned by PERMITTEE, in the form of the License Agreement attached as **Exhibit "A"**, as long as PERMITTEE and its Members have access to all the existing Points of Ingress/Egress to the Airport.

5. **Reaffirmation.** Except as amended herein, the 2004 Ingress/Egress Agreement is in full force and effect.

6. **Authorization.** The State Aviation Board, by duly adopted Delegation Order Number 1 dated October 12, 2000, has authorized the Director of the Oregon Department of Aviation to act in its behalf in approving and executing this Amendment. PERMITTEE'S Board of Directors has authorized the undersigned to execute this Amendment by resolution at a duly called meeting of its Board of Directors.

7. **Page 2, Definitions "Based Aircraft"** currently references ORS 836.840 and shall be amended to reference ORS 837.040.

8. **Page 5, Section 2, Payment for and Use of Airport Access, 2.1 shall be amended to read:**

PERMITTEE shall collect and pay to AVIATION access fees in the amount of \$15.00 per month for each Developed Lot whether or not the access is being utilized. AVIATION, however, reserves its right to review and adjust the consideration payable to AVIATION as per OAR 738-010-0035. The payment is due annually in a lump sum in advance of the effective date of the current agreement (June 17, 2004) until the agreement expires. To ease the administrative burden for PERMITTEE, AVIATION will collect the fees from Stearman Street residents for the year 2009. A ten percent (10%) early payment discount shall be allowed for each annual payment that is received by AVIATION on time. Commencing with the June 2010 payment, PERMITTEE will make a good faith effort to furnish AVIATION a current list of PERMITTEE names, address, lot numbers and N numbers of aircraft accessing the airport. With the following payments, PERMITTEE shall make a good faith effort to advise AVIATION of changes to the current list. PERMITTEE will not be held in default for any inaccuracies in reporting N numbers to AVIATION.

To ease the administrative burden for PERMITTEE, PERMITTEE shall not be required to collect fees for vacant lots until the payment due on June 17, 2010. If PERMITTEE is unable to collect the access fee for a vacant lot, the failure to pay AVIATION for the vacant lot access fee shall not be an event of default under this Agreement. Instead, AVIATION will post the uncollected vacant lot access fee as an accounts receivable from PERMITTEE, which shall be due and payable from PERMITTEE upon receipt of such lot fee by PERMITTEE from the owner. Delinquent access fee payments for vacant lots shall not be subject to late payment penalties under this Agreement, including Section 2.2(A).

9. **Page 5, Section 2, Payment for and Use of Airport Access, 2.2 Penalties (A) shall be amended to read:**

If any payment, except payment for access fees for vacant lots, under this Agreement remains unpaid ten (10) days after its due date, a one time penalty charge will be enforced not to exceed ten percent (10%) of the delinquent payment amount.

Page 5, Section 2, Payment for and Use of Airport Access, 2.2 Penalties (B) shall be amended to read:

In the event that any check to AVIATION for payment under this Agreement is returned to AVIATION by PERMITTEE'S bank unpaid for any cause, PERMITTEE shall pay AVIATION a fifty dollar (\$50.00) fee in addition to the amount of the check and any administrative charges due under the above paragraph per OAR 738-010-0060(2).

IN WITNESS WHEREOF, the parties hereto have affixed their signatures the day and year written below.

STATE OF OREGON,
DEPARTMENT OF AVIATION

INDEPENDENCE AIRPARK
HOMEOWNERS ASSOCIATION, INC.

By: *Daniel E. Clem*
Daniel E. Clem, Director (Date)

By: *Kelly Wilson* 4/13/09
Kelly Wilson, President (Date)

April 13
2009

By: *Keith Moes* 4/13/09
Keith Moes, Treasurer (Date)

STATE OF OREGON)
) ss.
County of Marion)

This instrument was acknowledged before me on 4/13, 2009, by Daniel E. Clem, as Director of State of Oregon, Department of Aviation.



Cindy M. Pease
NOTARY PUBLIC FOR OREGON
My Commission Expires: 4/7/2013

[Notary endorsements continued on following page]

STATE OF OREGON)
) ss.
County of Polk)

This instrument was acknowledged before me on April 13, 2009, by
Kelly Wilson, as President of Independence Airpark Homeowners Association, Inc.



Susan Paulus
NOTARY PUBLIC FOR OREGON
My Commission Expires: April 14, 2010

STATE OF OREGON)
) ss.
County of Polk)

This instrument was acknowledged before me on April 13, 2009, by
Keith Moes, as Treasurer of Independence Airpark Homeowners Association, Inc.



Susan Paulus
NOTARY PUBLIC FOR OREGON
My Commission Expires: April 14, 2010

Exhibit A

LICENSE AGREEMENT

This License Agreement ("Agreement") is entered into by and between the following parties, effective January 1, 2009 (the "Effective Date"):

IAHA: **Independence Airpark Homeowners Association, Inc.**
P. O. Box 31
Independence, Oregon 97351

Aviation: **State of Oregon, Department of Aviation**
3040 25th Street SE
Salem, Oregon 97302

RECITALS:

- A. IAHA is the owner of real property described as "Skylane Taxiway" (the "Taxiway") in Polk County, Oregon (NE 1/4th NE 1/4th SEC. 20 T8S R4W WM) and as depicted on the attached **Exhibit "A"**.
- B. Aviation is the owner of property adjacent to Skylane Taxiway, which is depicted on **Exhibit "A"** as the hangar properties (the "Hangar Properties"). The Hangar Properties are leased by Aviation to private entities and individuals for the purpose of owning hangars for the storage of aircraft.
- C. Aviation has granted IAHA access to and egress from the Independence State Airport in Polk County, Oregon (the "Airport") under the Independence State Airport Ingress and Egress Permit dated June 13, 1974 (recorded at Book 59, pages 259 through 269, Polk County records), as amended April 2, 1979 and June 17, 2004 (recorded at Instrument No. 2004-009749, Polk County records) (the "2004 Ingress/Egress Agreement").
- D. IAHA wishes to grant Aviation a non-exclusive license for ingress and egress over the Taxiway to allow the lessees of the Hangar Properties to taxi their aircraft from the Hangar Properties to and from the Independence Public Airport taxiway and runway, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, warranties and representations of the parties contained herein, the parties enter into the following:

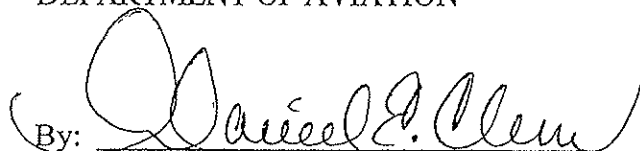
AGREEMENT

1. **Incorporation of Recitals.** The above recitals are incorporated herein by reference.
2. **Grant.** IAHA hereby grants to Aviation and the lessees of the Hangar Properties a revocable non-exclusive license for ingress and egress across the Taxiway to the Independence Public Airport taxiway and runway, subject to the conditions described herein.
3. **Consideration.** All lessees of the Hangar Properties shall pay IAHA an annual access license fee equal to the amount of the Independence Airpark Homeowners Association dues charged to its members to cover taxiway maintenance (the "Access License Fee"). Payment of the Access License Fee shall not entitle the lessees of the Hangar Properties to any membership or voting privileges in the Independence Airpark Homeowners Association.
4. **Non-Exclusive.** The license granted herein is non-exclusive.
5. **Duration.** The license rights granted herein are not perpetual and may be partially or fully terminated in the event that the lessees of the Hangar Properties fail to pay the Access License Fee or in the event that IAHA and its members no longer have access to the Airport using the existing Points of Ingress/Egress provided under the 2004 Ingress/Egress Agreement, as amended effective
6. **Binding.** This grant of a license for ingress and egress across the Taxiway shall run with the land and shall be binding on and inure to the benefit of IAHA, Aviation, the lessees of the Hangar Properties and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures the day and year written below.

STATE OF OREGON,
DEPARTMENT OF AVIATION

INDEPENDENCE AIRPARK
HOMEOWNERS ASSOCIATION, INC.

By: 
Daniel E. Clem, Director (Date)
April 13,
2009

By:  4/13/09
Kelly Wilson, President (Date)

By:  4/13/09
Keith Moes, Treasurer (Date)

[Notary endorsements on following page]

STATE OF OREGON)
) ss.
County of Marion)

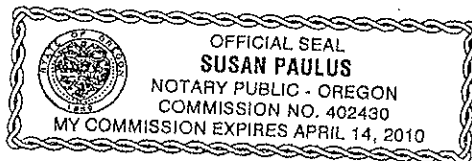
This instrument was acknowledged before me on 4/13, 2009, by
Daniel E. Clem, as Director of State of Oregon, Department of Aviation.



Cindy M Pease
NOTARY PUBLIC FOR OREGON
My Commission Expires: 4/7/2013

STATE OF OREGON)
) ss.
County of Polk)

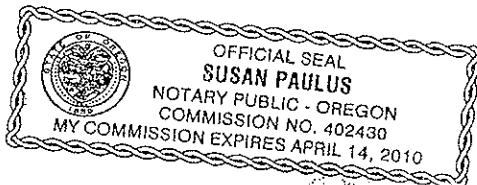
This instrument was acknowledged before me on April 13, 2009, by
Kelly Wilson, as President of Independence Airpark Homeowners Association, Inc.



Susan Paulus
NOTARY PUBLIC FOR OREGON
My Commission Expires: April 14, 2010

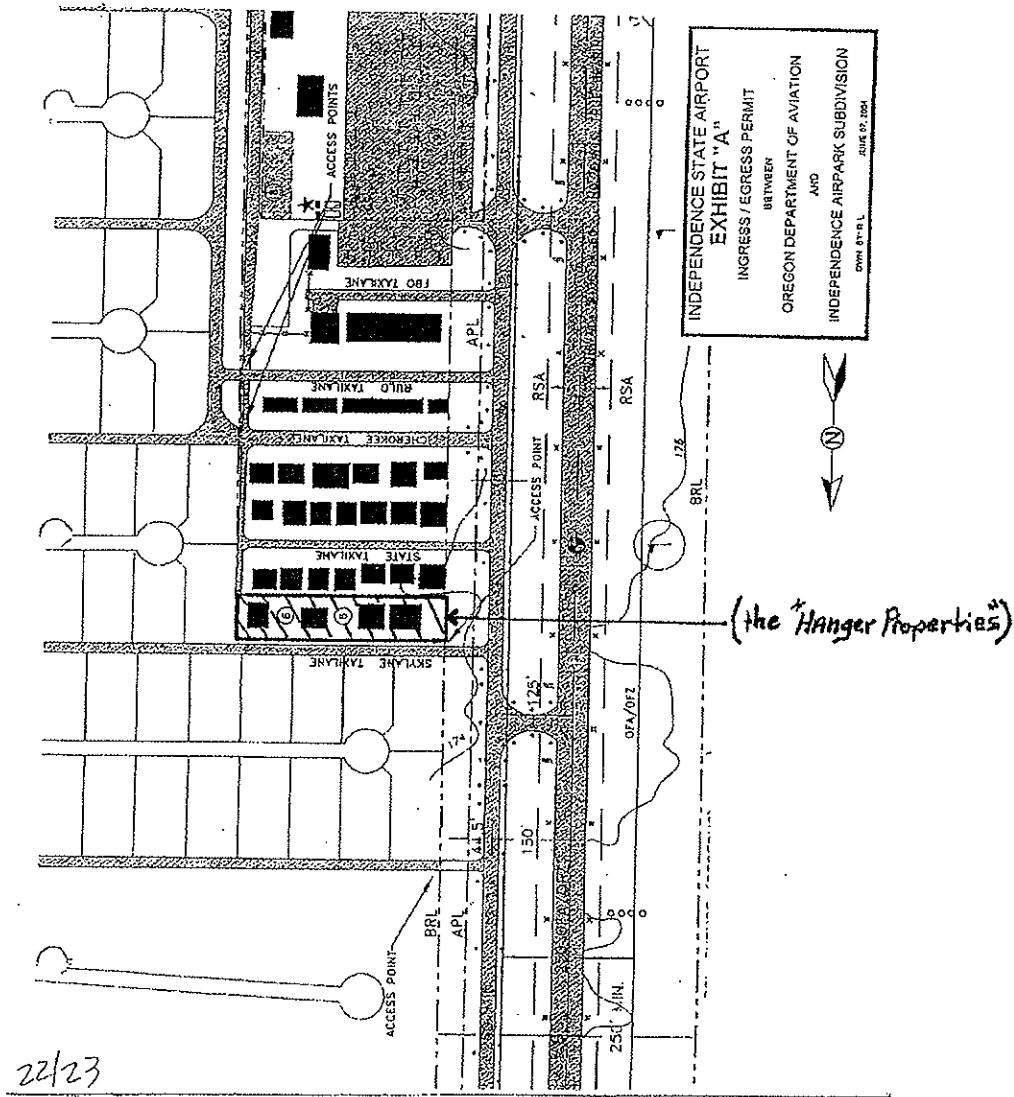
STATE OF OREGON)
) ss.
County of Polk)

This instrument was acknowledged before me on April 13, 2009, by
Keith Moes, as Treasurer of Independence Airpark Homeowners Association, Inc.



Susan Paulus
NOTARY PUBLIC FOR OREGON
My Commission Expires: April 14, 2010

Exhibit A
(The Taxiway)



**INDEPENDENCE STATE AIRPORT
AMENDED, RESTATED INGRESS/EGRESS AGREEMENT**

The State of Oregon, acting by and through its Department of Aviation, hereinafter referred to as AVIATION, hereby grants to Independence Airpark Homeowner's Association, Inc., successor and assign to James E. Preuit and Thomas W. Combest, hereinafter referred to as PERMITTEE and the individual MEMBERS and homeowners of the Independence Airpark Homeowner's Association, hereinafter referred to as MEMBERS, right of ingress to and egress from the Independence State Airport, Polk County, Oregon, on the terms and conditions described in this Agreement. This Agreement amends in its entirety, replaces and supersedes that Ingress and Egress Permit dated June 13th, 1974 between the Department of Transportation, Aeronautics Division, predecessor to Aviation, and James E. Preuit and Thomas W. Combest, predecessors to PERMITTEE herein, recorded at Book 59, pages 259 through 269, Polk County records.

Definitions

"Airport" – The Independence State Airport.

"Public Use Area" – All portions of the Airport that are available for public use as permitted by AVIATION, as such may change from time to time.

"Adjacent Property" – That certain contiguous improved real property owned by PERMITTEE AND MEMBERS located adjacent to the Airport, as depicted on the attached Exhibit "A".

"Points of Ingress/Egress" – The points where the Airport's taxiway adjoins and abuts the Adjacent Property, as depicted on the attached Exhibit "B".

1 of 1 Independence State Airport Ingress
23 Oregon Department of Aviation

RECORDED IN POLK COUNTY
Valerie Unger, County Clerk

2004-009749



\$136.00

REC-MDE Cnt=1 Stn=1 A. CAPTAIN
\$115.00 \$10.00 \$11.00

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"Based Aircraft" – An aircraft that the owner physically locates at the airport for an undetermined period and, whenever absent from the airport, the owner intends to return the aircraft to that same airport for long-term storage. A based aircraft is required to be registered with AVIATION in accordance with ORS 836.040.

"MEMBERS" – Homeowners, who may be single or joint owners, of record of lots within the property encumbered by the Declaration of Restrictions, Covenants and Conditions of the Independence Airpark Homeowners Association.

Recitals

- A. AVIATION owns and operates Independence State Airport for the benefit of the public.
- B. PERMITTEE is an incorporated homeowner's association whose members own lots on the Adjacent Property from which aircraft access the airport. PERMITTEE maintains and owns the common area of the Adjacent Property. PERMITTEE is the successor and legal assign of all of the interest of James E. Preuit and Thomas W. Combest, Grantees under the Independence State Airport Ingress and Egress Permit dated June 13, 1974 ("Original Permit").
- C. The Original Permit was granted to the Grantees without an access fee in partial consideration for Grantees paying approximately \$180,000 of funds, which were used by Aeronautics for the cost of paving the parallel taxiway and parking ramp. These funds were also used by Aeronautics as matching money for a federal grant which was used to improve the runway from a grass strip to a paved runway.

- D. MEMBERS own individual homes with rights to access and use taxiways and other common property owned by PERMITTEE;
- E. PERMITTEE desires to renew rights of ingress/egress to the airport for itself and its MEMBERS, employees, agents, contractors, unit owners, and invitees;
- F. AVIATION is willing to allow such rights of ingress/egress, on the terms set forth in this agreement.

SECTION 1

Grant, Scope, Term, Representatives

1.1 **Grant** AVIATION grants to PERMITTEE AND MEMBERS non-exclusive rights of ingress and egress at the Points of Ingress/Egress, to and from the public use area of the airport; provided, however, that AVIATION, reserves the rights to (i) temporarily close or relocate any one or more of PERMITTEE'S and MEMBERS' Points of Ingress/Egress if it reasonably determines in good faith that the access poses a risk to the safe operation of the Airport, and (ii) relocate any Point of Ingress/Egress upon sixty (60) days' written notice to PERMITTEE, including for the purpose of accommodating third parties or others to whom AVIATION grants ingress/egress rights. This grant is contingent upon the continued ownership and operation of the Airport by AVIATION, and upon the continued compliance by PERMITTEE with all of the conditions of this agreement.

In the event of relocation of any of the Points of Ingress/Egress for good cause Aviation shall make a determination regarding relocating the Points of Ingress/Egress in a manner which would afford PERMITTEE access to the Public Use Area from the Adjacent Property. If AVIATION offers a substitute Point of Ingress/Egress not agreeable to PERMITTEE, PERMITTEE shall have 30 days to either accept or reject such offer in writing and, if it accepts,

this Agreement shall remain in full force and effect and a proportionate amount of PERMITTEE'S obligation to pay any fee under this Agreement shall be waived for the amount of time PERMITTEE or MEMBERS did not have use of that Point of Ingress/Egress. Access at such relocated area shall be made available at the fee which is in effect at that time under this Agreement on the date relocation is completed.

1.2 **Term** This agreement will be in full force and effect for a period of ten years, commencing on June 12, 2004, and ending on June 12, 2014. This Agreement replaces and supersedes in its entirety the Independence State Airport Ingress and Egress Permit between the parties, dated June 13th, 1974, recorded in book 59 pages 259 through 269, and any amendments thereto including one dated April 5, 1979, recorded in book 138 page 420, Polk County records. That Permit is hereby renewed, and amended in its entirety by mutual agreement of the parties, and by this Agreement.

1.3 **Renewal** PERMITTEE shall be deemed to have renewed this Agreement for each of the two additional 10-year terms on condition that PERMITTEE is not in default herein unless PERMITTEE gives AVIATION at least 60 days notice in advance of intent to terminate.

If PERMITTEE is not in default at the termination of the second 10-year renewal term, then AVIATION shall offer to PERMITTEE the right to renew this Agreement under such terms and conditions as AVIATION considers to be in the best interest of the State of Oregon.

1.4 **Authorized Representative** Upon signing this agreement, PERMITTEE hereby names as authorized representatives to act in its behalf to carry out the responsibilities and obligations under the terms of this Agreement, the signatories identified on the signature page of this Agreement, at the address noted. Such representatives may be changed at any time, by written notice as set forth in Section 3.19 of this agreement.

SECTION 2

Payment For and Use of Airport Access

2.1 Consideration

As consideration for the renewal of the Ingress/Egress Agreement, and amending the terms of the former Permit, the PERMITTEE shall collect from PERMITTEE'S MEMBERS, a fee equal to \$15.00 per each developed lot in PERMITTEE'S Association, per month. PERMITTEE shall collect the fees and remit all of the fees less 1.5% of the total sum to AVIATION annually on the 10th day of June of each year of this Agreement. AVIATION agrees that the fee under this Agreement shall be fair, reasonable and nondiscriminatory as set forth in OAR 738-010-0010. Upon renewal, AVIATION may increase the access fee as allowed by its administrative rules.

2.2 Penalties

(A) If any payment under this Agreement remains unpaid ten (10) days after its due date, an administrative charge of 10% of the amount due shall be added to the amount due.

(B) In the event that any check to AVIATION for payment under this Agreement is returned to AVIATION by PERMITTEE'S bank unpaid for any cause, PERMITTEE shall pay AVIATION a fifteen dollar (\$15.00) fee in addition to the amount of the check and any administrative charge due under the above paragraph.

2.3 Possession and Use PERMITTEE and MEMBERS are granted the non-exclusive right to use, in a lawful manner and in common with others, all of the Public Use Areas, as such may change from time to time, including but not limited to, landing, taxiing, parking areas and other common use facilities.

2.4 **Posting Point of Ingress/Egress** PERMITTEE shall post and make reasonable efforts to control all of the Points of Ingress/Egress to prevent use by persons not allowed under this Agreement. Signs shall be placed on PERMITTEE's property. Such signs shall be placed as not to interfere with or be an obstruction to taxiing aircraft. AVIATION shall have the right to require PERMITTEE to add signs or replace or remove signs which AVIATION determines to be inadequate, improper or a safety hazard.

2.5 **Prohibited Uses of Airport** Neither PERMITTEE nor its MEMBERS shall use or permit to be used any portion of the Airport or other state-owned property for storage of non-aviation related personal property except in areas allowed and designated by AVIATION. PERMITTEE and MEMBERS understand that if state-owned airport property is used for such storage, AVIATION may demand and compel its removal upon forty-eight (48) hours notice. If such personal property is not removed within the specified time after such demand, then AVIATION may remove the same and charge the cost of the removal to PERMITTEE or MEMBER. PERMITTEE and MEMBERS agree that use of the Airport by PERMITTEE, its MEMBERS, employees, agents, unit owners, and contractors shall be confined to the Public Use Areas and the Points of Ingress/Egress shall allow use only by aircraft meeting the Airport's design criteria. No automobiles, bicycles, trucks, motorcycles or other power driven vehicles, pedestrians, or animals, shall be allowed on the Airport Public Use Area or the Points of Ingress/Egress except for vehicles authorized by AVIATION.

Any dangerous articles or magnetized materials being transported by or under the control of PERMITTEE or MEMBERS over AVIATION property shall be done in strict accordance with Title 49 of the Code of Federal regulations (49 CFR). AVIATION reserves the right at any

time to prohibit said transporting of any or all dangerous articles or magnetized materials as defined in 49 CFR, a copy of which is available upon request at AVIATION's office.

2.6 **Assignment** This Agreement shall not be assigned; however, Aviation acknowledges that PERMITTEE'S MEMBERS may change, and AVIATION does not consider a transfer of interest in PERMITTEE'S association according to the bylaws to be a prohibited assignment.

2.7 **No Exclusive Right** Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right forbidden by Section 308 of the Federal Aviation Act of 1958.

SECTION 3

Duty to Comply

3.1 **Records** PERMITTEE shall keep proper books of account and other records pertaining to its operation. The books and records shall be available at reasonable times by appointment to AVIATION and its authorized representatives including the Oregon Secretary of State's Office and the federal government, which may inspect all such books and records to ascertain compliance with the terms and conditions of this Agreement.

3.2 **AVIATION Entry onto Premises** Subject to advance notice unless an emergency exists, representatives of AVIATION may enter the Ingress/Egress areas at any time for the purpose of determining compliance with the terms and conditions of this Agreement. PERMITTEE hereby grants to AVIATION the right to enter the Adjacent Property to enforce the terms of this Agreement, as further specified in 4.2.3. below. AVIATION shall attempt to notify PERMITTEE in advance of any need to enter PERMITTEE's property for enforcement purposes.

3.3 **Airport Regulations** PERMITTEE's or MEMBERS' exercise of rights under this Agreement are subject to all existing and future regulations adopted by the State Aviation Board

relative to the operation of the Independence State Airport, and PERMITTEE and MEMBERS agree to comply with all of the provisions of such regulations. Actions taken by PERMITTEE at the airport shall conform to all applicable Federal Aviation Regulations, Oregon Aviation Laws, and traffic patterns as established at the Airport.

3.4 **No Commercial Operations** No lot or structure on or adjacent to the Airport shall be used as a base or site for maintaining, repairing, or selling aircraft or aviation fuel to the public, individuals, or to MEMBERS. MEMBERS retain the right to construct, rebuild, or maintain aircraft provided that this activity is noncommercial. No flight instruction is to be conducted, and no aircraft is to be allowed to be used for flight instruction, on or from the Airport property by MEMBERS, residents, homeowners, or PERMITTEE without the express written consent of AVIATION and compliance with AVIATION's Operating Minimum Standards, set out in Oregon Administrative Rules Chapter 738, Division 035.

3.5 **Construction or Alteration** PERMITTEE and MEMBERS agree that no structure, building or other facility which violates the airport imaginary surfaces as defined in Federal Aviation Regulations (FAR), Part 77, shall be constructed or permitted to be constructed on the Adjacent Property. PERMITTEE and MEMBERS further agree that notice of any and all proposed construction or alteration shall be submitted through AVIATION to the Federal Aviation Administration (FAA) on FAA Form 7460-1 "Notice of Proposed Construction or Alteration" as prescribed in FAR Part 77.17. AVIATION shall retain the right to require its prior written approval of any construction on the Adjacent Property by PERMITTEE or MEMBERS. AVIATION shall not unreasonably withhold its approval.

3.6 **Protection of the Airport's Imaginary Surfaces** AVIATION shall have the right to take any action it considers necessary to protect the Airport's imaginary surfaces, as defined by

FAR, Part 77, against obstructions, together with the right to prevent PERMITTEE or MEMBERS from erecting, or permitting to be erected, any building or other structure on the Airport which, in the opinion of AVIATION, would limit the usefulness of the Airport or constitute a hazard to aircraft.

3.7 **Access and Automobile Parking** No motor vehicle belonging to PERMITTEE or MEMBERS, except aircraft shall be allowed on the Airport runway, taxiway, or adjacent Airport land, except in areas specifically designated for motor vehicle use.

3.8 **Maintenance** PERMITTEE shall maintain the Points of Ingress/Egress, as shown on Exhibit "B", in a safe condition at all times. PERMITTEE shall maintain the adjacent property in a reasonably clean and neat fashion, and shall not permit the accumulation of rubbish, junk, aircraft or automobile parts or any other material.

3.9 **Hazardous Substances** For purposes of this Agreement, the following are collectively included as Hazardous Substances: environmentally hazardous or toxic materials, substances, compounds, mixtures, wastes, oils or any other substances defined as a pollutant or contaminant by any federal, state or local law, rule or regulations. PERMITTEE and MEMBERS represent, warrant and covenant that in relation to the access rights granted herein, they have not and shall not willfully, negligently, or illegally store, dispose of, or release any Hazardous Substance on any portion of the Airport Property. PERMITTEE and MEMBERS shall indemnify and hold AVIATION harmless from any and all claims, losses, damage, cleanup cost, attorneys fees and other expenses resulting from the presence of any Hazardous Substances in, on, upon or under the Points of Ingress/Egress or the Airport, if damage to the Airport results from PERMITTEE'S or MEMBER'S actions in relation to the access rights granted herein. All costs associated with the illegal use of Hazardous Substances or petroleum products by PERMITTEE or MEMBERS

in relation to the access rights granted herein, including but not limited to cost of cleanup, removal, remediation, and compliance with federal, state and local environmental requirements, shall be the primary responsibility of PERMITTEE and MEMBERS. All Hazardous Substances and petroleum products shall be used, handled, cleaned up, removed and remediated in accordance with federal, state and local requirements.

3.10 **Compliance with Law** MEMBERS shall observe and obey all laws, ordinances, rules and regulations promulgated by any lawful authority of the United States, the State of Oregon, or any municipal subdivision having authority over or jurisdiction of the premises, including, but not limited to safety, health, sanitary, fire, electrical and building codes, zoning and state and local comprehensive plans and criminal laws, relating to its use of the Airport and Adjacent Property under this Agreement.

3.11 **Organized Public Activities** In the event that any organized public activity using the Airport's airspace or aircraft operational areas is planned by PERMITTEE or MEMBERS at the Independence State Airport, PERMITTEE or MEMBERS shall request approval from AVIATION in writing not less than thirty (30) days prior to any scheduled activity. PERMITTEE or MEMBERS shall submit to AVIATION an application containing the pertinent facts relative to this activity, and based on the information presented, AVIATION will, at its sole discretion with due regard to Airport operational benefit, issue an approval or denial of said activity. After notice is received by AVIATION, conditional obligations of the PERMITTEE or MEMBERS shall be determined and transmitted to PERMITTEE or MEMBERS by AVIATION if AVIATION determines that the nature of the scheduled activity requires changed or added obligations for safe conduct of the activity. Should AVIATION grant approval of the planned

activity, PERMITTEE's or MEMBERS' obligations shall include, but shall not be limited to the following:

3.11.1 execute a "Hold Harmless and Indemnity Agreement" holding the State of Oregon, Department of Aviation, harmless from any claim, suit, fees or damages resulting from a violation of the Federal Aviation Regulations or Oregon State Laws, in connection with the scheduled activity;

3.11.2 make available a Unicom radio and a fully qualified operator thereof, advising aircraft traffic that the scheduled activity is in progress;

3.11.3 remove all debris and litter resulting from the scheduled activity within twenty-four (24) hours of the activity's completion. The Airport shall be returned to the same condition as it was prior to the scheduled activity;

AVIATION requests that upon becoming aware of any fly-in, air show, or organized public activity contemplated or planned by others, PERMITTEE and MEMBERS notify AVIATION immediately.

3.12 **Indemnity** PERMITTEE hereby indemnifies and holds AVIATION harmless from any claim, demand, cost, expense or suit, including attorney's fees, against or suffered by AVIATION arising out of PERMITTEE'S actions related to the Points of Ingress/Egress or this Agreement, and for aviation-related noise, property damages, or personal injuries resulting from activities at said airport, whether under AVIATION'S supervision and approval or otherwise, when such aeronautical activities conform to the airport rules and regulations and Federal Air Regulations, and no negligence on the part of AVIATION is involved. Likewise, MEMBERS hereby indemnify and hold AVIATION harmless from any claim, demand, cost, expense or suit, including attorney's fees, against or suffered by AVIATION arising out of MEMBERS' actions

related to the Points of Ingress/Egress or this Agreement, and for aviation-related noise, property damages, or personal injuries resulting from activities at said airport, whether under AVIATION'S supervision and approval or otherwise, when such aeronautical activities conform to the airport rules and regulations and Federal Air Regulations, and no negligence on the part of AVIATON is involved.

3.13 **Responsible Party** PERMITTEE shall enforce the terms of this Agreement to the extent it is able according to the enforcement provisions of the Covenants, Conditions and Restrictions of the Homeowners' Association (CCR's). AVIATION shall contact PERMITTEE's board of directors in the event of a violation by PERMITTEE or any MEMBERS of the terms of this Agreement, and the board of directors shall cause the MEMBER to remedy the violation according to the power and authority of its bylaws and CCR's. In the event that PERMITTEE is not able to obtain compliance to the terms of this Agreement by MEMBER, AVIATION has the authority to enter onto PERMITTEE'S property after 72 hours advance notice to PERMITTEE, and block access from a defaulting MEMBER property to the common property of PERMITTEE. PERMITTEE hereby waives any claim of trespass or damage in the event AVIATION acts to enforce the terms of this Agreement against an individual defaulting MEMBER. AVIATION will make every reasonable effort not to damage any property of PERMITTEE or MEMBER. Any damage caused by AVIATION in enforcement of this Agreement would be reimbursed by MEMBER. MEMBER must satisfy any demand for damages from AVIATION prior to resuming privileges under this Agreement.

3.14 **No Waiver** The covenants of this Agreement are continuing covenants, and the waiver, whether express or implied by AVIATION, PERMITTEE or MEMBER of breaches of these covenants shall not be deemed a waiver of subsequent breaches thereof.

3.15 **Amendment** Any future agreement between the parties of this Agreement hereinafter made shall be ineffective to modify or discharge this Agreement, in whole or in part, unless such agreement is in writing and executed with the same formalities as this instrument.

3.16 **Subordination to Federal-State Agreements** The provisions of this Agreement shall be subordinate to any existing or future agreement between AVIATION and the United States relative to the operation or maintenance of the Independence State Airport, the execution of which has been or may be required as a condition precedent to the receipt of federal funds for the development of the airport. Failure of PERMITTEE or MEMBERS to comply after 15 days written notice with any of the requirements of any existing or future agreement between AVIATION and the United States shall be cause for immediate termination of PERMITTEE's and MEMBERS' rights hereunder. During a time of war or national emergency, AVIATION shall have the right to lease the landing area or any part thereof to the United States government for military or other federal government purposes, and , if such lease is executed, the provisions of this Agreement, insofar as they are inconsistent with the provisions of the lease to the government, shall be suspended and reinstated at such time as the lease with the federal government is terminated. Suspended time shall be considered as part of the term of this lease and will not extend the expiration date of this Agreement. The Ingress/Egress fee to be paid by PERMITTEE to AVIATION shall be waived during such time as any lease with the federal government is in effect.

3.17 **AVIATION's Right to Develop the Airport** AVIATION reserves its rights to further alter, develop or improve the Airport in accordance with its duty to develop AVIATION within the State of Oregon as dictated by the demands of air traffic and AVIATION safety.

3.18 **Maintenance of Airport** AVIATION shall maintain the runways, public taxiways, and aircraft parking area. It is mutually understood that AVIATION retains sole authority to determine the methods and schedules by which any maintenance or necessary construction is to be performed. AVIATION shall have the right to close the Airport whenever it deems it necessary for reasons of public safety or convenience. No advance notice shall be necessary when closure of the airport is by reason of weather, acts of God, or other unforeseen circumstances.

3.19 **Standard Notices** For any terms of this agreement which require notice to PERMITTEE, written notice sent regular U.S. mail with postage affixed and mailed to the address provided below shall be deemed sufficient. Notice shall be deemed received the third day after the mailing date. Notice to PERMITTEE shall be mailed both to PERMITTEE and PERMITTEE'S counsel at the address set forth below. Either party may, by notice in writing to the other, change the address to which notices to that party are to be given.

PERMITTEE

Current IAHA President

PO Box 31

Independence, OR 97351

AND PERMITTEE'S COUNSEL

George M. Jennings

1011 Commercial Street, NE

Suite 210

Salem, OR 97301

DEPARTMENT OF AVIATION

3040 25th Street SE

Salem, OR 97302-1125

(503) 378-8689

Notice to individual MEMBERS shall be given directly to MEMBERS. AVIATION shall rely on PERMITTEE'S records for accurate addresses of any MEMBER. Alternatively, AVIATION may post notice on defaulting MEMBER's property.

3.20 **Authority** Any and all powers and authority conferred upon PERMITTEE or MEMBERS by this agreement shall be strictly construed, and no other powers may be lawfully exercised by PERMITTEE or MEMBERS without AVIATION'S prior written consent. Neither PERMITTEE nor MEMBERS shall have any authority to act on behalf of AVIATION, or to bind AVIATION to any third party, contractually or otherwise, except as is expressly stated herein.

3.21 **No Agency** The parties hereto understand and agree that the requirements imposed on PERMITTEE and MEMBERS by terms of this agreement shall not be construed to make either an officer, employee or agent of the State of Oregon, Department of Aviation, as those terms are used in ORS 30.265.

SECTION 4

Termination and Default

4.1 **Events of Default** Any one or more of the following events shall constitute a default under this agreement and entitle AVIATION to pursue the remedies set forth in this Section IV.

4.1.1 PERMITTEE fails to make payment when due of any Ingress/Egress fee when and as due, and such failure continues for more than ten (10) days.

4.1.2 PERMITTEE or any MEMBER fails to comply with any of the covenants, agreements, terms or conditions contained in this Agreement, and such failure continues for more than thirty (30) days after written notice is given to PERMITTEE or MEMBER by AVIATION, in the manner set forth in Section

3.19; unless, however, the defaulting party is making a good faith effort to correct the default and the corrective action is taking longer than the 30 day period.

4.1.3 PERMITTEE files a voluntary petition of bankruptcy, or has filed against it an involuntary petition of bankruptcy or makes any assignment of its property for the benefit of creditors.

4.1.4 PERMITTEE abandons use of the Adjacent Property for more than fifteen (15) days; or

4.1.5 PERMITTEE or any MEMBER fails to comply with all applicable federal and Oregon laws, and/or local permits, licenses or ordinances, including but not limited to the Oregon Uniform Trade Practices Act (ORS 646.605 to 646.652).

Notwithstanding anything to the contrary contained herein, a default by any individual MEMBER shall not be construed as a default by PERMITTEE, but AVIATION and PERMITTEE shall have the rights and obligations to cause the MEMBER to cure the default as outlined under Section 3.13. A default by an individual MEMBER shall also entitle AVIATION to proceed with the remedies under 4.2, against the defaulting MEMBER, but not against PERMITTEE.

Notwithstanding the forgoing, if a MEMBER or MEMBERS fail to pay the Access Fee and this causes PERMITTEE to fail to pay the Access Fee, this shall be considered a default by PERMITTEE. Any failure to pay the Access Fee required under this Agreement shall be a default by PERMITTEE.

4.2 Remedies Upon the occurrence of any one or more Events of Default, and after giving PERMITTEE or MEMBER written notice as provided in 3.19, AVIATION may exercise any

one or more of the following remedies, or any other remedy available under applicable law or in equity:

- 4.2.1 remove or occupy any property of either PERMITTEE or MEMBERS located on any portion of the Airport;
 - 4.2.2 deny PERMITTEE or any MEMBER any of their rights under the terms of this Agreement, including the rights of ingress and egress to and from the Points of Ingress/Egress, or in the case of individual MEMBERS, deny access to the common taxiway of PERMITTEE from the defaulting MEMBER'S property;
 - 4.2.3 enter upon PERMITTEE'S property and taxiways, and place a barrier between a defaulting MEMBER'S property and PERMITTEE'S taxiway, to prevent access by the defaulting MEMBER to the Airport;
 - 4.2.4 recover all unpaid fees due under this Agreement, and damages caused by the default including attorney fees and an administrative fee equal to 10% of such past due fees or amounts; or
 - 4.2.5 terminate this agreement, by written notice mailed to PERMITTEE at the addresses set forth in the Notice section of this Agreement (the "Termination Notice"), and pursue all additional remedies available at law or in equity.
- AVIATION shall not use termination of the Agreement as a remedy in the event of a default by an individual MEMBER.

4.3 **Termination; Survival** Upon termination of this agreement, PERMITTEE and MEMBERS shall immediately cease use of the access points, between the Adjacent Property and the Airport. Unless otherwise specified in this agreement, all fees, charges or liabilities owing or

arising during the term of this Agreement shall survive termination of this Agreement. This Agreement shall terminate upon:

4.3.1 Upon written Termination Notice to PERMITTEE as provided in Section 3.18.

4.3.2 Mutual written agreement of AVIATION and PERMITTEE;

4.3.3 Sale of all or any portions of PERMITTEE's interests in the taxiways on the Adjacent Property except as described in Paragraph 2.6 and as otherwise provided herein.

4.3.4 One hundred eighty (180) days' written notice to PERMITTEE from AVIATION that the State Aviation Board has determined to close the Airport.

4.4 **Non-Exclusive Rights and Remedies** The rights and remedies provided in the above provisions relating to default, including breach of contract, shall not be exclusive, and are in addition to any rights and remedies provided by law or in equity or otherwise under this Agreement.

4.5 **Declaration of Termination; and No Warranty of Non-interference by Entities Outside AVIATION's Control** The parties hereto understand and recognize that the actions of local governmental units, parties holding land or living adjacent to the Independence State Airport, and governmental entities not subject to AVIATION's influence and control, may have, in the future, adverse impacts upon the number and character of flight and other operations at the airport. In such event, PERMITTEE has the option of declaring this agreement terminated on ninety (90) days' written notice to AVIATION and the provisions of SECTION 4.3, Termination, shall apply. PERMITTEE and MEMBERS agree to not seek to recover any damages from AVIATION.

4.6 **Holding Over** Any holding over after the expiration of the term of this Agreement, shall be allowed only with payment of fees at a monthly rate to be determined by AVIATION, but not substantially exceeding the amount of the Ingress/Egress fee set forth in Section 2.1. Holding over creates a month-to-month agreement subject to the terms and conditions of this Agreement at the sufferance of AVIATION and is subject to termination on thirty (30) days' written notice by either AVIATION or PERMITTEE.

4.7 **Recording** This Agreement shall be recorded in the public records of Polk County as an amendment to the current Ingress and Egress Permit referenced above.

IN WITNESS WHEREOF parties hereto have affixed their signatures the day and year written below.

The State Aviation Board, by duly-adopted Delegation Order No. 1, dated October 12, 2000, has authorized the Director of the Department of Aviation to act in its behalf in approving and executing this agreement. PERMITTEE's Board of Directors has authorized the undersigned to execute this Agreement by resolution at a duly called meeting of the Board of Directors.

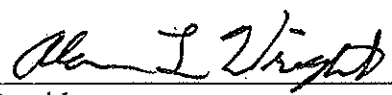
The undersigned is duly authorized by the Independence Airpark Homeowners Association Board of Directors to execute this Agreement and to thereby bind the Association and its MEMBERS to the terms and provisions herein.

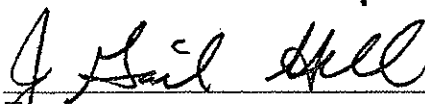
DATED this 10th day of June, 2004.

State of Oregon
Department of Aviation

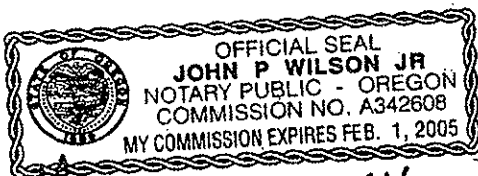

Interim Director

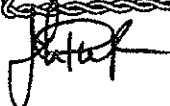
Independence Airpark
Homeowners Association, Inc.


President


Treasurer

Approved for legal sufficiency by DOJ AAG, Kathy Lincoln.

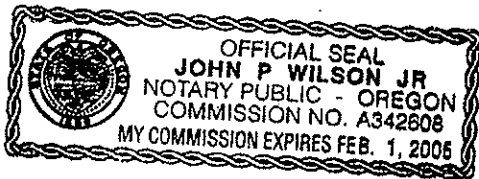


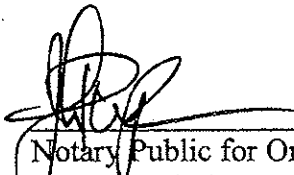


6-10-04
ODA, Marion County, Oregon

STATE OF OREGON)
COUNTY OF MARION)

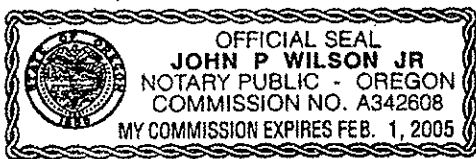
On this 10th day of June, 2004, personally appeared before me the above-named Ron Rende, Interim Director, and acknowledged the foregoing instrument to be his voluntary act and deed.

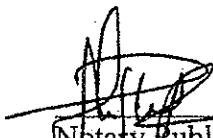



Notary Public for Oregon
My Commission expires:

STATE OF OREGON)
COUNTY OF MARION)

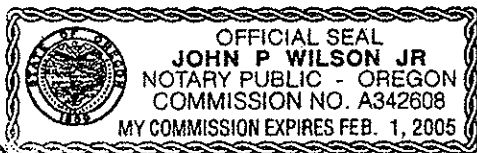
On this 10th day of June, 2004, personally appeared before me the above-named Alan Wright, President, and acknowledged the foregoing instrument to be his voluntary act and deed.

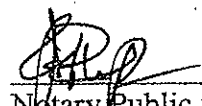



Notary Public for Oregon
My Commission expires:

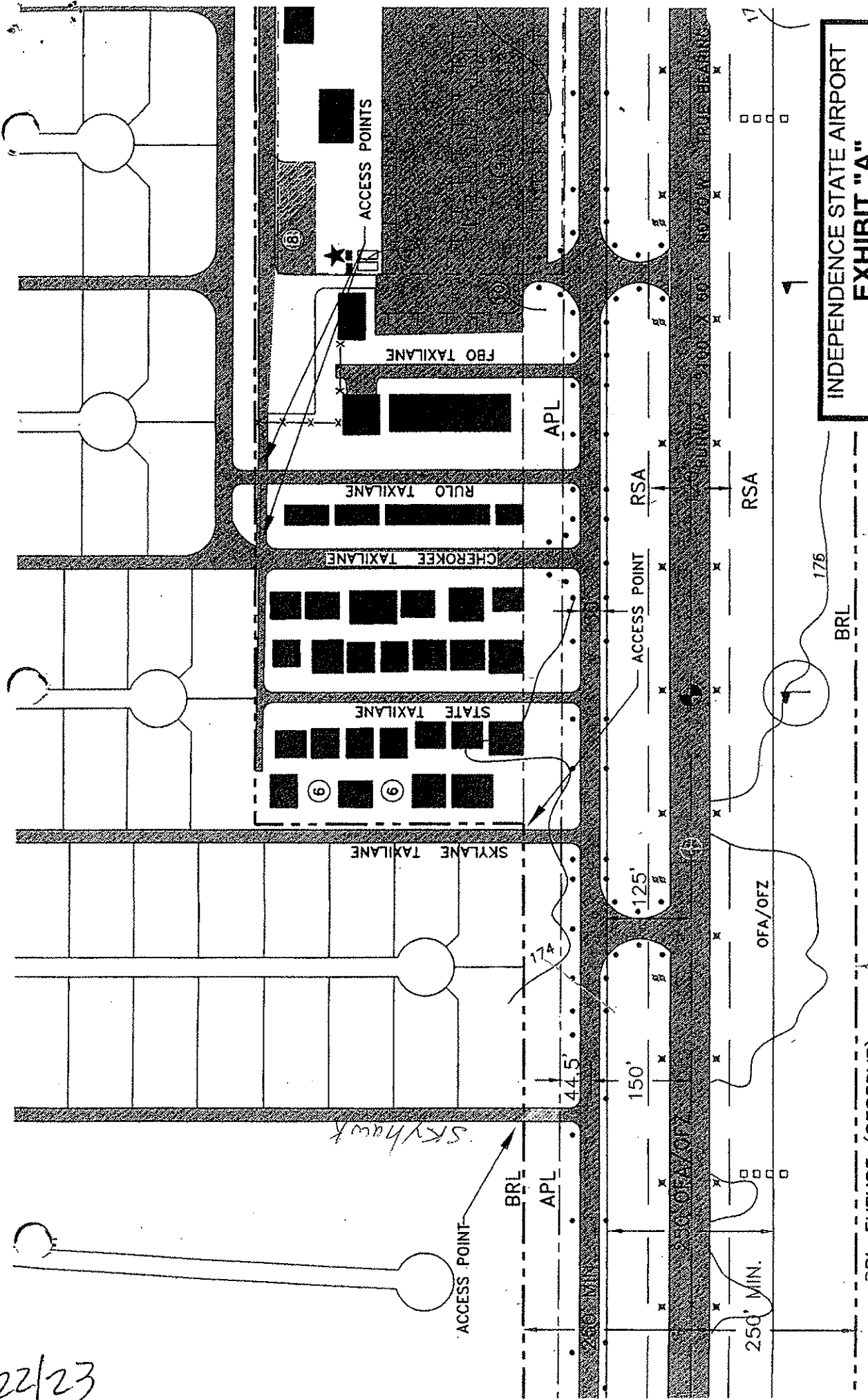
STATE OF OREGON)
COUNTY OF MARION)

On this 10th day of June, 2004, personally appeared before me the above-named Gail Hill, Treasurer, and acknowledged the foregoing instrument to be his voluntary act and deed.




Notary Public for Oregon
My Commission expires:

22/23



INDEPENDENCE STATE AIRPORT
EXHIBIT "A"
INGRESS / EGRESS PERMIT
BETWEEN
OREGON DEPARTMENT OF AVIATION
AND
INDEPENDENCE AIRPARK SUBDIVISION
DWN. BY: R.L. JUNE 07, 2004

STRIKER ROAD

STEARMAN STREET

SKYHAWK TAXILANE

CESSNA STREET

SKYLANE TAXILANE

STINSON STREET

PHOTOGRAPH TAXILANE

PIPER STREET

CONAN STREET

AIRPORT WAY

ARONCA STREET

LUSCOTE STREET

MOONEY STREET

HOFFMAN ROAD

BRL FUTURE (RESERVE)

BRL FUTURE (RESERVE)

INDEPENDENCE STATE AIRPORT EXHIBIT "B"

INGRESS / EGRESS PERMIT
BETWEEN
OREGON DEPARTMENT OF AVIATION
AND
INDEPENDENCE AIRPARK SUBDIVISION

DWN. BY: P.L. JUNE 07, 2004

