

# **COVENANTS, CONDITIONS and RESTRICTIONS**

## **JOINT DECLARATION OF RESTRICTIONS, COVENANTS AND CONDITIONS OF THE SEVERAL PHASES OF THE INDEPENDENCE AIRPARK**

This document is a Common English revision of the Restrictions, Covenants, and Conditions first promulgated by the Independence Airpark on October 23, 1973 and due for renewal after its initial term of 25 years\*. It incorporates the amendments\*\*, construction standards, and subsequent versions of similar documents of Airpark North as well as Independence Meadows. This document attempts to unify the various development phases of the whole Independence Airpark Homeowners Association under one code.

We hereby declare that all current owners and subsequent owners of parcels within the Independence Airpark voluntarily subject our property to the following restrictions, covenants, and conditions in compliance with ORS 94.580 and the Independence State Airport Ingress/Egress Agreement made with the State of Oregon. We impose these rules on all lots for our mutual benefit and obligate ourselves to a general plan of improvement and maintenance.

We vest the power of enforcement of the provisions of this document in the Board of Directors of the Independence Airpark Homeowners Association (IAHA). Officers, terms, and election dates are specified in the by-laws.

\* Revised on Dec. 6, 1998 and recorded on Dec 9, 1998

\*\* *Article 1 Section 3 revised Dec 3, 2017, and recorded on May 29, 2018*

## General Provisions

**Section 1: Duration.** Covenants and restrictions of this declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association members for a period of twenty-five years from the date this declaration is recorded. After such term, such covenants and restrictions shall be automatically extended for successive periods of ten years each unless this declaration is amended pursuant to the provisions of ORS 94.590.

**Section 2: Notices.** Notice shall be deemed to have been properly sent when hand-delivered, or mailed by first class mail, post paid, to the last known address of the person who appears as a member on the official association roster at the time of the mailing. Notices concerning delinquent assessments will be by certified mail.

**Section 3: Enforcement.** The members of the association, collectively, or any individual member shall have the right to enforce by any proceeding at law or equity all restrictions, conditions, covenants and reservations imposed by the provisions of this declaration and a similar right shall exist with respect to the recovery for damages and cost, including reasonable attorney fees, for such violation. Failure of the association, or members to enforce any covenant or restriction shall in no way be deemed a waiver of the rights to do so thereafter at any time.

**Section 4: Severability.** Invalidation of any one of these covenants or restrictions by judgement or court decree shall in no way affect any other provision of this declaration; the balance thereof remaining in full force and effect.

**Section 5: State, County, Municipal Laws and Ordinances.** Other authorities having jurisdiction over any member or their property described herein shall govern where more restrictive than these covenants and restrictions.

**Section 6: Construing Context of Declaration.** The singular pronoun may be taken to mean and include the plural and the masculine the feminine and the neuter.

## **Article 1: The Association**

The current owners of each lot are the only members of the association. Each lot is entitled to one vote. Votes may not be subdivided into fractions. The Association is governed by a Board of Directors elected annually and is obliged to function according to its by-laws.

## **Article 2: Property Rights in the Common Properties**

All members have the right to easement and quiet enjoyment in and to the common properties subject to the rules and regulations of the association. The common properties include the system of taxiways and sidewalks granted to the association by the original developers. Any member may share his right of quiet enjoyment to the common properties to members of his family, his guests, or to his tenants. Any damage to the common properties by a member or his delegates will be repaired, with all dispatch, at the member's expense, and, in no case, be delayed for more than 30 days. Piston-powered vehicles are prohibited from using the taxiways under any circumstances except in the case of emergency medical treatment or the removal of disabled aircraft. Exception: vehicles involved directly in the maintenance or repair of IAHA taxiways or other common property. Use of this exception must be coordinated with the Maintenance Committee

## **Article 3: Covenant for Maintenance Assessment**

**Section 1: Assessments.** All members agree to pay to the Association annual assessments and special assessments for capital improvements. This obligation is a continuing lien upon the property, and together with interest and costs of collection (if necessary) will be a personal obligation of every member. These assessments are used exclusively for the maintenance of and improvements to the common properties, and protecting the health, safety, enjoyment and welfare of the residents. Each member has an equal pro-rata liability to the association for

common expenses. The annual assessment shall be \$100, and is subject to change by a vote of the members. Special assessments or changes in the annual assessment must have the assent of two-thirds of the vote of all members who are voting in person or by proxy at a meeting duly called for that specific purpose. Written notice clearly stating the purpose of such a vote shall be sent to all members at least 30 days in advance of the meeting. Annual assessments are due and payable on January 1 of each year. The initial annual assessment for a member is prorated on a calendar year basis. The due date for any special assessments will be set by the Board of Directors in an authorizing resolution.

**This Section of Article 3 was modified and approved by a vote of the IAHA membership (112 to 30 – a response of 88.75 % by the membership) on December 3, 2017 as follows:**

- Two separate bank accounts are established in compliance with a recently approved State Law affecting Homeowner Associations (HOA's) – ORS 94.595. Those accounts shall be known as (a) the Administrative Account (General Fund) and (b) the Taxiway Maintenance Account (Taxiway Maintenance Fund). The Administrative Account shall be used for protecting the health, safety, enjoyment and welfare of the residents, as determined by the Board of Directors. The Taxiway Maintenance Account shall be used for the maintenance and improvements to the common properties (Taxiways) as determined by the Board of Directors.
- A special assessment of \$500.00 per year is established for five years (2018 through 2022) and is due on July 1<sup>st</sup> for each of those years. This assessment is dedicated to the Taxiway Maintenance Account/Fund for the maintenance and improvement of the common properties.
- The current (\$100.00 per year) assessment will continue through 2022 and is dedicated to the Administrative Account/General Fund.

- For the year 2023 and going forward the annual assessment will be reduced to \$300.00 per year with half going to the Administrative Account/General Fund and half going to the Taxiway Maintenance Account/Fund. It should also be noted that these assessments are in addition to the annual Airport Access Fees established by the Oregon Department of Aviation (ODA).

**Section 2: Duties of the Board of Directors.** The Board shall notify each member in writing at least 30 days in advance of the due date of the annual assessment. The Board will prepare and maintain a roster of all members that includes the status of all assessments. This roster is subject to inspection by any member. Upon request, the Board will furnish to any member a written letter setting forth the status of his assessment. The Board has sole discretion over the Maintenance Fund, assigns maintenance priorities, and enforces the provisions of this document.

**Section 3: Non-Payment of Assessments.** Delinquent assessments, together with interest at a legal rate and the actual costs incurred in the collection including legal fees and court costs, shall constitute a lien upon the property. "Notice of Delinquency" shall be filed with the county clerk. When the lien is released by the payment of the appropriate sum by the member, the board will then file a "Satisfaction of Lien" with the county clerk. No member may waive or otherwise escape liability for assessments by non-use of the common properties or abandonment of his lot. The sale or transfer of a lot shall not extinguish the assessment lien or release the lot from liability.

## **Article 4: Restrictions on Use of Property by Occupants**

**Section 1: Single Family Airpark Residential Use Only.** The requirements of the City of Independence RSA Zone shall be strictly adhered to. Members may combine a lot or parcel with another for a building site, but no member may divide a lot or parcel. Motor homes, house trailers, or other off-site manufactured housing are not permitted as permanent residences. Outbuildings shall be permitted and include garages and hangars, but they shall be equal to the exterior construction and appearance of the residential dwelling. Members will repair, restore,

or remove any damaged or destroyed structure with all dispatch.

**Section 2: Livestock, Poultry, and Family Pets.** No farm animals, livestock, poultry or other animals of any kind shall be raised, bred, or kept by any member on any lot within the RSA zone. No family pet animals shall be kept which may or does become an annoyance, nuisance or menace to the neighborhood, except as may be determined acceptable by the Association. Pets are not allowed on the common properties except when they are accompanied by their owner or delegated caretaker and properly restrained.

**Section 3: Industrial and Aviation Noise.** Members forever waive all rights to protest against industrial and/or aviation noise resulting from operations and activities conducted in relation to the operations of Independence State Airport.

**Section 4: Nuisances.** No noxious or offensive activity shall be carried on, nor anything done which may become an annoyance or nuisance to the other members or detract from the value of the residential neighborhood.

**Section 5: Sanitary Conditions to be Maintained.** Trash, garbage, and other waste shall not be kept on any lot, except temporarily in sanitary containers, screened from public view, awaiting collection. Common properties are not to be used for composting, waste piles, burn piles, etc.

**Section 6: Members' Private Aircraft Only.** Members shall not allow their property to be used as a base or site for maintaining, repairing or selling aircraft or aviation fuel to the public. Members do retain the right to construct or re-build antique, experimental, homebuilt, fixed wing and rotary wing private aircraft and to perform routine maintenance. 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 themselves, homeowners/residents, or any Association without the express written consent of the ODA.

**Section 7: Stored Vehicles.** No boat or trailer of any kind, recreational vehicle or motor home, camper, bus, disabled vehicle or other similar

vehicles are to be left, kept, or stored on any street or on any portion of the front yard setback. No more than 3 vehicles may be stored on rear and side yards and all vehicles must be licensed.

**Section 8: No Occupancy During Construction.** No residence shall be in any manner occupied during the course of original construction. Construction or reconstruction of any building is to be prosecuted with reasonable diligence continuously from commencement until completion.

## **Article 5: Architectural Guidelines**

**Section 1: Architectural Guidelines.** All buildings are subject to the approval of the Architectural Review Committee. The Committee will review each application to insure a pleasant, homogeneous residential community that blends with its neighbors while still allowing for individuality. The scale and proportion of the residence, garage, hangar and outbuildings should be appropriate and complimentary to the neighborhood. Minimum recommended living area is 1,350 square feet without a hangar and 1,000 square feet with a hangar.

**Section 2: Exterior Treatments.** Siding materials may be natural wood, simulated wood, brick, stone, or stucco. Roofing materials may include manufactured roofing, tile, shake, shingle or architectural metal.

**Section 3: Mechanical and Light Intrusion.** Heating and cooling units should be visually screened and their noises attenuated to the greatest extent possible. Solar heat collector systems and high intensity lights of any kind must be installed in such a manner as to prevent intrusion onto neighboring properties.

**Section 4: Reservation of Easements.** All members grant to the Association perpetual easements to maintain all common utilities. Members are responsible for maintaining a clear zone next to the taxiways, and no buildings, fences, or plants over eighteen inches tall will be allowed within 20 feet of the taxiway. The Association also reserves the right to trim any growth encroaching on common properties which might interfere with the safe movement of people or the operation

of aircraft and to bill the member for this service if it becomes necessary.

**Section 5: Taxiway Drainage.** All taxiways shall have a minimum of 18-inch gravel edge protection. This gravel will be  $\frac{3}{4}$  minus black crushed gravel. An 8-inch buried plastic or concrete drain line will be installed parallel to the taxiway, and below the 18-inch gravel edge, or, at the most, 5 feet from the edge of the taxiway. Pipe must be installed with a slope to match the taxiway and not impede water flow. Pipe ends will be connected with the proper metal/rubber seal connector. Open ditches will be allowed only for lots that are vacant (except for Skylane taxiway). Inspection pipes may be provided along the lot owner's property for maintenance purposes. Vertical inspection pipes will be 8-inch diameter and have a permanent cap to keep out debris and small animals.

## **Article 6: Construction Standards**

**Section 1: Authority and Procedure.** The following standards have been developed in accordance with the By-Laws of the Independence Airpark Homeowners Association and under the authority of the Declaration of Restrictions, Covenants and Conditions (CC&Rs) which establishes that Association. Appeals to rejection may be appealed to the Board.

These standards are provided to ensure the maintenance of quality dwellings within the airpark and to provide for the safety, comfort and convenience of airpark residents. All plans must be submitted to the Architectural Committee Chairperson before they are submitted to the City Building Inspector for the purpose of securing a Building Permit.

Approval by two of the Committee members or a majority of the Committee is required, whichever is more. Notice of preliminary Committee approval or rejection will be mailed or delivered to the applicant within fifteen (15) days of receipt by the Committee Chair. Reasons for any rejection will be included with the notice. Final plan approval will be given upon notice of acceptance by City Building Inspector and review of any alterations required by the Inspector for conformance with standards outlined below. One copy of the site plan will be retained on file by the Committee.



## **Section 2: Standards.**

**Codes:** All construction will conform to applicable State, County and Municipal building codes.

Erection of off-site manufactured buildings or modular units is prohibited.

**Taxiways and Tie-Down Areas:** Connections to taxiways shall be properly tiled and graded to provide drainage to the east or to storm drains. All homeowners must provide paved or concrete connections to the taxiways and at least a paved or concrete tie-down area for aircraft.

**Hangars:** Hangars are strongly encouraged for all homes. If a hangar is not constructed when the home is built, a 10 foot side lot line setback is required on one side to provide access for hangar construction. All hangars must conform to the architecture style and be complementary to the associated home and to the community. Hangar size should be reasonable with respect to the home. A minimum of 40 ft. wide and 10 ft. high is recommended for hangar door opening. Off-site manufactured or modular buildings are not permitted.

**Fences, Shrubbery, and Set-backs:** Within the 20 foot rear lot line setback, no fence shall be more than four (4) feet in height and shall be of chain link or similar see-through construction. Random trees and shrubbery will be allowed for landscaping purposes, provided no continuous visual obstruction above four (4) feet is developed. Plans for fences on lot lines between lots must be submitted for review by the Committee by both property owners. On all IAHA installed sidewalks, fences shall be set back 18 inches from either edge of the IAHA sidewalk. Fences must have a smooth rail on the top. If the fence ends at the lot corner stake, the fence will taper down to 18 inches at the corner stake. Fence installations on IAHA sidewalks must be reviewed by the Architectural Committee before installation.

**Cleanliness During Construction:** Streets and taxiways will be kept clean and neat during construction. All mud and debris will be removed on a daily basis. If not removed within a reasonable time, the Maintenance Committee will notify the lot owner(s) responsible of their obligation.

**Protection of Taxiways:** All damage to taxiways occasioned by construction is to be repaired immediately, and is the responsibility of the lot owners. The lot owner is responsible for informing all contractors and persons delivering materials that taxiways are **NOT** to be used by trades people for **ANY** reason. Damage not repaired or scheduled to be repaired within ten (10) days of time that the Maintenance Committee Chair informs the lot owner of the condition, will be repaired by the Maintenance Committee and the lot owner will be assessed for those repairs and expenses in accordance with the CC&Rs and the By-Laws. A reasonable effort will be made to inform the lot owner and provide time for the owner to effect repairs. Repairs must be coordinated and approved by the Maintenance Committee.

**Construction Progress:** Progress toward completion must be reasonable. Reasonable progress is defined as the completion of all taxiway connections, driveways, sidewalks, tie-down area and installation of siding and roofing on the dwelling and hangar within twelve (12) months of the date of issuance of the building permit.

**Grading:** Grading and filling of lot is also required within this 12 month time period. Completion of landscaping is encouraged.

**FAA:** The FAA requires completion and filing FAA Form 7460-1. This form is available from the Oregon Aeronautics Division, Salem Airport.

***NOTE: ARCHITECTURAL COMMITTEE APPROVAL DOES NOT CONSTITUTE A BUILDING PERMIT. SUCH A PERMIT MUST BE OBTAINED FROM THE CITY.***

## **Article 7: Vacant Lot Maintenance Obligations of Members**

Vacant lots will be maintained in a reasonable condition, and vegetation will not be allowed to grow more than eighteen inches high. If members fail to perform these duties, the Association will do it, after reasonable notice of an infraction of the rules, and bill the owner for the work as an assessment.

# INDEPENDENCE AIRPARK HOMEOWNERS ASSOCIATION

P.O. Box 31, Independence, OR 97351

## ADDENDUM No. 1 TO THE AMENDED DECLARATION OF RESTRICTIONS, COVENANTS AND CONDI- TIONS REVISED ON DECEMBER 6, 1998, AND RECORDED DECEMBER 9, 1998.

**A. DEFINITIONS:** Terms as used in this document and the revised CC&Rs are defined as follows:

**Taxiway Common Property Dimensions.** The width of the taxiway as platted is 60 ft wide and includes the area between the rear property lines on both sides of the taxiway as the IAHA Taxiway Common Property. See attached sketch drawing on page 4. (*Page 29 of this booklet.*)

**Structural Pavement** is that part of the Taxiway Common Property that is actually paved. The width of the Structural Pavement typically varies from 16 ft to 18 ft.

**Personal Use Area of Taxiway Common Property.** The area between the edge of the Structural Pavement and the rear lot line is the area for personal use by lot owner. The lot owner must install and maintain drainage along the taxiway and keep the area in a reasonably neat and attractive condition for the privilege of personal use. Vegetative growth cannot exceed 18 inches high nor obstruct aircraft nor the vision of the pilot while taxiing.

**Rear Lot Setback.** The rear lot setback is a minimum of 20 ft from the rear lot line and restricts any construction or vegetative growth above 4 ft high and must not interfere with the aircraft or vision of the pilot while taxiing. An exception is made to allow a minimum of 15 ft rear setback when the hangar door faces east or west.

**Undeveloped Lots.** An undeveloped lot is one which has been purchased but construction has not been started nor been approved by the Architectural Committee. An agreement must be made with the Maintenance Committee and the lot owner for

personal use of the Common Property between the Structural Pavement and the rear lot line. This agreement will allow personal use of the area when drainage is installed. The Common Property area and the entire undeveloped lot must be maintained in a neat and attractive manner. Vegetation must be kept under 18 inches high and not obstruct an aircraft nor the vision of a pilot while taxiing. An exception to the 18 inch high restriction is for native trees or shrubs by application to the Board or when the personal use agreement is made with the Maintenance Committee. Dumping or storage of debris is prohibited on an undeveloped lot and the Common Property.

**Association** means the Independence Airpark Home Owners Association.

**Declaration** means this document.

**Block** means any plat of land so designated in the recorded plat of the Independence Airpark.

**The Properties** means all of the property herein described and any additions there to.

**Common Property** means all those areas of land shown as such as platted devoted to the common use of lot owners in the association.

**Lot or Parcel** means any numbered plot of land shown upon the registered subdivision plat of the properties which is not designated as Common Property or a Block.

**Member** means every person who holds membership in the Association.

**Owner** means the record owner, whether one or more persons, of fee simple title to any lot, but does not mean a mortgagee.

**Street** means any road or other thoroughfare shown on the recorded plat.

**Setback** means a minimum distance between a structure and a lot line.

**Airpark** means the Independence Airpark.

**Aeronautics** means the Oregon Aeronautics Division.

## **B. DESCRIPTION OF THE BOUNDARIES OF THE AIR-PARK TO WHICH THE ATTACHED CC&Rs APPLY:**

A general description of the boundaries of the Independence Airpark is that area designated in the City of Independence Ordinance No. 1336 establishing the Residential Single-Family Airpark Overlay Zone: "RSA". The Airpark Overlay Zone includes all property within city limits between Hoffman Road north to city limits, and between the Independence State Airport runway and Stryker Road. Excluding the commercial area between Airport Road and said runway, and the area north of Cadet Taxiway to the city limits. (Independence Airpark boundary on the north excludes the North Park Annex which is within the Airpark Overlay Zone but outside the boundaries of the Independence Airpark.)

### **A more precise description follows:**

Independence Airpark - Phase 1. Located within the city limits of Independence in Polk County, State of Oregon. Beginning at the Initial Corner of this subdivision which is a 2 inch by 36 inch galvanized iron pipe set 6 inches below the ground at a point which is 1369.50 feet East and 1401.84 feet South 0 20 East and 500.0 feet East of the Northwest corner of the Thomas L. Burbank Donation Land Claim No, 43 in Township 8 South, Range 4 West of the Willamette Meridian in Polk County, State of Oregon; thence East 1344.37 feet to an iron pipe in West right-of-way of County Road No. 845; thence South 0 05 45 East 850.00 feet along said right-of-way to an iron pipe; thence South 0 05 15 West 83.00 feet to an iron pipe; thence South 44 54 45 West 42.43 feet to an iron pipe; thence South 89 54 45 West 827.60 feet to an iron pipe; thence North 0 2 West 414.17 feet to an iron pipe; thence West 400.00 feet to an iron pipe; thence North 0 20 West 467.28 feet to the point of beginning. Recorded October 23, 1973.

Added: Independence Airpark - Phase 2. Beginning at the initial corner of this subdivision which is a 2- inch by 36- inch galvanized iron pipe set 6 inches below the surface of the ground at a point marking the most Southerly Southwest boundary corner of Independence Airpark as said subdivision is platted and recorded in Volume 6, Page 49, Polk

County Book of Town Plats, which point is recorded as being 1369.50 feet East 1401.84 feet South 0 20 East and 400.00 East and 414.17 feet South 0 20 East from the Northwest corner of the Thomas T. Burbank Donation Land Claim No. 43 in Township 8 South, Range 4 West of the Willamette Meridian in Polk County, Oregon; thence North 89 54 45 East along the Southerly boundary of said Independence Airpark Subdivision, 827.60 feet; thence North 44 54 45 East 42.43 feet; thence North 98 54 45 East 83.00 feet to a point in the West right-of-way line of County Road No. 845; thence South 0 5 15 East along said right-of-way, 820.00 feet; thence South 89 54 45 West 83.00 feet; thence South 44 5 45 West 42.43 feet; thence South 89 54 45 West 824.10 feet; thence North 0 20 ; West 820.00 feet to the point of beginning and containing 17.674 acres of land, more or less. Recorded December 29, 1978.

Added: Independence Airpark North. Beginning at a point which is 20.75 chains East and 14.16 chains South of the Northwest corner of the Donation Land Claim of Thomas L. Burbank and wife, Notification No. 1524, Claim No. 43 in Township 8 South, Range 4 West of the Willamette Meridian in Polk County, Oregon; thence running East 28.25 chains; thence South 7.08 Chains; thence West 28.25 chains; thence North 7.08 chains to the place of beginning. Recorded May 12, 1992.

Added: Independence Meadows Airpark - Phase 1, located in the NE 1/4 of Section 20 and the NW 1/4 of Section 21, Township 8, South, Range 4 West, Willamette Meridian, City of Independence, Polk County, Oregon, recorded December 5, 1997.

Added: Independence Meadows Airpark - Phase 2, located in the NE 1/4 of Section 20 and the NW 1/4 of Section 21, Township 8, South, Range 4 West, Willamette Meridian, City of Independence, Polk County, Oregon, recorded February 10, 1998.

Added: Independence Meadows Airpark - Phase 3, located in the NE 1/4 of Section 20 and the NW 1/4 of Section 21, Township 8, South, Range 4 West, Willamette Meridian, City of Independence, Polk County, Oregon. This Phase 3 was platted as subdivision #011-0033 on November 27, 1998 and is included in these amended CC&Rs, and recorded on December 9, 1998.

current CC&R document as of 05-29-2018