

**INDEPENDENCE NORTH PARK ANNEX ADDITION  
HOMEOWNERS ASSOCIATION, INC.**

**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF THE  
PLANNED COMMUNITY INDEPENDENCE NORTH PARK  
ANNEX ADDITION**

---

Print Date: October 2014

**Table of Contents**

<b>RECITALS</b> .....	<b>1</b>
<b>ARTICLE I</b> .....	<b>3</b>
<b>DEFINITIONS</b> .....	3
<b>ARTICLE II</b> .....	<b>5</b>
<b>THE ASSOCIATION</b> .....	5
Section 1. <i>MEMBERSHIP</i> : .....	5
Section 2. <i>VOTING RIGHTS</i> : .....	5
<b>Article III</b> .....	<b>5</b>
<b>PROPERTY RIGHTS IN THE COMMON PROPERTIES</b> .....	5
Section 1. <i>MEMBER 'S EASEMENT OF QUIET ENJOYMENT</i> : .....	5
Section 2. <i>TITLE TO COMMON PROPERTIES</i> : .....	5
Section 3. <i>EXTENT OF COMMON PROPERTIES</i> : .....	6
Section 4. <i>MEMBER 'S EASEMENTS OF QUIET ENJOYMENT</i> : .....	6
Section 5. <i>DELEGATION OF USE</i> : .....	6
<b>Article IV</b> .....	<b>7</b>
<b>COVENANT FOR MAINTENANCE ASSESSMENT</b> .....	7
Section 1. <i>ASSESSMENT COVENANT</i> : .....	7
Section 2. <i>PURPOSE OF ASSESSMENTS</i> : .....	7
Section 3. <i>BASIS OF ASSESSMENTS</i> : .....	7
Section 4. <i>SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS</i> : .....	8
Section 5. <i>VOTING AND NOTICES FOR SPECIAL ASSESSMENTS AND CHANGE OF MAXIMUM ASSESSMENT</i> : .....	8
Section 6. <i>DATE OF COMMENCEMENT OF ASSESSMENT</i> : .....	8
Section 7. <i>DUTIES OF ASSOCIATION DIRECTORS</i> : .....	8
Section 8. <i>THE EFFECT OF NONPAYMENT OF ASSESSMENTS; LIEN OF ASSOCIATION MEMBERS</i> : .....	9
Section 9. <i>SUBORDINATION OF THE LIEN TO MORTGAGES</i> : .....	9
Section 10. <i>EXEMPT PROPERTY</i> : .....	9
Section 11. <i>RESERVE ACCOUNT</i> : .....	9
Section 12. <i>MAINTENANCE FUND</i> . .....	10
<b>Article V</b> .....	<b>11</b>
<b>RESTRICTION ON USE OF PROPERTY BY OCCUPANTS</b> .....	11
Section 1. <i>SINGLE FAMILY RESIDENTIAL USE ONLY</i> : .....	11
Section 2. <i>LIVESTOCK AND POULTRY</i> : .....	12
Section 3. <i>INDUSTRIAL AND AVIATION NOISE</i> : .....	12
Section 4. <i>NUISANCES</i> : .....	12
Section 5. <i>SIDEWALK AREAS</i> : .....	12
Section 6. <i>SANITARY CONDITION TO BE MAINTAINED</i> : .....	12
Section 7. <i>MEMBER'S PRIVATE AIRCRAFT ONLY</i> : .....	12
Section 8. <i>VEHICLES</i> : .....	13
Section 9. <i>DURING RESIDENCE CONSTRUCTION</i> : .....	13
Section 10. <i>LIMITATION ON ADDITIONAL PROPERTY AND EASEMENTS</i> : .....	13
<b>Article VI</b> .....	<b>14</b>
<b>RESTRICTIONS ON CONSTRUCTION AND MAINTENANCE</b> .....	14
Section 1. <i>ARCHITECTURAL GUIDELINES</i> : .....	14
Section 2. <i>RESTRICTIONS ON IMPROVEMENTS</i> : .....	14

*Table of Contents*

**ARTICLE VII..... 15**  
**RESERVATION OF EASEMENTS ..... 15**  
    *Section 1. PERPETUAL UTILITY EASEMENTS:..... 15*

**Article VIII ..... 16**  
**MAINTENANCE OBLIGATION OF OWNER ..... 16**  
    *Section 1. VACANT LOTS:..... 16*  
    *Section 2. LANDSCAPE PLANTING:..... 16*  
    *Section 3. REASONABLE NOTICE:..... 16*

**Article IX..... 16**  
**GENERAL PROVISIONS ..... 16**  
    *Section 1. DURATION: ..... 16*  
    *Section 2. AMENDMENT OF DECLARATION:..... 17*  
    *Section 3. NOTICES:..... 17*  
    *Section 4. ENFORCEMENT:..... 17*  
    *Section 5. SEVERABILITY:..... 17*  
    *Section 6. STATE, COUNTY OR MUNICIPAL LAWS & ORDINANCES:..... 17*  
    *Section 7. CONSTRUING CONTEXT OF DECLARATION:..... 18*  
    *Section 8. COVENANTS RUN WITH THE LAND: ..... 18*

***Independence North Park Annex Addition Amended and Restated CC&Rs***

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF  
THE PLANNED COMMUNITY INDEPENDENCE NORTH PARK ANNEX  
ADDITION**

**Amending CC&Rs B265 Page1216**

This Amendment and Restatement to the Declaration of Covenants, Conditions and Restrictions for Independence North Park Annex Addition Home Owners Association ("Amendment") is made this day of October 19, 2014, by the Independence North Park Annex Addition Homeowners Association, Inc. ("Association"), an Oregon nonprofit corporation, pursuant to the approval of the owners.

**RECITALS**

- a) On March 12, 1993, Independence Airpark North Annex' Real Estate Business Trust ("Developer"), recorded as Declaration of Restrictions, Covenants and Conditions of the Planned Community Independence North Park Annex Addition, which document was recorded in the Office of Recorder of Polk County, Oregon. Said Restrictions, Covenants and Conditions applicable to lands contained in the area described on Exhibit A, which is attached hereto and made a part hereof.
- b) WHEREAS, ASSOCIATION desires to subject said property to certain restrictions, covenants, conditions, uses, limitations, exceptions and obligations, all of which shall be for the benefit of such planned community subdivision and its present and subsequent owners as hereinafter specified and to comply with provisions of ORS 94.580 and a certain INDEPENDENCE STATE AIRPORT INGRESS/EGRESS AGREEMENT made with the State of Oregon, Department of Transportation, Aeronautics Division (hereinafter "AERONAUTICS").
- c) On August 24, 2002, Declarant transferred control of the Association to the Owners of the Units.
- d) Pursuant to ORS 94.621, since the DEVELOPER has completed development of all LOTS OR PARCELS and all planned COMMON PROPERTIES prior to the turnover meeting described in ORS 94.609 and 94.616, special rights, and general rights are no longer reserved to the DEVELOPER.
- e) Article IX, Section 2 of the Declaration provides that The ASSOCIATION may amend this DECLARATION and the recorded plat of the PROPERTIES by vote or agreement of owners representing 80 percent of the total votes in NORTH ANNEX.
- f) The Association, as authorized by a majority of the Owners, desires to amend Article I - IX of the Declaration to provide greater clarity, update language, remove outdated sections, remove items related to the developer who at this point has transitioned control and owns no interest within the subdivision.

***Independence North Park Annex Addition Amended and Restated CC&Rs***

- g) In all other respects, all of the terms and conditions of the Declaration shall remain in full force and effect.

***Independence North Park Annex Addition Amended and Restated CC&Rs***

**ARTICLE I  
DEFINITIONS**

- a) "ASSOCIATION" shall mean the Independence North Park Annex Addition Homeowners Association, Inc., an Oregon corporation registered with the Oregon Secretary of State.
- b) "DEVELOPER", previously referred to as the "Declarant", shall mean the Independence Airpark North Annex Real Estate Business Trust, an Oregon domestic business trust registered with the Oregon Secretary of State, and its future successors and assigns. Pursuant to ORS 94.609 and 94.616.
- c) "DECLARATION" shall mean this instrument by which the planned community Independence North Park Annex Addition subdivision is established pursuant to ORS 94.580.
- d) "BLOCK" shall mean any plat of land designated by the term "BLOCK" on any recorded subdivision plat of Independence North Park Annex Addition subdivision.
- e) "THE PROPERTIES" shall mean all of the real property of Independence North Park Annex Addition subdivision herein above described and any additions thereto subject to this DECLARATION or any supplemental declaration under the provisions of Article II hereof.
- f) "COMMON PROPERTIES" shall mean those TAXIWAYS, streets, sidewalks, and other areas of real property shown or declared as such in any recorded subdivision plat of THE PROPERTIES and intended to be devoted to the common use and enjoyment of the owners of THE PROPERTIES.
- g) "LOT OR PARCEL" shall mean the number of plots or parcels of land to be sold and used by owners as residential building sites as shown upon any recorded subdivision plat of THE PROPERTIES, except those which are otherwise designated as COMMON PROPERTIES or as a BLOCK and any additional plots or parcels of land which may be annexed to THE PROPERTIES by the ASSOCIATION in the future.
- h) "MEMBER" shall mean every person or entity that holds membership in the ASSOCIATION by reason of ownership or occupancy of any LOT OR PARCEL of THE PROPERTIES.
- i) "OWNER" shall mean the record owner, whether one or more persons or entities, of fee simple title to an LOT OR PARCEL of THE PROPERTIES.

***Independence North Park Annex Addition Amended and Restated CC&Rs***

- j) "RESERVE ACCOUNT" shall mean the reserve account for replacing the COMMON PROPERTIES are provided by ORS 94.595 and funded by ASSOCIATION annual and reserve assessments.
- k) "STREET" shall mean any road or other thoroughfare shown on the recorded plat of THE PROPERTIES.
- l) "SETBACK" shall mean a minimum distance between a structure and a LOT OR PARCEL line.
- m) "TAXIWAY" shall mean a paved strip for use by aircraft to gain ingress and egress from THE PROPERTIES to Independence State Airport.
- n) "NORTH ANNEX" shall mean the Independence North Park Annex Addition subdivision Phases I and II.
- o) "AERONAUTICS" shall mean the State of Oregon, Department of Transportation, Aeronautics Division.
- p) "FAMILY PET" shall have the meaning as established in association bylaws.

***Independence North Park Annex Addition Amended and Restated CC&Rs***

**ARTICLE II  
THE ASSOCIATION**

Section 1. MEMBERSHIP:

MEMBERS of the ASSOCIATION shall be every owner of a fee or undivided fee simple interest in any LOT OR PARCEL subject to the covenants herein of record, to assessment by the ASSOCIATION and every person who holds a contract purchaser's interest of record in a LOT OR PARCEL of more than one lot. There shall be no other qualifications for membership except as herein stated. Membership shall terminate upon transfer of fee simple title by owner, or the contract purchaser's interest by a contract purchaser, to another person who qualifies as a MEMBER. If an owner sells a lot by a contract or sale, upon recordation thereof, the owner's membership shall terminate and the contract purchaser's membership shall commence.

Section 2. VOTING RIGHTS:

MEMBERS shall be entitled to one (1) vote for each LOT OR PARCEL in which they hold the interest required for membership by Article II, Section 1, herein above. If more than one person holds such interest or interests, not more than one person shall hold membership for each parcel, that person being determined by the interest holders of said LOT OR PARCEL. The vote for such LOT OR PARCEL shall be exercised as the persons holding such interest shall determine between themselves, provided however, that in no event shall more than one vote be cast with respect to each LOT OR PARCEL.

**Article III  
PROPERTY RIGHTS IN THE COMMON PROPERTIES**

Section 1. MEMBER 'S EASEMENT OF QUIET ENJOYMENT:

Subject to the provisions of Section 3 of this Article, every MEMBER shall have a right of easement and quiet enjoyment in and to the COMMON PROPERTIES subject to rules and regulations of the ASSOCIATION; and such easement shall be appurtenant to and shall pass with the title to every LOT OR PARCEL, and upon the recordation of any contract of sale of a LOT OR PARCEL.

Section 2. TITLE TO COMMON PROPERTIES:

Pursuant to ORS 94.728(2), the ASSOCIATION has been granted fee title to all COMMON PROPERTIES and no separate tax or assessment may be levied by any governmental taxing entity against said COMMON PROPERTIES. Pursuant to ORS 94.665, the ASSOCIATION may sell, convey or subject to a security interest any portion of the COMMON PROPERTIES to a municipal corporation or public agency, board or authority, if eighty percent (80%) or more of the votes in the ASSOCIATION are cast in favor of that action. The ASSOCIATION shall treat the



## ***Independence North Park Annex Addition Amended and Restated CC&Rs***

proceeds of any such sale as an asset of the ASSOCIATION. However, the foregoing shall not apply to the granting of easements for public utilities, telecommunications utilities or other public purposes consistent with the intended use of the COMMON PROPERTIES by the owners of LOTS OR PARCELS in NORTH ANNEX, and a sale, transfer or encumbrance may not deprive any LOT OR PARCEL of its right of access and/or support without the written consent of the owner of the LOT OR PARCEL.

### **Section 3. EXTENT OF COMMON PROPERTIES:**

Common properties shall be designated as "Hotel" Taxiway, "Fox-trot" Taxiway, "Echo" Taxiway, "Golf" Taxiway and the BLOCKS, streets and sidewalks as shown on the recorded plat of THE PROPERTIES of the NORTH ANNEX Addition Subdivision. The association may further develop and construct all such common properties, except sidewalks, which shall be the responsibility of each LOT OR PARCEL owner to construct according to applicable building code standards during the construction of the residential structures as required by Article V, Section 5, herein below.

### **Section 4. MEMBER 'S EASEMENTS OF QUIET ENJOYMENT:**

The rights and easements of quiet enjoyment to the COMMON PROPERTIES created hereby shall be subject to the following right of the ASSOCIATION to:

- a) Limit the number of guests or members;
- b) Suspend the quiet enjoyment rights of any MEMBER for any period during which any assessment remains unpaid and for any period not to exceed thirty (30) days and for any infraction of its published rules and regulations;
- c) Limit the maximum weight of MEMBER and guest owned private aircraft which shall be allowed to utilize the COMMON PROPERTIES and taxiways. However, such limits shall be reasonably related to the maximum weight of private aircraft such COMMON PROPERTIES and taxiways were constructed to accommodate without damage, and further, the ASSOCIATION shall have no right to limit either the type, size, value, color or other characteristics of MEMBER owned private aircraft.
- d) Dedicate or transfer all or any part of the COMMON PROPERTIES to any municipal corporation or public agency, board or authority for such uses and purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer, however, shall be effective except pursuant to a vote of the members as provided by Article II, Section 2, herein above.

### **Section 5. DELEGATION OF USE:**

Any MEMBER may delegate his right of quiet enjoyment to the COMMON PROPERTIES, as set forth herein, to the members of his family or to his tenants.

***Independence North Park Annex Addition Amended and Restated CC&Rs***

**Article IV**

**COVENANT FOR MAINTENANCE ASSESSMENT**

Section 1. ASSESSMENT COVENANT:

Each owner of any LOT OR PARCEL, by acceptance of the Deed or Contract Vendee's interest therefor, whether or not it shall be so expressed in any Deed or other conveyance, shall be deemed to covenant and agree to pay to the ASSOCIATION annual assessments and special assessments for capital improvements. Such assessments shall be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and cost of collection thereof, as hereinafter provided shall be a continuing lien upon the property against which each such assessment is made from the date hereinafter set forth. Each such assessment, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall also be a personal obligation of the person who is the owner of such property at the time the assessment became due. Pursuant to ORS 94.723, if a first mortgagee acquires a LOT OR PARCEL by foreclosure, the mortgagee and the subsequent purchaser shall not be liable for any of the common expenses chargeable to the LOT OR PARCEL which became due before the mortgagee or purchaser acquired title to the property.

Section 2. PURPOSE OF ASSESSMENTS:

The assessments levied by the ASSOCIATION shall be used exclusively for the payment of the purpose of improving and maintaining the streets, sidewalks, Taxiways and other capital improvements in the COMMON PROPERTIES located in THE PROPERTIES to which an easement for the use and quiet enjoyment thereof is granted to each MEMBER of the ASSOCIATION and promoting the health, safety, and quiet enjoyment of the residents in THE PROPERTIES. Each LOT AND PARCEL shall have an equal pro-rata liability to the ASSOCIATION for the common expenses and to the enjoyment of any common profits of the ASSOCIATION.

Section 3. BASIS OF ASSESSMENTS:

Unless changed by vote of the membership as hereinafter provided, the maximum Annual Assessment against any LOT OR PARCEL shall be \$100.00 per year. This amount shall be paid to the Reserve Account as specified in Section 11 of this article.

Additional Reserve Assessment as determined to be required by the Directors of the Association, shall be paid into the RESERVE ACCOUNT for future use by the ASSOCIATION in replacement of specified items in the COMMON PROPERTIES as provided in Section 11 of this article herein below.

***Independence North Park Annex Addition Amended and Restated CC&Rs***

Maintenance Assessments, as determined to be required by the Directors of the Association, shall be paid into the Maintenance Fund use by the ASSOCIATION as described in Section 12.

**Section 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS:**

Upon vote of the ASSOCIATION in the manner hereinafter set forth, the ASSOCIATION may levy, in addition to annual assessments, special assessments from time to time for the purpose of defraying in whole, or in part, the cost of construction or reconstruction or expected repair or replacement of a described capital improvement upon the common area of THE PROPERTIES, including necessary fixtures and personal property relating thereto, which were not identified as items in or otherwise adequately provided for by the RESERVE ACCOUNT.

**Section 5. VOTING AND NOTICES FOR SPECIAL ASSESSMENTS AND CHANGE OF MAXIMUM ASSESSMENT:**

Any special assessment or change of maximum annual assessment shall have the assent of two-thirds (2/3rds) of the vote of all members who are present or by proxy at a meeting duly called for that specific purpose, written notice of which shall be sent to all members at least thirty (30) days in advance of the meeting, setting forth the purpose of the meeting.

**Section 6. DATE OF COMMENCEMENT OF ASSESSMENT:**

The annual assessment shall become due and payable on January 1st of each year, or billing date as designated by the Board to meet January 1<sup>st</sup> date.

The amount of initial annual assessment for the first year in which an assessment is to be made for any LOT OR PARCEL, which becomes subject to assessment for the first time, shall be prorated on a calendar-year basis according to the date on which said LOT OR PARCEL first becomes subject to an annual assessment. The due date of any special assessment shall be fixed in a resolution of the Board of Directors authorizing such special assessment.

**Section 7. DUTIES OF ASSOCIATION DIRECTORS:**

The Directors of the ASSOCIATION shall fix the amount of the annual assessment against each LOT OR PARCEL and give the owner subject thereto written notice of such assessment at least thirty (30) days in advance of the due date for payment of such assessment. The Board of Directors of the ASSOCIATION shall have prepared a roster of the lots and parcels subject to assessments with assessments applicable to each lot and parcel and keep such roster in a designated place subject to inspection by any owner.

***Independence North Park Annex Addition Amended and Restated CC&Rs***

The ASSOCIATION shall, upon demand at any time, furnish to any owner liable for an assessment a notice in writing setting forth whether the assessment on such LOT OR PARCEL owned by such owner has been paid or is delinquent.

**Section 8. THE EFFECT OF NONPAYMENT OF ASSESSMENTS; LIEN OF ASSOCIATION MEMBERS:**

If an assessment is not paid on the due date hereinabove set forth, such assessment shall become delinquent and shall bear interest at the legal rate from such due date. Such delinquent assessments together with interest at the legal rate shall constitute a lien upon such LOT OR PARCEL from the date the Board of Directors files of a "Notice of Delinquency" with the County Clerk of Polk County, Oregon, until the lien is released by payment of such sums by the owner of the LOT OR PARCEL to the ASSOCIATION, which shall then file a "Satisfaction of lien".

The ASSOCIATION may bring an action at law to enforce payment of a delinquent assessment against the owner personally obligated to pay the same and/or may enforce such lien in the manner provided by law with respect to a proper lien on real property. In the event a judgment or decree is obtained in favor of the ASSOCIATION, the delinquent owner shall also be liable for the ASSOCIATION's court costs and disbursements, including reasonable attorney fees, may be fixed by the court, such costs, disbursements and attorney fees to be further secured by a lien on the pertinent LOT OR PARCEL. No owner may waive or otherwise escape liability for assessments by non-use of the COMMON PROPERTIES and easements or abandonment of his LOT OR PARCEL.

**Section 9. SUBORDINATION OF THE LIEN TO MORTGAGES:**

The lien of the assessments provided for hereinabove shall be subordinate to the lien of any mortgage or deed of trust; however, sale or transfer of any LOT OR PARCEL shall not extinguish the assessment lien or release such LOT OR PARCEL from liability from future assessments becoming due or from the lien thereof.

**Section 10. EXEMPT PROPERTY:**

All common areas of THE PROPERTIES, and any easement or other interest therein dedicated and accepted by a municipal, county or other local government or authority and devoted to public use, shall be exempt from the assessments, charges and liens created herein above.

**Section 11. RESERVE ACCOUNT:**

- a) Pursuant to ORS 94.595, the Association shall maintain a RESERVE ACCOUNT for replacement of all items of the COMMON PROPERTIES which will normally require replacement, in whole or in part, in more than three

## ***Independence North Park Annex Addition Amended and Restated CC&Rs***

- and less than 30 years. The RESERVE ACCOUNT shall be funded by assessments against the individual LOTS AND PARCELS for maintenance of items for which the reserves are established. The assessments to the RESERVE ACCOUNT shall begin accruing from the date the first lot assessed is conveyed and may be shown as a separate item in the sales contract, however, DEVELOPER may defer payment of the accrued assessment for a lot until the date the lot is conveyed.
- b) The RESERVE ACCOUNT shall be maintained in the name of the ASSOCIATION, which shall be responsible for administering the account and making periodic payments into it. The amounts assessed shall take into account the estimated remaining life of the items for which the RESERVE ACCOUNT is created and the current replacement cost of those items, and the ASSOCIATION shall adjust the amount of the Reserve Assessment payments at regular intervals to reflect changes in current replacement costs over time.
  - c) The RESERVE ACCOUNT may be used only for replacement of items in the COMMON PROPERTIES and is to be kept separate from assessments for maintenance. However, the ASSOCIATION Board of Directors may borrow funds from the RESERVE ACCOUNT to meet high seasonal demands on the regular operating funds or to meet other temporary expenses; however, funds borrowed to meet temporary expenses shall be repaid from special assessments or other maintenance fees. Nothing herein shall prohibit the prudent investment of RESERVE ACCOUNT funds subject to any constraints imposed by this DECLARATION or the BYLAWS or rules of the ASSOCIATION.
  - d) Following the second year after the ASSOCIATION has assumed administrative responsibility for NORTH ANNEX pursuant to ORS 94.616, if the owners of LOTS OR PARCELS representing seventy-five percent (75%) of the votes of NORTH ANNEX agree to the action, they may vote to increase, reduce or eliminate future assessments for the RESERVE ACCOUNT, however, assessments paid into the RESERVE ACCOUNT are the property of the ASSOCIATION and are not refundable to sellers or owners of LOTS OR PARCELS, but said sellers or owners may treat their outstanding share of the RESERVE ACCOUNT as a separate item in the sales contract.

### **Section 12. MAINTENANCE FUND.**

The association shall keep all funds received by it as maintenance assessments, together with any other funds received by it pursuant to these covenants which are by the terms of this Declaration to be deposited in the Maintenance Fund, separate and apart from its other funds, in an account to be known as the "Maintenance Fund." The Association

## ***Independence North Park Annex Addition Amended and Restated CC&Rs***

shall use such funds exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Property and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the common areas and of the units situated upon the Property, including but not limited to:

- a) Payment of the cost of maintaining the common areas and the lighting, the entrance and other signs and other facilities designed to serve the general benefit of the Owners.
- b) Payment of taxes assessed against the common areas and any improvements thereon.
- c) Payment of the cost of other services which the Association deems to be of general benefit to the Owners, including but not limited to accounting, legal and secretarial services.
- d) In the event any condemnation of a portion of the common areas should result in a surplus in the Maintenance Fund not needed for payment in the other items described in this section, such surplus shall be divided by the number of units of the Property and such amounts paid equally to the holder of any first mortgage or deed of trust on each unit, or if none, to the Owner of the unit.

### **Article V**

#### **RESTRICTION ON USE OF PROPERTY BY OCCUPANTS**

##### **Section 1. SINGLE FAMILY RESIDENTIAL USE ONLY:**

No LOT OR PARCEL shall be used except for a building site for single family residential purposes. An owner may combine a LOT OR PARCEL with another as a building site, but no owner may divide a LOT OR PARCEL. Motorhomes, house trailers and other off-site manufactured housing are not permitted to be used as permanent residences are not permitted. Outbuildings shall be permitted and may include a garage and/or aircraft hangar building as hereinafter provided. The construction and appearance of a garage and/or aircraft hangar building shall be equal to the exterior construction and conform to the appearance of the residential dwelling. The aircraft hangar building on lots and parcels in THE PROPERTIES shall be located as shown in the duly recorded plat thereof.

In the event that an improvement or structure on a LOT OR PARCEL is damaged or destroyed, the owner may exercise the discretion to either repair or restore the improvement or structure or demolish and remove it for re-construction of the residence or resale of the LOT OR PARCEL to a new owner, but in no event shall an owner allow an improvement or structure to remain in a damaged or destroyed condition for a period longer than is necessary to take one course of action or the other.

***Independence North Park Annex Addition Amended and Restated CC&Rs***

**Section 2. LIVESTOCK AND POULTRY:**

No farm animals, livestock, poultry or other animals of any kind shall be raised, bred, kept or maintained on any LOT OR PARCEL in THE PROPERTIES for any purposes, with the exception of FAMILY PETS. No family pet animals shall be kept which may or do become an annoyance, nuisance or menace to the neighborhood, except as may be determined acceptable by the ASSOCIATION. At no time shall any animals be allowed on the COMMON PROPERTIES, except when accompanied by an owner or other caretaker and properly restrained.

**Section 3. INDUSTRIAL AND AVIATION NOISE:**

Individuals purchasing lots and parcels in THE PROPERTIES and becoming ASSOCIATION members forever waive all rights to protest against reasonable industrial and/or aviation noise resulting from operations and activities conducted under the supervision and approval of AERONAUTICS in relation to the operation of the Independence State Airport.

**Section 4. NUISANCES:**

No noxious or offensive activity shall be carried on upon any LOT OR PARCEL or in any residence, garage, aircraft hangar or other building on any LOT OR PARCEL in THE PROPERTIES, nor shall anything be done thereon which may be or become an annoyance or nuisance to other owners of lots and parcels in THE PROPERTIES or detract from the value of the NORTH ANNEX as a residential neighborhood.

**Section 5. SIDEWALK AREAS:**

It shall be the duty of the owner of any LOT OR PARCEL or the occupant thereof to construct and maintain in proper condition a sidewalk and surrounding areas between the property line and the adjoining street or TAXIWAY.

**Section 6. SANITARY CONDITION TO BE MAINTAINED:**

Trash, garbage, rubbish, yard debris, and other waste shall not be kept on an LOT OR PARCEL, except temporarily on the day of collection in sanitary containers awaiting collection and when screened from public view. LOT OR PARCEL shall not be used or maintained as a dumping or storage ground for trash, garbage, waste or debris.

**Section 7. MEMBER'S PRIVATE AIRCRAFT ONLY:**

No LOT OR PARCEL or any structure thereon or adjacent to THE PROPERTIES shall be used as a base or site for maintaining, repairing or selling aircraft or

***Independence North Park Annex Addition Amended and Restated CC&Rs***

aviation fuel to the public, individuals or to members of any Homeowners' ASSOCIATION. Owners of any LOT OR PARCEL in THE PROPERTIES may construct or rebuild antique or experimental, home-built, fixed wing and rotary wing private aircraft and to perform routine maintenance on their own private aircraft. Flight instruction shall not be conducted, and no aircraft is to be allowed to be used for flight instruction, on or from a LOT OR PARCEL in THE PROPERTIES by owners, lessees, or members of any Homeowners' ASSOCIATION without the express written consent of AERONAUTICS.

**Section 8. VEHICLES:**

Boats, trailers, mobile or motorhomes, campers, buses, disabled vehicles or other similar vehicles shall not be parked, left, kept or stored on any street, driveway or on any portion of the front yard setback. Said vehicles or other property should be parked or stored in a garage, carport or other allowable hangar, structure or accessory building.

Boats, trailers, mobile or motorhomes, campers, buses, automobiles, or other similar vehicles shall not ever be present on the TAXIWAYS. TAXIWAYS shall be kept clear of all vehicles, except those vehicles determined to be necessary for the designed use of a TAXIWAY and maintenance thereof, and only for a reasonable period of time and as allowed by agreement with AERONAUTICS.

**Section 9. DURING RESIDENCE CONSTRUCTION:**

Residences shall not be occupied while in the course of original construction, until it complies with all requirements as to area and with all other conditions and restrictions thereto or during reconstruction after substantial damage or destruction. The construction or reconstruction of any building or structure shall be prosecuted with reasonable diligence continuously from the time of commencement until full completed.

**Section 10. LIMITATION ON ADDITIONAL PROPERTY AND EASEMENTS:**

Neither an owner of a LOT OR PARCEL or any fee interest therein nor the ASSOCIATION or any other person or entity may either annex additional property to NORTH ANNEX or grant an easement across any LOT OR PARCEL in THE PROPERTIES or an easement across any TAXIWAYS, streets, sidewalks or other common areas of the COMMON PROPERTIES for the purpose of gaining access to and/or annexing addition property to THE PROPERTIES of NORTH ANNEX Phases I and II, unless specifically approved in writing by the ASSOCIATION and AERONAUTICS.



***Independence North Park Annex Addition Amended and Restated CC&Rs***

**Article VI**

**RESTRICTIONS ON CONSTRUCTION AND MAINTENANCE**

**Section 1. ARCHITECTURAL GUIDELINES:**

- a) The purpose of the restrictions on construction and maintenance contained in this article of the DECLARATION is to create a pleasant, homogeneous residential community where each LOT OR PARCEL maintains individuality while blending comfortably with its neighbors.
- b) Residences may be of any regionally accepted architectural style, such as Pacific Northwestern, Ranch, Southwestern, Cape Cod, etc., if constructed of the type of materials, color, trim or landscaping commonly used in first class execution of such style.
- c) Scale and proportion of the residence, garage and hangar structures are to be appropriate and compatible with the neighborhood.
- d) Outside paint and siding materials may include white, subdued creamed or greyed primary colors or pastels, neutrals or muted earth tones. Siding materials may be natural wood, simulated wood, brick, stone, or stucco. Roofing materials may include manufactured roofing, tile, shake, shingle or architectural metal, which complement the architectural style being used.
- e) Front yard landscaping is to augment and unify the character of the neighborhood using trees, shrubs and lawn. New plantings shall not inhibit the growth and development of the existing street trees.
- f) Heating and cooling units, and other devices commonly placed in the yard should receive special consideration to provide visual screening and noise attenuation to the greatest extent possible. Solar heat collector systems and high intensity lighting of any kind shall only be installed on the rear yard side of the residence, or on the hangar and other back yard structures, and in such a manner as to prevent an unreasonable reflection of light on other lots and parcels in THE PROPERTIES.

**Section 2. RESTRICTIONS ON IMPROVEMENTS:**

The following restrictions are applicable to all construction, maintenance and improvements on the properties:

- a) No structure, building or other facility shall be constructed which violates the Airport Imaginary Surfaces as defined in Part 77 of the Federal Air Regulations. In addition, all construction plans shall be submitted for

## ***Independence North Park Annex Addition Amended and Restated CC&Rs***

- approval to the Federal Aviation Administration (hereinafter "FAA") on FAA form 7460-1 "Notice of Proposed Construction or Alteration" via AERONAUTICS, as prescribed in Section 77.17 or the Federal Air Regulations.
- b) Residences, garages and hangars erected on THE PROPERTIES shall have a minimum set back from the front street of twenty (20) feet. Each dwelling house, garage or other outbuilding shall have a setback of not less than five (5) feet from each interior side property line. All buildings, fences, shrubs or other obstructions shall be a minimum twenty (20) feet away from any taxiway.
  - c) Setbacks from Streets and Taxiways as used herein are determined as being measured from the property line, and are not measured from the edge of the pavement or sidewalks or the center of the pavement or sidewalk.

### **ARTICLE VII RESERVATION OF EASEMENTS**

#### **Section 1. PERPETUAL UTILITY EASEMENTS:**

ASSOCIATION, and also reserve unto its self and its successors and assigns, perpetual easements over, under and across all COMMON PROPERTIES and under, over and across the designated strips of land running along and interior to the side lines and rear lines of each LOT OR PARCEL and each BLOCK in THE PROPERTIES as set forth and recorded in the plat of NORTH ANNEX for the purpose of erecting, constructing, maintaining and operating water systems, drainage systems, poles, pipes, wires, cables, anchors and conduits for lighting, power, telephone and any other method of conducting and performing any public or quasi-public utility service or function over, under and across the surface of such COMMON PROPERTIES and designated strips of land. Further, the ASSOCIATION reserves the right to cut and/or trim any tree, shrub or other growth on such COMMON PROPERTIES and/or easements as reserved herein, which may interfere with or menace the safe taxiing of aircraft or the construction, maintenance or operation of any utilities.

***Independence North Park Annex Addition Amended and Restated CC&Rs***

**Article VIII**

**MAINTENANCE OBLIGATION OF OWNER**

Section 1. VACANT LOTS:

It is the intent of these restrictions that vacant lots be maintained in a reasonable condition. Therefore, the ASSOCIATION shall have the right at all times to enter upon any LOT OR PARCEL that is vacant and unkempt by the owner after reasonable notice to the owner, to remove debris, weeds or other waste materials and to trim, cut back, remove if damaged or dead, cultivate, eradicate and/or maintain natural growth or other improvements and to charge the expense thereof to the owner as an assessment. The ASSOCIATION shall have the same rights with respect to such assessment as set forth in Article IV pertaining to annual assessments, reserve assessments and special assessments.

Section 2. LANDSCAPE PLANTING:

In the event the ASSOCIATION has permitted an owner to plant a portion of the common areas designated for all members use and quiet enjoyment abutting the owner's property in accordance with the owner's landscaping design, the owner shall thence forth be obligated to maintain such planting at his own expense. Failure of the owner to maintain the landscaping of such portion of the COMMON PROPERTIES shall give the ASSOCIATION the right, upon reasonable notice to the owner, to maintain such areas of the COMMON PROPERTIES and to charge the expense thereof to the owner as an assessment to be collected in the same manner as provided by Article IV.

Section 3. REASONABLE NOTICE:

"Reasonable notice", as that term is used in this article, shall mean mailing of notice by certified mail to the last known address of the owner shown on the books of the ASSOCIATION not less than ten (10) days before entry on such owner's property is made or maintenance of such is undertaken pursuant to Section 2 of this article.

**Article IX**

**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 or the owner of any LOT OR PARCEL subject to this DECLARATION, their respective legal representatives, heirs, successors and assigns for a period of twenty-five (25) years from the date this DECLARATION is recorded. After such term, such covenants and restrictions shall be automatically extended for successive periods of ten (10) year each, unless this DECLARATION is amended pursuant to the provisions of ORS 94.590 as set forth in Section 2 of this article herein below.

## ***Independence North Park Annex Addition Amended and Restated CC&Rs***

### **Section 2. AMENDMENT OF DECLARATION:**

The ASSOCIATION may amend this DECLARATION and the recorded plat of the PROPERTIES by vote or agreement of owners representing 80 percent of the total votes in NORTH ANNEX. Any amendment shall be executed, recorded and certified on behalf of the ASSOCIATION by the President and the Secretary of the Board of Directors; it shall be properly recorded with the County Clerk of Polk County, Oregon; and such amendment shall be effective only upon recordation.

In no event shall an amendment of this DECLARATION by the ASSOCIATION increase the number of LOTS OR PARCELS or change the boundaries of any lot or parcel or any uses to which any lot or parcel is restricted, unless the owners of the affected LOTS OR PARCELS unanimously consent to the amendment and AERONAUTICS give their written approval. Pursuant to ORS 94.590 (4), a person may not bring an action to challenge the validity of an amendment adopted pursuant to the above procedure later than one year after the date on which the amendment is recorded.

### **Section 3. NOTICES:**

Unless otherwise provided herein, any notice required to be sent to any MEMBER or owner under the provisions of the DECLARATION shall be deemed to have been properly sent when mailed by First Class Mail, postpaid, to the last known address of the person who appears as MEMBER or owner on the records of the ASSOCIATION at the time of such mailing.

### **Section 4. 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 members or individual owners to enforce any covenant or restriction contained herein shall in no way be deemed a waiver of the rights to do so thereafter at any time.

### **Section 5. SEVERABILITY:**

Invalidation of any one of these covenants or restrictions by judgment or court decree shall in no way affect any other provision of this DECLARATION; the balance thereof remaining in full force and effect.

### **Section 6. STATE, COUNTY OR MUNICIPAL LAWS & ORDINANCES:**

Police, fire, AERONAUTICS or other public safety ordinances of the State of Oregon or any county or municipal government or authority having jurisdiction over any portion

***Independence North Park Annex Addition Amended and Restated CC&Rs***

of THE PROPERTIES described herein shall govern where more restrictive than these covenants and restrictions.

**Section 7. CONSTRUING CONTEXT OF DECLARATION:**

In construing this DECLARATION and where the context so requires, the singular pronoun may be taken to mean and include the plural and the masculine may be taken to mean the feminine and the neuter.

**Section 8. COVENANTS RUN WITH THE LAND:**

This DECLARATION shall run with the land and shall be binding upon and inure to the benefit of the DEVELOPER and the OWNERS of the property and their respective successors and assignees.

IN WITNESS WHEREOF,

The Board of Directors of the Independence North Park Annex Addition Homeowners Association, and Association owners have executed these Amended and Restated Declaration of Covenants, Conditions and Restrictions For Independence North Park Annex Addition and do hereby certify that the foregoing changes, additions, and deletions of Article I-Article IX were duly adopted by more than eighty percent (80%) of the Owners at the Special Association Meeting held on October 19, 2014.

Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_

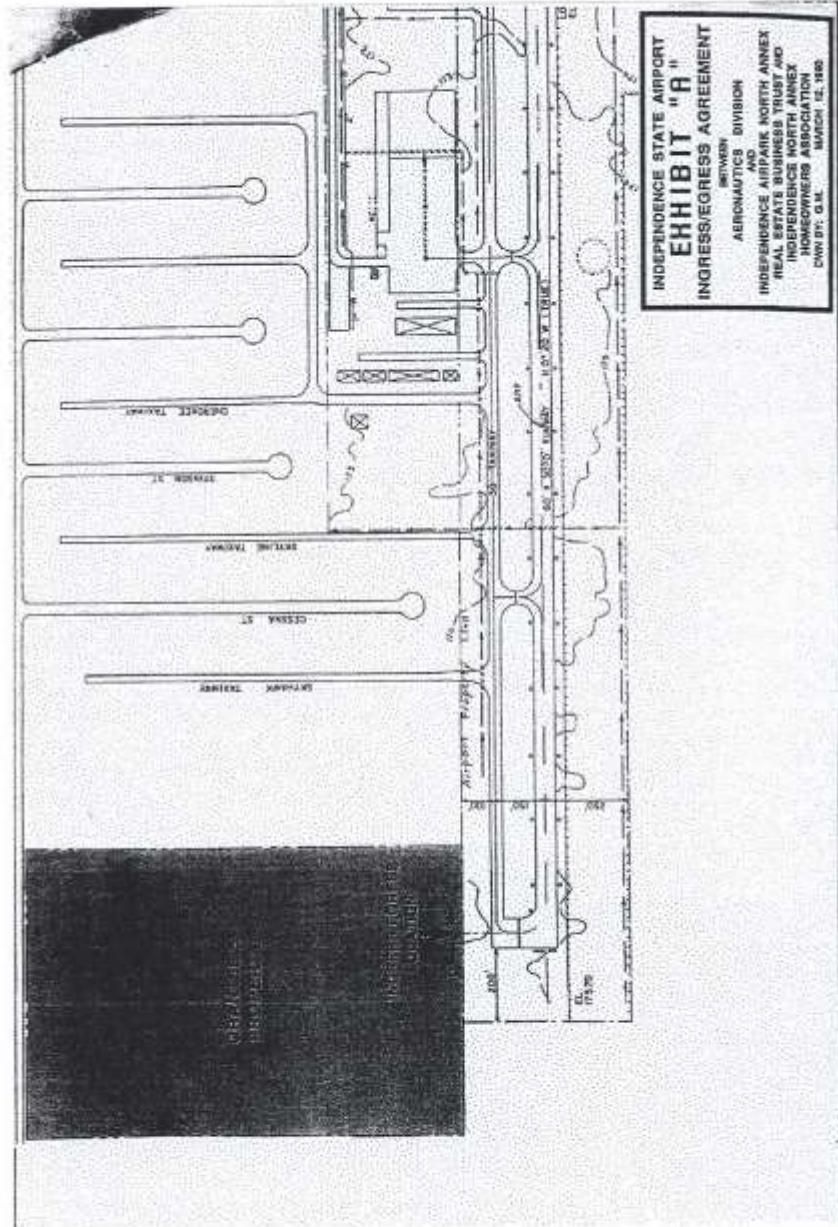
Signature \_\_\_\_\_ Date \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

*Independence North Park Annex Addition Amended and Restated CC&Rs*

EXHIBIT A



Independence North Park Annex Addition Amended and Restated CC&Rs

EXHIBIT B

