

**AMENDMENT AND RESTATEMENT
OF THE
DECLARATIONS OF THE OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF THE ERIE AIR PARK SUBDIVISION**

KNOW ALL MEN BY THESE PRESENTS, the undersigned constituting at least fifty one percent (51%) of the Lot Owners within the boundaries of the Erie Air Park Subdivision, as set forth in Exhibit A attached hereto, based on one vote for each lot owner, for the benefit of themselves and all persons claiming or to claim any part of the above-described real property, by, through or under them, hereby declare and agree that the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ERIE AIR PARK SUBDIVISION, recorded in Book 831 Rec. Number 1753140, amended at Book 1404 Rec. 02352630 is re-recorded herewith and subject to all duly recorded easements in the office of the County Clerk and Recorder of Weld County shall be and that said document and all previous covenants is hereby AMENDED, RESTATED and SUPERSEDED in the following manner, to wit:

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made this 9th day of May, 1978, by Erie Air Park Company, a Colorado Joint Venture, Reynolds Properties, a Business Trust and Custom Developers, a Colorado Partnership, hereinafter collectively referred to as "Declarant".

WITNESSETH:

WEREAS, Declarant is the owner of certain real property situated in the County of Weld, State of Colorado, as described on Exhibit A, described as Erie Air Park Subdivision attached hereto and by this reference incorporated herein and make a part thereof; and **WEREAS**, the Declarant is desirous of maintaining the highest value of said real property and creating a premium residential subdivision offering general aviation activities;

NOW, THEREFORE, Declarant hereby declares that all of the real property described on Exhibit A hereto shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the present and future value of the properties located in the subdivision, and which shall run with said real Property and be binding on all parties having any right, title or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

Section 1. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, and also including contract purchasers, even though they are a not fee simple title holders, but excluding those having an interest merely as security for performance obligations. Lot owners are members of the Erie Air Park Homeowners Association.

Section 2. "Property" or "Properties" shall mean and refer to that certain real Property described on Exhibit A hereto and referred to as the Erie Air Park Subdivision.

Section 3. "Lot" shall mean and refer to any plot of land shown upon the official subdivision map of the Properties, excluding roads, streets, etc.

Section 4. "Declarant" shall mean and refer to the Erie Air Park Company and its successors and assigns.

Section 5. "Committee" shall refer to the Erie Air Park Architectural Control Committee made up of 3 Homeowners and 1 alternate, selected by the Erie Air Park Homeowners Association Board Of Directors, to serve at the discretion of the Board. The members of the committee shall receive no compensation for their services.

**ARTICLE II
ARCHITECTURAL CONTROL**

Section 1. Review of Plans: No structure shall be commenced, erected, placed, moved on to or permitted to remain on any Lot, nor shall any existing structure upon any Lot be altered in any way which materially changes the exterior appearance thereof, nor shall any new use be commenced on any Lot, unless plans and specifications (including a description of any proposed new use) thereof shall have been submitted to and approved in writing by the Committee and have the proper Weld County and City permit (s). The issuance of a building permit or license which may not be in accordance with these protective covenants shall not prevent the Committee from enforcing these provisions. Such plans and specifications shall be in such form and shall contain such information as may be required by the Committee, but in any event shall include (1) a site plan of the Lot showing the nature, exterior color scheme, kind, shape, height, materials and location with respect to the particular Lot (including proposed front, rear and side set-backs and free spaces, if any are proposed) of all structures, the thereof with reference to structures on adjoining portions of the property; (2) a grading plan for the particular lot; (3) and a set of working plans.

The Committee shall have the right to disapprove any plans and specifications submitted hereunder because of any of the following:

- (a) failure to comply with any of the Erie Air Park Restrictions contained herein;
- (b) failure to include information in such plans and specifications as may have been previously requested;
- (c) objection to the design, appearance, materials or value of any proposed structure;
- (d) incompatibility of any proposed structure or use with existing structures or uses upon other Lots in the vicinity;
- (e) objection to the location of any structure upon any Lot or with reference to other Lots in the vicinity;
- (f) objection to the grading plan for any Lot;
- (g) objection to the color scheme, finish, proportions, style of architecture, height, bulk or appearances of any proposed structure;
- (h) any other matter which, in the judgment of the Committee, would render the proposed structure, structures, or uses inharmonious with the general plan of development and improvement of the Property or with structures or uses located upon other Lots in the vicinity.

Should the Committee fail to approve or disapprove the plans and specifications submitted to it by the Owner of the Lot in the Properties within thirty (30) days after written request thereof, then such approval shall not be required, provided, however, that no building or other structure which violates any of the Covenants, Conditions or Restrictions contained herein shall be erected or be allowed to remain on any Lot.

In any case where the Committee shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified upon specific conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any case the Committee shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval. A request for a waiver or exception of any of the following current Covenants, Conditions and Restrictions may be approved on an individual basis by a majority vote of the Committee and the Erie Air Park Homeowners Association Board of Directors.

Section 2. Except as hereinafter provided, the affirmative vote of a majority of the members of the Committee shall be required in order to adopt or promulgate any rule or regulation, or to make any findings, determinations, ruling or order, or to issue any permit, authorization or approval pursuant to directives or authorizations contained herein. Any disapproval or approval based upon specific conditions by the Committee shall be final and binding, provided, however, that in any such case, any applicant for such approval, permit or authorization may, within ten (10) days after receipt of notice of any such adverse decision, file a written request to have the matter in question reviewed by the entire Committee and the Erie Air Park Homeowners Association Board of Directors. Thereafter, the decision of a majority of the members of the Committee and the Erie Air Park Homeowners Association Board of Directors with respect to such matter shall be binding and final. Neither the Committee, Erie Air Park Homeowners Association Board of Directors or any of its members shall be liable in damages to any person submitting requests for approval or to any Owner within the Properties by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove with regard to such request.

ARTICLE III COMMON SCHEME USE RESTRICTIONS

The following restrictions are imposed as a common scheme upon and for the benefit of the Properties.

Section 1. Residential Use: No Lot or Lots within the Properties shall be used for other than single family residential purposes. There shall not exist on any Lot as shown on the plat at any time more than one residence. A Lot may not be used for any storage until a residency has been established. No commercial, business or trade operation shall be permitted except that which qualifies under the Erie Zoning Regulations.

Section 2. Building Standards: All structures shall conform to the current edition of the Uniform Building Code published by the International Conference of Building Officials as a guide for sound construction; furthermore, all buildings shall conform to current editions of the National Electric and National Plumbing Codes. All residential structures, shall be of new construction.

Section 3. Building Height: The maximum building height shall be 28 feet on runway abutting Lots; all other Lots shall be restricted to a maximum of 2 story structures. Building heights shall be considered as the vertical distance from the average finished ground level of the building to the highest point of the structure directly above said ground level. The designated maximum building height requirements may be waived by the Committee when in its opinion such structures relate to sound architectural planning and land use and conform to the overall design and pattern of the development. No decision by the Committee shall violate FAA standards.

Section 4. Dwelling (Quality and Size): The minimum living area in the main structure, exclusive of open porches, basements, finished or unfinished, and attached garages and hangars shall be as follows: single level 1800 square feet; multilevel 2400 square feet. The Property must include an attached two-car garage of minimum floor area of 400 square feet.

Section 5. Time for Construction: Upon the approval by the Committee of any plans and specifications submitted to it, the person who submitted the same shall proceed diligently with the construction of said improvements, obtaining a building permit in six (6) months, and the same shall be completed and ready for occupancy or use with a period of one (1) year time from the date of obtaining a building permit. This period may be extended as may be deemed reasonable by the Committee if extension is made necessary by reason of inclement weather, inability to obtain materials, strikes, acts of God, etc.

Section 6. Occupancy of Structure: No structure shall be occupied or used for the purpose for which it was designed or built until the same shall be approved by the County Building Inspector or such other official designated by the town of Erie. No structure erected upon any Lot shall be occupied in any manner while in the course of construction nor at any time prior to its being fully completed, as herein required.

Section 7. Building Exterior: The exterior portions of all structures shall be constructed of or finished with a manufactured finished surface material, natural stone, paint or stain. All exterior surfaces shall be maintained in a manner and with such frequency as is consistent with good Property management.

Section 8. Off-Street Parking: Off-street parking space for at least two (2) vehicles outside of the garage described in Section 4, above, shall be required for each residence.

Section 9. Water and Sewage Disposal: Any residence constructed on any Lot shall comply with the requirements of the Colorado State Health Department, Colorado Water Pollution Control Commission and the Colorado State Engineer with respect to water and sewage disposal.

Section 10. Landscaping: All Lots, whether vacant or occupied by a residence, shall be kept free of accumulations of weeds, brush, trash or other materials which may constitute a fire hazard or render a Lot unsightly, provided, however, that this shall not prevent Owners from storing firewood in neat stacks on their Lots. Under no circumstances shall the Owner of any Lot or parcel of land disturb the natural soil or grasses unless the Owner immediately thereafter constructs upon, paves, gravels or plants upon such area. Notwithstanding the foregoing, all un-irrigated portions of any Lot shall be planted or seeded with natural grasses; one or more of the following type or types of grasses are recommended: Fairway Wheatgrass, Crested Wheatgrass, Blue Gramma Grass or Buffalo Grass. Ground may be cultivated for gardening. Xeriscaping is recommended. Landscaping which does not obstruct any easements is recommended.

Section 11. Unnatural Drainage: Under no circumstances shall any Owner of any Lot or land parcel deliberately alter the topographic conditions of his Lot or land parcel in any way that would permit additional quantities of water from any source to flow from his Property onto any other Property or public right-of-way. The elevation of a Lot shall not be changed so as to materially affect the surface elevation or grade of the surrounding Lots. No rock, gravel or clay shall be excavated or removed from any Property for commercial purposes.

Section 12. Temporary Residence: No structure of temporary character, no trailer, converted trailer, mobile home, tent or accessory building shall be used on any Lot as a residence, temporarily or permanently. This is not to prohibit the use of motor homes or trailers by guests of the homeowners on a temporary basis. Any period of time extending beyond thirty (30) days must be approved by the Erie Air Park Homeowners Association Board of Directors.

Section 13. Automobiles and Other Vehicles or Machinery: No inoperative, wrecked, abandoned, dismantled or junked automobiles, aircraft, other vehicles or machinery shall be placed or remain on any Lot for more than seventy-two (72) total hours unless stored or parked in a garage or hangar or removed from public view behind a Committee approved fence or wall. However, this covenant shall not be applicable to equipment being used in construction of residence upon a Lot.

Section 14. Nuisance: Nothing shall be done or permitted on the Properties which may be or become an annoyance or nuisance to residents of the Properties. No activity, commercial business or trade that is noxious, dangerous or offensive shall be carried on or upon any Lot. No Lot shall be used in whole or in part for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material emit foul or obnoxious odors, cause any noise that disturbs the peace, quiet, comfort, or serenity of the occupants of surrounding Property, excluding normal airport activity.

Section 15. Refuse and Rubbish: Rubbish, garbage, or other waste shall be kept and disposed of in a sanitary manner. No Lot or easement shall be used or maintained as a dumping ground for rubbish. All containers or other refuse shall be kept in a clean, sanitary condition and shall be fenced or walled in to conceal them from the view of neighboring Lots, roads, or streets. Plans for all enclosures of this nature must be approved by the Committee prior to construction. Outdoor burning of trash shall not be conducted at any time, unless by Special Permit issued by the Colorado State Health Department and the Colorado Air Pollution Control Commission.

Section 16. Walls and Fences: No wall or fence of any height shall be constructed on any Lot until after the height, type, design, and approximate location thereof shall have been approved in writing by the Committee. The heights or elevations of any wall shall be measured from the existing elevations of the Property at or along the applicable points or lines. Any questions as to such height may be completely determined by the Committee according to FAA regulations, specifically, Federal Air Regulations, FAR: Part 77, "Objects Affecting Navigable Airspace", and line of site requirements.

Section 17. Tanks, etc: No elevated tanks of any kind shall be erected, placed or permitted on any Lot, provided that nothing herein shall prevent the placing of water solar tanks and other water system apparatus on the Properties. Any tanks for use in connection with any residence constructed on such premises must be buried or walled sufficiently to conceal them from the view of neighboring Lots, roads, or streets. Plans for all enclosures of this nature must be approved by the Committee prior to construction.

Section 18. Signs: No sign of any character shall be displayed or placed upon any of the Lots in the Properties except one flat-mounted, unanimated, non-flashing sign no more than 2'x3' advertising the Property for sale, or containing house numbers or occupant's names, or advertising the Property during any construction and sales periods. All Signs are subject to the approval of the Committee.

Section 19. Subdivision of Lots: None of the lots shall at any time be divided, subdivided or re-subdivided unless said division, subdivision or re-subdivision is permitted specifically by the Committee. In the event of said division, all property there under shall be subject to all other provisions hereof.

Section 20. Livestock and Poultry: No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that total of three household pets may be kept and bred provided that they are not kept, bred or maintained for commercial purposes. Pets will be on a leash or under Owner control while off Owner's Property.

Section 21. Commercial Vehicles: No commercial vehicles shall be stored or parked on any Lot, except in closed garage or hangar, nor parked on any road or access-way except when engaged in transportation to or from a residential dwelling. No more than one commercial vehicle can be parked overnight. For the purpose of these covenants a commercial vehicle is defined as one having commercial plates, or truck class over 1-1/2 ton.

Section 22. Fires: No open fire of any kind except with Erie City permit shall be permitted on the Properties, except within a metal or pottery cooking, barbecuing or brazing device or within a masonry fireplace, barbecue or fire pit, provided that the construction and use of any masonry fireplace shall require written approval of the Committee.

Section 23. Antennas: All television antennas must be enclosed within a dwelling; none may be mounted on a roof. Amateur and citizen band radio antennas or satellite dishes may be erected outside a dwelling so long as they are not attached to the roof of a dwelling and so long as they do not rise vertically more than 28 feet from the ground upon which they are based.

Section 24. Taxiway Easements: No structure, planting or other material shall be placed or permitted to remain within or abutting these easements which may interfere with the passage of aircraft over said easements.

ARTICLE IV GENERAL PROVISIONS

Section 1. Enforcement: The Town of Erie, the Erie Air Park Homeowners Association Board of Directors as well as any Lot Owner shall have the right to enforce, by a proceeding at law or in equity, all Covenants, Conditions, and Restrictions now or hereafter imposed by the provisions of this Declaration. Failure by the Town to enforce any Covenant, Condition or Restriction herein contained shall in no event be deemed a waiver of the right to do so by any Lot Owner, Erie Air Park Homeowners Association or thereafter by the Town. The Lot Owners and the Erie Air Park Homeowners Association Board of Directors agree that no civil action can be taken against the other for any action arising directly or indirectly from the terms of these Covenants, Conditions and Restrictions, that the parties will submit any such matters to arbitration under the following terms and conditions.

1. If any controversy or dispute arises under, out of, or in relation to any provisions hereof which cannot be settled by the parties within fifteen (15) days after same shall arise, either party, within thirty (30) days of the expiration of the foregoing fifteen (15) day

period, may submit such controversy or dispute for arbitration. Such arbitration shall be before one arbitrator; the arbitrator shall determine the controversy in accordance with the laws of the State of Colorado as applied to the facts found by him/her.

The parties shall mutually appoint an arbitrator who shall have had at least 5 years of experience in the State of Colorado as a legal arbitrator. Should they fail to agree on an arbitrator then he/she shall be appointed by a recognized arbitrator group then located in the Denver Metro area.

2. Arbitration shall have the same standings as a judicial procedure and shall be conducted pursuant to the Colorado Rules of Civil Procedure.

3. In the event of any dispute between the parties, until such dispute is resolved, whether by agreement or arbitration, neither party shall undertake any action with respect to any matter which is the subject of such dispute.

4. The arbitrators shall have the power to issue any award, judgment, decree or order of relief that a court of law or equity could issue under Colorado law, including but not limited to money damages, specific performance, or injunctive relief. The arbitrators shall render their decision in writing and shall specifically cite the statutes and precedents applied when reaching their decision. Any award, judgment, decree or order, and the findings of the arbitrators shall be binding on the parties. This agreement to arbitrate shall be self-executing without the necessity of filing any action in any court and shall be specifically enforceable under the prevailing arbitration law.

5. Appeal to the court may be taken pursuant to C.R.S. 13-22-221. At the request of a Lot Owner(s) or at the discretion of the Erie Air Park Homeowners Association Board of Directors, the Board shall have the authority to notify a Lot Owner of a covenant violation by certified return receipt letter. If the remedy is not accomplished in a reasonable time, the Board may choose to bring action in arbitration as set forth in Section 1. If any action is brought in a court of law as to the enforcement, interpretation or construction of any of the within Covenants, Conditions and Restrictions of the Declaration the prevailing party in such action shall be entitled to reasonable attorney's fees as well as all costs incurred in the prosecution or defense of such action.

Section 2. Severability: Invalidation of any one of these Covenants, Conditions or Restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3. Duration: These Covenants, Conditions and Restrictions run with the land, and shall be binding on all persons claiming under them for a period of two (2) years from the date of recording after which time said Covenants, Conditions, and Restrictions shall be automatically extended for successive periods of five (5) years. These Covenants, Conditions and Restrictions may be amended or eliminated prior to the five (5) years with a majority vote of Lot Owners. The results of said election shall be promptly recorded with the Clerk and Recorder of Weld County, Colorado. Any covenant changes will be initiated by a majority of voting members present at a general meeting of the Erie Air Park Homeowners Association.

EXHIBIT A

ATTACHED TO AND INCORPORATED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE ERIE AIR PARK SUBDIVISION.

The real property affected by the foregoing declaration is described as follows:

The **ERIE AIR PARK SUBDIVISION**, according to the Plat thereof recorded May 3, 1978, in Book 830, Reception No. 1752380 of the records of Weld County, Colorado.

EXCEPT TRACTS A, D, E, F, G, & H

In witness whereof of this Amendment and Restatement of the Declaration of Covenants, Conditions and Restrictions of Erie Air Park Subdivision, having previously been recorded at Book 1418 Rec. 02365912, is executed as of the day and year first set forth above pursuant to the April 2, 2001 signature card election of lot owners, as archived in the office of Erie Air Park Homeowners Association Secretary, representing a majority vote in affirmation of said Amendment and Restatement of the Declaration of Covenants, Conditions and Restrictions.

Erie Air Park Homeowners Association,
A Colorado Corporation
By: Dennis Bulliung (signed) President