

AMENDED DEED RESTRICTIONS

A majority of Property Owners in the Northwest Development of Aero Valley Airport (n.k.a. Northwest Regional Airport) agree to these AMENDED DEED RESTRICTIONS.

RECITALS

WHEREAS, on April 18, 1983, HYDE-WAY, INC. imposed deed restrictions (“Restrictions”) with a Runway and Taxiway License addendum (“Addendum”) on the Northwest Development of Aero Valley Airport (n.k.a. Northwest Regional Airport) (“Northwest Development”), which restrictions are recorded at Volume 1208, Page 944 and corrected at Volume 1889, Page 9 of the Real Property Records of Denton County, Texas.

WHEREAS, some provisions of the Hyde-Way, Inc. deed restrictions and the entire Runway and Taxiway License addendum:

(1) conflict with the preexisting runway access easements appurtenant to all properties within airport boundaries before Hyde-Way Inc. acquired the Northwest Development;

(2) conflict with the Property Owners’ preexisting right to govern the airport through an Architectural Control Committee (“ACC”) composed of their elected representatives as required by the Aero Valley Development Company (“AVDCO”) deed restrictions;

(3) conflict with the ACC’s preexisting authority to assess and collect fees for the operation and maintenance of airport common areas, including, but not limited to, the runway, parallel taxiway, ramp area, and other airport facilities;

(4) purport to designate Hyde-Way, Inc. a licensor who provides and requires a “license” for runway access and use that (a) applies to Northwest Development hangar tracts, (b) is irrevocable for 99 years, and (c) is assignable to subsequent purchasers, all of which are characteristics of an appurtenant easement and courts have held is an easement. *E.g., Hyde v. Hawk*, No. 07-16-00357-CV, 2018 Tex. App. LEXIS 5211 (Tex. App.—Amarillo July 11, 2018, pet. denied) (“The 1995 Warranty Deed from Hyde and Hyde-Way to Williams [containing the Hyde-Way license] establishes an easement for the use of the runway and taxiway.”)

(5) purport to “to provide for proper maintenance of common areas, including, but not limited to runway, runway areas, facilities, buildings and taxiways” but include the caveat that “nothing herein shall ever be construed as requiring Licensor to expend funds not collected from license agreements such as this for any such repairs, maintenance, construction or reconstruction of any airport facility,” leaving only an illusion of a promise to provide for proper maintenance.

WHEREAS, under the terms of a 1988 settlement agreement between Hyde-Way, Inc. and First Interstate Bank of Dallas recorded at Volume 2547, Page 228 (Doc #11267); Volume 2547, Page 244 (Doc. #11268); and Volume 2547, Page 254 (Doc. #11269) of the Real Property Records of Denton County, Texas; Hyde-Way, Inc. granted “a non-exclusive and continuing right of access to, from, over, across, and upon [the runway, parallel taxiway, and ramp area] to all unsold lots in all four Northwest Development phases and to “all other access ways or access

easement areas now or hereafter owned by Hyde-Way, Inc. and located within said Northwest Development, and such other lots, tracts, parcels, access ways or access easement areas as may now or hereafter be owned by Hyde-Way, Inc. as part of or used in connection with the Aero Valley Airport.”

WHEREAS, HYDE-WAY, INC. executed deed restrictions purporting to declare the runway, parallel taxiway, ramp area, and certain other airport properties as public access airport property without the consent of the Property Owners and without following either the Hyde-Way, Inc. or AVDCO amendment procedures. These restrictions are recorded at Volume 1212, Page 542; Volume 3415, Page 321; Volume 3415, Page 353; Doc #96-R0091540, Doc. # 2008-137796, and Doc. # 2009-29338 in the Real Property records of Denton County, Texas. The Property Owners object to these restrictions and in no way acknowledge that these restrictions are now or ever were valid.

WHEREAS, Northwest Development Property Owners desire to amend the Restrictions and Addendum.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Northwest Development Property Owners amend the Restrictions and Addendum, and agree as follows:

AGREEMENT

Definitions

1. Airport: The term “Airport” means all property currently developed or able to be developed within the boundaries of Aero Valley Airport (n.k.a. Northwest Regional Airport) as determined by the Board. The Properties are part of the Airport.
2. Assessable Property: The phrase “assessable property” means the gross square footage of improvements on a lot or the gross square footage of land on an Undeveloped Lot, as applicable.
3. Association: The term “Association” means the Northwest Regional Airport Property Owners Association or its successors.
4. Aviation-Oriented Activity: The phrase “aviation-oriented activity” means any activity whose primary purpose is aviation, that focuses on aviation, that is designed to appeal to people interested in aviation, or that openly supports aviation.
5. Board: The term “Board” means the Board of Directors of the Northwest Regional Airport Property Owners Association or its successors.
6. Northwest Development: The phrase “Northwest Development” means the property described in the Restrictions.

7. Property or Properties: The term “Property” or “Properties” shall mean the property or properties described in the Restrictions.

8. Property Owners: The phrase “Property Owners” means the owners of the Properties. The phrase “Property Owner” means the owner of one of the Properties.

9. Undeveloped Lot: The phrase “Undeveloped Lot” means any property that has not been altered from its natural state by the construction or erection of materials located in, upon, or attached to something located in or upon the ground.

Restrictions

1. Any repairs, assembly, or disassembly must be performed within the hangar and at no time shall parts, tools, refuse, or any other property be stored outside the enclosed area.

2. At no time shall planes, automobiles, or other vehicles be left unattended in the ramp or taxiway area.

3. No noxious or offensive activities shall be carried on within or on the property, nor shall anything be done therein which may reasonably be or become an annoyance or nuisance to other Property Owners.

4. No Property Owner shall use as a dumping ground any lot, public road, or easement. Trash, garbage, and other waste shall be kept in a sanitary container and all such containers, incinerators, and other equipment shall be kept in a clean and sanitary condition. Each Property Owner shall maintain his property in a clean, attractive condition, and, where necessary appropriate action may be taken by the Association with fines or assessments levied against the Property Owner.

5. All brush, trash, or other outside fires are expressly prohibited except for the use of outdoor cooking equipment for food preparation.

6. All sewage shall be disposed of by water carriage to a sanitary septic tank and underground disposal systems constructed within the guidelines of all governmental agencies. All outside toilets or other privies or other type of pit toilets are expressly prohibited.

7. The Association reserves the right to enter property for the purpose of laying and maintaining water, sewage, and other utility lines as deemed necessary and expedient.

8. Flammable products (e.g., gasoline, oil, petroleum-based solvents, etc.) shall be stored in safe and suitable containers.

9. The erection of signs on non-commercial hangars is expressly prohibited. Nothing in this restriction shall be construed to prevent the display of neatly painted directional, informational, or “For Sale” or “For Rent” signs on hangars used for non-commercial purposes.

10. Improvements in and upgrading of the property is encouraged, but no improvements or alterations shall be commenced until the plans and specifications have been submitted to and been approved in writing by the Association for control of quality of workmanship and materials, harmony of external design with existing structures, and compliance with these restrictions and covenants.

11. Property owners shall keep grass mowed and trimmed. The Association reserves the right to enter property for mowing and trimming purposes if grass (or weeds) exceeds 8 inches in height. Property Owners agree to reimburse the Association for all reasonable costs incurred to meet this standard.

12. Operations including parachuting, ultra-light aircraft operations, gliders, sailplanes, and agricultural application businesses, banner towing, balloon operations of airships are prohibited without the express written consent of the Association.

13. Premises are restricted to primarily aviation-oriented activities. Premises currently used for non-aviation-oriented activities are not subject to this restriction until the property is transferred, conveyed, or sold to another person after the Effective Date.

14. To carry out a general plan for the protection, use, and convenience of all Property Owners, the Airport shall be governed by the Association, a Texas non-profit corporation comprised of a Board of Directors consisting of seven directors elected from the Property Owners of the entire Airport by majority vote of the Property Owners of the entire Airport representing a quorum (as defined in the Association's bylaws) at a meeting called for that purpose every two years. At least four directors shall be active aviators. The Property Owners acknowledge and agree that the current directors of the Association are Mitchell R. Whatley, President; Steven Whatley, Vice President; Doug Reeves, Secretary; Larry Martin, CPA, Treasurer; Eric Branyan, Member; Gary Platner, Member; Carey Sharp, Member. In the event of death or resignation of any board member, a replacement may be appointed by a majority of the remaining board member(s) ("Board"). The Association shall have legal authority to enforce these Amended Restrictions, collect fees, and take any other actions deemed necessary to protect the best interests of the Property Owners in the Airport.

15. An annual fee, in an amount set by the Board each year and approved by majority vote of a quorum of Property Owners of the entire Airport at the annual meeting, shall be paid by each Property Owner in the Airport to the Association within thirty (30) days after the date of such statement to provide for proper maintenance of the runway, parallel taxiway, and other easements and appurtenances to which Property Owners enjoy privity of estate ("common areas"). The determination of common areas shall be determined solely by the Board. The amount assessed to each Property Owner shall be in proportion to the assessable property owned. All funds collected shall be deposited into an interest-bearing account at an approved and insured institution and may be withdrawn as per the Association's bylaws. The Board shall be required to use all funds collected for (a) maintenance of the common areas; (b) casualty, public liability, and other insurance coverages in the amounts and limits determined by the Board; (c) utilities to the common areas; (d) professional services, such as accounting and legal services; and (e) such other costs and expenses as reasonably may be related to proper maintenance, care, operating,

and management of the common areas and the administration and enforcement of these Amended Restrictions.

16. These covenants and restrictions shall run with the land and bind all parties and all persons claiming under them in perpetuity from the Effective Date, unless an instrument signed by a majority of Property Owners of record has been recorded, agreeing to change the covenants in whole or in part. If a Northwest Development Property Owner signs the amended restrictions but conveys the property before the Effective Date, the former owner's signature shall remain valid for one year and shall be counted to determine whether a majority signed the amended covenants. A Property Owner may not cast more than one vote regardless of the number of lots the person owns. If more than one person owns an interest in a lot, the owners may cast only one vote for that lot. A person may not vote if the person has an interest in a lot only by virtue of being a lienholder.

17. If any of the parties hereto, or their heirs, grantees, successors, or assigns, shall violate or attempt to violate any of these Restrictions, it shall be lawful for the Association or any Property Owner to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant, and either to prevent him or them from so doing or to recover damages, or to enforce such other rights and duties, either at law or in equity, for such violation as the Association or Property Owner shall possess.

18. Invalidation of any of these provisions by a judgment or court order shall not affect any of the other provisions, which shall remain in full force and effect.

19. Nothing contained in this declaration shall impair or defeat the lien of any mortgage or deed of trust, made in good faith and for value, but title to any property subject to this declaration obtained through sale, or otherwise, in satisfaction of any mortgage or deed of trust shall thereafter be held subject to all of these protective restrictions and covenants

20. These Amended Restrictions shall be binding upon and shall inure to the benefit of the Northwest Development Property Owners and their successors, successors-in-title, heirs, and assigns.

21. These Restrictions may be signed in counterpart.

22. Failure by the Association or a Property Owner to enforce these Restrictions shall not be waiver.

23. The laws of the State of Texas (without regard to its conflict of law principles) shall govern the interpretation, validity, and enforceability of these restrictions.

24. These Amended Restrictions shall in no way be interpreted or construed to amend, remove, or extinguish any rights of Property Owners in and to existing easements whether such easements are express, implied, equitable, or otherwise.

IN WITNESS WHEREOF, the Northwest Development Property Owners have executed these Amended Restrictions on the date set forth in their respective notary clauses and these Amended Restrictions shall be effective on the date of the last signature representing a majority of the Northwest Development Property Owners (“Effective Date”).

PROPERTY OWNER

Printed Name of Property Owner/Entity

Printed Name of Authorized Signer

Title or Position (if applicable)

Signature of Authorized Owner

I, a Notary Public in and for the State of Texas, do hereby certify that _____ whose signature is affixed to the foregoing instrument, has acknowledged the same before me.

WITNESS my hand notarial seal, this ____ day of _____, 2019.

NOTARY PUBLIC