

**Settlement Agreement Between First Interstate Bank and Hyde as Modified by the  
Amended Northwest Development Deed Restrictions<sup>1</sup>**

**Volume 2547, Page 228 Document 011267**

SETTLEMENT AGREEMENT

THIS AGREEMENT is entered into as of the 21<sup>st</sup> day of April, 1988 between and among FIRST INTERSTATE BANK OF DALLAS (successor by merger to Allied Bank of Dallas) (the "Bank"), HYDE-WAY, INC. ("Hyde-Way") and CHARLES GLEN HYDE ("Hyde").

WITNESSETH:

WHEREAS, the Bank filed a lawsuit against Hyde-Way and Hyde in the District Court of Dallas County, Texas, 44th Judicial District, Cause of Action No. 86-13701-B, arising out of certain factual circumstances and transactions more particularly described in the pleadings filed with said Court; and

WHEREAS, the Bank has also filed a lawsuit against IR3T, Inc. and Hyde in the District Court of Dallas County, Texas, 193d Judicial District, Cause of Action No. 87-15982, arising out of certain factual circumstances and transactions more particularly described in the pleadings filed with said Court, (hereinafter the above-described lawsuits shall be referred to collectively as the "Lawsuit"); and

WHEREAS, the Bank, Hyde-Way and Hyde have reached an agreement as to the settlement of the Lawsuit and now desire to set forth said agreement in writing as hereinafter provided;

NOW, THEREFORE, for and consideration of the mutual covenants herein contained between and among the Bank, Hyde-Way and Hyde, the parties hereto hereby agree as follows:

1. Glen Hyde, as the sole shareholder of IR3T, Inc., will cause IR3T, Inc. to execute and deliver to Hyde-Way a deed pursuant to which all of the real property previously conveyed by Hyde-Way to IR3T, Inc. will be conveyed back to Hyde-Way. Said deed will be in the same form as the deed that was previously executed by Hyde-Way to convey the property described therein to IR3T, Inc. Additionally, and prior to any obligation of the Bank to dismiss the lawsuit and/or discharge its existing judgment against Hyde-Way and Hyde, Hyde-Way shall cause the deed to be filed of record in the Real Property Records of Denton County, Texas and shall present the Bank with a certified copy of the recorded instrument, bearing the file-stamp of the County Clerk of Denton County, Texas, and in other particulars evidencing that said deed has been duly recorded.

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<sup>1</sup> Recorded in the Deed Records of Denton County, Texas at Document # 2019-63922.

2. The Bank agrees to and shall release and discharge its existing judgment (the "Judgment") against Hyde-Way and Hyde arising out of the above described Cause of Action No. 86-13701-B, judgment for which cause of action was entered on February 6, 1987.

3. The Bank agrees to dismiss the Lawsuit and agrees to cause to be filed with the Court the appropriate Motion for Dismissal, or such other appropriate filing, and cause to be executed by the Court an Order of Dismissal, all as may be necessary and appropriate to cause the Lawsuit to be dismissed with prejudice to refiling same, and with costs taxed to the party incurring same.

4. Hyde-Way, acting by and through its duly authorized president, Glen Hyde, covenants and agrees to execute and deliver to the Bank an agreement in form and substance acceptable to the Bank and in recordable form pursuant to which Hyde-Way shall, for the benefit of all lots owned by the Bank (which lots, tracts and parcels owned by the Bank are more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference) within Northwest Development (an Addition to the County of Denton, Texas, according to the plat thereof recorded in Cabinet C, Page 194 of the Plat Records of Denton County, Texas), and all other lots, tracts or parcels owned by the Bank and located within or adjacent to that certain airport facility located in Denton County, Texas known as the "Aero Valley Airport" (the "Airport"), grant to the Bank rights of access to, over, across and upon all land owned by Hyde and/or Hyde-Way and constituting the Airport (said land owned by Hyde and/or Hyde-Way, being referred to herein as the "Airport Properties," is more particularly described in Exhibit "B" attached hereto and incorporated herein by this reference) and such other properties owned by Hyde or Hyde-Way as may be described therein, for runway, taxiway and related purposes for flight operation uses.

5. Hyde-Way, acting by and through its duly authorized president, Glen Hyde, covenants and agrees to execute and deliver to the Bank, or as may be directed by the Bank, a written agreement in form and substance acceptable to the Bank and in recordable form pursuant to which Hyde-Way agrees to and does provide access to, over, across and upon the Airport Properties and such other properties owned by Hyde or Hyde-Way as may be described in said agreement, and containing such terms and provisions as desired and approved by the Bank, for the benefit of the lots within Northwest Development described in Exhibit "C" attached hereto and incorporated herein by this reference.

The effect, intent, and purpose of said agreements referenced above in paragraphs 4 and 5 will be to establish that the present owner and future owner of any such lot shall be entitled to access over, across, and upon the Airport Properties and other properties described therein for taxiway, runway, and related flight operation purposes upon payment of any assessment of the Aero Valley Property Owners Association as authorized by the amended deed restrictions for such lot. Said agreement shall also provide, among other things, that in the event of the foreclosure of a mortgage lien against any such lot by the Bank or any other owner and holder of a mortgage lien against such lot, such foreclosure or other action against the property shall not in any way affect or impair the right of any subsequent owner of such lot, whether such ownership occurs through a foreclosure sale or otherwise, from the use, enjoyment and benefit of access to the airport facilities provided that any assessment of the Aero Valley Property Owners

Association as authorized by the recorded amended deed restrictions continues to be paid in accordance with said amended deed restrictions.

6. It is understood and agreed that with respect to the access agreements referenced in paragraphs 4 and 5 above that the right of any lot owner within the Northwest Development to use the airport facilities for taxiway, runway and related flight operation purposes shall not require payment of any fees, assessments or other charges other than assessments imposed by the Aero Valley Property Owners Association as authorized by the recorded amended deed restrictions.

7. Hyde, in his personal capacity and in his capacity as president of Hyde-Way, hereby covenants and agrees to cease and desist from any and all further interference with the Bank in connection with the Bank's ownership of lots within the Northwest Development, and in connection with the Bank's ownership of any other lots, tracts or parcels in or around the Airport, and in connection with any attempts by the Bank to sell, lease or otherwise to transact business in connection with and pertaining to any such lots. Hyde, in his personal capacity and in his capacity as president of Hyde-Way, hereby acknowledges and understands that in the event Hyde or Hyde-Way shall in any way knowingly and intentionally interfere with the reasonable use and enjoyment by the Bank, or any of its assignees, or tenants with respect to any such lot, or in the event Hyde or Hyde-Way shall knowingly and intentionally interfere or attempt to interfere with the free alienation of any such lot, tract or parcel now or hereafter owned by the Bank, the Bank shall be entitled to file a lawsuit for the payment of damages and/or to seek such other remedies as the Bank may deem necessary or desirable for the breach of said covenant by Hyde and/or Hyde-Way. Additionally, Hyde and Hyde-Way hereby further agree and acknowledge that because the damages that may arise or accrue from any such breach of this covenant with respect to any given lot and/or with respect to all such lots may be difficult to ascertain as a dollar sum, the Bank shall be entitled to injunctive relief, without the necessity of posting bond, in addition to the payment of damages or such other relief as may be permitted by law or in equity, for any such breach; and Hyde and Hyde-Way each hereby waive their right to assert or otherwise demand the enforcement of any such bond posting requirement in connection with any such injunctive relief sought.

8. Hyde-Way and Hyde each hereby covenant and agree to continue providing water service to each of the lots owned by the Bank that are presently connected to the existing water supply system owned by Hyde-Way and/or Hyde and located at the Airport, and hereby covenant and agree to continue providing water service to any such lots so connected on the same basis as such service is supplied to other lots within the Northwest Development or otherwise connected to such water supply system, without any discrimination against the Bank or its successors, assigns, or tenants, and at a price in conformity with that charged to other users of such water supply system.

9. By executing this Settlement Agreement, both Hyde and Hyde-Way hereby acknowledge that all alleys, access ways and "A Lots" within the Northwest Development were intended from the inception and platting of said development to be available for use by all owners of lots within the Northwest Development for ingress and egress purposes, and that it was at all times and continues to be the intent of Hyde and Hyde-Way to dedicate such alleys,

access ways and "A Lots" to such purpose by the recording of the plat of the Northwest Development.

10. Hyde and Hyde-Way hereby covenant and agree that the existing gravel obstacle that is located within Phase I of the Northwest Development, will only block access to phase I of the Northwest Development from Cleveland Gibbs Road, if at all, and shall not constitute an impediment or a hindrance to vehicular and airplane traffic within said Phase I

11. Hyde, Hyde-Way and the Bank each hereby agree to execute (or procure) and deliver such other and further documents and instruments as may be reasonably necessary and as requested by the Bank so as to evidence and/or give effect to the terms and provisions hereof.

12. Hyde-Way hereby covenants and agrees to the following with respect to the following described lots within [the] Northwest Development:

(a) With respect to Lots 11 and 11A, T-Hangar Tract 3 of the Northwest Development, Hyde-Way shall deliver and endorse payable to the order of the Bank, without recourse or warranty, that certain promissory note executed by Lou Dionne, d/b/a Lou Dionne Aviation, in the original principal amount of \$13,666 and dated December 9, 1983, the payment of which promissory note is secured by the lien of a deed of trust dated of even date therewith recorded in Volume 1306, Page 714 of the Deed of Trust Records of Denton County, Texas. Additionally, Hyde-Way covenants and agrees to execute a transfer of lien instrument for the purpose of transferring the lien of said deed of trust and the vendor's lien securing the payment of said note to the Bank, which transfer of the lien shall be in recordable form.

(b) With respect to Lots 2, 2A and 2B, Hangar Tract 7 of Northwest Development, Hyde-Way covenants and agrees to deliver and endorse payable to the Bank, without recourse or warranty, that certain promissory note dated April 24, 1985 executed by Robert L. Bronstad in the original principal amount of \$60,000, the payment of which promissory note is secured by the lien of that certain deed of trust recorded in Volume 1633, Page 527 of the Deed of Trust Records of Denton County, Texas. Hyde-Way also covenants and agrees to execute and deliver to the Bank a transfer of lien pursuant to which the lien of said deed of trust and the vendor's lien also securing the payment of said note shall be transferred to the Bank, which transfer of lien shall be and a recordable form.

It is understood by the parties to this agreement that said two promissory notes and the liens securing same are being assigned by Hyde-Way to the Bank in furtherance of and in completion of the intended assignment of said notes and liens to the Bank on a previous date. It is also understood and agreed that the assignment of said notes and liens is intended to be an absolute assignment and not an assignment as collateral. Notwithstanding anything contained herein to the contrary, it is also understood and agreed that by releasing the Lawsuit and the Judgment the Bank does not intend to release Hyde-Way from any warranties of title or other representations and warranties made by Hyde-Way to the Bank in connection with the assignment of said notes and liens, or otherwise in connection with any other notes and liens assigned by Hyde or Hyde-Way to the Bank.

13. Hyde-Way, Hyde and the Bank hereby settle, release and forever discharge any and all known disputes and claims the Bank may have against Hyde-Way or Hyde, or which Hyde or Hyde-Way may have against the Bank, of whatever kind or nature, arising out of the Lawsuit or the Judgment, including but not limited to claims for money or other relief, whether based in contract or tort, and specifically including, but not limited to, any claims for deficiencies or the payment of sums owed, or for collateral or wrongful foreclosure; provided, however, that it is expressly understood and agreed that such settlement, release and discharge shall not and does not apply with respect to any warranties of title or other warranties or representations made by Hyde or Hyde-Way to the Bank, whether express or implied, with respect to any real property, a promissory notes or other property or property rights heretofore or hereby assigned or conveyed, or purported to be or to have been assigned or conveyed, to the Bank by Hyde or Hyde-Way.

14. Each and every covenant and agreement contained herein shall survive the execution and delivery of this Agreement by the parties hereto. All covenants contained herein that relate directly to any of the lots, tracts or parcels or other real property hereinabove described are intended by the parties to be, and shall be construed as, "covenants running with the land" to which they pertain. All of the terms of this agreement shall apply to, be binding upon and inure to the benefit of the parties hereto, their respective successors, assigns, heirs and legal representatives, and all other persons claiming by, through or under them. In the event that any provision of this agreement or any of the written agreements executed by the parties hereto for the purpose of giving effect to the terms hereof shall for any reason and to any extent be deemed invalid or unenforceable, this agreement and each of the other agreements, as applicable, shall remain in full force and effect notwithstanding any such finding of invalidity or unenforceability with respect to any one or more other provisions thereof.

15. In the event that it shall ever become necessary for the Bank to file a lawsuit against Hyde and/or Hyde-Way, or for Hyde or Hyde-Way to file a lawsuit against the Bank, in order to enforce any one or more of the covenants and agreements contained herein, or otherwise in the event of the breach of any covenant, agreement, or warranty contained herein, the prevailing party in any such litigation shall be entitled to recover from the non-prevailing party the court costs and attorneys' fees incurred by such prevailing party in connection with such litigation.

EXECUTED as of the date first hereinabove written.

All references to payment of Hyde's license fee have been replaced with payment of the POA's assessments. In addition, all references to licensees have been stricken from the document.

Hyde's license is void as a license because it creates irreconcilable conflicts with the rights and duties of the easement holders. Hyde had no authority to grant runway access by any means from the Northwest Development, no authority to govern the airport, and no authority to claim the exclusive right to maintain it.

Whyte and her lawyer knew this. Whyte challenged Hyde's authority to grant runway access by license or easement in a lawsuit she filed against Hyde in 1984. Hyde's subsequent act of

conveying nine hangar tracts to Whyte out of Northwest Development Phase 1 in partial payment of his debt to Whyte resulted in Whyte's consent to runway access from these hangars or they would have had no value. After Whyte died in 1992, Kelly Bryan, a co-executor of Whyte's estate, dismissed all of Whyte's lawsuits against Hyde.

Although void as a license, it meets all the requirements of an appurtenant easement. Thus, it can be effective as an easement with consent of the other easement holders. The easement holders granted consent by default because they did not object to purchasers having runway access from lots in Northwest Development Phases 1 and 2.

To eliminate any doubt about the invalidity of Hyde's license or his claims to governing authority, Northwest Development property owners amended their deed restrictions to eliminate all reference to the license and made it clear that the POA is the governing authority.