

RESOLUTION NO.

15-13

TITLE: A RESOLUTION APPROVING THE AMENDED AND RESTATED RESTRICTIVE COVENANT FOR A PORTION OF THE LLOYD LAND AIRPORT ANNEXATION

WHEREAS, the Town of Hudson (the "Town"), annexed the property known as the Lloyd Land Airport Annexation Nos. 1 and 2 (the "Annexation Area"); and

WHEREAS, a portion of the Annexation Area was within the boundary of a restrictive covenant, dated August 5, 2009 and recorded in the Weld County land records at reception No. 3643902 (the "Covenant"); and

WHEREAS the annexation agreement for the Annexation Area provided for the Town to take assignment of the Covenant as beneficiary and to approve certain amendments to the Covenant.


NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF HUDSON, COLORADO, AS FOLLOWS:

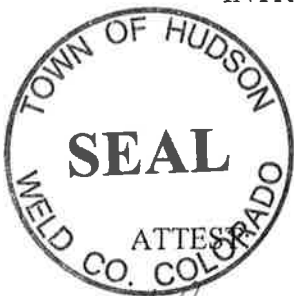
Section 1. That the Amended and Restated Restrictive Covenant, attached as Exhibit A and incorporated herein, is hereby approved.

Section 2. That the Mayor is authorized to sign the Amended and Restated Restrictive Covenant on behalf of the Board of Trustees.

INTRODUCED, READ and PASSED this 18th day of February, 2015.

TOWN OF HUDSON, COLORADO


Raymond Patch, Mayor




Linnette Barker, Town Clerk

Exhibit A
Amended and Restated Restrictive Covenant

AMENDED AND RESTATED RESTRICTIVE COVENANT

THIS AMENDED AND RESTATED RESTRICTIVE COVENANT ("the Amended Covenant") is made and entered into this _____ day of _____ 2015, by and between the Town of Hudson, Colorado (the "Town") and Lloyd Land and Lloyd Land Airport, LLC ("Property Owner" or "Grantor") as follows:

WHEREAS, the Board of County Commissioners of Weld County ("Weld County") was the beneficiary of that Restrictive Covenant by Anacapa Land Company, LLC dated August 5, 2009, and recorded in the records of the Weld County Clerk and Recorder's Office on August 20, 2009 at Reception No. 3643902 (the "Covenant");

WHEREAS, the property as defined in the Covenant (the "Land Property") was annexed by the Town, and as a result of such annexation, the Covenant was assigned to the Town by that Assignment of Restrictive Covenant by Weld County dated November 19, 2014, accepted by the Town on December 3, 2014, and recorded on December 31, 2014 in the Weld County Clerk and Recorder's Office at Reception No. 4072183; and

WHEREAS, the Town and the owner of the Land Property desire to enter into this Amended and Restated Restrictive Covenant as set forth below.

NOW THEREFORE, in consideration of the foregoing Recitals and the mutual covenants and promises set forth below, the receipt and sufficiency of which are mutually acknowledged, the Town of Hudson and Property Owner hereby agree as follows:

1. **Covenant.** Property Owner as Grantor, hereby covenants and agrees that the Property shall, from and after the date hereof, be used consistent with those zoning designations more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference, and as further limited by that list of Excluded Land Uses set forth in Exhibit C to that Annexation Agreement dated November 5, 2014, attached hereto as **Exhibit B**, and incorporated herein by this reference. For purpose of this Amended Covenant, the zoning designations identified on Exhibit A shall be those designations set forth in the Hudson Municipal Code as of the date of this Amended Covenant. The foregoing shall be subject to, and the use of the Property shall at all times comply with, all zoning and other Town land use requirements applicable to the Property and in effect from time to time (including the benefit of any grandfathered rights applicable at any time to the Property or uses or improvements thereon). At no time during the term of this Agreement, or anytime subsequent to its termination, shall the Town be responsible for maintaining the Land Property, or for general liability associated with its use and maintenance.

2. **Notice of Nearby Industrial Facility.** Owners and purchasers of parcels of land within the Land Property are advised that the Land Property is in close proximity to an electric power generation facility that may from time to time produce noise or other environmental impacts that may adversely affect the enjoyment of such parcels.

3. **Termination.** This Amended Covenant shall continue in perpetuity unless terminated in writing (which termination may relate to all or any portion of the Property) by the then owner of the Property (or portion thereof as to which this Amended Covenant is terminated) and the Town.

4. **Amended Covenant Runs With the Land.** This Amended Covenant shall constitute a restrictive covenant, which shall run with the Property for the benefit of the Town until its termination pursuant to Paragraph 2 above. The terms and obligations of this Amended Covenant shall be binding upon Grantor and its successors and assigns and shall inure to the benefit of the Town.

5. **Enforcement.** This Amended Covenant is enforceable by and only by the Town. The Town shall have the right to prevent and correct or require correction of violations of the provisions of this Amended Covenant. The Town shall have the right to seek specific performance, injunctive or other equitable relief with respect to any violations of this Amended Covenant.

6. **No Benefit to Third Parties.** This Amended Covenant does not and shall not be deemed to confer upon or grant to the public or any person not a party hereto any rights whatsoever and, except as provided in Paragraph 4 above, no person shall have the right to enforce, claim damages or to bring any lawsuit, action or other proceedings against either Grantor or the Town because of any breach hereof, or because of any of the terms, covenants, agreements or conditions contained herein.

7. **Waiver.** Enforcement of the provisions of this Amended Covenant shall be at the discretion of the Town. Any failure of the Town to discover a violation or any forbearance to exercise its rights hereunder shall not be deemed or construed to be a waiver of such provisions or of any subsequent breach of the same or any other provisions of this Amended Covenant or of any of the Town's rights hereunder or an abandonment of any rights, duties or responsibilities hereunder.

8. **Recordation.** The Town may record this Amended Covenant in the real estate records in the office of the Clerk and Recorder of Weld County, Colorado.

9. **Governing Law.** The laws of the State of Colorado shall govern the interpretation and performance of this Amended Covenant. Venue for any action or proceeding arising under or relating to this Amended Covenant shall only be proper in Weld County, Colorado.

10. **Severability.** In the case one or more of the provisions contained in this Amended Covenant, or any application hereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Amended Covenant and the application thereof shall not in any way be affected or impaired.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Assignment is executed by the Town of Hudson and Lloyd Land as of the date first above written.

TOWN OF HUDSON, COLORADO

By: _____
Raymond Patch, Mayor

ATTEST:

By: _____
Linnette Barker, CMC, Town Clerk

OWNER

LLOYD LAND AIRPORT, LLC, a
Colorado limited liability company

By: _____
Lloyd Land, Manager

Lloyd Land, an individual

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The above and foregoing signature of Lloyd Land as Manager of Lloyd Land Airport, LLC, a Colorado liability company was acknowledged, subscribed and sworn to before me this _____ day of _____, 2015.

Witness my hand and official seal.

My commission expires: _____

Notary Public



LEGEND	
Land Use *	
	Agriculture : A-3
	Commercial : C-2
	Industrial : I-2
	Industrial : I-3
	Restrictive Covenant Boundary

* This map is a schematic representation of proposed land uses. Acreages, roadways, boundaries, dimensions and existing site features are conceptual and are subject to change.

Exhibit A : Zoning Map - Restrictive Covenant

Land Airport - Hudson, CO.
2.13.15



Exhibit B
(Exhibit C to Annexation Agreement, List of Excluded Land Uses)

LIST OF EXCLUDED LAND USES

The following list of excluded land uses are not permitted on the Property that is zoned Industrial three district (I-3).

1. General offices
2. Medical and dental offices
3. Flea markets, indoor and outdoor
4. Governmental buildings, including fire stations
5. Sexually oriented businesses
6. The temporary uses of Auctions and Bazaars
7. Automobile sales and service
8. Adult entertainment uses
9. The manufacture, processing, use, sale or long-term storage of any highly flammable, corrosive or explosive liquids, solids or gases or highly toxic substances
10. Containers for the above ground storage of flammable or combustible liquids and flammable gases in excess of forty thousand gallon capacity per single property
11. Transportation terminals where vehicles are used to carry flammable, explosive, hazardous or highly toxic materials
12. Any temporary use allowed in the commercial districts