

COUNCIL CHAMBER

12-8-03

WHEREAS, the deed restrictions and avigation easement in the attached instrument have been volunteered in connection with the property located on the southeast line of Stutz Road, beginning at a point approximately 607.15 feet northeast of the northeast line of Forest Park Road, which is the subject of Zoning Case No. Z023-301/12005; and

WHEREAS, the City Council desires to accept the deed restrictions in the attached instrument; Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

Section 1. That the deed restrictions and avigation easement in the attached instrument be and are hereby accepted by the City Council of the City of Dallas, Texas, to be used in conjunction with the development of property that is the subject of Zoning Case No. Z023-301/12005.

Section 2. That the deed restrictions in the attached instrument shall be filed in the Deed Records of Dallas County, Texas.

Section 3. That this resolution shall take effect immediately from and after its passage in accordance with the Charter of the City of Dallas, Texas, and it is accordingly so resolved.

APPROVED AS TO FORM:

MADELEINE B. JOHNSON, City Attorney

By John F. O'Kane
Assistant City Attorney

APPROVED BY
CITY COUNCIL

DEC 08 2003

Shirley Gray
City Secretary

Passed DEC 08 2003

APPROVED [Signature]
HEAD OF DEPARTMENT

APPROVED _____
DIRECTOR OF FINANCE

APPROVED _____
CITY MANAGER

DEED RESTRICTIONS

THE STATE OF TEXAS)
)
 COUNTY OF DALLAS) **KNOW ALL PERSONS BY THESE PRESENTS:**

I.

The undersigned FARRELL & GAULT GENERAL PARTNERSHIP, a TEXAS GENERAL PARTNERSHIP (“the Owner”), is the owner of the following described property (“the Property”), being in particular a tract of land out of the Miles Bennett Survey, Abstract No. 52, Lot 19 in City Block D/2371, City of Dallas (“City”), Dallas County, Texas, and being that same tract of land conveyed to the Owner by PETER M. TART, TRUSTEE, by deed dated September 19, 2003, and recorded in Volume 2003186, Page 05418, in the Deed Records of Dallas County, Texas, and being more particularly described in Exhibit A attached hereto.

See Exhibit A

II.

The Owner does hereby impress all of the Property with the following deed restriction (“restriction”), to wit:

Buildings occupied with residential uses must be constructed using noise mitigation methods so that outside noise levels, measured within the habitable space of a dwelling unit, do not exceed 45 DNL.

III.

These restrictions shall continue in full force and effect for a period of twenty (20) years from the date of execution, and shall automatically be extended for additional periods of ten (10) years unless amended or terminated in the manner specified in this document.

IV.

These restrictions may be amended or terminated only after a public hearing before the City Plan Commission and a public hearing before and approval by the City Council of the City. Notice of

the public hearings must be given as would be required by law for a zoning change on the Property. The amending or terminating instrument must be approved as to form by the city attorney. If the City Council approves an amendment or termination of these restrictions, the Owner must then file the amending or terminating instrument in the Deed Records of the county or counties where the Property is located at his or her sole cost and expense before the amendment or termination becomes effective.

V.

These restrictions are not intended to restrict the right of the City Council of the City to exercise its legislative duties and powers insofar as zoning of the Property is concerned.

VI.

The Owner agrees that these restrictions inure to the benefit of the City. The Owner hereby grants the City the right to enforce these restrictions by any lawful means, including filing an action in a court of competent jurisdiction, at law or in equity, against the person violating or attempting to violate these restrictions, either to prevent the violation or to require its correction. If the City substantially prevails in a legal proceeding to enforce these restrictions, the Owner agrees that the City shall be entitled to recover damages, reasonable attorney's fees, and court costs. For further remedy, the Owner agrees that the City may withhold any certificate of occupancy or final inspection necessary for the lawful use of the Property until these restrictions are complied with. The right of the City to enforce these restrictions shall not be waived, expressly or otherwise.

VII.

The Owner agrees to defend, indemnify, and hold harmless the City from and against all claims or liabilities arising out of or in connection with the provisions of this document.

VIII.

The provisions of this document are hereby declared covenants running with the land and are fully binding on all successors, heirs, and assigns of the Owner who acquire any right, title, or interest in or to the Property, or any part thereof. Any person who acquires any right, title, or interest in or to the Property, or any part thereof, thereby agrees and covenants to abide by and fully perform the provisions of this document.

IX.

Unless stated otherwise in this document, the definitions and provisions of CHAPTER 51A of the Dallas City Code, as amended, apply and are incorporated into this document as if recited in this document.

X.

The Owner understands and agrees that this document shall be governed by the laws of the State of Texas.

XI.

The Owner certifies and represents that there are no mortgages or liens, other than liens for ad valorem taxes, against the Property if there are no signatures of mortgagees or lienholders subscribed below.

XII.

The invalidation of any provision in this document by any court shall in no way affect any other provision, which shall remain in full force and effect, and to this end the provisions are declared to be severable.

EXECUTED this the 3rd day of November, 2003.

OWNER:
FARRELL & GAULT GENERAL
PARTNERSHIP

By: GAULT COMPANY, PARTNER

By: *Roger C Gault*
ROGER C. GAULT, PRESIDENT

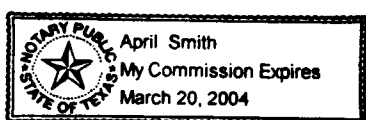
By: FARRELL INTERESTS, INC., PARTNER

By: *Richard Farrell*
RICHARD FARRELL, PRESIDENT

STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me on this 3rd day of ~~November~~ 2003, by ROGER C. GAULT, PRESIDENT of GAULT COMPANY, PARTNER of FARRELL & GAULT GENERAL PARTNERSHIP, a TEXAS GENERAL PARTNERSHIP, on behalf of said GENERAL PARTNERSHIP.



(SEAL)

April Smith

Notary Public

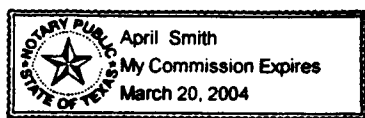
My commission expires:

3.20.04
(date)

STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me on this 3rd day of ~~November~~, 2003, by RICHARD FARRELL, PRESIDENT of FARRELL INTERESTS, INC., PARTNER of FARRELL & GAULT GENERAL PARTNERSHIP, a TEXAS GENERAL PARTNERSHIP, on behalf on said GENERAL PARTNERSHIP.



(SEAL)

April Smith

Notary Public

My commission expires:

3.20.04
(date)

CONSENT AND CONCURRENCE OF
LIENHOLDER OR MORTGAGEE

LIBERTY FEDERAL SAVINGS BANK
a Federally chartered savings bank
Property Lienholder or Mortgagee

By: Jon W. Stephenson

Printed Name: Jon W. Stephenson

Title: Senior Vice President

APPROVED AS TO FORM:
MADELEINE JOHNSON, City Attorney

By: John F. O'Connell
Assistant City Attorney

STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me on this 4 day of November,
2003, by Jon W. Stephenson of LIBERTY FEDERAL SAVINGS BANK, a
Federally chartered savings bank, on its behalf.

(SEAL) 

Linda L. York

Notary Public

My commission expires:

9/27/04

EXHIBIT A

BEING all of Lot 19 in City Block D/2371 in the Miles Bennett Survey, Abstract No. 52, in the City of Dallas, Dallas County, Texas, said lot fronting 100.00 feet on the southeast line of Stutz Road, beginning at a point 607.15 feet northeast of the northeast line of Forest Park Road, and containing 27,200 square feet of land.