

COUNCIL CHAMBER

June 22, 2005

WHEREAS, the avigation easement, release, indemnification, and disclosure agreement in the attached instrument has been volunteered in connection with property located in City Block D/2370 on Stutz Road between Forest Park Road and Maple Avenue, which is the subject of Zoning Case No. Z034-175/12114(RB); and

WHEREAS, the City Council desires to accept the avigation easement, release, indemnification, and disclosure agreement in the attached instrument; Now, Therefore,

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

Section 1. That the avigation easement, release, indemnification, and disclosure agreement in the attached instrument be and is 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. Z034-175/12114(RB).

Section 2. That the avigation easement, release, indemnification, and disclosure agreement 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:

THOMAS P. PERKINS, JR., City Attorney

By Cady Burson
Assistant City Attorney

APPROVED BY
CITY COUNCIL

JUN 22 2005

Shirley Geis
City Secretary

APPROVED Dail Combs APPROVED _____ APPROVED _____
HEAD OF DEPARTMENT DIRECTOR OF FINANCE CITY MANAGER

AVIGATION EASEMENT, RELEASE, INDEMNIFICATION,
AND DISCLOSURE AGREEMENT

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

That we, STUTZ ROAD PARTNERS II, L.P. (hereinafter GRANTOR whether one or more), for and in consideration of the sum of ONE and NO/100 DOLLARS (\$1.00) to the undersigned paid by the GRANTEE herein named, and other good and valuable consideration, the receipt of which is hereby acknowledged, have executed this Avigation Easement, Release, Indemnification, and Disclosure Agreement, have GRANTED, SOLD AND CONVEYED, and by these present does GRANT, SELL AND CONVEY unto the CITY OF DALLAS, TEXAS (hereinafter called GRANTEE), an Avigation Easement in, on, over and across the real property more particularly described in Exhibit "A", attached hereto and incorporated herein for all purposes (hereinafter the "Property").

This Avigation Easement, Release, Indemnification, and Disclosure Agreement is for free and unobstructed passage of aircraft ("aircraft" being defined as any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air) landing at or taking off from, or operating at or on Love Field Airport, or any airport owned by the GRANTEE, its successor and assigns, by whomsoever operated, in the airspace above the Property at the elevation of 625 feet Mean Sea Level or structural heights established by local zoning ordinances, whichever height is lower, together with the right in all air space above the surface of the Property to cause damages to the Property or to persons occupying or on such Property, from noise, vibration, fumes, dust, fuel, lubricant particles, and all other effects that may be caused by the operation of an aircraft landing at and taking off from, or operating at or on the Love Field Airport as it now or as it may hereafter be configured, or any other airport owned by the GRANTEE, its successors and assigns. GRANTOR does hereby further grant, sell, and convey to GRANTEE, its successors and assigns, a continuing right and easement to take any action necessary to prevent the erection or growth of any structure, tree, or other object into the air space above the Property and to remove from such air space any and all structures, trees or other objects that may at any time project or extend above the elevation specified above, together with the right of ingress to, egress from and passage over the Property for such purposes. Further, GRANTOR, their heirs, successors and assigns, are prohibited from any activity on the Property that would interfere with or be a hazard to the flight of aircraft over the Property, or to and from Love Field Airport, or interfere with air navigation and communication facilities serving it or any other airport owned by the GRANTEE, its successors and assigns.

It is GRANTOR's intent to permit whatever aircraft noise and related effects occur over the Property from aircraft using Love Field Airport, regardless of operational levels, air traffic control (ATC) procedures, types of aircraft, or airport runway configurations which might come to be in effect in the future.

GRANTOR does hereby waive, release, quitclaim and forever hold harmless GRANTEE, and its respective successors and assigns, officers, agents and employees from any and all claims for damages of any kind that GRANTOR might hereafter assert by reason of the passage of any and all aircraft and related effects as described above. By execution of this Avigation Easement, Release, Indemnification, and Disclosure Agreement, GRANTOR agrees not to file a claim or lawsuit against GRANTEE, its successors and assigns, officers, agents and employees, and agrees to indemnify and hold harmless GRANTEES, the Board, their successors and assigns, and their officers, agents and employees, against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons that may arise out of or be occasioned by the operation of aircraft landing at or taking off from, or operation at or on the Love Field Airport as it is now or as it may hereafter be configured, or any other airport owned by the GRANTEE, except that the indemnity and release provided for in this paragraph shall not be construed to release the owners or operators of aircraft from liability for damage or injury to person or property caused by falling aircraft or falling physical objects from aircraft, except as stated herein with respect to noise, vibration, fumes, dust and lubricant particles.

GRANTOR, their heirs, successors and assigns, hereby agrees that they have an affirmative duty at the time of offering for sale all or any portion of the Property to disclose the existence of this instrument and avigation easement on the Property to prospective purchasers by means of a sales listing sheet, whether the sale is listed by GRANTOR or by a licensed agent. Further, GRANTOR specially agrees that the execution by the GRANTEE of any assignment or assignments of the terms of this Avigation Easement, Release, Indemnification, and Disclosure Agreement to any other municipal corporation or public agency shall extend the terms hereof to any such assignee without extinguishment of its terms, and it is agreed that this Avigation Easement, Release, Indemnification, and Disclosure Agreement shall be binding upon GRANTOR, their heirs and assigns, and to any and all successors in interest to all or any portion of the Property.

This Avigation Easement, Release, Indemnification, and Disclosure Agreement shall be binding upon GRANTOR, their successors, heirs, executors, administrators and assigns, and shall be a covenant running with the land, same to be recorded in the Deed Records of the county in which the Property is situated.

TO HAVE AND TO HOLD said Avigation Easement, Release, Indemnification, and Disclosure Agreement and all rights appertaining thereto unto the GRANTEE, its successors and assigns, until said Love Field Airport or successor airports shall be abandoned and shall cease to be used for public airport purposes, and GRANTOR does hereby bind itself, its heirs, successors and assigns to WARRANT AND FOREVER DEFEND all singular this Avigation Easement, Release, Indemnification and Disclosure Agreement unto GRANTEE, and its respective successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

EXECUTED this 5 day of May, 2005.

GRANTORS:
STUTZ ROAD PARTNERS II, L.P.,
Limited Partnership

By: F & G Construction Inc., General
Partner

By: Roger C. Gault

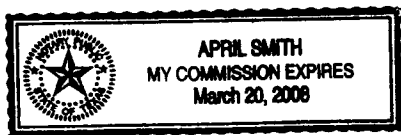
ROGER C. GAULT, PRESIDENT

STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me on this 5th day of May, 2005, by ROGER C. GAULT, PRESIDENT of F & G Construction, Inc., General Partner of STUTZ ROAD PARTNERS II, L.P., on behalf of said LIMITED PARTNERSHIP.

(SEAL)



April Smith

Notary Public

My commission expires:

3.20.08
(date)

CONSENT AND CONCURRENCE OF LIENHOLDER OR MORTGAGEE

By: Jon W. Stephenson
Printed Name: JON W. STEPHENSON
Title: SR VICE-PRESIDENT

APPROVED AS TO FORM:
Tom Perkins, InterimCity Attorney

By: Caden Bungard
Assistant City Attorney

STATE OF TEXAS

COUNTY OF Dallas

This instrument was acknowledged before me on this 5th day of May,
2005 by Jon W. Stephenson as Sr. Vice President of Liberty
Federal Saving Bank, a federally chartered savings
bank

(SEAL)

Karl A. Crawley
Notary Public

My commission expires:

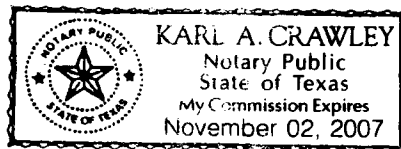


EXHIBIT A

LEGAL DESCRIPTION

Being all of Lot 5 in Block D/2370 of Maple Grove Acres, an Addition to the City of Dallas, Texas, according to the Map recorded in Volume 3, Page 154 of the Map Records of Dallas County, Texas and,

Being a tract of land 75 feet by 175 feet out of Lot 6 in Block D/2370 of Maple Grove Acres Addition, an Addition to the City of Dallas, Texas, according to the Plat recorded in Volume 3, Page 154, Map records, Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a point in the northwest line of Stutz Road (a 50 foot right-of-way) said point being the most easterly corner of Lot 6 for corner;

THENCE Southwesterly with the said northwest line of Stutz Road, a distance of 75.00 feet for a corner;

THENCE Northwesterly on a line parallel to the northeast line of Lot 6, a distance of 175.00 feet to a corner;

THENCE Northeasterly with the northwest line of Lot 6, a distance of 75.00 feet for corner;

THENCE Southeasterly on the northeast line of Lot 6, a distance of 175.00 feet to the Place of Beginning.