

062064

COUNCIL CHAMBER

August 9, 2006

WHEREAS, the deed restrictions in the attached instrument have been volunteered in connection with property located in City Block 5721 near the intersection of Maple Avenue and Kimsey Drive, which is the subject of Zoning Case No. Z045-257(JH); 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 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. Z045-257(JH).

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:

THOMAS P. PERKINS, JR., City Attorney

By Cody Burgess
Assistant City Attorney

APPROVED BY
CITY COUNCIL

AUG 09 2006

Rebecca Williams
City Secretary

APPROVED Paul Cox APPROVED _____ APPROVED _____
HEAD OF DEPARTMENT DIRECTOR OF FINANCE CITY MANAGER

S/N 753-036-006

SUP-00055A

Z045-257 (JH)

DEED RESTRICTIONS

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

I.

The undersigned, Perry Homes, a Texas joint venture (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, City Block 5721, City of Dallas ("City"), Dallas County, Texas, and being that same tract of land conveyed to the Owner by Prescott Interests LTD., by deed dated June 15, 2006, and recorded as Dallas County Instrument Number 200600227942 in the Deed Records of Dallas County, Texas, and by David G. Brewer, by deed dated June 29, 2006, and recorded as Dallas County Instrument Number 200600240353, in the Deed Records of Dallas County, Texas, and being more particularly described in the attached Exhibit A.

II.

The Property was previously zoned industrial research ("IR") and the property adjacent to it is currently zoned IR, which permits industrial uses that generate or may generate noise levels in excess of 45 decibels. To mitigate the possibility of future complaints regarding noise levels from adjacent property, the Owner does hereby impress all of the Property with the following deed restrictions ("Restrictions"), to wit:

Buildings occupied or to be occupied for residential uses must be constructed and maintained with noise mitigation methods that effectively reduce outside noise levels, measured within habitable space of each dwelling unit located on the Property, so that they achieve a Day-Night Average Sound Level (DNL) of 45 dBA or less. DNL is a measure of the average A-weighted sound level occurring in a 24-hour period. An A-weighted sound level is a sound level in the 1000 to 6000 Hz frequency range. An A-weighted sound level is increased by 10 dB if the noise event occurs between 10:00 p.m. and 7:00 a.m. The A-weighted sound level reflects the greater intrusiveness of sounds that the ear perceives as louder compared to other frequencies. dBA indicates a sound level measurement has been A-weighted.

The Owner, for itself and subsequent owners of the Property and all those claiming any right, title or interest in and to the Property, hereby waives and releases any right it might otherwise have to complain of noise generated by lawful industrial uses of the property adjacent to the Property.

A six (6) foot tall privacy fence shall be erected on the three sides of the Property that do not front Maple Avenue.

A six (6) foot wide sidewalk will be built along Maple Avenue across the frontage of the Property.

Parking shall be prohibited in the bulb of the proposed public cul-de-sac and the "No Parking" areas will be delineated with appropriate signage.

Security lighting will be installed on the front and rear of the buildings located on the Property.

The main façade of all buildings will be brick.

Multi-family uses are prohibited.

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, "PART II OF THE DALLAS DEVELOPMENT CODE," 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 4th day of August, 2006.

OWNER:

PERRY HOMES, a Joint Venture

BY: Perry-Houston Interests, Ltd.
a Texas limited partnership
As the Managing Joint Venturer

BY: PH Financial, L.L.C.
a Texas limited liability company,
as the General Partner

BY: Jerry Zamzow
Jerry Zamzow
Chief Financial Officer

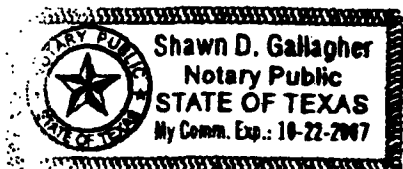
APPROVED AS TO FORM:

THOMAS P. PERKINS, City Attorney

By: Cody Byness
Assistant City Attorney

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 1st day of June, 2006, by JERRY ZAMZOW, as the duly authorized representative of PH FINANCIAL, L.L.C., a Texas limited liability company, as General Partner of PERRY-HOUSTON INTERESTS, LTD., a Texas limited partnership, and the Managing Joint Venturer of, and on behalf of, PERRY HOMES, a Joint Venture.



Seal Showing Name and Commission Expiration

Shawn D. Gallagher
Notary Public in and for the State of Texas

**BREWER TRACT
PROPERTY DESCRIPTION:**

BEING A 3.980 ACRE TRACT OF LAND SITUATED IN THE MILES BENNETT SURVEY, ABSTRACT NO. 52, CITY OF DALLAS BLOCK NO. 5721, DALLAS, COUNTY, TEXAS, AND BEING ALL OF THAT CALLED 3.9817 ACRE TRACT OF LAND DESCRIBED IN DEED TO DAVID G. BREWER II RECORDED IN VOLUME 2001149, PAGE 8288, DEED RECORDS OF DALLAS COUNTY, TEXAS, (DRDCT), SAID 3.980 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 1-INCH IRON ROD FOUND FOR THE MOST SOUTHERLY CORNER OF SAID 3.9817 ACRE TRACT OF LAND SAME BEING THE MOST WESTERLY CORNER OF MAPLE LAWN TERRACE ADDITION, AN ADDITION TO THE CITY OF DALLAS DESCRIBED BY PLAT RECORDED IN VOLUME 3, PAGE 242, MAP RECORDS OF DALLAS COUNTY, TEXAS AND BEING IN THE NORTHEASTERLY RIGHT-OF-WAY LINE OF MAPLE AVENUE, (A CALLED 60-FOOT RIGHT-OF-WAY);

THENCE NORTH 45°42'06" WEST ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 166.00 FEET TO A CHISELED "X" FOUND FOR THE WESTERLY CORNER OF SAID 3.9817 ACRE TRACT OF LAND SAME BEING THE MOST SOUTHERLY CORNER OF A 20-FOOT STRIP OF LAND BEING A REMNANT OF THAT CERTAIN TRACT OF LAND DESCRIBED IN DEED TO W.K. GRIFFIN AND WIFE FRANCES LARMER GRIFFIN AND LEIGHTON G. DOTSON AND WIFE, VIVIAN M.S. DOTSON DESCRIBED IN DEED RECORDED IN VOLUME 2534, PAGE 231, DRDCT; (RECORD NORTH 45°47'00" WEST-166.00')

THENCE NORTH 44°32'00" EAST ALONG THE COMMON LINE OF SAID GRIFFIN TRACT OF LAND AND SAID 3.9817 ACRE TRACT OF LAND, A DISTANCE OF 400.27 FEET TO A 1/2-INCH IRON ROD FOUND FOR CORNER;

THENCE NORTH 45°00'00" WEST, AT A DISTANCE OF 20.00 FEET PASSING THE MOST EASTERLY CORNER OF THAT CALLED 1.8365 ACRE TRACT OF LAND DESCRIBED IN DEED TO PRESCOTT INTERESTS, LTD. RECORDED IN VOLUME 97096, PAGE 1796, DRDCT, CONTINUING ALONG THE COMMON LINE OF SAID 3.9817 ACRE TRACT OF LAND AND SAID 1.8365 ACRE TRACT OF LAND IN ALL FOR A TOTAL DISTANCE OF 220.00 FEET TO A 1/2-INCH IRON ROD FOUND FOR MOST NORTHERLY CORNER OF SAID 1.8365 TRACT OF LAND AND BEING IN THE SOUTHEASTERLY LINE OF A CALLED 3.842 ACRE TRACT OF LAND DESCRIBED IN DEED TO JOHN J. TOMAINO DBA J & J ENTERPRISES RECORDED IN VOLUME 98088, PAGE 3196, DRDCT;

THENCE NORTH 44°36'55" EAST ALONG THE COMMON LINE OF SAID 3.9817 ACRE TRACT OF LAND AND SAID 3.842 ACRE TRACT OF LAND AT A DISTANCE OF 86.87 FEET PASSING A 1/2-INCH IRON PIPE FOUND FOR THE MOST

EASTERLY CORNER OF SAID 3.842 ACRE TRACT OF LAND SAME BEING THE MOST SOUTHERLY CORNER OF THAT CERTAIN TRACT OF LAND DESCRIBED IN DEED TO ROD-MAR CORPORATION, INC. RECORDED IN VOLUME 88237, PAGE 2258, DRDCT, CONTINUING ALONG THE COMMON LINE OF SAID 3.9817 ACRE TRACT OF LAND AND SAID ROD-MAR TRACT OF LAND AT A DISTANCE OF 97.27 FEET PASSING THE MOST SOUTHERLY CORNER OF THAT CALLED 112 SQUARE FOOT TRACT OF LAND DESCRIBED IN DEED TO T.C. BATESON RECORDED IN VOLUME 272, PAGE 104, DRDCT, CONTINUING ALONG THE COMMON LINE OF SAID 3.9817 ACRE TRACT OF LAND AND SAID 112 SQUARE FOOT TRACT OF LAND AT A DISTANCE OF 153.27 FEET PASSING THE MOST EASTERLY CORNER OF SAID 112 SQUARE FOOT TRACT OF LAND, CONTINUING ALONG THE COMMON LINE OF SAID 3.9817 ACRE TRACT OF LAND AND SAID ROD-MAR TRACT OF LAND IN ALL FOR A TOTAL DISTANCE OF 235.10 FEET TO A 1/2-INCH IRON ROD FOUND FOR THE MOST WESTERLY SOUTHWEST CORNER OF LOT 1, BLOCK 5721 OF ARCHITECTURAL CARPENTRY MATERIALS ADDITION, AN ADDITION TO THE CITY OF DALLAS DESCRIBED BY PLAT RECORDED IN VOLUME 81125, PAGE 2866, DRDCT; (RECORD NORTH 44°32'00" EAST~235.25')

THENCE ALONG THE COMMON LINE OF SAID 3.9817 ACRE TRACT OF LAND AND SAID ARCHITECTURAL CARPENTRY MATERIALS ADDITION, THE FOLLOWING:

SOUTH 44°55'05" EAST, A DISTANCE OF 7.15 FEET TO A 1/2-INCH IRON ROD FOUND FOR CORNER; (RECORD SOUTH 45°00'00" EAST~7.15')

NORTH 57°41'15" EAST, A DISTANCE OF 41.91 FEET TO A 5/8-INCH IRON ROD FOUND FOR CORNER; (RECORD NORTH 57°36'20" EAST~41.91')

SOUTH 44°59'26" EAST, A DISTANCE OF 368.37 FEET TO A 1/2-INCH IRON ROD FOUND FOR CORNER IN THE AFOREMENTIONED NORTHWESTERLY LINE OF MAPLE LAWN TERRACE ADDITION; (RECORD SOUTH 45°00'00" EAST~368.70')

THENCE SOUTH 44°32'21" WEST ALONG THE COMMON LINE OF SAID 3.9817 ACRE TRACT OF LAND AND SAID MAPLE LAWN TERRACE ADDITION, A DISTANCE OF 677.08 FEET TO THE POINT OF BEGINNING; (RECORD SOUTH 44°32'00" WEST~677.08')

CONTAINING A COMPUTED AREA OF 173,351 SQUARE FEET OR 3.980 ACRES OF LAND.

PRESCOTT TRACT
PROPERTY DESCRIPTION:

BEING A 1.844 ACRE TRACT OF LAND SITUATED IN THE MILES BENNETT SURVEY, ABSTRACT NO. 52, CITY OF DALLAS BLOCK NO. 5721, DALLAS COUNTY, TEXAS, AND BEING ALL OF THAT CALLED 1.8365 ACRE TRACT OF LAND DESCRIBED IN DEED TO PRESCOTT INTERESTS, LTD. RECORDED IN VOLUME 97096, PAGE 1796,, DEED RECORDS OF DALLAS COUNTY, TEXAS, (DRDCT), SAID 1.844 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A CHISELED "X" FOUND FOR THE WESTERLY CORNER OF THAT CALLED 3.9817 ACRE TRACT OF LAND DESCRIBED IN DEED TO DAVID G. BREWER II RECORDED IN VOLUME 2001149, PAGE 8288, DRDCT SAME BEING THE MOST SOUTHERLY CORNER OF A 20-FOOT STRIP OF LAND BEING A REMNANT OF THAT CERTAIN TRACT OF LAND DESCRIBED IN DEED TO W.K. GRIFFIN AND WIFE FRANCES LARMER GRIFFIN AND LEIGHTON G. DOTSON AND WIFE, VIVIAN M.S. DOTSON DESCRIBED IN DEED RECORDED IN VOLUME 2534, PAGE 231, DRDCT AND BEING IN THE NORTHEASTERLY RIGHT-OF-WAY LINE OF MAPLE AVENUE, (A CALLED 60-FOOT RIGHT-OF-WAY);

THENCE NORTH 45°42'06" WEST ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 20.00 FEET TO A 5/8-INCH IRON ROD WITH CAP STAMPED "BURY + PARTNERS" SET FOR THE POINT OF BEGINNING, BEING THE WESTERLY CORNER FO SAID 20.00 FOOT STRIP AND THE MOST SOUTHERLY CORNER OF SAID 1.8365 ACRE TRACT OF LAND;

THENCE NORTH 45°42'06" WEST CONTINUING ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 200.00 FEET TO A METAL FENCE POST FOUND FOR THE MOST WESTERLY CORNER OF SAID 1.8365 ACRE TRACT OF LAND, SAME BEING THE MOST SOUTHERLY CORNER OF THAT CALLED 3.842 ACRE TRACT OF LAND DESCRIBED IN DEED JOHN J. TOMAINO DBA J & J ENTERPRISES RECORDED IN VOLUME 98088, PAGE 3196, DRDCT; (RECORD NORTH 45°00'00" WEST~200.00')

THENCE NORTH 44°32'00" EAST ALONG THE COMMON LINE SAID 1.8365 ACRE TRACT AND SAID 3.842 ACRE TRACT OF LAND A DISTANCE OF 402.96 FEET TO A 1/2-INCH IRON ROD FOUND FOR A NORTHWESTERLY CORNER OF SAID 3.9817 ACRE TRACT OF LAND; (RECORD NORTH 45°00'00" EAST~400.00')

THENCE SOUTH 45°00'00" EAST ALONG THE COMMON LINE SAID CALLED 1.8365 ACRE TRACT AND SAID 3.9817 ACRE TRACT OF LAND, A DISTANCE OF 200.00 FEET TO A 5/8-INCH IRON ROD WITH CAP STAMPED "BURY + PARTNERS" SET FOR THE MOST EASTERLY CORNER OF SAID 1.8365 ACRE TRACT OF LAND AND THE MOST NORTHERLY CORNER OF THE AFOREMENTIONED 20-FOOT REMNANT STRIP;

THENCE SOUTH 44°32'00" WEST ALONG THE COMMON LINE SAID 1.8365 ACRE TRACT AND SAID 20-FOOT REMNANT STRIP, A DISTANCE OF 400.51 FEET TO THE POINT OF BEGINNING; (RECORD SOUTH 45°00'00" WEST~400.00')

CONTAINING A COMPUTED AREA OF 80,345 SQUARE FEET OR 1.844 ACRES OF LAND.