

COUNCIL CHAMBER

December 14, 2005

WHEREAS, the deed restrictions in the attached instrument have been volunteered in connection with property located in City Block 4/1518 at the intersection of Elizabeth Street and McKinney Avenue, which is the subject of Zoning Case No. Z045-270/12504(MM); 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. Z045-270/12504(MM).

**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

  
Assistant City Attorney

APPROVED  APPROVED \_\_\_\_\_ APPROVED \_\_\_\_\_  
HEAD OF DEPARTMENT DIRECTOR OF FINANCE CITY MANAGER

DEED RESTRICTIONS

THE STATE OF TEXAS    )  
                                   )  
 COUNTY OF DALLAS     )

KNOW ALL PERSONS BY THESE PRESENTS:

**I.**

The undersigned, McKinney Avenue J-V and Yancey Expressway Properties, ("the Owners"), are the owners of the following described property ("the Property"), being in particular a tract of land in City Block 4/1518 in the John Grigsby Survey, Abstract No. 495, in the City of Dallas, Dallas County, Texas, and being more particularly described in Exhibit A attached hereto.

**II.**

The Owners do hereby impress all of the Property with the following deed restrictions ("restrictions"), to wit:

1. The maximum height of any structure on the Property is thirty-six (36) feet.

**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 Owners 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 Owners agree that these restrictions inure to the benefit of the City. The Owners hereby grant 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 Owners agree that the City shall be entitled to recover damages, reasonable attorney's fees, and court costs. For further remedy, the Owners agree 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 Owners agree 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 Owners 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 Owners understand and agree that this document shall be governed by the laws of the State of Texas.

## XI.

The Owners certify and represent 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 14 day of October, 2005.

McKinney Avenue Joint Venture

Owner

By: 

Printed Name: Thomas W. Smith

Title: MANAGING PARTNER

Yancey Expressway Properties

Owner

By: 

Printed Name: C. Stephen Yancey Jr.

Title: Managing Partner

053562

CONSENT AND CONCURRENCE OF  
LIENHOLDER OR MORTGAGEE

FROST NATIONAL BANK

Owner

By: Robert White

Printed Name: ROBERT WHITE

Title: MARKET PRESIDENT

APPROVED AS TO FORM:  
THOMAS P. PERKINS, JR., City Attorney

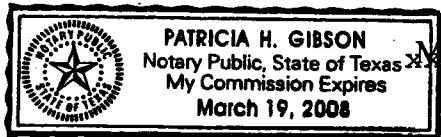
By: Cathy Burgoon  
Assistant City Attorney

STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me on the 14th day of October, 2005  
by Thomas M. Smith, Managing Partner of McKinney Avenue Joint Venture,  
in the capacity on behalf of said entity for the purposes stated therein.

(Seal)

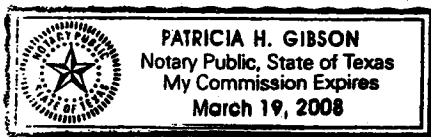


XXXXXXXXXXXXXXXXXXXXXXXXXXXX  
Patricia H. Gibson  
NOTARY PUBLIC, STATE OF TEXAS  
XXXXX

STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me on the 14<sup>th</sup> day of October, 2005,  
by C. Stephen Yancey, Jr., Managing Partner of Yancey Expressway Properties, in the capacity  
on behalf of said entity for the purposes stated therein.

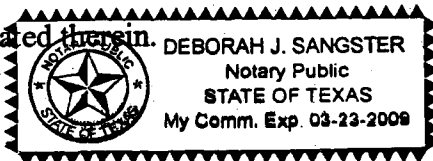


Patricia H. Gibson  
Notary Public in and for the State of Texas

STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me on the 13<sup>th</sup> day of October, 2005,  
by Robert White, Market President of Frost National Bank, in the capacity on behalf of said bank  
for the purposes stated therein.



Deborah Sangster  
Notary Public in and for the State of Texas

STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2005,  
by Thomas P. Perkins, Jr., Assistant City Attorney, City of Dallas, in the capacity for the  
purposes stated therein.

\_\_\_\_\_  
Notary Public in and for the State of Texas

EXHIBIT A  
PROPERTY DESCRIPTION

BEING a tract of land in City Block 4/1518 in the John Grigsby Survey, Abstract No. 495, in the City of Dallas, Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a point at the intersection of the southeast line of McKinney Avenue (70 foot right-of-way) and the northeast line of Elizabeth Street (50 foot right-of-way);

THENCE North 24° 00' 00" East along the southeast line of McKinney Avenue, a distance of 134.00 feet to a point for corner;

THENCE South 66° 00' 00" East, leaving the southeast line of McKinney Avenue, a distance of 197.00 feet to a point for corner;

THENCE South 24° 00' 00" West, a distance of 134.00 feet to a point for corner on the northeast line of Elizabeth Street;

THENCE North 66° 00' 00" West along the northeast line of Elizabeth Street, a distance of 197.00 feet to the POINT OF BEGINNING, and containing approximately 26,398 square feet or 0.60 acres of land.

Handwritten signature and initials, possibly 'C. H. Smith' and 'D. J. Smith', written in black ink.

Z045-270