

Waller Business Park

Declaration of Covenants, Conditions, and Restrictions

Preamble

This Declaration of Covenants, Conditions, and Restrictions is made effective 13th day of April, 2004, by FM 362 Development LLC, (the "Developer"), a Texas limited liability company with its offices at 40040 Hempstead Highway, Waller, Texas 77484.

Recitals

WHEREAS, on the 13th day of April, 2004, the Commissioners' Court of Waller County, Texas, approved and accepted WALLER BUSINESS PARK, a subdivision of a certain 44.77 acre tract of land in the J.P. Shelbourne Survey, Abstract 255, Waller County, Texas (the "Property"); and

WHEREAS, the approved plat of Waller Business Park is filed of record in Volume 831, Page 863 Official Real Property Records of Waller County, Texas (the "Plat"), for the dedication of said Waller Business Park; and

WHEREAS, the Property outlined and delineated hereby shall be hereafter known and referred to as Waller Business Park, and there shall be dedicated to the use of the public on the Plat a certain street called "Park 290 Drive;" and

WHEREAS, it is the desire of the Developer that the entire Waller Business Park be maintained and developed in keeping with a uniform plan of development which would best promote and protect the area as a prime business location.

NOW, THEREFORE, in accordance with both the doctrines of restrictive covenant and implied equitable servitude, the Developer desires to establish these Covenants, Conditions and Restrictions (the "Restrictions") on the Property according to these Restrictions in furtherance of this general development plan.

FURTHER, it is declared that all of the Property shall be held, sold, and conveyed subject to the conditions shown on the Plat as well as the following easements, restrictions, covenants, and conditions:

1. **SET BACKS.** Each parcel of land in Waller Business Park shall be subject to the minimum set back and side line restrictions as shown in the Plat. In the event any owner shall own two or more adjoining tracts of land in Waller Business Park, the side line restrictions for inside boundaries may be suspended, unless or until any single parcel of land shall then be sold by such common owner, at which time the side line restrictions shall once again be implemented.
2. **LAND TO BUILDING RATIO.** Land to building ratio shall be at least 3 to 1 in the Waller Business Park. For the purpose of this provision, "building" shall be construed to mean actual first floor ground coverage under roof and "land" shall be construed to include the total acreage of the particular parcel.
3. **LANDSCAPING.** Following the sale of any tract in the Waller Business Park and the construction of buildings or other improvements on such tract, the owner thereof shall be required to pave or landscape all areas of such tract not containing buildings or other permitted structures. As used herein the term "landscape" shall require as a minimum the mowing of the natural vegetation. The area shall be maintained to prevent natural erosion.
4. **PROVISIONS FOR OFF-STREET PARKING AND LOADING.** On-street parking and on-street loading shall not be permitted in the Waller Business Park and all Waller Business Park lands shall be developed in such a way as to provide sufficient off-street parking. Parking and loading areas shall be paved to provide dust-free, all weather surfaces.

5. OUTSIDE STORAGE. Outside storage of material shall be permitted only where such storage is appropriately screened from all approaches.

6. MAINTENANCE. The owner of any tract or lot shall at all times keep the premises, buildings, improvements and appurtenances in a safe, clean, wholesome condition and comply in all respects with all government, health, fire and police requirements and regulations, and any owner will remove at his or its own expense any rubbish of any character whatsoever which may accumulate on said site or lot, owner shall keep property mowed and in the event said owner fails to comply with any or all of the aforesaid specifications and/or requirements, then, and only then, the Developer shall have the right, privilege and license to enter upon the premises to make any and all corrections and/or improvements that may be necessary to meet such standards and charge to and collect from said owner the reasonable costs of making such corrections and/or improvements but only after 60 days written notice to owner to demand such actions.

7. REVIEW BOARD

- A. A Review Board is hereby created consisting of the Timothy Phelan, James Henderson and Don Mollan, Jr. In the case of the death or resignation of any member or members of the Board, the remaining member or members of the Board shall appoint a replacement member or members. No member of the Review Board shall be entitled to any compensation for performing the duties as a member of such Review Board.

- B. The Review Board hereby created shall consist of the persons appointed by the respective parties hereto from time to time. Such appointments shall be effective when written notice thereof shall have been mailed to the respective parties to this agreement with a copy of such notification being filed in the office of the Developer. Changes in the membership of the Review Board may be effected in like manner.

- C. Except in the case of those items described herein where unanimous consent or unanimous action of the Review Board is required, action of the Review Board shall be by majority vote. All actions of the Review Board shall be in writing and filed in the office of the Developer and shall at all reasonable times be open to public inspection. The Review Board shall have a minimum of three individuals at all times.

- D. Before commencing the construction or alteration of any building, enclosure, fence, loading dock, parking facility, storage yard or any other structure or permanent improvement on any site or lot within Waller Business Park, the property owner shall first submit site plans and building plans and specifications therefore (hereinafter collectively referred to as the "Plans") and the Review Board's written approval shall be required before such construction or alteration is commenced.

- E. No building, fence, utility service, surface water retention or flow reservoir, or other above-ground edifice shall be erected, placed or altered on any parcel in Waller Business Park until the plans and specifications showing the location of such structures have been submitted to and approved in writing by the Board as to conformity with these Restrictions, compliance with the Plat and harmony of external design, considering in part all then existing structures in Waller Business Park and as to location of the improvements with respect to topography and finished ground elevation.

- F. In the event that the Review Board or its designated representatives shall fail to approve or disapprove any Plans or any other instruments or items requiring the Review Board's approval

within seven (7) days after they have been submitted to the Review Board, such approval will not be required and the approval requirement in question shall be deemed to be satisfied.

8. **CONSTRUCTION MATERIALS.** The outside walls of all buildings and structures in the Waller Business Park shall be finished with construction grade painted metal on all sides or other construction materials of at least equal attractiveness in the sole discretion of the Review Board.

9. **SIGNS.** Plans and specifications for the construction, installation or alteration of all outdoor signs shall be first submitted to and have the written approval of the Review Board. The Review Board shall take into consideration the blocking or obstructing of existing signs. No reasonable request shall be denied.

10. **LAND USES.** None of the lands within the bounds of said business park shall be used for the following purposes. a. The operation of a junk or salvage yards; b. Uses constituting nuisance, public or private, by reason of emission of smoke, dust, gas, odor, fumes, noise, vibration, or refuse material of any kind; c. Without limiting the generality of "b" above, the manufacture of acid, cement, lime, gypsum, fireworks, glue; the manufacture, incineration or reduction of garbage, offal or dead animals, and the refining of petroleum, the smelting of zinc, copper, tin or iron ores, or the maintaining of stockyards and/or abattoirs. d. single or multi-family dwellings.

In addition, none of said lands shall be used for the purpose of maintaining any unenclosed frame structure such as a tower used for the transmission or reception of television or radio messages.

11. **VARIANCES AND INTERPRETATIONS.** The Review Board may grant to any owner of land in the Waller Business Park variances from any of the provisions contained in this development plan where such variances, in the sole discretion of the Review Board, are not detrimental to the Waller Business Park. Any question of interpretation of any provision of this development plan shall be decided by the Review Board.

12. **UTILITY EASEMENTS.** Subject to these Restrictions and the Plat of the Waller Business Park, Developer shall provide free of cost all necessary easements and rights-of-way required to bring public utility service to each of the parcels in the Waller Business Park, including but not limited to electric light and power, telephone, gas, water and sewer service. The locations of easements are tentative locations only and may be changed by the unanimous opinion of the review board.

13. **TERMINATION OF PLAN.** Each term, condition and covenant herein contained shall terminate and be of no further effect on April 13, 2014. However, at any time prior to April 13, 2014, the then owners of a majority of the area in square feet within said Waller Business Park may by declaration, signed, acknowledged by them, and duly recorded in the Deed Records of Waller County, Texas, extend such terms, restrictions, conditions and covenants for a period of ten (10) years. In like manner additional extensions for successive periods of ten (10) years may be provided for as long as the owners of a majority of the area in square feet within said Waller Business Park affirmatively vote to so extend them. During the term of any such extension, the rights reserved to the parties hereto and to the Review Board created hereby shall continue in full force and effect.

14. **ENFORCEMENT OF PLAN** The terms and conditions of this Development Plan are made for the benefit of any and all persons who may now own, or who may hereafter own property in Waller Business Park. Such persons and the Review Board are hereby specifically given the right to enforce these terms and conditions by injunction or other lawful procedure, and to recover damages resulting from any violation thereof.

15. This Development Plan of Waller Business Park shall be incorporated by reference in each and every contract of purchase and sale and every deed for conveyance of any character of land in the Waller Business Park so that all owners, occupants or users of land in the Waller Business Park shall assume the obligation of, and be bound by, all of the provisions of this Plan. All such transactions shall also have as one of the conditions of sale the undertaking by the purchaser to incorporate by reference said Development Plan of Waller Business Park as a condition of sale in the event of a resale of any of the lands in said Waller Business Park to a subsequent purchaser to the end that all such subsequent purchasers, occupants or users shall also assume the obligations of, and be bound by, all of the provisions of this Development Plan.

EXECUTED to be effective on April 13, 2004.

Timothy J. Phelan
FM 362 Development, LLC

By: Timothy J. Phelan
Name: Timothy J. Phelan
Title: Member

James C. Henderson
FM 362 Development, LLC

By: James C. Henderson
Name: James C. Henderson
Title: Member

ACKNOWLEDGMENTS

THE STATE OF TEXAS §
COUNTY OF Waller §

This instrument was acknowledged before me on the 13th day of APRIL, 2004, by Timothy J. Phelan as member of FM 362 DEVELOPMENT, L.L.C., a Texas Limited Liability Company and on behalf of said limited liability company.

My commission expires:
April 9, 2007

Iris Garza
NOTARY PUBLIC

Iris Garza
Notary's Name Printed



THE STATE OF TEXAS §
COUNTY OF Waller §

This instrument was acknowledged before me on the 13th day of APRIL, 2004, by James C. Henderson as member of FM 362 DEVELOPMENT, L.L.C., a Texas Limited Liability Company and on behalf of said limited liability company.

My commission expires:
April 9, 2007

Iris Garza
NOTARY PUBLIC

Iris Garza



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THE STATE OF TEXAS
COUNTY OF WALLER

I hereby certify that this instrument was FILED on the date and at the time stamped hereon by me and was duly RECORDED in the Official Public Records of Waller County, Texas, in the Volume and Page as noted hereon by me.



Cheryl Peters
County Clerk, Waller County, Texas

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FM 302 Development LLC
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