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Doris Tate, County Clerk and Recorder



PROTECTIVE COVENANTS AND BILL OF ASSURANCE

For all of the Lots in the Regions Business Park, a platted subdivision located in the Fort Smith District of Sebastian County, Arkansas, except Lots 1, 7, 12 and 13.

KNOW ALL MEN BY THESE PRESENTS:

The undersigned, Zero Business Park, Inc. (the "Developer"), being the developer of certain real property situated in the Fort Smith District of Sebastian County, Arkansas, hereby imposes the following covenants, limitations, restrictions and uses (the "Covenants") on Lots 2 through 5, 8 through 11 and 14 through 51 of the Regions Business Park, a platted subdivision filed of record in the Fort Smith District of Sebastian County, Arkansas on the 20th day of October, 2000, as plat number 1653B. The legal description of the Lots covered by these Protective Covenants and Bill of Assurance are attached as Exhibit "A". (The Lots covered by these Protective Covenants and Bill of Assurance are hereinafter collectively referred to as the "lots") The Covenants shall not apply to or cover Lots 1, 7, 12 or 13 that are shown on plat number 1653B.

The Covenants shall run with the land for the period of time hereinafter set forth and shall be binding upon the Developer and all future owners of the lots. These Covenants are for the benefit of and are limitations upon the Developer and all future owners of the lots and have been designated as such in order to provide for an orderly development of the lots and for the purpose of making the lots desirable, uniform and suitable for use as herein specified.

The Covenants shall be binding upon the Developer and all future owners of the lots until January 1, 2050, at which time they shall be automatically extended for an additional twenty (20) years, unless by majority vote of the then lot owners, it is agreed that these Covenants should be canceled, changed or amended in whole or in part. In any such vote, the owner or owners of each lot shall have just one (1) vote regardless of the number of owners of said lot.

It shall be lawful for the Developer or any person owning a lot or lots, or any undivided fee interest therein, to initiate any proceedings at law or in equity against persons or entities violating or attempting to violate any of the Covenants to seek an injunction against such violation or to recover damages for such violation, or both. The invalidation of any one of the Covenants by a court order shall not invalidate any of the other provisions which shall remain in full force and effect.

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ARTICLE I
USE OF LOTS

The lots shall be constructed, developed, occupied and used as follows:

Section 1. Lots. All lots shall be used, known and described as commercial, industrial or transitional lots. No lot may be divided or split unless the Regions Business Park Architectural Committee, in its sole discretion, approves the division or split. The following uses are prohibited: car washes; retail gasoline sales; convenience stores; wrecking or reclamation businesses; self-storage facilities; auto salvage yards; "adult" bookstores and any other business offering "adult" entertainment; or any other use or business deemed, in its sole discretion, undesirable by the Developer.

Section 2. Building Design Standards.

- a. If more than one building or structure is constructed on a lot, then all of the buildings or structures on that lot shall incorporate a recurring, unifying and identifiable design, unless approved by developer.
- b. At least 50% of the front facade of all buildings and other structures (and 50% of the side facades of all building and other structures on corner lots) must be of high quality materials, such as brick, glass, native stone, stucco, exterior insulated finished systems (EIFS) or tinted/textured concrete masonry units; provided however, that 100% of the front facade of any building facing Zero Street must be of said high quality materials. Smooth faced concrete block, plain or untextured tilt-up panels and prefabricated steel panels are not considered a "high quality material" for purposes of this subsection. No part of any exterior facades of a building or other structure shall consist of galvanized metal. All metal surfaces must be painted.
- c. All other building facade surfaces shall be of a high quality building material suitable for commercial application.
- d. Mechanical equipment (including but not limited to heating/cooling systems), trash receptacles and utility boxes shall be completely screened from adjoining properties and street rights-of-way. Screening shall consist of view-obscuring walls, fences, berms, architectural treatments, or vegetation, or some combination thereof.

Section 3. Driveways and Parking Areas. All driveways and parking areas that lie between the building face line (an imaginary line that runs along the front of the building from the side property line to the side property line) and the front property line of a lot shall have a

concrete or asphalt surface and shall have concrete curbs and gutters. Also, with regard to any corner lot, the driveways and parking areas that lie between the building side line (an imaginary line that runs along the side of the building facing the street from the front property line to the rear property line) and the streetside property line shall have a concrete or asphalt surface and shall have concrete curbs and gutters. Additionally, any other driveway or parking area that is visible from a public street shall either have a concrete or asphalt surface or shall be screened by a view-obscuring wall or fence.

Section 4. Sign Requirements.

- a. Monument Signs. A monument sign is defined as a ground mounted sign, with a maximum height of 7 feet above the surrounding ground level (inclusive of the base and the display area) and with maximum area of 64 square feet per side. Lots with less than 100 feet of linear street frontage may have just one monument sign. Lots with more than 100 feet of linear street frontage shall be entitled to one additional monument sign for each additional 100 feet of linear street frontage. In the case of corner lots, one additional monument sign shall be allowed but only one sign per streetside. Monument signs shall not contain more than two faces. Monument signs will be constructed of masonry or an architectural material approved by the Regions Business Park Architectural Committee. Illumination may be either internal or external.
- b. Wall Signs. In addition to the monument sign or signs described above, one wall mounted sign may be installed for each business or organization on a lot. The sign area shall not exceed 200 square feet. A second wall sign is allowed if the building has more than one side facing a street or highway right-of-way, but only one wall sign can face each street or highway right-of-way. All wall signs must be approved by the Regions Business Park Architectural Committee.
- c. Other Signs Prohibited. No signs, other than directional signs and the above described monument and wall signs, shall be permitted on any lot or on the building or other structure on any lot (including the windows of a building or structure). Banners, marquees and portable signs are expressly prohibited.
- d. Offsite Advertising and Billboards. No sign on a lot may be used to advertise a business or organization other than the business or organization occupying the lot. No billboards shall be permitted on any lot.
- e. Conflict with Ordinances. The forgoing notwithstanding, all signs shall comply with any sign ordinances of the City of Fort Smith.

Section 5. Landscaping.

- a. Perimeter Landscaping Requirements. A 10 foot wide landscaped area shall be located parallel, adjacent and all along the public right-of way lines on a lot. At least 25% of the perimeter landscaped areas will be covered by trees, shrubs or bushes. For purposes of the preceding sentence the "coverage" by a tree, shrub or bush shall be determined by the width of the drip line of the tree, shrub or bush.

- b. Interior Landscaping for Vehicular Use Areas. Any parking lot or open vehicular use area, excluding loading and unloading areas, containing more than 6,000 square feet of area, or twenty or more vehicular parking spaces, shall have interior landscaping (landscaping within the boundaries of the parking lot or open vehicular use area.) Interior landscaping may be of a peninsular or island configuration and shall be constructed as follows:
 - (1) Landscape Area. For every 100 square feet of vehicular use area, at least five square feet of landscaped area shall be provided. The minimum size of each landscaped area (whether an island or peninsula) shall be sixty-four square feet.

 - (2) Trees in a Landscaped Area. All trees shall be set back a distance of seven (7) feet from the edge of the public street.

 - (3) Vehicle Overhang. No portion of a parked vehicle may hang over the interior landscaped area more than two and one-half feet. Concrete curbs or other wheel stops shall be installed to insure no greater overhang of the landscaped areas.

- c. Landscape Materials. All landscape materials should compliment the general design and architecture of the adjacent buildings. The type and amount of shade or sun within a proposed landscaped area should be considered in selecting plant materials.
 - (1) Type of Materials. All landscaped areas shall contain some type of plant material and no more than 25% of the surface of a landscaped area may be covered with rock, mulch or gravel. Artificial plants are prohibited. All plant materials shall be living plants and shall meet the following requirements:
 - (a) Quality. Plant materials shall conform to the standards of the American Association of Nurserymen and shall have passed appropriate inspections required under State

regulations.

- (b) Deciduous Trees. All deciduous trees shall have a minimum caliper of three (3) inches at planting.
- (c) Evergreen Trees. All evergreen trees shall be a minimum of five feet high at the time of planting.
- (d) Grass or Ground Cover. Grass may be sodded or seeded except in swales or other areas subject to erosion, where solid sod, erosion reducing net, or suitable mulch shall be used.

(2) Maintenance and Installation. All landscaping materials shall be installed in a sound, workmanship-like manner and according to accepted, good construction and planting procedures. The owner of each shall be responsible for the continued proper maintenance of all landscaping materials of his or her lot, and shall keep them in proper, neat and orderly appearance, free from refuse and debris at all times. All unhealthy or dead plant material shall be replaced within one year, or by the next planting period, whichever comes first; while other defective landscape material shall be replaced or repaired with three months.

d. Conflict with Ordinances. The forgoing notwithstanding, all landscaping shall comply with any landscape ordinances of the City of Fort Smith.

Section 6. Exterior Lighting. All exterior lighting shall conform to the following:

- a. Light Poles. Light poles shall have a maximum height of 30 feet.
- b. Lamps. Each light pole will have a maximum of 2 lamps and each lamp will have a bulb with no more than 250 watts. The lamps will have no more than (2) candle foot power at ground level.
- c. Unnecessary Glare. All lamps will contain directional shielding as is necessary to avoid illumination or glare onto areas adjoining the lots, such as residential developments, roadways or highways.

Section 7. Fences. Fences will either be of decorative architectural type, including hot dipped galvanized, block, brick or one approved by the Regions Business Park Architectural Committee. No fence will be permitted beyond the building face line of the building on the front and on the side for corner lots. Barbed wire or sheet metal fencing shall not be used on any lot.

Section 8. Temporary Structures and Recreational Vehicles. No mobile home shall be placed on any lot, either temporarily or permanently. No portable building, trailer, tent, construction shack or other out building shall be erected or placed on any lot, except for temporary use by construction contractors for a reasonable period of time and only in such location and, for such time as may be designated by the Regions Business Park Architectural Control Committee. Boats, motorcycles, trailers, all terrain vehicles ("ATV's") and other recreational vehicles shall not be stored within public view on any lot..

Section 9. Setback Lines. No above ground structure shall be constructed or installed between the front property line and the building setback line as shown on the plats except as expressly permitted herein.

ARTICLE II **RIGHTS OF WAY**

No portion of any lot shall be used for a driveway, street, passageway, public right-of-way or easement of any type to service or benefit real property or owners of real property adjoining the Regions Business Park Subdivision; provided however, nothing contained in this Section shall: (1) prevent adjoining lot owners from permitting access between their lots: or (2) prevent the Developer from granting an easement or access to, from or across a lot prior to its sale by the Developer.

ARTICLE III **OFFENSIVE ACTIVITIES**

No offensive activity, including but not limited to the discharge of firearms or fireworks, shall be permitted on any lot, nor shall any activity be undertaken on any lot that shall become an annoyance or nuisance to the Lots. The burning or burying of leaves, debris and trash shall not be permitted on any lot. The development of minerals of any kind or nature is prohibited within the Lots: provided, however, underground hydrocarbon minerals may be captured by wells located outside the Lots. No privy, cesspool, septic tank or disposal plant shall be installed or maintained on any lot in the Lots, and all buildings shall have its plumbing connected to the city sanitary sewer system.

ARTICLE IV **OTHER CONSTRUCTION CRITERIA**

Section 1. Storage of Construction Materials. Construction materials may be stored on a lot within the building setback lines for thirty (30) days prior to the commencement of construction. All construction shall be completed within a reasonable period of time.

Section 2. Garbage: Dumping. Dumping is prohibited in the Lots. All trash, garbage or other waste shall be kept in trash cans or dumpsters located at the rear or side of a building screened from adjoining lots.

Section 3. Antenna, Aerial and Other Devices. Antennas, aerials or similar devices for telephone, television, citizen's band, shortwave or radio reception shall not be allowed in the Lots unless approved by the Maple Park Commercial Architectural Committee.

Section 4. Appearance Lot. All owners shall be required to keep their lot in a clean and sanitary condition whether or not they have constructed a building on the lot. "Indoor furniture" shall not be placed outside of any building. One satellite dish shall be permitted on each business but only if the diameter of the dish is 24" or less and only if the dish is installed to the rear of the building, so as to be obscured from public view and the view of adjacent lots. No refuse or debris pile shall be placed anywhere on a lot.

ARTICLE V

ARCHITECTURAL CONTROL COMMITTEE

Section 1. Design Review. All plans for landscaping, new buildings and modifications to existing buildings shall be subject to review and approval by the Regions Business Park Architectural Control Committee (the "Committee") prior to construction. Prior to the installation of landscaping, the construction of a building or modifications to an existing building, the owner of the lot shall furnish to the Committee a site plan or development plan which shall include the following:

- a. Rendered elevation drawings of the proposed structure to 1/8" to 1' (minimum) scale, showing the design of the structure and the proposed materials of the building's external finishes.
- b. The location and proposed screening of all mechanical equipment, parking, curbs and gutters, and sign locations.
- c. The location of all perimeter and interior landscaped areas with a description of proposed landscape materials.

Section 2. Decision by Committee. All plans must be reviewed by and a decision (with any required changes) rendered by the Committee within 21 days of submission of the plan. The Committee by a majority vote may, in its sole discretion, grant a variance from or waiver of any of the restrictive covenants contained herein.

Section 3. Members of the Committee. The Committee shall consist of a representative of the Developer, after the sale of at least two lots, and two other persons who own a lot, or interest in a lot. The two members of the Committee, other than the Developer's representative, shall be

chosen each year at an annual meeting of the lot owners held in January of each year. The two Committee members will be elected by a majority vote of the lot owners (including the Developer) who actually attend the meeting; and shall serve until the next annual meeting of the lot owners. After the Developer has sold all of the lots, the Developer may resign from the Committee and will be replaced by a lot owner elected in the same manner as the other Committee members. The Committee members shall elect a chairperson who will preside at any meeting of the Committee and will be responsible for receiving a plan, calling a meeting of the Committee to review a plan, notifying the plan proponent of the Committee's decision and providing notice to the lot owners of the time and place of the annual meeting. In voting on all matters each Committee member shall have one (1) vote for each lot owned by that member.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 1. Covenant Enforcement. The Committee or any owner of a lot, or an interest therein, may seek enforcement of the Covenants by any proceeding at law or in equity against any person or entity violating or attempting to violate them, whether the relief sought is an injunction or recovery of damages, or both; but failure by the Committee or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorney's fees and costs from the non-prevailing party.

Section 2. Severability. If any provision of these Covenants shall be held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall attach only to such provision and shall not in any manner effect or render illegal, invalid or unenforceable any other provisions of these Covenants, and these Covenants shall be carried out as if any such illegal, invalid, or unenforceable provision were not contained therein.

Section 3. Amendment. The Covenants may be amended at anytime by a vote of sixty (60%) of the lot owners. In any such vote, the owner or owners of each lot shall have just one (1) vote regardless of the number of owners of said lot.

Section 4. Headings. The headings contained in these Covenants are for reference purposes only and shall not in any way affect the meaning or interpretation of the provisions set out herein. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa, unless the context requires otherwise.

IN WITNESS WHEREOF, the duly authorized officers of Zero Business Park, Inc., the Developer, has set their hands and seals on the date first written above.