

STATE OF TEXAS *
*
COUNTY OF MIDLAND *

DECLARATION OF PROTECTIVE COVENANTS

WE, the undersigned owners of, in the aggregate, One Hundred percent of the votes of Stadium Merchants Association, a Texas non-profit corporation, and also as the Owners and Developers of Stadium Addition, Midland, Midland County, Texas do hereby recite and agree as follows, to wit:

NOW, THEREFORE, The undersigned make the following Declaration as to conditions, covenants, and restrictions to which the land described in Exhibit A appended hereto may be put, hereby specifying that this Declaration (hereinafter referred to as "the Declaration") shall constitute covenants to run with all of said land as provided by law and shall be binding upon the undersigned and all present or future owners of said land and other parties or persons claiming or to claim any interest therein. The land described on Exhibit A hereto may from time to time be referred to hereinafter as "Stadium Addition."

A. Objectives of Covenants:

1. To protect the owners and tenants of building sites within the Premises against improper uses that would depreciate property values.
2. To protect against construction of structures built of improper or unsuitable materials.
3. To encourage the construction of attractive permanent structures which conform to a common architectural concept, the provision for adequate and suitable landscaping, and the proper placement of improvements of the sites.
4. To provide an adequate parking area.
5. To provide for the continuation of a non-profit Incorporated association of all owners of property and/or major tenants within the subdivision to be known as the Stadium Merchants Association, the major purpose of which shall be to maintain all common area, to provide any common services deemed desirable by the members, and to assess and collect such periodic fees or assessments as may be necessary in order to accomplish the foregoing.

B. Permitted Uses:

1. Stadium Addition shall be used for commercial purposes only. Such purposes shall be limited to the construction, leasing, operation and maintenance of mercantile, retail, banking, office, business, service and professional establishments, and related facilities, such as the common areas.
2. For the purpose of this Agreement, Stadium Addition is divided into two (2) categories which relate to use, and are referred to herein as "Building Area" and "Common Area", respectively.

The construction, establishment and maintenance of buildings within Stadium Addition shall be confined within the Building Area designated on the applicable plat or plats of the subdivision or portions thereof.

3. "Common Area" shall include all *of* the areas within Stadium Addition designated for use in common for the benefit of the owners and occupants, more specifically being the utility, drainage, fire lane easements and easements for ingress and egress to the public street system.

C. Performance Standards:

The following performance standards shall be observed by the owners, lessees and interested parties with respect to the Premises:

1. No noxious or offensive trades, services or activities, as determined by the Board of Directors *of* the Merchants Association shall be conducted nor shall any use or activity become an annoyance or nuisance by reason *of* unsightliness, odor, glare, vibration, dust, smoke or noise.
2. No materials, supplies, equipment, products, raw materials, or articles of any nature shall be stored or permitted to remain on any building site within the Premises unless properly screened as approved by the Architectural Control Committee.
3. Each owner or tenant shall keep its parcel and improvements within the premises in a safe, clean, and neat condition and shall remove any rubbish or trash *of* any character generated on the premises or accumulated from without. No disposal of rubbish shall be permitted by means contrary to ordinances of the City of Midland.
4. No heating, air conditioning, electrical, lighting or other equipment shall be installed on a roof or hung on exterior walls or placed upon exterior landscaped areas, unless the same is covered and installed in a manner approved in writing by the Architectural Control Committee.

D. Merchants Association:

A non-profit corporation known as the Stadium Merchants Association has been established under the non-profit corporation laws of the State of Texas and the following provisions are applicable thereto:

1. All owners of land within Stadium Addition shall automatically be Members of the Merchants Association. Voting by Members shall be on the basis of one (1) vote for each one-thousand (1,000) square feet of land owned rounded to the nearest one-thousand (1,000) square feet. Any owner of land within Stadium Addition may assign all or any part of his total votes as a Member of the Association to tenants or lessees of all or any portion of his or its property within Stadium Addition.
2. The purpose of the Association shall be to promote Stadium Addition (hereafter referred to as the "Stadium") through the sponsorship of commercial, cultural, educational, community and other programs and in furtherance of such purpose, to engage in and conduct promotional programs and publicity, special events, decorations, co-operative advertising in the general interest and for the

benefit of the Stadium; and to maintain common areas and to oversee and enforce maintenance of the exterior portions of all buildings and all exterior parking and landscaped areas. In addition, such assessments shall be used to pay ad valorem taxes assessed and due and for payment of any hazard or casualty insurance premiums due on coverage for the said commons areas.

3. The Association shall be empowered to assess and collect maintenance fees and such promotional, taxes, insurance or other fees as may from time to time be duly approved by the Association in accordance with its By-Laws. All fees assessed by the Association shall be paid promptly when same becomes due, and any failure to pay same within thirty (30) days from due date shall constitute a lien upon the total premises owned by the delinquent party and may be enforced in equity and law in the same manner as non-judicial foreclosure as permitted and described in the Texas Property Code. The Association shall be conducted as a non-profit organization, and no part of the profits (if any) shall inure to the benefit of any Member or be used for any purpose not related to the general benefit of owners and tenants in the Stadium.

4. The business and affairs of the Association shall be managed by its Board of Directors, which shall initially consist of three (3) Members designated in the Articles of Incorporation of the Association. The Board of Directors shall be elected by the Members of the Association at an annual meeting of the Members. The Board may exercise all of the powers of the Association, except such powers as are conferred upon or reserved to the Members by the Articles of Incorporation or the By-Laws. The Board of Directors may enforce the rules, regulations, resolutions, and by-laws of the Association by whatever means it deems appropriate, except such as are specifically prohibited by statute, or the by-laws of the Association.

5. When 75% of the lots in the subdivision have been sold then all of the common areas improved by the developer will be conveyed to the Members Association by the Developer free of any liens or encumbrances. Any subsequent conveyance by the Association must have City of Midland approval prior to such conveyance.

E. Architectural Control Committee:

1. The Board of Directors shall appoint an Architectural Control Committee, which shall consist of three (3) natural persons.

2. A principal objective of the Architectural Control Committee shall be to insure, that all buildings constructed within Stadium are architecturally compatible with buildings previously constructed within the Stadium Addition, thereby insuring the establishment of a common architectural theme and concept for all buildings and structures.

3. No improvement as that term is hereinafter defined, shall be erected, constructed, placed or altered within the Plaza until plans and specifications in such form and detail as the Architectural Control Committee may deem necessary, shall have been submitted to and approved in writing by such Committee. The decision of the Architectural Control Committee shall be final, conclusive and binding upon the Applicant.

4. A. Two (2) sets of preliminary plans and specifications shall be submitted to the Architectural Control Committee, c/o Black Family Partnership, Ltd., P.O. Box 50820, Midland,

Texas 79710, or such address as may be described by the Architectural Control Committee, and shall include the following:

- a. A topographical plot showing contour grades (with no greater than five foot contour intervals) and showing the location of all improvements, structures, walks, patios, drive-ways, fences and walls.
- b. Exterior elevations.
- c. Exterior materials, colors, textures and shapes.
- d. Landscaping plan, including walkways, fences and walls, elevation changes, watering systems, vegetation and ground cover.
- e. Parking area and drive-way plan.
- f. Screening, including size, location and method.
- g. Utility connections.
- h. Signs, including size, shape, color, location and materials.

B. Upon approval of preliminary plans and specifications, two (2) sets of proposed final plans and specifications shall be submitted to the Architectural Control Committee, c/o Black Family Partnership, Ltd., P.O. Box 50820, Midland, Texas 79710, or such address as may be described by the Architectural Control Committee, which shall include in addition to all items required to be specified in the preliminary plans and specifications, the following additional items:

- a. A topographical plot showing existing and finished grades at lot corners and at corners of proposed improvements. Lot drainage provisions shall be included as well as cut and fill details if any appreciable change in the lot contour is contemplated.
- b. Structural design.
- c. Exterior illumination, including location and method.
- d. Fire protection system.

5. Improvements which shall be subject to the Architectural Control Committee review and approval process shall mean and include all buildings and roof structures, parking areas, loading areas, trackage, fences, walls, hedges, mass plantings, poles, driveways, fountains, signs, changes in any exterior color or shape, and any new exterior construction or exterior improvement. Subsequent to the completion of initially approved improvements, any exterior construction or exterior Improvements thereafter proposed to be completed, including but not limited to, the category of improvements described above, shall be subject to a review and approval requirements only if such exterior construction or improvements will exceed \$5,000.00 in cost. The term improvements shall not include garden shrub or tree replacements, or any other replacement or repair of any magnitude which ordinarily would be expensed in accounting practice and which does not change exterior colors or exterior appearances.

6. Neither the Architectural Control Committee, nor any owners (and/or lessees) of the land or improvements within the Stadium Addition, as the case may be, shall be liable in damages or otherwise to anyone submitting plans and specifications for approval or to any owner (and/or tenant) of land or improvements within the Stadium by reason of mistake of judgment, negligence or non-feasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans or specifications.

7. If the Architectural Control Committee fails to approve or to disapprove preliminary or final plans and specifications or reject them as being inadequate within thirty (30) days after submittal thereof, it shall be conclusively presumed that the Committee has approved such plans and specifications, except that the Architectural Control Committee shall have the right or power either by action or failure to act to waive or approve any substantial deviation from their restrictions and covenants set forth herein. If any Improvement is erected, constructed, placed or altered in any variance to plans and specifications previously approved by the Architectural Control Committee (whether approved by action or waived by no action) then said Architectural Control Committee has the right to take legal action against the applicant. Said applicant shall be liable for all legal expense incurred by the Architectural Control Committee.

F. Architectural and Building Controls:

All access, drainage, utility, fire lane easements and set back lines shall be shown on the most recent plats of this subdivision and all applicants shall be subject to said requirements. These requirements shall be used as general construction guidelines and are subject to change or modification by the Architectural Control Committee.

1. Landscaping
 - a. All areas not covered by buildings, parking spaces or access areas shall be landscaped with appropriate plant materials and shall be maintained at all times.
 - b. All landscaping shall be in accordance with the plans submitted to the Architectural Control Committee, which plans shall describe or depict all walkways, fences, walls, elevation changes, watering systems, vegetation and ground cover.
2. Building Wall Finish
 - a. All walls exposed to the general public shall be composed of stucco, pre-cast concrete panels, tile, glass or brick.
 - b. Decorative detailing on exterior walls shall be brick, glazed brick, tile or wood.
 - c. Walls exposed to service drives (no general public visibility) shall be composed of painted concrete block, stucco, pre-cast concrete panel, tile or brick.
3. Canopies, Overhangs, and Covered Walkways
 - a. Canopies and overhangs may project as far as the outside of the building sidewalk only and must be continuous for stores arranged along a strip design.

- b. All covered walkways must afford a minimum clear depth of eight (8) feet.
4. Roofs
- a. Roofs shall be of a standing seam metal, common built-up or trellised design and construction.
 - b. Roof top air conditioning and heating units shall be enclosed from view by an appropriate screening facade.
5. Sidewalks and Pavements
- a. Building fronts must have a minimum ten (10) foot walk along the entire frontage.
 - b. Pavement material for sidewalks shall be ceramic tile, brick pavers, concrete with patterns of tile, or brick.
 - c. Pavement materials for parking or road surface should be concrete or asphalt.
6. Parking and Loading Facilities
- a. Adequate loading and maneuvering space will be provided at loading areas and will be properly graded and as inconspicuous as practicable. .
 - b. With respect to the buildings to be constructed within Stadium Addition after the date hereof, if warranted by the intended use or uses thereof, parking spaces auxiliary thereto in excess of the requirements of the City of Midland may be required.
 - c. Adequate space for circulation of traffic will be provided by each lot owner.
7. Exterior Lighting
- a. A downcast type of lighting, approved by the Architectural Control Committee, shall be used in all parking and walkway areas.
8. Exterior Storage and Dumpster Screening
- a. All exterior storage will be enclosed by an eight (8) *foot* high solid screen with locked gate and shall be kept in good repair.
 - b. All garbage storage, more specifically garbage dumpsters, shall be enclosed on three sides by an eight (8) foot high solid screen.
9. Signs
- a. All signs attached to a building must be parallel to the building facade or roof overhang and shall remain stationary.

- b. Signs must be positioned so that the underside of the sign is not less than eight (8) feet from the top of the sidewalk.
- c. Detached pylon or marquee signs are permissible.
- d. All signs must be approved by the Architectural Control Committee.

G. Ingress, Egress and Utilities:

- 1. There are now and may hereafter be established walkways for pedestrian use on, over, and across all parking areas and walkways.
- 2. There is hereby established in favor of all owners and tenants and their licensees, invitees and permittees access for ingress and egress, to the public street system over and across all areas designated for access on the recorded plats of Stadium Addition.
- 3. There have been established reciprocal and nonexclusive easements for construction, installation, maintenance, removal, use, and replacement of sewers; water and gas pipes and systems; drainage lines and systems; electric power conduits, wires and systems; telephone conduits, wires and systems; and other public utilities, beneath the ground surface of the common areas at the location or locations shown on the recorded plats of Stadium Addition. No future such easements shall be established without the prior written approval of the affected landowner or landowners. Any proposed future easements shall be first submitted to the Architectural Control Committee provided that in the performance of such work, the party performing the work shall:
 - a. Make adequate provision for the safety and convenience of all persons using the surface of such areas.
 - b. Replace and restore the areas and facilities to the condition in which they were prior to the performance of such work.
 - c. Hold all other parties to this Declaration of Protective Covenants harmless against claims including costs and attorney's fees arising from the performance of such work or use of such easements.
- 4. There are no reciprocal parking easements granted by this Declaration. Landowners, however, may either amongst themselves, or singularly or collectively with their respective tenants, enter into such agreements. Any such agreements in existence upon the date of recordation of this Declaration in the deed records of Midland County, Texas, are hereby deemed to be consistent with this Declaration.
- 5. An easement is hereby granted to the Merchant's Association, its successors and assigns, for maintenance of the wall along the south and east boundaries of Stadium Addition.

H. Modification Provision:

This instrument may not be modified, terminated or rescinded without the consent of the appropriate governmental regulatory body of the City of Midland, along with the concurrence of the owners of not less than sixty percent of the land described on Exhibit A (the consent or approval of lessees, licensees, or others having a possessory interest or security interest shall not be required) and then only by a written instrument duly executed and acknowledged by such parties and recorded in the office of the County Clerk of Midland County, Texas.

I. Not a Public Dedication:

Nothing herein contained shall be deemed to be a gift of dedication of any portion of Stadium Addition to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties hereto that this agreement shall be strictly limited to and for the purposes herein expressed.

J. Severability:

If any clause, sentence, or other portion of these covenants and restrictions shall become illegal, null, or void for any reason or shall be held by any court of competent jurisdiction to be so, the remaining portions shall remain in full force and effect.

WITNESS THE EXECUTION hereto as of the date of acknowledgement by each of the parties hereto.

**BLACK FAMILY PARTNERSHIP, LTD.
By It's General Partner
BLACK & CRUMP, INC.**

By: *Michael E. Black*
Michael E. Black, President

STATE OF TEXAS *
 *
COUNTY OF MIDLAND *

This instrument was acknowledged before me on this the 21st day of August, 2004 by MICHAEL E. BLACK, President on behalf of BLACK & CRUMP, INC., and General Partner on behalf of BLACK FAMILY PARTNERSHIP, LTD., A Texas Limited Partnership.

 **J. BRIAN MARTIN**
Notary Public, State of Texas
My Commission Expires 06-16-2008

Notary Public, STATE OF TEXAS
My Commission Expires:

EXHIBIT "A"

Proposed Plat Limits of Stadium Addition,
Section 1, City of Midland, Texas

**LEGAL DESCRIPTION FOR A 21.84 ACRE TRACT
LOCATED IN THE SOUTHWEST QUARTER OF
SECTION 30, BLOCK 39, T-1-S, T. & P. RR. CO. SURVEY,
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS**

Boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,691,451.96' and E= 1,733,249.97') the Southwest corner of this tract and the Southwest corner of a 20.17 Acre Tract as described in Volume 2142, Page 66, Official Records, from whence the Southwest corner of said Section 30, bears S75°34'12"W, a distance of 26.84 feet and S14°25'48"E, a distance of 1551.29 feet, also from said beginning point a ½" iron rod found at the Northwest corner of Lot 20, Block 158, Wilshire Park, Section 8, as recorded in Cabinet B, Page 372, Plat Records of Midland County, bears N75°37'16"E, a distance of 10.15 feet and S14°23'50"E, a distance of 20.00 feet;

THENCE N14°23'50"W with the East boundary line of West Loop 250, at 527.53 feet pass the Southwest corner of Lot 2, Block 8, Westgate Acres, Section 3, as recorded in Cabinet D, Page 566, Plat Records of Midland County, continuing for a total distance of 987.43 feet to the Northwest corner of this tract and the Northwest corner of said Lot 2, from whence a ½" iron rod found at the most Westerly Northwest corner of Lot 1, Block 8, Westgate Acres, Section 2, as recorded in Cabinet B, Page 343, Plat Records of Midland County, bears N14°23'50"W a distance of 60.00 feet, also a found ½" iron rod bears N57°W, a distance of 0.26 feet;

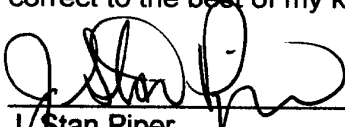
THENCE N75°35'37"E with the North boundary line of said Lot 2, a distance of 963.00 feet to the Northeast corner of this tract and said Lot 2;

THENCE S14°23'50"E with the East boundary line of said Lot 2, at 459.90 feet pass the Southeast corner of said Lot 2, from whence a ½" iron rod with a plastic cap marked "Schumann" bears S0°18'W, a distance of 0.67 feet, continuing for a total distance of 987.89 feet to the Southeast corner of this tract;

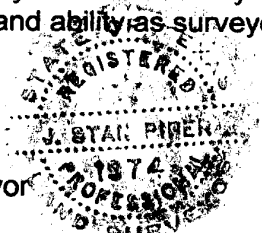
THENCE S75°37'16"W with the North boundary line of an alley, a distance of 963.00 feet to the Place of Beginning.

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/86, Central Zone, with a combined grid factor of 0.9999101, and a theta angle equal to -0°54'48.39" at U.S.C. & G. station "MIDLAND" with published values of Y= 10,690,154.70 and X= 1,746,696.78 in U.S. Survey Feet.

I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that this legal description is based on an actual survey made by me or under my supervision, and that the same is true and correct to the best of my knowledge and ability as surveyed on the ground on May 14, 2003.



J. Stan Piper
Registered Professional Land Surveyor



Prepared for:
Parkhill, Smith, and Cooper, Inc.
5214 Thomason Drive
Midland, TX 79703

PIPER SURVEYING COMPANY, P.O. BOX 60432, MIDLAND, TX, 79711, 432-550-7810

FILED FOR RECORD IN
Midland County
Shauna Brown
COUNTY CLERK

ON: Sep 02, 2004 AT 03:25P

as
Recording

Document Number: 18725
Total Fees : 30.00

Receipt Number - 167430
By:
Raye White, Deputy



STATE OF TEXAS
COUNTY OF MIDLAND

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 volume and Page of the named RECORDS of Midland
County, Texas, as stamped hereon by me.

Shauna Brown

County clerk
Midland County, Texas