

Brenda DeShields-Circuit Clerk  
Benton County, AR  
Book/Pg: 2007/31277  
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07/31/2007 1:44:12PM  
Tran: 9144  
Total Fees: \$65.00

**BILL OF ASSURANCE AND PROTECTIVE COVENANTS  
CENTERTON BUSINESS PARK**

This Bill of Assurance and Declaration of Protective Covenants made this 24<sup>th</sup> Day of July, 2007, by Boos Builders, Inc. hereinafter referred to as "Developer, Owner and Landlord".

Article I.

Recitals

- 1.1 The Developer is the present record title holder of certain real property situated in the County of Benton, State of Arkansas, more particularly described as follows:

A Part of the NE1/4 of the SE1/4 of Section 3, Township 19 North, Range 31 West of the City of Centerton, Benton County, Arkansas and being more particularly described as follows:

Commencing at the Northeast Corner of the Northeast Quarter of the Southeast Quarter of Section 3, Township 19 North, Range 31 West, thence N87°20'10"W 497.17 feet to the point of beginning, said point being a found ½" rebar; thence SO2°29'26"W 1319.41 feet; thence N87°19'22"W 821.39 feet to a point on Buckhorn Flats Road, said point being a found ½" rebar; thence along Buckhorn Flats Road N02°07'00"E 1319.28 feet to a point in the intersection of Kimmel Road and Buckhorn Flats Road, said point being a found 5/8" rebar; thence along Kimmel Road S87°20'10"E 830.00 feet to the point of beginning, containing 1,089,346.25 square feet or 25.008 acres, more or less, subject to all rights-of-way, easements, and restrictive covenants of record of fact.

- 1.2 The Developer has re-platted the Property into Lots 1-36, of Centerton Business Park as recorded on plat recorded on July 31, 2007, in Book 2007 Page 649 in the office of the Circuit Court and Ex-officio recorder of Benton County, Arkansas.
- 1.3 Developer is desirous of subjecting the Property to the conditions, covenants, restrictions and reservations herein set forth to insure proper use and appropriate development and improvement of said Property as an Business Park Complex.

Book 2007 Page 31277  
Recorded in the Above  
DEED Book & Page  
07/31/2007

Article II

Definitions

2.1 Definitions of Terms:

- a) "Developer" shall mean Boos Builders, Inc., an Oklahoma Corporation, its successors and assigns.
- b) "Owner" shall mean and refer to the record owner, whether one or more persons or entities of the fee simple title to any Lot in Centerton Business Park, Benton County, Arkansas, but excluding those having any interest merely as security for the performance or payment of an obligation. At the present time, the Sole "Owner" is Boos Builders, Inc.
- c) "Landlord" shall mean and refer to the record owner, who may, from time to time enter into Lease and Rental Agreements with individuals and/or entities referred to as "Tenants". At the present time, the Sole "Landlord" is Boos Builders, Inc.
- d) "Property" shall mean and refer to the real property hereinbefore described as Centerton Business Park, Benton County, Arkansas.
- e) "Improvements" shall mean and include but not be limited to buildings, parking areas, loading areas, fences, walls, hedges, landscaping, mass plantings, poles, signs and any structures of any type or kind.
- f) "Lot" shall mean and refer to the fee simple absolute estate of any numbered plot of land shown upon the Plat of Centerton Business Park as heretofore and hereafter platted.
- g) "Plat" shall mean and refer to that certain drawing attached to and made a part of this instrument.

Article III.

Purpose

- 3.1 The Property is hereby made subject to the following conditions, covenants, restrictions and reservations all of which shall be deemed to run with the Property and each and every current or proposed parcel thereof to insure proper use and appropriate development and improvement of said Property so as to:
  - a) protect the Owner against such improper development and uses of existing facilities or surrounding Lots as will depreciate the value and use of their Lots;

- b) prevent the erection on the Property of structures constructed of improper or unsuitable materials or with improper quality and methods of construction;
  - c) insure adequate and reasonably consistent care-taking and development of the Property;
  - d) encourage and assure the erection of attractively designed permanent improvements appropriately located within the Property in order to achieve harmonious appearance and function;
  - e) generally promote the welfare and safety of the Owner.
- 3.2 The Developer hereby plats Centerton Business Park, Benton County, Arkansas. Henceforth, description and conveyance by such designation as shown and represented on the Plat shall be a proper and sufficient description for all purposes.

#### Article IV.

##### Permitted Uses

- 4.1 In the development, use, or ownership of all or any portion of the Property the Owner thereof shall develop same in compliance with the zoning rules and regulations of the City of Centerton and any and all other applicable governmental entities as they apply to any particular portion of the Property.
- 4.2 Owner shall not permit any commercial uses on said Property except those permitted as Accessory Uses and Conditional Uses in the C-2 Zoning Classifications of the Zoning Ordinance of the City of Centerton.

#### Article V.

##### Regulation of Improvements

- 5.1 Approval. No building or exterior additions shall be attached, erected, placed or altered on the Property until the plans, specifications, exterior color scheme and plot plan showing the location and facing of such, including the relationship to existing topography, adjoining streets, and finished ground elevations have been approved in writing by the Developer. The primary purpose of this restriction is to insure that proper standards of planning, design and construction are followed in the development of the Property and as such, all submissions shall be prepared by a licensed architect or Engineer with registration in the State of Arkansas and complying with all Codes of the City of Centerton.

5.2 Developer's Liability

The granting of any approval, permit or authorization by the Developer shall be final and binding. The Developer shall incur no liability by reason of its approval or refusal to approve any plans or specifications submitted hereunder.

5.3 Submission Requirements

- (a) Any submission to the Developer for approval of a proposed development or to the Landlord relative to Tenant additions, alterations and improvements shall include, but are not limited to the following:
- (1) A large scale development plan, to scale, indicating the location of all proposed improvements, including, without limitations, structures, parking areas, storage and maintenance areas, fencing, drainage and traffic circulation;
  - (2) Landscape plan indicating location of walks, drive and building entries, fencing location, type of fencing and material thereof, and any other pertinent site treatment;
  - (3) Building elevations, to scale, indicating all elevations of proposed structures with specification of building materials, fences and color scheme; and
  - (4) Sign plan, indicating design, location and details of all signs which will be visible from the exterior of any building.
- (b) Approval of any proposed development by the Developer will not relieve any Owner, Landlord or Tenant of the obligation to comply with all laws, ordinances, regulations or rules and governmental body, nor can any Owner, Landlord or Tenant rely upon such an approval as an indication of such compliance. In no event will approval of such proposed development, addition or alteration by the Developer create any liability to the Owner, Landlord or Tenant or to any third party who may seek to rely thereon.
- 5.4 Setbacks. No building shall be located on any building site nearer to the front, side or rear lot lines shown on any recorded Plat affecting the Property. Provided, however, in the event any Owner or Owners of contiguous Lots desire to develop their Lots as one project, the Developer shall have the right to waive the common side setback line to promote the development of the contiguous Lots as one in a manner which is aesthetically compatible with development of the Property, if approved by the City of Centerton.
- 5.5 Sidewalks. Sidewalks shall be installed by the Owner along abutting streets and parking areas as may be required by the City of Centerton.

- 5.6 Subdividing. No Lot shall be subdivided without the written consent of the Developer and the Centerton Planning Commission first having been obtained.
- 5.7 Building Exteriors. The exterior of all improvements on any Lot shall comply with the following:
- (1) Exterior wall elevations of buildings must be approved by the Developer.
  - (2) Roofs shall be of a flat or sloping design and in a material approved by the Developer.
  - (3) Roof-mounted mechanical equipment which is visible from the ground is to be screened and painted to match the exterior material of the building.
  - (4) Gutters and downspouts are to be covered or painted to match the surface to which attached.
  - (5) Vents, louvers, exposed flashing and service doors are to be painted consistent with the exterior material of the building.
- 5.8 Signs. All Signs must be approved in writing by the Developer and must comply with The City of Centerton municipal code for permitting of signs.
- (a) Exterior Ground Signs.
- (1) There may be a maximum of one ground sign per building.
  - (2) The ground signs will be of material approved by the Developer.
  - (3) Ground signs will be no more than four feet above grade in height nor more than 8 square feet in area. If signs are upon landscaped berms, their maximum height above curb level shall be six feet.
- (b) Wall Signs.
- (1) There may be a maximum of one wall sign per building.
- (c) Pole Signs. Unless expressly approved by the Developer, pole signs are not permitted.
- (d) Temporary Signs. The location, size and design of temporary signs are subject to the approval of the Developer.

5.9 Driveways and Parking.

(a) The location of driveways requires the prior approval of the Developer.

(b) Each development/lot shall provide parking accommodations at a rate of two parking spaces per 1,000 square feet of usable building space and in no case, less than the parking requirements of the City of Centerton.

5.10 Lighting. Exterior lighting shall comply with the following:

(a) Parking Lot:

(1) Type: Pole-mounted or equivalent approved by the Developer

(2) Height: Thirty Feet overall

(3) Finish: Dark Grey anodized finish for pole and fixture.

(b) Walkways:

(1) Type: 8" Round bollard light

(2) Finish: Dark Grey anodized finish

(c) Lighting to highlight building shall be at ground level with Dark Grey anodized finish for fixtures.

(d) Security lighting fixtures are limited to use for lighting loading or similar service areas and shall have Dark Grey anodized shielding.

(e) All exterior lighting shall be shielded and confined within the site boundaries.

5.11 Landscaping.

(a) Owner will be responsible for the design, development and maintenance of the landscape on his own site. All landscaping plans must be approved by the Developer and must be in compliance with the City of Centerton requirements.

Article VI.

Stormwater Management Facilities Maintenance

6.1 Under and pursuant to various regulations from time-to-time adopted and implemented by the City of Centerton, responsibility for maintenance and repair of storm

water management facilities developed, constructed or installed within the Subdivision, or to service the Subdivision, is imposed upon the owners of the lots within the Subdivision. Such facilities are hereby declared to constitute common properties of the Subdivision whether on or offsite.

- 6.2 In order to insure compliance with and enforcement of such regulations, the City of Centerton is hereby declared to be a third party beneficiary under these covenants and conditions, and is specifically authorized and empowered hereunder, as fully as if a signatory hereto, to undertake and perform required maintenance and repair of any such storm water management facility, upon failure of the lot owners to timely do so. Further, should the City of Centerton undertake maintenance and repair of such facilities as herein provided, the City of Centerton shall be entitled to be reimbursed for all costs incurred in effecting same and, upon failure of the lot owner to reimburse the City of Centerton for his or her pro-rata share of the cost, the City of Centerton is authorized and empowered to implement the provisions of Paragraph 6.3, to establish and collect assessments to pay the defaulting lot owners' share of the cost. The power and authority herein granted to and vested in the City of Centerton shall apply, notwithstanding the existence or nonexistence of an organized property owners association.
- 6.3 By acceptance of the deed or other instrument of conveyance for his or her lot within the Subdivision, each lot owner shall be deemed to covenant and agree to pay any assessment levied to offset the cost incurred by the City of Centerton for the care and maintenance of any storm water management facility servicing the Subdivision hereinafter referred to as the "Storm Water Assessment." This Storm Water Assessment, together with such interest thereon and cost of collection as provided below, shall be a continuing lien on the lot affected and shall also be a personal obligation of the owner of such lot from the date when the Storm Water Assessment is due and payable until paid in full. Such personal obligation shall not pass to successors intitle to the affected lot unless expressly assumed by such successor. Any Storm Water Assessment levied as set forth in these covenants and conditions shall become a lien on the affected lot as soon as such assessment is due and payable. In the event any owner fails to pay the Storm Water Assessment when due, the Storm Water Assessment shall then bear interest at the maximum legal rate permitted by the State of Arkansas on the date when such Storm Water Assessment is due and shall continue to accrue at that rate until it is paid in full. Such Storm Water Assessment shall be due fifty (50) days after the date it has been fixed and levied, and, if not paid, shall become delinquent and the payment of both the principal and interest may be enforced as in the case of a laborer's lien on the affected lot, and a notice of such lien may be filed with the Circuit Clerk of Benton County, Arkansas. In the event legal proceedings are commenced to collect the Storm Water Assessment, or if the services of any attorney are retained by the City of Centerton, the non-paying owner or owners shall be obligated to pay all costs incurred, plus reasonable attorney fees, which costs and fees shall become a portion of the lien and may be foreclosed on in the same manner as the assessment as provided above.

- 6.4 The Storm Water Assessment shall be used exclusively to offset any cost to the City of Centerton associated with repairing or maintaining any storm water management facility which services the Subdivision.

#### Article VII.

##### Property Owners Association.

- 7.1 Formation of Property Owners Association. The Owner/Developer has formed or shall cause to be formed an association of the owners of the Lots within Centerton Business Park (hereinafter referred to as the "Property Owners' Association") to be established in accordance with the statutes of the State of Arkansas. A purpose of the Property Owners' Association will be to share in the maintenance of the entry facilities that may be built and maintenance of the storm water detention facility.
- 7.2 Membership. Every person or entity who is a record owner of the fee interest of a lot shall be a member of the Property Owners' Association. Membership shall be appurtenant to and may not be separated from the ownership of a lot. The acceptance of a deed to a lot shall constitute acceptance of membership to the association as of the date of incorporation, or as of the date of recording of the deed, whichever occurs last.
- 7.3 Assessment. The Owner/Developer and each subsequent owner of a lot by acceptance of a deed thereto, is deemed to covenant and agree to pay to the Property Owners' Association assessments to be established by the Board of Directors in accordance with a declaration to be executed and recorded by the Owner/Developer. An assessment shall be a lien on the lot against which it is made, but the lien shall be subordinate to the lien of any first mortgage.
- 7.4 Enforcement rights of the association. Without limitation of such other powers and rights as the Property Owners' Association may have, the Property Owners' Association shall be deemed a beneficiary, to the same extent as the owner of a lot, of the various covenants set forth within this document, and shall have the right to enforce the covenants to the same extent as the owner of a lot.

#### Article VIII.

##### Enforcement, Duration, Amendment and Severability.

- 8.1 Enforcement. The restrictions herein set forth are covenants to run with the land and shall be binding upon the Owner/Developer, its successors and assigns. The covenants contained herein shall inure to the benefit of and shall be enforceable by the owner of a lot and/or the Property Owners' Association. If the undersigned Owner/Developer, or its successors or assigns, shall violate any of the covenants or restrictions set forth herein



it shall be lawful for any person or persons owning any lot to maintain any action at law or in equity against the person or persons violating or attempting to violate any such covenants, to prevent him or them from so doing or to compel compliance with the covenant and/or to recover damages with the exception of actions to enforce covenants contained herein prior to the commencement of any action pertaining to these restrictions, the person intending to commence the action shall give the record owner of the property on which the violation is occurring, or has occurred, written notice of the violation. In the event reasonable efforts to cure the violation are commenced within thirty (30) days from receipt of notice, no judicial action shall be commenced to enforce the restrictions so long as the efforts to cure the violation diligently proceed to completion.

8.2 Enforcement by judicial action In any judicial action brought to enforce the covenants or restrictions, the defense that the party initiating the equitable proceeding has an adequate remedy at law, is hereby waived. In any judicial action brought by the Property Owners' Association or any lot owner, which action seeks to enforce the covenants or restrictions and/or to recover damages for the breach thereof, the prevailing party shall be entitled to receive his or its reasonable attorney fees and costs and expenses incurred in such action.

8.3 Duration. These covenants and restrictions set forth within this deed of dedication, to the extent permitted by applicable law, shall be perpetual but in any event shall be in force and effect for a term of not less than twenty (20) years from the date of the recording of this deed of dedication, unless terminated or amended as hereinafter provided.

8.4 Amendment.

(a) If Developer desires to amend these covenants, conditions and restrictions, Developer shall first obtain approval of the City of Centerton, Arkansas. No such waiver, termination and/or modification shall be effective until the proper instrument in writing, shall be executed and recorded in the Office of the Recorder for Benton County, Arkansas.

(b) The covenants and restrictions contained herein may be amended or terminated at any time by a written instrument signed and acknowledged by the Owner/Developer during such period that the Owner/Developer is the record owner of at least 1 lot or alternatively, the covenants and restrictions may be amended or terminated at any time by a written instrument signed and acknowledged by the owners of 60% of the lots. In the event of any conflict between an amendment or termination properly executed by the Owner/Developer (during its ownership of at least 1 lot) and any amendment properly executed by the owners of 60% of the lots, the instrument executed by the Owner/Developer shall prevail during the time of the Owner/Developer's ownership of at least 1 lot. The provisions of any instrument amending or terminating covenants and restrictions shall be effective from and after the date it is properly recorded.

(c) The provision of Article VI may not be amended or terminated at anytime without the express, written approval of the City of Centerton, Arkansas. Said Article VI shall survive any termination of any other provision or the whole of this Bill of Assurance.

- 8.5 Severability. Invalidation of any restriction set forth herein, or any part thereof, by and order, judgment, or decree of any court, or otherwise, shall not evaluate or affect any of the other restrictions of any part thereof as set forth herein, which shall remain in full force and effect.

#### Article IX.

##### Miscellaneous


- 9.1 No Waiver. All the conditions, covenants, restrictions and reservations contained in this Bill of Assurance shall be construed together, but if it shall anytime be held that any one of said conditions, covenants and reservations or any part thereof, is invalid, or for any reason becomes unenforceable, no other conditions, covenants, restrictions and reservations or any part thereof shall be thereby affected or impaired.
- 9.2 Owner's Liability Subsequent to Sale. Upon sale of a Lot, the Owner so selling shall not have any further liability for the obligations thereon which accrue against such Lot sold after the date of conveyance; provided, however, that nothing herein shall be construed so as to relieve an Owner of a Lot from any liability or obligation incurred prior to such sale pursuant to the Bill of Assurance. Furthermore, any such sale shall not modify the City of Centerton's right to collect any assessment due for maintenance or repair to stormwater management facilities as described in Article VI hereof, or Developer's right of lien pursuant to Article VII hereof.
- 9.3 Benefits and Burdens. The terms and provisions contained in this Bill of Assurance shall bind and inure to the benefit of the Developer, the Owners of Lots located within the Property, their Tenants and their respective heirs, successors, personal representatives and assigns.
- 9.4 Notice. Any notices required or permitted herein shall be in writing and mailed, postage prepaid by registered or certified mail, return receipt requested and shall be directed as follows:

Boos Builders, Inc.  
Attention: Craig Boos  
8141 E. 74<sup>th</sup> Place South  
Tulsa, OK 74133

9.5 Singular and Plural. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, female or neuter, as the contracts require.

EXECUTED on the date first mentioned above.

Benton County, AR  
I certify this instrument was filed on  
07/31/2007 1:45:56PM  
and recorded in DEED Book  
2007 at pages 0031277 - 0031287  
Brenda DeShields-Circuit Clerk



Craig A. Boos, President


**For Business Entity:**

ACKNOWLEDGEMENT

STATE OF OKLAHOMA )  
  ) ss.  
COUNTY OF TULSA )

On this 24<sup>th</sup> day of July, 2007 before me, a Notary Public, duly Commissioned, qualified and acting, within and for said County and State, appeared in person the within named Craig Boos, being the person authorized by said corporation to execute such instrument, who stated that s/he was the owner of the corporation, and was duly authorized in his/her capacity to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that s/he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

Sworn to and subscribed before me this 24<sup>th</sup> day of July, 2007.



Notary Public

My Commission Expires:

4-6-09

