

**OWNER'S RESTRICTIVE COVENANTS**  
**FOR**  
**BOURBON STREET SQUARE DEVELOPMENT**

STATE OF OKLAHOMA            )  
   )  
 COUNTY OF PAYNE             )

SS:



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 Cienna Craig, Payne County Clerk  
 Payne County - State of Oklahoma

***KNOW ALL MEN BY THESE PRESENTS:***

That the undersigned being the owners of and the only entities or individuals having any right title, or interest except outstanding mineral interests of record in and to the land described as follows:

**A part of the East Half (E/2) of the Southwest Quarter (SW/4) of Section Seventeen (17), Township Nineteen (19) North, Range Two (2) East of the Indian Meridian, Payne County, Oklahoma, according to the U.S. Government Survey thereof, more particularly described as follows:**

**Beginning at a point 755 feet West of the Southeast Corner (SE/Cor) of the East Half (E/2) of the Southwest Quarter (SW/4) of said Section Seventeen (17); THENCE, West along the South line of said Section Seventeen (17) a distance of 565 feet, more or less, to the Southwest Corner (SW/Cor) of the East Half (E/2) of the Southwest Quarter (SW/4) of said Section Seventeen (17); THENCE, North along the West line of the East Half (E/2) of the Southwest Quarter (SW/4) of said Section Seventeen (17) a distance of 2,640 feet, more or less, to the Northwest Corner (NW/Cor) of the East Half (E/2) of the Southwest Quarter (SW/4) of said Section Seventeen (17); THENCE, East along the North line of the Southwest Quarter (SW/4) of said Section Seventeen (17) a distance of 565 feet; THENCE, South 2,640 feet, more or less, to the Point of Beginning.**

**The above described tract is now more fully described as follows:**

**A tract in the East Half (E/2) of the Southwest Quarter (SW/4), of Section Seventeen (17), Township Nineteen (19) North, Range Two (2) East of the I.M. City of Stillwater, Payne County, State of Oklahoma, more particularly described by; Josh L. Powers, Licensed Professional Land Surveyor #1652 on June 28, 2007, with a basis of bearing of South 89°27'30" West as shown on the South line of Southwest Quarter of Section 17, Township 19 North, Range 2 East of the I.M.:**

Commencing at a P.K. nail also the Southeast Corner (SE/Cor) of Southwest Quarter (SW/4) of said Section; THENCE, South 89°27'30" West, along the South line of the Southwest Quarter (SW/4) of said Section, a distance of 754.23 feet to the POINT OF BEGINNING; THENCE, continuing South 89°27'30" West along the South line of the Southwest Quarter (SW/4) of said Section, a distance of 564.42 feet to the Southwest Corner (SW/Cor) of the East Half (E/2) of the Southwest Quarter (SW/4) of said Section; THENCE, North 00°27'06" West along the West line of the East Half (E/2) of the Southwest Quarter (SW/4) of said Section, a distance of 2,643.17 feet to the Northwest Corner (NW/Cor) of the East Half (E/2) of the Southwest Quarter (SW/4) of said Section; THENCE, North 89°28'29" East along the North line of the Southwest Quarter (SW/4) of said Section to a 1/2" rebar, a distance of 564.77 feet; THENCE, South 00°26'39" East, a distance of 2,643.01 feet to the POINT OF BEGINNING.

Said tract of land contains a total area of 1,492,279 square feet or 34.2580 acre more or less, and an area of, less highway right of way, 1,383,893 square feet or 31.7698 acres more or less.

according to the recorded plat thereof, recorded on the 17 day of Aug., 2007, in Book Number 1730, at Page 199, in the Office of the County Clerk of Payne County, Oklahoma for the purpose of providing an orderly development and of providing adequate restrictive covenants for the mutual benefit of itself and its successors in title to BOURBON STREET SQUARE DEVELOPMENT, hereby imposes the following restrictions to which it shall be incumbent upon their successors to adhere, and any person or persons, corporation or corporations, partnership or partnerships hereafter becoming the owner or owners, either directly or through any subsequent transfer or in any manner whatsoever of any lots included in said addition, shall take, hold and convey same, subject to the following restrictions, to-wit:

**ARTICLE I**  
**GENERAL RESTRICTIONS**

1. No building shall be erected, placed, or altered on any lot in this development until the building plans, specifications, and plot plan showing the location of such building have been approved in writing as to conformity and harmony of external design with existing structures in the subdivision; and as to location of the building with respect to topography and finished grade elevations and to property and building set-back lines by the architectural committee consisting of Howard Aufleger, Clyde Rucker, Trace Morgan and Mark Perry any two or their authorized representatives. In the event of the death, resignation, or unavailability of any of the committee, the remaining representatives shall have full authority to designate a successor. If the aforesaid persons or their designated or authorized representative fails to

approve or disapprove such design or location within thirty (30) days after plans have been submitted to it, or if no suit to enjoin the erection of such building or the making of such alteration has been commenced prior to the completion thereof, such approval will not be required, and this covenant shall be deemed to have been fully complied with.

2. The acquisition of ownership of any lot or lots in this development shall constitute a waiver of any right to protest any subsequent paving assessment district, which may be created for paving upon the right of way of the adjacent State Highway 51. The cost of paving any such roads and/or sidewalks shall be paid equally in any such assessment by the lot owners in this development.

3. All lots and blocks of said development shall be known and designated as Commercial building lots.

4. The lots in this development may be enlarged, subdivided or reduced from the dimension as shown on the official plat of said development upon approval of the architectural committee and approval from the City of Stillwater. The purpose of this covenant is to allow and permit adjustments to lot lines to accommodate individual uses of this property.

5. No building, or any part thereof, shall be located nearer to the front lot line than the building set back line shown on the final plat. The architectural committee shall determine the minimum setback from any interior lot line, however, no building shall encroach upon the minimum setback as set by the City of Stillwater. All buildings shall be maintained in a first-class manner. Public areas shall be cleaned daily. Public areas shall be repainted as needed.

6. All landscaping and plantings shall be installed and maintained by the lot owner.

7. No structure upon any lot shall be used as temporary housing.

8. No existing structure shall be moved on to any lot in this development, and all construction shall be of new material, except that it may be permissible to utilize used brick for architectural effects and used material on the interior where it is used strictly for decorative purposes or to carry out architectural effects, it being the intention of this covenant to prohibit the moving onto or placing of existing commercial structures on any of the lots in the Bourbon Street Square Development.

9. No noxious or offensive trade or activity shall be carried on upon any lot in Bourbon Street Square Development, nor shall anything be done thereon which may be or become an annoyance or nuisance to the adjoining owners. The storage, use or disposal of any hazardous or toxic substance on any lot herein shall be strictly prohibited.

10. All commercial activities allowed under the CG zoning shall be allowed within the Bourbon Street Square Development subject to approval of the architectural committee.

11. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot.

12. No building material of any kind or character shall be placed or stored upon the property until the owner is ready to commence improvements and then such material shall be placed within the property lines of the lot upon which the improvements are to be erected.

13. All equipment, materials and supplies used in the operation of purchaser's business shall be stored in secure enclosures, so as not to be visible from roadways and so as not to be hazardous to the public. All trash receptacles shall be covered and screened.

14. No machinery or vehicles of any kind that are in a "junk" state or state of disrepair, unless garaged, shall be permitted on any lot. All property must be kept free from undesirable vermin, weeds, brush, and high grass and trash and rubbish shall not be permitted to accumulate upon any lot. No person shall cause incineration of trash, garbage, or other wastes, and the same shall not be permitted in the development. Each owner shall keep trash and garbage containers out of sight from the access road and State Highway 51.

15. Each building shall be constructed with adequate parking. Owners shall be required to provide a minimum of Five (5) parking spaces in excess of the amount required by the zoning laws in effect at the time of construction.

16. Each building shall be entitled to at least one (1) sign advertising the name and business of the owner or occupant. All signs shall be subject to prior written approval by Bourbon Street Square, LLC, in order to maintain uniformity and aesthetic quality, such approval shall not be unreasonably withheld. A Pole Sign designed and erected for the promotion of the development shall additionally be made available for all lots in the development that do not have frontage along State Highway 51 (East 6<sup>th</sup> Street). Each lot owner shall be responsible for its pro rata share of said Pole Sign. Additional signs may be installed upon written approval of the architectural committee of Bourbon Street Square, LLC.

- (a) The Bourbon Street Square Development shall consist of no more than one (1) restaurant which serves chicken as its primary and prominent part of the menu. In addition, for a period of ten (10) years from the date herein, Bourbon Street Square Development shall not sell or lease any portion of the development to a user whose reasonably projected annual gross revenues from the sale or provision of made to order deli type sandwiches for on or off premises consumption exceeds seventy percent (70%) of the gross revenue of such business. In the event of a co-branded store, the sales percent of gross revenue shall be calculated for each brand and not averaged in for total sales on said lot. In addition for a period of ten (10) years the Bourbon Street Square Development shall not sell or lease any portion of the development for the operation of a facility selling or marketing the following brands: Subway, Pot Belly, Quizno's, Jersey Mike's, Firehouse Subs, Cousins, Larry's Sub Shop, Mr. Goodcents, Penn Station, Schlotzky's, Which Wich, or Capriati's. The terms of this

agreement shall be signed and recorded, and shall run with the land as provided above.

17. The foregoing covenants and restrictions are to run with the land and shall be binding on all persons and parties claiming subsequent ownership under them until January 01, 2025, at which time the said covenants shall automatically renew and extend for successive periods of five (5) years, unless by a two-thirds (2/3) vote of the then lot owners it is agreed to change or abrogate said covenants in part or in whole.

18. Should the owner and/or tenants of any lot or lots in Bourbon Street Square Development, violate any of the restrictive covenants and/or conditions herein, and thereafter refuse to correct same and to abide by said restrictions and conditions contained herein, after reasonable notice, then in such event any owner or owners of any lot in the Bourbon Street Square Development, may institute legal proceedings to enjoin, abate and/or correct violation(s) of such restrictions, and the owner of the lot or lots permitting the violation of such restrictions and/or conditions shall pay all attorney fees, court costs, witness fees, and other litigation expenses incurred by the Plaintiff owner or owners, said attorney fees, court costs, witness fees, and other litigation expenses allowed and assessed by the Court, for the aforesaid violation or violations, shall become a lien upon the lands of the defendant owner or owners as of the date legal proceedings are originally instituted; and said lien shall be subject to foreclosure in such action so brought to enforce such restrictions in the same manner as liens upon real estate the procedure of which is fixed by statute.

19. Invalidation of any one of these covenants by judgments or by court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

**ARTICLE II**  
**OWNER'S ASSOCIATION FOR MAINTENANCE**  
**OF COMMON AREA**

Bourbon Street Square, LLC has granted a perpetual non-exclusive access easement on and across a paved roadway running through the Bourbon Street Square Development subject to the terms and conditions of the Access Easement executed by each Lot Owner. Every lot in the Bourbon Street Square Development shall have a benefit in this Access Easement, which shall be appurtenant to and shall pass with the title to every lot. As defined herein below the common areas of the Development will be managed subject to the following easements, restrictions, covenants and conditions and as defined in the Access Agreement executed by all parties to the development.

**ARTICLE II.A.**  
**OWNER'S ASSOCIATION**

The owners hereby declare that all of the lots in this development, together with the common area shall be held, sold and conveyed and subject to the preceding and following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the

value and desirability of and which shall run with the real property and which shall be binding on all parties having any right, title or interest in the described properties or any part thereof, theirs heirs, successors, and assigns and shall inure to the benefit of each owner thereof.

**ARTICLE II. B.**  
**DEFINITIONS**

Section 1. "Association" shall mean and refer to Bourbon Street Square Development Owner's Association, or its successors and assigns.

Section 2. "Common Area" shall mean and refer to the following: (i) all common green spaces not previously conveyed of record to a lot owner within the Development; (ii) entrances to the Bourbon Street Square Development situated off of existing and future public streets that abut the Development; (iii) any security facilities, including walls and fences; (iv) non-advertising signage, street lights, and walks or pathways; (v) storm drainage that generally serves the Development; and (vi) any other areas within the Development owned by the Association or otherwise held for the common use and enjoyment of the Lot Owners within the Development.

Section 3. "Development" shall mean and refer to the commercial development known as "Bourbon Street Square" located on and throughout the legal description set forth in the preamble of these Owner's Restrictive Covenants herein.

Section 4. "Owner" shall mean and refer to the record owner, and member in the "Association", whether one or more persons or entities, of a fee simple title to any Lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 5. "Properties" shall mean and refer to that certain real property hereinbefore described and designated as the common area.

Section 6. "Lot" shall mean and refer to any plot of land shown on the recorded subdivision map of the Properties with the exception of the common area.

**ARTICLE II. C.**  
**PROPERTY RIGHTS**

Section 1. Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the common area, which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(A) The right of the Association to charge reasonable fees for the maintenance, upkeep, and utility fees associated with the common area, and the right to file liens upon the lot(s) of any owner who fails, refuses or neglects to pay said fees.

(B) The right of the Association to suspend the voting rights of a lot owner for any period during which any assessment or fine against the lot remains unpaid.

**ARTICLE II.D.**  
**MEMBERSHIP AND VOTING RIGHTS**

Section 1. Every owner of a Lot, which is subject to assessment, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, which is subject to assessment.

Section 2. The Association shall have one class of voting membership.

Class A: Class A members shall be all those owners of lots within the Bourbon Street Square Development, and shall be entitled to one vote for each Lot owned. When more than one person holds any interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they, among themselves determine, but in no event shall more than one vote be cast with respect to any Lot

**ARTICLE II.E.**  
**COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligations of Assessments. The undersigned owner, for each lot owned within the Properties hereby covenants, and each owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association, the following:

a. Annual assessments or charges, and

b. Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fee, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment together with interest, costs, and reasonable attorney's fees, shall also be in the personal obligation of the person who was the owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for maintenance, improvements, payments of utilities costs, general liability insurance, legal/accounting services, and taxes associated with the common area.

Section 3. Annual Assessment. The initial assessment shall be

<b>TYPE OF MEMBER</b>	<b>AMOUNT</b>
Class A	\$ 500.00 per year
a. From and after January 1, 2016, the annual assessment may be increased	

each year not more than ten (10) percent above the assessment for the previous year without a vote of the membership.

b. From and after January 01, 2017, the annual assessment may be increased above ten (10) percent by a vote of two-thirds (2/3rds) of the members who are voting in person or by proxy, at a meeting duly called for this purpose.

c. The Board of Directors may fix the annual assessment at an amount not in excess of the percentages as set forth hereinabove. The Board of Directors shall be composed of three (3) lot owners, elected annually. Until such time as eighty percent (80%) of the lots have been sold, the undersigned Developers shall act as the Board of Directors.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvement upon the common area, including the fixtures and personal property related thereto, provided that any such assessment shall have the consent of two-thirds (2/3rds) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any action Authorized under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under herein shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxy entitled to cast sixty percent (60%) of all votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at the uniform rate for all lots and shall be collected on an annual basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Lot from the undersigned owner to purchaser. The first annual assessment shall be adjusted according to the number of months remaining in calendar year. The Board of Directors shall fix the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Board of Directors shall establish the due date. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association.



Any assessment not paid within thirty (30) days after the due date shall bear interest at the rate of ten percent (10%) per annum. The association may bring an action at law against the Owner(s) personally obligated to pay the same, and/or foreclose the unpaid assessment as a lien against the property in the same manner as liens upon real estate. No owner may waive or otherwise escape liability for the assessments provided for herein.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments, which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for assessments thereafter becoming due or from the lien thereof.

IN WITNESS WHEREOF, we have hereunto set our hands this 11th day of April, 2016.

By: [Signature]  
HOWARD AUFLEGER, Manager  
Bourbon Street Square, LLC

STATE OF OKLAHOMA            )  
  )     SS:  
COUNTY OF PAYNE            )

On this 11th day of April, 2016, before me, a Notary Public in and for said County and State, personally appeared, HOWARD AUFLEGER, to me known to be the identical person who signed the name of the maker thereof to the within and foregoing instrument as its Manager and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of said Limited Liability Company, for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.



[Signature]  
Notary Public

My Commission Expires: 10-19-18  
My Commission Number: 10008796

Payee County Clerk  
STILLWATER, OK  
Blenna Craig, County Clerk

Receipt Number : 28582  
4/11/2016 11:32:06 AM  
Receipt

Doc. No.	Doc Type	Fees/Doc Stamp
1-2816-804283	POWY	129.00 48.00
PRESENTATION		65.00
RECORDED		121.00

Received:  
Check 3445 129.00

Received of MURKIN TRACY E