

**DECLARATION OF CONDITIONS,  
COVENANTS, RESTRICTIONS AND EASEMENTS**

**BY**

**THE TOWN OF NASHVILLE**

(Declarant)

with respect to

**WEST NASHVILLE COMMERCE PARK**

Amended April 6, 2021

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DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS

THIS DECLARATION is made as of the 5<sup>th</sup> day May 2015 and amended as of the 6<sup>th</sup> day April 2021 by the Town of Nashville, a North Carolina municipality (hereinafter called "Declarant") and;

WITNESSETH:

WHEREAS, this Declaration relates to the tracts of land situated in the Town of Nashville, Nash County, North Carolina, legally described as set forth in Exhibit A hereto (hereinafter referred to as the "Property") and also known as the West Nashville Commerce Park; and

WHEREAS, this Declaration is being executed and recorded in order to facilitate the development of the Property as an integrated business development for light industrial and heavy commercial purposes, and to fix and establish certain covenants, conditions and restrictions upon and subject to which the Property, or any part thereof, shall be improved, held, leased, sold and/or conveyed; and

WHEREAS, the Declarant wishes to utilize the services of the Carolinas Gateway Partnership, a North Carolina Nonprofit Corporation (hereinafter called "CGP") to market and coordinate the development of the West Nashville Commerce Park;

NOW, THEREFORE, Declarant, for itself and its successors and assigns, hereby declares as follows:

ARTICLE 1  
CERTAIN DEFINITIONS

1.01. The following terms shall, except where the context otherwise requires, have the respective meanings hereinafter specified:

"Building" shall mean any structure which (i) is permanently affixed to the land, (ii) has one or more floors and a roof, and (iii) is bounded by either an open area or the lot lines of a Building Site. A Building shall not include such structures as billboards, fences, or radio towers, or structures with interior surfaces not normally accessible for human use, such as tanks, smokestacks, or similar structures.

"Building Line" shall have the meaning given to such term in Section 6.01 hereof.

"Building Site" shall mean any tract, lot or portion or portions thereof, whether platted or not, within the Property which has been, will or can ultimately be developed by an Owner with a Building or Buildings and appurtenant Structures. Building Sites shall include not only the portion of the Property upon which any such Building is or could be constructed, but shall also include the entire lot or portion of the Property owned by

the applicable Owner. An Owner may own more than one Building Site for the purposes of this Declaration.

"Common Areas" shall include the following:

(a) Entrance Sign Easement Areas. The Declarant will be granted certain easements upon and to the Entrance Sign Easement Areas pursuant to Section 17.02 of this Declaration. The term "Entrance Sign Easement Areas" shall also include any and all other entrance sign easement areas hereinafter conveyed to and accepted by the Declarant.

(b) Utility Easements. The utility easements referred to in Section 17.01. of this Declaration.

"Declarant" shall mean the "Declarant" as defined on page 1 of this Declaration, or any legal successor thereto, or any person who shall succeed to its rights and obligations hereunder. The Declarant shall also include any person to which Declarant shall expressly assign its rights and obligations hereunder in accordance with Article 19.

"Entrance Sign Easement Areas" shall have the meaning ascribed to such term under the definition of "Common Areas."

"Floor Area" shall mean the aggregate area of all floors within all Buildings erected on any Building Site. Each Floor shall be measured to the exterior side of each outside wall where such floor extends to an outside wall and shall be measured to the interior side of the supporting pillars or walls where such floor does not extend to an outside wall. The term "Floor Area" shall not include truck ramps or shipping or delivery areas situated outside any Building, improvement or other structure.

"Mortgage," with an initial capital letter, shall mean and refer to a mortgage, deed of trust, installment land sales contract and security agreement or other similar security interest instrument granting, creating or conveying a lien upon, a security interest in, or a security encumbered title to a Building Site.

"Mortgagee," with an initial capital letter, shall mean and refer to the holder of a Mortgage.

"Owner" shall mean the owner of any part of the Property, as shown on the records of the Register of Deeds, Nash County, North Carolina, as of the date of any action to be taken by such Owner under the provisions of this Declaration, and shall also mean and include any person designated in writing, whether in a lease or otherwise, by any such Owner to act in the manner provided herein with complete authority and in the place of such Owner in the matter for which action is taken.

"Person" shall mean an individual, corporation, trust, partnership or unincorporated organization.

"Plats" shall mean the plats, if any, of the Property which is described in Exhibit A hereto, and as may be amended from time to time and recorded in the Nash County Registry.

"Property" shall have the meaning ascribed to such term in the premises of this Declaration.

"Restrictions" shall mean the covenants, conditions, restrictions and other terms and provisions of this Declaration upon and subject to which the Property, or any part thereof, shall be improved, held, leased, sold and/or conveyed, all as hereinafter set forth.

"Sign" shall mean any writing (including letter, word, or numeral); pictorial representation (including illustration or declaration); emblem (including device, symbol or trademark); flag (including banner or pennant); or any other figure or similar character, which (i) is a Structure or any part thereof, or is attached to, painted on or in any other manner represented on a Building or other structure, (ii) is used to announce, direct attention to, or advertise, and (iii) is visible from outside a Building. A Sign shall include a writing, representation, or other figure of similar character within a Building only when illuminated and located in a window. The following shall not be deemed to be a Sign within the meaning, as hereinabove set forth: (i) signs of a duly constituted governmental body, including traffic or regulatory devices, legal notices or warnings; and (ii) small signs displayed for the direction or convenience of the public, including signs which identify restrooms, freight entrances or the like.

"Structure" shall mean any physical object temporarily or permanently affixed to the land, except grass, shrubbery, trees or other landscaping.

"Subsidiary" shall mean any corporation at least a majority of the outstanding voting stock of which shall at the time be owned by an Owner.

"Unavoidable Delays" shall mean strikes, lockouts, acts of God, casualty, boycotts, governmental restrictions, war, national emergency, inability to obtain labor or materials or other cause beyond the reasonable control of the Owners or any person claiming under such Owners; provided, however, lack of funds or financing shall not be deemed an Unavoidable Delay.

## ARTICLE 2 GENERAL PURPOSES OF RESTRICTIONS

2.01 Purposes. The Property is hereby subjected to the Restrictions for the following purposes:

- (a) To encourage development of the Property in a manner which is free from danger of fire, explosion, toxic and noxious matter and other hazards, and from offensive noise, vibration, smoke, dust, odorous matter and other objectionable

influences.

(b) To protect the Property against congestion by limiting the bulk of Buildings in relation to the land around them and to one another, and providing for off- street parking and loading facilities.

(c) To promote the proper and most desirable use and development of the various parts of the Property in accordance with a well considered plan.

(d) To conserve the value of Building Sites and Buildings of Owners in the Property.

(e) To protect against construction on Building Sites of improvements which are of poor design or quality and to encourage construction of improvements, utilizing good quality and attractive material and good architectural and planning standards, compatible with other improvements in the Property.

### ARTICLE 3 PROPERTY RIGHTS

3.01. Owner's Easements of Enjoyment. Every Owner shall have a nonexclusive right and easement of enjoyment and use in and to the entrance areas and entrance street right of way, subject to the provisions of this Declaration.

### ARTICLE 4 REVIEW AND APPROVAL OF IMPROVEMENTS

4.01. Declarant Authority. Declarant shall have full power to regulate all matters as have been delegated to the Declarant in this Declaration. All decisions of the Declarant shall be final and binding on any Owner.

4.02. Approval of Plans. No Building, Structure, or other improvement, including, without limitation, any signs, poles or towers, paved areas or fences, shall be erected, placed or altered on any Building Site unless and until the plans and specifications thereof, a site plan showing the location thereof on the particular Building Site, and a landscaping plan (collectively the "Plans"), shall have been submitted to and approved in writing by the Declarant. The Declarant shall also be entitled to require the submissions set forth in Section 4.07 of this Article. The approval of such Plans shall be based upon the following standards: adequacy of site dimensions; adequacy of structural design; conformity and harmony of external design with neighboring Buildings, Structures and improvements and with other Buildings, Structures and improvements on the Property; the effect of the location and use of the proposed improvements upon neighboring Buildings, Structures and improvements and upon other Buildings, Structures and improvements on the Property, and the operations and uses thereof or conducted thereon; relation to topography, grade and



finished ground elevation of the Building Site being improved to that of neighboring Building Sites; proper orientation of main elevations with respect to nearby streets; conformity of the Plans to the purpose and general plan and intent of this Declaration and with the Restrictions; and such other similar criteria as the Declarant may reasonably deem necessary or advisable in order to effectuate the general plan and intent of this Declaration. The Declarant shall not arbitrarily or unreasonably withhold or delay its approval of such Plans.

4.03. Costs of Review. The Owner or any other person having its Plans reviewed hereunder shall pay for all costs associated with review of its Plans by the Declarant including any expense for architectural, engineering or attorney's fees. Such sums shall be paid prior to final approval of the Plans. The Declarant may adopt a schedule of reasonable fees for processing applications to the Declarant. Such fees, if any, shall be payable to the Declarant, in cash, at the time the applications are submitted to the Declarant. In the event that the foregoing expenses and fees are not paid by the Owner, they shall become a lien of the Declarant on the Building Site as a Specific Assessment.

4.04. Certificates of Approval. Upon approval of Plans as set forth above, the Declarant shall, upon the written request of an Owner, issue a certificate executed by the Declarant stating that the Plans have been approved, and if the improvements are constructed in substantial accordance with such Plans, the Declarant shall, upon the written request of an Owner, issue a final certificate of compliance as set forth in the next sentence. Upon final approval of any construction by the Declarant, it shall, upon request of the Owner completing such construction, issue a certificate of compliance stating that the construction was constructed in accordance with requirements of this Declaration.

4.05. Liability. The Declarant and its officers, employees or agents shall not be liable in damages to anyone submitting Plans for approval or to anyone affected by this Declaration in connection with the exercise of rights and duties under this Article or by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval of the Plans. All persons who submit plans or specifications to the Declarant for approval agree, by submission of same, and every Owner of any Building Site agrees, by acquiring title thereto or an interest therein, that such Owner will not bring any action or suit against the Declarant, its officers, employees or agents to recover damages arising from or in any way connected with this Declaration or the approval or failure to approve any Plans submitted. With regard to any Plans approved, the Declarant shall not be responsible or liable in any way for any

defects in any Plans nor any structural defects in any work done according to such Plans, nor the failure of the Plans to comply with any law.

4.06. No Deviation After Approval. After approval of the Plans by the Declarant, no deviation therefrom shall be made during construction which would materially change the scope of the improvements and no changes in exterior quality or appearance of the improvements thereby contemplated shall be made, without prior written approval of the Declarant.

4.07. Submissions. The Declarant may require all or any part of the following information to be submitted to it in connection with the consideration by the Declarant of any plans, submittal or application:

(a) Architectural plans and elevations for the proposed building or buildings, which shall include outline specifications designating materials and mechanical, electrical and structural systems, and samples of external colors.

(b) A site plan showing the location and design of buildings, setback lines, easements, driveway intersections with streets, traffic engineering, parking areas, loading areas, maneuvering areas and sidewalks.

(c) A grading plan and planting plan, including screen walls and fences for analysis of adequacy of visual screening, erosion control, drainage and landscape architectural design.

(d) A site plan showing utilities and utility easements.

(e) Plans for all Signs to be erected, including details of materials, location, design, size, color and lighting.

(f) A description of proposed use of the improvements including the estimated number of employees in sufficient detail to permit a determination (i) of the extent of any noise, odor, glare, vibration, smoke, dust, gases, hazard, radiation, radioactivity or liquid wastes that may be thereby created; and (ii) as to whether or not the proposed use complies with then existing zoning ordinances, the Restrictions, and other laws and governmental regulations applicable thereto.

(g) Any other information as may be reasonably requested by the Declarant in order to ensure compliance with the Restrictions.

4.08. Variance. The Declarant shall have the right to approve a variance from the Restrictions resulting from an inadvertent error in surveying of lot lines, or unintentional mis-location of improvements on a Building Site, at the sole reasonable judgment of the Declarant; provided approval of such variance does not violate the spirit of the Restrictions.

4.09. No Withdrawal of Approval. Once the Declarant has approved Plans for a building or other Structure and such Building or other Structure has been constructed in conformity with such Plans, the approval shall not be withdrawn and such Building or other Structure shall thereafter be deemed to be in compliance with these Restrictions as then in effect or thereafter amended.

4.10. Existing Improvements. The Buildings, Structures (including, without limitation, signs), and improvements which have been completed and exist on the Property as of the date of recording of this Declaration shall be deemed to have been

approved by the Declarant.

## ARTICLES 5 ARCHITECTURAL AND DESIGN STANDARDS

5.01. General. A relatively wide variety of architectural design and materials shall be permitted. However, it is intended that a basic harmony of architecture shall prevail among all buildings and developments to that no building shall detract from the attractiveness of the overall development.

5.02. Equipment. All mechanical equipment, and appurtenances shall be shielded or screened from view. Materials used for shielding or screening shall be harmonious with materials used in roof or side walls, subject to the approval of the Declarant

5.03 Accessory Structures. Accessory structures, buildings and enclosures shall be of similar design and materials as the Building.

5.04 Fencing. Fencing for security reasons will be permitted. Fencing materials and design shall be approved by the Declarant prior to construction.

## ARTICLE 6 BUILDING LINES

6.01. Building Lines. Except as hereinafter provided, no Building shall at any time be erected on a Building Site nearer than 30-feet to the front boundary or any right-of-way of any public or private street adjoining the same or nearer than 25-feet from any side or rear boundary line of a Building site which is an exterior boundary line of the Property or nearer than 25-feet to any side boundary lines or rear boundary line of such Building Site that is not an exterior boundary line of the Property (the lines established by such setbacks are herein called a "Building Line"). The area between the property lines and Building Lines is to be used for landscaped area, lawns, driveways and walks in accordance with other provisions of this Declaration. With the written approval of the Declarant, off street parking may be permitted in the area between the property lines and Building lines provided that appropriate landscaping areas are maintained and further provided that no parking shall be permitted within 30-feet of property lines adjoining a public or private street, or within 20-feet of other property lines.

## ARTICLE 7 PARKING AND LOADING

7.01. Parking. No parking of automobiles, trucks, or other vehicles will be permitted on any public or private streets in the Property, and it will be the responsibility of each Owner to provide at all times sufficient parking and loading facilities on its Building Site at

least to the minimum standards set forth herein. Each Owner shall be responsible for compliance with the provisions of this Section by its employees, customers, visitors, invitees, and motor carriers serving the Building Site. Each Owner shall keep available and maintain on its Building Site paved areas, or land for future paved areas, at least as set forth below:

(a) 1 parking space for every 2 employees on the maximum employment shift.

(b) 1 parking space for every truck to be stored or stopped on the Building Site simultaneously.

7.02. Loading Docks. No loading dock shall be erected within any building line nor shall it front on any public street unless adequately screened by landscaping or other screening approved by the Declarant pursuant to Article 4.

7.03. Paving. All portions of any Building Site used for driveways, parking areas and loading areas shall be paved with asphalt or concrete surface and shall be kept in a good condition and state of repair.

7.04. Built Upon Area. Total "built upon" area on a Building Site shall not exceed 75% of the total acreage. "Built upon" is defined as area covered with impervious surfaces including buildings, roadways, paved parking areas, truck aprons, sidewalks or materials other than soil or gravel.

7.05. Grading. All parking areas shall be graded to provide proper drainage with a minimum slope of one percent (1%) and a maximum slope of eight percent (8%).

## ARTICLE 8 BUILDING CONSTRUCTION

8.01. Building Construction. Metal buildings will be allowed provided an attractive stone, brick, concrete, glass or other attractive surface not otherwise prohibited, shall cover a minimum of 50% of the fronts of the buildings. The use of any other materials shall be permitted only upon the Declarant's prior written approval.

8.02. Minimum Building Size. All buildings constructed on a Building Site for permanent occupancy shall contain a minimum of 5,000 square feet. The Declarant shall have the right to approve a minimal variance of not more than ten percent (10%) of the required square footage.

8.03. Building Coverage. No more than eighty (80%) of the total area of any Building Site may be covered with buildings and appurtenant structures.

ARTICLE 9  
LANDSCAPING AND MAINTENANCE OF GROUNDS AND BUILDINGS

9.01. Landscaping Plans. All Building Sites upon which a Building is constructed shall be landscaped in accordance with a landscaping plan submitted to and approved by the Declarant pursuant to Article 4. Landscaping plans shall be submitted to the Declarant prior to commencement of any construction and all landscaping plans, once approved by the Declarant, shall not be altered without the Declarant's prior written approval. Landscaping plans shall include adequately defined information pertaining to areas to be landscaped and locations of planting materials. Landscaping pursuant to such landscaping plans approved by the Declarant shall be installed within ninety (90) days after the occupancy or completion of a Building, whichever occurs first.

9.02. Landscaping Outside of Building Lines; Screening of Parking and Loading Areas. All areas between required Building Lines and property lines not used for drives, walks, parking, and loading areas must be attractively landscaped and maintained so as to create a landscape buffer along all property lines. It shall also be the responsibility of each Owner to landscape and maintain the area between such Owner's property lines and the paved area of all streets adjacent to the Building Site. All loading areas shall be adequately screened from adjacent roadways and/or Building Sites.

9.03. Minimum Tree Planting. On each Building Site, a minimum of one, two and one-half (2 ½) inch caliper hardwood or evergreen tree shall be planted for each 3,000 square feet of paved area. A minimum of five, one and one-half (1 ½) inch caliper hardwood or evergreen trees shall be planted per acre of land.

9.04. Maintenance of Landscaping. The landscape development having been installed, shall be maintained by the Owner or tenant of the Building Site in a neat and adequate manner, which shall include the mowing of lawns, trimming of hedges, and removal of weeds from planted areas on the Owner's Building Site and public rights-of-way adjacent thereto. Maintenance of the landscaping development shall include replacement of all plant material included in the approved landscaping plan as well as the replacement of any trees originally provided by the Declarant in the public right-of-way adjacent to the Building Site.

9.05. Maintenance of Clean Condition; Compliance with Laws; Disposal of Trash. Each owner and tenant shall keep its premises, Building, improvements and appurtenances in a safe, sightly, clean, and neat condition and shall comply with all governmental, health, and police requirements. Each Owner and tenant shall keep the Building Site free of rubbish and trash and shall remove at its own expense any rubbish or trash of any character which may accumulate on its property. Rubbish and trash shall not be disposed of on the premises by burning in open fires.

9.06. Declarant's Right to Maintain. In the event any Owner or tenant does not comply with the provisions of this Article, within 10 days after written notice by the

Declarant, the Declarant and its representatives or employees shall have the right to enter on such Building Site and perform the work specified in such notice and the Owner or tenant, each having liability therefore, shall pay the cost thereof within thirty (30) days following demand. If the cost of such work is not paid after such demand is made therefore upon such Owner or tenant, it shall become a lien on such Building Site as a Specific Assessment.

9.07. Drainage. Where storm water drainage is not piped, it shall be passed through drainage ditches which shall be constructed and maintained by the Owner at his expense along the course of it Building Site, and such drainage ditches shall comply with all rules, regulations and requirements of the governmental authority(ies) having jurisdiction.

## ARTICLE 10 OUTSIDE STORAGE

10.01 Outside Storage; Screening. Outside storage is prohibited in the front yard. Outside storage shall be screen from view by fencing, hedging, or land scaping approved by the Declarant with written approval.

10.02 Trash Facilities. Facilities for storage of waste and rubbish shall be maintained in closed metal containers of a type approved by the Declarant in writing and in locations approved by the Declarant in writing. All such facilities for storage shall be kept in a clean and sanitary condition.

10.03 Bulk Storage of Liquids. The bulk storage of any liquids on the outside of Buildings shall be permitted only in locations and in a manner as may be approved in writing by the Declarant.

## ARTICLE 11 MINERALS

11.01. No oil or gas drilling, oil development, mining or quarrying operations of any kind shall be permitted upon the Property, or any part thereof, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon the Property or any part thereof without prior written approval of the Declarant.

## ARTICLE 12 EXTERIOR LIGHTING

12.01. General. All exterior lighting systems shall use LED lighting. The maximum average illumination shall be 5-foot candles. All lighting systems shall be designed to not provide significant illumination beyond the parcel on which it is placed. All electric circuitry shall be installed underground.

12.02. Mounting Height. The maximum permitted mounting height for any lighting fixture shall be 40-feet. Fixtures designed to illuminate pedestrian walkways shall have a maximum mounting height of 20-feet.

12.03. Building and Sign Floodlights. Building and sign floodlightings shall be permitted utilizing wall mounted or set-back methods provided fixtures incorporate LED lighting for illumination. Building and sign floodlighting shall be so installed and aimed so that glare shall not be present which may hinder vehicular or pedestrian traffic, nor may glare be permitted which shall present a hindrance to operations at the Building Site itself and/or any adjacent Building Sites.

### ARTICLE 13 PERMITTED AND PROHIBITED USES

13.01. The Property shall be used only for heavy commercial, industrial, assembly, fabrication, manufacturing, office, warehousing, wholesale, distribution, laboratories or research and development activities and services in support thereof. No noxious, offensive or illegal trade or activity shall be conducted on the Property, nor shall anything be done thereon which may be or become an annoyance or nuisance as a result of excessive emission of odors, fumes, smoke, dust, gases, vibration, liquid or solid waste, or noise. The following uses shall not be permitted:

- (a) Residential use;
- (b) Agriculture or related use;
- (c) Processing or slaughter of livestock, swine, poultry or other animals;
- (d) Leather goods manufacture, tanning or curing;
- (e) Storage or processing of fuels as a principal use;
- (f) Metal product manufacture involving foundry, blast furnace or drop forge;
- (g) Outdoor fabrication or handling of any machinery or parts;
- (h) All signs must meet the provisions of the Town of Nashville sign ordinance.

### ARTICLE 14 RIGHT TO REPURCHASE

14.01. If (i) after the expiration of one year from the date of conveyance of any Building Site within the Property (the "Conveyance Date"), any Owner (or anyone claiming

under such Owner) shall not have begun in good faith (subject, however, to Unavoidable Delays) the construction of an acceptable and approved Building upon such Building Site for a use permitted hereunder, or (ii) the Owner, after commencement of construction as provided in paragraph (i), shall fail to thereafter prosecute such construction with diligence, in strict compliance with the provisions hereof, Declarant may within a two-year period after the Conveyance Date, at its option, require such Owner to reconvey the Building Site to Declarant, free and clear from all liens, charges, encumbrances, tenancies and other such title exceptions except those in existence at the time of such original conveyance. The repurchase price shall be the original price paid for such Building Site. Such right to repurchase shall be an additional material consideration to Declarant for the conveyance of any Building Site. A notice of such right to repurchase or an agreement with respect to such right may be included in contracts for sale or in deeds by which Declarant conveys title, but the failure in any particular transaction so to include either the notice or the agreement or both shall not deprive Declarant of such right without specific recitation to such effect in such contracts and deeds. The right to repurchase set forth in this Section 14.01 with respect to any Building Site shall be subordinate to the lien of any mortgage that is of record as an encumbrance against such Building Site.

#### ARTICLE 15 UTILITY CONNECTION

15.01. All public utility connections and installations of wires and conduits to Buildings shall be made underground from the nearest available power source. No transformer, electric, gas or other meter of any type or other apparatus shall be located on any power pole nor hung on the outside of any Building but the same shall be placed on or below the surface of the land, and where placed on the surface shall be adequately screened and fenced, and all such installations shall be subject to prior written approval of the Declarant pursuant to Article 4.

#### ARTICLE 16 SUBDIVISION

16.01. Minimum Lot Size. All Building Sites shall contain a minimum of two (2) acres of land.

16.02. Approval by the Declarant. Except as provided in Sections 16.03 and 16.04 below, no Building Site shall be subdivided nor shall any portion be separately sold, leased or rented nor shall separate Building Sites be combined, until a plan for such proposed subdivision or separate sale, leasing or renting or combination, shall have been submitted to and approved in writing by the Declarant. The approval by the Declarant shall be based upon the standards and procedures set forth in Article 4 of this Declaration; provided, however, that the Declarant shall not approve any subdivision or combination which would violate the minimum lot sizes or other requirements set forth in Section 16.01 above and re-subdivision or combination in violation of setback open space or other



requirements shall be prohibited. The approval by the Declarant of subdivision or combinations of property owned by Declarant as provided in Sections 16.03 and 16.04 below shall not be required; provided that in no event shall a building site be less than two (2) acres.

16.03. Subdivision by Declarant. The Property owned or purchased by Declarant may be subdivided by Declarant into individual Building Sites, each containing a minimum of two (2) acres of land.

16.04. Combination; Re-subdivision by Declarant. Building Sites owned by Declarant may be combined and re-subdivided provided all Building Sites as referred to in Article 16.03 above resulting from such combination and re-subdivision contain a minimum of two (2) acres, exclusive of street rights-of-way. Parcels of less than one (1) acre may be conveyed to the owner of a contiguous tract provided no parcel shall remain containing less than two (2) acres. Re-subdivision resulting in a violation of setback or other requirements contained herein is prohibited.

## ARTICLE 17 EASEMENTS

17.01 Utilities. In addition to easements and rights-of-way in existence at the time of the conveyance by Declarant of any Building Site, non-exclusive easements and rights-of-way are reserved in favor of the Declarant, in, over and under a strip of land ten (10) feet in width along all rear and side parcel lines for utility easements to be utilized by the Declarant for the installation, maintenance, repair and replacement of such utilities (including, without limitation, electricity, gas, telephone cable 1V, water, sewer and drainage) as may be necessary, appropriate or desirable for the development of the Property and the servicing of Building Sites, within the Property. The execution of formal easements, as and when such utility easements shall be deemed by the Declarant to be appropriate, shall be entirely at the discretion of the Declarant, and the Declarant shall have the right to execute any such easement agreements without the joint execution or the consent of the Owner of any Building Site affected. For such purposes, the non-exclusive use of all or any part of such easements and rights-of-way may be granted or conveyed by the Declarant to any person, firm, governmental, unit or agency or corporation furnishing any such services. In the event that (a) an Owner shall be the Owner of adjoining Building Sites or (b) a subdivision or combination has been effected in accordance with Article 16 of an Owner's Building Site(s), such Owner shall have the right, at its sole cost and expense, to relocate the easements reserved under this paragraph to another location upon such Owner's Building Site(s), provided that such relocated easement provides substantially the same services as the original easement and utility services to other portions of the Property are not interrupted. The Declarant shall, upon satisfaction of the conditions and requirements set forth in the preceding sentence, execute such instruments or documents that may be necessary or desirable to relocate such utility easements at the Owner's expense. Nothing contained in this Section 17.01 shall place any obligation upon the Declarant for the installation, maintenance, repair or replacement of utilities within the easement areas reserved under this Section unless

the Declarant expressly assumes such obligation.

17.02. Entrance Sign Easement Areas. All other Owners hereby grant and convey to the Declarant, its successors and assigns, permanent non-exclusive easement and right-of-way over and under the Entrance Sign Easement Areas for the purposes of (a) the use of the Entrance Sign Easement Areas for the placement of such signs therein as may be approved by the Declarant from time to time, (b) constructing, maintaining, repairing, replacing and improving signs and landscaping within the Entrance Sign Easement Areas.

## ARTICLE 18 PRIVATE ROADS

18.01. The Owners of Building Sites shall have an easement for ingress and egress for themselves, their tenants, agents, employees, representatives, invitees and assigns over such private roads, and there shall be no public rights of any kind therein until such road is dedicated to the public use and accepted by the appropriate authority. It is the intent of Declarant to dedicate said private roads for public use, approval and maintenance, but Owners shall only have an easement for ingress and egress until such time as the road is dedicated to and accepted for public use by the appropriate authority.

## ARTICLE 19 ASSIGNABILITY OF DECLARANT'S RIGHTS AND DUTIES

19.01. Declarant may assign any of all of its rights, powers and reservations as Declarant hereunder to any person or entity which owns or controls a substantial part of the Property or in connection with a sale or transfer by Declarant to any person or entity of substantially all of Declarant's remaining property. Where such person or entity evidences its consent in writing to accept such assignments and assume such duties, he or it shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are imposed upon Declarant hereunder and Declarant shall be relieved thereof. The term "Declarant" as used herein includes all such assignees, and their heirs, successors and assigns.

## ARTICLE 20 ENFORCEMENT AND DURATION

20.01. Covenants Running with Land. The conditions, covenants, restrictions and reservations herein contained shall run with the land, and be binding upon and inure to the benefit of Declarant, and the now and future Owners of every part of the lands now or hereafter covered by the provisions hereof, shall create mutual, equitable servitudes upon each Building Site in favor of every other such Building Site; and shall create reciprocal rights and obligations between and among Declarant and the respective Owners and tenants of all Building Sites and privity of contract and estate between Declarant and all Owners of

said Building Sites, their heirs, successors and assigns.

20.02. Enforcement. These conditions, covenants, restrictions and reservations may be enforced as herein provided by Declarant, any Owner, or any tenant with approval of the Owner of the Building Site of which the tenant occupies in whole or in part, and violation of any condition, covenant, restriction or reservation herein contained shall give to Declarant, and to the Owners or any of them, then right to bring proceedings at law or in equity against the party or parties violating or attempting to violate any of said covenants, conditions, restrictions and reservations, to enjoin them from so doing, to cause such violation to be remedied, or to recover damages resulting from restrictions and reservations herein contained shall constitute a nuisance and every remedy available at law or in equity for the abatement of public or private nuisances shall be available to Declarant, and the Owners. In any legal or equitable proceeding to enforce the provisions hereof or to enjoin their violation, the party or parties against whom judgment is entered shall pay the reasonable attorney fees of the party or parties for whom judgment is entered in such amount as may be fixed by the court in such proceeding. Such remedies shall be cumulative and not exclusive.

20.03. Dedication. It is understood that from time-to-time Declarant or other Owners may dedicate portions of the Property to various governmental bodies or to public utilities, to be used as public streets, utility corridors, or similar purposes essential to the use and development of the Property. So long as any of the foregoing are dedicated for the purposes as set forth above, and are used and maintained for such purposes, they shall be automatically released from this Declaration. In the event, however, that any of the foregoing dedications are vacated or if they are no longer used or maintained for the purposes for which they were dedicated, they shall thereupon automatically come under the terms and provisions of this Declaration.

20.04. Priority. All Restrictions and other provisions herein contained shall be deemed prior and superior to all Mortgages or Deeds of Trust now or hereafter executed upon land subject to this Declaration, and to all leases covering part or all of any Building Site; provided, however, the violation of these restrictions shall not defeat nor render invalid the lien of any Mortgage for Deeds of Trust made in good faith and for value, nor the leasehold estate of any tenant except to the extent otherwise expressly provided in its lease. If any portion of the land is sold under foreclosure of any Mortgage of Deed or Trust, any purchaser at such sale, and his successors and assigns, shall hold any and all of such properties purchased subject to all of the restrictions and other provisions hereof as fully as if he were an original party to this Declaration.

20.05. No Waiver. The failure of Declarant or any Owner to take action to enforce the provisions hereof or to enjoin their violation shall in no event be deemed a waiver of its right subsequently to do so, nor shall it be deemed a waiver of any subsequent default or of the continuation of any existing default.

20.06. Duration. These Restrictions shall run with and bind the land and shall be binding upon and shall inure to the benefit of the Declarant and each Owner, their respective legal representatives, heirs, successors and assigns and parties and all persons

claiming under or through Declarant or any Owner until May 4, 2025, at which time the Restrictions shall be automatically extended for successive periods of ten years; provided, however, that there shall be no renewal or extension of this Declaration if during the last year of the initial period or during the last year of any subsequent ten (10) year renewal period three-fourths (3/4) of the property owner's votes are cast in favor of terminating this Declaration at the end of its then current term subject to the requirements set forth in Section 20.08 below. It shall be required that written notice of any meeting at which such a proposal will be considered, shall be given each property owner at least thirty (30) days in advance of said meeting. In the event that the Owners vote to terminate this Declaration, the Declarant shall execute a certificate which shall set forth the resolution of termination adopted, the date that notice of such meeting was given, the total number of votes of Owners, the total number of votes required to constitute a quorum of the property owners, the number of votes necessary to adopt a resolution terminating this Declaration, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. Said certificate shall be made of record and may be relied upon for the correctness of the facts contained herein as they relate to the termination of this Declaration.

20.07. Amendments.

(a) The procedure for amendment shall be as follows: All proposed amendments shall be submitted to a vote of the current property owners and the Declarant at a duly called meeting of the same and any such proposed amendment shall be deemed approved if two-thirds (2/3) of the votes cast at such meeting vote in favor of such proposed amendment subject to the requirements set forth in Section 20.08 below. Notice shall be given each current property owner and the Declarant at least thirty (30) days but not more than sixty (60) days prior to the date of the meeting at which such proposed amendment is to be considered. If any proposed amendment to this Declaration is approved by the current property owners and the Declarant as set forth above, the Declarant shall execute an addendum to this Declaration which shall set forth the amendment, the effective date of the amendment, the date of the meeting at which such amendment was adopted, the date that notice of such meeting was given, the total number of votes required to constitute a quorum at a meeting, the total number of votes necessary to adopt the amendment, the total number of votes cast in favor of such amendment, and then total number of votes cast against the amendment. Such amendment shall be recorded in the Nash County Registry.

(b) Amendments by current property owners and the Declarant to this Declaration shall be subject to the following additional limitations:

(i) If any other provisions of this Declaration expressly prohibit or place limitations upon an amendment to this Declaration, then such provisions shall control over the provisions of this Section 20.07.

(ii) Any provisions of this Declaration expressly providing for approval

of the applicable action by more than a simple majority of the votes cast at a meeting may not be amended to reduce the number of votes required for such action without the consent of all owners.

20.08. Quorum. The quorum required for any action authorized to be taken at such meeting under Section 20.06 or 20.07 shall be as follows: at the first meeting of current property owners and the Declarant in any year called to take action under such sections, the presence at the meeting of the current property owners and the Declarant or proxies entitled to cast fifty-one percent (51%) of the Outstanding Votes of the current property owners and the Declarant shall constitute a quorum; if the required quorum is not present at any such meeting, a second meeting may be called subject to the giving of proper notice and the required quorum at such second meeting shall be the presence of current property owners and the Declarant or proxies entitled to cast twenty-five percent (25%) of the Outstanding Votes.

#### ARTICLE 21 MISCELLANEOUS

21.01. Notices. All notices, consents, approvals or other communications (herein called Notices) required or permitted to be given hereunder shall be in writing and shall be deemed to have been properly given if sent by registered or certified mail, postage prepaid, addressed as follows:

If to Declarant:	Town of Nashville P.O. Box 987 Nashville, NC 27856
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If to any Owner:	at the address specified in the deed from Declarant to the Owner owning the Building Site in question.
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Declarant or any Owner may change the address to which Notices are to be sent by delivering notice of such address change to the Declarant in the manner hereinbefore provided. The Declarant may change the address to which notices are to be sent by delivering notice of such address change to the Owners. Notices shall be deemed given on the date of the registration or certification thereof. The Declarant shall not be bound by any change in record ownership of any Building Site until it has been given notice of such change in ownership and the address of such owner in the manner herein provided for the giving of Notices.

21.02. Consent. Every person who now or hereafter owns or acquires any right, title, estate or interest to any portion of the property covered hereby is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not reference to this Declaration is contained in the instrument by which such person acquired an interest in said property.

21.03. Paragraph Headings. Paragraph headings are inserted for convenience only and are not intended to be a part of this Declaration or in any way to define, limit, or describe the scope or intent of the particular paragraph to which they refer.

21.04. Severability. If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof, and for the purposes hereof all covenants as contained herein shall be deemed to be severable each from the other without qualification.

21.05. Governing Law. This Agreement and the separate provisions thereof shall be construed and enforced in accordance with the laws of the State of North Carolina without regard to principles of conflict of laws.

21.06. In the case of any conflict between these restrictions and the Code of Ordinances of the Town of Nashville, the Town Code will control.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed under seal as of the date first above written.

TOWN OF NASHVILLE

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Brenda Brown, Mayor

ATTEST:

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Louise Bennett, Town Clerk