

Tax Map Nos. 72-4-16A1 and 72-4-16A3; PIN Nos. 616100 and 616300
Tax Map Nos. 61-1-7A2 and 61-1-; PIN Nos. 654654 and 642200

May 22, 2023

DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS

NATURE’S CROSSING TECHNOLOGY CDNTER

WAYNESBORO COMMERCE AND INDUSTRY PARK

CITY OF WAYNESBORO VIRGINIA

This Declaration of Protective Covenants and Restrictions made on 22nd day of May, 2023 by the CITY OF WAYNESBORO, VIRGINIA (the “DECLARANT”), a municipal corporation and political subdivision of the Commonwealth of Virginia.

WITNESSETH:

WHEREAS, the DECLARANT is the owner of certain real estate consisting of approximately 170 acres, more or less, tax map numbers 72-4-16A1 and 72-4-16A3, commonly known as Nature’s Crossing Technology Center (NCTC), and being the same property conveyed to the DECLARANT by deed recorded in the Clerk’s Office of the Circuit Court for the City of Waynesboro, Virginia (“Clerk’s Office”), at Instrument No. 120000361. The DECLARANT is also the owner of approximately 35 acres, more or less, tax map numbers 61-1-102 and 61-1-72A, commonly known as Waynesboro Commerce and Industry Park (WCIP), and being a portion of the same property conveyed to the DECLARANT by deed recorded in the Clerk’s Office at Deed Book 256, 684 and Deed Book 261, 432 (NCTC and WCIP are referred to collectively herein as the “PROPERTIES”); and

WHEREAS, the DECLARANT is developing the PROPERTIES, in cooperation with the Economic Development Authority of Waynesboro, Virginia (the “EDA”), a political subdivision of the Commonwealth, as an industrial business park; and

WHEREAS, in order to establish a general plan for the improvement and development of the PROPERTIES, the DECLARANT and the EDA desire to impose on the PROPERTIES certain easements, restrictions, covenants, and conditions (the “PROTECTIVE COVENANTS”) for the benefit of the DECLARANT and all future owners and successors in title of the PROPERTIES and/or any parcel within the PROPERTIES; and

WHEREAS, in order to ensure the proper development and use of the **PROPERTIES**, to protect the owners of the parcels within the **PROPERTIES**, to prevent haphazard and inharmonious improvements, and to provide adequately for the highest quality improvements and use within the **PROPERTIES**, the **DECLARANT** subjects the **PROPERTIES** to be held, improved, and conveyed subject to the following **PROTECTIVE COVENANTS**, which will be enforceable by the **DECLARANT**.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WAYNESBORO, VIRGINIA THAT:

All of the **PROPERTIES** shall be held, sold, leased, used, and conveyed subject to the **PROTECTIVE COVENANTS** set forth below, which are for the purpose of ensuring the proper development and use of the **PROPERTIES**, and which shall run with the land and be binding on and inure to the benefit of all parties having any right, title, or interest in the **PROPERTIES**, any parcel within the **PROPERTIES**, or any part thereof. The **PROTECTIVE COVENANTS** shall be included in all deeds transferring the **PROPERTIES** or any parcel within the **PROPERTIES**. A copy of this Declaration shall be recorded in the Clerk's Office of the Circuit Court for the City of Waynesboro, Virginia. Each owner of a parcel within the **PROPERTIES**, and their respective successors and assigns, covenant and agree with the **DECLARANT** to use their parcel(s) only in accordance with the **PROTECTIVE COVENANTS** set forth herein and to refrain from using their parcel(s) in any way inconsistent with or prohibited by the provisions of the **PROTECTIVE COVENANTS**. Each owner further agrees that the **PROTECTIVE COVENANTS** are necessary, reasonable, and proper and do not constitute unreasonable or unlawful restrictions or penalties on the parcels and/or on the rights of the owners. The **PROTECTIVE COVENANTS** are designed to be enforced in addition to the City of Waynesboro Zoning Ordinance, as well as other applicable state and federal regulations, and where a conflict occurs, the more protective or restrictive requirements shall apply.

PROTECTIVE COVENANTS

1. **PRIMARY INTENT**: The primary objective of the **DECLARANT** in establishing design and development criteria for businesses and industries locating in City-owned industrial parks is to insure, to the extent practical, a sense of continuity in aesthetic value and environmental sensitivity. The **PROTECTIVE COVENANTS** are to be included in each conveyance, deed, or lease of property to any business or party. The intent of these **PROTECTIVE COVENANTS** is not to impede or slow development but are intended to provide a protection and improvement to the investments.
2. **TIME LIMIT FOR COMMENCING CONSTRUCTION**: Unless otherwise approved in writing by the City Manager, evidence of progress toward construction of a facility, including, without limitation, grading, foundations, and storm water detention facilities,

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must be commenced within one year from the date of execution of a deed or lease of a parcel within the PROPERTIES.

3. **ACCEPTABLE USES:** Use of any parcel within the PROPERTIES is limited to industrial purposes, such as manufacturing, fabricating, processing, converting, altering, and assembling and testing of products. Office and clerical work, research and development, warehousing, and distribution are allowed only as incidental and necessary to the main purpose of industrial use. Roof mounted solar panels, trails, and other recreational uses are also allowed only as incidental to the industrial use and if approved by the City in the design review. Exceptions to the acceptable uses are as follows:
 - a. Technology-based businesses, as defined in the Technology Zone Ordinance, may operate within 900 feet, plus or minus, of Delphine Ave, to coincide with the City Technology Zone; and
 - b. DECLARANT may elect to operate, sell, and/or lease up to five (5) acres adjacent to the main access road and railroad for a public or private rail siding.

4. **PROHIBITED AND RESTRICTED USES:** Notwithstanding any provision to the contrary contained herein, no portion of the parcel shall be used for any purpose that is a nuisance or offensive by reason of odor, fumes, dust, smoke, noise, or pollution, or which shall increase the danger, by fire or explosive damage or otherwise, to any other parcel, or for any purpose or use that is in violation of any federal, state, or local law. Specifically, but not in limitation of the preceding, the following uses shall not be permitted on any portion of the parcel:
 - a. Ground mounted solar panels;
 - b. Dumping, disposal, incineration, or reduction of garbage, trash, sewage, offal, dead animals, or refuse;
 - c. The construction or operation of water or sewage treatment plans or electrical substations;
 - d. Hazardous waste storage or treatment facilities;
 - e. Junk yards and recycling facilities;
 - f. Storage of explosives, junk, refuse, or secondhand materials;
 - g. Truck terminals (incidental truck usage is specifically permitted);
 - h. Temporary buildings or structures, shacks, containers, tents, travel trailers, mobile homes, or other storage facilities on-site, except during construction and as approved by the DECLARANT;

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- i. Retail or general warehouse of distribution uses, unless specifically approved by the DECLARANT;
 - j. Commercial excavation of building or construction materials, excluding excavation in connection with the construction of improvements;
 - k. Extraction or refining of petroleum or its products;
 - l. Distillation of bones;
 - m. Smelting of iron, tin, zinc, or other similar materials;
 - n. Fat rendering;
 - o. Stockyard or slaughter of animals;
 - p. Cemeteries;
 - q. Labor camps and migrant worker camps; and/or
 - r. Jails or honor farms.
5. **DESIGN REVIEW:** All buildings and site plans shall be designed by a registered architect, licensed engineer, or equally qualified design professional. No improvements, construction, building, fence, wall, sign, roadway, driveway, parking area, grading, landscaping/planting, or any other facility shall be commenced, constructed, erected, placed, altered, revised, expanded, or permitted to remain on any parcel within the PROPERTIES subject to these PROTECTIVE COVENANTS until the building plans, specifications, and site and landscaping plans, have been submitted to the City. All design elements must be reviewed and approved by the City before implementation. The property owner or prospective business will provide the City Community Development Department a set of permanent architectural and site plans, which shall include, without limitation, the following:
- a. Building plans sections and elevations showing exterior materials, textures, colors, and other details necessary for depicting the finished building and its site;
 - b. Samples of the exterior materials and colors; and
 - c. A site plan showing grading, drainage, layout of roads, walk, paved areas, landscaping, lighting, signage, outside storage materials, and appropriate screening.
6. **REVIEW TIME PERIOD:** Upon receipt of a complete application package of architectural and site plans, the City will review and respond to the applicant within sixty (60) days. The City assumes no liability for any damage to anyone submitting plans to it for approval or to any owner of property subject to the PROTECTIVE COVENANTS by reason of mistake in judgment, negligence, or non-feasance arising out of or in connection with the approval, disapproval, or failure to act on any such plans. Every

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person submitting plans to the City for approval agrees by such submission, and every owner of any parcel within the PROPERTIES agrees by acquiring title thereto, to hold the City harmless and that they will not bring any action or suit against the City to recover such damages.

7. **DESIGN AND DEVELOPMENT CRITERIA (SETBACK STANDARDS):** No structures or buildings shall be located closer than 30 feet to the street upon which it fronts, 20 feet from any other street, and 20 feet to any adjacent property. Driveway and parking areas shall be no closer than 10 feet to any adjacent property line.
8. **EXTERIOR APPEARANCE:** Architectural design will be evaluated in terms of sensitive integration of the proposed shape, form, texture, and colors with the particular landscape and character of each site. To maintain a high standard of construction and appearance, colors, materials, finishes, and the building form must be consistent on all elevations. Exterior walls facing a public street or Interstate 64 of each building are to be constructed of high quality, durable, and permanent materials aesthetically acceptable, including, without limitation, brick, glass, concrete, and other architectural surfaces commonly used in the industry. Metal siding must be of concealed fastener construction. All exterior faces shall be well maintained at all times.
9. **PARKING; LANDSCAPING, ETC.:** Off street parking for the vehicles shall be provided in sufficient numbers to serve the business being conducted without using adjacent public streets. The surface of all parking areas including entrance way and driveway shall be of concrete, asphalt, or by other bituminous material or other equivalent material and in accordance with the Virginia Department of Transportation standards. It is the property owners' responsibility to extend driveways to existing or project streets at their own expense.

Within the setback area of any parking or entrance way or building from any public street or other property, there shall be trees of a medium caliber provided every 25 feet. A medium caliber tree has approximately one and one-half inch caliber. Low hedge forms, shrubbery, and ground cover shall be planted and intermixed with the trees required around the parking areas and buildings and in unpaved areas, as approved by the City in the design review.

10. **LOADING DOCKS OR AREAS:** Any loading dock or area visible from any public street or Interstate 64 shall be screened from view with landscaping, berm, or fence. All loading docks or areas shall be located at such points or places as will accommodate all

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trucks without requiring their protrusion into any public street during the time of loading or unloading.

11. **LIGHTING**: Well-designed lighting of the building's exterior will be permitted but should be compatible with the architectural and site characteristics.
12. **SIGNS**: All signage shall meet all requirements of the City's Zoning Ordinance. The design and materials used for signage shall be consistent with the architecture and design of the building and neighboring developments. One identification sign may be erected at the entrance to each parcel. In addition to the primary sign, other signs will be reviewed at the time of design review. The contents of all signs shall be limited to the of the name of the establishment and the identification of the products or services sold or produced. Flashing or intermittently illuminated signs shall be prohibited and any lighting of signs must be done in such a way that the lighting is directed at only the sign face.
13. **UTILITIES**: All utilities must be underground.
14. **OUTSIDE STORAGE OF MATERIALS**: Materials, supplies, dumpsters, product, or equipment located or stored outside of a building that is visible from a public street or Interstate 64 must be screened by appropriate fencing, shrubbery, or other approved barrier. The location of any outside equipment, items, and storage, and the screening of each, must be approved by the City in the design review.
15. **ALTERATIONS AND ADDITIONS**: Any alteration and or addition to the original building or site must be submitted to the City and approval obtained through the same review process as the original improvement approval before any construction or erection occurs.
16. **DAMAGED OR DESTROYED BUILDINGS**: If any building or other improvement located on the PROPERTIES or on any parcel within the PROPERTIES is damaged by fire, storm, explosion, or otherwise, then, and in that event, all debris resulting from such damage or destruction shall be cleaned up and removed the property within sixty (60) days of the damage or destruction. If the clean-up is commenced within such time and diligently pursued in good faith, the City shall extend the time to complete the clean-up within a reasonable time. The owner shall commence the repair, abatement, and/or reconstruction of any building damaged or destroyed by fire, storm, explosion, or otherwise within nine (9) months of the date of such damage. Once commenced, the repair, abatement, and/or reconstruction shall be diligently pursued to completion. If not

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commenced within 9 months, the owner agrees, upon receipt of a written request from the City, to demolish all damaged improvements and clear the property of all trash, debris, and other materials associated with the demolition.

- 17. ENVIRONMENTAL ASSESSMENT:** Any construction or alterations of improvements shall be subject to all federal, state, and/or local laws, rules and regulation.
- 18. EASEMENT:** The City reserves unto itself an easement upon, across, over, through, and under all parcels within the PROPERTIES, for ingress, egress, installation, replacement, inspection, repair, maintenance, and as needed and required by the City of all utilities and greenways, including, without limitation, water, sewer, stormwater, gas, electricity, television, cable, fiber optic, or communication lines and systems.
- 19. COVENANTS RUNNING WITH THE LAND:** Each of the PROTECTIVE COVENANTS set forth herein shall be perpetual and shall run with the PROPERTIES and each parcel within the PROPERTIES and inure to the benefit of all grantees of the PROPERTIES and each parcel within the PROPERTIES, their successors and assigns, and shall apply to and bind the grantees of any and all lots and parcels within the PROPERTIES, their successors and assigns.
- 20. INSPECTION:** The owner of any parcel within the PROPERTIES agree that the City and its employees or agents are authorized, from time to time at any reasonable hour, to enter and inspect any property the PROPERTIES and each parcel within the PROPERTIES and shall cooperate fully with such inspection.
- 21. ENFORCEMENT:** The City may proceed at law or in equity to prevent the occurrence of a violation and to correct a violation of the PROTECTIVE COVENANTS and this Declaration. The owner of any parcel within the PROPERTIES shall indemnify the City against all of its costs and expenses, including, without limitation, reasonable attorney's fees, in prosecuting any breach of the PROTECTIVE COVENANTS. Any dispute shall be brought in the courts of the City of Waynesboro, Virginia.

Signature page to follow

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IN WITNESS WHEREOF, the City has caused this Declaration to be executed the day and year first written above. The Declaration of Protective Covenants and Restrictions set forth herein was duly authorized and adopted by Resolution of the City Council of Waynesboro, Virginia, dated May 22, 2023, a copy of which is attached hereto and incorporated herein as Exhibit A.

CITY OF WAYNESBORO, VIRGINIA

By _____
Mike G. Hamp, II, City Manager

Approved as to form by the City Attorney:

Melisa G. Michelsen

The Economic Development Authority of Waynesboro, Virginia executes this Declaration signifying its agreement to the contents herein.

The Economic Development Authority of Waynesboro, Virginia

By: _____ Date: _____
Chair, Economic Development Authority
of the City of Waynesboro