

This Instrument Prepared By
Spragins Barnett & Cobb, PLC
312 East Lafayette Street
Jackson, Tennessee, 38301

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS

THIS DECLARATION made on the 11th day of January, 2010 by BC BY-PASS PARTNERS, a Tennessee general partnership (hereinafter referred to as "Declarant")

WITNESSETH:

WHEREAS, Declarant is the owner and developer of certain property in the City of Jackson, County of Madison, State of Tennessee, which is more particularly described and depicted on the recorded plat of same of record in Plat Book 10, Page 694 (the "Plat") in the Register's Office of Madison County, Tennessee (The real estate as described on the Plat shall sometimes be referred to herein as the "Property"); and

WHEREAS, Declarant has the authority and power to establish these declarations and covenants; and

WHEREAS, Declarant will hereafter convey the said Property subject to certain protective covenants, conditions, restrictions, reservations, liens, easements, and charges as hereinafter set forth; and

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, reservations, liens and conditions all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. These easements, covenants, restrictions, reservations, liens and condition shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

"Development" means the planned commercial development contained within the Property.

"Declarant" shall mean and refer to BC BY-PASS PARTNERS, a Tennessee general partnership, or the duly appointed agent or representative, successors and assigns of Declarant.

“Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions together with any supplement or amendment hereto recorded in the Register’s Office.

“Improvements” shall mean the structures, buildings, pavements, plantings and other additions or improvements built or placed on the Lots. It is intended that the Improvements reasonably meant for the Owner of a particular Lot will lie entirely within said Lot.

“Lot” shall mean and refer to each of the Lots shown on the Plat of the Property and as they exist from time to time and to the Improvements on said Lots.

“Owner” shall mean and refer to the record Owner, whether one or more persons or entities of fee simple title to any Lot, including Declarant to the extent it owns any Lot, but excluding those having such interest merely as security for the performance of an obligation (“Mortgagee”) provided that if the Mortgagee shall succeed to title to a Lot then the Mortgagee shall be an Owner for purposes hereof.

“Person” shall mean an individual firm, corporation, partnership, association, trust or other legal entity or any combination thereof.

“Plat” means the recorded plat of the Property filed in the Registers Office of Madison County, Tennessee depicting the Lots and any future re-platting thereof as permitted under this Declaration.

“Property” shall mean and refer to that certain “Land” described on and as depicted on the Plat and shall include any other parcel(s) of real estate adjacent to the Land that may be added to the Land as an addition to the Development by Declarant’s amending of these Declarations by writing duly recorded in the Registers Office.

ARTICLE II PERMITTED USES

SECTION 1. PERMITTED USES. Only the following uses shall be permitted on the Property:

- (a) Uses permitted under Section 21 (Office Center District) of the Zoning Ordinance of the City of Jackson, as now existing or as same shall be hereafter amended.
- (b) Uses permitted as “special exceptions” under Section 21 (Office Center District) of the Zoning Ordinance of the City of Jackson, as now existing or as same shall be hereafter amended.

SECTION 2. PROHIBITED USES. Irrespective of the provisions of Section 1, no Person shall use any portion of the Development for the following prohibited uses or conduct operations

that produce or are accompanied by the following characteristics:

- (a) a business or use which (1) creates strong, unusual or offensive odors, fumes, dust or vapors, (2) constitutes a public or private nuisance, (3) emits noises or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness or (4) creates unusual fire, explosive or other hazards;
- (b) strip club, adult bookstore or other establishment engaged in the business of selling, exhibiting or delivering pornographic, erotic or obscene materials (provided this prohibition shall not apply to a full-line bookstore which, as an incidental or minor part of its business, includes among its inventory, books or other reading material that might be characterized as pornographic or obscene);
- (c) “head shop” or tattoo parlor or any other shop featuring, in any part, manner or way drug paraphernalia;
- (d) video or other type of game room or arcade.
- (e) business’s selling so-called “second-hand goods”, flea market, flea circus or other operation primarily for the sale of used goods;
- (f) bar serving alcoholic beverages (except as an incident to a full kitchen restaurant operation;
- (g) discotheque, dance hall or night club;
- (h) bingo parlor;
- (i) gymnasium, exercise facility or massage parlor (excluding high-class health spas offering therapeutic massage treatments);
- (j) dry cleaning, laundry plant or laundry mat (except for an establishment that only receives and dispenses items that are laundered and/or dry cleaned at a location outside the Development);
- (k) any warehouse operation or assembling, manufacturing (other than such manufacturing use as is conducted in conjunction with any home improvement center business) distilling, refining, smelting, industrial, agricultural, drilling or mining operation;
- (l) gasoline or automobile service stations
- (m) funeral establishment, mortuary or similar service;
- (n) auction or bankruptcy sale, except for a charity auction and except for a

bankruptcy sale order by a bankruptcy court having jurisdiction;

- (o) day care or child care center.

ARTICLE III

POWER OF DECLARANT TO REVISE EASEMENTS-PLAT

For a period of five (5) years following recordation of the initial Plat, Declarant shall be vested with the power and authority to make additional grants or modifications of easements for utilities (water, gas, sewer, electricity, telephone and cable TV-internet) upon the Property as reasonably determined by Declarant, to finalize the locations thereof for so long as such grants and/or modifications do not materially impair or hinder the construction of, or an Owner's use of, Improvements as determined in the sole discretion of Declarant.

ARTICLE IV

ARCHITECTURAL-CONSTRUCTION STANDARDS

SECTION 1. GENERAL. Declarant has established certain architectural-construction requirements and site plan-design review procedures for Improvements to be constructed on any Lot. Prior to a Person acquiring or purchasing a Lot, it shall be the Person's responsibility to review these covenants and become familiar with the requirements as set forth herein. Each Owner covenants and agrees that:

- (a) All Improvements to Lots in the Development shall conform to the construction requirements herein unless a variance has been granted in writing pursuant to this Article.
- (b) No building, fence, wall, drive or other Improvement shall be commenced, erected or maintained upon a Lot, nor shall any exterior addition to or change or alteration in any Improvement upon a Lot (including a material change in color of any exterior trim, wall or roof surface), be made until the plans and specifications showing the nature, kind, shape, height, materials and location, including site plan, of the same shall have been submitted to Declarant and approved in writing by Declarant.
- (c) Each owner shall submit landscape plan that shall include landscape plantings for any retention basin area located on the Lot, if applicable.
- (d) All approvals hereunder shall be solely by Declarant or its appointed "designee". The initial authorized designees are Charles T. Clark, Larry A. Butler and/or Lewis Dunn. Declarant may from time to time, without the consent of any Owner, remove or appoint authorized designees by doing so in writing and recording same in the Registers Office of Madison County, Tennessee as an amendment to these Declarations. Any Owner may

rely upon the written approval of Declarant or its authorized designee. For purposes of approvals of site plans and building Improvements, references herein to Declarant shall mean and include any authorized designee of Declarant.

SECTION 2. APPROVAL PROCESS.

(a) Submission of Plans. Prior to beginning construction, an Owner shall submit to Declarant the following items (herein the "Plans"):

1. Proposed Site Plan that accurately depicts the Lot, the size of and location of all buildings, drives, walkways, parking areas, setback lines and all other material Improvements to be constructed on the Lot, together with building elevation drawings (front, back and side) showing depiction of building features, including architectural features, height of building and roof lines.
2. Descriptive list of building exterior materials components, e.g brick, stucco, roof type etc. (This information may be written on the elevations drawings). However, upon request by Declarant actual samples of materials, such as brick, shingles, and exterior color schemes must be submitted to Declarant for prior approval.
3. Landscape plans.
4. Signage plan depicting the size and location of all signs proposed by the Owner.
5. The specific proposed use of the Lot and the identity of the applicant Owner and the mailing address for purposes of receiving notices under Section 4 below.

(b) Variances. The Declarant may, in its sole discretion, authorize variances from compliance with the construction covenants when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations. No variance shall (i) be effective unless in writing; (ii) be contrary to or in direct conflict with any "Permitted Use" provision as set forth in Article II of this Declaration; or (iii) bind the Declarant to grant a variance in other circumstances or for any other Owner. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance. The grant or denial of any such variance shall be in the sole and absolute discretion of the Declarant and shall not be subject to review by any other Owner.

SECTION 3. SCOPE OF REVIEW. In reviewing the Plans and related submissions, the Declarant may consider any factors it deems relevant, including harmony of external design with surrounding or adjacent structures and environment and consistency with the visual themes established for the Development. Its decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are subjective and opinions may vary as to the desirability or attractiveness of particular improvements.

The architectural guidelines and procedures established pursuant to this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Development and shall not create any duty to any Person or other Owner. Declarant shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all structures are of comparable quality, value or size or of similar design to improvements on other Lots.

Declarant shall not be held liable for soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder; or any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications. In all such matters; the Owner shall defend and indemnify the Declarant and its designees.

SECTION 4. SCHEDULE FOR REVIEW. The Declarant shall notify the applicant of its determination on the Plans within Twenty (20) days after receipt of the Plans and all other required information as may be requested by Declarant. The Declarant may (i) approve the Plans with or without conditions; (ii) approve a portion of the Plans and disapprove other portions; or (iii) disapprove the Plans. In the case of disapproval, the Declarant may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U.S. Postal Service, postage prepaid to the last known address of the applicant Owner. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of actual delivery to the applicant Owner. If Declarant does not issue its written approval or rejection of the Plans within said Twenty (20) day period, then the Plans shall be deemed approved as though Declarant had issued its written approval. Declarant shall be entitled to keep possession of a complete set of the Plans, as finally approved, to be furnished at the expense of the Owner.

SECTION 5. COMMENCEMENT AND COMPLETION OF CONSTRUCTION. Upon Declarant's approval, or deemed approval, of the Plans for Improvements on a Lot, the Plans, including the design and materials specifications thereof shall be deemed to be the "Final Plans" and Owner may thereafter begin construction and shall perform the construction consistent in all material respects with the Final Plans. If construction has not commenced on a Lot for which an application has been approved within six months after the date of approval, such approval of the Final Plans shall be deemed withdrawn and the applicant must resubmit the Plans for approval by the Declarant. Once construction is commenced, it shall be diligently pursued with continuity to completion. Unless otherwise agreed in writing by the Declarant, all elements of proposed Improvements for which plans are approved hereunder shall be completed within one (1) year after the date of approval, or such shorter or longer period as may be specified in any agreement for the purchase of a Lot from the Declarant.

ARTICLE V

PROPERTY MAINTENANCE

Each Owner shall be responsible for the maintenance of the Owner's Lot and Improvements including, but not limited to, all exterior walls, doors, windows, roofs, patios, garages, light fixtures, parking surfaces, driveways, curbing, landscaping, lawn areas, trees and fences, in a clean and neat condition and in a good state of repair, and shall not allow or permit any of the Improvements to fall into a state of disrepair.

ARTICLE VI

BUILDING-USE RESTRICTIONS

SECTION 1. GENERAL. The restrictions covenants set forth herein below shall apply to each Lot to ensure the best use and most appropriate development and improvement of the Lot to protect each owner of each Lot against improper use of surrounding Lots as well as depreciation of the value of the Lot; to preserve, as far as practicable, attractive Improvements on such Lots, appropriately located on such Lots; to prevent haphazard and inharmonious improvements of such Lots; to secure and maintain proper setbacks from streets and adequate spaces between structures; and, in general to provide adequately for a high type and quality of Improvements on such Lots, and thereby enhance the value of investments made by Owners of such Lots.

SECTION 2. RESTRICTIONS. All Lots shall be subject to the following specific restrictions, covenants and uses:

- (1) No trailer, tent, shack or barn shall be erected on any Lot temporarily or permanently nor shall any Improvement other than permitted by governmental authority and the Final Plans for a Lot. All out-buildings must conform to construction style and materials of the main building structure. No out-buildings of any type, whether temporary or permanent, may be located on any Lot except those of a permanent nature of similar design and construction to the principal building located upon the Lot specifically in the area approved by the Declarant. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permitted for the Declarant to maintain during the period of sale of Declarant's Lots, upon such unsold portion of the Property as Declarant may choose, such facilities as in the sole opinion of Declarant may be reasonably required convenient or incidental to the sale of Lots, including, without limitation, a business office, storage area, signs, sales office and construction facilities.
- (2) Easements or provisions for utility and drainage are reserved as shown on the Plat. No Owner shall within any such easement areas or at other location whether within or without designated easement areas, place or permit any structures, fencing, plants or other material which may damage or interfere with the installation and maintenance of utilities and/or interfere with the positive natural

drainage established by Declarant. Further, no Owner shall install any Improvements or modify any existing grades in such a manner as would impair the positive, natural flow of water from the Owner's Lot or any other Lot affected thereby. The easement area and drainage facilities and pipes constructed on each Lot shall be maintained continuously by the Owners of such Lot and kept free of debris and blockages of water flow to and/or from the retention basins.

- (3) No noxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become annoyance or a nuisance to other Owners within the Development.
- (4) Radio and television transmission or receiving towers and antennas as well as satellite dishes or solar panels may be installed only if approved by the Declarant and if in accordance with the regulations of all appropriate governmental authorities. The Declarant may withhold approval of any of the aforesaid installations in the exercise of its sole discretion if it deems that such Improvements may be architecturally inharmonious with the Development or reasonably objectionable to one or more of the Owners. Recreational vehicles, house trailers, motor homes, campers, boats, boat trailers, motorcycles, trailers, commercial vehicles and/or inoperable or damaged vehicles shall not be kept or stored on a Lot unless screened by a fence or planting screen from the view of all adjoining Owners and streets except for periods of temporary parking within confines of said Lot only for not more than fourteen (14) days per year collectively for all of said vehicles.
- (5) No livestock, animals or poultry of any kind shall be raised, bred or kept in or around a Lot.
- (6) No debris, trash, ashes or other refuse may be thrown or dumped on any of the Lots, except during construction of Improvements, and even then subject to the item 7 below.
- (7) No construction or building materials of any kind or character shall be placed or stored upon any Lot until the Owner of the Lot is ready to commence construction or renovation of Improvements. During construction upon a Lot, the Owner shall keep the Lot free of excessive debris and trash and shall not permit construction activities to encroach upon adjacent Lots without the consent of the affected Owner.
- (8) Grass and vegetation on each Lot shall be kept mowed and cleared of any debris at regular intervals by the Owner thereof so as to maintain the same in a neat and attractive manner. Trees, shrubs, vines, debris and plants which die shall be promptly removed from such Lot by its Owner. Any plantings so removed that were originally required for design approval shall be promptly replaced by plantings of the same type and size. Until an Improvement is built on the Lot,

Owner shall mow the grass and have dead trees and debris removed from such Lot. In no event shall such landscape maintenance or removals apply to the Buffer Areas, the maintenance of which shall be governed by the provisions set forth in Sub-section 23 below.

- (9) No unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot, nor shall the premises be used in any manner or for any purpose which may endanger the health or unreasonably disturb, the Owner of any Lot. Construction-Lender signs shall be permitted during construction, but not larger than 4x8 feet in size. Declarant reserves the right to place one or more highway billboard signs on any Lot adjacent to U.S Hwy 45 By-Pass by reserving an easement therefor at the time Declarant transfers or conveys such Lot. All other signage must be approved by Declarant.
- (10) No political signs or election banners shall be erected, placed or permitted on any Lot.
- (11) No Lots shall be re-subdivided into smaller lots except Owners of multiple Lots may combine a Lot with all or a portion of another Lot, but subject to the approval of Declarant and governmental authorities.
- (12) All equipment, utility meters, building materials, HVAC equipment, garbage cans, service yards, storage areas and similar type of items shall be kept screened by adequate planting or fencing so as to reasonably conceal them from view of neighboring Owners and as approved by the Declarant. All rubbish, trash or garbage shall be regularly removed from the Lot.
- (13) All exterior lighting on each Lot shall be constructed and maintained so as to provide such illumination as is necessary for the Lot only without unreasonably interfering with the peaceful enjoyment of any adjacent Owner.
- (14) All fencing locations and the material, design, color, height, details, etc. shall conform to the Final Plans, and the design, materials and location of which shall be subject to approval by Declarant. No wood or chain link shall be permitted, except that wood fences may be permitted as enclosures for patio or rear piazza structures adjoining a building if such fences are not visible from either the public street or adjacent Lot.
- (15) No Owner shall permit any use of his Lot or any Improvement thereon for any purposes which shall increase the fire hazard to adjoining Lots; or for any purposes calculated to injure the reputation of the Owner of said Lots; or for any purpose or use in violation of local, state or federal statutes or ordinances. Written approval by the Declarant or the Association of a particular use shall be conclusive evidence of compliance with this restriction insofar as this Declaration controls.

- (21) During construction of Improvements, any signage depicting the identity of the contractor or financing lender shall not exceed the size limitations set forth in subsection 9 above. All utilities, including water, electricity, gas, cable and telephone, and telecommunications lines must be underground.
- (22) Without the prior written consent of the Declarant, but otherwise also subject to any stricter limitations as set forth under the applicable zoning ordinance, no Building to be constructed on any Tract shall extend higher than One Hundred and Fifty (150) feet above the ground (exclusive of architectural details like arches, spires and cupolas that do not materially and adversely affect the visibility of other Buildings) nor shall the building area of such Building exceed thirty-five percent (35%) of the square footage of the Tract.
- (23) Every building and accessory building erected in the Development shall be constructed of a minimum of eighty-five percent (85%) brick, stone or stucco unless another similar type construction material is approved by the Declarant. No wood, vinyl, masonite or similar materials will be approved except for windows, doors, trim and gables as specifically approved in writing by Declarant. No outside walls may be constructed of imitation brick or similar materials. All outside materials must be new except that used brick, stone, or ornamental iron work or other ornamental objects may be used. No previously used dwelling or accessory buildings shall be relocated in the Development. All roof shingles must be of architectural design, with samples furnished to Declarant, unless a different roof covering is approved by the Declarant.

Areas designated on the Plat as "Buffer Areas" are protected wetland's areas and are to remain in a natural environmental condition. No Improvements may be constructed within such Buffer Areas. Buffer Areas cannot not be disturbed by use of any machinery or equipment or otherwise altered except in accordance with governmental rules and regulations applicable to such areas.

ARTICLE VII

TERM OF DECLARATIONS

These Declarations are to run with the land and shall be binding upon all parties and all persons claiming under them until the expiration of thirty (30) years after recordation of this Declaration, at which time said Declaration shall be automatically extended for successive periods of ten (10) years, unless by a vote of two-thirds of the then Owners of all Lots, it is agreed to change or terminate this Declaration in whole or in part. The change, modification or rescission shall be effective upon recording of such instrument in the Register's Office.

ARTICLE VIII

ENFORCEMENT OF DECLARATION

If any Owner, his heirs, successors or assigns shall violate or attempt to violate any provision of this Declaration, any other Owner and/or Declarant may prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such provision to prevent such violation or attempted violation or to recover damages for such violation. Failure to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter. In the event of such litigation, the party guilty of such violation or attempt to violate shall pay the other party's attorney's fees and costs incurred in enforcing this Declaration.

ARTICLE IX

MISCELLANEOUS PROVISIONS

SECTION 1. SEVERABILITY OF COVENANTS, CONDITIONS AND RESTRICTIONS. Invalidation of any one or more of the covenants, conditions and restrictions or other provisions herein or hereafter set forth by any judgment or court order shall in no way affect the validity of any of the other covenants, conditions or restrictions herein which shall remain in full force and effect.

SECTION 2. GENDER AND GRAMMAR. The singular whenever use herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships, or individuals, men or women, shall in all cases be assumed as applicable.

SECTION 3. RE-RECORDING OF PLAT. By the acceptance of a deed conveying title to a Lot, the Owner thereof shall be deemed to consent to amendments or modifications of the Plat for purposes of technical corrections, regarding boundary line adjustments, setback lines, relocation of utility easements, etc., however, such Owners shall be entitled to receive notice of any public hearing which may be required prior to such amendment or modification.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration on the day and year first above written.

BC BY-PASS PARTNERS

By: 

Authorized General Partner

STATE OF TENNESSEE
COUNTY OF MADISON

Before me, a Notary Public of the state and county aforesaid, personally appeared Charles T. Clark, Jr., with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the authorized General Partner of BC By-Pass Partners, a Tennessee general partnership, the within named bargainor, and that he as such General Partner, executed the foregoing instrument for the purposes therein contained, by signing the name of the partnership by himself as General Partner.

WITNESS my hand and seal at office on this 12 day of January 2010.



Steven King
Notary Public

My Commission Expires:

11-21-2010

BK/PG: T1875/726-737
10000724

12 PGS : AL - RESTRICTIONS	
JANET BATCH: 83647	01/20/2010 - 09:28 AM
VALUE	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	60.00
ARCHIVE FEE	0.00
DP FEE	2.00
REGISTER'S FEE	0.00
TOTAL AMOUNT	62.00

STATE OF TENNESSEE, MADISON COUNTY
LINDA WALDON
REGISTER OF DEEDS