

PROTECTIVE COVENANTS
CANTERBURY DEPOT COMMERCE PARK

THIS DECLARATION, made this 12th day of July 2004, by the TOWN OF CANTERBURY, a New Hampshire municipal corporation.

ARTICLE I
RECITALS

- 1.01** Declarant is the owner of certain real property to be known as the “Canterbury Depot Commerce Park,” located in the Town of Canterbury, County of Merrimack, State of New Hampshire, as shown on the subdivision plan recorded at the Merrimack County Registry of Deeds as Plan # 16683.
- 1.02** In order to establish a general plan for the improvement and development of the Park, Declarant desires to subject the Park to certain conditions, covenants, and restrictions and subject to which all of the property within the Park shall be held, improved, and conveyed.

ARTICLE II
GENERAL PROVISIONS

- 2.01 Establishment of Covenants.** Declarant hereby declares that the Park shall hereafter be held, transferred, sold, leased, conveyed, and occupied subject to the covenants herein set forth, each and all of which is and are for, and shall inure to the benefit of and pass with each and every parcel of the Park and shall apply to and bind the heirs, assignees, and successors in interest of any owner thereof.
- 2.02 Purpose of Covenants.** The purpose of this Declaration is to provide a means for creating, maintaining, controlling, and preserving the Park as a high-quality business enterprise development. To this end, Declarant intends that all grantees shall be bound to carry out and enforce the spirit, as well as the letter, of this Declaration. Further and more specifically, the purpose of the covenants is to ensure proper development, high-quality improvement, and use of the Park in accordance with a general plan available from Declarant and in such a manner that:
- 2.02.1** Attractive and permanent improvements appropriately located within the Park will provide compatible, consistent, and appealing appearance and uses.
- 2.02.2** Well-defined land areas within the Park will be established and maintained to the following ends: land uses and functions within a given land area will be compatible and complementary; and all future owners and occupants of land within the Park will be protected against such use of neighboring land within the Park as might unreasonably depreciate or detract from the value and use of their land.
- 2.03 Applicability to Additional Property.** Declarant may from time to time cause separate and additional declarations and agreements to be recorded subjecting subsequently acquired property to restrictions similar to, or different from, those imposed upon the Park by this Declaration. Should Declarant desire to apply the within covenants to such additional property, it shall appropriately amend Exhibit A.
- 2.04 Definitions**
- 2.04.1 “Declarant”** means the Town of Canterbury, a New Hampshire municipal corporation as embodied by its Board of Selectmen. The term Declarant is used herein to refer to said Board of Selectmen in its sole capacity as the creator of the Park, the plan for its development, and these

covenants, and therefore the sole interpretor and enforcer of any provisions hereof not covered by applicable federal, state, or local laws, ordinances, rules, and regulations.

- 2.04.2 “Improvements”** include, without limitation by reason of enumeration, buildings, outbuildings, appurtenances, roads, driveways, sidewalks, parking areas, fences, screening walls, retaining walls, loading areas and facilities, signs, utilities, lawns, hedges, plantings, landscaping, ponds, water tanks and holding areas, water lines, sewers, septic and other waste disposal systems or containers, electrical and gas distribution facilities, all other structures of any type of kind, any disturbance of the land within the Park, including the removal of vegetative cover or excavation, and staged or stored materials outside permanent structures, whether temporary or permanent.
- 2.04.3 “Lot”** means a subdivision lot within the Park that is approved in accordance with state and local statutes, ordinances, and regulations.
- 2.04.4 “Owner”** means the record owner, whether one or more persons, of the fee simple title to any Lot, but shall not include any mortgage or lien holder unless and until such mortgagee or lien holder has acquired title pursuant to foreclosure or any procedure in lieu of foreclosure. When appropriate in context as it relates to the obligations imposed by this Declaration, “Owner” shall also include any lessee, tenant, occupant, or any other person or entity that is using any Improvement or Lot.
- 2.04.5 “Park”** means that real estate described in Plan #16683.
- 2.04.6 “Town”** means the Town of Canterbury, New Hampshire, including its respective regulations and regulatory bodies, including without limitation the Board of Selectmen, the Planning Board, and the Zoning Board of Adjustment, that have jurisdiction over the creation of, Improvements made to, and the use of, each Lot.

ARTICLE III

REGULATION OF USES AND OPERATIONS

- 3.01 Permitted Operations and Uses.** All Improvements made to, all operations conducted on, and all uses made of the Park shall conform to the provisions of this Declaration and to all applicable federal, state, and local laws, ordinances, rules, and regulations, including, without limitation, the Town’s Zoning Ordinance, Subdivision Regulations, and Site Plan Review Regulations. In the event of a conflict between this Declaration and any of the Town’s regulations, that which imposes a higher or more stringent standard shall apply.
- 3.02 Inside Improvements.** All activity related to a permitted use shall be conducted within structures on a Lot, except as otherwise expressly allowed by this Declaration in accordance with Article V, by a site plan approval of the Town and, when necessary, by prior approvals of Declarant.
- 3.03 Other uses.** Unless a use or activity is authorized in accordance with this Article, it shall be a proscribed use and shall not be permitted in the Park.
- 3.04 Specific Proscriptions and Limitations.** The following uses, operations, developments, and Improvements are proscribed or limited as follows.
- 3.04.1** No noxious, obnoxious, or offensive trade or activity—as defined in the Town’s Zoning Ordinance from time to time in effect—shall be carried on, nor shall anything be done, within the Park that may be or may become an annoyance or nuisance to other Lots or Owners by reason of unsightliness or the excessive emission of odors, dust, fumes, smoke, noise, or light, or by reason of unusual fire, explosive, toxic, or other health hazards.
- 3.04.2** The primary use of all Lots shall be as set forth in this Article, but shall not include retail sales, except as incident to a permitted use as may be allowed by the Town and Declarant.
- 3.04.3** The following uses, even if deemed permitted uses or allowed by special exception or permit under the table of uses of the Town’s Zoning Ordinance, shall not be allowed: open storage of

lumber, soil/loam, sand, gravel, salt, equipment, machine parts, etc. for sale or otherwise; excavation, other than required to construct approved Improvements, subject to Section 4.03; mining; waste, rubbish, or ash disposal; commercial laundry; motor vehicle repair garage or sale; gasoline stations; convenience stores; commercial parking lots; and similar uses.

- 3.04.4** No top soil or loam may be removed from the Park except pursuant to prior written approval granted by the Town and Declarant.
- 3.05 Resubdivision.** Except as might be specifically allowed in the initial conveyance of any Lot, no Lot shall be further subdivided unless it is in accordance with the Town's regulations and receives the prior written consent of the Town and Declarant.
- 3.06 Condition.** The Owner shall at all times keep its Lot and Improvements in a safe, clean, and well-maintained condition, and, at its own expense, shall remove and properly dispose of any rubbish of any character whatsoever which may accumulate on such Lot. If the Owner fails to comply with the requirements of this section or fails to remedy any deficiency hereunder within twenty (20) days of any written notification from Declarant of such deficiency, Declarant may enter upon the premises and make any and all corrections that may be necessary to be in compliance and eliminate any deficiency, all at the Owner's costs and expense.

ARTICLE IV

IMPROVEMENTS

- 4.01 Minimum Setback Lines and Standards.** Setbacks of Improvements and lot coverage shall conform to the requirements of the Town's regulations and as approved by the Town.
- 4.02 Completion of Construction.** Application for site plan approval for any Lot shall be submitted to the Town's Planning Board not later than six (6) months after conveyance of the Lot to the Owner and shall be diligently pursued. Construction of approved Improvements shall commence within six (6) months after official site plan approval, and construction of all Improvements or additions or alterations to existing Improvements shall be completed within twelve (12) months after startup, unless otherwise agreed in writing by Declarant.
- 4.03 Excavation.** No clearing or excavation shall be made except in connection with construction of an approved Improvement and, upon completion thereof, exposed openings shall be backfilled and disturbed ground shall be graded and leveled.
- 4.04 Landscaping.**
- 4.04.1** Every Lot on which a building shall have been placed shall be landscaped according to the terms of the Town's site plan approval. During and after site work, appropriate erosion control measures shall be taken.
- 4.04.2** The Owner shall landscape and maintain all areas between the Lot lines and any building on the Lot. The areas between streets and the setback lines shall be used exclusively for landscaping except for fire protection, walk, driveways, and parking, as permitted in Section 4.06(b)2 or as otherwise allowed or required by site plan approval.
- 4.04.3** Approved landscaping shall be installed within ninety (90) days of occupancy or completion of any building on the Lot, whichever occurs first.
- 4.05 Signs.** A directory sign of Park occupants will be designed and installed by Declarant at the common entrance or other place approved by the Selectmen. Not more than one free-standing sign may be placed on a Lot, except for directional and similar signs, which shall be industry standard for a comparable setting. The design of such free-standing sign shall be approved by the Town and Declarant. Signage on each Lot shall be made of wood, stone, metal, or other materials of similar appearance. Flashing or moving signs are not allowed. All costs associated with signage on a Lot will be the responsibility of the Owner. The costs of maintaining the Park's directory sign and structure shall be a common expense in accordance with Section 8.06.

4.06 Parking Areas.

- 4.06.1** Parking areas shall be located to preserve the attractiveness of the Park and to conserve natural features (including trees) and open space in the Park, as approved in advance by Declarant. Adequate off-street parking on every Lot shall be provided to accommodate all parking needs for employees, visitors, and Owner's vehicles to eliminate the need for any on-street parking. If an Owner's parking requirements increase, Owner shall at its expense provide additional, adequate, off-street parking in accordance with this Declaration and applicable Town regulations.
- 4.06.2** No parking shall be allowed within the setback lines required by the Town's regulations, nor shall parking be permitted between street pavement and Lot property lines, nor between any Improvements and the street right-of-way line, except visitor parking approved in advance by Declarant.
- 4.06.3** All driveways and parking areas shall be paved and curbed, with appropriate drainage properly installed and maintained by the Owner.

4.07 Storage and Loading Areas.

- 4.07.1** Unless specifically approved by Declarant, no materials, supplies, or equipment, including without limitation, trash and garbage receptacles, shall be stored in any areas on a Lot except inside a closed building, or behind a visual barrier that screens such areas from the view of other Lots and any streets or areas outside of the Park.
- 4.07.2** Any loading docks shall be screened to minimize the exposure from streets within or outside of the Park, and shall not be located closer than one hundred (100) feet to public or common streets' right-of-way lines, except as approved in advance by Declarant.

4.08 Building Regulations.

- 4.08.1** Structures of any kind may be erected or permitted upon a Lot or any part thereof only if the plans and specifications for the same, including without limitation construction materials and exterior finish type and color, shall have been first submitted to and approved by Declarant as being compatible with the design and purpose of the Park.
- 4.08.2** Any structure located on a Lot shall be sited to preserve open space and enhance landscaping and retention of natural features, including trees. The building-coverage-Lot-area ratio shall not exceed fifty (50) percent, unless otherwise approved in advance by Declarant.
- 4.08.3** All structures shall have a suitable foundation, shall be built and maintained in a good and workmanlike manner with good quality building materials, and shall be built of wood, brick, block, or metal (with appropriate facade) or other similar materials. Colors and materials shall be compatible with the natural environment. Exterior walls shall be painted or suitably treated to maintain the attractiveness of the Park.
- 4.09 Additional Restrictions.** Without limiting the generality of the foregoing, the following use restrictions shall be maintained and enforced within the Park.
- 4.09.1** Buildings and improvements of a temporary nature, including without limitation trailers, basements, incomplete buildings, tents, and shacks, may only be used in connection with the construction of permanent approved Improvements if they are located as inconspicuously as possible and are removed no later than upon completion of the permanent Improvements.
- 4.09.2** Antennas of any type may only be installed outside of an approved closed structure if the installation minimizes the visual impact of the antenna and if it is approved in advance by Declarant.
- 4.09.3** Any permanent utility lines, wires, and other devices installed within a Lot for the transmission or communication of electric current or power or audio, text, data, video, or other information or media shall only be constructed, placed, and maintained underground or concealed in, under, or on buildings or other structures, provided, however, that electrical transformers may be permitted if properly screened and approved in advance by Declarant. This restriction shall not apply to lines or wires installed from a main transmission line outside a Lot to a properly located pole for

purposes of providing underground service to a Lot. Owners may install and use lines, wires, or devices for temporary power and/or communications purposes incidental to the construction of approved Improvements, provided however, that such temporary facilities shall be installed to minimize impacts within and outside of the Park, and shall be removed as soon as possible during or upon completion of such construction.

- 4.09.4** Outside storage tanks, including without limitation those used for water, liquid or gaseous fuel, waste, or other materials are permitted only with the prior approval of Declarant.
- 4.09.5** Air conditioning equipment that is visible on the exterior of any building or other structure on a Lot shall be permitted only with adequate screening and landscaping, if such equipment is installed to minimize noise within and outside of the Park, and if approved in advance by Declarant.
- 4.09.6** Fences and similar structures shall be shown on construction or alteration plans submitted in accordance with Article V so their installation may be approved in advance by Declarant or the Town.
- 4.10 Utilities.** If Declarant installs utilities such as water or sewer service within the Park, each then existing Owner shall connect to the utility system within one (1) year after such utility system is installed or within such other time period as may be ordered by Declarant. Connections to such utility system from a Lot developed after the installation of said system shall be completed no later than the completion of approved Improvements within such Lot. The cost of connecting to any such utility system shall be borne by the Owner of each Lot unless otherwise provided by Declarant.

ARTICLE V

APPROVAL OF PLANS

- 5.01 Prior Approval.** Unless otherwise provided in writing by Declarant, before commencing the construction or alteration of any Improvements within a Lot, the Owner shall first submit plans and specifications for such activities to Declarant for its approval. Except as provided in Section 5.03, all approvals by Declarant set forth in this Declaration as amended from time to time shall be in advance, in writing, and at its sole discretion.
- 5.02 Criteria.** In deciding whether to approve plans and specifications related to Improvements on a Lot, Declarant shall take into account such factors as adequacy of site dimensions; storm drainage; conformity and harmony of external design with neighboring Improvements, operations, and uses; relation to topography, grade, and finished ground elevation of a Lot to that of neighboring Lots or property outside of the Park; proper facing of main elevation with respect to nearby streets; and conformity of the plans and specifications to the purpose of this Declaration. Declarant's approval of any such plans or specifications shall not be arbitrarily or unreasonably withheld, but shall be at its sole discretion based upon its consideration of applicable federal, state, or local laws and regulations, and the letter, spirit, and intent of this Declaration.
- 5.03 Timelines.** If Declarant or the Town fails to approve or disapprove such plans and specifications by the later of (1) sixty (60) days after the same have been submitted in writing, or (2) thirty (30) days after Declarant or such body's receipt of all requested materials related to the same, or, if later, any formal meetings involving Declarant or the Town and the Owner regarding the same, Declarant or the Town shall be deemed to have approved such plans and specifications as finally submitted.
- 5.04 No Liability to Declarant** Neither Declarant, the Town, nor its successors or assigns shall be liable in damages to anyone submitting plans to it for approval, nor to any Owner affected by this Declaration by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans. Every person who submits plans to Declarant or the Town for approval agrees, by submission of such plans,

and every Owner agrees, by acquiring title to a Lot or interest therein, that he will not bring any action, proceeding, or suit against Declarant or the Town to recover any such damages.

ARTICLE VI

ENFORCEMENT

- 6.01 Applicability of Covenants.** All restrictions, conditions, covenants, and agreements contained here in are made for the direct, mutual, and reciprocal benefit of each and every Lot and the Owner thereof, as well as Declarant, shall create mutual, equitable servitudes upon each Lot in favor of every other Lot, shall create reciprocal rights and obligations between the respective Owners of all Lots and privity of contract and estate between all grantees [?] of said Lots, their heirs, successors, and assigns; and shall as to the Own of each Lot, his heirs, successors, and assigns, operate as covenants running with the land, for the benefit of all other Lots.
- 6.02 Obligation to Comply.** The restrictions, conditions, covenants, and agreements set forth herein and the obligations associated therewith shall be borne by each Owner, as defined herein. In enforcing the provisions of this Declaration, Declarant or other person seeking to enforce the same may take such action as deemed necessary against the Owner.
- 6.03 Collection Costs/Attorney's Fees.** In any legal or equitable proceeding for the enforcement, or to restrain the violation, of this Declaration, including the collection of any amounts due and owing Declarant or the Town, the losing party or parties shall pay the attorney's fees and reasonable costs and expenses, including interest, of the prevailing party, in such amount as may be fixed by the Court in such proceedings. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.
- 6.04 Inspection.** Declarant may from time to time at any reasonable hour or hours, with or without notice, enter and inspect any Lot and Improvement subject to the restrictions set forth herein or to the Town's regulations to ascertain compliance therewith.
- 6.05 Failure to Enforce Not a Waiver of Rights.** The failure of Declarant or any Owner to enforce any covenant herein contained shall in no event be deemed a waiver of the right to do so thereafter nor of the right to enforce any other restriction set forth herein.
- 6.06 Cost Allocation.** Any costs incurred in enforcement, maintenance, or other action required of Declarant shall be reimbursed by the party charged with the responsibility for costs, except to the extent that any such costs shall be deemed to be the joint obligation of all Owners, in which case all Owners shall share in the costs thereof in accordance with the formula set forth below and shall pay such amounts to Declarant as are necessary to defray said costs within thirty (30) days after billing, in accordance with Section 8.06. The amount of such costs allocated to any Owner shall equal the total amount of such costs multiplied by the fraction composed of the assessed valuation of the Lot and Improvements of such Owner divided by the total assessed valuation of all Lots and Improvements in the Park as determined from time to time.

ARTICLE VII

TERM, TERMINATION, MODIFICATION, AND **ASSIGNMENT OF DECLARANT'S RIGHTS AND DUTIES**

- 7.01 Term.** This Declaration, every provision hereof, and every covenant, condition, and restriction contained herein, shall continue in full force and effect for a period of forty (40) years from the date hereof. At the end of the initial or any subsequent forty (40)-year term, unless otherwise voted by the Owners and consented to by Declarant, this Declaration shall be deemed to be renewed upon its expiration for an additional forty (40)-year term. No sooner than one hundred eighty (180) days nor fewer than ninety (90) days prior to the expiration of the initial or any subsequent term of this Declaration, the Owners, at their option, may vote in writing to

determine whether they wish the Declaration to be renewed, and shall promptly provide documentation to Declarant of the results of any such vote. A vote of seventy-five percent (75%) of the Owners of Lots subject to this Declaration shall be required to bring the matter of the termination of this Declaration to Declarant. In conducting such vote, the Owner of each Lot shall have one vote.

- 7.02 Termination and Modification.** This Declaration, or any provision hereof, or any covenant, condition, or restriction contained herein, may be terminated, extended, modified, or amended, as to the whole of said Park or any portion thereof, with the written consent of the Owners of seventy-five percent (75%) of the Lots subject to this Declaration. However, no such termination, extension, modification, or amendment shall be effective without the prior written approval of Declarant. No such termination, extension, modification, or amendment shall be effective until a proper instrument in writing has been executed and acknowledged and recorded in the Registry of Deeds of Merrimack County, New Hampshire.
- 7.03 Assignment of Declarant's Rights and Duties.** Any and all rights, powers, and reservations of Declarant may be assigned to any person, corporation, or association which will assume the duties of Declarant pertaining to the particular rights, powers, and reservations assigned. The assignee, to the extent of the assignment, shall have the same rights and powers and be subject to the same obligations and duties as are given and assumed by Declarant herein.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

- 8.01 Constructive Notice and Acceptance.** Every Owner, including every person or entity who now or hereafter owns or acquires any right, title, or interest in or to any portion of said Park, shall be conclusively deemed to have consented and agreed to every covenant, condition, and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument to which such Owner, person, or entity acquired such right, title, or interest.
- 8.02 Rights of Mortgagees.** All provisions herein contained shall be deemed subject to and subordinate to all Deeds to secure Debt now or hereafter executed upon any Lot or Improvement subject to these covenants, and none of said restrictions shall supersede or reduce the security of affect the validity of such Deed to Secure Debt; provided, however, if any Lot or Improvement is sold under a foreclosure of any such Deed to Secure Debt or under the provisions of any Deed to Secure Debt, any purchaser of such sale, and its successors or assigns, shall hold such Lot or Improvement so purchased subject to all of the provisions of this Declaration.
- 8.03 Section or Paragraph Headings.** Headings in this Declaration are inserted for convenience only and are not intended to be a part of this Declaration of in any way define, limit, or describe the scope and intent of the particular paragraphs to which they refer.
- 8.04 Effect of Invalidation.** 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.
- 8.05 Easement Rights.** Declarant reserves an easement in perpetuity for the installation, construction, maintenance, repair, inspection, and replacement of sewer, water, electric, telephone/data, or gas service, drainage, or other utility facility and services. In the event of exercising such easement rights, Declarant may do whatever is necessary for the enjoyment of said rights, including, without limitation, the right to clear the easement areas of timber, trees, shrubs, or Improvements and no charge, claim, or demand may be made against Declarant for any activity undertaken in the exercise of such easement rights.
- 8.06 Common Costs.** In the event that costs are incurred for Improvements, maintenance, operation or repairs that benefit the entire Park and do not create special benefit for any Lot, Declarant shall notify the Owners of the proposed expenditure and the manner of allocation thereof to the Lot Owners. Unless a majority of the Owners of the then-approved Lots object to the expenditure

and cost allocation within twenty (20) days after the date of such notice, the Owners shall be assessed the costs thereof and shall pay the amount due and owing within thirty (30) days of the invoice date.

ARTICLE IX
RIGHT OF REPURCHASE

9/01 Declarant hereby retains the option to refund the purchase price without interest to, and regain title from, an Owner if that Owner does not, within two (2) years of the date of the original transfer of title from Declarant, commence construction of Improvements as approved by the Town and, if required, Declarant.

IN WITNESS WHEREOF, the undersigned have executed this Declaration on the date first hereinabove written.

DECLARANT: TOWN OF CANTERBURY, NH BOARD OF SELECTMEN

By_____

By_____

By_____

EXHIBIT A
DESCRIPTION OF CANTERBURY DEPOT COMMERCE PARK